

01 20.09.2021

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T. 516 of 2021
With
CAN 1 of 2021**

**Macmilan Industries Limited
Vs.
Berri Alloys Limited & Anr.**

**Mr. Swatarup Banerjee
Ms. Somali Mukhopadhyay For the Appellant/Petitioner.**

**Mr. Pallav Chowdhury
Mr. Dharendra Nath Sharma For the Respondent No. 2.**

**Mr. S.N. Mookherjee, Sr. Advocate
Mr. Surajit Nath Mitra, Sr. Advocate
Mr. Sanjay Ginodia
Mr. Debnath Ghosh
Mr. Sushovit Dutt Majumder
Mr. S. Ginodia
Ms. V. Dudhwewala For the Respondent No. 1.**

Re: CAN 1 of 2021

We admit the appeal.

This is an appeal from an ex-parte ad interim order dated 27th August, 2021 passed by the learned commercial court at Alipore in an interim application in a suit, granting an order of injunction in terms of prayer (a) of the petition.

The impugned order made the application returnable on 31st August 2021.

S.D. We are told that subsequently this order of injunction has been extended and the next date of hearing before the learned court is 4th October, 2021. Meanwhile, the appellant/defendant has taken out an application under Order 7, Rule 11 of the Civil Procedure

Code.

Apart from the merits of the matter a preliminary issue as to whether in a suit arbitral proceedings can be restrained is also involved.

Be that as it may, we are of the view that continuance of the order of injunction, considering all preliminary objections, should be considered by the learned court below upon notice to and upon hearing the appellant, by preponing the returnable date.

We dispose of the appeal (FMAT 516 of 2021) and the connected application (CAN 1 of 2021) after dispensing with all formalities by directing the learned court below on an application made by the appellant by 23rd September, 2021 to prepone the date of hearing of the interim application to a date not later than 30th September, 2021. On that day in the presence of the appellant the continuance of the interim order may be considered and directions for filing written objection or extension of time to file the same etc. may be made after suitably modifying any earlier direction in this behalf.

The Order 7, Rule 11 application may also be considered along with the interim application.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

