

23.12.2021

ASR 2.

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

**FMAT 738 of 2021
With
CAN 1 of 2021
(Via Video Conference)**

**Transafe Services Limited
Vs.
Petrofarms Limited & Anr.**

**Mr. Anirban Ray
Ms. Anshumala Bansal
Mr. Shayak Mitra**

.....for the appellant

**Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Anirdam Guhu
Mr. Soumasish Sengupta**

.....for the respondent no. 1

The Affidavit of service is taken on record.

None appears for the respondent no. 2.

This intended appeal is by a limited company, seeking leave to prefer it, from a judgement and order dated 23rd August, 2021 modified on 3rd September, 2021 directing sale of the subject containers.

The order has been passed on the premise that those containers belong to the respondent no. 2 against whom the respondent no. 1 has a substantial claim.

The appellant says that they are the owners of the containers. Without notice or hearing the appellant, the impugned order has been passed. It ought to be vacated.

We are of the view that such an application ought to have been made before the learned court below. This Court in its appellate jurisdiction cannot enter into a fact-finding exercise.

Mr. Ratnanko Banerjee, learned senior Advocate appearing for the respondent no. 1 contends that under the agreement between his client and the respondent no. 2, his client had the right to sell the subject containers to realize their dues against the respondent no. 2. He also submits that there is collusion between the respondent no. 2 and the appellant.

In those circumstances, dispensing with all formalities we heard out the appeal.

We direct that if the appellant makes an appropriate application before the learned court below on the self-same ground as sought to be made out in this appeal, the said court will proceed to consider it in accordance with law, from not later than 10th January, 2022.

Since the impugned order was made on 23rd August, 2021 and till date there is no transfer of ownership or possession of the containers, the receiver appointed by the court below will simply stay his hands and maintain this status quo till 24th January, 2022. The future course of action by the receiver will be determined by the direction on the application of the appellant further to this order. If there is no order to the

contary by 24th January, 2021, there will be no impediment on the receiver in proceeding in terms of the impugned order.

If by 24th January, 2022 some reason the learned court below is unable to dispose of the application it can extend the stay only upon imposition of such condition with regard to security etc to be provided by the appellant for postponement of the sale.

We have not gone into the merits of the application.

The appeal and application are disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)