

ORDER SHEET
A.P.O.T. No. 92 of 2021
IA No: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

Shivam Dhatu Udyog Pvt. Ltd. & Ors.
Versus
Jaishree Steels Pvt. Ltd. & Ors.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

-And-

The Hon'ble JUSTICE KAUSIK CHANDA

Date : 9th June, 2021.

Mr. Ratnanko Banerjee, Sr. Adv. with Mr. Debjit Mukherjee,
Mr. Rishav Banerjee, Mr. Sachin Shukla,
Mr. Suddhasatva Banerjee, Mr. Vivek Jhunhunwala
& Mr. Suryash Manot, Advs.
... for Appellants

Mr. S.N. Mukherjee, Sr. Adv. with Mr. Moukh Mukherjee
Mr. Rohit Banerjee, Advs.
... for respondents

1. This appeal has been preferred at the instance of the defendants in a suit for specific performance challenging an order dated April 23, 2021, whereby the learned Single Judge has restrained them from operating the factory forming the subject matter of the suit.
2. To appreciate the controversy between the parties it is necessary to advert to the plaint case. The plaintiffs/respondents have filed the suit praying, *inter alia*, for a decree of specific performance and injunction.

3. The plaint suggests that an oral agreement was entered into between the plaintiffs and the defendants for the purpose of taking over the control and management of the defendant no.1 company by sale of shares for a consideration of Rs. 85 crores. In terms of the said oral agreement, the plaintiffs have paid in excess of rupees three crores towards the GST liabilities of defendant no.1 company. Plaintiffs have further invested in excess of rupees thirty one crores towards making the factory functional. Plaintiffs also cleared the statutory dues of the workers of the factory with the intention of running the factory. The other defendants did not participate and interfere in the running of the factory of the defendant no. 1 company but continued to remain as share holders. The defendants, however, subsequently, refused to take steps to transfer the shares as orally agreed and, in the month of January, 2021 with the help of anti-socials, removed the employees of the plaintiffs who were inside the factory premises and prevented other employees from entering the factory premises. The plaintiffs subsequently found that the said factory has been kept under security and they were not allowed to enter the factory premises.

4. In connection with the said suit the plaintiffs filed an application praying, *inter alia*, for an injunction restraining the defendants from alienating or creating any third party interest in the assets and shares of the defendant no.1 company and also for appointment of a receiver over the said defendant no. 1/the appellant no. 1 to this appeal.
5. An interim order was passed on the said application on January 28, 2021, restraining the defendant no.1 from creating any third party rights over its assets without the leave of the Court. A receiver was also appointed for the purpose of making an inventory of the books and records of the defendant no.1.
6. After the said order was passed, the defendants no. 1, 2 and 3 filed an application before the learned Single Judge alleging that taking advantage of the order dated January 28, 2021, the plaintiffs have interfered with the operation of the factory and have also prevented raw materials being brought into the factory premises.
7. The defendants in the said application prayed, *inter alia*, for the following reliefs –

“(a) An order be passed restraining plaintiffs/respondents including their men, agents, servants, assigns etc from interfering and/or distributing the possession of the defendants at the factory premises situate at Jamuria Industrial Area, P.S. Jamuria, Ikra;

(b) An order of injunction be passed restraining the plaintiffs and/or its men, agents, assigns and servants from interfering with the operations of the factory of the defendant no.1 and/or its men, agents and employees;

(c) A direction upon the local Police Station Jamuria to provide police assistance in order to ensure that there is no breach of peace and no interference and/or intervention by the plaintiffs in the functioning and/or operations of the factory by the defendants;

(d) Ad-interim orders in terms of prayers above;

(e) Such further and/or other order or orders be passed as the Hon’ble Court may deem fit and proper.”

8. By the order impugned dated April 23, 2021, the learned Single Judge declined to pass any substantive order in favour of the defendants allowing them to operate the factory without the receiver making an inventory of the assets and properties of the defendant no. 1

company. The learned Single Judge has passed an order restraining the plaintiffs from preventing the defendant nos. 2 and 3 from entering the factory premises. It was, further, directed by the learned Single Judge that the defendant nos. 1, 2 and 3 shall take no step in the garb of entry to operate the factory or remove materials, machines etc. Directions for affidavits were given accordingly.

9. Mr. Ratnanko Banerjee, learned senior advocate appearing for the defendants/appellants, submits that the plaint case was to be disbelieved on its face since a verbal contract for transfer of shares between two incorporated entities is highly improbable and legally not permissible. He denies the verbal agreement as alleged by the plaintiffs. He further submits that when the learned Single Judge himself found that the defendants/appellants are in possession of the factory, the learned Single Judge was not justified in restraining them from operating the factory. He argues that in a suit for specific performance, the order restraining the defendants from operating their own company is not sustainable in the eye of law.

10. Mr. S. N. Mukherjee, learned senior advocate appearing for the plaintiffs/ respondents, submits that the defendants could not have taken out the application without filing any counter claim. He further submits that the defendants' application on the self same prayers, prior to filing of this application, was dismissed with a leave to file a fresh application. Mr. Mukherjee, further, submits that discretion exercised by the learned Single Judge at the ad-interim stage should not be interfered with by us. He denies the allegation that the plaintiffs have interfered with the possession and operation by the defendants over the factory premises.
11. After hearing respective parties, it does not appear before us that there was any justification on the part of the learned Single Judge to pass an order restraining the defendants from operating the factory.
12. The defendants sought for an injunction restraining the plaintiffs from interfering with the possession and operation of the defendant no. 1 company at the factory premises. The defendants' control and possession over the factory are even admitted in the plaint. In fact the learned Judge himself in the order impugned observed that the defendants were in possession of the factory and, till the ownership of

the defendant no.1 company was decided, the defendants were entitled to operate the factory.

13. We are of the opinion that in a suit for specific performance of this nature where the defendants' ownership, possession and control over the factory are admitted, there was no scope to restrain them from running their own factory.
14. The plaintiffs' interest has already been protected by the subsisting injunction order passed on 28th January, 2021 restraining the defendants from creating any third party rights and from disposing of the assets of the defendant no. 1 company without the leave of the Court. No material is brought to show that such order of injunction has been appealed against by any of the parties. A receiver was also appointed to make an inventory of the books and records of the defendant no. 1 company. The plaintiffs' application for inventory of the assets of defendant no.1 company is ready for hearing upon completion of affidavits.
15. In view of the discussion above, the direction of the learned Single Judge to the extent it restrains the defendants from running the business of the defendant no. 1 company stands accordingly set aside subject to the subsisting injunction order dated 28th January, 2021.

16. If the affidavits as directed by the learned Single Judge are not complete, the plaintiffs/respondents will be at liberty to file their affidavit in opposition within two weeks from date and reply, if any, may be filed by the defendants/appellants within one week thereafter. Parties will be at liberty to mention the matter after exchange of affidavits.
17. We, however, make it clear that opinion expressed by us at this ad-interim stage are prime facie in nature. The learned Single Judge will decide the application on merits being untrammelled by any of the observations made in this order.
18. The appeal being no. **A.P.O.T. 92 of 2021** and the application being IA no. **GA 1 of 2021** are, thus, **disposed of**.
19. Parties are to act on a server copy of this order downloaded from the official website of the Court.

(KAUSIK CHANDA, J.)

(SUBRATA TALUKDAR, J.)

