ODC – 1

ORDER SHEET
APOT 94 OF 2021
WITH
CS 20 OF 2021
IA NO: GA 1 OF 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(Commercial Division)

JAISHREE STEELS PRIVATE LIMITED AND ORS
VS
SHIVAM DHATU UDYOG PRIVATE LIMITED AND ORS

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 28TH JUNE, 2021.

Appearance:
Mr. S. N. Mookherjee, Sr. Adv.
Mr. A. Ray, Adv.
Mr. S. Nandy, Adv.
Mr. A. Singh, Adv.
Mr. R. Banerjee, Adv.
...For the appellant

Mr. Ratnanko Banerji, Sr. Adv.
Mr. R. Banerjee, Adv.
Mr. S. Dhatu, Adv.
...For the respondent

The Court : This is an appeal from a judgement and order dated 17th June, 2021 passed by a learned single judge of this Court refusing to appoint a Receiver to make an inventory of the assets in the factory premises of the respondent No.1.

We admit the appeal.

We have heard out the appeal dispensing with all formalities.

The learned judge observed that "the order protecting the plaintiffs' interest is in place and the plaintiffs have not shown any factual basis of the order being frustrated by any act of the defendants."

The learned judge was referring to an earlier interlocutory order dated 28th January, 2021 on an application filed by the appellants/ plaintiffs granting an injunction restraining the respondent/defendant No.1 from creating any third party rights over its assets without the leave of the Court and appointing a member of the bar as a receiver to make an inventory of "the books and records of the defendant No.1".

It may be noted that in an application filed subsequently by the respondents on 23rd April, 2021, a learned single judge of this Court had restrained the first, second and third respondents from operating the factory or remove materials and machines from it. On 9th June, 2021, the appellate Court had noted that the appellants were already protected by the order dated 28th January, 2021 and set aside that part of the order dated 23rd April, 2021 restraining the respondents from operating the factory.

A Division Bench of this Court had thus endorsed the view of the learned single judge that the appellants were adequately protected by the order made on 28th January, 2021.

Furthermore, we add that the cause of action of the appellants is based on an alleged oral agreement for transfer of the respondents' subject factory together with the shareholdings in the business to them. This oral agreement is denied by the respondents.

Apart from assertions in paragraphs 10, 11, 14, 15 and 17 of the plaint to the effect that the appellants had paid the GST liability of the respondents of Rs.3,14,67,162/- and Rs.78,95,839/- and would in future meet the liability of Rs.85,09,67,162/- of the respondents towards an entity Phoenix ARC limited, allegedly a secured creditor of the respondents, there is no indication of any substantial consideration for this alleged oral agreement.

However, the parties would be at full liberty to prove their respective cases at a later stage, particularly at the trial of the suit.

For those reasons, we are of the opinion that no further protective order in addition to the subsisting interim order dated 28th January, 2021 is required. We are told that the respondents have taken out an application challenging the territorial jurisdiction of this Court to entertain, try and determine the suit. We feel the ends of justice would be subserved if the suit is expedited.

We expedite the suit as follows:

As the respondents have already filed their written statement, we direct that there be cross discovery by the parties by 16th July, 2021. Inspection forthwith.

The learned judge taking up suits may be moved to hear out the suit subject to the direction of the Hon'ble the Chief Justice (Acting) regarding hearing of suits.

The said application of the respondents challenging the jurisdiction of this Court may be heard along with the suit.

We take note of the parting submission of Mr. S. N. Mookherjee, learned senior Counsel appearing for the appellants. He submitted that his clients may be provided an inventory of the movables which were lying in the factory when they took over its possession from the appellants.

We observe that every company has to undergo an annual audit. A quarterly statement of accounts inter alia containing the details of movables, stocks etc. of the company is also prepared. This statement is prepared in furtherance of a statutory requirement.

We direct the respondents to make available to the appellants such a squarely statement relevant to the time when they took over possession of the factory from the appellants.

The appeal (APOT No.94 of 2021) and the connected application (GA No.1 of 2021) are disposed of accordingly.

(I. P. Mukerji, J.)

(Aniruddha Roy, J.)

A Dey