

21 30.3.2022
Sc Ct. no.8

FMAT 63 OF 2022
with
I.A. No. CAN 1 OF 2022

Md. Wasim & Ors.

Vs.

M/s United Traders & Ors.

Mr. Rahul Karmakar
Mr. Abir lal Chakravorti.

...For the Appellants/
Defendants 1 to 4

Md. Wasim Ahmed

...For the Respondents

By consent of the parties the appeal and the application are taken up together and disposed of by this order.

The respondent no.1 has filed a suit praying for declaration that the plaintiff is the monthly tenant in respect of one shop room on the ground floor in the suit premises. The proprietor of the said firm is one Khansa Noor. The defendant no.s 1 to 7 are the relatives of the plaintiff. The dispute arose with regard to the creation of such tenancy and carrying on business by the family members of the respondent no.1. There is a dispute also with regard to the nature and character of the plaintiff that is to say whether the plaintiff is a proprietorship concern or a partnership firm consisting of the family members of Khansa Noor.

According to the defendants the defendant nos. 1 to 3 are the partners of M/s. Bengal Refrigeration and Company and they are carrying on business as co-partners in the said premises. It was the contention of the defendant nos. 1 to 4 that the disputes between the plaintiff and the defendants are not merely family disputes but there has been misappropriation of the assets of the partnership business of M/s. Bengal Refrigeration Company by Md. Sohail in connivance with his wife Khansa Noor. Due to such *mala fide* act on the part of Md. Sohail and his wife M/s. United Traders i.e. respondent no.1 in this appeal are causing disturbance to the functioning of the partnership business.

After hearing learned counsel for the parties, the Court made the following findings :

- “1. Two separate rent receipts are exist one in the name of United Traders and another in the name of Md. Sohail and Brothers.
2. Two businesses are running in the name and style of “M/s. Bengal Refrigeration & Co and M/S United Traders.
3. Two separate Trade Licenses are exist one in the name of “M/s. Bengal Refrigeration & Co” and another in the name of “M/S United Traders”.
4. Two separate areas are mentioned in the trade licenses one is 150 Sq.ft. and another 250 Sq.ft.
5. one is Proprietorship business and another is Partnership business.
6. Nature of businesses are more or less same.

Only disputes amongst the parties are that Defendant No.1 to 7 claim proprietorship business is part and parcel of Partnership business, i.e., “M/s. Bengal Refrigeration & Co” although there is no counter claim/WS filed by

the Defendants and plaintiff claims Proprietorship business is totally separate and different legal entity.”

It cannot be denied at this stage that the firms are running the business from the suit premises. However, the disputes are of such a nature which require adjudication at the trial. At this interim stage, the Court is not required to hold a mini trial. The basis of the findings of the trial court as we have elaborated above was based on the materials made available to the Court by the parties in their pleadings. The appellants alleged that taking advantage of the *status quo* order, the appellants are not permitted to enter the suit premises.

However, we find from the impugned order that the learned trial Judge directed both the parties to maintain *status quo* only in respect of the business as mentioned in the schedule of the application.

We do not find from the impugned order that any allegation was made with regard to the obstruction being caused by the respondent no.1 or the other defendants to the ingress and egress of the appellants in the suit property for the purpose of carrying on their business.

In view of the aforesaid, we do not find any reason to interfere with the order. Accordingly the appeal fails.

The appeal and the application are dismissed. However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)