

19.04.2022  
Item No.11  
Court No.6.  
S. De

**M.A.T. 373 of 2022**  
**I.A. No. CAN 1 of 2022**

**Smt. Rupa Saha & Another.**  
**Vs**  
**The State of West Bengal & Ors.**

Mr. Billwadal Bhattacharyya,  
Mr. Saumya Ray,  
...for the appellants.

Mr. Alak Kumar Ghosh, Ld. Sr. Adv.  
Mr. Swapan Kumar Debnath,  
...for the K.M.C.

Mr. Amit Halder  
...for the respondent no.8.

Mr. Ranjan Kali,  
Ms. Nabanita Dutta,  
...for the respondent no.10.

Mr. Raja Saha,  
Mr. Biswabrata Basu Mullick,  
...for the State.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated December 10, 2021 whereby W.P.A.14155 of 2021 was disposed of.

One Sumitra Saha, since deceased, was the proprietress of a saree business which was run under the name and style of 'Indian Silk Museum'. The appellants and the private respondents are the son and three daughters of the said Sumitra Saha.

It appears that one of the children of Sumitra Saha, namely Jui Bhattacharjee had filed a suit for partition and declaration in the Alipore Court. The suit was dismissed. An appeal was carried to a Division Bench of this Court. A compromise was arrived at by and between the parties. By an order dated December 12, 2014 the said appeal being F.A. 64 of 2012 was disposed of in terms of the agreement dated November 21, 2014 arrived at between the parties. Thus, the Division Bench passed a decree in accordance with the terms of settlement.

Sumitra Saha passed away on April 20, 2016. Thereafter, the present appellants made an application before the corporation authorities and obtained a Certificate of Enlistment in their names for the purpose of carrying on the said saree business. The private respondents herein, having come to know of the same, approached this Court by way of a writ petition being W.P.A. 21017(W) of 2018 for an order directing the corporation authorities to cancel the Certificate of Enlistment which was issued in the names of the appellants herein. The writ petition is still pending.

The private respondents herein thereafter made a fresh complaint to the License Department of Kolkata Municipal Corporation contending that they were also legal heirs of Sumitra Saha and their names

should also be included in the aforesaid Certificate of Enlistment.

It appears that the matter was referred to the Chief Municipal Law Officer of Kolkata Municipal Corporation by the competent authority for a decision as to whether the contention of the complainants therein (private respondents herein) should be accepted.

The Chief Municipal Law Officer heard all the concerned parties, perused relevant documents submitted by them and passed an order on March 11, 2021, the operative portion whereof reads as follows:

*“We may agree by taking recourse to the provision enunciated in Section 199 of K.M.C. Act, 1980 to issue Certificate of Enlistment showing names of Nanda Das and Jui Bhattacharjee as Certificate of Enlistment Holder in addition to already existing Certificate of Enlistment Holders.”*

Pursuant to such order of the Chief Municipal Law Officer, it appears that the Certificate of Enlistment was amended and the names of the private respondents being Nanda Das and Jui Bhattacharjee were included therein.

Being aggrieved by the order of the Chief Municipal Law Officer, the present appellants

approached the learned Single Judge challenging the said order and actions taken pursuant thereto. The learned Single Judge held that issuance of the Certificate of Enlistment in the names of all the surviving heirs of the deceased proprietress of 'Indian Silk Museum' is not causing any prejudice to the business of the writ petitioners and such license is not a document of title or ownership of the business. The learned Single Judge further held that incorporation of the names of the other heirs of the deceased proprietress in the Certificate of Enlistment, shall abide by the decision of the Civil Court. Parties shall not claim any equity on the basis of the same. The Certificate of Enlistment issued by the Corporation shall not be used to claim possession or title by either of the parties. The business of the writ petitioners (appellants before us) shall not be disturbed in any way. With those observations the learned Single Judge disposed of the writ petition.

Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard learned counsel for the parties at length including Mr. Ghosh, learned senior counsel appearing for the Kolkata Municipal Corporation.

We are of the view that ideally, before the Certificate of Enlistment was amended by incorporating the names of the other legal heirs of the

original proprietress of the business, the writ petitioners should have been heard once by the competent authority who appears to be the Municipal Commissioner. However, we have ourselves gone into the material facts of the case. We find from the decree that was passed by a Co-ordinate Bench of this Court referred to hereinabove, that the same provided that the writ petitioners and the private respondents shall jointly run the business of 'Indian Silk Museum'. We also find that an affidavit was affirmed by the writ petitioners before the learned Judicial Magistrate at Alipore wherein it was stated that the writ petitioners, namely Ms. Rupa Saha and Sri Debasish Saha are the only legal heirs of Sumitra Saha who was the sole proprietress of the business in question. Let a copy of the said affidavit be kept with the records. This affidavit was submitted to the licensing authorities for obtaining a Certificate of Enlistment exclusively in the names of Rupa Saha and Debasish Saha. This document was suppressed by the writ petitioners before the Learned Single Judge as also before us. It has been brought to light by Learned Advocate for the private respondents. In our opinion, this was sharp practice amounting to fraud. The writ petitioners have not approached this Court with clean hands and do not deserve any relief from a Court of equity. In any event, we do not find that any prejudice has been

caused to the writ petitioners by incorporation of the names of the other admitted legal heirs of the original proprietress in the Certificate of Enlistment. The learned Single Judge has given sufficient protection to the writ petitioners as we have recorded above. We do not think that in the facts and circumstances of the case, we should remand the matter back to the Municipal Commissioner. The order passed by the Chief Municipal Law Officer and the action taken on the basis thereof appear to be just and fair.

It was urged on behalf of the appellants that there is a subsisting order of injunction passed by the Civil Court restraining the private respondents herein from interfering with the peaceful running of the business of "Indian Silk Museum". We do not see how such order could stand in the way of amendment of the Certificate of Enlistment. The learned Single Judge has already clarified that the business which is being run by the writ petitioners will in no way be interfered with by the private respondents herein.

On an overall consideration of the facts and circumstances of the case, we are of the view that no interference is warranted with the order of the learned Single Judge.

M.A.T. 373 of 2022 is, accordingly, dismissed along with the application being I.A. No. CAN/1/2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

**(Kausik Chanda, J.)**

**(Arijit Banerjee, J.)**