

22.03.2022
KC(AC1)

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

F.M.A.T.(ARBAWARD) 18 of 2022

Dr. Partha Biswas and Anr.

-versus-

Dr. Ajoy Paul and Anr.

With

CAN 1 of 2022

Mr. Ratnanko Banerjee,
Mr. Reetobroto Mitra,
Ms. Urmila Chakraborty,
Mr. Orijit Chatterjee,
Mr. Indranil Karfa,
Ms. Sabarni Mukherjee.....For the appellants.

Mr. Jishnu Saha,
Mr. Ishaan Saha,
Ms. Sananda Ganguly,
Mr. Shubratip Roy.....For the respondents.

This is an appeal from an ex parte order of injunction made on 16th March, 2022 by the learned Judge, Commercial Court at Alipore. The order was passed in an application under Section 9 of the Arbitration and Conciliation Act, 1996 made by the respondents. The order was to the following effect:

“Accordingly, the ad-interim order of injunction is allowed in terms of Prayer-(b) read with Prayer-(c) of the present application and the Respondents are directed to follow the provisions of the Indian Partnership Act, 1932 by not carrying out similar nature of business as that of the Petitioners till 22.03.2022.

Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.

Issue notice accordingly to show cause as to why the instant application shall not be allowed alongwith the instant application and all annexures within 24 hours and the Petitioner is also directed to file the affidavit of service within 24 hours.

To 22.03.2022 at 1 p.m. for S/R, appearance, filing affidavit-in-opposition, if any and also for hearing.

Both sides shall act of the basis of the downloaded copy of this order from the Website/ECourts App.”

Prayers (b) and (c) are as follows:

“(b) An order of injunction be made restraining the respondents and each of them together with their men, agents and assigns, from in any manner interfering with the occupation of flat Nos. G1/A and 3D at 2/5, Sarat Bose Road, Kolkata-700020, by the B B Eye Foundation partnership firm during the subsistence of the partnership firm;

(c) An ad interim order be made in terms of the prayers above.”

It is a matter of great concern and much importance. Whether by entering into a partnership agreement under the Indian Partnership Act, 1932 with fellow medical practitioners, a medical practitioner as a partner of the firm can restrain another partner from carrying out his professional obligations on the ground that by doing so he or she would be competing with the partnership business? Whether the medical profession is a business?

This is a point of law which has to be appreciated on facts and must be analysed and dealt with in detail by the learned trial court in the Section 9 application, before even thinking of granting an order of injunction.

In this appeal the appellants and the respondents, except the appellant no. 2, are eye specialists/surgeons. All of them are the partners of a firm named B B Eye Foundation. The “business” of the firm, as described in the partnership deed, is inter alia performance of eye surgery. This firm was constituted on 27th March, 2018 and was granted the necessary licence to carry out its activities on 10th September, 2020.

Much earlier than that from 1998 the appellant no. 2, who is not a doctor was running an establishment by the name of Trenetralaya.

Mr. Jishnu Saha, learned senior advocate appearing for the respondents submitted that this establishment only accommodated doctors’ chamber or clinic and did not have the requisite registration and permission to carry out any surgical procedure.

It appears that in 2019, the appellant no. 1, the husband of the appellant no. 2 entered into partnership with his wife to run Trenetralaya. The required licence under the West Bengal Clinical Establishment (Registration and Regulation) Act, 2010 and the Rules framed thereunder to perform surgery in Trenetralaya, which is stated to be situated about 3½ K.M.s from B B Eye Foundation, was obtained by the appellants on 4th October, 2021.

This has given rise to all the trouble.

The respondents say that under Section 11 read with Section 36 of the Partnership Act, 1932 and the partnership agreement, the appellants could be restrained from carrying out the “competing business” from Trenetralaya. They could be restrained from entertaining any patient in that clinic.

Mr. Ratnanko Banerjee, learned senior advocate appearing for the appellants contended that for a long period of time his clients and the respondents were collaborating with one another to carry out their medical practice. The respondents were aware of Trenetralaya. He showed us Whatsapp messages and social posts made by the respondents to congratulate the appellants for starting medical treatment at Trenetralaya.

Mr. Saha met this submission by stating that his clients were all along aware that the premises of Trenetralaya was used as a doctors’ chamber and could be used for that purpose only. His clients were not aware of the licence which the appellants had obtained to carry out eye surgery from there.

What is a matter of grave concern, from the submissions made before us, is that Trenetralaya has already booked about 60 (sixty) eye surgeries to be performed in the immediate future. If this order of injunction, which the learned court below has passed, is made effective, those patients who have prepared themselves for those surgeries would be the worst

sufferers. Moreover, the fate of the ill or the infirm cannot be made dependant on business disputes or rivalry between medical practitioners. That is the least that our society would want.

In those circumstances, we stay the operation of the impugned order. However, we direct the appellants to maintain a profit and loss account of Trenetralaya from tomorrow, i.e. 23rd March, 2022 till the date of disposal of the Section 9 application by the learned trial court. A statement of account shall be furnished by the appellants to the respondents on a fortnightly basis. Continuance of the profit and loss account by the appellants will depend on the final order to be passed by the learned court below.

The appellants will not interfere with the participation of the respondents in the business of B B Eye Foundation.

This question whether an order of injunction should be granted at all is to be re-visited by the learned court of first instance, which should do so by hearing the Section 9 application upon notice to and upon hearing all the parties, by a reasoned order, preferably by 6th May, 2022.

Written objection may be filed to the Section 9 application by the appellants by 30th March, 2022. Any reply thereto, may be filed by 6th April, 2022.

All points are kept open before the learned court.
Our observations shall only be treated as prima facie.

The appeal (F.M.A.T. 18 of 2022) and the
connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)