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

**F.M.A.T.(ARBAWARD) 19 of 2022
With
CAN 1 of 2022**

**Aruna Banerjee & Anr.
Vs.
Dr. Papiya Mukherjee**

**Mr. Shounak Mukherjee
Mr. M. Ahmed
Mr. Anurag Ghosh** **For the Petitioners.**

**Mr. Arik Banerjee
Mr. Ayan Dutta
Mr. Rajib Mullck
Ms. Shreyashi Maity** **For the Respondent.**

Re: **CAN 1 of 2022**

The impugned order dated 24th February, 2022 of the learned judge, Commercial Court at Alipore is on the following terms:

- a. “Respondents, his men, agents, assignees shall be restrained from creating any third party rights in respect of the ground and first floor of scheduled premises as exposed in the present application.
- b. Respondents, his men, agents, assignees also shall be restrained from surrendering the tenancy of the pathological lab in favour of any third party and/or the landlord.
- c. It is ordered that Respondents, his men, agents assignees shall be restrained from

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interfering with and/or obstructing the petitioner from entering into the said pathological lab and/or situated at scheduled premises.

d. Respondents shall not create any activities in respect of closing down the business of the said pathological lab.

e. All the above directives shall bind up to 60 days and/or formation of Arbitral Tribunal, whichever is earlier.”

Mr. Shounak Mukherjee, learned advocate for the appellant makes, inter alia, the following submissions:

- a. The first floor of the subject premises was not partnership property and could not have been the subject matter of the order;
- b. The partnership firm which was a tenant in respect of a ground floor was dissolved by the death of a partner, Dr. Dhrubajyoti Banerjee.

In those circumstances, the ground floor has reverted back to the appellant, the owner of both the ground and the first floors.

On the other hand Mr. Banerjee appearing for the respondent submitted that on more than one occasion, in an application under Section 9 of the Arbitration and Conciliation Act, 1996 made by the

respondent before the learned court below more or less identical orders were passed which were not challenged by the appellant.

Considering the impugned order as a whole we find that it is a plausible order which could have been passed on the prima facie case and on consideration of the balance of convenience for a period of 'sixty days and or formation of arbitration tribunal whichever is earlier.'

In any case, the order would not have life beyond 24th April, 2022.

We are told that in a Section 11 application by an order dated 30th March, 2022, this court has appointed an Arbitrator.

We take it that the arbitral tribunal has been constituted or shall soon be constituted. Either party would be at liberty to approach the tribunal for any appropriate interim relief or award pending the arbitral proceedings. All questions would be open.

Dispensing with all formalities this appeal and the stay application (CAN 1 of 2022) were heard out.

They are disposed of by this order.

With the above observations the impugned order is affirmed.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

