

**F.M.A.T. 151 of 2022
With
CAN 1 of 2022**

**JC Overseas Ltd.
Vs.
Simi Jaireth & Ors.**

And

**F.M.A.T. 152 of 2022
With
CAN 1 of 2022**

**Juneja Heights LLP
Vs.
Simi Jaireth & Ors.**

And

**F.M.A.T. 153 of 2022
With
CAN 1 of 2022**

**Juneja Highrise LLP & Ors.
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 154 of 2022
With
CAN 1 of 2022**

**Indian Tanning Industries Pvt. Ltd. & Ors.
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 155 of 2022
With
CAN 1 of 2022**

**Hazelton Hirise LLP
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 156 of 2022
With
CAN 1 of 2022**

**Bengal Juneja Leather Complex Ltd.
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 160 of 2022
With
CAN 1 of 2022**

**Fenasia Ltd.
Vs.
Simmi Jaireth & Ors.**

And

F.M.A.T. 166 of 2022

**J C Overseas Ltd.
Vs.
Simi Jaireth & Ors.**

And

F.M.A.T. 167 of 2022

**Juneja Heights LLP
Vs.
Simi Jaireth**

And

F.M.A.T. 168 of 2022

**Juneja Highrise LLP & Ors.
Vs.
Simmi Jaireth & Ors.**

And

F.M.A.T. 169 of 2022

**Indian Tanning Industries Pvt. Ltd. & Ors.
Vs.
Simmi Jaireth & Ors.**

And

F.M.A.T. 170 of 2022

**Fenasia Ltd.
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 176 of 2022
With
CAN 1 of 2022**

**Hazelton Highrise LLP
Vs.
Simmi Jaireth & Ors.**

And

**F.M.A.T. 177 of 2022
With
CAN 1 of 2022**

**Bengal Juneja Leather Complex Limited
Vs.
Simmi Jaireth & Ors.**

Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Kanishk Kejriwal,
Mr. Rahul Poddar,
Mr. B. N. Joshi,
...for the appellant
in F.M.A.T. 151 & 166 of 2022.

Mr. Dhruba Ghosh, Sr. Adv.,
Mr. Anubhav Sinha,
Mr. Rahul Poddar,
Mr. B. N. Joshi,
...for the appellant in
F.M.A.T. 152 & 167 of 2022.

Mr. Hirak Kumar Mitra, Sr. Adv.,
Mr. Jishnu Chowdhury,

Mr. Aritra Basu,
 Mr. Rahul Poddar,
 Mr. Nikunj Berlia,
 ... for the appellants in
 F.M.A.T. 153 & 168 of 2022

Mr. Surajit Nath Mitra, Sr. Adv.,
 Mr. Shayak Mitra,
 Mr. Rahul Poddar,
 Mr. B. N. Joshi,
 ... for the appellants in
 F.M.A.T. 154 & 169 of 2022

Mr. Anindya Kumar Mitra, Sr. Adv
 Mr. Debanjan Mandal,
 Mr. Soumya Roy Chowdhury,
 Mr. Sanjeev Kumar Trivedi,
 Mr. Ajay Agarwal,
 Ms. I. Hanan,
 Mr. Sanket Sarawgi,
 Mr. Arka Banerjee,
 Ms. Mahima Cholera,
for the appellant
 in FMAT 155 of 2022 and
 FMAT 176 of 2022

Mr. S.K. Kapur, Sr. Adv.,
 Mr. Krishnaraj Thaker,
 Mr. Rudrajit Sarkar,
 Mr. Aditya Kanodia,
 ... for the appellant in
 FMAT 160 of 2022 and
 FMAT 169 of 2022

Mr. S. N. Mukherjee, Sr. Adv.,
 Ms. Lopita Banerjee,
 Mr. Rajesh Upadhyay,
 Ms. Ujjaini Chatterjee,
 ... for the appellant in
 F.M.A.T. 156 & 177 of 2022

Mr. Jayanta Kumar Mitra, Sr. Adv.
 Mr. Sabyasachi Chaudhury,
 Mr. Rudraman Bhattacharyya,
 Mr. Suddhasatva Banerjee,
 Ms. Radhika Singh,
 Mr. Chayan Gupta,
 Mr. Satyaki Mukherjee,

...for the plaintiff/
respondent no. 1 in all matters

Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Sarvapriya Mukherjee,
Mr. Satadeep Bhattacharya,
Mr. Aniruddha Agarwalla,
... for the respondents nos.
2, 4, 6, 7, 10 and 11 in all matters

Order Dated: 19th May, 2022

Soumen Sen, J.: By consent of the parties the appeals and applications are taken up together and are disposed of by this order.

There are two sets of appeals filed. The first set of appeals are against the ad interim order of injunction restraining the appellants/defendants from alienating, encumbering and dissipating and/or dealing with immovable properties and the bank accounts of several entities.

The estate of Thakurdas is in the eye of the storm.

For better understanding of the dispute we divide the appeals in two sets.

The first group of appeals would consist of the Public and Private Limited Companies. The second group of appeals would consist of LLPs. The cause title would give an indication of the nature of the entities.

The lead counsel for the Companies is Mr. S.K. Kapur, senior advocate and his argument is supplemented by Mr. Surajit Nath Mitra Sr. Advocate and Mr. Ratnanko Banerjee, Sr. Advocate representing few of the appellants as would appear from the appearances mentioned above.

The learned Counsel for the parties have submitted that the suit is bad for multi farousness and is required to be dismissed for lack of any pleading

to show that the Companies are formed out of the funds of Thakurdas. The companies do not have any joint family character. There is no, prima facie, evidence to establish that business grew from a nucleus of joint family property or out of the fund of Thakurdas. Thakurdas claimed to be a self made person. Accordingly, any claim for coparcenery is baseless and absurd.

The Learned counsel for the parties have taken us through the plaint to demonstrate that there is no pleading of jointness or blending and the averments made in the plaint are vague. The plaintiff has failed to establish existence of any coparcenery estate and accordingly, only the estate of Thakurdas, if any, could have been partitioned which he left at the time of his demise. Even if, it is assumed that the plaintiff has any claim or interest in the estate of Thakurdas the same is restricted only to the shares of Thakurdas in the appellants/companies which are insignificant in comparison to the holding of others in the said Companies. The Company is a juristic entity and distinct from share-holders. The assets of the Companies belong to the Companies and not to any share-holder.

Mr. S.K. Kapur, the learned Senior Counsel has submitted that there is no presumption under the Hindu Law that the business standing in the name of any member of the joint family is a joint family, business even if that member is a manager of the joint family unless it can be shown that the business in the hands of coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with a joint family estate, the business remained free and separate. The plaintiff has to prove that a self-acquired property in order to become joint family property has been voluntarily thrown by the coparcener into the

joint stock with the intention of abandoning all separate claims up to it. Mr. Kapur submits that his submission is duly supported by the decision of the Hon'ble Supreme Court in ***G. Narayana Raju (dead) by his legal representative Vs. G. Chamaraju & Ors.*** reported at **AIR 1968 SC 1276**.

The learned Trial Judge has completely misdirected his mind in not appreciating the above legal position and granted an omnibus ad-inteirm order of injunction preventing the Companies to carry on their day-to-day functioning and business.

The lead Counsel for the LLPs are Mr. Anindya Kumar Mitra, senior Counsel and Mr. Hirak Kumar Mitra, senior counsel.

Mr. Anindya Kumar Mitra the learned senior Counsel has submitted that there is no semblance of any right of the plaintiff in relation to the appellant, Hazelton Hirise LLP in short 'Hazelton' and the learned trial Court ought not to have prevented the LLPs from carrying on their business activities and to complete the pending projects. The plaintiff was aware that the Hazelton has entered into a development agreement in respect of the property at U.N. Brahmachari Street and substantial construction had taken place and the project is duly registered with WBHIRA and unless Hazelton is able to complete the construction by May 2023 serious consequences are to follow including payment of huge amount of compensation. Mr. Mitra has drawn our attention to the development agreement and various clauses of the agreement to show that the project invokes various entities and most of the parties of the LLPs are strangers to Thakurdas family and they cannot be prevented from carrying on their business due to any inter se dispute between the family members of Thakurdas. In fact, the other family members of

Thakurdas have participated in the said project. With a view to create disruption in the development of the said property the suit has been filed.

It is submitted that allotments have already been made to a large number of allottees. In the event, the said order is allowed to continue this will result in procuring a breach of contract and would cause irreparable loss and prejudice to the LLPs. Moreover, it would seriously affect the valuable rights of the allottees.

Mr. Hirak Kumar Mitra, learned Senior Counsel representing one of the LLPs has submitted that in fact one of the partners of the LLPs who happens to be one of the brothers of the plaintiff has rescued her during her distress. There is no semblance of any right of the plaintiff in relation to the LLPs. The LLPs have never assumed the character of a joint family business. The learned Trial Judge has hastily decided the matter at the ad-interim stage without realizing the effect it would have on the functioning of various LLPs.

Mr. Dhruva Ghosh, learned Senior Counsel representing one of the LLPs has also made similar submission that by reason of the order of injunction, the development project undertaken by the said LLPs had come to a standstill and would adversely affect the said LLPs.

Per contra, Mr. Jayanta Kumar Mitra, learned Senior Counsel representing the plaintiff has submitted that Annexures “MMM” and “kkk” would, prima facie, establish the jointness of the business. The shareholding pattern of the joint companies would indicate that family members of Thakurdas in one way or the other are closely associated with these companies. The companies and the LLPs were formed out of the fund of Thakurdas and the business grew from a nucleus of the property acquired by

Thakurdas during his lifetime. Mr. Mitra submits that Thakurdas wanted his sons and family members to be part of the business entities and/or firms during his lifetime and the shareholdings of various companies so arranged would clearly establish the said intention of Thakurdas. All the companies and the businesses including the LLPs have been formed out of the funds of the joint family. The joint family properties were actually utilized for starting or carrying on business and that the income from such businesses was thrown into the common stock. Mr. Mitra submits that plaintiff was enjoying all the facilities of the joint family properties and businesses, however, on 24th January, 2022 the defendant Nos.1 to 10 and the companies under their control threatened to dispossess from her three flats on the basis of an undated family settlement that was never signed by the plaintiff. Mr. Mitra has emphasized that the other family members of Thakurdas did not prefer any appeal against the order impugned nor against the order by which the interim order was extended. There is no affidavit on record to show that the family members of Thakurdas are disputing the existence and veracity of the family settlement. If the settlement is taken to be correct then it would reflect that the family members of Thakurdas had accepted jointness of the properties as enumerated in the so-called arrangement. The signatories to family settlement have accepted that the estate of Thakurdas consist of various properties and shares in various companies and in absence of any rebuttal by the persons who are signatories to the said family settlement, it has to be accepted at the prima facie stage that they considered these properties as part of the estate of Thakurdas.

Mr. Mitra, has also submitted that in the plaint it has been clearly stated that various immovable assets and properties were purchased/acquired from the family corpus and forming a part of the estate of the Juneja joint family, which would be evident from the schedule annexed to the plaint and marked as “NNN”. The shares in complies, limited liability partnerships, partnership firm, entities, several moveable assets purchased/acquired from the family corpus as also several bank accounts, all forming a part of the estate of the Juneja joint family, have been disclosed and marked as “OOO”.

The defendant nos. 11 to 33 were essentially run on partnership principles and the family members comprising of the plaintiff and the defendant nos. 1 and 2 had a say in each of the said defendants. The Juneja family remained joint and the control of the defendant nos. 11 to 33 remains the primary asset of the Juneja family. Shares held by the plaintiff, the defendant nos. 1 to 7 and the defendant nos. 9 and 10 in the defendant nos. 11 to 19 and 24 to 33, as applicable including the business of the defendant nos. 10 to 23 are joint Juneja family properties. The individual shareholders/partners/individuals are merely holding share/shares in the companies, limited liability partnerships and partnership firms and the defendant nos. 20 to 23 in trust and for the benefit of the Juneja family.

The defendant nos. 11 to 33 have been set up with and/or from the joint family corpus. The defendant nos. 28 to 33 have been incorporated from funds out of the joint family corpus. The members of the Juneja family have no separate independent source of income. All income is generated from the respondent nos. 11 to 33, which are closely held family entities.

Mr. Mitra, therefore, submits that on the basis of such pleadings and the documents disclosed in the plaint and in the injunction petition, cannot be said that the learned Trial Court did not apply its mind in exercising its discretion in favour of the plaintiff by granting an ad interim order of injunction.

We have considered the submission made on behalf of the respective parties.

At the ad-interim stage, the Trial Court is required to find out whether the plaintiff has made out a prima facie case. Once a prima facie case is established, the balance of convenience and irreparable loss and prejudice are the other factors to be taken into consideration. The plaintiff claims to be the daughter of Thakurdas. In the plaint, she has indicated the formation of various companies and the present status of the various companies which would go to show that in most of the companies, Thakurdas was a shareholder along with his family members and relations. The averments made in the plaint prima facie gives an impression that the business of Thakurdas family proliferated under the able guidance and stewardship of Thakurdas. However, at the same time it needs to be considered whether there is a blending of individual property with the joint family property. It needs to be ascertained whether the other members of Thakurdas family had contributed separately and acquired properties unconnected with the joint family property or that the acquisition of joint family properties or companies or formation of LLPs or companies are not out of the fund of the joint family or of Thakurdas. The existence of the family settlement has been denied by the appellants. However, none of the appellants, in our view, is entitled to

deny the existence or authenticity of the said settlement as it is between the sons and family relations of Thakurdas. Curiously defendant No.1 to 10 did not prefer any appeal against the ad-interim order or the subsequent order by which the ad-interim order was extended for a limited duration. At the same time, it is equally important to appreciate that a member of the joint undivided family can make separate acquisition of property for his own benefit and unless it can be shown that the business grew from the joint family property or that the earnings were blended with joint family estate that remained free and separate. The burden of proving in an action for partition of joint family property that a particular item of property is joint primarily rests upon the plaintiff. Circumstances no doubt may readily cause the onus to be discharged but where this has not been done, the Court may not grant any relief to the plaintiff. The circumstances in the instant case based on the undated family settlement prima facie gives an impression of jointness in respect of some of the properties and such assertion has remained unrebutted uptill now as the defendant Nos. 1 to 10 are curiously remained unrepresented nor has preferred any appeal. These defendants are required to take a stand and file affidavit dealing with the allegations made against them. The “so called family settlement” on the basis of what it is alleged that the plaintiff was sought to be ousted from those flats and deprivation in respect of properties forming the estate of Thakurdas prima facie shows that the properties from its nature and relative value may have formed the nucleus from which the properties mentioned in the alleged family settlement may have been acquired but even then the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without

the joint family property. There has to be prima facie evidence that members of a joint family carried on business with the joint family estates in various firms under different names and the onus would be on the partner of a particular firm to prove that the firm was their separate business and if they withhold from the Court, the source of capital of their business, it may be inferred that the business was started with a nucleus of joint family funds. The claim of the plaintiff appears to be that the family members of Thakurdas carried on business in various firms under different names at different times and they should be regarded as joint family business. The claim is largely dependent upon the existence and authenticity of the family settlement as we find that the learned Trial Court has relied upon the family settlement as the primary document to decide the injunction application at the ad-interim stage.

Where we find that the learned Trial Court had gone wrong in exercising its discretion is with regard to the operation of the bank accounts of the several entities. They should have been heard before a freezing order is passed against the companies and the LLPs. The companies cannot be prevented from carrying on their day to day activities. The freezing of the bank accounts would undoubtedly cause irreparable prejudice to the companies and LLPs in carrying on their business and also to meet various liabilities. The ad-interim order, in our view, should have been restricted to the shareholdings of the defendant no.1 to 10 and family members of Thakurdas in several companies and LLPs. Similarly, the order restraining the companies and LLPs to carry on with their ongoing projects are also likely to affect various third parties who may have already acquired interests in

such properties. It cannot be said that the plaintiff was not aware of the development agreements and the ongoing projects. Her claim to such development projects would be either allotment of any area or equivalent amount in the event it is ultimately found that no allotment is possible by reason of change in circumstances provided she could establish the claim of jointness. Insofar as the ongoing development projects are concerned, we are not inclined to restrain the LLPs from continuing with ongoing development projects upon maintaining proper accounts but in the event any allotment is made after the filing of the suit the allottee should be informed about the pending litigation in writing.

Mr. Jayanta Kumar Mitra the learned Senior Counsel has fairly submitted that going by the interest of the Juneja families in the Loudon street project, the entitlement of the plaintiff would be:-

- i) 2 apartments;
- ii) 1 basement car parking space;
- iii) 1 open car parking space;
- iv) 4 numbers of covered car parking spaces; And
- v) 0.67% of 1 mechanical car parking space.

Hazelton Hirise LLP shall be permitted to complete the construction but shall keep the aforesaid apartments and other areas mentioned above secured till the disposal of the injunction application.

All the Junejas and their family members are restrained from transferring, dealing with and/or diluting their shareholdings in the companies and/or the LLPs till the disposal of the injunction application. All the companies and the LLPs shall furnish accounts duly certified by a

Chartered Accountant before the Trial Court in sealed envelopes on June 8, 2022 and in the event the Trial Court found that the said accounts are required to be looked into, the Trial Court may permit the said accounts to be disclosed formally. However, the said exercise shall be made provided the plaintiff is able to establish the growth of the joint family properties and businesses out of the funds of Thakurdas.

The learned Trial Court in deciding the injunction application on merits is required to keep in mind that the one who asserts the properties belonging to the joint family has to prove that the property is a joint family property. The proof and existence of a joint family does not lead to the presumption that the property held by any member of the family is joint family property and the onus is on the person who asserts that any item of property is joint property. The plaintiff is required to prove that when the property was acquired, there was sufficient nucleus of the joint family fund with which the acquisition could have been made and also that such fund was actually available to the acquirer. [See. **Rajendra Nath Majhi Vs. Tustu Charan Das & Ors.** reported in **AIR 1979 cal 105**]

There is no presumption of a property being joint family property only on account of existence of a joint hindu family as observed in **D.S. Lakshmaiah and Ors. vs. L. Balasubramanyam and Ors.** reported in **2003 (10) SCC 310** at paragraph 18 which reads:

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired,

there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

We find from the order dated 10th May, 2022 that an application has been filed under Order XXXIX Rule 4 of the Code of Civil Procedure by the defendant no. 28 along with an application under Section 151 of the Code of Civil Procedure. The defendant no.33 filed an application for vacating the ad interim order of injunction. The defendant no.33 also filed a petition praying for time to file written objection against the injunction application. The defendant no.1 also filed applications under Order VII Rule 11 and Order XXXIX Rule 4 of the Code of Civil Procedure. The defendant nos. 1, 11 to 15 filed a petition praying for time to file written statement. The defendant nos. 25, 29 to 32 filed a petition praying for time to file written statement as well as written objection against the application for injunction. The defendant no.31 filed a petition contending that the appeal has been preferred by the said defendant and the matter is pending before the Hon'ble High Court and for that reason the defendant no.31 prayed for stay of further proceedings till the disposal of the appeal. Similarly, prayers have been made by the defendant nos. 25, 29, 30 and 32. The defendant nos. 2 filed an application praying for time to file written statement and written objection. The learned Trial Court extended the interim order till 8th June, 2022 and fixed 19th May, 2022 for hearing the application under Order VII Rule 11 of the Code of Civil Procedure. The learned Trial Court observed that the application under Order XXXIX Rule 4 filed by the defendant no.28 be heard after disposal of the

application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant no.1.

We have already passed an order on 18th May, 2022 by which we have requested to the learned Trial Court to dispose of the application under Order VII Rule 11 of the Code of Civil Procedure as expeditiously as possible. However, we feel that once an application under Order XXXIX Rule 4 has been filed, the learned Trial Court ought to have considered the said application insofar as the said defendant is concerned. In view of the order passed today, we request the learned trial Court to dispose of the injunction application along with the connected applications on merits uninfluenced by the observations made in this order save and except the observations with regard to the principles that are required to be taken into consideration at the time of disposal of the injunction application preferably on or before 15th July, 2022. The parties are directed to file their written objections and reply thereto if any, by the date fixed by the learned Trial Court.

The impugned interim orders are modified to the aforesaid extent.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)