

11.01.2022
KC(3&4)

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

F.M.A.T. 761 of 2021
Pradeep Kumar Agarwal and Ors.
-versus-
Silverson Trade Link Private Limited and Ors.
With
CAN 1 of 2021
With
F.M.A.T. 4 of 2022
Silverson Trade Link Private Limited and Ors.
-versus-
Pradeep Kumar Agarwal and Ors.
With
CAN 1 of 2022

(Through Video Conference)

Mr. Saptangshu Basu,
Mr. Abhijit Roy,
Mr. Shuvam Gupta.....For the appellants in
F.M.A.T. 761 of 2021
And
For the respondent
nos. 1, 2, 4 and 5 in
F.M.A.T. 4 of 2022.

Mr. Abhratosh Majumdar,
Mr. Aniruddha Chatterjee,
Mr. Arif Ali.....For the appellants in
F.M.A.T. 4 of 2022
and
For the respondents in
F.M.A.T. 761 of 2021.

We propose to dispose of both the appeals by this
common judgment and order, dispensing with all
formalities.

At the outset, the impugned order dated 6th
December, 2021 in Title Suit No. 29 of 2021 from which
the appeal (F.M.A.T. 761 of 2021) arises states that the

defendants/respondents therein have filed their affidavit in opposition to the interlocutory application.

Thereafter the said order proceeds to record the order dated 18th November, 2021 passed by this court in F.M.A.T. 694 of 2021 allowing the plaintiff to obtain return of the plaint from the court where it was filed and to present it before the competent court. While this exercise being carried out the division bench was of the view :

“In order to enable the appellant to take necessary steps and as the order of injunction restraining selling of the shares in question had been passed by the court below, we direct that the defendants-respondents are restrained from selling 1,50,000 shares of Suumaya Lifestyle Limited for a period of three weeks from date or until further orders, whichever is earlier.”

By the impugned order dated 6th December, 2021 in the present suit upon re-presentation of the plaint the learned court below ruled :

“In the fitness of things, following grant of ad-interim order by the Hon’ble Court for a period of three weeks, I am inclined to further extend the ad-interim order until the next date.”

Mr. Saptangshu Basu, learned senior advocate appearing for the appellants first contends that upon re-presentation of the plaint, the plaintiff has changed the cause of action in the suit. Secondly, citing a decision in EXL Careers and Anr. –vs- Frankfinn Aviation Services Private Limited, reported in (2020) 12 SCC 667, he submitted, the court was required to

consider the grant of an interim order de novo and was in error in simply extending the order of the division bench.

In our opinion, the learned judge in the first paragraph of the impugned order noted that the application upon filing of affidavits was ready for hearing. He was simply fixing a date of hearing of the application. In the meantime, considering the facts and circumstances of the case he extended the interim order which had been passed by the division bench and was operative.

We do not think that this course of action can be faulted.

In the other appeal (F.M.A.T. 4 of 2022), Mr. Abhratosh Majumdar, learned senior advocate assisted by Mr. Aniruddha Chatterjee and Mr. Arif Ali, learned advocates submits that the court ought to have extended the said interim order till the next date of hearing but had inadvertently omitted to do so.

We only observe that at the time of final hearing of the application the learned judge will consider the interlocutory application de novo, not being influenced by any previous observation of the court, by the division bench of this court in the said order dated 18th November, 2021 or this order.

Considering that the said interim order has been once extended, for the ends of justice we extend the said interim order till 31st January, 2022 with a request to the learned court below to dispose of the said interlocutory application by that date. If for some reason the court is unable to dispose of the application, the interim order shall only be extended on due consideration of the case.

Both the appeals (F.M.A.T. 761 of 2021 and F.M.A.T. 4 of 2022) and connected applications (CAN 1 of 2021 and CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(KAUSIK CHANDA, J.)