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**I.A./GA 1 OF 2021
APOT/197/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

KAMAL KUMAR JINDAL
VS
KOLKATA MUNICIPAL CORPORATION & ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE KAUSIK CHANDA

Date : 25TH JANUARY, 2022.

Appearance:

Mr. Sanjay Kumar Baid, Advocate
....**for appellant/petitioner.**

Mr.Tapan Coomar De,Advocate
Mr.Gurudas Mitra,Advocate
...**for KMC.**

Mr.Aniruddha chatterjee,Advocate
Mr.Debangshu Dinda,Advocate
Mr.Rabindra Kumar Mitra,Advocate
...**for respondent Nos.4,5 & 6.**

THE COURT: Affidavit of Service filed in court today be
kept with the records.

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

The writ petitioner is the appellant before us. It appears that the
writ petitioner and one Mrs.Raj Malhotra, since deceased used to run an

educational institute in co-partnership. Mrs. Malhotra passed away. Her legal heirs claimed that they were entitled to act as partners of the firm. This dispute has been referred to arbitration in terms of the arbitration clause contained in the Deed of Partnership. The arbitration is pending.

In the meantime, the legal heirs of the said deceased approached the writ court by filing WPA No.11888 of 2021 seeking cancellation of Certificate of Enlistment that had been issued by the Kolkata Municipal Corporation in the joint names of the present appellant and the said deceased. The writ petition was disposed of by an order dated 4th August, 2021, the operative portion whereof reads as follows :-

“As there is already an order of this Court that the business cannot be stopped, the Kolkata Municipal Corporation shall find out a way so as to ensure that a certificate of enlistment is issued in such a form and manner that the institute can continue to operate. The petitioner shall file a representation before the licensing officer of the KMC, who shall consider the representation of the petitioner and dispose of the same in accordance with law, upon affording an opportunity to the parties to place their cases.

The entire exercise shall be completed within 8 weeks from date of communication of this order.”

Pursuant to such order, the Kolkata Municipal Corporation held a hearing. After the hearing, the licensing officer directed the concerned department to enter the names of the legal heirs of the said deceased

partner in the Certificate of Enlistment for carrying on of the business of the institute in question.

This order was challenged by the appellant before the learned single Judge. The learned single Judge by the interim order impugned herein directed that the parties are to ensure that the institute runs smoothly without any unnecessary interference from either side. The learned Judge recorded that the purpose of the Certificate of Enlistment is only to ensure that the institute does not run without permission from the Corporation and the students do not pass out from an institute which is not authorized by law to operate.

The learned Judge clarified that the Certificate of Enlistment would not be used in any pending litigation between the parties with regard to the alleged partnership and that the order was being passed only for the benefits of the students of the institute. Being aggrieved by this interim order, the writ petitioner is before us.

We have heard the learned counsel for the parties.

We are not inclined to interfere at this stage. After all, it is only an interim order and it is only proper that the learned single Judge decides the writ petition after exchange of affidavits. The interim arrangement made by the learned single Judge is reasonable and we see no infirmity therein which may warrant our interference.

We find that the time for exchange of affidavits has expired. On the prayer of the respondents, time for the respondents to file Affidavit-in-opposition to the writ petition before the learned single Judge is extended

by a week from date. Reply thereto, if any, be filed within a week thereafter.

Since the case involves an educational institute and several students are involved, we request the learned single Judge having determination in the matter, to give some precedence, if possible, to this matter subject to the business of the court permitting. For this purpose, the parties may pray before the learned Judge for early hearing.

Since no affidavits have been called for, allegations in the stay petition are deemed not to be admitted by the respondents.

Needless to say, none of the observations made in this order shall have any bearing on the hearing of the writ petition before the learned single Judge.

The appeal and the application are disposed of.

(ARIJIT BANERJEE, J)

(KAUSIK CHANDA, J.)