

17.08.2023
KC(52)

F.M.A.T. 116 of 2023
Pooja Roy
-versus-
Pranab Kanti Roy and Ors.
With
CAN 1 of 2023

Mr. Ranjan Kali,
Ms. Mitul Chakraborty,
Ms. Mili Saha,
Ms. Payel Nath.....For the appellant.

The respondents are not appearing. On an earlier occasion also they had not appeared. In those circumstances, we had directed that the rules regarding service ought to be scrupulously complied with.

An affidavit of service is on record. None appears for the respondents.

This case concerns a partnership business. The business runs a bar cum restaurant “Snow Fox” in Sodepur, 24-Parganas (North). The dispute is between the partners, more particularly with regard to running of the business and distribution of profits.

By an interim order the learned court below had inter alia directed the respondents not to create any third party interest in the property. The above order had been made ex parte. However, on the returnable date, the interim application was dismissed and the said order was vacated by the learned judge. The principal

ground, if not the only solitary ground on which the application was dismissed seems to be the pendency of a writ application preferred by the appellant/plaintiff in this court.

Mr. Ranjan Kali, learned advocate appearing for the appellant submits without contradiction that the subject matter of the writ had no connection with the present application for interim relief.

We find on an examination of the impugned judgment and order that the existing interim order had been vacated by the learned judge on a mere assertion being made by learned counsel for the respondents that a writ with regard to the self-same cause of action had been filed before the high court.

Under the ordinary principles of law there is no harm if a writ application is preferred along with an application under Section 9 of the Arbitration and Conciliation Act, 1996. Only our law does not permit parallel proceedings being run for self-same reliefs before two courts at the same time. In any event an existing interim order prohibiting the respondents from creating any third party interest in respect of the partnership business ought not to have been so summarily vacated.

For all those reasons we are disposing of this appeal (F.M.A.T. 116 of 2023) and the connected application (CAN 1 of 2023) by setting aside the

impugned judgment and order and remanding it before the learned court below keeping all points open to be urged before it.

In the meantime, till further orders are passed by the learned court below the interim order of that court which was operative at the time the interim application was dismissed will revive. The business of partnership may only be carried out in its usual course.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)