

03.08.2023
Court No.13
Item No.1
AP

**FMA 477 of 2023
With
IA NO: CAN 1 of 2023**

**Chandan Kumar Mondal and Anr.
Vs.
Swapan Kumar Podder and Ors.**

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Sandip Mondal
Ms. Trisha Rakshit

...For the Appellants.

Mr. Abhijit Roy
Mr. Abhradip Maity
Ms. Pooja Basak
Mr. Subhojit Nath
Mr. Sathi Kundu

... For the Respondent No.1.

1. The instant appeal arises against an order of Status Quo being No.29 dated 29th April, 2023 passed by the learned Chief Judge, City Civil Court at Calcutta in Title Suit No.1025 of 2020.

2. By reason of the impugned order, the respondents have been restrained from disturbing the running of F.L. Off Shop called M/s. Nishi Kanta Mondal F.L. Off Shop. A status quo has been ordered as regards the running of the business. Admittedly, the plaintiff/respondent Swapan Kumar Podder has been running the F.L. Off Shop.

3. The brief facts relevant to the case are that the elder brother of the appellants, Late Swapan Kumar Mondal was the original licensee for the liquor-vending outlet. He died on 15th September, 2017. Prior thereto

the plaintiff/respondent was an employee in the F.L. Off Shop of the deceased licensee. By a partnership deed dated 6th December, 2013 the plaintiff/respondent claims that the late Swapan Kumar Mondal inducted the plaintiff/respondent as a partner.

4. Since after the death of the Swapan Kumar Mondal, the appellants/brothers came to know of the alleged partnership deed. They filed a complaint with the police against the respondent No.1 alleging that the signature of Swapan Kumar Mondal was forged. An FIR was registered after investigation was completed charge sheet has been filed inter alia under sections 406 and 467 of the IPC by the police.

5. The plaintiff/respondent claims that he had lent, as advance, diverse sums of money to late Swapan Kumar Mondal and the appellants for the said business. He also claims that the partnership was inter alia in lieu of such advance.

6. He also submits that since after the death of Swapan Kumar Mondal, he is alone entitled to run the Foreign Liquor Shop.

7. During the pendency of the dispute, a temporary licence has been issued to the plaintiff/respondent by the Excise authorities to run the liquor vending shop. Subsequently, the appellants brought on record before this Court that they have been inducted into the license

as legal heirs of the late Swapan Kumar Mondal. Such document has, however, not been disclosed in the Court below when the injunction was being heard.

8. This Court notes that the respondents have filed written statement and counter claim in the suit. They have sought a declaration that the partnership deed is void and other reliefs have been claimed.

9. In the backdrop of the above, without going into the propriety of the order of status quo passed by the Court below, this Court directs that the appellant No.1, Chandan Kumar Mondal @ Chandan Mondal shall be permitted to participate and sit in the shop room and observe the running of its business along with the respondent Swapan Kumar Podder. The said Chandan Kumar Mondal @ Chandan Mondal shall be entitled to inspect and receive accounts of all sales and stocks purchased by the retail outlet.

10. The appellants shall also receive monthly statements of the profit and loss account of the shop room from the respondent Swapan Kumar Podder.

11. The appellants shall also be furnished with monthly statements of the bank accounts of the liquor shop with the Karur Vysya Bank, Burra Bazaar Branch, Calcutta.

12. Let a copy of this order be sent to the Manager of the Karur Vysya Bank, Burra Bazaar Branch by the parties forthwith.

13. The parties shall ensure that the liquor vending shop functions smoothly. The appellants shall not unnecessarily interfere with the running of the business.

14. True and faithful accounts shall be maintained in respect of all transactions in the shop room by the plaintiff/respondent until disposal of the suit.

15. Since written statement and counter claim have been filed, it is expected that subject to compliance of all formalities in this regard, the plaintiff/respondent Swapan Kumar Podder shall file written statement to the counter claim within a period of one week from date.

16. The parties shall complete discovery and inspection within a period of seven days of filing of such written statement to the counter claim. The Court below shall frame issues immediately within a period of seven days thereafter.

17. It is expected that the suit itself shall be disposed of by the City Civil Court, either by the Chief Judge or by any assigned Bench, mandatorily and positively within a period of three months after framing of issues. It is made clear that no unnecessary adjournment shall be granted to any of the parties.

18. The aforesaid interim arrangement shall abide by the final result of the suit.

19. The Trial Judge shall proceed in the matter uninfluenced by any observations made hereinabove.

20. With the aforesaid directions, FMA 477 of 2023 and CAN 1 of 2023 are disposed of.

21. Since no affidavit-in-opposition has been filed in CAN 1 of 2023, none of the allegations contained therein shall be deemed to have been admitted by the respondents.

22. There shall be no order as to costs.

23. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)