

12 21.04.2023
RP Ct. No. 01
AN

FMAT (ARBAWARD) 51 of 2022
with
IA No. CAN 1 of 2022

PCO Restaurants LLP
Vs.
Merlinz Restaurants Pvt. Ltd. & Ors.

Mr. Shaunak Ghosh
Ms. Saheli Sen
Mr. Rajib Mullick
Mr. Biswaroop Ghosh

... For the Appellant

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samant
Mr. A. Chatterjee

... For the Respondent No.1

Mr. Debanjan Mukherjee

... For the Respondent No.6

1. The appeal filed by the appellant is directed against the order dated 30th August, 2022 passed in Misc. Case No.3780 of 2022. We find from the said order that the notice has been issued to the appellant directing them to show cause within 15 days from the date of this order as to why the petitioner's prayer for ad interim relief for injunction shall not be made absolute. The appellant/defendant was at liberty to seek for modification/alteration or setting aside the order. This case is still pending before the City Civil Court and only an interim order has been passed therein and final order is yet to be passed. Therefore, we are of the clear view that all issues can be raised by the appellant before the learned City Civil Court. When we heard the appeal on 31st January, 2023 we pointed out that the question of jurisdiction, which

was canvassed by the appellant in this appeal, is not a pure question of law but it is a mixed question of law and fact which has been raised by the appellant before the Court of the first instance and, in fact, we inclined to dispose of the appeal, however, at the request of the learned advocate for the appellant the matter stood adjourned. Subsequently the matter was heard. Thus, we are of the clear view that the appellant should agitate all issues before the learned City Civil Court where the case is still pending and all points can be canvassed before the learned City Civil Court.

2. With the above observations the appeal stands **disposed of**. Consequently, the connected application is also stand disposed of.

3. After we have dictated the order, the learned counsel appearing for the appellant requested that a time frame be fixed for the matter to be taken up by the learned City Civil Court, we grant liberty to the appellant to mention before the concerned for early hearing.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)