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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

F.M.A.T. 503 of 2022

Rohit Musaddi
Vs.
Suresh Kumar Kedia & Anr.

Mr. Suddhosatta Banerjee
Ms. Kavita Saraf ... **For the Appellant.**

Mr. F. Ghaffar
Mr. S. Chaudhury
Ms. S. Yasmin ... **For the Respondent.**

Mr. Arif Ali
Ms. Ankita Singh ... **For the Respondent No. 2.**

Re: <u>CAN 1 of 2022</u>

For at least three days, this appeal and the connected application were listed by us. We tried to resolve the issue between the parties.

Today the matter was posted 'For Orders.'

On a detailed examination of the papers, we find that the impugned ex-parte ad-interim judgement and order 2nd December, 2022 was passed without the court being properly apprised of the essential facts and the law and practice relating to holding and operation of shares in dematerialized form kept in an account with a depository participant.

S.D.

Whether the testator and the appellant/defendant no. 2 were the joint or second holder of the subject Demat account? Whether the appellant held the shares on the term ‘either or survivor’ with the testator? Did the subject shares, under the terms of contract vest in the appellant absolutely on the death of the testator and did not form a part of his estate? If the shares did not so vest or only a part of the shares vested in the appellant, what is the obligation of the respondent/bank and the appellant with regard to those shares, which did not vest in him?

In our opinion, all these questions have to be prima facie gone into properly before any interim order can be considered to be passed in favour of the respondent/plaintiff.

In those circumstances, we set aside the impugned judgement and order dated 2nd December, 2022 and remand the interim application to the learned court below to consider it afresh at the ad interim stage upon notice to and hearing the appellant/defendant No. 2.

Learned counsel for the appellant/defendant No. 2 assures the court on instruction from his client which is treated as an undertaking to this court that for a period of three weeks from date, his client will not deal with the shares to enable the court to consider passing an interim order on the application of the respondent/plaintiff.

We request the learned court below to decide whether to pass an interim order or not within two weeks from date and to dispose of the interim application within eight weeks from date after passing necessary directions for filing affidavits etc. at the ad-interim stage.

The appeal (FMAT 503 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)