

27.04.2023

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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3934 of 2022

**Shyamal Roy
versus
Bharat Petroleum Corporation Ltd. & ors.**

Mr. Sabyasachi Chaudhury
Mr. Nirmalya Dasgupta
Mr. R. L. Mitra
Ms. Priyanka Dhar
... for the petitioner

Mr. Puspendu Chakraborty
... for the opposite party nos.1 to 5/
B.P.C.L.

Mr. Amales Roy
Ms. Mousumi Bhowal
... for the opposite party nos.6 & 7

Mr. Pushan Majumdar
... for the opposite party nos.8,9 & 10

Affidavit of service filed on behalf of the petitioner
is taken on record.

This application has been filed under Article 227
of the Constitution of India challenging portion of the
order dated 27th September, 2022 not directing the
opposite party no.6 to furnish accounts of the
partnership firm namely, opposite party no.7.

The brief fact of the case is that the plaintiff-
petitioner and defendant-opposite party nos.6 and 8 to
10 run business of petrol pump under the name and
style of "*M/s. Roy & Cousin*" which is a partnership firm
having dealership under Bharat Petroleum Corporation

Limited. The plaintiff filed a suit for declaration, permanent injunction, receiver and other reliefs registered as Title Suit No. 1086 of 2022. In the said suit, the plaintiff filed an application for *ad interim* injunction which was refused by the trial court and thereafter the said order was assailed in appeal before the learned District Judge, Alipore, South 24-Parganas in Misc Appeal No. 284 of 2022. The learned District Judge by order dated 13th September, 2022 allowed the *ad interim* injunction directing the respondent/defendant no.6 not to utilize the sale proceeds of petroleum products or allied products, supplied by the respondent no.1 and 5, save and except to make payment to the respondent no.1 to 5 for the said supply of petroleum products and/or allied products and/or to run the establishment for a limited period till 03.11.2022. The plaintiff thereafter filed an application under Section 151 of the Code praying for access to the books of accounts, daily statement of accounts. On 27th September, 2022, such application of the plaintiff was taken up by the learned District Judge, Alipore, South 24-Parganas. However, it observed that the said petition needs to be heard in presence of respondent nos.6 and 7. Thereafter, several dates have been fixed, but the application is still pending. Hence, this revision.

Mr. Sabyasachi Chaudhury, learned Advocate for the petitioner submits that the plaintiff-petitioner filed

application under Section 151 of the Code for access to the books of account maintained by the partnership firm which is innocuous one having relevance to the import of the *ad interim* order of injunction passed by the District Judge. Referring to the partnership deed as well as Section 12(d) of the Partnership Act he submits that every partner has a right to have access to the books of account maintained by the firm and inspect the same, therefore, the plaintiff being one of the partners in the partnership should have access to the books of account. He further submits that the opposite party no.6 has siphoned money of the partnership firm. He submits for appropriate order for giving access to the petitioner to inspect the books of account of the partnership firm.

In reply to the contentions raised on behalf of the plaintiff-petitioner, Mr. Amales Roy, learned Advocate for the opposite party nos.6 and 7 submits that the allegation of siphoning the funds by the opposite party no.6 is without any basis since the opposite party no.6 is holding 68% share of the partnership firm. He further submits that the application under Section 151 of the Code filed by the plaintiff-petitioner has not yet been disposed of by the learned District Judge on its merit and, therefore, the question of invoking power under Article 227 of the Constitution of India does not arise at all. In support of his contention, Mr. Roy relies on a decision of Hon'ble Supreme Court passed in **Sneh**

Gupta versus Devi Sarup and ors. reported in **(2009) 6 SCC 194**. Furthermore, he submits that direction be passed fixing a time period for disposal of the application under Section 151 of the Code.

Mr. Pushan Majumdar, learned Advocate appearing on behalf of the respondent nos.8, 9 and 10, concurs with the submissions advanced on behalf of the plaintiff-petitioner.

It is found from the impugned order No.5 dated 27th September, 2022 that the learned District Judge has observed that the application needs to be heard in presence of respondent nos. 6 and 7. The application filed by the petitioner-plaintiff under Section 151 of the Code has not yet been decided and disposed of on merits by the learned District Judge. Such being the position, the application and the prayer of the plaintiff made therein need to be decided by the learned District Judge.

It is informed that the next date of hearing of the application is fixed on 07.06.2023.

Accordingly, learned District Judge, 24-Parganas (South) or any learned Judge in Charge of the District Judge is directed to dispose of the application under Section 151 of the Code of Civil Procedure filed by the petitioner, preferably within a period of one month from the date of communication of this order without granting unnecessary adjournments to either of the parties. For doing so, the learned District Judge, if required, may

prepone the date of hearing fixed on 07.06.2023 upon notice to the parties.

Petitioner is directed to communicate this order to the learned District Judge, Alipore, South 24-Parganas.

With the aforesaid observation, this revisional application being **C.O. 3934 of 2022** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)