

OD-03

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/70/2021
WITH
AP/359/2020
YASMIN KHALIQUE AND ORS
VS
MUKHTAR ALAM

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE: 10TH AUGUST 2023.

APPEARANCE:

Mr. A. Choudhury, Sr. Adv.; Mr. S. Haque, Adv.; Mr. M.I.A. Lodhi, Adv., appear for appellants.

Mr. Jishnu Saha, Sr. Adv.; Mr. T. Quasimuddin, Adv.; Ms. Z. Tahur, Adv.; Mr. I. Saha, Adv., for
respondent.

1. THE COURT: APO/70/2021 is directed against the judgment dated March 15, 2021, passed by a Learned Single Bench upholding an Interim Award dated November 12, 2020, passed by the Sole Arbitrator. The facts of the case are already recorded in the said interim award and the judgment dated 15th March 2021 impugned herein. They are not repeated herein.
2. By the impugned interim Award, the learned Arbitrator, after a lengthy discussion, had found that the partnership dated April 1, 2006, between the appellants and the respondent was one, 'at will'. It was also found that the said partnership stood dissolved consequent upon notice dated November 17, 2018, issued by the respondent on the claimant.

3. The learned Single Bench found that the said interim award called for absolutely no interference whatsoever.
4. This Court is otherwise in complete agreement with the views of the learned Single Bench.
5. There are, however, some observations made by the learned Arbitrator in paragraphs 5, 29, 30 and 31 of the Award to the following effect:

“Thus, if I hold that the partnership is a partnership at will and the same has been dissolved by their letter dated 17th November, 2018, the prayers for declaration and injunction made by the Claimants in their Statement of Facts would be rendered infructuous, such prayers having been made on the footing that the partnership has not been dissolved and is subsisting. The claim for money award also would have to be reduced only to the extent that the Claimants between them would be entitled to 50% of the share of profit calculated till the date of dissolution i.e. 17th November, 2018. Consequently, the scope of evidence in support of money claim would necessarily be limited as well.”

“Finally, in examining the allegation of bad faith, it may not be right to see the act of issuing notice of dissolution on the part of the Respondent in isolation, but need to be seen in the context of origin of the business and extensive use of trade mark over the years. Such practice is enmeshed in the history of the wider family beyond those who were partners under the Partnership agreement dated 1st April, 2006. In brief, the business was started by one Md. Musa way back in 1970s and on his death was continued by his sons, their spouses and descendants, in different combination of the constitution of partnership at various points of time over the years. By practice and by convention, the family members of wider family became entitled to carry on the business of Gul tobacco under the trade mark “Masa Ka Gul Super”. This contention

was raised by the Respondent in course of hearing of the Section 9 application but was rejected by the Learned Judge.”

“Learned Counsel for the Respondent invited me to see the said family aspect, and wide use of trade mark over the years from a different perspective to hold that on the basis of provisions of Section 11 of the Partnership Act, an implied term is to be imported in the agreement on the footing that such wide spread practice was denotative of a course of dealing. Hence, by granting of licence to carry on the same business as of the firm and use the trade mark by the Respondent in favour of his wife was perfectly legal and nothing mala fide about.”

“In the light of such wide spread practice in the family tradition, as it were, the grant of licence in favour of Shaheena Makhtar, wife of Respondent cannot be questioned on any principle: What is good for goose is good for the gander.”

6. The aforesaid observations were not germane or necessary for the purpose of the said “Interim Award” dated 12th November 2020. The said observations of the Ld. Arbitrator shall therefore not be deemed conclusive or binding on the parties at this stage and shall be subject to the final award. The Arbitration shall proceed in accordance with law until final award is pronounced and published.
7. The parties are at liberty to apply under the available laws for any other reliefs pursuant to the dissolution of the partnership under the deed dated 1st April 2006.
8. With the aforesaid directions. APO/70/2021 stands disposed of. All interim applications shall also accordingly stand disposed of.

(RAJASEKHAR MANTHA, J)

(SUPRATIM BHATTACHARYA, J)