

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/224/2023
WITH
CS 126 of 2023
IA No. GA/1/2023
RAMJI LAL AGARWAL
-VS-
SOURAV AGARWAL

With

APOT No. 247 of 2023
IA No. GA 1 of 2023
IA No. GA 2 of 2023
SOURAV AGARWAL
-VS-
RAMJI LAL AGARWAL

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

AND

The Hon'ble JUSTICE PRASENJIT BISWAS

Date : August 9, 2023.

Appearance:

Mr. Sabyasachi Chowdhury, Adv.

Mr. V.V.V. Sastry, Adv.

Mr. Rahul Poddar, Adv.

Mr. Rudraman Bhattacharya, Adv.

Mr. Sourojit Dasgupta, Adv.

Mr. Lalit Baid, Adv.

Mr. Tamoghna Saha, Adv.

Mr. Apurba Ghosal, Adv.

Re :APOT NO. 224 OF 2023

The Court : We admit this appeal. At the same time, we are in a position to dispose of it dispensing with all formalities.

This is an appeal from a judgment and order dated 6th July, 2023 passed by a learned single judge of this court in an interim application. The learned judge refused to grant injunction restraining the respondent from carrying on business in the style of "Sindharam Sanwarmal Mewawala" by stating that it would amount to grant of a final relief in the application.

However, the learned judge directed the respondent to maintain a separate account of the business from a shop-room at 43/44, Cotton Street, Kolkata-700 007.

Directions were made for filing of affidavits.

We are told that the respondent has not filed any affidavit-in-opposition.

Moreover, we find that the motion is adjourned till 23rd August, 2023 to be heard after filing of affidavits.

In those circumstances, we direct the respondent to file his affidavit-in-opposition by 18th August, 2023. Affidavit-in-reply may be filed by 23rd August, 2023.

We request the learned single judge to hear out the interim application as early as possible after that date.

The bone of contention between the parties put very shortly is this.

There are three shop-rooms with the name Sindharam Sanwarmal or with a suffix attached to it being used by the first party, third party and fifth party to the family agreement dated 13th January, 2017. The first, third and fifth parties are Ramji Lal Agarwal, Urmila Devi Agarwal and Gopal Agarwal. Only the second party and the fourth party Binod Kumar Agarwal and Mohan Kumar Agarwal could start business with the same business name. However, the others could not do so within one kilometer of the existing shop-rooms. The case of the appellant/plaintiff against the respondent is that in the very same premises he is doing business using the above name, in breach of the above agreement.

The learned judge had noted the above prima facie case made out by the appellant/ plaintiff, but used his discretion to refrain from passing an order of injunction.

At the appellate stage, we are not minded to interfere with his lordship's use of discretion. But nevertheless we are of the view that just maintenance of accounts is not doing justice to the case. If in the event of the plaintiff's success in the suit in the particular area he is entitled to use the said business

name and the respondent not so entitled, then very legitimately he also has a right to profits from that business carried out by the respondent.

For those reasons, we add a further direction to the existing order that the respondent shall not only maintain accounts but set apart the profits earned from running the above business from 9th August, 2023 till further orders are made by the learned single judge in the interim application.

From the profits so set apart the respondent shall be entitled to appropriate 30% thereof for his use. A monthly statement of profit so set apart and appropriated shall also be furnished by the respondent to the appellant.

With the above directions and observations the appeal (APOT/224/2023) and the interim application (IA NO. GA/1/2023) are disposed of.

Re : APOT/247/2023

APOT/247/2023 (Sourav Agarwal vs. Ramji Lal Agarwal) and the connected applications GA/1/2023 and GA/2/2023 are also treated as on the day's list and disposed of by this order.

(I. P. MUKERJI, J.)

(PRASENJIT BISWAS, J.)

CS.