

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/334/2023
IA NO: GA/1/2023
WITH
CS/228/2022

VIJAY KUMAR GOYAL & OTHERS
VS
ANSHUL GOYAL AND OTHERS

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 27th September 2023.

Appearance:

Mr. Abhrajit Mitra, Senior Advocate
Mr. Debanjan Mandal, Advocate
Mr. Jishnu Chowdhury, Advocate
Mr. Sanjiv Kumar Trivedi, Advocate
Mr. Satadeep Bhattacharyya, Advocate
Mr. Shaunak Mitra, Advocate
Ms. Iram Hassan, Advocate
Mr. Sanket Sarawgi, Advocate
Mr. Yash Singhi, Advocate
Ms. Mahima Cholera, Advocate
... for appellants.

Mr. Krishnaraj Thaker, Advocate
Mr. Aditya Mondal, Advocate
... for respondent no.26.

Mr. Billwadal Bhattacharyya, Advocate
Mr. Suryaneet Das, Advocate
Mr. Aditya Mondal, Advocate
... for respondent no.27.

Mr. Amritam Mondal, Advocate
Mr. Rohit Banerjee, Advocate
... for respondent nos.1, 2, 23 & 24.

THE COURT:- Order in terms of prayer (a) of the stay petition.

We admit the appeal.

We are in a position to dispose of this appeal dispensing with all formalities.

We clarify our judgment and order dated 13th February 2023 by saying that this order will not prevent the Learned Single Judge from passing any further interim order if the merits of the case so warrant.

This would be true despite pendency of an application made by the respondents/defendants subsequent to the said order dated 13th February 2023 for taking the plaint off the file and for dismissal of the suit. Whether that application was pending at that point of time does not matter. This point of law was always open to the respondents/ defendants and for some reason not urged when the order dated 13th February 2023 was passed. Therefore, the said order dated 13th February 2023 is to be taken as one passed subject to the question of jurisdiction of the court to be decided in the Order VII Rule 11 application.

When this is the case, we request the Learned Judge also to examine whether there has been compliance with our order dated 13th February 2023.

In the application, GA/6/2023, the respondents shall file an affidavit indicating the holding of shares and dealing with the same as on 13th February 2023. They shall also disclose quarterly balance sheets and profit and loss account of the concerned company from March 2023 to June 2023 and July 2023 to September 2023, if not disclosed earlier. If the subject fund is not reflected specifically in the balance sheet of the company, the source and application of the said fund elsewhere shall be indicated by the respondents in the said affidavit.

We reiterate that all points on merits are kept open before the Learned Judge, subject to the question of maintainability to be decided in the Order VII Rule 11 application.

The appeal (APOT/202/2023) and application (IA GA/1/2023) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)