IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

IA No. GA 1 of 2022
APOT No. 240 of 2022
Vijay Kumar Goyal & Ors.
Versus
Anshul Goyal & Ors.

IA No. GA 1 of 2022
APOT No. 241 of 2022
with
CS No. 228 of 2022
Vijay Kumar Goyal & Ors.
Versus
Anshul Goyal & Ors.

APO No. 113 of 2022

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 13th February 2023

Appearance:
Mr. Abhrajit Mitra, Sr. Advocate
Mr. Debanjan Mondal, Advocate
Mr. Sanjiv Kr. Trivedi, Advocate
Mr. Jishnu Chowdhury, Advocate
Mr. Satadip Bhattacharyya, Advocate
Ms. Iram Sassan, Advocate
Mr. Sanket Sarawagi, Advocate
Ms. Sahima Cholera, Advocate
for the appellant

Mr. Amritam Mandal, Advocate
Mr. Rohit Banerjee, Advocate
Mr. M. P. Sahay, Advocate
Mr. Tamoghna Saha, Advocate
Mr. Satyaki Mukherjee, Advocate
Ms. Saberi Saha, Advocate
Ms. Moumita Dhar, Advocate
respondent nos.1,2,3,23 & 24

Mr. Ranjan Bachawat, Sr. Advocate
Mr. Soumabho Ghose, Advocate
Mr. S. Mukherjee, Advocate
Mr. Rajesh Upadhyay, Advocate
for respondent no. 25

Mr. Suryaneel Das, Advocate

Mr. Aditya Mondal, Advocate
For respondent nos. 26 & 27
Mr. Ratnanko Banerjee, Sr. Advocate
Mr. Anuj Singh, Advocate
Mr. Kaushik Chakravorty, Advocate
for respondent no. 33

The Court: We admit the appeal. We have heard out the appeal dispensing with all formalities.

We have examined the impugned order dated 28th September 2022 in the appeal (APOT 240 of 2020). We have also gone through in detail the impugned judgment and order dated 12th December 2022 in the appeal APOT 241 of 2022.

The Goyals are a rich business family. There is an alleged family settlement between its members concerning their shares in the company Shyam Ferro Alloys Limited (the company). These shares are held individually by the family members or through the respondent corporate bodies, except the respondent no. 31, controlled by some of them. According to the appellants, those shares can only be dealt with in terms of the settlement and not unilaterally. This suit is substantially on allegations by one group against the others relating to those shares. The allegation is very serious. It is said that the shares or a substantial portion of them of two companies Shringee Packaging & Ancilliary Private Limited and Agnija Tie-Up Private Limited, the respondent nos. 26 and 27, which are contolled by the other respondents except the respondent no. 31, (the said respondents) in the company have been surrendered to it in breach of the settlement in a "buy back arrangement". As a result of this a few hundred crores of rupees have been received in the account of the two companies Shringee and Agnija.

Mr. Abhrajit Mitra, learned senior advocate supported by Mr. Ranjan Bachawat, learned senior advocate submit that the said shares are part of the holding of the Goyals in the company, subject matter of the family settlement and could not have been unilaterally dealt with by the said respondents.

Relying on a table at page 236 of the stay petition Mr. Mitra submits that these two companies along with Sterovate Synergies & Exports Private Limited held 1,18,27,160 shares in the company. After this alleged buy back only one crore shares out of the 1,55,86,160 shares which are the subject matter of the family settlement remain. The rest have been wrongfully surrendered by the said respondents, the consideration received, appropriated in the account of the two companies and thereafter misappropriated by the said respondents.

Having heard learned counsel for the parties two issues are most germane. Is the family settlement valid and binding on the parties? To what extent the family settlement binds the members of the family with regard to dealing with the subject shares? Whether the respondents were entitled to independently without the consent of the appellants enter into a buy back arrangement with the company and receive and utilise the consideration of several hundred crores credited into the account of Shringee Packaging and Agnija Tie-Up?

A prima facie finding by the learned single judge on these two issues was essential while considering an interim order. This finding is not available in the impugned orders.

Before us the family settlement was supported by the groups represented by Mr. Mitra as well as Mr. Bachawat. Mr. Ratnanko Banerjee, learned senior advocate appearing for the company has taken a very neutral stand. He said his client would abide by any order to be passed by this court.

On the other hand learned advocates appearing for the said respondents first submitted that the matter was under consideration by the bench presided over by the Hon'ble Mr. Justice Harish Tandon.

Secondly, they prayed for adjournment on the ground of learned Advocate General. Thirdly, it was submitted that adjournment should be granted so as to "obtain instruction in the matter". All three pleas are untenable for the following reasons.

We have perused the records. There is a solitary order in the file dated 17th January 2023 which says, "Let this matter appear on 31st January, 2023".

As regards the learned Advocate General, it was submitted by Mr. Mitra that the plaint was settled by learned counsel. Hence in no circumstances he could appear for the said respondents.

As long as the family settlement is not disproved by the said respondents, prima facie we have to take the family settlement as valid and binding upon the parties. It has been supported by the parties represented by Mr. Mitra and Mr. Bachawat.

On the alleged buy back arrangement between the said two companies Shringee and Agnija and the company several hundred crores of rupees have been received by the said two companies.

However, this transaction took place in September, 2022. Learned counsel for the said respondents are unable to apprise the court as to the use which their companies have made with the money.

Considering all the above circumstances, we are of the view that these applications should be heard out on affidavits by the learned single judge as early as possible. In the interim period we restrain the parties from altering the status quo with regard to holding and dealing of the shares held by the family or family companies in the company. Furthermore, we restrain the said respondents from making any use of the fund received by them or the balance fund in their hands received by them from the said buy back arrangement, save and except for running the said two companies in the usual course of business without the leave of the learned single judge.

All the observations are prima facie. All questions are kept open.

The appeals and the applications (IA GA 1 of 2022 with APOT 240 of 2022 and IA GA 1 of 2022 with APOT 241 of 2023) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose