

05.03.2024
SSS (10)

**FMAT 61 of 2024
With
CAN 1 of 2024**

**Hoichoi Technologies Pvt. Ltd.
Vs.
Alphabet Inc and Ors.**

Mr. Ranjan Bachawat, Sr. Adv.
Mr. Rudraman Bhattacharya,
Mr. Shuvasish Sengupta,
Mr. Sagnik Bose,
Ms. Shyantee Datta,
.....For the Appellant.

Mr. S. N. Mookherjee, Sr. Adv.
Mr. Sajan Poovayya, Sr. Adv.
Mr. Soumya Roy Chowdhury,
Mr. V. P. Singh,
Ms. Sayobani Basu,
Ms. Shubhangni Jain,
Mr. Asif Ahmed,
Mr. Sanjay Ginodia,
Mr. Shwetauk Ginodia,
Mr. Sushovit Dutt Majumder,
Ms. Pubali Sinha Chowdhury,
Ms. Mini Agarwal, Adv.
.....For the Respondents.

We admit this appeal from the order dated 1st March, 2024 made by the learned judge, Commercial Court at Alipore in an interim application made in the suit between the parties. By the impugned order the court refused to grant any ex-parte order in favour of the appellant plaintiff.

We find from the order sheet that initially the application was made returnable before the court on 9th April, 2024 but thereafter, the returnable date was

advanced to 6th March, 2024 at 2.00 P.M when we are told the interim application along with an application by the respondents/ defendants under Order 7 Rule 11 of the Code of Civil Procedure would be considered by the learned judge.

Mr. Ranjan Bachawat, learned senior advocate, appearing for the appellant plaintiff submitted that the only ground on which his client's prayer for interim relief was refused by the court was the alleged existence of a forum selection clause which stated that the courts in the State of California, U.S.A would have exclusive jurisdiction over the disputes between the parties. These disputes would be governed by the laws of that state.

Learned counsel submitted that he was not given an opportunity to establish before the court that the courts in this country had such jurisdiction.

On the other hand, Mr. S.N. Mookherjee, learned senior advocate and Mr. Sajan Poovayya, senior advocate, appearing for the respondents made submissions on the failure of the appellant plaintiff to pay the service fees to run their app in the google play store and also on the lack of jurisdiction of the civil court to try the disputes between the parties.

We are of the view that since the interim applications are due for consideration before the learned court below tomorrow at 2.00 p.m, let such consideration

be made. All observations made by the learned court on 1st March, 2024 should be treated as tentative. All questions be kept open at the hearing tomorrow.

We understand from the submissions made by learned counsel for the parties that the status quo between the parties as was existing on 1st March, 2024 remains unchanged, that is to say, till date the appellant plaintiff has not been delisted from the play store as apprehended by them. Therefore, let these applications be considered by the learned court below on this state of facts which would be subject to any order or orders that may be passed by the learned court.

The appeal and the application (CAN 1 of 2024) are disposed of after dispensing with all formalities.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]