

18.04.2024
S/L. No. 20
Court No. 3
Suvayan/
Sourav

**FMAT 118 of 2024
With
CAN 1 of 2024**

**Ashoke Kumar Banik
Vs.
Bengal National Chamber of
Commerce & Industry & Ors.**

*Mr. Sakya Sen
Mr. Sunil Gupta*

...for the appellant.

*Mr. Pranit Bag
Mr. Debdatta Saha
Mr. Subhamay Dewanji*

...for the respondent nos. 1 & 2.

*Mr. Aniruddha Chatterjee
Mr. Rishabh Keshari
Mr. Amar Dudhwewala
Mr. Pranav Sharma*

...for the respondent no. 3.

1. Heard learned Counsel for the parties.
2. The present appeal arises out of refusal of ad interim injunction in favour of the plaintiff who is none other than the President of the defendant no. 1/organization, which is a non-profit making company coming under the purview of the Companies Act.
3. We need not go into the details of the facts canvassed before us. The relevant fact for disposal of this appeal are as follows:

The plaintiff was the President of the organization having been elected in 2003. The tenure was for one year. He received some complains/allegations against the

members of the executive committee who were carrying on business under the guise of the defendant no. 1/company by indulging themselves in nefarious activities. Mr. Arpan Mitra, ex-president of the company during his tenure had allowed Mr. Abhishek Kumar, defendant no. 4 to act as deputy secretary of the company who is stated to be the master mind of all these nefarious activities.

4. The plaintiff being conscious of his obligation to the company is stated to have issued a notice of show-cause to Abhishek Kumar, defendant no. 4. Thereafter, Abhishek Kumar is stated to have managed the calling of a meeting of the executive committee, notice of which was given to the President (appellant herein). Immediately, the appellant being the plaintiff filed a suit for temporary injunction for restraining defendants, their mans and agents from giving any effect or further effect to the said notice issued on 03.04.2024.
5. A caveat having been filed before the trial court it was obligatory on the part of the trial judge to hear the caveator, therefore, the petition filed by the present appellant along with the plaint was taken on record and the case was posted to 06.04.2024 for hearing. On 06.04.2024 when

the matter was taken up by the learned trial court, it was brought to the notice of the Court that meeting has already been held on 04.04.2024 and the executive committee's as resolved to strip the president (plaintiff/appellant) of all his powers and a three member committee has been appointed in his place to function till 30.04.2024 or till any other order whichever is earlier.

6. Regard being had to the aforesaid development, learned trial court refused the interim injunction, the prayer being infructuous in the meantime in view of the development dated 04.04.2024.
7. The defendant no. 1 had filed a petition before the trial court under Order 7 Rule 11 of the CPC praying for rejection of plaint on the ground that the City Civil Court has no competence to take cognizance of any suit concerning a company and in that regard provision of Section 5(4)(i) of Calcutta City Civil Court Act read with Section 430 of the Companies Act are relevant. Learned trial court, however, did not give any ruling on that aspect and said petition has not been heard as yet and the date is fixed on April 22, 2024 for hearing of the petition under Order 7 Rule 11 as well as the petition under Order 39 Rules 1 and 2 read with Section 151 CPC thereof.

8. Mr. Sen, learned Counsel for the appellant with vehemence submits that the civil court under Section 151 CPC and for that matter any higher forum under the said Section has the necessary power to modulate the relief on the basis of the subsequent facts and it is the duty of the Court to see that the state that was there on the date of filing of the suit should not have been changed by manipulation of the parties.
9. The submission advanced by the learned Counsel for the appellant is no doubt a debatable issue but despite bringing the subsequent facts on record, whether it was necessary for the plaintiff/appellant to amend the plaint for mandatory injunction along with the injunction application is also a question which needs reconsideration.
10. Regard being had to the aforesaid facts, we remand the matter to learned Judge, 6th Bench, City Civil Court at Calcutta to reconsider the matter on the following issue:
 - (i) whether the civil court has had the necessary power to modulate relief to be granted to the plaintiff in the form of interim injunction on the basis of subsequent facts brought on record by way of supplementary affidavit;

- (ii) whether it was the duty of the civil court in absence of any stay order or injunction order being passed by him to see that the defendants should not have changed the *status quo ante* as on the date of filing of the suit just to frustrate the prayer made in the plaint and the injunction application;
- (iii) whether it was incumbent on the part of the plaintiff/appellant to amend the plaint as well as the injunction application seeking mandatory injunction as the prayer made in the plaint and the injunction application had already become infructuous on the day of hearing of the injunction application at the ad interim stage;
- (iv) whether the trial court should proceed with hearing of the injunction application when a necessary party has filed a proper petition under Order 7 Rule 11 CPC showing specific bar regarding the competence of the City Civil Court at Calcutta to entertain the suit.

11. We, therefore, direct the concerned Judge, City Civil Court at Calcutta to take up both the petition under Order 7 Rule 11 CPC and the injunction petition under Order 39 Rules 1 and 2 CPC read with Section 151 thereof simultaneously/analogously.
12. It is needless to mention here that if the Court decides to return the plaint, there is no need to hear out the injunction application. The aforesaid order be carried out by the Court within 15 days from the date of communication of this order.
13. With aforementioned observations, the appeal being FMAT 118 of 2024 along with the interim application being CAN 1 of 2024 is disposed of.
14. Both the parties as well as the learned Judge, 6th Bench, City Civil Court at Calcutta are hereby directed to act on the server copy of this order duly downloaded from the official website of this Court.
15. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)