

AD-10
Ct No.16
02.12.2024
(SSS)

FMA 1058 of 2019
With
CAN 1 of 2019 (Old No. CAN 6683 of 2019)
With
CAN 2 of 2019 (Old No: CAN 7208 of 2019)
With
CAN 3 of 2019 (Old No. CAN 8889 of 2019)
With
CAN 4 of 2019 (Old No. CAN 8890 of 2019)
With
CAN 6 of 2020 (Old No. CAN 1925 of 2020)
With
CAN 7 of 2020 (Old No. CAN 4737 of 2020)
With
CAN 8 of 2020 (Old No. CAN 4738 of 2020)
With
CAN 9 of 2024
With
CAN 10 of 2024

Mrs. A. M. Cohen & Ors.
Vs.
Mr. Sol Noah & Ors.

Mr. Rahul Karmakar,
Ms. Gargi Goswami,
Mr. Debapriya Majumdar,
Mr. Sourav Guchhait, Advs.
.....For the Appellants.

Mr. Raj Mohan Chatteraj,
Mr. Mehboob Rahman,
Mr. Tanmoy Sett, Advs.

.....For the Respondents.

1. The limited scope of the present application is change of the Administrator who was appointed by a Coordinate Bench vide Order dated September 4, 2019. A challenge was preferred against the said

order before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by an Order dated July 6, 2021, as subsequently modified on September 20, 2021, had inter alia disposed of the challenge by confirming the interim Order dated November 4, 2019 appointing the Administrator. However, the Trial Court was directed by the Hon'ble Supreme Court to decide the suit expeditiously, preferably within a period of six to ten months, if not earlier. It was recorded by the Hon'ble Supreme Court that Counsel for the parties had assured that they would render full cooperation for early disposal of the suit. Any further grievance of either party with regard to the Administrator or otherwise was therefore, naturally, to be raised before the Trial Court, which would alone be competent to pass appropriate orders with regard to the same.

2. Learned Counsel for the petitioners submits that since the prayer in the present application is innocuous, as the Administrator has certain personal difficulties due to his professional engagements in continuing in such post, the same can be disposed of in this court, particularly since the parent appeal is still pending.
3. Learned Counsel for the respondents opposes such prayer and submits that in the light of the order of

the Supreme Court, all grievances are to be raised before the Trial Court.

4. In fact, certain applications, allegations and counter allegations are at present sub judice before the Trial Court, inter alia pertaining to the functioning of the Administrator, alleged non-compliance of the orders of the Administrator by the plaintiffs/appellants as well as on other issues.
5. Challenging the applications in that regard being taken up before hearing of an Order VII Rule 11 CPC application which has also been filed, the plaintiff/appellants have preferred a revisional application which is also pending before this court. In connection with the revision, a stay order was passed, an application for vacating of which is also pending before this court. It is thus submitted that this court ought not to pass any order but it is the Trial Court which now has jurisdiction to decide all the issues.
6. Upon a careful consideration of the arguments of the parties and the materials on record, we are of the opinion that the Supreme Court, by its Order dated July 6, 2021, as subsequently modified on September 20, 2021, made it amply clear that nothing remains to be adjudicated in the present appeal. By directing the Trial Court to decide the suit itself expeditiously within the time frame as

given therein and making it clear that any further grievance of either party with regard to the Administrator or otherwise would have to be raised before the Trial Court, there is no occasion left for this Court to interfere in the matter.

7. Moreover, since certain allegations have been raised by the respondents before the Trial Court as regards the functioning of the Administrator as well as non-compliance of certain orders of the Administrator, it would only be prudent, in the context of the Order dated July 6, 2021 passed by the Hon'ble Supreme Court, to relegate such issues, including the change of the Administrator, to the Trial Court.
8. Since we have not invited affidavits to be exchanged on all the pending applications in connection with the present appeal and are not deciding the merits of any of the issues involved before the Trial Court, it is deemed that none of the allegations made by the parties in connection with the present appeal as well as the connected applications are admitted by their other sides.
9. In the light of the above observations, FMA 1058 of 2019, along with all connected applications, stands disposed of with liberty to both sides to raise all issues raised herein and in the applications made in connection with the present appeal, including

CAN 10 of 2024 and CAN 9 of 2024, before the Trial Court in the light of the observations of the Supreme Court.

10.No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Gaurang Kanth, J.)