

ORDER

OCD – 1 to 4

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION

APOT/154/2024
WITH
AP-COM/490/2024
IA NO: GA-COM/1/2024
SYED SABAHAT AZIM
VS
UPHEALTH HOLDINGS INC AND ORS.

AND
IA NO: GA-COM/1/2024
APOT/155/2024
WITH
AP-COM/490/2024
RICHA SANA AZIM
VS
UPHEALTH HOLDINGS INC AND ORS.

AND
IA NO: GA-COM/1/2024
APOT/156/2024
WITH
AP-COM/490/2024
KIMBERLITE SOCIAL INFRA PVT. LTD.
VS
UPHEALTH HOLDINGS INC AND ANR.

AND
IA NO: GA-COM/1/2024
APOT/157/2024
WITH
APOT/490/2024
GAUTAM CHOWDHURY
VS
UPHEALTH HOLDINGS INC AND ANR.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

Date : 4th October 2024.

APPEARANCE:

Mr. Ranjan Bachawat, Senior Advocate
 Mr. Debashis Karmakar, Advocate
 Mr. Dhruv Chadha, Advocate
 Mr. Parikshit Lakhotia, Advocate
 Mr. Sagnik Bose, Advocate
 ... for appellant in APOT/154/2024.

Mr. Abhrajit Mitra, Senior Advocate
 Mr. Sarvapriya Mukherjee, Advocate
 ... for appellant in APOT/155/2024.

Mr. Dhruva Ghosh, Senior Advocate
 Mr. Rajarshi Dutta, Advocate
 ... for appellant in APOT/157/2024.

Mr. Suddhasatva Banerjee, Advocate
 Mr. Chayan Gupta, Advocate
 Mr. A. S. Pathak, Advocate
 Mr. Vijay Purohit, Advocate
 Mr. Shivam Pandey, Advocate
 Mr. Areejit Mukherjee, Advocate
 Mr. Anirudhya Dutta, Advocate
 ... for respondents.

The Court:- The aforesaid appeals are taken up together as the common judgment and order dated 12th April 2024 is assailed by the respective appellants. Though preliminary objection was raised as to the maintainability of the appeals, but, without going into the aforesaid aspect, we feel that justice would be subserved if all these appeals are disposed of with the following observations.

The appeals are against interim orders of injunction and the applications for injunction have not been finally disposed of as yet. The appearing counsel for the appellants are unanimous in their submission that while passing an order of injunction, the court should not make adverse remarks or observations which would have an impact at the time of final disposal either on an application for temporary injunction or the suit. Such being the scope of determination in the instant appeals, we feel it prudent to recapitulate the law enunciated in this regard.

There is no gainsaying that the consideration at the time of passing an ad interim order of injunction is different from the consideration at the time of disposal of an application for temporary injunction finally. The Court should be more cautious in making observations in pursuit of granting an interim order of injunction as it has a larger impact at the time when the application for temporary injunction is finally disposed of. Time and again, the apex court in unequivocal terms indicated that the court should not make any adverse remarks or observations which would non-suit the other party or would impinge upon the rights which are to be adjudicated after affording an opportunity of hearing or disclosing the stand by filling the pleadings.

The apex Court in *State of Assam v. Barak Upatyaka D. U. Karamachari Sanstha* reported in (2009) 5 Supreme Court Cases 694 held that the interim order which does not partake the character of final order cannot be regarded as a precedent as the findings made therein are mere tentative. It is in aid of the final relief and therefore the court should avoid adverse observations to be made at the time of passing an ad interim order. Paragraph 21 of the said judgment reads thus:-

“21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the

matter does not become either infructuous or a fait accompli before the final hearing.”

The aforesaid proposition of law is further reiterated in a three judge Bench decision of the Supreme Court in State of Madhya Pradesh v. Narmada Bachao Andolan and Another reported in (2011) 12 Supreme Court Cases 689, in the following:-

“15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.”

What emerge from the observations made in the aforementioned reports is that the finding made at the interlocutory stage or at the time of passing interim order is a prima facie finding and no finality can be attached to it. The Apex Court has succinctly held that those findings are tentative in nature meaning thereby only for the purpose of passing a protective order having no impact on subsequent stage of the proceedings. Such finding is limited and restricted to the interim order and therefore cannot have any impact or an adverse impact on a party against whom the said interim order was passed, at the time of final disposal of the application or the suit. It is obvious that the remarks which affect the character or reputation of an individual or bona fide dealing in relation to a transaction have a larger impact and therefore the Court should avoid making such remarks at the

interim stage. As indicated above, those remarks are in pursuit of passing an interim order and therefore are mere prima facie observations and tentative having no impact at the time of final disposal of the application.

We are given to understand that pursuant to the impugned order, affidavits of assets have already been filed by the appellants and therefore we do not think to delve deeper into the aforesaid aspect.

With this observation, the appeals are disposed of. The connected applications also stands disposed of.

(HARISH TANDON, J.)

(PARTHA SARATHI SEN, J.)

S. Kumar