

25.09.2025
SL No.11
Court No.1
(gc)

**FMA 1265 of 2025
CAN 1 of 2025**

**Shyamal Mudi
Vs.
Sipra Koley & Anr.**

Mr. Purnasish Gupta,
Mr. Jayanta Kumar Mukhopadhyay
...for the Appellant.
Mr. Mohammad Mahmud
...for the Respondent No.2.

1. The order appointing the Receiver is the subject matter of challenge in this appeal.
2. The learned Counsel for the appellant has submitted that the learned Trial Judge has proceeded on the basis that a decree has already been passed against the plaintiff in respect of 'A' Schedule Property and an appeal is pending against the said decree whereas the fact remains that the decree of the Appellate Court was set aside.
3. However, we do not find that such record is wrong in view of the fact that the decree of the learned Trial Court still remains and we have only set aside the order of the First Appellate Court on the reason that the order of the Appellate Court is unreasoned. We have also stayed the execution proceeding. It does not by itself give any right to the plaintiff to seek an appointment of the Receiver. It appears that the parties are claiming through Jaladhar Mudi.

The learned Trial Court has taken into consideration that resolution was adopted between the legal heirs of Jaladhar and it was agreed that the wife of Jaladhar, that is Durga Mudi and Amal Mudi, that is the defendant no.2 will continue the business in the name and style of M/s. Rising Engineering Work. In terms of the partnership deed, Amal Mudi, i.e., the defendant no.2 would have 50% share in the said firm.

4. The plaintiff filed a suit for partition, accounts, declaration and permanent injunction. It relates to the business of M/s. Rising Engineering Work. In view of the fact that prima facie there appears to be a settlement consequent upon the death of Jaladhar, the parties have proceeded with the business of Jaladhar having divided their shares equally appointment of Receiver over a running business will be ruinous. If, however, the partition suit succeeds and there would be a requirement for settlement of accounts and if it is ultimately contended and held that the corpus of the business is Jaladhar and there has been no mutual settlement between the parties, division of the properties as also the incomes of the business would be required to be distributed according to the share.

5. All incomes either in the name of M/s. Rising Engineering Work or collected by the respondents from properties and other tenants shall be disclosed in a quarterly statement of accounts to be filed by the respondents before the Trial Court till the disposal of the suit or any order that may be passed in the pending suit
6. On such consideration, we direct M/s. Rising Engineering Work to file quarterly statement of accounts in the suit and the accounts shall be duly verified by a competent accountant.
7. The statements of accounts from 1st April, 2025 till 30th September, 2025 shall be filed by 15th November, 2025 and for the quarterly statement of accounts as directed by this order shall commence from 1st October, 2025.
8. Accordingly, the appeal and the application are disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)