

M/L.32.
June 9, 2025.
MNS.

FMA No. 1140 of 2024
+
CAN 1 of 2024

Santimoy Mallick
Vs.
Gresswell Breweries Limited and others

Mr. Partha Pratim Roy,
Mr. Samrat Chakraborty

... for the appellant.

Mr. S. P. Tewary

...for the respondent no. 1 and 2.

1. The present appeal has been preferred against a judgment and order of remand.
2. The learned Trial Judge sustained the objection as to the maintainability of the suit on the ground that the plaintiff/respondent-Company's name had been struck off from the records of the Register of Companies at the relevant juncture when the suit was filed.
3. Subsequently, on an appeal preferred against the said decree, the learned First Appellate Judge, by relying on an order of this Court passed in company jurisdiction, took note of the fact that the company had since been revived by cancellation of the order of striking off the name of the company from the Register of Companies and it was further observed by this Court that it would be open for the company to assail the rights of the present

appellant if the company is indeed the owner of the land. It was further observed by the learned Single Judge sitting, in company jurisdiction, that it will be open for the company to seek the benefit of the appropriate provisions of the Limitation Act for the purpose of maintaining the suit and other proceedings in respect of the disputes regarding the land with Mallick (the present appellant).

4. Learned counsel for the appellant argues that since the suit was not maintainable at the inception, the learned Appellate Judge ought to have affirmed the findings of the learned Trial Judge. It is further argued that merely on the premise and observation of the Company Court, the appellate court ought not to have remanded the matter without taking into consideration the fact that the suit is by now barred by limitation in any event.
5. However, upon a perusal of the judgments of the courts below and the relevant materials on record annexed with the stay application filed in the present appeal, we find that the learned Judge of the first appellate court committed no error, either of law or of fact, in remanding the suit by setting aside the trial Court's decree whereby the suit was held to be not maintainable, by taking into consideration the subsequent fact that the name of the company had since been restored in the

Register of Companies and taking into account the order of the Company Court in that regard.

6. The apprehension of the appellant, to the extent that the appellate court has decided certain issues, is entirely misplaced, as is evident from the face of the impugned judgment.
7. It is obvious that all the questions raised by both sides have been kept open for being decided on merits by the learned trial Judge on remand, including the issues of maintainability of the suit as well as the question of limitation.
8. Hence, we do not find any reason to entertain the present appeal or to admit the same.
9. Accordingly, FMA No. 1140 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure in the light of the above observations.
10. Consequentially, CAN 1 of 2024 stands dismissed as well.
11. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)