Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'be Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMAT No. 498 of 2022
+
CAN 1 of 2023
+
CAN 2 of 2023

Sri Tapash Banerjee
Vs.
Smt. Bina Banerjee and another

For the appellant	:	Mr. Krishna Das Poddar, Ms. Rabina Akhter, Ms. Mondira Barman, Mr. Surajit Mitra
For the respondents	:	Mr. Sounak Bhattacharya, Mr. Anirban Saha Roy, Mr. Sounak Mondal, Ms. Avirup Halder
Heard on	:	17.03.2025
Judgment on	:	17.03.2025

Sabyasachi Bhattacharyya, J.:-

Re : CAN 1 of 2023 (condonation of delay)

1. Upon hearing learned counsel for the parties, we find that sufficient explanation has been furnished in the condonation application for the delay occasioned in preferring the appeal.

2. Accordingly, CAN 1 of 2023 is allowed, thereby condoning the delay in preferring FMAT No. 498 of 2022.

3. There will be no order as to costs.

Re: <u>FMAT No. 498 of 2022.</u>

4. Since questions of both fact and law are involved in the appeal, the appeal is admitted and will be heard on the grounds as taken in the Memorandum of Appeal.

5. In view of the short conspectus of the appeal, formal preparation of paper books and calling for the trial court records are dispensed with.

6. The appeal itself is now taken up for hearing.

7. At the outset, learned counsel for the appellant submits that there was no reasonable basis for the learned Trial Judge having directed the appellant to pay a monthly amount of Rs.12,000/- to the defendant/respondent no. 1 as a partner.

8. The brief facts of the case are that the plaintiff/appellant and the defendant/respondent no. 1, being son and mother respectively, run a partnership business.

9. The grievance of the plaintiff/appellant is that the defendant/respondent no. 2, the sister of the appellant, was appointed as a Constituted Attorney by the respondent no. 1-mother, without having any reconstitution of the partnership business. The induction of a third party to the partnership

business without the consent of all partners, it is contended, is palpably illegal.

10. That apart, since the respondent no. 1 is not in a position to conduct the business due to her advanced years and ailments, the appellant has been doing so alone. Due to hindrance caused by the respondents, it is argued that the appellant is not being able to run the business smoothly.

11. As such, learned counsel submits that the injunction order restraining the defendant no. 1 from disturbing the plaintiff/appellant running the partnership business smoothly was justified.

12. However, the learned Trial Judge, by the impugned order, also directed the plaintiff/appellant to pay Rs.12,000/- per month to the defendant no.1-mother as a partner of the business. It is submitted that there is no basis or reasoning disclosed in the impugned order for the same.

13. Learned counsel for the respondents submits that since the respondent no. 1-mother is not in a physical condition, due her different ailments, to actively participate in the partnership business, she appointed respondent no. 2, her daughter, as the Power of Attorney holder to represent her in the business. It is submitted that the respondents are totally in the dark as to the running of the business since they have been restrained entry to the business by the appellant.

14. We find from a bare perusal of the impugned order that there is no basis whatsoever for the direction on the appellant to pay Rs.12,000/- per month to the respondent no. 1-mother. There is not a single finding in the impugned order as to the quantum of profits actually earned by the business, which might have been the premise of grant of fifty per cent of such amount to the respondent no.1, who is a partner in equal share.

15. However, on humanitarian grounds, since the respondent no. 1 is suffering from different ailments and is the mother of the appellant, the appellant concedes to payment of Rs.6,000/- per month to the respondent no. 1.

16. That apart, we also find that since it is an admitted position that the respondent no. 1 is a partner of equal share with the appellant, the ends of justice would be sub-served if the appellant is also directed to furnish before the learned Trial Judge quarterly audited accounts of the partnership business; otherwise there would be no protection of the rights of the respondent no. 1 as a partner of the said business.

17. Accordingly, FMAT No. 498 of 2022 is disposed of by modifying the impugned order to the extent that instead of Rs.12,000/- per month, the plaintiff/appellant shall pay a monthly amount of Rs.6,000/- per month to the defendant/respondent no. 1 on an *ad hoc* basis, which payments shall be subject to the outcome of the suit.

18. Such payments shall be made from the date of the impugned order, that is, from the month of August, 2022. The arrears in that regard till the month of February, 2025 shall be cleared off by the appellant in favour of the respondent no.1 in three equal monthly instalments. The first of such instalments shall be paid by March 31, 2025 and thereafter, by the last date of each succeeding month. The current payments shall also be made by the last date of each current month, beginning from March, 2025.

19. Such payments, both arrears and current, shall be made by online transfer by the appellant directly to the Bank Account of the defendant/respondent no. 1. The particulars of such Bank Account shall be furnished by March, 2025 by the respondents, through their learned Advocate, to the learned Advocate for the appellant in this Court.

20. That apart, the appellant shall also file before the learned Trial Judge, with advance copy to the respondents, audited quarterly accounts of the partnership business till disposal of the suit.

21. In view of the suit already being on the peremptory board, it is expected that the learned Trial Judge shall make endeavour to dispose of the same as expeditiously as possible, without granting any unnecessary adjournment to either of the parties, preferably by the end of September, 2025.

22. CAN 2 of 2023 also stands disposed of in the light of the above observations.

23. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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