

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMERCIAL DIVISION)
ORIGINAL SIDE

APD/6/2023
WITH CS/51/2021

EMPORIS PROPERTIES PVT LTD.
VS
KAILASH KUMAR TIBREWAL AND ORS

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

AND

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date :February 5, 2026.

Appearance:

Mr. Raj Ratna Sen, Adv.

Mr. Ayan Dutta, Adv.

Mr. Pradip Kumar Saraogi, Adv.

Ms. Debolina Dey, Adv.

...for the appellant.

Mr. Sudhasatva Banerjee, Adv.

Mr. Anirudha Agarwala, Adv.

Mr. Shashwat Nayak, Adv. (VC)

Ms. Priyanka Garain, Adv.

...for respondent no. 1.

The Court: Appeal is at the behest of the defendant no. 3 in a suit for specific performance and other reliefs.

The appeal is directed against the order dated June 14, 2023 by which, the learned Single Judge, accepted a terms of settlement and passed a decree on the basis thereof.

Learned Advocate appearing for the appellant submits that, the appellant is not a signatory to the terms of settlement. Nonetheless, the terms of settlement accepted by Court, requires the defendant no. 3 to do certain things. The defendant

no. 3 is not bound by such terms of settlement. In any event, some of the terms and conditions of the terms of settlement are contrary to the provisions of the Companies Act, 1956 under which, the defendant no. 3 was incorporated.

Learned Advocate appearing for the appellant submits that the appellant is a private limited liability company. Share transfer of the appellant is governed by the articles of association of the appellant. All shareholders of the appellant are not parties to the suit. He draws the attention of the Court to the shareholding of the appellant, at the time of filing of the suit.

Learned Advocate appearing for the plaintiff submits that, there is no direction on the defendant no. 3 in the terms of settlement and the ultimate decree that was passed. He submits that, the terms and conditions of the decree or the terms of settlement cannot be classified as violative of any provisions of any law. He draws attention of the Court to the various clauses of the terms of settlement in this regard.

The plaintiff who is the respondent no. 1 in this appeal filed a suit for specific performance and other reliefs against three defendants. Appellant before us is the defendant no. 3 in such suit. The other two defendants in the suit filed by the respondent no. 1 as the plaintiff are the respondent nos. 2 and 3 in the present appeal. They claim to be shareholders of and in the appellant.

The appellant is a private limited liability company incorporated under the provisions of the Companies Act, 1956. Companies Act, 1956 conceives of and lays down prohibition on transfer of the shares to outsiders in respect of a private limited liability company.

Be that as it may, a terms of settlement was entered into between the respondent no. 1 on one part and respondent nos. 2 and 3 in this appeal on the other part. As noted herein, respondent no. 1 herein is the plaintiff in the suit while the respondent nos. 2 and 3 herein are the defendant nos. 1 and 2 in the suit.

By such terms of settlement, the plaintiff and the defendant nos. 1 and 2 in the suit agreed to various dealings amongst themselves. In addition thereto, in the terms of settlement, they sought certain actions to be taken by the appellant as the defendant no. 3. In particular, in Clause 11, the plaintiff and the defendant nos. 1 and 2 required the appellant as the defendant no. 3 to consider the applications for transfer of shares. Moreover, in Clause 10 of the terms of settlement, the plaintiff and the defendant nos. 1 and 2 in the suit sought a declaration that they are the 50% shareholders of and in the defendant no. 3, the appellant herein.

As noted above, the defendant no. 3 is not a signatory to the terms of settlement.

Therefore, in our view, interest of justice would be subserved by holding that since the defendant no. 3 did not sign the terms of settlement and is not accepting the same, such terms of settlement is not binding upon the defendant no. 3, the appellant herein.

The suit continues to remain. The issues as to the legality and validity of the clauses of the terms of settlement which relates to the defendant no. 3 that is the appellant before us, may be decided in the suit.

APD/6/2023 is disposed of accordingly, without any order as to costs.

At this stage, the learned Advocate appearing for the respondent no. 1 invites the Court to record that the Court did not enter into the merits of the rival contentions.

Since, the suit is pending, it is clarified that, the rival contentions of the parties are kept open to be decided at the trial, if so raised. Our findings are limited to the terms of settlement and the consequent decree passed thereon as also on the nature of such terms of settlement and the decree.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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AR (CR)