

Commercial Suit 01 of 2023

Order No.36

Date: 29-04-2025

Parties file haziras. Today is fixed for passing of an order. The case record is taken up for passing of an order with regard to application U/O. XXXIX Rule.1 and 2 of the CPC R/W. Section 151 of the CPC filed by the petitioners/plaintiffs of this case.

The plaintiffs/petitioners, namely Mohindra Tubes Limited and another, have filed this suit against Haldibari Tea Manufacturers LLP, Sushil Mitruka, Anita Mitruka, Rubi Mitruka, Kajal Sarkar, Haldibari Industries and Plantation Company Limited, being defendants nos. 1,2,3,4,5 and 6 respectively, for declaration, permanent injunction, damages and other consequential relieves. As per the case of the plaintiffs, the Petitioner/plaintiff no. 1 is the Public Limited Company and petitioner/plaintiff no. 2 is one of the directors and founding member of the petitioner/plaintiff no. 1. The opposite party/defendant no. 1 is a Limited Liability Partnership Firm and opposite parties/defendants no. 2 and 3 are the founding partners of the defendant no. 1. The petitioner/plaintiff no. 2 and the opposite parties/defendants no. 2,3, and 4 are the distant relatives. On request the petitioner/plaintiff no. 2 advanced Rs. 20 lacs and 25 lacs on 27-08-2021, 16-11-2021 respectively, to the opposite party/defendant no.1, with assurance to return within few months. The opposite party/defendant no. 2 approached and requested the petitioner/plaintiff no.2 to enter into partnership wherein the opposite parties/defendants no. 3 and 4 having 70% share in the opposite party/defendant no. 1 would retire and such share would be transferred to the petitioner/plaintiff no. 1 by bringing in contribution of 50% share. The opposite party/defendant no. 2 claimed that, showing an agreement for assignment of lease of Haldibari Tea Estate which was executed by and between the opposite party/defendant no. 1 and opposite party/defendant no. 6, dated 11-11-2019, where by the entire Haldibari Tea Garden was to be assigned in favour of the opposite party/defendant no. 1 on payment of consideration of Rs. 23.5 crores, out of which major part of the consideration had been paid and only about Rs. 3 crore was remaining, which was to be transferred at the time of registration. The opposite party/defendant no. 2 informed the petitioner/plaintiff no. 2 that opposite party/defendant no. 2 had inducted opposite party/defendant no. 5 as one of the partners, to have 20% share, on bringing certain contribution by executing a reconstituted limited liability partnership agreement dated 31-01-2020. But the opposite party/defendant no. 5 was expelled from opposite party/defendant no. 1 as he did not bring any contribution. The opposite party/defendant no. 2 also showed a deed of agreement dated 15-05-2020, alleging to be forged and prepared by opposite party/defendant no. 5 with an intention to take full control over the business of the opposite party/defendant no. 1. The opposite party/defendant no. 1 also apprised or revealed about criminal proceeding initiated by opposite party/defendant no. 2 against opposite party/defendant no.5. On being referred, Questioned Documents Examination Bureau, CID, West Bengal has opined that the said deed of agreement dated 15-05-2020 as not genuine. On the basis of connivance between opposite party/defendant no. 5 and opposite party/defendant no. 6, opposite party/defendant no.6 terminated the agreement between the opposite party/defendant no. 1 and opposite party/defendant no. 6. The opposite party/defendant no.5 claimed 100% share in the opposite party/defendant no.1 on the basis of forged agreement and the opposite party/defendant no. 2 also apprised the petitioner/plaintiff no. 2 with regard to then on going arbitration proceeding involving opposite party/defendant no. 1,2,3,4 on the one side and the opposite party/defendant no. 5 on the other, being presided over by Hon'ble Justice Asok Kumar Ganguly, former judge, Supreme Court of India. After verifying the facts placed by the opposite party/defendant no. 2, the petitioner/plaintiff no. 1 agreed to enter into a partnership with the opposite party/defendant no. 2 in the business of opposite party/defendant no. 1. Accordingly, the opposite party/defendant no. 3 and 4 resigned from the opposite party/defendant no. 1 as partners by virtue of their respective resignation letters and after signing and executing a deed of retirement dated 24-12-2021. The petitioner/plaintiff no. 1 was inducted as a partner in the opposite party/defendant no. 1 as designated partner after signing and executing a reconstituted deed of partnership dated 24-12-2021, where in the petitioner / plaintiff no. 1 was represented by petitioner / plaintiff no. 2. As per reconstituted deed of partnership, the petitioners / plaintiffs advanced loan amount, which was stated as its initial capital contribution on joining the opposite party/defendant no. 1 and its

contribution was to be paid within 31-03-2022. Soon after the induction, the petitioner/plaintiff no. 1 was registered and was shown as a designated partner in the opposite party/defendant no. 1, after filing and applying before Registrar of Companies(ROC), Kolkata. There after the petitioner/ plaintiff no. 1 fulfilled its obligation by contributing the remaining amount towards the capital contribution by transferring an amount of Rs. 3.5 crores through bank transfer on 03-01-2022. Out of this 3.5 crore , Rs. 2.05 crores was paid towards the capital contribution as an incoming partner and remaining amount of Rs. 1.45 crores was in the form of loan advanced to the opposite party/defendant no. 1 . There after the petitioner/plaintiff no. 2 started attending and attended or participated in all the arbitration references. The petitioner/plaintiff no. 2 became busy ,some time in the month of September 2022,due to marriage of his son on 25-11-2022, due to which he used to frequently travel from Siliguri to Kolkata,on being insured by the opposite party/defendant no. 2 that opposite party/defendant no. 2 would take care of the litigation. Accordingly opposite party/defendant no. 2 continued representing in arbitration references for an behalf of opposite party/defendant no. 1 . In between, the petitioner/plaintiff no.2 came to know that the disputes between the opposite party/defendant no. 1 and opposite party/defendant no. 5 was going to get settled, as opposite party/defendant no. 2 to 4 had agreed that henceforth, opposite party/defendant no.5 will continue to manage and run the tea state which was in his illegal possession. Thereafter the petitioner/plaintiff no. 2 tried to contact and get in touch to seek clarifications but the opposite parties/defendants avoided the attempts made by the petitioner/plaintiff no.2. It was found that the name of the petitioner/plaintiff no. 1 was illegally removed from the e-portal of the Ministry of Corporate Affairs. On meeting opposite parties/defendants threatened to face dire consequences if there was interference in affairs of opposite party/defendant no. 1. The petitioner/plaintiff no.2 left the place after being threatened and then lodge the police complaint at Siliguri Police Station on 10-02-2023. The petitioners/plaintiffs was shocked to find that the Consent Award dated 24-11-2022 , passed on the basis of terms of settlement was not signed by the opposite party/defendant no. 1. Rather it was signed by opposite party/defendant no. 2 to 5. The said award is illegal. The opposite parties/defendants have jointly and/or severally perpetrated fraud not only on petitioners/plaintiffs but also on the Ld. Arbitrator. The petitioners'/plaintiffs' has suffered damages to the tune of Rs. 10 crores. The petitioners/plaintiffs have prayed for an order of temporary injunction, restraining the opposite parties/defendants no. 1 to 5, or their men, servants and agents from relying on and/or acting in furtherance of the award dated 24-11-2022 and from acting in furtherance of the all forms filed with the Registrar of Companies on 09-11-2022, where by the petitioner/plaintiff no 1 was removed as the designated partner of the opposite party/defendant no. 1. The petitioner/plaintiff has also prayed for an order of temporary injunction restraining the opposite parties/defendants no. 1 to 5 and their men and agents from dealing with or creating any rights in the assets of the opposite party/defendant no. 1 and from operating any bank accounts from the opposite party/defendant no.1 or creating any liabilities upon opposite parties/defendants no.1 .

The opposite parties/defendants no. 2 to 4 have filed W/O. against the application U/O. 39 R. 1 and 2 R/W. Section 151 of CPC. The alleged agreement dated 09-11-2022, notarised on 11-11-2022 which has resulted in an arbitral award dated 24-11-2022 , and change in partnership structure of the referred LLP on 09-11-2022, is also under investigation by the Ministry of Law and Justice, Govt. of India. The alleged Terms of Settlement dated 09-11-2022, notarised on 11-11-2022 contains signatures of opposite parties/defendants no. 2 to 4 but opposite party/defendant no.4 was not in India from 09-11-2022 to 11-11-2022, and was in Singapore during this period. The opposite parties/defendants no. 3 and 4 had already retired from the LLP vide Retirement Deed dated 24-12-2021, accordingly were not authorised the sign any such agreement on behalf of the LLP, and that it was signed under death threat by opposite party/defendant no. 5. The agreement dated 15-05-2020 was taken into cognizance to formalise the Terms of Settlements dated 09-11-2022, resulting in an arbitral award dated 24-11-2022. The agreement dated 15-05-2020 is null and void, as per the report of Forensic Department, CID , Govt. Of West Bengal alleging the disputed signatures of opposite party/defendant no. 2 as not genuine.This agreements settles the transfer of shares of answering opposite party/defendant no. 4 without the signatures and accordingly agreement dated 15-05-2020 and ToS dated 09-11-2022 are null and void.It is further alleged that the arbitral award was further forged by opposite party/defendant no. 5 with free handwriting and creating additional page, '11-A' , without signature of opposite party/defendant no. 3 and also without notary public. The

opposite parties/defendants no. 2 to 4 has prayed for setting aside the award being null and void.

The opposite parties/defendants no. 2 to 4 have also filed further two written objections against the application U/O. 39 R. 1 and 2 R/W. Section 151 of CPC on 17-06-2024 and on 21-09-2024.

The opposite parties/defendants no. 1 and 5 have also filed W/O. The opposite party/defendant no. 5 has claimed to be partner of respondent opposite party/defendant no. 1 LLP. The petitioners/plaintiffs can seek restraining order against arbitral award dated 24-11-2022 only in terms of the provision of Arbitration and Conciliation Act, 1996. The petitioners/plaintiffs cannot challenge the arbitral award dated 24-11-2022 only U/S. 34 of the Arbitration and Conciliation Act, 1996. Pursuant to the execution of an agreement dated 15-05-2020, disputes and differences had arisen between the partners of the erstwhile-reconstituted Limited Liability Partnership Agreement dated 31-01-2020. The Hon'ble Supreme Court vide its order dated 20-09-2021, appointed Hon'ble Justice Asok Ganguly, former judge, Supreme Court of India as Ld. Sole Arbitrator to adjudicate the disputes in reference to SLP vide Special Leave to Appeal(C) no. 12719-12720/2021. Accordingly the parties presented themselves before the Ld. Sole Arbitrator for adjudication of disputes between them. Ld. Sole Arbitrator, in the 15th sitting of the Arbitral reference dated 24-11-2022, recorded that the parties have decided to settle their disputes amicably and accordingly proceeded to record the settlement between parties in the form of an Arbitral Award with the consent of the parties. As per the Memorandum of Understanding and Settlement Agreement dated 09-11-2022 Sushil Mitruka, Anita Mitruka and Ruby Mitruka, being erstwhile partners of the respondent no. 1 LLP sold their entire share holding in the LLP on receipt of valuable consideration, to the respondent no.5 by way of an agreement dated 15-05-2020 and accordingly Sushil Mitruka, Anita Mitruka and Ruby Mitruka ceased to have any share holding in the respondent no. 1 LLP and accordingly ceased to be partners in the same. Pursuant to terms of Memorandum of Understanding and Settlement Agreement dated 09-11-2022, Kajal Sarkar/respondent no. 5 has become sole stake holder in respect of the assets, rights and liabilities of the respondent no.1 LLP. The petitioner no.1 is claiming to be designated partner of the respondent no. 1 LLP, by way of the Reconstituted Limited Liability Partnership Deed dated 24-12-2021, but by way of an Agreement dated 15-05-2020, the respondent no. 2 to 4, being the erstwhile partners of the respondent no 1 LLP sold their entire share in the said LLP in receipt of valuable consideration to the respondent no 5. Accordingly, no agreement could be entered into by and between the respondent no. 2 and the petitioner no. 1 inducting the later as a partner to the respondent no. 1 LLP. Respondent no. 2 could not enter into an agreement or induct any one as a partner when respondent no. 2 ceased to be a partner on 15-05-2020 thus the Reconstituted Partnership Deed is null and void. The petitioner no 2 failed to apprise Ld. Sole Arbitrator Justice Asok Ganguly, (former Judge, Supreme Court, India) in the arbitral reference of "Haldibari Tea Manufacturers LLP and another and Kajal Sarkar" of the purported Reconstituted Deed of Limited Liability Partnership Agreement dated 24-12-2021, during the course of proceedings between the Haldibari Tea Manufacturers LLP and another and Kajal Sarkar before the Ld. Sole Arbitrator Mr. Asok Ganguly (former Judge, Supreme Court, India). No board resolution was ever brought on record by the petitioners evincing them to be authorised representative of the respondent no. 1 LLP. The respondent no. 2 represented the respondent no 1 LLP at all the material times until the execution of the Settlement Agreement dated 09-11-2021. All the pleadings, at all point of time have been filed in the name of respondent no. 2 on behalf of the respondent no.1 LLP in arbitral reference of "Haldibari Tea Manufacturers LLP and Kajal Sarkar" prior to the Settlement Agreement entered into between the respondent no. 2 to 4 and the respondent no 5. The respondent no.2 represented respondent no. 1 LLP at all material times until the execution of the Settlement Agreement dated 09-11-2021. The purported reconstituted LLP Agreement dated 24-12-2021 is null and void and accordingly no right, title or interest in the said LLP vests upon the said M/s. Mohindra Tubes. Respondent no.2 could not have inducted the petitioner no.1 as a partner of the respondent no.1 LLP as on 24-12-2021 since the respondent no.2 himself ceased and desisted to be a partner of the respondent no. 1 LLP in terms of the agreement dated 15-05-2020. The Arbitral award dated 24-11-2022 passed by Ld. Sole Arbitrator, Hon'ble Justice Mr. Asok Kumar Ganguly, former judge, Supreme Court, in arbitral reference, has attained finality and accordingly cannot be a subject matter of challenge. The petitioner have labelled untrue and incorrect allegations against the answering respondents.

The petitioners have filed an intervenor application before the Ld. Sole Arbitrator, Hon'ble Justice Mr. Asok Kumar Ganguly , former judge, Supreme Court in arbitral reference of Haldibari Tea Manufacturers LLP and Haldibari Industries and Plantation Company Limited, praying for an order allowing the applicant/claimant to participate in the proceedings for and on behalf of Haldibari Tea Manufacturers LLP. Such intervenor is unethical and mala fide. Right , title and interest of the respondent no. 5 germinates from the arbitral award dated 22-11-2022 , which recognize the MOU and the terms of settlement dated 09-11-2022, entered into between the parties to the disputes. The respondents/defendants no. 1 & 5 have denied all the allegations made by the petitioners/plaintiffs. The petitioners transferred Rs. 20 lacs on 27-08-2021 and Rs. 25 lacs on 16-11-2021 as a part of long term borrowings of the said respondent no. 1 LLP, which does not masquerade the petitioner no.1 as a partner in respondent no. 1 LLP. It is denied that the said reconstituted deed of partnership dated 15-05-2020 is not genuine or is forged. Disputes and differences that arose between the respondent no.5 and respondent no. 2 to 4 was referred to arbitration. The said MOU and Settlement Agreement dated 09-11-2022 provided that the agreement dated 15-05-2020 was validly executed between the respondent no. 2,4 and respondent no. 5 whereby and where under the entire share holding of the respondent no. 2 & 4 in the respondent no. 1 LLP was agreed to be and was transferred in favour of respondent no. 5 against receipt of valuable consideration. Accordingly the respondent no. 2 to 4 ceased to have any share in the said respondent no. 1 LLP and ceased to be partners in the same. It is denied that petitioner no.1 entered into reconstituted deed of partnership with the respondent no. 2 to 4 in order to be inducted as a partner of the respondent no. 1 LLP. It is denied that the petitioner no. 1 transferred an amount of Rs. 3.5 crores in favour of respondent no. 1 LLP towards its induction as a partner in the said respondent no. 1 LLP. The amount of Rs. 3.5 crores was transferred by petitioner no. 1 on or about 3rd January 2022 , as a loan to the respondent no.1 LLP which has been recorded as a long term borrowing. Upon perusal of the minutes of the arbitral sitting in the reference of “ Haldibari Tea Manufacturers LLP and Kajal Sarkar”, it can be asserted that the petitioner no. 2 has attended such proceedings along with respondent no. 2 to 4, but petitioner no. 2 never intimated the Ld. Sole Arbitrator of the purported reconstituted deed of partnership dated 24-12-2021. The reconstituted LLP Agreement dated 24-12-2021 is null and void. Petitioner no. 1 was never a partner to the respondent no. 1 LLP. The petitioner no. 1 has willingly and consensually advanced a sum of Rs. 3 crore 95 lacs towards loan to the respondent no. 1 LLP. The defendant no. 1 and 5 have stated that the petition is mischievous, frivolous, concocted, vexatious, surreptitious for and has been filed with utmost ulterior motive of wrongful gain. The defendants no. 1 & 5 have prayed for dismissing this application.

I have heard Ld. Lawyers for the petitioners/plaintiffs, opposite parties/defendants no. 2 to 4 and opposite parties/defendants no. 1 to 5. Perused the application U/O. XXXIX R. 1 and 2 R/W. Section 151 of the CPC, written objections filed by opposite parties/defendants no. 2 to 4 and opposite parties/defendants no. 1 and 5 , documents annexed and the case record.

The case record is taken up for order with regard to application U/O XXXIX, Rule 1 and 2 read with Section 151 of the CPC filed by petitioners/plaintiffs.

Ld. Lawyer for the petitioners/plaintiffs submitted that the petitioner/plaintiff no. 1 is partner in of opposite party/defendant no. 1 and has contributed sufficient capital but by dishonest and forged mean, the petitioner/plaintiff no. 1 has been thrown out of the partnership and that it apprehends that capital contributed to the partnership is likely to be misappropriated. He further submitted that the defendant no. 5 has claimed this right over opposite party/defendant no.1 on the basis of agreement dated 15-05-2020 which has established to be a forged document by Questioned Document Examination Bureau, CID , West Bengal. and Conciliation Act 1996. The petitioners/plaintiffs have prayed for a decree of declaration that the Award passed by Ld. Arbitrator Justice Ashok Kumar Ganguli, Retired Supreme Court , in the Arbitration between the opposite party/defendants no. 1,2,3 and 4 with the defendants no. 5 is null and void ,as one of the relieves.

Ld. Lawyer for opposite party/defendant no. 1 and 5 submitted during hearing that the petitioners/plaintiffs were never partners of the opposite party/defendant no 2 . Ld. Lawyer for the opposite party/defendant no-1 and 5 admitted that the petitioners/plaintiffs participated in the arbitration proceedings. Ld. Lawyer for the defendants no. 1 and 5 have denied the allegations and claims of the plaintiffs.

The petitioners/plaintiffs have claimed to have become partner of opposite party/defendant no. 1 vide Re-constituted Deed of Partnership dated 24-12-2021 . The opposite party/defendant no. 1 and 5 have denied such deed dated 24-12-2021 ,claiming that as per terms of Memorandum of Undertaking and Settlement Agreement, vide point no – 3.8(b) any such reconstitution of the LLP, during pendency of proceedings, between the parties ,has been declared to be treated as null and void.

It prima facie appears that the opposite party/defendant no. 5 was expelled from partnership firm, that is, the opposite party/defendant no. 1 . The opposite party/defendant no. 5 has admitted that the petitioners/plaintiffs have contributed Rs. 3.95 crore to the opposite party/defendant no.1, but as long term borrowing. But the petitioners/plaintiffs have claimed that maximum contributed amount of money or money transferred to the opposite party/defendant no. 1 is contribution towards capital in capacity of a partner .Ld. Lawyer for the opposite party/defendant no. 1 and 5 has not claimed to have paid back Rs. 3.95 crore to the petitioners/plaintiffs but on the other hand has instead made opposite parties/ defendants no. 2 to 4 to pay the amount petitioners/plaintiffs in terms of 3.8(a) of the Memorandum of Understanding and Settlement Agreement dated 09-11-2022. Ld. Lawyer for the opposite party/defendant no.2 submitted during the hearing that the petitioner/plaintiff was inducted as partner vide Re-constituted Deed of Partnership ,dated 24-12-2021 and that the petitioner/plaintiff no.1 contributed its share capital to the re-constituted partnershipfirm .The opposite party/defendant no. 5 has claimed admission or induction of the petitioner/plaintiffs vide Re-constituted Deed of Partnership ,dated 24-12-2021 as invalid in terms of point 3.8(b) of the Memorandum of Understanding and Settlement Agreement dated 09-11-2022. The petitioners/plaintiffs have claimed that the opposite party/defendant no. 5 was inducted as a partner vide a Reconstituted Limited Liability partnership agreement on 31-01-2020, subject to contribution of Rs 1 crore toward partner's capital contribution . It is further claimed that the opposite party/ defendant no. 5 was expelled from Opposite party/ defendant no. 5 in terms of the clause 20 of the Re-constituted Limited Liability Partnership Agreement dated 31-01-2020. Opposite/defendant no. 5 was not partner of opposite party/defendant no. 1 on 24-12-2021 when the petitioner/plaintiff no. was inducted as a partner in the LLP, opposite party/defendant no.1. There is no allegation on the part of opposite party/defendant no. 5 that the petitioner/plaintiff no. 1 was inducted into LLP, opposite party/defendant no .1 in violation of provisions of the Partnership Act or under any other legal provision. In other words, inductionof the petitioner/plaintiff no. 1 into LLP, opposite party/defendant no .1 was legal and proper. Mere inserting of point no 3.8(b) in the Memorandum of Understanding and Settlement Agreement dated 09-11-2022, that too after 24-12-2021, cannot declare Reconstituted Limited Partnership Agreement dated 24-12-2021 as null and void , that too without giving opportunity to the petitioner/plaintiff no.1 to be heard. Prima facie, it is really strange to notice that the petitioner/plaintiff no. 1, earlier inducted as partner in LLP opposite party/defendant . 1, by way of Reconstituted Limited Partnership Agreement, dated 24-12-2021, involving opposite party/defendant no. 2 and petitioner/plaintiff no. 1, has been declared to be null and void by opposite parties/defendants no. 2 to 4 and 1 and 5, vide MOU and Settlement Agreement dated 09-11-2022 without giving opportunity to the petitioner/plaintiff no. 1 of being heard. Prima facie, this is gross violation of principal of natural justice. The opposite party/defendant no. 5 has claimed that the petitioner/plaintiff no. 1 was never partner of opposite party/defendant no. 1 but on the other hand point no. 3.8(b) of the Memorandum of Understanding and Settlement Agreement dated 09-11-2022 has indirectly admitted Reconstituted Limited Partnership Agreement dated 24-12-2021. Thus, this way the opposite party/defendant no. 5 has admitted Reconstituted Limited Partnership Agreement dated 24-12-2021 and induction of petitioner/plaintiff no. 1 into LLP, opposite party/defendant no. 1. Due to such reason point no. 3.8(b) has been inserted in the MOU and Settlement Agreement dated 09-11-2022. This Memorandum of Understanding and Settlement Agreement dated 09-11-2022 has been challenged by the opposite parties/defendants no. 2 to 4 on the ground that opposite party/defendant no. 4 was not in India when the document was sworn before notary. It is further alleged by the petitioners/plaintiffs and opposite parties/defendant no. 2 to 4 that Memorandum of Understanding and Settlement Agreement dated 09-11-2022 was signed by the opposite parties/defendants no. 2 to 4 by force and threatening opposite parties/defendants no. 2 to 4. It is further alleged that the opposite party/defendant no. 5 inserted page no. 11A in the Memorandum of Understanding and Settlement Agreement dated

09-11-2022 later on, by deceitful mean after it was presented before the notary on 11-11-2022. This contention of the petitioners/plaintiffs and opposite parties/defendants no. 2 to 4 cannot be denied after perusing pages no. 11 and 11A of the Memorandum of Understanding and Settlement Agreement dated 09-11-2022. Prima facie the opposite party/defendant no 5 has tried to deprive the petitioners/plaintiffs of its contribution of Rs. 3.95 crore, admittedly contributed to the LLP opposite party/defendant no. 1, and also of rights and status as a partner of the LLP opposite party/defendant no. 1, by adding point no. 3.8(a) and 3.8(b) in the disputed Memorandum of Understanding and Settlement Agreement dated 09-11-2022. Ld. Lawyer for the opposite parties/defendants no. 2 to 4 submitted during hearing that the opposite parties/defendants no. 2 to 4 have never been paid any valuable consideration for, the claimed giving up right and interest in the LLP opposite party/defendant no. 1, and that they have been forced to sign on the Memorandum of Understanding and Settlement Agreement dated 09-11-2022 by giving death threat, and that the opposite parties/defendants no. 2 to 4 had been under constant fear from the opposite party/defendant no. 5. Ld. Lawyer for the opposite parties/defendants no. 2 to 4 have admitted to have received some payment from the opposite party/defendant no. 5 but in respect to some other transaction.

The opposite party/defendant no. 5 has been alleged to have forged deed of agreement dated 15-05-2020 in order to take control of business of opposite party/defendant no.1, and that on examination of the deed dated 15-05-2020, the Questioned Document Examination Bureau , CID, West Bengal, has described the document dated 15-05-2020 as not genuine .It also prima facie appears that a criminal proceeding vide FIR no. 124 of 2021 has been initiated by the opposite party/defendant no. 2 against opposite party/defendant no. 5 . But this agreement dated 15-05-2020 has been ratified to be valid vide Memorandum of Understanding and Settlement Agreement dated 09-11-2022. Prima facie, how can the agreement dated 15-05-2020 ,allegedly, declared to be forged or not genuine by Questioned Document Examination Bureau , CID, West Bengal, be made basis of an agreement or contract?. Ld. Lawyer for the opposite party/respondent no. 5 has not denied allegation of declaring agreement dated 15-05-2020 as forged or not genuine by the Questioned Document Examination Bureau , CID, West Bengal. Prima facie, there is force in the allegation that agreement dated 15-05-2020 is forged or not genuine, and accordingly cannot be basis as part of Memorandum of Understanding and Settlement Agreement dated 09-11-2022. It prima facie, obtaining or procuring of Memorandum of Understanding and Settlement Agreement dated 09-11-2022 in his favour by way of forcing and threatening the petitioners / plaintiffs and opposite parties/defendant no. 2 to 4 and by not placing the actual facts before the Ld. Arbitrator cannot be ruled out.

As per this Memorandum of Understanding and Settlement Agreement dated. 09-11-2022, the opposite party/defendant no. 5 has claimed to have taken control of entire opposite party/ defendant no. 1 in which the plaintiffs have share to the extent of Rs.3.95 crore as per of Written Statement of opposite party/defendant no. 1 and 5. In spite of having put in, admittedly, Rs. 3.95 crore in opposite party/defendant no.1 , the petitioner/plaintiff had no say, rather was not given opportunity to participate in the drafting and execution of Memorandum Of Understanding and Settlement Agreement dated 09-11-2022, as per which opposite party/defendant no. 5 has claimed to be absolute owner of opposite party/defendant no. 1 firm. Thus there is sufficient reason for the petitioner/plaintiffs to panic and apprehend loss and misappropriation of fund contributed by the petitioner/plaintiffs to the opposite party/defendant no. 1. Further urgency or call for urgent interim relief has arisen where, allegedly , the petitioner/plaintiff no.1 has been deprived of its rights as a partner of a partnership firm where he has contributed sufficient capital. Prima facie, the opposite party/defendant no. 5 was not partner in opposite party/defendant no. 1 when the petitioner/plaintiff no. 1 was inducted as a partner in opposite party/defendant no.1 but now has been allegedly thrown out the opposite party/defendant no. 1, without giving opportunity to be heard. As per Memorandum of Understanding and Settlement Agreement dated. 09-11-2022 the opposite party/defendant no . 2 has no more say in opposite party/defendant No. 1 . Whereas plaintiff no. 1 entered into partnership with defendant no. 2 and accordingly contributed capital to the re-constituted Partnership Firm. Therefore the petitioner/plaintiffs apprehending misappropriation of its fund contributed to opposite party/defendant no.1 is not hollow, or without sufficient reason and accordingly urgent interim relief to restrain or check such misappropriation is not unexpected. Ld. Lawyer for the petitioners/plaintiffs submitted during the hearing that apprehending losing control over opposite party/defendant no. 1 , the

opposite party/defendant no. 1 has recently declared loss of Rs. 4 crores and there has been continuous committing of fraud by the opposite party/defendant no. 5 .Thus the petitioners/plaintiffs have justified need for urgent interim relief and the petitioners/plaintiffs have filed an application U/O. 39 Rule 1 and 2 of CPC in an attempt to seek urgent interim relief. Material on record call for urgent interim relief. There appears to be urgency in the matter. Contribution of Rs. 3.95 crore as a partner in LLP opposite party/defendant no. 1 vide Reconstituted Limited Partnership Agreement petitioner/plaintiff no. 1 shows that the petitioners/plaintiffs have prima facie case.

Considering alleged observation of the Questioned Document Examination Bureau , CID, West Bengal declaring the agreement dated 15-05-2020 to be forged or not genuine, lodging of FIR no. 124 of 2021 against the opposite party/defendant no. 5 , prima facie strengthens the allegation of misappropriation of the property of LLP opposite party/defendant no. 1 by the opposite party/defendant no. 5 .Thus issue of balance of convenience and inconvenience is in the favour of the petitioners/plaintiffs.

Considering the afore observation, submission of the Ld. Lawyers of the parties to this case , contents of the application U/O. XXXIX R.1 and 2 R/W. Section 151 of CPC and written objections filed , there is need for staying the operation of Award dated 24-11-2022 of the Hon'ble Arbitrator, Mr. Justice Asok Kumar Ganguly , former judge, Supreme Court of India, in reference to Special Leave to Appeal (C) no. 12719-12720/2021 (Arising out of impugned final Judgment and Order dated 23-03-2021 in FMAT No. 03/2021 (CAN No. 1 of 2021 passed by the Hon'ble High Court at Calcutta, Circuit Bench at Jalpaiguri, till disposal of this case.

Hence,

Ordered

that the application U/O. XXXIX R.1 and 2 R/W. Section 151 of CPC is allowed in part on contest without cost.

Accordingly let there be stay on the operation of the Award dated 24-11-2022 of Hon'ble Arbitrator, Mr. Justice Asok Kumar Ganguly , former judge, Supreme Court of India, till disposal of this case.

Ld. Lawyers for the petitioners/plaintiffs prayed, during the hearing, for appointing a receiver for managing and controlling of opposite party/defendant no. 1 till disposal of this case. A separate hearing is required with regard to this issue.

Fix 08-05-2025 for hearing with regard to prayer for appointment of receiver by the petitioner/plaintiffs.

Dictated &Corrected by me

Sd/-
Judge, Commercial Court
Siliguri

Sd/-
Judge, Commercial Court
Siliguri