TS (Com) – 105/2024

Present: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge, Commercial Court at Rajarhat,
North 24 Parganas

CNR: WBNP19-000120-2024

Dipali Brickfield & Ors.

…. Plaintiffs

vs.

Swadish Kumar China & Anr.

…. Defendants

24
06.08.2026

1. Parties file haziras.

2. Today is fixed for passing order in respect of the injunction application.

3. Perused the plaint, injunction application, written objection, written notes of arguments as well case-laws filed thereto.

4. The learned Advocate for the plaintiffs/petitioners submitted that the present suit has been instituted by the plaintiffs, being partners of the unregistered partnership firm namely “Dipali Brickfield”, for dissolution of the partnership firm, winding up of its affairs, rendition of accounts, determination of assets and liabilities of the firm through Commissioner/Expert and for permanent injunction, along with recovery of Rs.30,00,000/- with interest. It was submitted that the land in question on which the brickfield business is being carried on belongs to defendant nos.1 and 2, being their paternal property. The learned Advocate pointed out that during the lifetime of Santosh Kumar China, the deceased father of the defendants, an agreement dated 01.01.2001 was entered into between the parties and others for carrying on the brick manufacturing business, though the same was described as a licence agreement, and subsequently further agreements dated 01.09.2016 and 01.09.2019 were executed for continuation of the same business arrangement. It was urged that a formal partnership deed was also executed on 16.05.2003 between the plaintiff no.2, late Raj Kumar Nandi, predecessor of plaintiff nos.3 and 4, and the defendants, whereby the partnership business was carried on under the name and style of “Dipali Brickfield”.

5. The learned Advocate for the plaintiffs/petitioners further submitted that the foundation of the plaintiffs' claim is the partnership deed executed between the parties. Defendants, although denying the existence of partnership by alleging that defendant no.1 was not the signatory and that the documents are forged, have admitted execution of various agreements concerning operation of the brickfield business. It was pointed out that the defendants accepted licence fees/rents from the partners and derived benefits from the business arrangement. It was argued that the substance and recital of the agreements clearly show that the parties were carrying on business jointly and the same constitute prima facie evidence of partnership within the meaning of Section 4 of the Indian Partnership Act, 1932. It was urged that the question whether the partnership deed is genuine or not is a disputed question of fact which cannot be decided at the stage of injunction and requires adjudication during trial.

6. The learned Advocate further submitted that the objection regarding non-registration of the partnership firm is not maintainable, as the present suit is for dissolution of partnership, winding up of affairs and rendition of accounts, and the same is maintainable under Section 69(3) of the Indian Partnership Act, 1932. It was also urged that the objection regarding jurisdiction of the Commercial Court is misconceived, as the dispute arises out of a commercial transaction relating to running of brick manufacturing business, partnership assets and liabilities. It was pointed out that the application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendants has already been rejected by holding that the issues involved are disputed questions of fact requiring trial.

7. The learned Advocate appearing for the plaintiffs/petitioners submitted that the defendants cannot claim exclusive ownership over the business merely because the land belongs to them. It was specifically argued that the plaintiffs have not claimed any declaration of title over the land and the present suit is only for dissolution of partnership, protection of partnership assets and taking of accounts. It was urged that under Sections 12, 18 and 19 of the Indian Partnership Act, a partner is an agent of the firm and acts done by a partner in the ordinary course of business bind the firm. The acquisition of properties, securing licences and statutory permissions and other transactions for expansion of the brickfield business were acts done in connection with the partnership business and support

the plaintiffs' case and it was asserted that the plaintiffs have established a strong prima facie case as the existence of partnership, running of the brick manufacturing business and participation of the parties are supported by documentary evidence. It was submitted that the defendants, after entering into agreements, accepting monetary benefits and participating in the business arrangement, are estopped by their conduct from denying the existence of partnership. It was contended that defendant no.1, by claiming himself to be the sole proprietor and dealing with the partnership assets for his own benefit, has acted contrary to the interest of the other partners, amounting to misconduct, breach of trust and mismanagement of partnership property.

8. The learned Advocate lastly submitted that the balance of convenience and irreparable injury are also in favour of the plaintiffs/petitioners. It was urged that the defendants have already threatened to transfer the assets of the partnership business on 02.09.2024 and have transferred huge quantities of bricks without consent of the other partners. It was submitted that unless injunction is continued, the defendants may dispose of the remaining assets of the firm, thereby frustrating the suit for dissolution and accounts. It was pointed out that under Sections 46 and 47 of the Indian Partnership Act, 1932, partnership assets are required to be preserved until completion of winding up and distribution of surplus amongst the partners. Therefore, the interim injunction already granted deserves to be made absolute till disposal of the suit, as at the stage of injunction the Court is required only to protect the subject matter of litigation and not to finally decide disputed questions of fact.

9. In support of his contention, relied upon ***1963 AIR 1165, Banarsi Das vs. Seth Kanshi Ram & Ors., (1985) 4 SCC 35, Deputy Commissioner of Sales Tax, (Law) Board of Revenue (Taxes), Ernakulam vs. M/s. K. Kelukutty, AIR 1985 Jammu and Kashmir 50, Tilak Chand Jain vs. Darshan lal Jain & Anr. F.M.A No.1041 of 1998 & 1040/1998, Nawal Kishore Tharad & Ors. vs. Smt. Meera Dutta and (2013) 9 SCC 311, Lakshmi Alias Bhagyalakshmi & Anr. vs. E. Jayaram (Dead) By LR.***

10. The defendant / respondent no.1 contested the instant application by filing written objection.

11. The learned Advocate for the defendant no.1 alleged Partnership Deed, being Annexure-'D' (Page 31 of the plaint), is illegal, invalid, forged, fabricated and incomplete, as it does not contain the signature of defendant no.1, has no attesting witnesses, does not disclose its draftsman and is neither notarised nor registered. It was further submitted that defendant no.2 has categorically denied being a partner and has disputed the signature appearing on the alleged partnership agreement. It was pointed out that defendant no.2 signed only as guarantor and owner of the 'A' Schedule property and not as a partner.

12. The learned Advocate contended that the documents filed by defendant no.1, being Item Nos.1 to 39, together with the Trade Licence, GST Registration, PAN, Professional Tax, Income Tax records, Royalty payments, Bank Statements for the periods 01.04.2022 to 31.03.2023, 01.04.2023 to 31.03.2024 and 01.04.2024 to 31.03.2025 (Annexures 'A', 'A-1' and 'A-2'), clearly establish that "Dipali Brick Field" has been a proprietary concern of defendant no.1 since 1992. Reliance was also placed upon the Affidavit-in-Reply filed before the National Green Tribunal, Eastern Zone Bench, Kolkata, in O.A. No.42/2014/EZ (Joydeep Mukherjee vs. Pollution Control Board & Ors.), pursuant to the order dated 15.07.2015 and the Notice dated 11.08.2015, wherein defendant no.1 described "M/s. Dipali Brick Field" as his proprietary concern.

13. The learned Advocate further submitted that the plaintiffs have suppressed material facts by describing the arrangement relating to the 'A' Schedule property as a tenancy although their own documents disclose a licence agreement. Reliance was placed upon ***2022 (1) ICC 642 (S.C), Shri K. Jayaram & Ors. vs. Bangalore Development Authority & Ors., 2022(1) ICC 649 (Cal.), Ainuddin Sek vs. State of West Bengal & Ors., AIR 1968 SC 794, AIR 2005 NOC 305 (MADRAS), A. Thayal Nayagi vs. Union of India & Ors., 2013(5) CHN (CAL) 461, Tarak Nath Manna vs. Nityananda Saha, AIR 2004 KERALA 278, K. P. Sadanandan Nair & Ors. vs. M. Vimala & Ors. and (2007) 5 SCC 103, Raghu Lakshminarayanan vs. Fine Tubes***. It was urged that there is no valid partnership deed, Trade Licence, GST Registration, PAN, Bank Account or Income Tax Return in the name of the alleged partnership firm and, therefore, the plaintiffs have failed to establish the existence of any partnership.

14. The learned Advocate lastly submitted that the ex-parte order dated 10.09.2024 was obtained by suppression of material facts and has been misused by the plaintiffs, resulting in complete closure of defendant no.1's proprietary brick manufacturing business since September, 2024, causing a loss of more than Rs.30,00,000/-. It was urged that the plaintiffs have no prima facie case, the balance of convenience lies entirely in favour of defendant no.1 and no irreparable injury would be caused to the plaintiffs if the injunction is vacated. Accordingly, it was prayed that the ex parte order dated 10.09.2024, as extended from time to time, be vacated and the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure be dismissed with exemplary costs.

15. Upon consideration of the pleadings of the parties, the written notes of argument, the documents relied upon by the respective parties, the report of the learned Advocate Commissioner and the submissions advanced by the learned Advocates for the contesting parties, this Court finds that

16. A bare perusal of Annexure D being the Deed dated 16.05.2003, shows that the same bears the signature of plaintiff no.2, predecessor of plaintiff nos.3 & 4 and the defendant no.2 but not the defendant no.1. There is no disagreement over the fact that brick manufacturing business under the name and style of Dipali Brickfield is being carried on from the suit premises. There is also no dispute regarding such suit property belonging to the defendants. The principal controversy between the parties concerns the nature of the business being a proprietorship or partnership which is banking on the legal effect of the Deed dated 16.05.2003 (asserted to be a partnership deed but denied by the defendant no.1), and the agreements dated 01.01.2001, 01.09.2016 and 01.09.2019. At this interlocutory stage, when the Court is only required to assess a prima facie case, it is apparent from the document (Annexure D) that it bears the signature of all the other parties excepting for defendant no.1 and including defendant no.2, who is the full-blooded brother of the defendant no.1. Consequently, the possibility of proprietorship is ruled out at this stage. Whether or not the defendant no.1 is a partner or whether the signature of defendant no 2 on the impugned deed is forged or whether business is a partnership or proprietorship concern is a matter which requires full trial. The genuineness of the documents relied upon by the parties and their respective rights are disputed questions of fact requiring adjudi-

cation upon evidence. Such issues cannot be conclusively determined while deciding an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Similarly, the judgements relied upon by the parties are on the proposition of law which are to be considered at the final stage.

17. For the purpose of granting temporary injunction, the Court is only required to examine whether the plaintiffs have established a prima facie case, whether the balance of convenience lies in their favour and whether refusal of interim protection would occasion irreparable injury. The materials produced by the plaintiffs, particularly the documents evidencing the business arrangement between the parties over a considerable period and the recitals contained in the agreements relied upon by them, disclose that the land was being used for running a brickfield . The Plaintiffs, have particularly placed reliance on a document (Annexure E), which bears the signature of the Defendant No. 1 along with the other parties . In the instant case, the dispute is centered around the authenticity of the signature of Defendant No. 1 on the other Deeds, which has been alleged by Defendant No. 1 to be forged and also the genuineness of Annexure D being the partnership deed and the signature of defendant no.2 thereupon. As already discussed earlier, the issue regarding the genuineness of the signature on the Deeds is a factual dispute, which requires a thorough examination during the trial.

18. The suit is essentially one for dissolution of the alleged partnership firm, rendition of accounts and winding up of the business. In such a suit, preservation of the subject matter is of paramount importance. The report of the learned Advocate Commissioner also indicates the existence of movable assets relating to the brick manufacturing business. If the business assets are permitted to be transferred, alienated, disposed of or third-party rights are created during pendency of the suit, the ultimate decree, if passed in favour of either party, may be rendered ineffective and the very purpose of seeking dissolution, accounts and distribution of assets may stand frustrated.

19. The balance of convenience also tilts in favour of preserving the existing state of affairs. Continuance of the order of status quo merely protects the property and business assets without determining the rights of the parties finally, whereas vacating the injunction at this stage may irreversibly alter the nature and

character of the subject matter of the litigation. Such alteration may not be capable of being adequately compensated by monetary damages and would cause irreparable prejudice to the party ultimately found entitled to the assets.

20. This Court is, therefore, satisfied that the plaintiffs have made out a prima facie case for grant of temporary injunction and that the balance of convenience and irreparable injury also weigh in their favour. Moreover, it cannot be ignored that the ad-interim order was granted on 10.09.2024 about two years back and it has remained unchallenged till date. Accordingly, the ad-interim order dated 10.09.2024, as extended from time to time, deserves to be confirmed and made absolute till the disposal of the suit.

21. The observations made herein are confined solely to the adjudication of the present injunction application and shall not be construed as an expression of opinion on the merits of the suit.

22. Hence, it is

O R D E R E D

that the injunction order passed on 10.09.2024 is hereby made absolute and shall continue to remain in force till the disposal of the suit.

both parties are directed to maintain status-quo in respect of the nature, character, possession, alienation and creation of any third party interest in respect of the suit properties as described in the Schedules A, B & C of the plaint and the injunction petition till the disposal of the suit.

The temporary injunction application is thus disposed of.

Fix **12.11.2026** for steps by the parties for discovery and inspection.

Dictated & Corrected by me

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court, Rajarhat
North 24 Parganas

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Judge
Commercial Court, Rajarhat,
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