

Present: Sri Suvadip Chowdhury (JO Code WB840)
Addl. District & Sessions Judge, FTC-I, Alipore
-cum-
Judge, Commercial Court at Alipore (in-charge).
Money Suit 23/2022
(CNR no. WBSP18-000074-2022)

Order no. 01
10.06.2022

In the matter of :

*Suit for recovery of money
valued at*

Rs.11,86,03,41,595/-.

And

In the matter of :

Power Trust & 03 ors.

Vs.

In the matter of :

*Ashika Stock Broking Ltd. &
02 ors.*

ORDERED

1. Plaintiffs file a suit for recovery of money valued at Rs.11,86,03,41,595/-, alongwith Vokatnama and Court Fee of Rs.50,000/-, which is paid correct.
2. Ld. Regular P.O is on leave.
3. Ld. ADJ, FTC-I, Alipore is in charge.
4. Requisites are not put in alongwith Process Fees.
5. Plaintiffs are directed to submit requisites alongwith Process Fees positively within 24 hours.
6. Plaintiffs also file an application for granting of leave under Section 12A of the Commercial Courts Act, 2015, on the prayers stated therein. Let the same be registered as **I.A. no. 01/2022.**
7. Plaintiffs further file another application under Order XXXVIII Rule 5 read with Section 151 CPC. Let the same be registered as **I.A. No. 02/2022.**
8. This matter have been filed by four-4 Plaintiffs/applicants, the first being the "Power Trust" a Trust registered under the Indian Trusts Act, 1882 having it's office presently at the address mentioned in the Cause Title, and the other three the trustees thereof.
9. The defendants no 1 and 2 are the "Ashika Stock Broking Limited" a registered company under the provisions of Companies Act 1956 and further registered

with the proforma defendant SEBI. The defendant no 2 is the Compliance Officer of the defendant no 1 company.

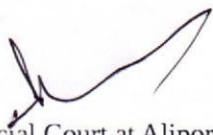
10. The relief prayed for in the present case was a decree of mandatory injunction directing the defendant no 1 and 2 and their men and agents to forthwith change in the names of signatories in their records in respect of the IPCL shares held by the said defendants, a decree for a sum of Rs 11,86, 03,41,594/-, interim interest and penal interest along with the prayers for appointment of receiver, for injunction, attachment, cost and other incidental relief.
11. At this point in time, the application for interim relief have been filed under the provisions of Order 38 Rule 5 of the C.P.C and leave have been prayed for under section 12A of the C.C Act.
12. Heard the Ld Advocate for the plaintiff who submits that due to urgency in this matter, the leave is sought for under section 12A of the Act and it was submitted that, since the defendant 1 and 2 are not complying with the requirement of forthwith changing the names of signatories in their records in respect of the IPCL shares held by them, the present suit is filed. In spite of the communication of the Hon'ble High Court solemn Order dated 17.04.2013 in CP No 206 of 2012 along with all other incidental documents, they/defendants no 1 and 2 are raising one plea or the other giving rise to the non compliance of the Hon'ble High Court order. For this very reason the plaintiff may be subjected to contempt proceedings before the Hon'ble High Court for non compliance of the said direction in future. Fact remains that the plaintiffs have been held hostage in the situation by the lackadaisical approach in the matter by the defendants. They being the intermediaries have no *locus standi* to ignore the order of the Hon'ble Court wherein the terms of the Trust have been made a part of the Hon'ble High Court's solemn order.
13. It was also submitted that the present plaintiffs have been added as Trustees in terms of the Trust Deed as the previous trustees have resigned and brought these plaintiffs as trustees on 08.11.21. Now in respect of these plaintiff/trustees the defendants nos 1 and 2 are creating stumbling block by raising one plea or the other and the "change in the names of signatories in their records in respect of the IPCL shares" have not been complied with in spite of several intimations.
14. Before the institution of the present proceeding the notice was issued and served upon the defendant but to no effect.
15. It was further submitted that the Order/directions of the Hon'ble High Court have been served on them and also the Copy of the Trust Deed was served but on a misreading of the direction of the Hon'ble Court the defendants have been ignoring the statutory right of these plaintiffs giving rise to a huge financial implication. It was also submitted that the Trust Deed was made part of the order has to be recognized in law and the defendants are required to oblige but they care a fig.
16. Therefore, on the basis of these urgency the matter is moved and leave is prayed for.

17. Considered the submission of the Ld Advocate for the plaintiff in this case. This court have considered all the annexures in great details. The solemn order of the Hon'ble High Court dated 17.04.2013 in CP No 206 of 2012 is perused in details. It is a fact that on the basis of the obligation imposed therein, in the order of the Hon'ble High Court, the trustees who have stepped into the shoes of the previous ones have prayed for extension of time which was considered from time to time by the Hon'ble Court and enlarged.
18. The relevant annexures are perused in details. The nature of the communications from the defendants are also perused from the copies annexed with the plaint and the petition u/Order 38 Rule 5 of the C.P.C. The substance of the dispute amongst the parties seems to be merely that the defendants are unable to vest in mind that the Order of the Hon'ble High Court ought to be read in letter and spirit. The trust deed was recognized and made a part of the order by the Hon'ble Court, meaning thereby that the terms of the Trust applied to the erstwhile Trustees. The minimum requirement of the number of trustees and their obligations in respect of the rights and liabilities have been laid down in clear and ambiguous terms in the said Trust Deed itself. By virtue of the terms of the Deed, the erstwhile trustees have resigned and the new Trustees have been brought in on a specific date, which has to be recognized and the defendants are required to do the needful and oblige.
19. In these parameters it is also seen that though there is no contempt application before the Hon'ble High Court yet the plaintiffs are to act according to the obligation imposed therein. The defendants have been seen to be consuming time for one reason or the other.. But time is the essence in this case and a lot of it have already been consumed. Fact remains that the defendants have failed to appreciate the matter in it's true perspective.
20. Thus there is prejudice caused to the plaintiffs for the actions of the defendants no 1 and 2 for which the urgency to grant the leave under section 12A of the C.C Act is recognized and the leave is granted and accordingly, I.A. no. 01/2022 is disposed of.
21. **The suit is admitted and accordingly the defendants no 1 and 2 are directed to show cause within 25.06.2022 at 1 p.m. as to why they shall not be required to furnish security to the extent of Rs 11, 86,03,41,594/-.**
22. Note in the register.
23. Both sides shall act of the basis of the downloaded copy of this order from the Website/Ecourts App.

Dictated and corrected by me,


Judge, Commercial Court at Alipore (i/c),
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

JUDGE
COMMERCIAL COURT AT ALIPORE


Judge, Commercial Court at Alipore(i/c),
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

JUDGE
COMMERCIAL COURT AT ALIPORE