

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

F.M.A. 411 of 2024

**Biswanath Ghosh (Since Deceased) Represented
By His Legal Heirs Jogmaya Ghosh & Ors.**

Vs.

The State of West Bengal & Ors.

With

CAN 2 of 2025

with

F.M.A. 410 of 2024

**Biswanath Ghosh (Since Deceased) Represented
By His Legal Heirs Jogmaya Ghosh & Ors.**

Vs.

Utpal Ghosh & Ors.

With

CAN 1 of 2024

CAN 2 of 2025

For the Appellants : Mr. Partha Sarathi Bhattacharya, Sr. Adv.,
Mr. Falfuni Bandyopadhyay
Mr. Debabrata Mandal
Mr. Raju Bhattacharya
Ms. Sreetama Neogi
Mr. Chinmoy Mukherjee

For the Private Respondents: Mr. Saptansu Basu, Sr. Adv.,
Ms. Nibedita Pal
Mr. A.g. Mukherjee
Ms. Sonam Ray
Ms. Nasria Khatoon
For the State : Mr. Suddhadev Adak
Ms. Richa Pramanik

Heard & Judgment on : August 25, 2025

Debangsu Basak, J.:-

1. Application for Utpal Ghosh seeking recall of the judgment and order dated May 2, 2025 is taken up for consideration.
2. Learned Senior Advocate appearing for Utpal submits that Utpal was prevented by sufficient cause from appearing at the time of hearing on May 2, 2025. Utpal engaged an advocate on record. Utpal also engaged a counsel for the purpose of appearing on behalf of Utpal at the time of hearing of the appeals. He submits that unfortunately on May 2, 2025, when the two appeals were taken up for hearing, the advocate on record was suffering from personal difficulties which prevented her from attending Court. He submits that when the advocate for the appellants called such advocate on record of Utpal, such advocate for the appellants was informed as to the personal difficulty.

3. Learned Senior Advocate appearing for the Utpal submits that without entering into the controversy with regard to the communication between the advocates, the cause shown by Utpal of not being able to appear due to the personal difficulty of the advocate for Utpal be accepted as sufficient and the judgment and order dated May 2, 2025 be recalled. He submits that, the main matter be heard on merits.
4. Learned Senior Advocate appearing for the heirs and legal representatives of Biswanath Ghosh (since deceased) and Tapan Ghosh submits that so far as the ground canvassed for recalling, that is, the learned advocate not being present on May 2, 2025 is concerned, the same may be decided by the Court.
5. Considering the rival contentions with regard to the ground for recalling, we deem it appropriate to recall the judgment and order dated May 2, 2025 on the principle that Utpal should not be visited with consequences for non-appearance of his Advocate. The parties are requested to advance arguments on the merits of the appeal. The application for Utpal in this regard stands allowed.
6. Learned Senior Advocate appearing for the appellants submits that, instead of consuming precious time of this Court, his submissions resulting in the judgment and order dated May 2, 2025 be accepted and treated as submissions of the appellants in this de novo hearing.

7. Learned Senior Advocate appearing for Utpal refers to the facts resulting in the impugned order. He submits that one Jogendra Nath Ghosh was the M.R. dealer. Thereafter, during the lifetime of Jogendra Nath Ghosh, the M.R. dealership was changed to a partnership consisting of Ajoy and Utpal. He points out that there were four sons of Jogendra Nath Ghosh, namely, Ajoy, Utpal, Biswanath and Tapan. He also points out that apart from four sons, there were two daughters of Jogendra Nath Ghosh. He also points out that initially the M.R. dealership was standing in the name of Jogendra Nath Ghosh as the sole proprietorship of Jogendra Nath Ghosh. At time such sole proprietorship was converted into a partnership of Ajoy and Utpal, all other children of Jogendra Nath Ghosh gave No Objection thereto. Consequently, the partnership firm was constituted between Ajoy and Utpal with the consent of Jogendra Nath Ghosh and his other children.
8. Learned Senior Advocate appearing on behalf of Utpal submits that on March 10, 2015, Ajoy expired. Since Ajoy did not marry, therefore, he was survived by his brothers and sisters. Again, since such brothers and sisters of Ajoy granted No Objection to the constitution of the partnership firm, they cannot claim any right, title and interest in respect of such partnership firm.
9. Learned Senior Advocate appearing for Utpal submits that Utpal applied for the dealership on the death of Ajoy. Such request was turned down by the

authorities. Request of Utpal for the M.R. dealership was rejected by the authorities on March 13, 2019. Biswanath and Tapan also jointly applied for the M.R. dealership which was rejected on March 12, 2019.

10. Learned Senior Advocate appearing for Utpal submits that neither Biswanath nor Utpal can claim any right, title and interest in respect of the M.R. dealership. He points out that Tapan filed an affidavit stating that his occupation is business and, therefore, in accordance with the provisions of the West Bengal Public Distribution System (Maintenance and Control Order), 2013 and in particular Clause 20 (vi) thereof, Tapan is disqualified since Tapan is with a regular means of income on the basis of his own affidavit.
11. Original M.R. dealership was standing in the name of Jogendra Nath Ghosh. During his lifetime, the M.R. dealership, sole proprietorship of Jogendra Nath Ghosh was reconstituted to a partnership of his two sons Ajoy and Utpal. Other children of Jogendra Nath Ghosh gave their consent at that material point of time for constitution of that partnership.
12. M.R. dealership was continuing as a proprietorship till the death of one of the partners, namely Ajoy. Ajoy expired on March 10, 2015. He died as a bachelor. Consequently, right, title and interest of his estate devolved upon his brothers and sisters living at that material point of time. There are four

sons and two daughters of Jogendra Nath Ghosh. Two of the sons expired, namely Ajoy on March 10, 2015 and Biswanath expired on August 22, 2021.

13. There are disputes amongst the sons of Jogendra Nath Ghosh as to who will inherit the M.R. dealership and carry on business with regard thereto. Utpal applied for grant of M.R. dealership which was rejected by an order dated March 13, 2019. Biswanath and Tapan jointly applied for the M.R. dealership which was rejected on March 12, 2019. Biswanath was alive at the time of making the application jointly with Tapan. He was alive on the date of the rejection of their application also.
14. Grounds of rejections of the two requests to the authorities are different.
15. Both the orders of rejection were assailed by the respective parties. Utpal filed a writ petition assailing his order of rejection dated March 13, 2019 while Biswanath and Tapan filed a writ petition assailing their order of rejection dated March 12, 2019.
16. Both the writ petitions stood disposed of by a judgment and order dated December 14, 2023.
17. Two appeals were carried directed against the judgment and order dated December 14, 2023 being F.M.A. 411 of 2024 and F.M.A. 410 of 2024. Both the appeals were initially heard and disposed of by us by our judgment and order dated May 2, 2025 which we recalled today.

18. Utpal claims that the M.R. dealership is governed by the Control Order of 2013, particularly Clause 20 (vi) and (vii) thereon.

19. Clause 20 (vii) of the Control Order of 2013 is as follows:-

“(vii) Whenever ---

(a) an individual licensee opt to convert its business into partnership firm for the reason of his physical incapacitation, or

(b) a licensee of a partnership firm opt to induct a new partner or substitute the name of an existing partner, the licensing authorities may, on an application in Form C3 along with Annexure-1, requisite fee as prescribed in Schedule A and corroborative documents as per Checklist made by the licensee in this behalf, allow him to do so on examination of the enquiry report in Form L2 and comments of the SCF&S in Form M2, with the approval of the Director, if and only if any of the family member of licensee having no regular means of income is inducted or substituted as partner and not otherwise:

Provided that in case of death of one of the partner of a partnership firm comprising of only two partners having the dealer's license, the surviving partner shall reconstitute the partnership firm by inducting only the family member of the deceased partner having no regular means of income and not otherwise:

(A) in case of death of a partner of partnership firm having the dealers license, the licensing authorities may, on an application made by the surviving partner, allows him to continue the business for a period of ninety days or till the new license is granted, whichever is earlier;

(B) in case of death of a partner of partnership firm having the dealer's license and if no eligible family members found to become the partner or partners, as the case may be, of the said partnership firm, the surviving partner, may apply for the conversion, before the licensing authority, and upon satisfaction of the licensing authority, the said surviving partner will be allowed to continue the business, as a sole licensee, subject to the approval given by the Director, DDP&S in this behalf:

Provided also that in case of death of an individual licensee, the eligible family member or members, as the case may be, may apply before the licensing authority, for running its business, either as an individual licensee or as the registered partnership firm, subject to the approval given by the Director, DDP&S in this behalf.

20. Clause 20(vii) first proviso contemplates that on the death of a partner of a partnership, the family members of the deceased partner can be inducted into such partnership provided that the inducted family members must be without any regular means of income.
21. In the facts and circumstances of the present case, Utpal claims that by virtue of Tapan affirming an affidavit claiming that his occupation is business, Tapan stands disqualified to be inducted as a partner of the partnership firm on the death of Ajoy.
22. We need not enter into the controversy as to whether Tapan stands disqualified by reason of such affidavit. Suffice to notice that apart from Tapan, there are other family members who inherited the estate of the deceased original partner, namely Ajoy. Estate of Ajoy on his death on March 10, 2015 devolved upon the surviving three other sons of Jogendra Nath Ghosh including his two daughters.
23. Consent of the heirs of the sons and daughters of Jogendra Nath Ghosh at the time of constitution of the partnership firm cannot be construed to mean that

they gave consent for reconstitution of the partnership firm also or that on the death of Ajoy, they gave up their rights to be included in the partnership firm for the purpose of reconstitution thereof.

24. At the basic minimum , there are disputed questions of fact as to who gets to inherit the estate of Ajoy and how the firm is to be reconstituted. These issues ideally are to be considered and decided by a regular Civil Court rather than an authority deciding the application for grant of licence on the reconstitution of partnership firm under the Control Order of 2013. Such authority is not clothed with the jurisdictions to decide on the reconstitution of a partnership firm. It can decide the time to grant of the licence to the new firm on the reconstituted firm applying for the same consequent upon a reconstitution of the firm. Once a reconstituted firm applies for grant of licence of the previous then such an application is to be considered on the anvil of clause 20(vi) of the Control Order of 2013.

25. A Writ Court should not enter into the arena of deciding who amongst the family gets to constitute the partnership. A Writ Court should allow the private parties to settle such disputes at the appropriate forum.

26. Clause 20 (vii) of the Control Order of 2013 requires the authority to consider an undisputed case where a family member of the deceased partner is before such authority applying for reconstitution of the firm and establishing that

not only is the inducted partner a family member of the deceased partner, but also is without any other income.

27. In the facts of the present case, there are issues as to which of the family members get to reconstitute the partnership firm.

28. In view of the discussions above, the impugned judgment and order dated December 14, 2023 is set aside.

29. We are of the view that none of the writ petitioners are entitled to any of the relief as prayed for their respective writ petitions till the settlement of their *inter se* disputes by a Civil Court.

30. F.M.A. 411 of 2024 and F.M.A. 410 of 2024 and the connected applications of both the appeals are disposed of without any order as to costs.

(Debangsu Basak, J.)

31. I agree

S.D.

(Md. Shabbar Rashidi, J.)