

OD-50

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/1/2021
IN CS/153/2021

ABDUL HADI AND ORS.

-VS-

QADRI DAWAKHANA AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: September 25, 2024.

Appearance:

Mr. Rupak Ghosh, Adv.

Mr. A. K. Lala, Adv.

...for the petitioners.

Mr. Avijit Roy, Adv.

Mr. Indrajit Sen, Adv.

Mr. S. Medda, Adv.

...for the respondent Nos. 2 to 7

The Court : Mr. Rupak Ghosh, learned Counsel, is appearing for the petitioners and Mr. Avijit Roy, learned Counsel, is appearing for the respondent Nos. 2 to 7.

The plaintiffs has filed an application being GA/1/2021 praying for interim relief.

By an order dated 22nd February, 2022 this Court has passed an interim order which reads as follows:

“Having heard Counsel appearing on behalf of the parties, I am of the view that affidavits are required to be exchanged and the respondents should indicate as to how and in what manner they will fulfil the award. Affidavit-in-opposition be filed within four

weeks from date; reply thereto, if any, within one week thereafter. Liberty granted to the parties to mention for inclusion in the list.

In my view, it is necessary that parties including the plaintiffs should be restrained from transferring any property till this matter is resolved. Accordingly, let there be orders in terms of prayers (a) and (c) of the Notice of Motion.

I make it clear that the plaintiff shall not in any manner disturb the running of the Dawakhana.

I also make it clear that the submissions made by both the parties are without prejudice to their rights and contentions. It is further made clear that the award that has been referred to above appears to be only with reference to the Dawakhana and certain properties in the Kolkata region. The said award is not in reference to the other properties which form part of the joint family.”

Subsequently, by an order dated 26th July, 2023 this Court has directed the defendant Nos. 2 to 7 to provide the particulars of the amounts which have been paid till 2018.

In compliance of the order dated 26th July, 2018, the defendant Nos. 2 to 7 have filed their affidavit of compliance on 8th September, 2023 wherein it is stated that :

“ 4. I say that in compliance of the clause no 3 as mentioned in the said award of Panchayat/Panchs dated 31.08.2014, the Plaintiff no 1, Abdul Hadi received Rs. 5,00,000/- (Rupees Five Lakh only) by an account payee cheque being no 067719 dated 23.12.2016 for performing the marriage of his eldest daughter as non refundable money. The Plaintiff no 1 had issued money receipt for the same in presence of Abdul Rasid, Md. Eshan who signed as witnesses and in the said money receipts he has clearly written that he received the said amount of Rs. 5,00,000/- (Rupees Five Lac only) in pursuance of the instrument of the award and also mentioning the paragraph no 3 of the said award acknowledging the receipt of the

said money as stated above for performing the marriage of his eldest daughter and also stated that the statements and signature of the recipient i.e. the Plaintiff no 1, on the receipt in token of acceptance of the said account payee cheque shall be valid upon him, the recipient only after realization of the amount as mentioned in the cheque for the ends of justice. That the said cheque was duly encashed and in support thereof I am annexing herewith the Xerox copy of the said money receipt granted by the Plaintiff No 1 being marked with Annexure A. I crave leave to produce the original thereof at the time of hearing.

5. That the Plaintiff no 1, Abdul Hadi in compliance of the clause no 2 as mentioned in the said award of Panchayat/Panch all along received the amounts of Rs. 20,000/- (Rupees Twenty Thousand only) per month from Abdul Quadir and after his demise from defendant no 2 to 7 as daily expenditure as mentioned in the said award since September 2014 to November 2018 and in support thereof I am annexing herewith the Xerox copies of the said money receipt granted by the plaintiff No 1 being marked with Annexure B. I crave leave to produce the originals thereof at the time of hearing.

6. That the Plaintiff no 2, Rizwana Khatoon, in compliance of the clause no 2 as mentioned in the said award of Panchayat/Panchs all along received the amounts of Rs 15,000/- (Rupees Fifteen Thousand only) per month from Abdul Quadir and after his demise from defendant no 2 to 7 as daily expenditure as mentioned in the said award since September 2014 to November 2018. Be it mentioned here as the Plaintiff no2, Rizwana Khatoon lives at Village- Mohammadpur Badalh, P.O –Mohammadpur Badal, Via Silout, P.S Sakra, District- Muzaffarpur, Bihar, Pin 843 119 and she requested Abdul Quadir to deposit the said amount of Rs. 15,000/- (Rupees Fifteen Thousand only) in her Bank Account and accordingly the said amount of Rs. 15,000/- per month was paid by Abdul Quadir in the bank account as requested by her and after the demise of Abdul Quadir, his sons, defendant no 2 to 7 paid in the

bank account as per her direction as per her direction as her daily expenditure since September 2014 to November 2018, unfortunately the details of the said payments are not in the custody of the defendant no 2 to 7 but the plaintiff in their injunction application in para no 35 duly acknowledged the receipt of 20,000/- (Rupees Twenty Thousand only) per month and Rs. 15,000/- (Rupees Fifteen Thousand only) per month since September 2014 to November 2018 respectively.

7. That very recently i.e in the month of July 2023, the Plaintiff no 2, Rizwana Khatoon requested the Defendants no 2 to send her money to the tune of Rs 10,000.00 (Rupees ten thousand only), and on her request the defendant no 2 transferred the said amount of 10,000/- (Rupees Ten Thousand only) in the Bank Account of Hajra Malik, the daughter of Plaintiff no 2 on 11/07/2023 and in support thereof I am annexing herewith the Xerox copy of the Phone pay receipt being marked with Annexure C.”

When the matter was taken up for hearing today, Counsel for the defendant has brought to the notice of this Court letter dated 11th February, 2019 sent by the learned Advocate for the defendant to the advocate for the plaintiffs wherein it is stated that :

“A sum of Rs 40,00,000/- each had to be paid by my clients to Abdul Hadi and Rizwana Khatoon, within 6 (six) years of the passing of the Award. My clients are ready with one lot of the said sum of Rs 40,00,000/- (Rupees Forty Lakh only), and the said amount is lying ready with my clients. Please give the details of the bank account of your client Abdul Hadi, to enable my clients to transfer the said sum of Rs 40,00,000/- (Rupees forty lakh only) by RTGS to his account, or your client Mr Abdul Hadi can collect a cheque/pay order/demand draft, for the said sum of Rs 40,00,000/- (Rupees forty lakh only) from my client namely Md Arif,

on 28th day of February 2019, at 11 am, from B-38/1/D Iron Gate lane, P.S. Garden Reach Kolkata 700024.

My clients have fulfilled their obligation of payment of a sum of Rs 40,00,000/- (Rupees forty Lakh only), to Abdul Hadi, they are under no obligation to pay any further monthly sum of Rs 20,000/- (Rupees Twenty Thousand only) towards expenditure to the your client Abdul Hadi, form March 2019, onwards. All other obligations, to be performed, on the part of my clients, shall be completed, as per the terms and conditions as stated in the said Award i.e. within the time mentioned therein.”

This Court made query from the learned Advocate for the defendants, the defendants have submitted that they are still ready and willing to pay Rs.40,00,000/- each to the plaintiffs as well as Rs. 20,000/- and Rs.15,000/- per month to the plaintiff No. 1 and plaintiff No. 2 respectively in terms of the impugned award. But, Counsel for the defendants submits that they may be given some time so that they can pay the same in instalments.

Learned Counsel for the plaintiffs submits that the plaintiffs have challenged the award and as such if the defendants are ready to pay the said amount, the same may be deposited before the Registrar, Original Side of this Court without prejudice to the rights and contentions of the plaintiffs. He further submits that the defendants are taking benefits of all the properties and the it will take time for disposal of the suit and as such it would be proper to direct the defendants to submit their details of accounts with regard to usufructs/benefits received by the defendants from the suit properties.

Heard learned Counsel for the respective parties. Perused the materials on record.

This Court finds that the defendants are ready to pay Rs.40,00,000/- each to the plaintiffs but in instalment and accordingly, the defendants are directed to pay to deposit Rs.40,00,000/- each in total Rs.80,00,000/- with the Registrar, Original Side of this Court in six instalments of Rs.13,00,000/- (Rs.6.5 lacks each) from the month of October 2024 till 31st March, 2025 and last instalments would be Rs.15,00,000/- (Rs.7.5 lacks each).

It is found from record that the defendants have paid the monthly allowance of Rs.20,000/- to the plaintiff No. 1 and Rs.15,000/- to the plaintiff No. 2 only up till November, 2018 thereafter, the defendants have not paid the monthly allowance.

Learned Counsel for the defendants submits that the defendants were ready to pay the monthly allowance but the plaintiffs have refused to accept the said monthly allowance due to which defendants could not pay the said amount to the plaintiffs.

Counsel for the plaintiffs submits that an amount of Rs.14,00,000/- is due to be paid to the plaintiff No. 1 being the monthly maintenance and Rs.11,00,000/- is due to be paid to the plaintiff No. 2 as monthly maintenance till date.

The defendants are directed to pay the said arrears of monthly maintenance to the plaintiffs at the rate of Rs.40,000/- per month to the plaintiff No. 1 from the month of October, 2024 and Rs.30,000/- to the

plaintiff No. 2 till the realization of the aforesaid monthly maintenance amount.

Defendant Nos. 2 to 7 are also directed to submit their statement of accounts with regard to the loss and profit of business of the suit properties and the rents collected from the properties every quarterly before this Court till the disposal of the suit.

This order is passed without prejudice to the rights and contentions of the parties.

In view of the above, GA/1/2021 is disposed of.

The interim order passed by this Court dated 22nd February, 2022 is made absolute.

The Registrar, Original Side of this Court is directed that on receipt of the amount in instalments from the defendants, the Registrar shall invest the said amount in the interest bearing short term fixed deposit with the facilities of auto renewal in any Nationalized Bank and to submit the report before this Court.

It is made clear that if the defendants fail to deposit the amount as agreed, the plaintiffs are at liberty to review the prayers for Receiver appointment.

Affidavit in reply be filed by the plaintiff be kept with record.

(KRISHNA RAO, J.)