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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

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**NOTICE OF MOTION No. 92 of 2015
IN
SUIT No. 131 of 2014**

Pushpanjali Tie Up Pvt. Ltd. ..Applicant.

In the matter between :-

Pushpanjali Tie Up Pvt. Ltd. ..Plaintiff.

Vs

Mrs. Renudevi Choudhary & Anr ..Defendants.

Mr. Meghnath Navlani for Applicant/Plaintiff.

Mr. Simil Purohit a/with Mr. Ganesh Ambekar I/by Thakore
Jariwala & Associates for Defendant Nos. 1 and 2.

CORAM : B. P. COLABAWALLA, J.

DATED :- 6th June, 2019.

P.C. :-

1. This Notice of Motion has been filed by the applicant (original plaintiff) seeking to direct defendant Nos. 1 and 2 to disclose the complete details of the movable and immovable properties, assets, investments, wealth, DEMAT accounts, Bank Accounts and other valuables owned/held by them in their name or

in the name of their agents, representatives, attorneys, trustees etc., on or before the date of the filing of the suit. The additional prayer is that defendant Nos. 1 and 2 be restrained from selling, disposing, transferring, alienating etc. any of their movable and immovable properties, assets, shares, investments, belongings owned/held by them in their name or in the name of their agents, representatives, attorneys, trustees etc., to the extent of a sum of Rs.6.61 crores and which claim has now been amended in the plaint to the extent of Rs.5.72 crores approximately.

2. In seeking this relief, the learned Advocate appearing on behalf of the plaintiff placed his heavy reliance on Paragraph 12 of the affidavit in support, which reads thus :-

“12. I say that in order to defeat the claim of the Applicant, the Respondent No. 1 and 2 could dispose off and sell their movable, immovable properties, assets, investments, wealth, DEMAT accounts, Bank Accounts and other valuables owned /held by them in their name or in the name of their agents, representatives, attorneys, trustees etc. and therefore it would also be just and proper that pending the hearing and final disposal of this Suit, the Respondent Nos. 1 and 2 and their agents, representatives, attorneys, trustees etc., be restrained by temporary order and injunction of this Hon'ble Court, from in any manner selling, transferring, alienating, disposing, assigning or otherwise dealing with the movable, immovable properties, assets, shares, investments, belongings, wealth owned/held by them in their name or in the name of their agents, representatives, attorneys, trustees etc. for the value of loss of shares, occurred to the Plaintiff to the extent of sum of Rs.6,61,97,456/- together with interest at the rate of 24% per annum from the date of suit till the date

of payment and/or realization thereof and any other order as this Hon'ble Court thinks fit and proper. Hereto marked and annexed Exhibit F is the copy of the particulars by way of a calculation sheet of the Losses along with interest.”

3. I find that on going through the entire affidavit, the averments made in Paragraph 12 are the only averments that can be found to somehow substantiate the relief sought by the plaintiff. I find that the averments made in Paragraph 12 to be wholly unsatisfactory. Apart from making a bald statement that defendant Nos. 1 and 2 could dispose of and sell the movable and immovable properties, assets, investment, etc. nothing has been brought on record to even remotely substantiate these allegations. On the basis of these bald averments, I am afraid that this Court cannot convert an unsecured claim and which now only remains a claim damages, into a secured one. In fact, the only provision under which the present injunction can be sought is under Order XXXIX Rule 1 (b) which clearly states that where in any suit it is proved by affidavit or otherwise that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, then the the Court, by order, can grant a temporary injunction to restrain such an act. In the present case, I find that the affidavit in support of the notice of motion is wholly devoid of any particulars

whatsoever as to how the defendant Nos. 1 and 2 are disposing of and/or selling their movable and immovable properties and other assets. I must mention that an affidavit-in-reply has been filed to the present Notice of Motion and in Paragraph 18 thereof, the defendants have categorically stated that the apprehension as raised by the plaintiff is false and baseless and therefore they are not entitled to the reliefs as claimed in the notice of motion. No rejoinder affidavit has been filed by the plaintiff either controverting these facts or bringing any other material on record that would entitle it to the reliefs claimed for in this notice of motion.

4. In these circumstances, I find that no reliefs in this notice of motion can be granted. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)

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