Original Application No.519 of 2019

R.SURESH KUMAR, J.

The prayer sought for herein is as follows,

> "To pass an order restraining the respondent No.1 from transferring, alienating or creating any third party rights or interest in the shares and debentures of PIFL belonging to the applicant and as described in the schedule hereunder."

2. Heard the learned counsel for the applicant, who would submit that, the applicant as well as the first respondent are the shareholders of the second respondent company. The applicant and the first respondent entered into a Memorandum of Understanding for share transfers. According to the said Memorandum of Understanding, the shares and debentures of the applicant to the value of Rs.14 Crores shall be purchased by the first respondent within a particular time, and within which time if the first respondent is not able to purchase the shares and debentures, the applicant can purchase the shares and debentures of the first respondent for the value of Rs.2 Crores.

3. Pursuant to this agreement / Memorandum of Understanding reached between the parties, the first respondent had taken the original share certificates as well as the debentures

from the applicant, in order to enable the first respondent to raise a loan from the bank for purchasing the said shares and debentures from the applicant.

4. Accordingly, as per the claim made by the applicant, the applicant had handed over the original share certificates as well as the debenture certificates to the first respondent. However, within the time stipulated in the Memorandum of Understanding, the first respondent has not come forward to purchase the shares and debentures and has also not returned the original share certificates and debenture certificates of the applicant. Moreover, the first respondent has also not come forward to sell the first respondent's shares to the extent of Rs.2 Crores, as agreed to by the first respondent in the Memorandum of Understanding. Only in that circumstances, the applicant, through his lawyer, issued a notice dated 01.08.2018 to the first respondent, wherein at paragraph 8 of the notice, the applicant has stated the following,

> "Our client further states that in pursuance of the third MoU, Our Client also handed over original physical share certificates and the debenture certificates along with share/debenture transfer forms to you Notice No.1 with the explicit understanding that the same shall be

held in trust by you till the payment of entire sale consideration and after obtaining permission from SBI for transfer of the shares and absolving the promoters of PIFL (ie., Our Clients Perfect Industries Group) from their obligations / guarantees given to SBI."

5. That apart, the applicant, in the said notice, has called upon the first respondent to immediately return the original share certificates and debenture certificates to the applicant.

6. Having received the said notice, though reply had been given by the first respondent on 21.08.2018, through his lawyer, wherein nothing had been mentioned about returning back the original share certificates and debenture certificates held by the first respondent. Instead, the first respondent has stated the following in the reply notice.

"We therefore, hereby call upon you to instruct your client to repay the amount of INR 6,50,00,000/- (Rupees Six Crore Fifty Lakhs only) within a period of 15 (fifteen) days from the receipt of this reply on the receipt of which, our client shall divest his entire holdings in PIFL. Failing which, our Client shall be constrained to initiate legal proceedings, including but not limited to pursuing any civil and/or criminal Arbitration proceedings, against your client for the recovery of our Client's dues as mentioned herein, which please note shall be entirely at your client's risk as to cost and consequences thereof."

7. Relying upon this communication, the learned counsel for the applicant submitted that the first respondent, not only failed to purchase the shares and debentures of the applicant to the extent of Rs.14 Crores, but also demanded a higher sum ie., Rs.6.50 Crores instead of Rs.2 Crores, to purchase the shares and debentures of the first respondent by the applicant. That apart, the original share certificates and debenture certificates of the applicant taken by the first respondent, have not been returned, despite the attempt made in this regard by the applicant through the notice referred to above issued on 01.08.2018, as there has been no whisper of the said returning back of the original share certificates and debenture certificates by the first respondent, in their reply notice dated 21.08.2018, as referred to above.

8. Only in that circumstances, since the first respondent is trying to alienate the original shares and debentures of the

applicant, which is held by the first respondent, in order to prohibit the first respondent from alienating or transferring the shares of the applicant to any third party, the applicant seeks prohibitory injunction order, as has been prayed for in this application.

9. I have considered the said submission made by the learned counsel for the applicant and perused the materials placed before this Court. In view of the prima facie case being made out by the applicant and the balance of convenience is in favour of the applicant, this Court is inclined to pass the following order.

10. That the first respondent is hereby restrained from transferring or alienating any of the shares as well as the debentures of the applicant at the second respondent company till 06.06.2019. Notice to the respondents returnable by then. Private notice permitted. Post the matter on 06.06.2019.

30-04-2019

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O. A. No.519 of 2019
(Next Hearing Dt : 06.06.2019)

30.04.2019