

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

**Present:**

**The Hon'ble Justice Soumen Sen**

**And**

**The Hon'ble Justice Ajoy Mukherjee**

**FMAT 612 of 2021**

**with**

**I.A No. CAN 1 of 2021**

**KAHM Industries Pvt. Ltd.**

**Vs.**

**Punalur Paper Mills Ltd. & Ors.**

**with**

**FMA 752 of 2021**

**Punalur Paper Mills Ltd.**

**Vs.**

**M/s. Lindsey Towers Pvt. Ltd. & Ors.**

**with**

**FMA 753 of 2021**

**Punalur Paper Mills Ltd.**

**Vs.**

**M/s. Lindsey Towers Pvt. Ltd. & Ors.**

**with**

**FMAT 698 of 2021**

**with**

**CAN 1 of 2021**

**Punalur Paper Mills Ltd.**

**Vs.**

**M/s. Lindsey Towers Pvt. Ltd. & Ors.**

**with**

**FMAT 699 of 2021**

**with**

**CAN 1 of 2021**

**Punalur Paper Mills Ltd.**

**Vs.**

**IndusInd Bank Ltd. & Ors.**

For the Appellant

: Mr. Jishnu Saha, Sr. Adv  
Mr. Ratnanko Banerjee, Sr. Adv  
Mr. Sakya Sen, Adv.  
Mr. Sumanta Ganguly, Adv.  
Mr. Souradipta Banerjee, Adv.

Ms. Fatima Hassan, Adv.

For the Respondents : Mr. Arnab Basu Mallick, Adv.  
Mr. Sakya Sen, Adv.  
Mr. S.R. Kakrania, Add.  
Mr. Tanuj Kakrania, Adv.  
Mr. Aviroop Mitra, Adv

Hearing concluded on : 24<sup>th</sup> February, 2022

Judgment Date : 5<sup>th</sup> April, 2022

**Soumen Sen, J.:** In view of the similarities and commonalities of the issues involved, the appeal, cross-appeal and all connected applications, by consent of the parties, are taken up together and disposed of by this common order.

The dispute is concerning the right to receive compensation in respect of premises situated at 13 Nellie Sengupta Sarani, Kolkata 700087, (in short, '*said premises*').

KAHM Industries Private Limited (formerly known as '*Lindsay Tower Private Limited*') (in short '*the KAHM*') is claiming to be the owner of the said property purchased under a deed of conveyance dated 5<sup>th</sup> April, 2003 from Punalur Paper Mills Limited, in short, '*the Punalur*'.

The deed of conveyance refers to three schedules. The First Schedule describes the land together with structure. The Second Schedule has two parts: Part I gives the detailed description and particulars of the portions under the possession of different occupiers and Part II gives the details of writ applications and other legal proceedings pending before the Hon'ble

High Court at Calcutta in relation to the said property. The third schedule gives the list of tenants.

Presently, we are concerned with the compensation received in connection with the acquisition proceedings which are described in Part II of the second schedule. It provides particulars of the proceedings initiated by Punalur against the State of West Bengal in respect of the Notification issued under Section 4 and Declaration under Section 6 of the Land Acquisition Act in concerning the basement, ground-floor, second-floor and a portion of the fifth floor amongst others of the premises in question.

The deed of conveyance also refers to a compromise decree dated 24<sup>th</sup> March, 2003 passed in C.S. No.59 of 2003 by the Hon'ble High Court at Calcutta in a suit for specific performance of the Agreement for sale dated 4<sup>th</sup> March, 2002 and for other reliefs, whereby Punalur was directed to complete the sale and/or transfer of the "said premises" in favour of the KAHM at a total consideration of Rs. 4.50 crores and Punalur was required to take appropriate steps within six months from the date of execution of the Deed of Conveyance, to recover the vacant and peaceful possession of the *"said portions in possession of the occupiers"*, described in Part I of the Second Schedule. The said deed of conveyance has clearly stated that KAHM shall be solely and exclusively be entitled to receive an appropriate amount of compensation pending before the Court at the time or as may hereafter become payable on account of and in respect of the *"said portions in possession of the occupiers"* as more fully described in Part I of the Second Schedule, which at the relevant time were subject matter of writ applications

filed against the State Government concerning acquisition and requisition of the said portions of the property.

After the said agreement on 15<sup>th</sup> May, 2010, Mr. Kunal Dalmia and his associates representing about 52.76 per cent of the equity of Punalur decided to sell their shareholdings in favour of third parties. Accordingly an agreement was entered into on 15<sup>th</sup> May, 2010 between Punalur and KAHM which not only acknowledges that the third parties became the majority shareholder of Punalur but also reaffirms and reiterates that KAHM would have the right to prosecute and/or defend all litigations and/or proceedings concerning the acquisition proceedings and would have the exclusive right to receive and recover the compensation amount in respect of portions of the suit property which were the subject matter of litigations in the name of Punalur but at its cost, and for such purposes KAHM would be entitled to operate a separate Bank account being No.0015-608737-060 (previous account no. 200001818875) with M/s. IndusInd Bank Limited situated at 3A Upper Wood Street Branch, Kolkata 700017, albeit in the name of Punalur for the purpose of depositing, realizing and encashing the amount of such compensation and any other amount as may be received and/or realized in respect of the portions of the suit property. The said agreement also provided that Punalur would execute an irrevocable power of attorney in favour of KAHM or its nominee/s authorizing him/them to represent Punalur in all the litigations. The said agreement was signed by the majority shareholders of Punalur including Mr. T K Sundaresan, chairman and

whole-time director of Punalur and one of the plaintiff in suit no. 613 of 2021.

KAHM in the proceeding has disclosed documents, showing that the reconstituted board of Punalur confirmed that Mr. T K Sundaresan had the authority to execute a power of attorney in favour of Mr. Kunal Dalmia and Mr. Ronoj Roy Chowdhury as the lawful attorney of Punalur in terms of the resolution dated 19<sup>th</sup> October, 2011.

KAHM claims that by virtue of the deed of conveyance dated 5<sup>th</sup> April, 2003 followed by the agreement dated 15<sup>th</sup> May, 2010 and the power of attorney executed in favour of the two aforesaid persons, compensation proceedings were pursued and out of several proceedings initiated, in one of such land acquisition proceedings concerning acquisition of the basement and ground floor of the property in question, a decree was passed on 6<sup>th</sup> December, 2018 by the learned District Judge, Alipur in respect of L.A. case no. 38 of 2007 for an amount in excess of Rs. 27 crores.

The State of West Bengal preferred an appeal against the said award being FAT no.473 of 2019 by a Co-ordinate Bench on 19<sup>th</sup> October, 2020. The learned Appellate Court after taking into consideration the submission made on behalf of the State of West Bengal, that on a calculation made on the basis of the impugned judgment and order, Punalur would be entitled to receive more than Rs.27 crores as compensation, the State of West Bengal, was directed to deposit the said sum on 20<sup>th</sup> November, 2020 with the learned Registrar General of this court. The State of West Bengal as well as

the learned Registrar General was directed to notify Punalur about such deposit. Within seven days of receiving of such deposit, the learned Registrar General was directed to make payment of 25 per cent of the said amount to Punalur and invest the balance amount in a short term fixed deposit earning the highest rate of interest in a nationalized bank upon intimation to the parties. The appeal was adjourned till 2<sup>nd</sup> December, 2020 for further consideration as to what further amount could be directed to be disbursed to Punalur pending appeal. Thereafter on 4<sup>th</sup> January, 2021 on the basis of the submission made by the State of West Bengal that there was a mistake in calculation, instead of Rs.27 crores the figure should be Rs.18,11,40,003/-, the Co-ordinate Bench permitted Punalur to withdraw 50 percent of Rs.18,11,40,003/- on the basis of the judgment of Hon'ble Supreme Court in ***Baburao v State of Maharashtra***, reported in **2017 (11) SCC 334**, without security and the prayer for release of balance 50 percent of Rs. 18,11,40,003/- upon furnishing security was left open to be decided if any formal application is made in this behalf by Punalur.

In terms of the aforesaid order, Mr. Ranoj Roy Chowdhury, one of the power of attorney holders of Punalur received a demand draft being No.120984 dated 31<sup>st</sup> May, 2021 for Rs.9,05,70,001.50/- drawn on Central Bank of India in favour of Punalur Paper Mills Limited on June 1, 2021 and deposited the said amount in the designated bank account.

The dispute started after the Order dated 4<sup>th</sup> January, 2021, and escalated when the said amount was withdrawn after depositing the said amount in the designated account.

The plaintiff/KAHM alleged that after the aforesaid order Punalur in collusion with the other defendants were threatening to close the designated M/s IndusInd Bank account maintained with IndusInd Bank, Wood Street Branch, Kolkata so that KAHM would be unable to deposit the compensation amount in the said Bank Account and thereafter withdrawing the said amount. Punalur instructed the IndusInd Bank to close the said Bank Account with a view to deprive KAHM to receive and use the said fund to which they were otherwise entitled under the said agreement.

In view of the aforesaid, in March, 2021 KAHM filed a suit being Title Suit No.314 of 2021 praying *inter alia*, for declaration that the said agreement dated 15<sup>th</sup> May, 2010 is still in force and the subsisting and binding upon the defendant no.1 including rest of the defendants. The defendants have no right to close the said account mentioned in Schedule-B of the plaint and further, KAHM also prayed for permanent injunction restraining the defendants and their men and agents from closing the said account. Simultaneously, KAHM filed an application for injunction restraining Punalur and the other defendants from closing the designated bank account and restraining them from creating any obstruction in the operation of the said bank account. In the said application the learned Trial Court passed an ad-interim order of injunction on 6<sup>th</sup> March, 2021 whereby Punalur and other defendants were restrained from closing the bank account till 6<sup>th</sup> April, 2021. The said interim order continued for some time. Soon thereafter on 11<sup>th</sup> May, 2021, Punalur revoked power of attorney

granted earlier in favour of Kunal Dalmia and Ranoj Roy Chowdhury on 15<sup>th</sup> May, 2010 and 19<sup>th</sup> October, 2011.

In or about 11<sup>th</sup> May, 2021 Punalur filed a suit before the City Civil Court being Title Suit no. 613 of 2021 praying *inter alia*, for declaration that Punalur alone is entitled to operate the said bank account standing in the name of Punalur through its authorised signatory Shri T.K. Sundaresan, the chairman and managing director of Punalur in respect of the said bank account being No.0015-608-737-060 (previous account no. 200001818875) with M/s IndusInd Bank and a further declaration that the defendant bank has no authority to permit persons who are not representative of the plaintiff company to operate the said bank account. Punalur also prayed for a decree for permanent injunction restraining the bank from permitting any person other than the plaintiff represented by T.K. Sundaresan to operate the Bank account in accordance with the resolution of the Board of Directors of Punalur dated 25<sup>th</sup> February, 2021 and all the subsequent resolutions of Punalur in respect of this aforesaid bank account.

Punalur also filed an application for injunction on 21<sup>st</sup> May, 2021, under order 39 Rule 1 and 2 of the Code of Civil Procedure in which an order was passed on 21<sup>st</sup> May, 2021 whereby the IndusInd Bank was restrained from permitting any person to withdraw, encash and/or transfer any amount from the said bank account till 19<sup>th</sup> June, 2021. It was further observed that for proper adjudication, T.S. No.314 of 2021 would be heard analogously with Title Suit No.613 of 2021. Punalur was directed to add M/s Lindsay Power Private Limited as defendant no.3.



In view of the aforesaid order dated 21<sup>st</sup> May, 2021, IndusInd Bank refused KAHM to operate the said Bank account and disallowed withdrawal of any compensation amount. KAHM after being aware of the said ex-parte ad-interim order dated 21<sup>st</sup> May, 2021, preferred an appeal before the Coordinate Bench of this Court being FMAT No. 377 of 2021. The appeal was allowed on 17<sup>th</sup> June, 2021 by setting aside the ex-parte ad-interim order dated 21<sup>st</sup> May, 2021. The learned Trial Court was directed to hear the injunction application filed by Punalur afresh in the presence of the parties. Whether KAHM was to be added as a party in the suit was left open to be decided by the learned Trial Court. In view of the fact that the injunction application filed by Punalur was made returnable before the learned Trial Judge on 19<sup>th</sup> June, 2021, the Hon'ble Division Bench observed that during this intervening period neither party *"will act in such a manner so as to make the interim application before the court below infructuous"*.

KAHM appears to have made a communication dated 18<sup>th</sup> June, 2021, to the IndusInd Bank requesting the said Bank to honour the cheque bearing No.439199 drawn on 2<sup>nd</sup> June, 2021 duly signed by Kunal Dalmia and deposited the sum in the designated bank account maintained with the IndusInd Bank. On the basis of the aforesaid request IndusInd Bank on 23<sup>rd</sup> June, 2021 encashed the said cheque of Rs.9.05,70,001/- to be credited to an account of KAHM.

The application filed by Punalur for addition of KAHM as defendant No.3 in T.S. No. 613 of 2021 was allowed by Order No.5 dated 30<sup>th</sup> June, 2021. By the said order, the learned Trial Court observed that neither party

would be allowed to operate the bank account in any manner, whatsoever till the injunction application as well as the application filed under Section 151 of the Code of Civil Procedure are disposed of on merits.

The learned Trial Court in a subsequent order dated 23<sup>rd</sup> July, 2021 passed in T.S. No.613 of 2021 observed that IndusInd Bank exceeded its jurisdiction in allowing KAHM to withdraw the aforesaid money and in violation of the order passed by the Hon'ble High Court earlier. It was observed that KAHM committed criminal breach of trust and therefore KAHM was directed to revert the said transaction. KAHM was directed to refund the money in the account where the compensation money was originally deposited within a period of one week. KAHM being aggrieved by the said order preferred a Civil Revision before the learned Single Judge of this court being C.O. No.1339 of 2021.

The said application was disposed of on 7<sup>th</sup> September, 2021 whereby the learned Trial Judge was directed to dispose of the application filed by Punalur positively within a period of two weeks from date without granting any unnecessary adjournment to either of the parties. It was further observed that in the event Punalur succeeds in the pending application for injunction, KAHM would be obliged to return the said sum of Rs. 9 crores to the account where it was lying earlier.

On the basis of the aforesaid direction the learned 6<sup>th</sup> Bench, City Civil Court at Calcutta by Order No.18 dated 22<sup>nd</sup> September, 2021, was pleased

to dispose of the said injunction application filed by Punalur holding, *inter alia*,

*“It appears that the entire proceeding initiated by the Plaintiff [Punalur] is a deceitful action on the part of the Plaintiff and the same Director who has taken part in Conveyance and Agreement, as well as Power of attorney, came before this court for the relief which he is not entitled and this case has no leg to stand upon. It is a futile attempt by Plaintiff, and this injunction application must be ended into dismissal. Hence, as an interim measure, to preserve the amount desposited in bank, it was ordered that neither party was allowed to operate the bank account in any manner whatsoever till the disposal of this case and well as TS No. 314 of 2021.”*

This order has resulted in an appeal and cross-appeal by the parties.

Interestingly, Punalur filed the cross-appeal after KAHM filed an appeal.

Mr. Jishnu Saha, learned Counsel appearing on behalf of KAHM submitted that once the Learned Court has arrived at a finding that the entire proceeding initiated by Punalur is a deceitful action and the director who had taken active role in the execution of the conveyance and agreement as well as power of attorney approached the trial Court for the relief to which Punalur is not entitled to, the Trial Court could not have prevented KAHM from operating the said bank account and/or to use or utilize the compensation amount and from receiving further compensation amount. The said impugned order having recognized that Punalur does not have any right to any of the reliefs in the suit ought to have restored its earlier order and permitted KAHM to operate the said bank account and realise the

compensation amount, if required, upon conditions as may be deemed fit and proper.

Mr. Saha had drawn our attention to several pages of the Deed of Conveyance dated 5<sup>th</sup> April, 2003 more particularly internal pages at 72, 78, 105-113 and 132-134 of the FMAT No.612 of 2021 and submitted that the recitals in the deed of conveyance mentioned at those pages would clearly show that the right to receive the compensation was transferred by the said recitals in favour of KAHM which was in the nature of chose in action as it includes all forms of beneficial interest be it “*existent, accruing, conditional or contingent*” as defined in Section 3 of the Transfer of Property Act, 1882 and that the transfer of such right by way of and/or under the conveyance together with the transfer in interest in the immovable property is in accordance with Section 130 of the Transfer of Property Act, 1882.

The actionable claim was already transferred by the Deed of Conveyance in 2003 and the Agreement of 2010 only recognized and reiterated the transfer of the actionable claim besides allowing the designated Bank Account in the name of Punalur to be operated by KAHM and/or its nominees only for the purpose of realizing, receiving and encashing the compensation amounts, mesne profit and other amounts as may be hereafter received and/or realized on account and in respect of the portions of the said ‘*Property*’, from the proceedings and as would be evident from clause 5 of the said Agreement dated 15<sup>th</sup> May, 2010.

Mr. Saha submitted that Punalur in its plaint has admitted to have the knowledge of deed of conveyance dated 5<sup>th</sup> April, 2003 but has made unfounded and baseless allegation that *“the same was brought into existence by undue influence, fraud for which, the plaintiff is initiating separate proceedings for cancellation.”*

However, subsequent facts and conduct of the parties in relation to the said agreement dated 5<sup>th</sup> April, 2003 and the agreement dated 15<sup>th</sup> May, 2010 would clearly show and establish beyond any doubt that the parties were *ad idem* with regard to the entitlement of KAHM to the compensation amount arising out of the acquisition proceedings. It was submitted that initially Punalur challenged the validity of the agreement dated 15<sup>th</sup> May, 2010 without, however, challenging the deed of conveyance dated 5<sup>th</sup> April, 2003. Such challenge to the Agreement without challenging the conveyance would be clearly meaningless, as the Agreement only ratifies the transfer of the actionable claim made by the conveyance.

The challenge to the agreement, in any event, as on date, would not be maintainable in view of Article 59 of the Limitation Act, 1963 and also barred by the principles of Order II Rule 2 of the Code of Civil Procedure.

The learned Senior Counsel has submitted that in the plaint filed by Punalur being Title Suit No. 613 of 2021 no particulars of fraud or undue influence have been furnished as mandatorily required under Order VI Rule IV of the Code of Civil Procedure. Merely because Mr. Kunal Dalmia was a director of both Punalur and KAHM at the time of the execution of the

conveyance, it does not necessarily follow that the conveyance or the subsequent agreement of 2010 was vitiated by or fraud, undue influence and, thus it was submitted that in absence of full particulars of fraud or undue influence the suit itself is liable to be dismissed. In this regard Mr. Saha has relied upon the decision of the Hon'ble Supreme Court ***Sangramsinh P. Gaekwad and Ors. v Shantadevi P. Gaekwad (Dead) thr. Lrs. and Ors.*** reported in **2005 11 SCC 314** paragraphs **182, 208, 210 and 212.**

It was submitted that the necessity of the 2010 Agreement in spite of there being express clauses in the Deed of Conveyance of 2003 conferring the right upon the KAHM to receive compensation as would appear from recital "F" at internal page 6 of the said Agreement clearly implying that there was change in management of Punalur and the members of the new management controlling about 52.76% now decided to enter into the said Agreement to confirm the rights already vested upon the KAHM by the Conveyance and to give effect to the same. T.K. Sundaresan, Managing Director of the Plaintiff, who has affirmed the Plaint and the Injunction Application himself had signed the agreement of 2010 along with others who had purchased shares representing 52.76%. In view thereof Punalur is now estopped from raising any challenge as regards the said agreement.

Per contra, Mr. Souradipta Banerjee the learned Senior Counsel appearing on behalf of Punalur submitted that Mr. Kunal Dalmia who happened to be one of the Directors of Punalur played a pivotal role in getting the said property transferred in favour of his another company

Lindsey Towers Private Limited which has been subsequently renamed as KAHM Industries Private Limited. The approximate value of the said property was about 80 crores to 100 crores.

Mr. Banerjee submitted that in view of the abominable conduct of KAHM in withdrawing a part of the compensation amount disregarding the order passed by the learned Trial Court as well as by the Co-ordinate Bench, the proceeds of the acquisition proceeding required to be secured and preserved till the disposal of both the suits and an appropriate order might be passed directing KAHM to deposit the said sum of Rs.9 crore to the said bank account till the disposal of the suit. Mr. Banerjee further submitted that none of the parties should be allowed to utilize the compensation amount till both the suits are decided on merits.

It was submitted that from the Schedule of the said Deed of Conveyance dated 5<sup>th</sup> April, 2003 it would be evident that only the property in question being premises no.13, Nellie Sengupta Sarani was transferred along with the arrears of acquisition amounts, interest thereon and/or actionable claim. In the recital and body of the said deed the mentioning of arrear interest and/or compensation amount that accrued to the appellant could not have been transferred without separate deed of assignment.

Mr. Banerjee by way of illustration submitted that if a property 'A' is transferred and in the recital portion of the said deed, it is surreptitiously mentioned that the property 'B' is also transferred along with 'A' property without any mention of property 'B' in the Schedule of the Deed, the said

transfer would never tantamount to transfer of property 'B' in favour of the transferee.

According to Mr. Banerjee reference to Section 3 of the Transfer of Property Act, 1882 by Mr. Saha would not apply as the said provision does not include any previously accrued interest or actionable claim as envisaged in Section 8 of the Transfer of Property Act, 1882. In this regard Mr. Banerjee had relied upon the decision of the Hon'ble Supreme Court in ***Sheikh Noor and Ors., v. Sheikh Ibrahim (dead) by Lrs*** reported in **(2003) 7 SCC 321** (paragraph 18), where it has been held that arrears of rent for the property cannot be claimed unless separately assigned or conveyed to the transferee owner.

Mr. Banerjee strenuously argued that KAHM could not give any satisfactory reply as to why after more than 28 years of transfer of the aforesaid property the Bank account still remained in the name of Punalur Paper Mills Limited and the name of KAHM Industries does not appear in the municipal records.

It was further contended that in the balance sheet and the auditors' report of KAHM for the year 31<sup>st</sup> March, 2020 the suit property was not shown under the head Property, Plant and Equipment, Tangible Assets and therefore the suit property i.e. 13, Nellie Sengupta Sarani, was never declared to be a property of KAHM.

Mr. Banerjee further submitted that even if it is assumed that KAHM was entitled to receive the compensation amount on behalf of Punalur the



obligations on the part of KAHM to pay the Municipal rates and taxes and Income Tax dues that became payable on the compensation amount received by KAHM which however, were conveniently avoided.

Mr. Banerjee tried to impress upon the Court that in the given facts and circumstances, the parties to both the suits should be restrained to operate the bank accounts and the compensation amount present and future should be secured and preserved till the disposal of both the suits. KAHM should be directed to deposit Rs. 9,00,00,000/- wrongfully withdrawn from IndusInd bank in violation of court order.

We have heard both the parties at length.

The interlocutory injunction is an equitable remedy, made necessary by the delays before actions come to court, designed to ensure that no irreparable harm is caused to the respective rights of the parties before the trial and to preserve the effectiveness of any judgment in the final action.

**Lord Diplock** in ***American Cyanamid Co v Ethicon Ltd*** reported in [1975] 1 All E.R. 504, had observed, that; *"It is no part of the court's functions at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration."*

Roskill L.J. discussed that the mere existence of a prospect of success should not be conclusive so far as the award of an interlocutory injunction

is concerned in ***Tetrosyl Ltd. v. Silver Paint and Lacquer Co. Ltd.*** reported in [1980] F.S.R. 68. Here the plaintiff had argued that if there is a serious issue to be tried it ought to follow automatically that an interlocutory injunction would be given, because otherwise there would be an offence against the basic principle laid down in *Cyanamid* that the court must not ask itself whether or not a plaintiff is likely to succeed at the trial. Roskill L.J., with the agreement of Lawton L.J., rejected this saying that,

*"It cannot be that in every case where the plaintiff can show that he has a claim which is not frivolous, an interlocutory injunction should automatically follow as a matter almost of right. The court must always have discretion whether or not it will grant an interlocutory injunction."* (See ***Interlocutory Injunctions Since Cyanamid*** (supra)).

Historically, it is an equitable remedy, since it derives from the former courts of Chancery, and accordingly it has a discretionary character. Now, even in England, it is statutory. In India, it is statutory in nature.

The remedy of injunction was undoubtedly borrowed by the Chancellors from the "interdicts" of the Roman Law.

The need for such protection, however, has to be judged against the corresponding need of the defendant to be protected against injury resulting from exercising his own legal rights. The court must weigh one need against another and determine where the balance of convenience lies and may pass an appropriate order in exercise of its discretionary power. (See. ***Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.*** reported in (1999) 7 SCC 1: AIR 1999 SC 3105).

At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail and hold a mini trial. What the Court has to examine is (i) the plaintiff has a prima facie case to go for trial; (ii) the protection is necessary from that species of injuries known as irreparable before his legal right can be established; and (iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.

*Lord Diplock put it broadly in **NWL v Woods [1979]3 All E.R. 614 at 624:***

*'In assessing whether what is compendiously called the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding one way rather than the other at a stage when the evidence is incomplete.'*

The hearing of an application for an interim injunction is not a trial on the merits. There is usually no oral evidence and no opportunity for cross-examination. The full pre-trial processes of disclosure and inspection of documents have not occurred; indeed the statements of each side's case may not yet have been served. The criteria applied must inevitably be different, because neither side's case can be "proved" as at a final hearing. The function of an interim injunction is often described as a process which is designed to "hold the ring" (see e.g. **United States of America v Abacha** reported in **[2015] 1 W.L.R. 1917**) pending final determination of the merits or other disposal of the dispute.

KAHM has contended that right to receive compensation is an actionable claim. An actionable claim must be a claim either to a debt or to

a beneficial interest in movable property. The beneficial interest is not the movable property itself, and may be existent, accruing conditional or contingent. The movable property in which such beneficial interest is claimed, must not be in the possession of the claimant. An actionable claim is therefore an incorporeal right. (See: ***TATA Consultancy vs. State of AP*** reported in **2005 (1) SCC 308**).

The right to claim compensation in favour of KAHM arises from the deed of conveyance read with the agreement dated 15<sup>th</sup> May, 2010. The deed of conveyance is required to be read as a whole in order to find out the intention of the parties. The recitals in the deed of conveyance clearly shows that KAHM would solely and exclusively be entitled to receive an appropriate amounts of compensation now pending or as may hereafter become payable on account of and in respect of the acquisition proceedings. It clearly refers to the present and the future right of the KAHM to receive the said compensation and gives power to KAHM to continue such proceedings in the name of Punalur but at the expense of KAHM.

This was reiterated after there was a change of shareholding in Punalur on 15<sup>th</sup> May, 2010. In fact, an irrevocable power of attorney was executed in favour of Kunal and Ranoj. The said power of attorney holders pursued the proceedings on behalf of Punalur that had ultimately resulted in a decree being passed in favour of Punalur being L.A. case no. 38 of 2007 for an amount in excess of Rs. 27 crores.

Punalur was unable to demonstrate before us that they had pursued the aforesaid proceedings at their own cost and expenses. Punalur has not denied the execution of the deed of conveyance, the agreement dated 15<sup>th</sup> May, 2010 and the power of attorney which was revoked only on May 11, 2021. It is interesting to note that the power of attorney holders represented Punalur in the writ petition filed by the State of West Bengal being FAT no.473 of 2019 in which an order was passed for the release of part of the compensation amount to Punalur. These facts conclusively prove for the purpose of the interlocutory application that the power of attorney was acted upon and KAHM has conducted such proceeding for and on behalf of Punalur.

The question arises whether this money should exclusively belong to KAHM or Punalur could have a claim on the said money. The learned Trial Judge noticing that Mr. T.K. Sundaresan, the Managing Director of Punalur, who was one of the signatories to the agreement dated 15<sup>th</sup> May, 2010, power of attorney dated 15<sup>th</sup> May, 2010 and 21<sup>st</sup> November, 2011, signed the plaint on behalf of Punalur had taken a completely contrary stand in the proceeding with a view to defeat the right of KAHM observed that the proceedings initiated by Punalur was deceitful and frivolous.

Initially Punalur did not file a suit for cancellation of the deed of conveyance dated 5<sup>th</sup> April, 2003. It is difficult for Punalur at this stage to contend that they were not aware of the execution of the deed of conveyance or subsequent documents giving exclusive rights to KAHM to receive and deal with the compensation amount.

An argument has been advanced that Kunal Dalmia took an active part in the deed of conveyance and the said property was sold at a meagre consideration. However, nothing prevented the majority shareholders after assuming control of Punalur to raise the issue and sue KAHM in cancellation of the deed of conveyance.

On the contrary the majority shareholder have agreed to execute an irrevocable power of attorney in favour of Kunal and Ranoj and required the power of attorney holder to prosecute and defend all actions against Punalur concerning the property in question at the cost of KAHM.

This clearly establishes that the cancellation of the power of attorney is *prima facie* illegal as it is an agency coupled with interest. Even if one may be persuaded to ignore the other claims of KAHM, the right that accrued in favour of KAHM by reason of acts done in pursuance of the power of attorney needs to be preserved.

At the same time Punalur cannot be made to suffer for Income Tax payable on the compensation amount as Punalur is not receiving the money and accordingly it cannot be treated as their income on which any tax can be levied.

Mr. Saha, learned Senior Counsel appearing on behalf of KAHM has submitted that no demand so far has been raised by Punalur for payment of Income Tax dues and KAHM is willing to reimburse Punalur for any amount payable towards Income Tax in respect of the suit property.

The KAHM had in the meantime realised a sum of Rs.9,05,70,001.50/- on the basis of the order passed by the Co-ordinate Bench on 4<sup>th</sup> January, 2021 in FAT No.473 of 2019. It is undisputed that the power of attorney was revoked much later on 11<sup>th</sup> May, 2021 and at that time KAHM was entitled to the said amount. A suit filed subsequently cannot deny the payment of such compensation amount without Punalur establishing their right to receive the said compensation amount on revocation of the power of attorney. However, the learned Trial Court did not permit the parties to utilize the compensation amount till the disposal of the suit.

With a view to hold the ring pending final adjudication we permit KAHM to retain and utilize the said amount upon furnishing security to the satisfaction of the learned trial Court. In so far as the balance sum of Rs.9,05,70,001.50/- deposited in connection with LA case no.38 of 2007 we are not inclined to direct the Registrar General to release the said amount at this stage, on consideration of the decision of the Hon'ble Supreme Court in ***Baburao vs. State of Maharashtra***, reported in **2017(11) SCC 333**.

Since we are of the *prima facie* view that the cancellation of the power of attorney was illegal and the documents executed in favour of KAHM are establishing a clear right to receive the compensation, at this stage we do not direct KAHM to return the said sum of Rs.9,05,70,001.50/- to Punalur.

Mr. Jishnu Saha, learned Senior Counsel appearing on behalf of the KAHM has strenuously argued that the suit filed by Punalur Paper Mills Limited is not maintainable in law and expressly barred by limitation under

Order II Rule 2 of the Code of Civil Procedure. It is submitted that the application for rejection of the plaint is pending before the learned trial Court; we request the learned trial Judge to dispose of the said application expeditiously, without being influenced by any observations made in this judgment.

The impugned order is modified to the aforesaid extent.

The appeals and cross appeals along with all the connected applications are accordingly disposed of.

The department is directed to send down LCR at the earliest. The Registrar Administration (L & OM) is to ensure compliance.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on an usual undertaking.

I agree

**(Soumen Sen J.)**

**(Ajoy Kumar Mukherjee J.)**

Later:

After the judgment is pronounced Mr. Souradipta Banerjee, learned Senior Counsel appearing on behalf of the Punalur Paper Mills Limited has



prayed for stay of the operation of the order, in so far as our observation with regard to the power of attorney is concerned.

The said prayer is considered and rejected.

**(Ajoy Kumar Mukherjee J.)**

**(Soumen Sen J.)**