IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

APOT NO. 47 OF 2022
IA GA NO.1 OF 2022
In
CS No. 161 OF 2021

Premjit Roy & Anr.
Vs.
Munawar Abbas Gangjee & Ors.

And

APOT NO. 227 OF 2021
IA GA NO.1 OF 2021
In
CS No. 162 OF 2021
Housing Development Finance Corporation Ltd.
Vs
Indrajit Roy & Ors.

And

OCOT NO. 1 0f 2022

Indrajit Roy
Vs
Housing Development Finance Corporation Ltd. & Ors.

Appearance:

For the Appellant : **Mr. Joy Saha, Sr. Adv.**

Mr. K. R. Thakker, Adv.

Mr. Chayan Gupta, Adv.

Mr. Kausik De, Adv.

Mr. Dwip Raj Basu, Adv.

Mr. Saptarshi Kumar Mal, Adv.

Mr. Roshan Pathak, Adv.

Mr. Bhaskar Mukherjee, Adv.

Mr. Debraj Sahu, Adv.

For the Respondent no.s 3 & 4 : **Mr. Samrat Sen, Sr. Adv.**

Ms. Manali Bose, Adv.

Mr. Subhransu Ganguly, Adv.

Judgment On : **11.05.2022**

Harish Tandon, J.

The interim order dated 1st October, 2021 passed by the Single Bench in CS 162 of 2021 is a subject matter of challenge in the instant Intra-court Appeal. The dispute centers around the obligation, liability, enforceability and the interpretation of the several clauses contained in the Quadrupartite Agreement dated 30th August, 2013 in relation to the Flat no 601 on the sixth floor in a housing society pertaining to the tower named as Godrej Platinum 1 and Godrej Platinum 2. Admittedly the respondent no. 1 and 2 are the owners of the property and entered into a development agreement with the respondent no. 3 for development and commercial utilisation of the said property by making construction and selling the constructed units /flats to the intending purchasers.

Indubitably the entire project of development was principally agreed to be financed by the respondent no. 4. The plaintiff/appellant being one of the intending purchasers agreed to purchase the said flat at the consideration agreed upon and approached the respondent no. 4 for extending the financial support. An agreement for sale was entered into between the owners, the respondent no. 1 and 2 and the developer, the respondent no. 3 with the plaintiff/appellant, upon payment of the initial amount as earnest money and the balance amount to be paid in a phase wise manner as reflected in the schedule of payment appended thereto. Subsequently the plaintiff/appellant approached the respondent no. 4 and apart from the loan agreement a Quadrupartite Agreement was also entered into between the plaintiff and the respondents containing several obligations, liabilities and the modalities in the event the agreement for sale is cancelled or the plaintiff/appellant resiled from purchasing the said flat. Clause 7 and 9 of the said Quadrupartite Agreement dated 30th August, 2013 are the epitome of the dispute and suit was filed for specific performance thereof. The aforesaid Clause 7 and 9 of the Quadrupartite Agreement dated 30th August, 2013 are reproduced as under:

> ***7. That if the Borrower desired to withdraw his application for the allotment of Flat (GPL will obtain NOC/Permission from HDFC before accepting the same) or if he fails to pay the balance amount representing the difference between the loan***

sanctioned by HDFC and the actual purchase price/total sale consideration of the Flat/dwelling unit in terms of the Flat Buyer's Agreement, or in case of death of the Borrower or on the advice of the HDFC, 'GPL' shall cancel/terminate the Flat Buyer's Agreement and the entire loan amount advanced by HDF along with interest, due if any will be refunded by 'GPL' to HDFC forthwith. Thereafter, from the balance amount, if any, after deduction of earnest money and any other charges in accordance with the provisions and terms of the Flat Buyer's Agreement may be refunded by 'GPL' to the Borrower or his legal heirs and thereupon all and every interest of the HDFC or Borrower or his legal heirs and thereupon all and every interest of the HDFC or Borrower or his legal heirs or representative which they may have in the Flat shall cease and they shall be left with no right and interest in the said Flat and shall be free to deal with the Flat in any manner. Provided that in the event of the death of the Borrower, 'GPL' shall permit his legal heirs to have continued interest in the Flat if they immediately deposit with 'GPL' the amount refunded to HDFC as provided therein and undertake to pay to 'GPL' all such further sum or sums as would have been payable by the Borrower in accordance with the rules in force and in terms of the Flat Buyer's Agreement.

> ***9. That 'GPL/OWNERS' are hereby authorized by the Borrower, upon intimation by HDFC in the event of default as determined by HDFC in its sole discretion, to cancel/terminate the allotment/Flat Buyer's Agreement of the residential apartment in favour of the Borrower and to refund (refundable by 'GPL' in the event of cancellation of the allotment in terms of the Flat Buyer's Agreement for any reason), the loan amount advanced by HDFC on behalf of the Borrower to 'GPL' along with the interest accrued thereon to HDFC directly under intimation to the Borrower for appropriation and adjustment by HDFC against the monies due to it from the Borrower. The accounting between the Borrower and the HDFC would be done by themselves without recourse to 'GPL'."***

Clause 7 basically deals with the intention of the buyer to withdraw his application for the allotment of flat subject to the condition that the Respondent no. 3 shall obtain no objection certificate or permission from the respondent no. 4 before accepting the same. It further provides that in the event of default in payment of the balance amount by the borrower being the differential amount of the actual consideration and the loan so disbursed the respondent no. 3 can terminate the said contract and shall refund the entire loan amount advanced by the respondent no. 4 along with interest, if any due, forthwith. The said clause further contemplates that in the event any surplus amount is retained by the Respondent no. 3 after due performance of the earlier obligation i.e. the refund of the loan amount with interest, if any due the balance would be paid to the borrower and upon due performance of the aforesaid obligations the interest of the respective parties would cease in respect of a flat.

The Clause 9, however, authorizes the respondent nos. 1-3 to cancel/terminate the allotment or the agreement for sale after due intimation to the respondent no. 3 in the event of any default that may be determined by the respondent no. 3 at its sole discretion and refund the loan amount to the respondent no. 3 on behalf of the plaintiff/appellant together with an interest accrued thereon directly and such event shall be communicated to the plaintiff/appellant.

In fact, the suit is filed by the plaintiff/appellant to enforce the aforesaid two clauses and the reliance has been placed upon the several correspondences exchanged between the parties in this regard. The genesis of the dispute can be traced from the default having committed by the plaintiff/appellant in repayment of equated monthly installment to the respondent no. 4 and a letter was caused by the said respondent to the respondent no. 3 intimating the aforesaid facts and sought for invocation of Clause 9 to cancel the said agreement and demanded the payment of an amount advanced to the said respondent with interest. Such letter was caused on 9.10.2018 which forms part of the record. The respondent no. 4 further caused a letter on 11th December, 2018 to the plaintiff/appellant demanding the outstanding amount of the said loan agreement together with an interest at the rate of 18 per cent per annum.

Although from the aforesaid letter issued by the respondent no. 4, the obligation under the aforesaid clauses were sought to be activated yet the further correspondences made on 12.4.2019 would reveal that the several discussions were held between the parties and the plaintiff/appellant communicated to them that he is in search of a good buyer and the agreement should not be concluded in haste. The said letter further reflects the consensus having arrived between the parties not to initiate any process under the said agreement until 26th February, 2019. The reference of the said letter caused by the plaintiff/appellant would be evident from the said letter dated 12.4.2019 that he sought for a cancellation of the agreement and agreed for enforcement of clause 9 of the Quadrupartite Agreement dated 30th August, 2013.

Apropos the same, the offer was made by the respondent no. 3 to pay sum of Rs. 6.60 crores as full and final settlement of the obligations, liabilities claims and the costs. Other correspondences exchanged through e-mail would reveal that such proposal was not acceded to and in fact till this time, it has not been invoked. Even a learned Single Judge in the impugned judgment has held that the conditions enshrined for activation of Clause 9 of the said agreement has not been triggered as yet as the permission of the respondent no. 3 which is a condition precedent for acceptance of the withdrawal has not been extended and/or accorded. Even thereafter several correspondences were exchanged in the year 2020 at the behest of the plaintiff/appellant seeking time to find a suitable buyer and in fact communicated the same having found such buyer but the consideration which was shown were not acceptable to the respondent no. 3 and 4.

The sequel of events as quoted above manifest that though the permission was sought for cancellation of the agreement yet, the parties were exploring the possibility of the other solutions postponing the invocation of the aforesaid clause. Precisely, for such reason the suit for specific performance of the said Quadrupartite Agreement dated 30th August, 2013 is filed and an application for temporary injunction was taken out restraining the respondents from acting contrary to or in violation of the said Quadrupartite Agreement.

A point has been taken by the respondent no. 4 being the appellant in the instant appeal that even after the single Bench has found that the stage has not reached for triggering Clause 7 and 9 of the Quadrupartite Agreement dated 30th August, 2013 yet, the court passed an injunction in mandatory form restraining the respondents to stay their respective hands in relation to the said agreement until the matter is heard out upon exchange of affidavits.

Referring to the judgment in case of ***Deoraj vs. State of Maharashtra & Ors reported in 2004 (4) SCC 697*** The learned Advocate appearing for the appellant submits that the interim order passed in the mandatory form at the inter locutory stage though not absolutely impermissible but must be passed in exceptional circumstances. It is further submitted that the court must be vigilant, cautious and circumspect while passing temporary injunction in mandatory form tantamounting to granting the final relief in the suit. Mr. Saha further submits that the findings returned in the order is not in commensurate with the mandatory injunction and, therefore, the interference is required by the Appellate Court. According to Mr. Saha the moment ingredients required for invocation of Clause 7 and 9 of the Quadrupartite Agreement dated 30th

August, 2013 is not satisfied which, in fact , has been held by the Single Bench, there was no necessity to pass the mandatory injunction restraining the respondents to stay hand in proceeding on the basis of the said agreement . It is vehemently submitted that the single Bench has not considered the basic requirement for passing a mandatory injunction more particularly when the conduct of the parties does not suggest so and, therefore, the impugned order warrants interference.

Mr. Sen appearing for Respondent no. 3 & 4 arduously submitted that the mandatory injunction at the temporary injunction stage can only be passed in rare cases and mainly to undo the things what had happened after the notice of the suit within avowed object to restore the position existed as on the date of the presentation of the suit. The reliance is placed upon a judgment of this court in case of ***Nandan Pictures Ltd. Vs Art pictures Ltd. & Ors reported in AIR 1956 CAL 428*** Mr. Sen further submits that the principles of law enunciated in ***Nandan Pictures (supra)*** has been accepted and reinstated by the Supreme Court in case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors reported in 1990 (2) SCC 117***. He thus submits that the court should ordinarily refrain from passing temporary injunction in mandatory form unless grave injustice is caused by the conduct of the other side after having notice of the suit.

Mr. Thakker, the learned Advocate appearing for the plaintiff/respondent no. 1 and the cross objector submits that there is no absolute fetter in passing a temporary injunction in mandatory form at the interlocutory stage if the case of such nature is made out to protect the interest of the parties. He further submits that in a deserving case the court has a discretion to pass the interlocutory relief in mandatory form if the facts of the case warrant so and relied upon a judgment of a Division Bench of this court in case of ***Indian Cable Company Ltd. Vs. Smt. Sumitra Chakraborty reported in AIR 1995 CAL 248*** to the proposition that there is no absolute fetter on the part of the court in passing an interlocutory order which may remotely tantamount to decreeing the suit provided the case of a strong prima facie case is made out. According to Mr. Thakker the aforesaid proposition has been raised, reiterated and reinstated by the Apex Court. There is no absolute fetter on the part of the court in granting the temporary injunction in mandatory form. Had it been the intention of the legislation putting an absolute fetter on the court not to grant mandatory injunction at interlocutory stage, the language could have been couched in such fashion which we find conspicuously absent therein. There may be circumstances where the parties after being aware of the suit having filed against him have acted in such prejudicial manner which would render the ultimate relief, inappropriate, the court may pass an injunction in mandatory form to restore the position existed as on the date of the institution of the suit. Even in the case of a ***Nandan Pictures Ltd. (supra)*** the Division Bench of this court after noticing the very nature of the injunction, a forum of the equitable relief held that it is aimed to restore the status quo ante but cannot be used to establish a new state of things deferred from the state existed as on the date of the institution of the suit in the following.

"***3. Mr. Dey, who appeared for the Indira Cinema, contended though somewhat feebly, that even regarded as a mandatory injunction, the order had been made with jurisdiction and had been properly made. As far as I could understand him he did not ultimately persist in that contention, but based his defence of the order on another ground to which I shall advert in a moment. It appears to me that regarded as a mandatory injunction, the order complained of cannot be held to have been properly made. I need not refer to any of the collateral questions to which Mr. Meyer referred, because each one of them is of a controversial character and remains to be decided in the suit or in the application for an injunction during the pendency of the suit which is still pending before the learned trial Judge. I consider it sufficient to point out that it is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an 'ad interim' pending the decision of the application itself are almost unknown. I do not wish to say, because it is not necessary for the purposes of this case to say so, that in no circumstances will the Court have any jurisdiction to issue an ad interim injunction of a mandatory character pending the disposal of an application for an injunction. Injunctions are a form of equitable relief and they have to be adjusted in aid of equity and justice to the facts of each particular case. No court, therefore, ought to lay down absolute propositions when such are not necessary and forge fetters for itself. At the***

same time, I may point out what the accepted principles have been and what has been, according to the reported cases, the practice of the Courts. It would appear that if a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the status quo and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. The one case in which a mandatory injunction is issued on an interlocutory application is where, with notice of the institution of the plaintiff's suit and the prayer made in it for an injunction to restrain the doing of a certain act, the defendant does that act and thereby alters the factual basis upon which the plaintiff claimed his relief. An injunction issues in such a case in order that the defendant cannot take advantage of his own act and defeat the suit by saying that the old cause of action no longer survived and a new cause of action for a new type of suit had arisen. When such is found to be the position, the Court grants a mandatory injunction even on an interlocutory application, directing the defendant to undo what he has done with notice of the plaintiff's suit and the claim therein and thereby compels him to restore the position which existed at the date of the suit. As far as I have been able to find, even such an order has been made only when the application for an ad interim injunction pending the disposal of the suit is finally disposed of and not during the pendency of the application itself as made in the present case. Here an ad interim injunction of a restrictive character was in fact

granted on the 7th of March pending the disposal of the application and what was done on the 12th of March was to make another order of the nature of an injunction by way of implementing what was thought to have been the ad interim order made on the earlier date. The order was not made on the basis of anything done by the appellants since the institution of the suit and with notice of the plaintiff's claim and, therefore, the basis on which ad interim injunctions of a mandatory character are generally granted under the approved practice was lacking."

In Dorab Cawasji Warden (Supra) the matter relates to the rights enshrined under Section 44 of the Transfer of Property Act which prohibits joint possession of the stranger with the co-sharer of the undivided dwelling house. In the backdrop of the same it is held that the interlocutory mandatory injunctions are generally granted to restore the status quo of the non-contested status until final hearing but such power must be exercised not only on the equitable consideration but in a rare circumstance. It is profitable to quote the observations made in paragraphs 16 and 17 of the said report which runs thus:

"***16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party***

complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant of refusal of such injunctions would be a sound exercise of a judicial discretion."

The judgment rendered in case of ***Indian Cable Company Ltd. (supra)*** as relied by Mr. Thakker does not run counter to the aforesaid propositions laid down in the above noted decisions. The said Division Bench was ad idem to the proposition of law that there is no restriction having imposed upon the court to pass an interlocutory mandatory injunction as it would mean that the suit is decreed before the trial. It is further held that he court can grant the reliefs on an interlocutory applications in mandatory form even if it may remotely tantamount to granting the reliefs claimed in the suit but the court must exercise such power only in exceptional cases in the following:

> "***9. So far as the second reason assigned by the learned Subordinate Judge is concerned, I feel that it is necessary to clarify the legal position with regard to a prayer for injunction as made in the present case. The learned Subordinate Judge appears to have taken the view that since recovery of possession is the principal relief claimed in the suit, the plaintiff cannot claim restoration of possession on an interlocutory application because that would mean in a manner decreeing the suit even before the trial. Reliance has been placed upon an earlier decision of this court in the case of Rameswar Lath (1936 (40) Cal WN 1201) (supra). But in my opinion the said decision is no authority for an absolute proposition that no relief on an interlocutory application can be granted under any circumstances which may amount to granting of the main relief prayed for in the suit. Mcnair, J: In the said decision merely pointed out that as a general rule such a***

relief is not granted in the absence of apparent urgency and injury to the applicant. When I refer to the decision I find that Mcnair, J. did take note of and approve of the principle as enunciated in English cases which acknowledged the existence of a power in a court to give such a relief on an interlocutory application as may also be the substantial prayer in the suit. The learned Judge took pains to consider whether on the facts of the particular case any such ground had been made out for grant of such a relief and observed: "there is no statement for pleading as to the injury which would be suffered by the applicant if he does not set the injunction which he now prays for and I am not satisfied there is any urgency in the matter". If the bar to the granting of such a relief had been considered to be absolute by the learned Judge, it would not have been necessary for him to go into the question of "urgency or the injury to be suffered by the plaintiff. Granting of such a relief was upheld by the court of appeal in the case of Heywood v. B.D.C Properties Ltd., (1963) 2 All ER 1063 (1067). Reviewing the earlier authority it was observed: "Those cases, I think, do show that it is only in unusual circumstances that the court ought to take the step of granting substantially the whole relief claimed in the action on an interlocutory application. But they equally show that is a procedure which, in a proper case, is available. In my judgment, having regard to the admitted fact that the alleged contract registered, was not contract at all this is one of those cases in which it is proper and appropriate to grant by way of an

interlocutory application the relief the Judge has granted". The same view was expressed by the court of appeal in the case of Acrow Limited v. Rex Chain Belt, (1971) 3All ER 1175, when the appeal court allowed the appeal and granted an interim relief though it took note of the fact that granting such a injunction meant virtually deciding the action and it was observed that: "that often happens". Mr. Kapoor has rightly drawn out attention to an unreported Bench decision of this court in the case of Lachmandas Daswani v. Philis Berry D Cruz (A.F.O.O No. 243/72, O.S. decided on May 17, 1974). In this decision, the Division Bench distinguished the decision [in (1936) 40 Cal WN 1201] by taking the same view as I have taken in the present case. In my opinion, the principle on the point as it emerges on review of the authorities thereon is that if a court is called upon to grant any relief on any interlocutory application which when granted would mean granting substantially the relief claimed in the suit, the court will be very slow and circumspect in the matter of granting any such prayer. It is indeed true that such a relief should be granted only in exceptional cases. Though exercise of such a discretion should be limited to rare and exceptional cases, still at the same time no court should not hesitate to come in aid of a litigant and uphold the cause of justice by granting such a relief. I am, therefore, of the opinion that that the learned Subordinate Judge went wrong in reading the decision in (1936) 40 Cal WN 1201 as an authority for a proposition that in law there is an absolute bar to the granting

of an interlocutory relief as claimed in the present case and, therefore, not deciding on the merits whether the plaintiff had made out any exceptional case in support of his claim."

We do not find any ambiguity to the proposition of law that the court cannot pass an interlocutory order if it tantamounts to granting the reliefs claimed in the suit either partially or wholly. The aforesaid proposition is also accepted and find support from the Division Bench judgment of this court in premier Industries (India) Ltd. (supra) in the following:

"6. Finally in the submission of the appellant that the court has no power to pass an order on an interlocutory motion which would virtually amount to decreeting the suit. The submission is unacceptable. The courts have held consistently that in certain circumstances particularly when there is no dispute as to the right of the plaintiff to the property there is no bar to passing an interim order even if it amounts to decreeing the suit [see : Thomson v. Park: 1944 (2) All ER 477; Heywood v. B.D.C Properties Ltd. 1963 (2) All ER 1063 at page 1066; Woodford v. Smith : 1970 (1) All ER 1091 at page 1093; Manchester Corporation v. Connolly : 1970 (1) All ER 961 at pages 964, 967; New Chhatabar Coal Co. Ltd. V. J.G. Kumarmangalam : AIR 1974 Cal. 242 (para 27); Indian Cable Company Ltd. V. Smt. Sumitra Chakraborty : AIR 1985 Cal. 248; Chanda Jhunjhunwalla v. State of West Bengal : 89 CWN 924]. In this case the appellant has never claimed that the machinery and equipment leased to it by the respondent belonged to the appellant

> ***it has not even a prima facie right thereto. Even the right to user under the agreement was dependent upon payment of rental. Admittedly the appellant has not paid any amount to the respondent for its continued use of the equipment at least from March, 1997. The court cannot be party to a continued breach of agreement. In our opinion, the facts in this case are such that the trial court rightly directed the return of the respondent's machines 7 equipment to the respondent."***

However, in ***Deoraj (supra***) the Apex Court has succinctly held that if the law is so rigid that the temporary injunction cannot be granted in mandatory form or would tantamount to granting the final relief, it may invite a converse situation that non granting such interim reliefs may tantamount to the dismissal of the suit as well. However, it is held that in a case where the temporary injunctions are passed in mandatory form apart from the existence of the prima facie case, balance of convenience and inconvenience and the irreparable loss and injury, the case must stand on a higher pedestal of the aforesaid principles and in order to invoke such powers a very strong prima facie case is required to be made out in the following:

> ***12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner very strong***

prima facie case – of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.

What can be discerned from the aforesaid reports and the law enunciated therein, there is no absolute fetter on the part of the court in granting an inter locutory reliefs in mandatory form but such extraordinary power should be exercised in a rare cases based upon an exceptional circumstances. It is not an absolute rule that the court shall stay hands in passing an interim reliefs as it would tantamount to granting the final relief either partially or in entirety. The parties of the suit having prevaricated its stand after noticing the institution of the suit making the situation irreversible or irremediable, the court may exercise its discretion in passing an interlocutory order in mandatory form to restore the situation as it existed either on the date of the presentation of the plaint or at the point of undisputed stand. Such power is eminent and well recognized in legal parlance but should be exercised with great caution, circumspection and only in a rarest of rare cases depending upon the extraordinary and exceptional circumstances.

We, thus, do not find any absolute fetter having put on the court in passing the temporary injunction at the interlocutory stage in mandatory form.

Reverting back to the factual matrix whether any case of such exceptional factors eminent from the pleading having made out warranting such discretion to be exercised in extraordinary manner is required to be seen. Clause 7 and 9 create an obligation on the part of the respondent no. 3 in refunding the amount on account of the loan received from respondent no. 4 with interest if any, due in the event of a cancellation and/or termination of an agreement which is further circumscribed with the condition for granting NOC or the permission by the respondent no. 4. Though the initial correspondence exchanged between the aforesaid respondents may suggest that the steps were taken under the aforesaid clauses yet the subsequent correspondences would reveal that the invocation was postponed on one pretext or another.

There is no dispute to the Quadrupartite Agreement as neither of the parties has taken a stand that the same was repudiated for any reason whatsoever. The parties to the contract are bound to act on the basis thereof and cannot take a stand that the same is not binding upon them. If the terms are indicative of the fact that its invocation is circumscribed by certain eventualities unless such event happens the invocation at the interlocutory stage may not be proper. Apart from the same, the findings returned in the impugned order in relation to the triggering of the aforesaid clause does not invite the interlocutory reliefs to be granted in mandatory form. There is no finding made on the exceptional circumstances or a strong prima facie case having made out for exercising the discretion by the court to issue mandatory injunction at interlocutory stage.

We thus find that the order impugned cannot be sustained. The same is hereby set aside.

Since the application for temporary injunction is otherwise ready for final disposal, we request the learned Single Judge to dispose of the same as early as possible without being persuaded by the findings made hereinabove.

The appeal is allowed.

All the inter locutory applications including cross objection filed in the appeal are accordingly disposed of.

No order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Rabindranath Samanta, J.)