

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.589 of 2021

Ravi Poddar, Son of Shree Shiv Bhagwan Poddar, Resident of Jawahar Lal Road, Police Station-Town, District-Muzafarpur.

... .. Appellant/s

Versus

1. M/s Mitra Mandal Sangathan (Association of Person) Hereinafter Called AOP through its President, Kali Das Singh aged 45 Years.
2. Kali Das Singh, S/o Munna Lal Singh Resident of Y-22/05, Awas Vikas Kalyanpur Kanpur City, Uttar Pradesh Permanent Address Village and Post Kashipur, District-Kanpur Dehat, Uttar Pradesh, Pin-209311.
3. Ajit Kumar, S/o Akhileshwar Prasad, Resident of Marhowrah Khur, P.S. Marhowrah, District - Saran Chapra.
4. Miss Sandra, D/o Shri Ram Avadh Singh, Resident of Village and Post Rampart, District - Ghazipur (Uttar Pradesh) Pin-(233001)
5. Hemant Singh, Son of Rama Singh, Resident of Village and Post Kashipur Kanpur Dehat, District - Kanpur (Uttar Pradesh) Pin-209311
6. Anil Katiyar, S/o Shri Ratan Katiyar, Resident of Ashok Nagar, Belhaur Kanpur Nagar (Uttar Pradesh), Pin-(208001)
7. Raj Kumar, S/o Resident of Mohalla Narendra Nagar, H. no 37/0 Unnao Disrict-Unnao (Uttar Pradesh) PIN-(20981)
8. Santosh Kumar, S/o Kali Charan Singh, Resident of Plot no. 16 Ganga Nagar, Shyam Nagar Kanpur, District Kanpur Nagar (Uttar Pradesh) Pin-(20931)
9. M/s Mitra Mandal Sangathan, A Society Registered Under UP Co-Operative Act 1965 through its Chairman Kali Das Singh, S/o Munna Lal Singh, Resident of Y-2215 Awas Vikash Kalyanpur Kanpur City (Uttar Pradesh).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. J.P. Singh, Advocate Mr. Chandra Mohan Jha, Advocate Mr. Dhananjay Kumar Singh, Advocate
For the Respondent No. 3	:	Mr. Samrendra Kumar Jha, Advocate
For the Respondent Nos. 1,2 and 9	:	Mr. Rajeev Kumar Singh, Advocate Mr. Harish Kumar, Advocate Mr. Alok Chandra, Advocate
For the Respondent Nos. 5, 6, 7 and 8	:	Mr. Waliur Rahman, Advocate Mr. Nishant Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT



Date : 02-08-2023

Heard learned counsel for the parties.

2. This Miscellaneous Appeal has been filed for setting aside the order dated 04.10.2021 passed in the Title Suit No. 625 of 2019 by the learned Additional Sub-Judge- 1, Saran at Chapra, whereby the petition filed under Section 94 read with Order 39 Rule 1 and 2 CPC by the plaintiff/ appellant for grant of temporary injunction to restrain the defendants / respondents from transferring suit property has been rejected.

3. The appellant is the plaintiff in the suit and defendant - respondent No. 1, namely, M/S Mitra Mandal Sangathan is an Association of person (AOP) formed for the purpose of purchase and sale of land and it has to act through its president. The defendant / respondent Nos. 2 to 8 are its founder members. Members of defendant No. 1 appointed defendant - respondent No. 2 as its President. On reference made by BIFR for winding up sick company, namely, M/S Saran Engineering Company Ltd., Mis. Company Application No. 06 / 1995 was registered by Allahabad High Court and the company Judge appointed official liquidator who directed for its auction sale of immovable and movable properties. Defendant No. 1, M/S Mitra Mandal Sansthan submitted its tender by depositing a draft of Rs. 5 lac dated 06.01.2004, participated in public



auction held on 07.01.2004 in open Court of learned Company Judge, Allahabad High Court and offered highest amount of Rs. 67 Lac for lot No. 1 property i.e. for land and building of the factory of M/S Saran Engineering Company Ltd. in open bid which was accepted and was provisionally confirmed the sale in its favour by directing the purchaser defendant no. 1 to deposit 31 lacs within 2 months and remaining 31 lacs was to be paid on the date when plant and machinery be removed by M/S Gunjan Trading Company who had purchased the plant and Machinery i.e. Lot No. 2 of M/S Saran Engineering Company Ltd. It was also stated that until payment is made the purchaser defendant no. 1 was not entitled to deal with the property.

4. M/S Mitra Mandal Sangathan (defendant no. 1) did not have enough capital to pay the said sale consideration amount, accordingly, approached the plaintiff / appellant to pay Rs. 23.45 lacs (i.e. 35% of total sale consideration of Rs. 67 lacs) to defendant-respondent No. 1 for which the defendant – respondent No.1 through defendant- respondent No. 2 offered to transfer 35% ownership in the share of land and building of M/S Saran Engineering Ltd. purchased by M/S Mitra Mandal Sangathan in Court sale. Accordingly, an agreement dated 07.04.2004 was executed. The plaintiff-appellant made payment



through five demand drafts and cash of Rs. 27,500/- for total Rs. 11,72,500/-. The drafts were made in favour of official liquidator, Allahabad High Court which was half of Rs. 23.45 lacs and gave the same to defendant-respondent No. 2 who deposited the same with official liquidator, Allahabad High Court and the said fact is mentioned in the said Agreement.

5. The plaintiff – appellant claimed that soon thereafter he paid remaining amount i.e. Rs. 11,72,500/- to defendant – respondent No. 2 in cash on different dates in November and December, 2005 in 3 installment for payment of balance sale consideration by defendant-respondent No. 1 to official liquidator. The defendant-respondent No. 1 paid Rs. 31 lacs on 03.01.2006 with the official liquidator, Allahabad High Court which includes the payment of Rs. 11,72,500/- made by plaintiff – appellant to defendant-respondent No. 2.

6. The learned Company Judge vide order dated 08.02.2006 confirmed the sale in favour of defendant-respondent No. 1. On misrepresentation that M/S Mitra Mandal Sangathan is a sister concern of M/S Gunjan Trading Company represented by Raj Kumar Agarwal, the sale deed dated 08.06.2007 was executed in the name of M/S Mitra Mandal Sansthan as sister concern of M/S Gunjan Trading Company



represented by Raj Kumar Agarwal. M/S Mitra Mandal Sansthan got registered itself under U.P. Society Registration Act on 24.08.2016. A dispute of management started and the competent authority affirmed that defendant -respondent No. 2 is the Chairman of the society and defendant – respondent nos. 3 to 8 are members and, accordingly, the land and building was handed over to defendant - respondent No. 2.

7. It is further claimed that the appellant was waiting for the resolution of dispute regarding the removal of cloud over the title of defendant No. 9 and in 2019 all the disputes regarding title, ownership and possession of defendant No. 9 was settled by competent authority and official liquidator. In 2019, the plaintiff - appellant asked defendant No. 2 to honour and abide by the terms and conditions of the agreement and requested to demarcate his 35% share and hand over the land and building falling under his share but the defendant No. 2 avoided to specify the share and handover the same and consequently, the appellant filed the aforesaid suit.

8. Learned counsel for the appellant submits that the trial Court failed to appreciate that the appellant approached the Court to enforce the contract rather than receiving mere monetary consideration. The appellant shall suffer irreparable



injury if the relief of temporary injunction is not granted.

9. He further submits that if temporary injunction is not granted transfer of suit property to third party would result in complication and multiplicity of proceeding by inclusion of many persons. On 09.10.2021 after rejection of injunction petition by trial court on 04.10.2021, defendant – respondent No. 2 is in haste has started selling the land and executed 8 sale deed of disputed land. The trial court has not considered that the appellant has a strong *prima facie* case, balance of convenience lay in favour of the plaintiff and if injunction is not granted, the appellant would suffer irreparable injury. The learned trial Court vide order dated 14.11.2019 passed an order of status quo till filing of show cause by defendants. The defendant-respondent Nos. 2 and 5 filed show cause / written statement stating that on failure to make payment of balance amount, the agreement stood automatically terminated and suit was barred by limitation.

10. The learned trial Court held that the execution of agreement is an admitted document but injunction petition was rejected primarily on the ground that since the respondent states that remaining balance amount was not paid, the agreement stands terminated and under such circumstances, the



appellant does not have a *prima facie* case and if injunction is not granted, the plaintiff-appellant will not suffer irreparable injury as he may be compensated in terms of money.

11. Further, he has submitted that it is well settled that when lis is admitted then it is the duty of the court to preserve the subject matter of the dispute by an interim order so that it can be available at the time of adjudication.

12. Learned counsel for the appellant has submitted that in the present case the plaintiff has *prima facie* case and if the temporary injunction is not granted by restraining the defendant then subject matter of dispute will not be available for adjudication in view of the conduct of the defendants who transferred the suit land in haste. There is a disputed question to be tried in the suit.

13. Learned counsel for the appellant has further submitted that respondent no. 3 who was the Secretary of the said AOP has categorically accepted the share of the appellant in the learned trial court. It is also submitted that the appellant also made payment of Rs. 16 lac through draft to the labour Union of Marhaura and distributed 56 lac as cost among them for vacating the land of the said company for which a certificate was issued to him by the G. M. of the said company.



14. He has further submitted that after rejection of injunction petition by the learned trial court on 04.08.2021 the defendant respondent no. 2 has started transferring the suit land and has executed eight sale deeds. Status quo order with respect to suit property was passed by this Court vide order dated 11.08.2022 and the same has been continued during pendency of this case vide order dated 25.08.2022.

15. He has next submitted that respondent no. 2 filed a petition under Order 7 Rule 11 CPC before the trial court to linger the case which was rejected vide order dated 23.03.2023. Respondent no. 2 sought time for filing Revision against the said order dated 23.03.2023, but no revision has been filed till date. Respondent no. 2 is trying to create hindrance in disposal of the suit. Respondent no. 2 has sold more than 10 *bighas* of valuable land from the road side out of total 23 *bighas* in violation of clause 6 of the said agreement between the parties.

16. Further, he has submitted that if the appellant did not pay the balance amount then why the respondent no. 2 did not serve him any reminder or notice for said payment and how did he succeed in obtaining the said auction. The appellant fulfilled his obligation towards the agreement but respondent



no. 2 wants to grab his share.

17. *Per contra*, learned counsel for the respondents has submitted that respondents have become absolute owners and title holders of the suit land and, accordingly, have every right of transfer/alienate the suit property and manage the same in their own way. In the counter-affidavit filed on behalf of the respondent nos. 1, 2 and 9, it is stated that the appellant ditched the respondents making part payment of Rs. 11,75,500/- against the agreed amount of Rs. 23.50 lac and rest half was not at all paid and the paid amount would have been forfeited and the appellant had got no claim whatsoever over the property under auction from the respondents. The appellant failed to meet the terms of agreement and not made the payments of money agreed upon and by failing to do so the appellant has got no right or interest in the suit property.

18. Further, it is submitted that appellant has no *prima facie* case, balance of convenience is not in his favour and no irreparable loss would be cause, if temporary injunction is not granted in his favour and learned court below rightly rejected the temporary injunction petition filed on behalf of appellant. He has further submitted that in the suit for specific performance temporary injunction may be granted only in exceptional case only.



19. Further, it is submitted that respondent no. 2 under RTI has submitted an application in the office of Official Liquidator, Allahabad who informed the respondent no. 2 that demand draft as claimed by the appellant had not been encashed and credited in the Official Liquidator, Allahabad. Thus, the appellant has not invested a single penny against the property under consideration.

20. Having heard the learned counsel for the parties and on perusal of material on record, it appears that in the affidavit dated 25.11.2014 of Kali Das Singh (respondent no. 2) before the High Court at Allahabad in paragraph 14 categorical stated that in his efforts to raise the said amount, the deponent entered into an agreement with Ravi Poddar son of Sri Shiv Bhagwan Poddar agreeing to 35 per cent share of the land and building purchased by M/S Mitra Mandal Sangthan in auction conducted by the Hon'ble High Court on 07.01.2004. In exchange of the said share Mr. Ravi Poddar was to pay Rs. 23.45 lacs through drafts and cash. At the time of executing the said agreement Sri Ravi Poddar paid a total of Rs. 11,72,500/- through 5 different drafts drawn in favour of Official Liquidator including a sum of Rs. 27,500/- which was paid to the deponent in cash. Since the deponent was able to raise a sum of Rs.



11,72,500/- by 7.04.2004 he deposited the same before the official liquidator even though M/S Gunjan Trading Company by that time had not removed the plant and machinery as directed by the Hon'ble Court. A true copy of the agreement dated 07.04.2004 is annexed as Annexure 6 to this affidavit.”

21. In paragraph 16 of written statement filed on behalf of defendant no. 2 he has admitted to the effect that plaintiff voluntarily deposited draft and cash Rs. 11,72,000/- only to the liquidators on 02.04.2004. Then thereafter failed to pay rest amount out of Rs. 23.45 lacs to the liquidation. The defendant no. 2 requested him to pay rest amount, but he refused to pay and did not pay rest amount to the liquidator. The defendant no. 2 paid the amount. The plaintiff himself broken the terms of agreement and withdrawn from the alleged agreement.

22. The law regarding grant of temporary injunction and interlocutory order is covered by Order 39 of the CPC. It is now well settled that before a court grants a temporary injunction, it needs to be satisfied that a person seeking an injunction has a *prima facie* case in his favour and that balance of convenience and irreparable injury also lies in his favour.



23. The Hon'ble Supreme Court in [Kishoresinh Ratansinh Jadeja v. Maruti Corpn](#), (2009) 11 SCC 229 held that it is well established that while passing an interim order of injunction under order 39 Rules 1 and 2 CPC, the Court is required to consider:

(i) whether there is a prima facie case in favour of the plaintiff;

(ii) whether the balance of convenience is in favour of passing the order of injunction; and

(iii) whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.

24. The Hon'ble Supreme Court in the case of **Hazrat Surat Shah Urdu Education Society Vs. Abdul Saheb** reported in 1988 (4) Judgments Today 232 : MANU/ SC/0651/ 1988 observed that no temporary injunction should be issued unless the three essential ingredients are made out, namely (1) *Prima facie* case, (ii) balance of convenience (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the Court will be justified in declining to issue injunction.



25. The word 'prima facie case' apparently indicates something which at first impression makes out a triable case. The term 'prima facie case' should not be confused with the term 'prima facie title' which has to be established at the trial upon permitting the parties to lead evidence. Thus, it means a substantial question which has been raised and which upon first sight needs to be investigated and decided on merits.

26. The word 'balance of convenience' denotes that the court must be satisfied that the comparative mischief and hardship which is likely to be caused to the person seeking injunction is more than the inconvenience likely to be caused to the other party by granting such injunction.

27. The word 'irreparable injury' guides the court to be satisfied that the refusal to grant injunction would result in such injury which cannot be compensated in term of costs or otherwise and the person seeking injunction needs to be protected from the consequences of apprehended injury.

28. While dealing with aforesaid three ingredients, the court must refrain from holding a mini trial. The court should make an endeavor to test the relevant pleadings in the light of the principles as noted above and if it finds that there is a contestable issue which requires evidence of the parties to be



decided and balance of convenience and irreparable injury is in favour of the party seeking the injunction then the status be preserved, as at the initial stage the rights of the parties are in an inchoate stage. The court would require the evidence to determine the rights of the parties which can only be crystallized after trial and can enable the court to form a definite opinion whether the plaintiff has a valid right or interest to pass a decree in his favour or not.

29. Considerations of equity and interests of justice would justify preservation of status quo in respect of corpus of the dispute. This is simply because, if ultimately, the case of the plaintiff is found to be without merit, the defendant could deal with property as it chooses and also be adequately re-compensated for the prejudice, if any, which has been caused by its inability to do so in the interregnum whereas, if the status of the property, whether in respect of title or possession, alters during the pendency of lis, the resultant prejudice to the plaintiff might be irremediable. Principles of balance of convenience too, therefore, normally justify maintenance of the status quo during the pendency of the litigation.

30. In **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors.** reported in (1992) 1 SCC 719, the Hon'ble Supreme



Court has held that Rule 1 primarily concerned with the preservation of property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court, on exercise of power of granting ad interim injunction, is to preserve the subject matter of the suit in the *status quo* for the time being. Grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that (1) there is serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendants, (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

31. The Hon'ble Apex Court further held that there should be *prima facie* case in favour of applicants which needs adjudication at the trial. The existence of the prima facie right



and infraction of the enjoyment of his property or right is a condition for the grant of temporary injunction. Prima Facie case is not to be confused with prima facie title which has to be established, on evidence at the trial.

32. This Court in **Dular Chand Sah & Ors. Vs. Devnath Sah & Ors.** reported in MANU/BH/0794/2015 observed as follows:-

“ The person who is seeking injunction has to satisfy the Court three ingredients, namely, *prima facie* case, balance of convenience and irreparable loss. If any of the ingredients is missing the Court would refuse to grant injunction. Satisfaction of *prima facie* case by itself is not sufficient to grant injunction. The Court has to satisfy itself that non-interference by the Court would result in irreparable injury to the party seeking relief and there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely, one that cannot be adequately compensated in terms of money. Even where *prima facie* case is made out in favour of the plaintiff, the



Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable...”.

33. The Hon’ble Supreme Court in **Ambalal Sarabhai Enterprise Ltd Vs. KS Infra Space LLP Ltd.** reported in **(2020) 5 SCC 410** observed in para 15 & 16 as follows-

“15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as ‘the Act’) provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.

*16. The cardinal principles for grant of temporary injunction were considered in **Dalpat Kumar vs. Prahlad Singh, (1992) 1 SCC 719**, observing as follows :*

“5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also



is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

34. From the material on record as discussed above, it appears that it is not in dispute that an agreement dated 07.04.2004 was executed between the plaintiff/ appellant and defendant- respondent no. 2 in which the part payment of Rs. 11,75,500/- out of Rs. 23.50 lac had been stated as paid amount. The question with respect to payment of remaining amount is in dispute whether the same has been paid by petitioner to defendant-respondent no. 2 or not. There is no provision in the agreement for forfeiture of paid amount if further balance amount is not paid. The said question is a matter of trial. The payment of Rs. 11,75,500/- by petitioner to defendant no. 2 has been admitted by respondents in various documents including in written statement, counter affidavit, affidavit submitted before Allahabad High Court also. The said agreement is the basis of



suit. The admitted payment of 50% amount of total agreed amount shows that petitioner has strong *prima facie* case in his favour. Sale of about 10 acre land out of 23 acres suit land through 8 sale deed just after dismissal of injunction petition itself shows the intention and conduct of respondent no. 2. After accepting the part payment of Rs. 11,75,500/- by petitioner at various forum now denying the same also shows the conduct of respondent no. 2 during the present proceeding.

35. In writ application CWJC No. 19782 of 2021 arising out of same Title Suit No. 625 of 2019, with consent of all parties therein, the writ application was disposed of on 24.11.2022 with a direction to learned trial court to dispose of said title suit within a year from the date of communication of the order. It is also stated that both the parties submits that this application may be disposed of accordingly and they undertaken to cooperate the trial court to dispose of the suit within the stipulated period. It appears from the report of trial court that the case is still pending for appearance of parties.

36. Except respondent no. 4, other respondents have appeared in this Court in this case and they are expected to cooperate the trial court to adjudicate the suit itself within the time fixed.



37. In the aforesaid facts and circumstances and the law discussed above, in my considered opinion the petitioner has strong *prima facie* case, balance of convenience lies in his favour and irreparable loss would be caused if temporary injunction is not granted in favour of plaintiff/ appellant. This Miscellaneous Appeal is liable to be allowed. The impugned order is, accordingly, set aside and this Miscellaneous Appeal is allowed.

38. Litigation between the parties are pending before the learned trial court, this court at this stage, refrain from returning findings of facts or express any opinion on merits of the suit. Nothing in the present order shall be deemed or construed as any expression of opinion or observation by this court at the final hearing of the suit which naturally will have to be decided on its own merit. This Court has already given direction to conclude the trial within one year as stated earlier and the same is reiterated.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	11.07.2023
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