**17.05.2023**
**SL No.10**
**Court No.8**
**(gc)**

**FMAT 221 of 2023**
**CAN 1 of 2023**

**Vedica Sanjeevani Projects Pvt. Ltd. & Anr.**
**Vs.**
**Williamson Magor & Company Ltd. & Ors.**

Mr. Surojit Nath Mitra, Sr. Adv.,
Mr. Moinak Bose,
Mr. Anirban Roy,
Mr. Sidhartha Sharma,
Mr. Rishav Dutt,
Mr. Varun Kothari,
Mr. Rohit Bhattacharjee,
…for the Appellants.
Mr. Rishav Banerjee,
Mr. Srinjoy Bhattacharya,
Ms. Nikita Rathi,
…for the Respondent Nos.1 to 5.
Mr. Rohit Das,
Mr. Dwaipayan Basu Mallick,
Ms. Suchismita Ghosh Chatterjee,
Mr. Abhishek Kisku,
Mr. Pranshu Paul,
Mr. Subhankar Das,
…for the Respondent No.8.
Mr. Ranjan Bachawat, Sr. Adv.,
Mr. Arkaprava Sen,
…for the Respondent No.9.
Mr. Jishnu Chowdhury,
Mr. Ritoban Sarkar,
Mr. Srinjoy Bhattacharya,
Ms. Nikita Rathi,
…for the Respondent Nos.10 to 12.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The dispute is essentially with regard to control and management of the immovable properties situated at Neemrana. A proceeding initiated by the secured creditors in respect of such properties is pending. The creation of security interest in favour of respondent Nos.7 and 8 has been challenged in the suit. The appellants have contended that the purpose for which they have executed several documents was misused and all these documents were utilized for different purpose not intended and are now sought to be enforced fraudulently against the interest of the appellants. There is no dispute that the appellants are the owners of the properties at Rajasthan over which the parties are presently at loggerhead and the respondent No.9 has enforced mortgage on behalf of the Respondent Nos.7 and 8 against such properties.

The learned Counsel for the parties have drawn our attention to the orders and affidavits filed in the proceedings arising out of the enforcement of mortgage by the secured creditors. In the suit, it is contended that the creation of security interest by the Williamson Financial Services Ltd. or the Mc Leod Russel India Ltd. was fraudulent and contrary to the *inter se* agreement or arrangement between the appellants and the Mc Leod Russel India Ltd.

The learned Counsel for the appellants has submitted that although the Trial Court was of the view that a prima facie case has been made out but has refused interim order on the ground that it involves convoluted facts.

We are partly in agreement with the submission made on behalf of the appellants. The Trial Court having set out the facts it was incumbent upon the Trial Court to consider the issues and to decide whether the trinity tests have been complied with or not. If the plaintiff was able to make out a prima facie case and an arguable case on merits, it was incumbent upon the Trial Court to protect the interest of the appellants till the returnable date. We do not agree with the reasoning for refusal to pass an interim order.

However, the facts as now revealed, we feel that affidavits are required to be filed but at the same time some protective order is required to be passed, otherwise, in the event the plaintiff succeeds in the suit, it may result in irreparable loss and prejudice for them. As it appears that the Williamson Financial Services Ltd. have withdrawn their objection to the enforcement of the security interest and till date no steps have been taken by the appellants against the measures taken under Section 13(4) of the Securitization Act.

The appellants however, are not remediless if any measure is taken under Section 13(4) of the said Act. Moreover, if the property is sought to be auctioned against the security interest, the appellants would have a right to challenge such measure in accordance with law. The enforcement of mortgage however, can only be in accordance with Rules 8(6) and 9(1) of the Security Interest Enforcement Rules, 2002. To the aforesaid extent the rights of the appellant are protected.

All the respondents are directed to file their affidavit-in-opposition by 30th May, 2023. Reply thereto, if any, shall be filed by 9th June, 2023.

The learned Trial Judge is requested to reconsider the prayer for injunction on consideration of the affidavits to be filed by the parties and after giving a reasonable opportunity of hearing to the learned Counsel for the parties.

The learned Counsel for the respondents has raised an issue of maintainability of the suit. The said issues are left open and shall be decided if raised in the pending proceeding.

Mr. Mitra has submitted that since the basis of the agreements are challenged and such agreements are now being used unauthorizedly and for improper purpose the suit is maintainable as the basis of enforcement of such agreements is now being challenged.

We request the learned Trial Judge to dispose of the injunction application preferably by 30th June, 2023 subject to the convenience of the learned Trial Judge and without granting any unnecessary adjournment to either of the parties unless it is unavoidable.

The direction with regard to the filing of affidavits is peremptory.

We make it clear that we have not gone into the merits of the matter and the learned Trial Judge shall decide the matter uninfluenced by the observation made in this order.

With the aforesaid observation, the appeal and the application are, accordingly, disposed of.

However, there shall be no order as to costs.

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

**(Uday Kumar, J.)** **(Soumen Sen, J.)**