

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

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**CO 3376 of 2023
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.**

With

**CO 1038 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.**

With

**CO 1039 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.**

With

**CO 1042 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.**

With

**CO 1043 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.**

With

**CO 1046 of 2024
J. M. Financial Asset Reconstruction Company Limited**

Vs.
Abhinandan Holdings Private Limited & Anr.

With

CO 1049 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.

With

CO 1577 of 2024
J. M. Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.

For the Petitioners : Mr. Ratnanko Banerjee
Ms. Aasia Hasanadvocates

For the Opposite Party no. 1 : Mr. S. N. Mookherjee
Mr. Debnath Ghosh
Mr. Sarojit Dasgupta
Mr. Saptarshi Banerjee
Mr. Subhrajyoti Mookherjee
Mr. Sushovit Dutt Majumdar
Ms. Ratnadipa Sarkar advocates

For the Opposite Party no. 2 : Mr. Abhrajit Mitra
Ms. Sarbapriya Mukherjee
Mr. Biswajit Kumar
Mr. Rajarshi Ganguly advocates

Reserved on : 26.07.2024

Judgment on : 02.08.2024

Hiranmay Bhattacharyya, J.:-

1. CO 3376 of 2023 is at the instance of the 1st defendant and is directed against an order being No. 23 dated August 2, 2023 passed by the learned Judge, Commercial Court, Rajarhat, District 24 Parganas North in Title Suit No. 22 of 2021 (CC).
2. The order impugned therein is an ad interim order of injunction passed in terms of prayer (a) of the petition under Section 151 dated July 27, 2023 till September 16, 2023. The said ad interim order of injunction was extended from time to time and such extension orders have also been challenged in the other Civil Revision Applications. Therefore, all the Civil Revision Applications were heard analogously and are being decided by this common judgment and order.
3. The opposite party no. 1 herein as plaintiff filed a suit being Title Suit No. 22 of 2021 before the learned Judge Commercial Court at Rajarhat for specific performance of the agreement dated January 15, 2020, perpetual injunction for delivering up and cancellation of the letter dated March 2, 2020 issued by the 1st defendant to the plaintiff and for a mandatory injunction directing the 1st defendant to forthwith execute and register deed of assignment in terms of the agreement dated January 15, 2020 and for other consequential beliefs. The opposite party no. 1 filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure and the learned Trial Judge by an order being no. 2 dated September 29, 2021 restrained the petitioner herein and/or his men and agents from giving any further effect or acting on the basis of the letter dated March 2, 2020 for a limited period. Thereafter the opposite party herein filed an application under Section 151 of the Code of Civil Procedure inter alia praying for an order restraining the petitioner herein and/or his men and agents and servants from creating any third party interest over and in respect of the accounts of the plaintiff/petitioner by transferring the loan accounts of the plaintiff/opposite party no. 1 maintained with the

defendant no. 1 /petitioner herein of the financial assets of the petitioner/Opposite Party no. 1 herein either to asset reconstruction company or to any banking company or to any financial institution or any other entity in law, in any manner either with or without the leave of the Court. The learned Trial Judge, by the order impugned, passed an ad interim order of injunction in terms of the prayer (a) of the petitioner filed under Section 151 for a limited period.

4. Mr. Mukherjee, learned Senior Counsel representing the opposite party no. 1 raised two fold objections against the maintainability of the application under Article 227 of the Constitution of India. He submitted that the nature of the reliefs prayed for fall within the scope of Order 39 Rule 1 and 2 of the Civil Procedure Code though the application was wrongly captioned as one under Section 151 of the Civil Procedure Code and, therefore, an appeal lies Order 43 of the Code against the order impugned. Mr. Mukherjee contended that in view of Section 13 of the Commercial Courts Act, 2015 the appeal lies before the Commercial Appellate Division of this Hon'ble Court. By referring to the decision of the Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others vs. Tuticorin Educational Society and Others*** reported at **(2019) 9 SCC 538**, Mr. Mukherjee contended that in view of availability of an appellate remedy in terms of the provisions of the Civil Procedure Code, an approach to this Court by way of an application under Article 227 of the Constitution of India should not be entertained. Mr. Mukherjee further contended that the original ad interim injunction order passed on 02.08.2023 lost its force by efflux of time and, therefore, CO 3376 of 2023 is not maintainable at this stage. With regard to the scope of Article 227 of the Constitution of India, Mr. Mukherjee placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and Others*** reported at **(1998) 5 SCC 749**. He further contended that a litigant cannot be deprived of the remedies merely because the relevant provisions of statute has not been mentioned if the grounds for

the relief prayed for exists and the same have been set out in the petition. In support of such contention he placed reliance upon a decision of this Court in Re. **Sulekha Works Ltd.** reported at **AIR 1965 (Cal) 98**. He submitted that when there is an express provision of appeal under the Civil Procedure Code, a revision petition cannot be filed by passing the said appellate remedy. In support of such contention he placed reliance upon a decision in the case of **Koushik Mutually Aided Cooperative Housing Society vs. Ameena Begum and Another** reported at **(2023) SCC Online SC 1662**.

5. Mr. Mitra, learned Senior Counsel representing the Opposite party no. 2 also raised an objection as to the maintainability of this appeal as, according to him, the nature of the relief prayed for and granted by the learned Trial Court falls within the scope of order 39 Rule 1 and 2 of the Code of Civil Procedure. He placed reliance upon the decision of the Hon'ble Division Bench of this court in the case of **Sukhendu Maity vs. Abhinaba Prakashan and Ors.** reported at **2005 (3) CHN 1** and **Banwarilal Jalan vs. Pramod Kumar Jalan** reported at **2011 (3) CHN 257** in support of his contention that an appeal lies against the impugned order and, therefore, the Civil Revision Application is not maintainable.
6. Mr. Banerjee, learned Senior Counsel representing the petitioners submitted that though the initial ad interim injunction passed by the order dated 02.08.2023 was for a limited period, the subsequent extensions have also been challenged by filing separate revisional applications. He further submitted that since the original order of ad interim injunction as well as the subsequent extensions have been challenged, the revisional application cannot be dismissed on the ground that the initial order has lost its force. Mr. Banerjee submitted that the plaintiff/opposite party no. 1 herein prayed for certain reliefs by filing an application under Section 151 of Code of Civil Procedure. The nature of the reliefs prayed for do not fall within the scope of order 39 Rule 1 and 2 of the Code of Civil Procedure. He submitted that the learned Trial Judge, granted reliefs as prayed for by the Opposite Party no. 1 by treating the said application as an application under Section 151 of the

Code of Civil Procedure. He submitted that since an order was passed on an application under Section 151 of the Code, the petitioner rightly approached this Court under Article 227 of the Constitution of India.

7. Heard the learned Advocates for the parties and perused the materials placed.
8. The Opposite Party no. 1 filed the suit inter alia for a decree for specific performance of the agreement dated 15.01.2020. It was also prayed that the letter dated 02.03.2020 issued by the defendant no. 1 to the plaintiff be adjudged null and void and same be delivered up and cancelled.
9. The case made out by the opposite party no. 1 in the plaint is that the plaintiff and the defendant no. 1 entered into an agreement to assign dated January 15, 2020 by virtue of which the plaintiff had undertaken to take over the financial assets of the defendant no. 2 from the defendant no. 1. The plaintiff has paid Rs. 6.50 crores and Rs. 1 crore to the defendant no. 1. The defendant no. 1, by a letter dated March 2, 2020 purported to forfeit the money paid by the plaintiff and to terminate the said agreement. Onset of Covid-19 pandemic was stated as the reason for the failure to pay the stipulated installments. Plaintiff stated that it is ready and willing to pay the balance sum of Rs. 18.51 crores by three installments.
10. The learned Trial Judge by an order dated September 29, 2021 passed an ad interim order restraining the petitioner and his men and agents from giving any further effect or acting on the basis of letter dated March 2, 2020 for a limited period.
11. Alleging that the petitioner herein is trying to deny the right, title and interest of the plaintiff/opposite party no. 1 herein in respect of the loan account thereby purporting to transfer the same to some other financial institution and/or an asset reconstruction company, the opposite party no 1 filed an application under Section 151 of the Code of Civil procedure and prayed for the certain reliefs. Prayer (a) of the said application would be relevant for which the same is extracted hereinafter.

“(a) The respondent no. 1 and/or its men, agents, servants and assigns be restrained from creating any third party interest over and in respect of the accounts of the petitioner, by transferring the loan account of the petitioner maintained with the defendant no. 1 or the Financial Debt of the petitioner either to any Asset Reconstruction company or to any banking company or to any financial institutions, or any other entity in law, in any manner whatsoever, with or without the leave of this learned Court;”

12. The impugned order was passed on an application captioned as one under Section 151 of the Code of Civil procedure. The question that falls for consideration in this civil revision application is whether this application is maintainable or not.
13. Section 151 of the Code of Civil Procedure is an enabling provision by which the Court is vested with inherent powers to administer substantial justice. It is well settled that inherent powers under Section 151 of the Code can be exercised in cases where there is no express provision in the Code in that regard. Inherent powers also cannot be exercised in cases where there is an express prohibition in the Code with regard to the claim of a party. Order 39 Rule 1 of the Code lays down the cases in which temporary injunction may be granted. Rule 2 of Order 39 enables the Court to grant injunction restraining the defendant from committing a breach of contract or other injury of any kind. Therefore, powers under Section 151 cannot be exercised in cases falling under Order 39 Rule 1 and 2 of the Code of Civil Procedure. It is well settled that in cases not covered by the provisions of Order 39 Rule 1 and 2 of the Code, Court can pass an order of injunction if the same is required for the interest of justice.
14. Mr. Banerjee would contend that the order of injunction passed by the learned Judge was under Section 151 as the reliefs sought for by the Opposite Party no. 1 are not covered under Order 39 Rule 1 and 2 of the Code. On the other hand, Mr. Mukherjee contended that the reliefs sought for are squarely covered under Order 39 Rule 1 and 2 of the Code.
15. After going through the averments made in the application under Section 151 and the reliefs claimed, this Court finds that the opposite party no. 1 prayed for

an order of temporary injunction in order to prevent alienation of the property which is the subject matter of dispute in the suit and/ or from causing injury to the plaintiff in relation to the property in dispute in the suit and to restrain the defendant from committing a breach of contract. To the mind of this Court, the nature of the reliefs claimed by the plaintiff/opposite party no. 1 herein falls within the scope of Clauses (a) and (c) of Rule 1 and Rule 2 of Order 39 of the Code of Civil Procedure.

16. Order 43 Rule 1 Sub-Rule (r) of the Code of Civil procedure states that an appeal shall lie from an order passed under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39. Therefore, if the nature of an order is one which is passed under Rule 1, Rule 2 of order 39, an appeal shall lie therefrom under Order 43 Rule 1(r) of the Code of Civil Procedure. Whether an order is appealable one or not is not dependent on the caption of an application. It is only the nature of the order which is relevant for deciding as to whether the same is an appealable order under Order 43 Rule 1(r) of the Code or not. Proviso to Section 13 of the Commercial Courts Act, 2015 states that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Code of Civil Procedure as amended by the 2015 Act. Therefore, an order under Rule 1 and 2 of order 39 which is appealable under Order 43 Rule 1(r) has to be challenged by filing an appeal in the manner as provided under Section 13 of the Commercial Courts Act, 2015.
17. Now the question arises whether an order of injunction passed on an application filed under Section 151 of the Code is an appealable one?
18. The said issue is no longer *res integra*. The Hon'ble Division Bench in **Sukhendu Maity** (supra) reiterated the well settled proposition of law that in deciding the question whether a particular order is appealable or not, the Court should not be guided by the wrong quotation of the provisions of a statute by the Court in the order impugned or by such wrong description given by the parties in an application upon which the order was passed, but should find out the exact provision of the statute which authorised the Court to pass such order.

19. In **Banwarilal Jalan** (supra), it was held that if a Court really passes an order of injunction within the meaning of Order 39 Rule 1 or 2 of the Code, but the application on which such order is passed, is erroneously described as one under Section 151 of the Code, for that reason, one cannot lawfully contend that the order does not come within the purview of Order 43 Rule 1(r) of the Code and should be a revisable one. It was further held that the authority to pass an order does not depend upon the wrong quotation of a Section of the Statute.
20. In the light of the proposition of law laid down in the said reports, this Court holds that for deciding as to whether the order impugned is an appealable one, the Court should look into the nature of the relief sought for and the order passed thereon rather than the form of the application. This Court has already observed that the reliefs claimed falls within the scope of Order 39 Rule 1 and 2 of the Code. The authority of the Court to pass the order(s) which is/are impugned herein, flows from Order 39 Rule 1 and 2 of the Code of Civil Procedure. This Court, therefore, holds that the order impugned was passed in exercise of powers conferred upon the Court under Order 39 Rule 1 and 2 of the Code. This Court further holds that the impugned order is an appealable one under Order 43 Rule 1(r) of the Code.
21. Mr. Banerjee would contend that the application under Section 151 ought to have been rejected in case the reliefs sought for, in the opinion of the Court, falls within the meaning of Order 39 Rule 1 and 2 of the Code.
22. This Court is not inclined to accept such contention of Mr. Banerjee in view of the decision in the case of **Sulekha Works Ltd.** (supra), wherein it has been held that a litigant should not be deprived of its remedies merely because a particular Section has been mentioned if the grounds for such relief exist and have been set out in the petition and the Court is satisfied that sufficient grounds have been made out for grant of such relief.
23. Now the question arises whether availability of remedy by way of appeal bars the exercise of supervisory jurisdiction by the High Court.

24. The Hon'ble Supreme Court in ***Tuticorin Educational Society*** (supra) made a distinction between (i) cases where the alternative remedy is available before Civil courts in terms of the provisions of the Civil Procedure Code and (ii) cases where such remedy is available under special enactments and/or statutory rules and the *fora* provided therein happen to be quasi judicial authorities and tribunals. It was held therein that in cases which may involve civil suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of the Code, may have to be construed as a near total bar. It was further held that the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy is provided under the Code of Civil Procedure itself. The Hon'ble Supreme Court held thus-

"12. But Courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before Civil Courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai, pointed out in Radhey Shyam v. Chhabi Nath that "orders of Civil Court stand on different footing from the orders of authorities or tribunals or Courts other than judicial/ Civil Courts".

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under

Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

25. In **Ameena Begum** (supra), the Hon’ble Supreme Court held that when there is an express provision under the Code of Civil Procedure under which an appeal is maintainable, a revision petition cannot be filed by passing the appellate remedy.
26. In Pepsi Foods Ltd. (supra), it was reiterated that the power of superintendence of High Court under Article 227 being extraordinary is to be exercised sparingly and only in appropriate cases. It was further held that such jurisdiction cannot be exercised as a cloak of an appeal in disguise and it does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings.
27. This Court has already held that the order impugned is appealable under Order 43 Rule 1(r) of the Code of Civil Procedure. In view of Section 13 of the Commercial Courts Act, and in the light of the aforesaid well settled proposition of law, this Court is not inclined to entertain these civil revision applications filed under Article 227 of the Constitution of India.
28. With regard to the other objection that initial ad interim order of injunction has lost its force and hence CO 3376 of 2023 is not maintainable, this Court finds that the subsequent orders extending the initial order have also been challenged by filing separate civil revision applications which were also heard. That apart, in view of the finding recorded hereinbefore, this issue has become academic and the same is thus left open.
29. For all the reasons as aforesaid, all the civil revision applications stand dismissed as not entertained and the petitioners will be at liberty to approach the proper forum for appropriate reliefs in accordance with law. It is made clear that this Court has not entered into the merits of the claims and counter claims of the respective parties.

30. The learned advocate on record of the petitioner is permitted to take back the certified copy of the impugned orders upon replacing the same with photocopy thereof.
31. There shall be, however, no order as to costs.
32. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Rinki)