D/L
Item No. 1
31.07.2025
KOLE
266301

FMAT 75 of 2025
With
CAN 1 of 2025

Shree Vaishnavi Ispat Ltd.
-Vs.-
M/s. Sharp Ferro Alloys Ltd.

Mr. Arijit Bardhan,
Ms. Satabdi Das,
Mr. Gourab Mondal,
... for the appellant.

Mr. Probal Mukherjee,
Mr. Ranabir Roy Chowdhury,
... for the respondent.

This appeal is directed against an order dated September 11, 2024, passed by learned Bench-VI, City Civil Court at Calcutta in Commercial Suit No. 17 of 2024, whereby the learned Judge allowed the injunction application of the respondent herein being the plaintiff in the suit, restraining the appellant/defendant from alienating the schedule property to any third party till hearing of the application filed by the appellant herein under Order 7 Rule 11 of the Code of Civil Procedure.

The respondent herein has filed a money suit claiming a decree for Rs. 80 lakh approximately. The plaintiff alleges that in connection with a business transaction with the defendant, that amount of money is due and payable by the defendant to the plaintiff.

Alleging that the plaintiff apprehends that the defendant will sell off its property at Durgapur to render infructuous any decree that the plaintiff may obtain, the plaintiff approached the learned Single Judge with an injunction application. The defendant also took an application for rejection of the plaint of the suit on the ground of lack of territorial jurisdiction of the learned City Civil Court to entertain, try and determine the suit.

The learned Trial Judge allowed the plaintiff's injunction application. The operative portion of the order reads as follows:-

> *"Since there is an apprehension of the Plaintiff that at this stage if no order of injunction be passed, there is every chance of alienation of the property stands in the name of the Defendant/Company by them to any third party and in that occasion, if the Defendant/Company succeeds to do so, the claim of the Plaintiff will be frustrated. Though, in the instant case, an application under Order 7 Rule 11 of C.P.C. has been filed by the Defendant pointing out the territorial jurisdiction of this Court, but at this stage, without hearing over the said matter, the said application cannot be decided without giving opportunity to the Plaintiff to file any Written Objection against it. Before hearing of the said application, as there is an urgency of the Plaintiff, rather when they are apprehending that the Defendant/Company may dispose of the schedule property to any third party, an interim protection may be granted in favour of the Plaintiff/Petitioner, otherwise the main object of injunction will be frustrated.*
>
> *Considering all these aspects and facts and circumstances of the case, the Defendant/O.P. is hereby restrained from alienating the schedule property to any third party till tearing of the application filed under Order 7 Rule 11 of the C.P.C. dated 11.09.2024."*

Being aggrieved the defendant in the suit is before us by way of this appeal.

Learned Advocate for the appellant/defendant vociferously argues that in a money suit, the learned Trial Judge should not have secured the claim of the plaintiff. This amounted to making an unsecured debt secured. Further, no case under Order 38 Rule 5 of the Code of Civil Procedure has been made out by the plaintiff. No basis for the apprehension of the plaintiff that the defendant may sell off its Durgapur property has been disclosed in the injunction application or the plaint. The order of injunction is contrary to settled principles of law.

Supporting the order of injunction, learned Senior Advocate appearing for the respondent/plaintiff says that the Court always has the power to secure even a money claim. Learned Advocate relies on the observations of the Hon'ble Apex Court at paragraphs 40, 42.6 and 42.7 of the judgment in the case of **Rahul S. Shan-vs.-Jinendra Kumar Gandhi & Ors.,** reported in **(2021) 6 SCC 418**, which read as follows:-

> *"40. In Ghan Shyam Das Gupta v. Anand Kumar Sinha, (1991) 4 SCC 379, this court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statues and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the court must not allow the judgment-debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the plaintiff or on its own motion using the inherent powers under Section 151, under the circumstances, direct the defendant to provide security before*

> *further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order 17 Rule 3.*
>
> *42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.*
>
> *42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree."*

Learned Senior Advocate further says that apart from Order 38 Rule 5 CPC, the Court has enough power under Order 39 Rules 1 and 2 to restrain the defendant from dealing with its property if the Court feels that in the facts of the case and for the ends of justice, the same is necessary.

Having considered the rival contentions of the parties, we are of the opinion that the order assailed before us cannot be sustained. While it is true that the Court has the power to secure even a pure money claim, there must be good reason for doing so. The plaintiff must make out a case with supporting material that the defendant is trying to dispose of its properties with the fraudulent motive of rendering infructuous any money decree that may be passed in favour of the plaintiff and against the defendant. Some material for the plaintiff's apprehension must be disclosed. The only ground on which the learned Trial Court in this case has restrained the defendant from dealing with its property is that the plaintiff apprehends that the defendant may sell off its property. This reasoning, in our opinion, is wholly inadequate.

Ordinarily, a money claim shall not be secured. That will be granting an undue advantage to an unsecured creditor. This principle is extremely well-established. One of the first English cases on this point is that of **Lister-vs.-Stubbs** reported in **(1890) 45 Ch. D 1**, where Catton L.J., sitting in the Chancery Division observed : "I know of no case where, because it was highly probable that if the action were brought to a hearing the plaintiff could establish that a debt was due to him from the defendant, the defendant has been ordered to give security until that has been established by the judgment or decree". That case has been followed by Indian Courts including our Supreme Court. Even independently our Supreme Court has in a catena of cases laid down that ordinarily an unsecured claim ought not to be secured. In **Hara Gobinda Das.-vs.-Bhur & Co., ILR 55 Cal 478 at 483,** P.N. Mookherjee, J., speaking for a Division Bench of this Court observed: "The Plaintiff may have some just claim against the defendant, - I am not expressing any opinion on the merits of the case – but that alone will not entitle him in law or in justice to have an order of attachment before judgment or to covert his unsecured debt into a secured debt".

The observations of the Hon'ble Supreme Court in the case of **Rahul S. Shah (supra)**, in our opinion do not help the respondent/plaintiff. The said observations only reiterate that in an appropriate case the Court may demand security from the defendant for satisfaction of the plaintiff's claim in the event the claim fortifies to a decree. We cannot read the said decision as an authority for the proposition that in every money suit the plaintiff's claim has to be secured.

We are told that the defendant's application for rejection of the plaint stands dismissed for default. As requested by Mr. Mukherjee, learned Senior Advocate for the respondent/plaintiff, we request the learned Trial Court to expedite the trial of the suit to the fullest extent possible and carry it to its logical conclusion as early as possible and preferably within a period of one year from date.

In view of the aforesaid, the appeal succeeds. The order under appeal is set aside.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(**Arijit Banerjee**, **J**.)

(Om Narayan Rai, J.)