

ORDER

OCD-29

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/71/2025

L& T FINANCE LIMITED
VERSUS
RO CARE INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 26th February, 2025.

Appearance:

Ms. Archana Chowdhary, Advocate
Mr. Sariful Haque, Advocate
... for the petitioner.

1. Affidavit of service is taken on record.
2. Despite service, none appear on behalf of the respondents.
3. The petitioner seeks protection for an unsecured loan amounting to Rs.17,58,000/-. The petitioner extended the loan to the respondents. According to the petitioner, the loan was not repaid. Thus, the petitioner has filed this application on the strength of an arbitration clause contained in the business loan agreement. The petitioner prays that the respondent should be enjoined from transferring alienating or creating any third party interest in respect of properties belonging to the respondents, for security of a sum of Rs.17,58,000/- and for appointment of Receiver over the properties that the respondents may disclose.

4. The loan was unsecured. The petitioner has not made any averment with regard to the immovable properties over which the injunction is prayed before. The prayer is based on the basis that this court must direct the respondents to disclose all their assets and bank account and upon such disclosure, order be passed for appointment of receiver and then a blanket injunction be issued over all the properties.

5. In this case, nothing has been disclosed which would suggest that the respondents were intending to either remove or dispose of the property or the assets with an intention property to defraud the creditor. In the decision of ***Harleen Jairath vs Prabha Surana and Another*** reported in **2019 SCC Online Cal 2372**, the Division Bench of this High Court held as follows:-

“35. While Order 39 Rule 1(a) and 1(c) refer to the property in dispute, Order 39 Rule 1(b) does not put any such restriction as it uses the phrase “to remove or dispose of his property with a view to divert his creditor.” The property contemplated under Order 39 Rule 1(b) may not be the property in dispute in the suit. An injunction can also be granted by the court to restrain a threatened removal or disposal of property with a view to defrauding creditors. If the court is satisfied that the defendant intends to remove or dispose of his property and his intention in doing so is to defraud his creditors, injunction under Rule 1(b) can be granted (Padam Sen v. State of U.P., AIR 1961 SC 218). Such property may be movable or immovable. Unlike clause (a) the applicability of clause (b) is not restricted or limited to the “property in dispute in a suit.” Hence, clause (b) can be invoked even if the property is wholly outside the subject matter of the suit. (Albert Judah Judah v. Rampada Gupta, AIR 1959 Cal 715). Only thing is that threat or intention to remove or dispose of property to defraud creditors must be supported by sufficient particulars. (Anand Prasad Agarwalla v. Tarkerhwar Prasad, (2001) 5 SCC 568).”

6. This Court does not find any, prima facie, case to pass an interim order of injunction, as prayed for. The petitioner has filed this application in

the nature of an attachment before judgment, even without invoking the arbitration clause.

7. An application under Section 9 of the Arbitration and Conciliation Act, cannot be a mechanism for recovery of the loan which is admittedly an unsecured loan. An unsecured loan cannot be protected by an injunction over immovable property, unless a strong case is made out, which will persuade the court to hold, prima facie, that the respondents were alienating their assets and removing their funds which would ultimately render any award that may be passed in favour of the petitioner, a paper decree.

8. Under such circumstances, the application is disposed of without any order. If the situation demands that an order of injunction or any such interim protection in respect of the alleged loan, would become necessary, the petitioner may proceed in accordance with law.

9. The petitioner is at liberty to invoke arbitration and make all interim prayers before the learned Arbitrator.

(SHAMPA SARKAR, J.)