IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

APO 112 of 2023

IA NO: GA 7 of 2022

In

CS 390 of 2014

Union Bank of India

Vs.

Swadha Builders Private Limited and Others.

And

APO 109 of 2023

IA NO: GA 8 of 2022

In

CS 390 of 2014

Union Bank of India

Vs.

Swadha Builders Private Limited and Others.

For the Appellant	: Mr. Jishnu Chowdhury, Sr. Adv. Mr. Ranajit Chowdhury, Adv. Mr. Soumabho Ghose, Adv. Mr. Abhidipto Tarafder, Adv. Mr. Sudipto Chowdhury, Adv. Mr. Purnendu Modak, Adv. Ms. Sampoorna Saha, Adv.
For the Respondent Nos. 1to 5	: Mr. Suddhasatva Banerjee, Adv. Mr. Pranit Bag, Adv. Ms. Rituparna Chatterjee, Adv Ms. Khushboo Choudhury, Adv. Ms. Ayesha Kedia, Adv. Mr. Aurin Chakraborty, Adv.

Hearing Concluded on : November 4, 2025
Judgement on : December 10, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated March 22, 2023 in IA GA 7 of 2022, IA GA 8 of 2022 in CS 390 of 2014.

2. Learned Senior Advocate appearing for the appellant has submitted that, the respondent Nos. 1 to 5 had filed CS 390 of 2014 against the respondent Nos. 6 to 11 and the appellant praying for declaration that the deed of equitable mortgage and deed of guarantee executed in favour of the appellant be adjudged null and void and be delivered up and cancelled.

3. Learned Senior Advocate appearing for the appellant has referred to the sequence of events with regard to the immovable property concerned. He has drawn the attention of the Court to the fact that, the immovable property was mortgaged for the purpose of a loan. The respondent No. 8 had defaulted in payment of the loan facility. Appellant had classified the account of the respondent No. 8 as a Non-Performing Asset (NPA). Appellant had issued a notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on August 4, 2014 which was followed by a notice dated October 28, 2014 under Section 13(2) of the Act of 2002.

4. Learned Senior Advocate appearing for the appellant has drawn the attention of the Court to the fact that, the appellant initiated steps under the Act of 2002 whereupon, the respondent Nos. 1 to 5 had filed CS 390 of 2014 on November 5, 2014.

5. Learned Senior Advocate appearing for the appellant has submitted that, the respondent No. 1 made a representation under Section 13(3A) of the Act of 2002 which was considered by the appellant and rejected. Immediately after such rejection, the respondent No. 1 had filed an interim application being GA No. 3838 of 2014 on February 4, 2015 which was dismissed as withdrawn on July 14, 2016, on the Court refusing to pass any order in favour of the respondent No. 1.

6. Learned Senior Advocate appearing for the appellant has submitted that, on July 14, 2015, appellant had issued a notice under Section 13(4) of the Act of 2002. The respondent Nos. 1 to 5 had challenged such notice under Section 17 of the Act of 2002, before the Debts Recovery Tribunal on August 26, 2015.

7. Learned Senior Advocate appearing for the appellant has contended that, the respondents had made 11 attempts to frustrate the proceedings under the Act of 2002. He has referred to the instance where, the respondent No. 1 filed 2 writ petitions, 2 proceedings under Section 17 under the Act of 2002, 3 revisional applications, 1 mandamus appeal, 1 criminal revisional application, 1 first appeal and another appeal.

8. Learned Senior Advocate appearing for the appellant has submitted that, the order dated April 10, 2017 passed by the Debts Recovery Tribunal, dismissing the proceedings under Section 17 of the Act of 2002 operates as res judicata. In support of such contention, he has relied upon ***(2017) SCC Online Mad 30542 (P S Pushparaj Vs. Authorised Officer, Bank of Indore)***.

9. Learned Senior Advocate appearing for the appellant has contended that, the suit is not maintainable in view of the Section 34 of the Act of 2002. He has submitted that, the appellant has taken action under the Act of 2002 and, therefore, no suit would lie. In support of such contention, he has relied upon ***2023 Volume 16 SCC 331 (Punjab & Sind Bank Vs. Frontline Corporation Limited)***.

10. Learned Senior Advocate appearing for the appellant has contended that, appellant did not perpetuate any fraud. The alleged fraud as has been alleged are inter se shareholders of the respondent No. 1. According to him, questions relating to fraud in security interest can be determined by the Debts Recovery Tribunal. In support of such contention, he has relied upon ***2024 SCC Online***

AP 2595 (K Jayamma and Others Vs. Syndicate Bank and Others).

11. Relying upon ***2022 SCC Online Cal 1389 (Asha Agarwal and Others Vs. Williamson Magor & Company Limited and Others)*** learned Senior Advocate appearing for the appellant has contended that, no injunction can be granted restraining actions under the Act of 2002.

12. Learned Senior Advocate appearing for the appellant has contended that, IA GA 7 of 2022 is an abuse of the process of Court. He has contended that, there was no fresh cause of action for such application to be moved. He has relied upon ***AIR 1960 SC 941 (Satyadhan Ghoshal and Others Vs. Deorajin Debi (Smt))*** and ***AIR 1964 SC 993 (Arjun Singh Vs. Mohindra Kumar and Others)***.

13. Learned Senior Advocate appearing for the appellant has contended that, previous application for injunction being GA 3838 of 2014 was withdrawn by the respondent No. 1. Therefore, the respondent No. 1 is guilty of perpetuating fraud on Court. He has relied upon ***1987 Volume 1 Supreme Court Cases 5 (Sarjuga Transport Service Vs. State Transport Appellate Tribunal)*** in such context.

14. Learned Senior Advocate appearing for the appellant has contended that CS 390 of 2014 is a suit for land. He has contended that the mortgage property is situated 6, Jessore Road North, Madhyamgram, Kolkata 700129 which is outside the Ordinary Original Civil Jurisdiction of the High Court. He has contended that, the suit relates to mortgage of land and is, therefore, a suit for land. In support of such contention, he has relied upon ***1998 Volume 2 Calcutta High Court Notes 473 (Hindustan Laminators Pvt. Ltd. And Others Vs. Central Bank of India and Others)*** and ***2015 Volume 5 Calcutta High Court Notes 207 (Eden Infrastructure Private Limited & Others. Vs. Eden Realty Ventures Pvt. Ltd. and Others).***

15. Learned Senior Advocate appearing for the appellant has contended that the order passed in GA 8 of 2022 was for return of plaint and in the alternative rejection which was dismissed. He has contended that, no argument was advanced on such application.

16. Learned Senior Advocate appearing for the appellant has contended that, the bank has no role to play in the internal management of the respondent No. 1. The suit relates to and arises out of share transfer agreement dated October 3, 2012 which does not concern the creation of the mortgage in favour of the appellant. He has relied upon ***1870 LR 5 Ch App 288 (The Royal British***

Bank Vs. Turquand) and ***ILR (1912) 39 Cal 810 (Collieries Co. Ltd. Vs. Bholanath Dhar)*** in this regard**.**

17. Learned Advocate appearing for the respondent No. 1 to 5 has contended that there are 5 plaintiffs to the suit. Plaintiff No. 1 is the owner of the land and building while plaintiff Nos. 2 to 5 are the shareholders of the plaintiff No. 1. The defendant No. 1 and 2 were the Directors of the defendant No. 3 and the intended transferee of the shares held by the plaintiff Nos. 2 to 5 in the plaintiff No. 1. The defendant No. 3 had borrowed money from the appellant. Defendant Nos. 1 and 5 had guaranteed the share transfer agreement. The defendant Nos. 4 and 5 were the Directors in the defendant No. 6. Defendant No. 6 had stood as a guarantor for the credit facilities.

18. Learned Senior Advocate appearing for the appellant has referred to the date of the filing of the civil suit. He has submitted that, the suit was filed on November 5, 2014. He has pointed out that the agreement between the plaintiff and the defendant No. 1 and 2 for transfer of shares to the defendant No. 1 and 2 was entered on October 3, 2012. Defendant No. 4 had guaranteed the performance and discharge of the obligations of the defendant Nos. 1 and 2 under the share transfer agreement.

19. Learned Advocate appearing for the respondent No. 1 to 5 has contended that, the share transfer agreement was to be completed by January 31, 2013. Terms of the agreement regarding payment of balance consideration and no transfer or encumbrances of the property until full consideration was paid had been incorporated in the agreement.

20. Learned Advocate appearing for the respondent No. 1 to 5 has contended that, mortgage of the property of the plaintiff No. 1 could only be created by holding a general meeting in presence of the transferees and passing a Board Resolution under the signature of all the Directors and giving standing instructions to the lending bank to disburse the loan only after payment of the balance consideration.

21. Learned Advocate appearing for the respondent Nos. 1 to 5 has contended that, the defendant Nos. 1 and 2 failed to discharge their obligations under the share transfer agreement. He has referred to several correspondences in this regard by which the parties thereto sought extension of time.

22. Learned Advocate appearing for the respondent Nos. 1 to 5 has referred to the articles of association of the plaintiff No. 1. He has contended that, the appellant has proceeded in contravention of the articles of association of the plaintiff No. 1.

23. Learned Advocate appearing for the respondent Nos. 1 to 5 has contended that, the Chartered Accountant appointed to search the records of the plaintiff No. 1 submitted a report dated December

13, 2013. From such report, the plaintiffs had become aware of the fraudulent Board Resolution dated December 22, 2012 on a fabricated letter head with regard to the mortgage of the immovable property concerned. The respondent Nos. 1 to 5 had also become aware of memorandum of deposit of title deed and the fact that a supplementary deposit of title deed was executed on September 25, 2013 despite disbursement of loan having stopped.

24. Learned Advocate appearing for the respondent Nos. 1 to 5 has contended that, the plaintiffs became aware of the fraud on December 13, 2013 being the date of the report of the Chartered Accountant. He has pointed out that, properties of the defendant No. 3 and the defendant Nos. 1 and 2 of a value in excess of Rs. 50 crores were available as collateral securities with the bank. The Jessore Road property was not mentioned in the request for sanction letter.

25. Learned Advocate appearing for the respondent Nos. 1 to 5 has contended that, the appellant was directly involved in the fraudulent creation of the mortgage. In this regard, he has referred to the Forensic Audit Report dated February 24, 2019, and the chargesheet dated December 21, 2018 filed against the defendant Nos. 1 and 2 and the officials of the appellant.

26. Learned Advocate appearing for the respondent Nos. 1 to 5 has contended that, appellant could not have accepted the mortgage of the property since, the property concerned is an agricultural land. In this regard, he has referred to the letter dated December 15, 2012 of the Chief Manager of the bank as also the report dated December 14, 2012 of the learned Advocate for the bank.

27. Referring to the share transfer agreement, learned Advocate appearing for the respondent No. 1 to 5 has contended that, without an actual transfer being taken place, the creation of mortgage was bad. He has contended that, mortgage was also bad in view of violation of provision of the articles of association. The immovable property had been overvalued. The company did not have any Board Resolution authorising mortgage. The affidavit of the defendant No. 1 contains false statement.

28. Learned Advocate appearing for the respondent No. 1 has submitted that suit was filed on November 5, 2014 before receipt of the notice under Section 13(2) of the Act of 2002 dated October 28, 2014.

29. Learned Advocate appearing for the respondent No. 1 to 5 has contended that, the appellant did not proceed against the properties of the defendant No. 3. He has referred to the sanction letter dated December 11, 2012 which requires the defendant No. 3

to give a guarantee as a guarantor although no such guarantee had been given.

30. Two applications have been disposed of by the impugned judgment and order. The respondent Nos. 1 to 5 had filed the application being IA GA 7 of 2022 for injunction in the suit while IA GA 8 of 2022 has been filed at the behest of the appellant.

31. Respondent Nos. 1 to 5 has filed the suit praying for the following reliefs:-

> *"a) Declaration that the purported creation of equitable mortgage of the Jessore Road property by the defendant Nos. 1 and 2 purporting to act on behalf of the plaintiff No. 1 in favour of the defendant No. 7 and the acceptance of the same by the defendant No. 7 is wrongful, illegal, fraudulent and void;*
>
> *b) Declaration that the purported corporate guarantee given by the defendant Nos. 1 and 2 purporting to act on behalf of the plaintiff No. 1 in favour of the defendant No. 7 and the acceptance of the same by the defendant No. 7 is wrongful, illegal, fraudulent and void;*
>
> *c) Decree directing delivery up and cancellation of the purported equitable mortgage of the Jessore Road Property created by the plaintiff No. 1 in favour of the defendant No. 7 upon adjudging the same to be void;*
>
> *d) Decree directing delivery up and cancellation of the purported corporate guarantee given by the plaintiff No. 1 in*

favour of the defendant No. 7 upon adjudging the same to be void;

e) Decree for perpetual injunction restraining the defendants or any of them from representing or holding out the Jessore Road property as having been mortgaged in favour of the defendant No. 7 or from in any manner giving effect or further effect to or acting in pursuance of such purported mortgage of the said Jessore Road property;

f) Decree for perpetual injunction restraining the defendants or any of them from representing or holding out that any corporate guarantee has been given by the plaintiff No. 1 to the defendant No. 7 or from in any manner giving effect or further effect to or acting in pursuance of such purported corporate guarantee;

g) A decree for perpetual injunction be passed restraining the defendant No. 7 from threatening to take or from taking any step to enforce the purported equitable mortgage of the Jessore Road property or the purported corporate guarantee given by the plaintiff No. 1 on account of any default in the performance of any repayment obligation undertaken by the defendant No. 3 or the other defendants to it;

h) A decree for perpetual injunction restraining the defendant No. 7 from disbursing and the defendant No. 3 from receiving any further money against the purported creation of equitable mortgage of the Jessore Road property of the plaintiff No. 1 or the *purported corporate guarantee given by the said plaintiff in favour of the defendant No. 7;*

i) Decree for Rs. 9,50,67,840/-, against the defendants jointly or severally on account of loss and damage suffered by the plaintiffs by reason of their breach and violation of the agreement dated 3rd October, 2012 and their fraudulent and wrongful acts and conduct:

j) Alternatively, an enquiry be made into the loss and damage suffered by the plaintiffs on account of the fraudulent and wrongful acts and conduct of the defendant including the breach of the terms of the agreement dated 3rd October, 2012 by them, and a decree for such sum be passed against the defendants jointly and/or severally as may be found due and payable by them on such enquiry;

k) Receiver;

l) Injunction:

m) Attachment;

n) Costs;

O) Further and other reliefs."

32. In the interlocutory application being IA GA 7 of 2022, respondent Nos. 1 to 5 have prayed for the following reliefs:-

"(a) An order be passed restraining the respondents forthwith from giving any effect to or giving any further effect to and/or to act in furtherance of and in pursuance of the purported equitable

mortgage of the said property alleged to have created in favour of the respondent – No.3.

(b) An order be passed appointing a fit and proper person as the receiver/ Special Officer to do the following:

i. To take custody of the deeds/ documents in respect of the said property in relation to the creation of the purported mortgage.

ii. To take custody of all documents in relation to the purported creation of mortgage in respect of the said property.

iii. To deposit such documents in a sealed cover before this Hon'ble Court, pending disposal of the instant suit.

(c) An order be passed restraining the respondents forthwith from seeking to enforce such purported equitable mortgage by taking any coercive steps against the petitioner;

(d) An order be passed restraining the respondents from giving any effect and/ or further effect to and/ or from taking any steps in terms of and in pursuance of the corporate guarantee purportedly given by the petitioner No. 1 to the respondent No. 7;

(e) An order of injunction be passed restraining the respondent No. 7 from disbursing any further sum in favour of the respondent No. 3 against and/ or in connection the purported creation of equitable mortgage of the said property of the respondent No. 3 against and/ or in connection the purported creation of equitable mortgage of the said property.

(f) Ad-interim orders in terms of the prayer made above;

(g) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."

33. Suit of the respondent Nos. 1 to 5 having been filed prior to the provisions of the Commercial Courts Act, 2015, the suit was transferred to the Commercial Division by an order dated January 13, 2021. Plaintiffs in the plaint and the reliefs sought would demonstrate that, respondent Nos. 1 to 5 as plaintiffs have sought relief with regard to a mortgage of an immovable property. Immovable property in respect of which, the respondent No. 1 to 5 have sought reliefs, in the suit, lies beyond the territorial jurisdiction of the Original Side of this Hon'ble Court.

34. Reliefs that the respondent Nos. 1 to 5 as plaintiffs have sought in the suit, are based on a share transfer deed in relation to an immovable property and relates to the right, title and interest in respect thereof.

35. By reason of the pleadings in the plaint of the suit and the reliefs sought for therein, issues with regard to the right, title and interest in an immovable property lying and situated outside the Ordinary Original Civil Jurisdiction of the Hon'ble High Court have been raised. An issue as to whether or not the High Court has jurisdiction over such suit, can justifiably be raised at the hearing of the suit.

36. The appellant herein had filed IA GA No. 8 of 2025 seeking return of the plaint. Such application has been dismissed by the impugned judgment and order.

37. Since the suit stands transferred to the Commercial Division upon coming into effect of the provisions of the Act of 2015, the impugned judgment and order to the extent that it deals with IA GA 8 of 2022 filed by the appellant is not appealable. We have, therefore, not considered the issue as to whether or not, the suit is a suit for land, and therefore, the High Court has no jurisdiction over the same, in its Original Side, finally.

38. We have examined the plaint of the suit, the injunction petition filed by the respondent Nos. 1 to 5 being IA GA No. 7 of 2022, and the events that have occurred prior to the filing of the suit as pleaded as well as the events occurring subsequent thereto.

39. Respondent Nos. 1 to 5 have filed the instant suit alleging that an immovable property belonging to the respondent No. 1 had been fraudulently mortgaged with the appellant as collateral security for the loan granted by the appellant to the respondent No. 4. In support of such contention, respondent Nos. 1 to 5 have relied upon a share transfer agreement, various clauses therein, and the conduct of the parties governed by the share purchase agreement.

40. Respondent Nos. 1 to 5 have not pleaded nor has any document established that, appellant is a party to the share transfer agreement. However, it has been alleged that, officials of the appellant were involved in the fraud of obtaining the mortgage of the immovable property concerned. A criminal complaint has been lodged with regard thereto in which, police filed a chargesheet.

41. Appellant has proceeded against the immovable property concerned, under the provisions of the Act of 2002 by a notice dated October 28, 2014 and subsequently on November 13, 2014. Both such notices have been stated to be under Section 13(2) of the Act of 2002.

42. Respondent No. 1 has replied to the notice under Section 13(2) of the Act of 2002 by a letter dated January 17, 2015. Appellant had disposed of the representation under Section 13(3A) of the Act of 2002 made by the respondent No. 1 by a letter dated February 2, 2015.

43. Respondent No. 1 had made two attempts to challenge the steps taken under the Act of 2002 by the appellant. Respondent No. 1 had filed an application for injunction being GA 3838 of 2014 in which, interim orders were refused by an order dated February 4,

2015. Respondent No. 1 had filed a writ petition being WP 15887 of 2015 against the order of the Authorised Officer which was dismissed as withdrawn on July 13, 2015.

44. Appellant had issued a possession notice in respect of the immovable property concerned on July 14, 2015. Respondent No. 1 to 5 had withdrawn GA 3838 of 2014 filed in the suit on July 14, 2014.

45. Respondent No. 1 had challenged the possession notice dated July 14, 2015 before the Debts Recovery Tribunal, Kolkata-II in SA 332 of 2015 which was dismissed by an order dated April 10, 2017. Respondent No. 1 did not challenge the order dated April 10, 2017 of the Debts Recovery Tribunal passed in SA 332 of 2015 before the Debts Recovery Appellate Tribunal. However, respondent No. 1 had assailed the order dated April 10, 2017 passed by the Debts Recovery Tribunal by way of a revisional application being CO No. 2553 of 2017 which was dismissed by the High Court on September 1, 2017 in view of existence of statutory alternative remedy. Thereafter respondent No. 1 did not take any further steps with regard thereto.

46. Respondent No. 6 to 8 had assailed the possession notice dated July 14, 2015 under Section 17 of the Act of 2002 being SA 314 of 2015 which was dismissed on July 14, 2015.

47. Respondent No. 8 and 9 had moved the Debts Recovery Appellate Tribunal against the order dated April 10, 2017 passed in SA 314 of 2015. Debts Recovery Appellate Tribunal had recorded that, the order dated April 10, 2017 was not appealed from by the respondent No. 1. The appeal of the respondent No. 9 had held to be not maintainable.

48. In the facts and circumstances of the present case, therefore, action of the appellant taken under the Act of 2002, in respect of immovable property concerned, were assailed before the Debts Recovery Tribunal, by way of 2 applications under Section 17 thereof, being SA No. 332 of 2015 filed by the respondent No. 1 and SA No. 314 of 2015 filed by the respondent No. 6 to 8. Both such proceedings had been disposed of by an order dated April 10, 2017. The respondent No. 1 did not challenge the same before the Debts Recovery Appellate Tribunal. The respondent Nos. 6 to 8 did not challenge the order dated April 10, 2017 before the Debts Recovery Appellate Tribunal, also.

49. So far as the parties to the proceedings in SA 332 of 2015 and SA 314 of 2015 are concerned, the order dated April 10, 2017 passed by the Debts Recovery Tribunal are final.

50. Significantly, the Debts Recovery Tribunal, Kolkata in the order dated April 10, 2017 has held, inter alia, that, as there was no illegality with respect to the creation of the mortgage, no exemption from the proceedings under the Act of 2002 can be claimed on account of the land being agricultural land and that, the writ and the suit proceedings were irrelevant to the adjudication before the Debts Recovery Tribunal.

51. In a later decision the Debts Recovery Tribunal has clarified that, the Debts Recovery Tribunal will not enter into the fraud as alleged by the respondent No. 1.

52. The issue of fraud that has been alleged by the respondent Nos. 1 to 5 in the suit at hand, largely relates to and revolves around the share purchase agreement to which the appellant is not a party. Respondent Nos. 1 to 5 has alleged that, the creation of the mortgage in favour of the appellant was vitiated by fraud, as some of the parties to the share purchase agreement acted in breach of the terms and conditions thereof in creating the mortgage.

53. However, records made available to Court demonstrate that, mortgage had been created with Form-8 being filed with the Registrar of Companies contemporaneously recording the creation of such mortgage.

54. There is another aspect to the jurisdiction of this High Court to try, entertain and determine the present suit. Appellant as a secured creditor has invoked the provisions of the Act of 2002.

Notice under Section 13(2) of the Act of 2002 is prior to the date of filing of the suit.

55. ***Frontline Corporation Limited (supra)*** has considered provisions of Section 34 of the Act of 2002 which prescribes ouster of jurisdiction of Civil Court. It has held that, the jurisdiction of the Civil Court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken or to be taken under the Act of 2002. It has held that, prohibition covers even matters which may be taken cognizance of by the DRT though no measure is yet to be taken under Section 13(4) of the Act of 2002. It has clarified that, the Civil Court shall have no jurisdiction to pay, entertain any proceedings or any matter in respect of which an action may be taken later on. Therefore, power of Civil Court applies to all such matters which may be taken cognizance of by the DRT apart from those matters in which measures have already been taken under Section 13(4) of the Act of 2002. ***Frontline Corporation Limited (supra)*** has however noted that, jurisdiction of the Civil Court remains to a limited extent. It has observed that, jurisdiction of the Civil Court can be invoked where the action of the secured creditor is alleged to be fraudulent or the claim of the secured creditor is so absurd and untenable that it does not require any probe whatsoever.

56. In the facts and circumstances of the present case, the respondent Nos. 1 to 5 have filed the suit in which the impugned order was passed. The respondent No. 1 had assailed the measures taken under the Act of 2002 by the appellant in respect of the immovable property concerned, unsuccessfully. Respondent 1 has not preferred any appeal from the order of the DRT dated April 10, 2017. Challenge by another party to the order dated April 10, 2017 of the DRT before the Debts Recovery Tribunal has been dismissed.

57. Therefore, in the facts and circumstances of the present case, as akin to ***Frontline Corporation Limited (supra)*** it cannot be said that the appellant is acting fraudulently or that its claim is absurd or untenable and does not require any proof to establish the same.

58. A Court considering an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, is necessarily required to consider a prima facie case of the plaintiff, the balance of convenience and inconvenience and whether or not, grave prejudice would be caused by the non-grant of the order of injunction as has been prayed for. While considering whether, the plaintiff has made out a prima facie case, the Court necessarily needs to decide, that it has jurisdiction to grant the relief prayed for, even at the prima facie level.

59. In the facts and circumstances of the present case, the Court passing the impugned order has assumed jurisdiction over the subject matter of a lis which it does not appear, on a prima facie level to have. Since we are of the view that, the Court passing the impugned order, does not have jurisdiction, on a prima facie level, we are not in a position to sustain the impugned judgment and order. Order of injunction granted by the learned Single Judge stands vacated. In view of such finding of ours, we have refrained from dealing with the other authorities cited at the bar as, in our view, they do not impact our decision as returned herein.

60. As noted above, the impugned judgment and order has to consider two applications. Appellant has filed two several appeals directed against the same impugned judgment and order.

61. Appellant had applied for rejection of the plaint and revocation of Clause 12 of the Letters Patent Act, 1865 by way of IA GA 8 of 2022. Such application being IA GA 8 of 2022 having been dismissed by the learned Single Judge, the same, in our view, is not appealable under Section 13 of the Act of 2015. However, the issue as to whether, Court has jurisdiction to try, entertain and determine the suit or not, is an issue which is required to be taken into consideration for the purpose of evaluating relief to be granted under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908. The evaluation of jurisdiction, in such a scenario is limited to a prima facie binding. We have done so.

62. In view of the decision above, APO No. 112 of 2023 is therefore allowed. APO 109 of 2023 is dismissed as not maintainable.

[DEBANGSU BASAK, J.]

63. I agree.

[MD. SHABBAR RASHIDI, J.]

Later:-

Learned advocate appearing for the plaintiff/respondent prays for stay of the judgment and order.

Considering the grounds on which, we vacated the interim order, we are not in a position to accept the request made on behalf of the plaintiff/respondent.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]