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IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

APOT/52/2025
WITH
CS-COM/536/2024

DIVIJ MERCANTILES PVT LTD.
-Vs-
SMT. SABITA RUNGTA AND ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Jishnu Chowdhury, Sr. Adv. Mr. Shantanu Mishra, Adv. Mr. Hemant Tiwari, Adv.
For the Respondent	:	Mr. Anupam Bhattacharya, Adv. Mr. Sudhakar Thakur, Adv. Mr. Rahil Faraz, Adv. Mr. Sana Sallana, Adv.
HEARD ON	:	27.04.2026
DELIVERED ON	:	27.04.2026

<u>DEBANGSU BASAK, J</u>.:-

1. Appeal is at the behest of the plaintiff and directed against the judgment and order dated January 31, 2025 passed in IA No. GA/1/2023 in CS-COM/536/2024.

2. By the impugned judgment and order, learned Single Judge dismissed the application of the plaintiff for injunction and attachment.

3. Learned Senior Advocate appearing for the appellant submits that, the appellant lent and advanced money to the respondent. Respondent deposited tax deducted at source on account of the appellant with the Income Tax authorities. He draws the attention of the Court to the documents evidencing deposit of tax deducted at source with the Income Tax authorities on account of the appellant. He submits that, by such action, a jural relationship between the appellant and the respondent stands admitted by the respondent. Quantum of loan is also admitted at least to the extent of the acknowledgment made through the tax deducted at source.

4. Learned Senior Advocate appearing for the appellant submits that, application under Order XIIIA of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015 was dismissed by the learned Trial Judge. A Special Leave

Petition is pending directed against such judgment and order of dismissal.

5. Learned Senior Advocate for the appellant submits that, an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by the respondent was also dismissed. A Special Leave Petition carried which was dismissed.

6. Learned Senior Advocate appearing for the appellant submits that, the respondent took a stand in its written statement as also in the affidavit-in-opposition that, one Mr. Anil Chowdhury arranged for the loan transaction and that, amount is payable by the respondent to Mr. Anil Chowdhury and not to the plaintiff. He contends that, such a stand is dishonest necessitating the interim protection as sought for by the appellant.

7. In response to a query of the Court as to whether the respondent deposited tax deducted at source with the income tax authorities on account of the appellant or not, learned Advocate appearing for the respondent submits that, the respondent did so.

8. Learned advocate appearing for the respondent submits that, the loan transaction was arranged by one Mr. Anil Chowdhury and that, the loan is repayable to such Mr. Anil Chowdhury. He submits that, there is no liability of the respondent to the appellant to repay loan amount.

9. Learned advocate appearing for the respondent relies upon ***AIR Online 2007 SC 80 (Raman Tech. And Process Engg. Co. And Anr. -Vs- Solanki Traders)*** in support of the contention that, under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, the plaintiff must establish existence of prima facie case and that, the defendant is removing assets from the jurisdiction of the Court. He refers to the pleadings in the injunction petition and submits that, the plaintiff did not establish at least the second condition, if not both. Consequently, according to him, the appellant is not entitled to the protection as prayed for.

10. As noted above, the appeal is directed against the judgment and order, by which, learned Trial Judge, dismissed IA No. GA-COM/1/2025 and refused to grant interim protection to the appellant as the plaintiff.

11. The suit is for recovery of money. Issue with regard to the maintainability of the suit, was considered by the learned Trial Judge. Decision under Order VII Rule 11 of the Code of Civil Procedure, 1908 was assailed before the Hon'ble Supreme Court. The Special Leave Petition directed against such judgment and order dated November 12, 2024 was dismissed on January 31, 2025.

12. The suit is for recovery of money lent and advanced. Respondent filed returns with the income tax authorities acknowledging the jural relationship between the appellant and the respondent. Acknowledgment of such jural relationship appears from the tax deducted at source certificate issued by the respondent to the appellant. Such certificate establishes that, the respondent obtained money from the appellant and that, the respondent deposited tax deducted at source on account of appellant with the Income Tax authorities.

13. The respondent cannot be allowed to approbate and reprobate between two authorities. Before the Income Tax authorities, which, also possesses the adjudicatory powers under the Income Tax Act, 1961, the respondent as an assessee therein is acknowledging that there was a money transaction between the appellant and the respondent and that, the respondent was obliged to deduct tax at source on the income that the appellant was generating out of the loan transaction and deposited the same with the Income Tax authorities. Respondent invited the Income Tax authorities to assess its return on the basis of such a statement. Such respondent now cannot be heard to contend that, there is no liability of the respondent to the appellant in a civil suit before the Civil Court.

14. The stand that the respondent is now seeking to take before the suit Court, with the deepest of respect, is dishonest. The present stand is diametrically opposite to the stand taken by the respondent before the Income Tax authorities. Before the Income Tax authorities, the stand is one of unconditional jural relationship between the plaintiff and the respondent. While before the suit Court, on the basis of the same transaction, the respondent seeks to deny any jural relationship.

15. In ***Raman Tech. And Process Engg. Co. and Anr. (Supra)***, the Supreme Court was concerned with an application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 before the Civil Judge, Junior Division. In the factual scenario obtaining therein, Supreme Court held that twin requirement under Order XXXVIII Rule 5 of the Code of Civil Procedure must be simultaneously satisfied for a Civil Court to grant an order of attachment under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908. Twin conditions that must be simultaneously satisfied are existence of prima facie case and the defendant involved was removing assets from the jurisdiction of the Court.

16. In the facts and circumstances of the present case, the appellant as the plaintiff is seeking order of injunction as also an order in the nature of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908.

17. Prima facie case stands made out by the appellant as noted above. Balance of convenience and inconvenience lies overwhelmingly in favour of the appellant in granting order of injunction, as prayed for. The appellant is likely to suffer injury which may not be ultimately compensated by money alone in the event order of injunction is not granted.

18. In such circumstances, it would be appropriate to pass an order in terms of prayer (a) of the IA No. GA-COM/1/2025.

19. Respondent will submit an affidavit-of-assets before the learned Trial Judge within a fortnight from date. In such affidavit-of-assets, in addition to the assets available to the respondent, it will specify the amount lying in its bank accounts as on April 27, 2026.

20. APOT/52/2025 along with connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

21. I agree

(MD. SHABBAR RASHIDI, J.)

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