(2009) 08 MAD CK 0307

Madras High Court

Case No: Original Application No. 474 of 2009 in C.S. No. 407 of 2009

Merit Resorts Pvt. Ltd.	APPELLANT
Vs	
Canara Bank, Teynampet Branch and Sri Lakshmiammal Educational Trust	RESPONDENT

Date of Decision: Aug. 17, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Amendment) Act, 2004 - Section 86
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: T.V. Ramanujun, SC for G. Desingu, for the Appellant; Srinath Sridevan, for R1, G. Masilamani, General for Venkatesh Mahadevan, for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
Heard Mr. T.V. Ramanujun, learned Senior Counsel for Mr. G. Desingu appearing for the applicant/plaintiff, Mr. Srinath Sridevan, learned Counsel appearing for the first respondent and Mr. G. Masilamani, learned Advocate General for Mr. Venkatesh Mahadevan appearing for the second respondent and perused the records.

2. The applicant is the plaintiff. This application is filed for the grant of an interim injunction restraining the respondents from in any manner directly or indirectly acting upon the sale certificate, dated 15.10.2007 registered as Document No.

1875/2007 with the Sub-Registrar''s Office, Udagamandalam by taking possession of the property pending disposal of the suit.

3. The applicant filed the suit for the very same relief for declaration and permanent injunction. The suit was admitted on 30.04.2009. When the matter came up on 30.04.2009, in this application, this Court granted an ad-interim injunction till 8.6.2009. The said interim order was not continued thereafter. On notice from this Court, both respondents have filed their respective counter affidavits.

4. The applicant is a private limited company represented by its Director Mrs. S. Shalini. In the affidavit in support of the application it was stated that the company was sanctioned a loan to the tune of Rs. 16 Crores by the first respondent Bank on 27.12.2004 as against the rent receivables from its properties, i.e. the land measuring 10.34 acres situated in R.S. No. 1222/1 at Udhagamandalam as well as the building measuring 72,220 sq.ft. situated in that land. It was stated that the land and building were leased out to M/s. Merit International Education Foundation and the loan was to be repaid in 84 monthly instalments. The lease amount was to be deposited in an escrow account with the first respondent Bank. The company also executed security documents in favour of the Bank. The company had mortgaged the property at Udhagamandalam as well as the property at Chennai in favour of the Bank by deposit of its title deeds.

5. It was also stated by the Company that they had purchased the property by a sale deed, dated 19.4.1999 for an extent of 3 acres of land out of 10.34 acres. It was registered as Document No. 340/99 at the Sub Registrar Office, Udhagamandalam. By an another sale deed, dated 5.10.2001, the company had purchased 4.34 acres in the same survey number and that property was registered as document No. 906/01 in the same registrar''s office. Further, the said company had purchased 3 acres of land and got it registered as document No. 657/99. Thus they are the absolute owners for the entire extent of land.

6. It was stated that one of the Directors of the Company, i.e. S. Harshavardhan had resigned from his Directorship on 13.1.2005. It was notified to the Registrar of Companies by the submission of Form No. 32. The company had three Directors, i.e. M/s. M.R. Sarangapani, S.Shalini and S. Harshavardhan. After the resignation of S. Harshavardhan, the company had only two Directors. Incidentally, the deponent of the affidavit S. Shalini is the wife of Sarangapani and Harshavardhan is their son. It was the contention of the applicant that the company never passed any resolution for availing a loan from the first respondent Canara Bank and it had never authorised any of its Directors to execute documents on behalf of the company. Both the Directors of the company, i.e. Sarangapani and S.Shalini never stood guarantee for any loan on behalf of the company.

7. It was also stated that the Bank has created a credit record as if the company had guaranteed for a loan. The Bank had also filed a complaint before the Central

Bureau of Investigation (CBI) stating that the documents in respect of the properties of the company were found to be forged. The CBI''s Bank Securities and Fraud Cell at Bangalore had taken up the complaint, dated 16.01.2007 for its investigation and the same is pending. It was sated that the documents of the company in respect of the Udhagamandalam property were found to be forged. The Bank was having only forged documents and hence there was no valid mortgage. It was also stated that the original title deeds in respect of the sale deeds, dated 19.4.1999 and 5.10.2001 are in the custody of the applicant company. When the applicant made an enquiry under the Right to Information Act regarding the genuineness of the documents registered with the Sub Registrar''s Office, they were informed that the sale deeds produced by the company are genuine and certified copies of such sale deeds were also issued by the Sub Registrar. Therefore, it was stated that a fraud had been played upon by the Bank as if the applicant company had created an equitable mortgage. No equitable mortgage can be created by deposit of forged title deeds. Therefore, the bank is not entitled to proceed u/s 13 of the SARFAESI Act. But, the first respondent Bank had classified the account as a non performing asset (NPA) account and issued a notice u/s 13(2) of the SARFAESI Act on 10.09.2005. The said notice was also published in the newspapers on 4.1.2006.

8. The erstwhile Director Harshavardhan received the notice and sent a reply on behalf of the other two Directors, who were not in India at the relevant point of time. The reply given by the erstwhile Director was without any authority and he was not the Director at that time. Likewise, the application filed by the erstwhile Director before the DRT was also done without authority. The proceedings before the DRT though was dismissed, the same is not binding on the Company. When the first respondent Bank issued a sale notice on 30.8.2007 inviting tenders from general public, the two Directors came to know about the loan. They challenged it in S.A. No. 260/2007 before the DRT but the same was dismissed, by an order of DRT, dated 3.10.2007. The dismissal was on the ground that the Director of the company was not authorized to sue on behalf of the company.

9. In the meanwhile, pursuant to the sale notice, dated 30.8.2007, the second respondent Trust had submitted its tender on 4.10.2007 quoting a sum of Rs. 10,05,00,000/-. The sale was confirmed as the offer by the Trust was the highest. A sale certificate was also issued in favour of the second respondent. The said sale certificate was registered with the Sub Registrar''s Office at Udhagamandalam as document No. 1875/2007, dated 17.10.2007. The applicant also claimed that they filed an appeal before the DRAT and that appeal was also dismissed. A writ petition was filed by one of the Directors of the Company, which was also dismissed. Therefore, they have come up with the present suit, challenging the sale certificate and have asked for an interim relief. It was stated that the first respondent Bank had committed a fraud in bringing their properties for sale and those properties were never mortgaged to the bank. The impugned sale certificate cannot usurp the company''s title to the suit properties. Therefore, they are entitled to get the reliefs

as prayed for.

10. The first respondent Bank in their counter affidavit, dated Nil (June, 2009), stated that the sale certificate issued was confirmed by a Division Bench of this Court by an elaborate order. On 27.12.2004, the applicant company approached the Bank and offered to securitize the rent receivable from its project at Udhagamandalam. It also offered by way of collateral security the mortgage of its properties at Chennai and Udhagamandalam. Personal guarantees of Mrs. S. Shalini, her son Harsavardhan and her husband Sarangapani were also given. Based upon these assurances, the bank had parted with Rs. 15 Crores to the applicant company, which is only a family concern. The documents were duly executed in favour of the bank. It is only during August, 2005, the audit department of the Bank found certain irregularities in the mortgage deed in respect of Chennai property and the same was intimated to the applicant. On 21.09.2005, the Bank also addressed a letter to the applicant. It was found that the documents of title in respect of the Chennai property was forged and hence it had complained to the CBI.

11. On 29.09.2005, the applicant company sent a reply to the Bank through its Director Ritesh Ranka. The bank having left with no alternative recalled the outstanding amount and called upon the Directors to pay back the entire amount. The Managing Director of the Company Harshavardhan sent a reply stating that the Udhagamandalam properties were duly mortgaged. He also disputed the recall letter issued by the Bank. On 11.11.2005, the applicant company through its Director disputed the allegation of forgery. On 16.11.2005, the Bank was constrained to issue a notice u/s 13(2) of the SARFAESI Act. On 23.1.2006, the three Directors sent a legal notice and admitted the creation of mortgage over the Udhagamandalam property as well as the forged documents submitted regarding the Chennai property.

12. It was at this juncture, Harshavardhan and Merit International Educational Foundation represented by his father Sarangapani filed an application before the DRT in S.A. No. 27 of 2006, challenging the notice issued u/s 13(2) of the SARFAESI Act. That application was dismissed by the DRT. On 4.9.2006, a possession notice was issued by the Bank. The applicant filed an appeal before the DRAT against the order, dated 11.8.2006 in S.A. No. 27 of 2006. The applicant also filed S.A. No. 109 of 2007 before the DRT on 27.11.2006, challenging the possession notice. In the meanwhile, their earlier appeal was dismissed by the DRAT on 28.11.2006. On 17.8.2007, the interim order granted in S.A. No. 109 of 2007 was also dismissed by a speaking order. On 4.9.2007, a sale notice was issued under the SARFAESI Act.

13. The deponent to the affidavit (Mrs. S. Shalini) filed a suit in O.S. No. 293 of 2007 before the District Munsif Court, Udhagai and obtained an ex-parte interim order. She also filed S.A. No. 260 of 2007 before the DRT challenging the sale notice, dated 4.9.2007. On 3.10.2007, the said S.A. No. 260 of 2007 was also dismissed by the DRT. Again, a third party filed an application against the Bank on 3.10.2007. But, however, no stay was granted. It was also stated by the Bank that on 5.10.2007, the sale was

conducted and it was confirmed in favour of the second respondent. Thereafter, the impugned sale certificate was issued and it was also registered on 17.10.2007.

14. It was further stated by the first respondent Bank that on 18.10.2007, the said Shalini filed an another appeal in INSA No. 732/2007 before the DRAT, challenging the order, dated 3.10.2007 in S.A. No. 109 of 2007. In the meanwhile, the ex-parte interim order granted by the District Munsif Court, Udhagai in O.S. No. 293 of 2007 was vacated on 18.3.2008. On 18.7.2008, the DRAT dismissed the appeal filed by Shalini. She moved this Court with a writ petition in W.P. No. 23709 of 2008. The same was also dismissed on 17.4.2009. It was observed that the mortgage over the Udhagai property was not disputed. The Bank also approached the District Sessions Court, Ooty for getting a direction u/s 14 of the SARFAESI Act on 29.4.2009. A direction was issued by the court to deliver the property on or before 5.5.2009. Without disclosing all these facts, the applicant had filed the present suit and obtained an interim injunction. The said Shalini also filed a criminal Revision Petition being Crl.R.C. No. 407 of 2009 before this Court, challenging the delivery of possession, but that revision petition was also dismissed by this Court.

15. The said Shalini filed an another writ petition in W.P. No. 9700 of 2009 before this Court, challenging the order passed by the Sessions Court, but no interim order was granted by this Court. The applicant also moved the Supreme Court in SLP No. 11505 of 2009, challenging the order of this Court in W.P. No. 27309 of 2008, dated 17.4.2009. The said SLP was dismissed on 14.5.2009. It was claimed by the first respondent Bank that all the pleas raised herein were raised in S.A. No. 109 of 2007 before the DRT and it has become final and binding on the applicant. It was also stated that the sale process culminated in issuing a sale certificate which formed part of the steps by which the secured creditor was entitled to take recovery of his dues u/s 13(4) of the SARFAESI Act. The applicant having availed the loan on 27.12.2004 by creating an equitable mortgage in respect of the building and land at Udhagai cannot resile from those transactions. The contention that Harshavardhan resigned from the company and therefore, the transactions are not binding on the company is denied. The said Harshavardhan was the Managing Director of the company at the time when the loan was sanctioned. He had also represented the company in SA No. 27 of 2006 before the DRT, Chennai. By representing the company, he also gave a letter of guarantee to avail credit facilities.

16. It was further stated that after the funds were released by the Bank to the applicant, the funds were used to pay up M/s. Trisha Exports, M/s. Mega Channel, M/s. Access Solutions and M/s. New Link Overseas on behalf of the company. Therefore, they cannot contend that the loan was availed by the erstwhile Director was not binding on the company. The report submitted by the CBI only states that the title deeds of the property at Anna Salai, Chennai alone was forged. The applicant in having lost the battle in various proceedings before the DRT and this Court in writ proceedings cannot institute a suit and the principle of res judicata will

squarely apply to the present proceedings. Besides, there is a bar u/s 34 of the SARFAESI Act ousting the jurisdiction of the civil court. Inasmuch as the second respondent had paid Rs. 10 Crores towards the sale consideration, it is not open to the applicant to question the sale.

17. The second respondent in their counter affidavit, dated 16.6.2009 more or less asserted the same facts. They also stated that the forum provided under the DRT having been utilized, it is not open to the applicant to institute a civil suit once again for the very same cause.

18. Mr. T.V. Ramanujun, learned Senior Counsel appearing for the applicant, on the question of jurisdiction of the civil court, placed reliance upon the judgment of the Supreme Court in Groupe Chimique Tunisien SA Vs. Southern Petrochemicals Industries Corpn. Ltd., . He contended that if on account of a mistake or wrong understanding of law, a party takes a particular stand, he is not barred from changing his stand subsequently or estopped from seeking for an arbitration. Reliance was made on the passage found in paragraph 9 of the said judgment and it reads as follows:

9. It is true that the petitioner had contended before the Jordanian court that there was no arbitration agreement between the parties. But the said contention was not accepted and the suit filed by the petitioner has been dismissed on the ground of want of jurisdiction. Thereafter, on reconsidering the matter and taking legal advice, with reference to the contentions of the respondent, the petitioner has now proceeded on the basis that an arbitration agreement exists between the parties. If, on account of mistake or wrong understanding of law, a party takes a particular stand (that is, there is no arbitration agreement), he is not barred from changing his stand subsequently or estopped from seeking arbitration. [See U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd. where the contention based on estoppel was negatived while considering a reserve (sic reverse) situation.]

19. The learned Senior Counsel also placed reliance upon the judgment of the Full Bench decision of this Court in Lakshmi Shankar Mills (P) Ltd. v. The Authorised Officer/Chief Manager, Indian Bank and Ors. reported in 2008 (2) CTC 529 for the purpose of contending that the proceedings u/s 17 of the SARFAESI Act are available in lieu of a civil suit and such remedies are ordinarily available, but for the bar u/s 34 of Securitisation Act. It was stated that once possession of secured assets is taken, there would be no occasion for the Tribunal to order redelivery of possession till a final determination of the issue. Therefore, the present suit is maintainable.

20. Per contra, Mr. G. Masilamani, learned Advocate General appearing for the second respondent (auction purchaser) placed reliance upon the Division Bench judgment of this Court in C. Rajagopal Vs. State Bank of Travaneore, Karur Branch and Others, and contended that in a case of a mortgage, the intention of the parties is a prime factor to be considered. In that case, it was held that in case of equitable

mortgage, the document that is referred to need not necessarily be deposited, but the documents of title would only apply to a document by which the mortgagor derived title to the property. A clear expression of intention by the mortgagor is enough to infer the mortgage.

21. The learned Advocate General also placed reliance upon the judgment of the Division Bench of the Kerala High Court in Business India Builders & Developers Ltd. v. Union Bank of India reported in 2007 (2) KLT 237 for holding that the SARFAESI Act will have overriding effect over the civil jurisdiction of the Court.

22. He also placed reliance upon an another Division Bench judgment of the Kerala High Court in The Kottakkal Co-op. Urban Bank Ltd. Vs. T. Balakrishnan, for contending that the remedy by way of Section 14 of the SARFAESI Act is available for taking possession of the secured assets from the secured debtor. When such proceedings culminates into a final order, the secured debtor would be dispossessed from the actual possession and the secured creditor can transfer such defacto possession to the transferee in terms of Section 13(6) of the Act.

23. But it must be noted that the issues raised herein have been very recently answered by the Supreme Court vide its judgment in Authorized Officer, Indian Overseas Bank and Anr. v. Ashok Saw Mill reported in JT 2009 (9) SC 491. In that case, the Supreme Court had observed in paragraphs 23 and 24 as follows:

23. The intention of the legislature is, therefore, clear that while the Banks and Financial Institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee. The consequences of the authority vested in DRT under Sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The Legislature by including Sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Altaf Ahmed that the DRT has no jurisdiction to deal with a post 13(4) situation, cannot be accepted. The dichotomy in the views expressed by the Bombay High Court and the Madras high Court has, in fact, been resolved to some extent in the Mardia Chemicals Ltd.''s case (supra) itself and also by virtue of the amendments effected to Sections 13 and 17 of the principal Act. The liberty given by the learned Single Judge to the appellants to resist S.A. No. 104 of 2007 preferred by the respondents before the DRT on all aspects was duly upheld by the Division Bench of the High Court and there is no reason for this Court to interfere with the same.

24. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated u/s 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT.

(Emphasis added)

In fact after this order of the Supreme Court, even the opinion expressed by the Full Bench in Lakshmi Sankar Mills (P) Ltd. case (cited supra) cannot be a good law regarding the jurisdiction of the DRT.

24. The argument of the learned Advocate General Mr. G.Masilamani that the earlier proceedings initiated by the applicant before the DRT will operate as res judicata has some substance. The applicant themselves have moved the DRT and DRAT and having failed have also moved this Court by way of a writ proceedings. Their SLP filed in the Supreme Court was also dismissed. Those proceedings cannot be simply wished away by the applicant in the absence of valid reasons. In this context, it is necessary to refer to the judgment of the Supreme Court in State of Karnataka and Another Vs. All India Manufacturers Organization and Others,
. A useful reference to paragraph 32 may be made:

32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem causa (no one ought to be twice vexed for one and the same cause 2) and second, public policy that there ought to be an end to the same litigation. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both "cause of action estoppel" and "issue estoppel". There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in Somashekar Reddy constitute res judicata for the present litigation.

Therefore, the applicant having had full round of litigation before the DRT, DRAT, High Court and having moved the Supreme Court, cannot institute the present suit urging the very same issue.

25. The learned Advocate General also stressed the fact that the applicant while filing the suit had suppressed to mention about the filing of his proceedings before the other forums and since they have not come to this Court with clean hands, no

equitable relief should be granted in their favour. In this context, it is necessary to refer to the decision of the Supreme Court vide its judgment in Prestige Lights Ltd. Vs. State Bank of India,
. The said decision was rendered in the context of proceedings under Article 226 of the Constitution. It is necessary to refer to the following passages found in paragraphs 33 to 35, which reads as follows:

33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R. v. Kensington Income Tax Commrs., in the following words:

[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-facts, not law. He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.

(emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

It must be stated that what applies to writ jurisdiction will also apply to the applications filed under Order 39 Rule 1 CPC since orders are granted on such applications on the basis of pleadings filed by the parties in the form of affidavits.

26. In any event, the documents produced by the Bank including the Board resolution shows that Harshavardhan was very much the Director of the company when the mortgage deed was executed. Considering that the company has no other Directors other than the husband, wife and the son team, the contentions raised by the applicant will have to be viewed with suspicion. Even the CBI investigation had not questioned the genuineness of the title deed regarding the Udhagai property. At this stage, this Court is only has to consider whether any prima facie case exists and whether the balance of convenience was in their favour to continue the interim order.

27. As to when an injunction can be granted under Order 39 Rule 1 C.P.C. has been propounded by the Supreme Court in several decisions. One such case by the Supreme Court is in Dalpat Kumar and Another Vs. Prahlad Singh and Others,
. It is necessary to quote the following passages found in paragraphs 4 and 5 of the said judgment, which reads as follows:

4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing ... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission Clause (c) was brought on statute by Section 86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power u/s 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court''s interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of the granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

28. In the light of the above factual matrix and the legal precedents referred to above, the applicant has not made out any case for entertaining this application. Hence this application stands dismissed with costs quantified at Rs. 10,000/- (Rupees ten thousand only) payable to the first respondent Bank.