
(2011) 08 CAL CK 0088

Calcutta High Court

Case No: G.A. No. 2198 of 2011, A.P.O.T. No. 334 of 2011 and C.S. No. 95 of 2011

Bimal Kumar
Parasramka and Others

APPELLANT

Vs

Rajendra Prasad
Agarwalla and Others

RESPONDENT

Date of Decision: Aug. 12, 2011

Acts Referred:

- Companies Act, 1956 - Section 560

Citation: (2011) 4 CHN 362

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Jishnu Saha, Raja Basu Chowdhury and K. Sahs, for the Appellant; Abhrajit Mitra and Jishnu Chowdhury for the Respondent Nos. 1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.:

1. This appeal filed by the Plaintiff and a cross-objection filed by the Defendants therein were taken up together and we propose to deliver a common judgment disposing of both the appeal and the cross-objection.

2. This appeal is at the instance of the Plaintiff in a suit for declaration and permanent injunction and is directed against an order dated 22nd June, 2011 passed by a learned Single Judge of this Court by which His Lordship passed direction for filing affidavits on an application of the Plaintiff for interlocutory reliefs and granted an ad interim order of injunction in favour of the Plaintiff thereby restraining the Defendant from surrendering possession in respect of the cold storage involved in the suit in favour of the any person or otherwise creating any third party's right in respect thereof without the previous leave of the Court.

3. The learned Single Judge refused to grant further interim relief claimed by the Plaintiff for appointment of a receiver.

4. Being dissatisfied, the Plaintiff has come up with the present appeal.

5. The Defendant, on the other hand, is aggrieved by even the passing of the limited interim order passed by the learned Single Judge and their grievance is that even on the basis of averments made in the plaint, the suit should be treated to be one for land and the only immovable property involved in the suit being situated outside the territorial limit of Original Side of this Court, the learned Single Judge should have returned the plaint for presentation before appropriate forum after revoking the leave under Clause 12 of the Letters Patent earlier granted.

6. We, however, propose to deal with the cross-objection filed by the Defendant first and proceed to decide whether on the basis of averments made in the plaint, the suit can be said to be a "suit for land" within the meaning of Clause 12 of the Letters Patent so as to the exclude the territorial jurisdiction of the Original Side of this Court.

7. In the plaint, out of the seven Plaintiffs, the Plaintiff Nos. 1 to 6 are the shareholders of the Plaintiff No. 7 and the Plaintiff No. 7 is a private company incorporated under the provision of Companies Act, 1956 having its office at 47 Strand Road, 2nd Floor, Room No. 36, Calcutta-01 within the jurisdiction of this Court.

8. In the suit the Plaintiffs claimed for the following reliefs:

a) Decree declaring that the Plaintiff Nos. 1 to 6 and the Defendant Nos. 7 to 15 constitute 100% shareholdings of the Plaintiff No. 7.

b) Decree declaring that the Defendant Nos. 1 to 6 are neither shareholders nor directors of the Plaintiff No. 7.

c) Perpetual injunction restraining the Defendant Nos. 1 to 6 and/or men and/or agents and/or servants and/or assigns and/or each of them from managing any assets and including its cold storage properties of the Plaintiff No. 7 in any manner whatsoever.

d) Decree directing the Defendant Nos. 1 to 6 to render true and proper accounts of all dealings and transactions that the Defendant Nos. 1 to 6 had in relation to the Plaintiff No. 7.

e) Upon ture and proper accounts being furnished and/or upon such accounts being taken, the Defendant Nos. 1 to 6 be directed by an appropriate decree to pay such amount as may be found due and payable by them to the Plaintiffs and Defendant Nos. 7 to 15 forthwith.

f) Alternatively, an enquiry be made into the loss and damages suffered by the Plaintiffs and the Defendant Nos. 7 to 15 by the wrongful user, occupation and possession of the Defendant Nos. 1 to 6 in respect of the assets of the Plaintiff No. 7 and its cold storage and upon such enquiry being made, appropriate decree be passed thereon.

g) Decree for perpetual injunction restraining the Defendant Nos. 1 to 6 either by themselves or through their men and/or agents and/or servants and/or assigns and/or howsoever from dealing with and/or disposing of and/or transferring and/or alienating and/or selling and/or encumbering and/or parting with possession and/or creating third party right over and in respect of any assets and/or properties of the Plaintiff No. 7 including the cold storage whatsoever.

h) Decree for perpetual injunction restraining the Defendant Nos. 1 to 6 and/or their men and/or agents and/or servants and/or assigns and/or howsoever from letting out any part or portion of the cold storage of the Plaintiff No. 7 or receiving any hire from any person in respect of any transaction relating to the cold storage or otherwise of the Plaintiff No. 7 and/or from operating any bank account of the Plaintiff No. 7 and/or opening any new bank account in the name of the Plaintiff No. 7 and/or receiving any money from any debtors of the Plaintiff No. 7 in any manner whatsoever.

i) Decree for delivering up and cancellation of the Memorandum of Understanding.

j) Decree declaring that the termination of the Memorandum of Understanding by the letter dated April 29, 2011 is valid, legal and binding on the Defendant Nos. 1 to 6.

k) Receiver.

l) Costs.

m) Injunction.

n) Such further other reliefs the Plaintiffs and the Defendant Nos. 7 to 15 are entitled to.

9. The case made out by the Plaintiffs may be summarized thus:

a) The Plaintiff Nos. 1 to 6 and the Defendant Nos. 7 to 15 hold the entire shareholding of and in the Plaintiff No. 7. The shareholders and directors of the Plaintiff No. 7 are of the Parasramka family. The said family controls the Defendant No. 7 also.

b) As on January 31, 2010 and March 31, 2010, the shareholders and directors of the Plaintiff No. 7 are as follows:

Number of the Shares	
1. Bimal Kumar Parasramka	240700
2. Sudha Devi Parasramka	182800

3. Neha Parasramka	45100
4. Swati Parasramka	86000
5. Sunita Agarwal	233800
6. Saloni Parasramka	40000
7. Bimal Kumar Parasramka	104000
8. Om Prakash Choudhary	12600
9. Ajay Parasramka	12600
10. Arun Parasramka	12600
11. Urmila Devi Parasramka	100
12. Raj Kumari Choudhary	20100
13. Suresh Kumar Parasramka	10100
14. Raghunath Banerjee	10000
	289500

Names of Directors

1 Bimal Kumar Parasramka

2 Sudha Devi Parasramka

3 Neha Parasramka

4 Swati Parasramka

5 Sunita Agarwal

c) At all material times, the Plaintiff No. 1 was and still is in management and control of the Plaintiff No. 7. The Plaintiff No. 7 has a cold storage lying and situate at Village Tora, Post Office Antpur, Police Station Jangipara, Hooghly - 712424 outside the jurisdiction aforesaid.

d) The Plaintiff No. 7 had obtained credit facilities from UCO Bank, Kolkata Main Branch, 10, Biplabi Trailakya Maharaj Sarani, Kolkata 700001, within the aforesaid jurisdiction.

e) The said UCO Bank claiming that the account of the Plaintiff No. 7 with it had become a Non-Performing Asset (NPA) invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Plaintiff No. 7 had challenged the steps purported to be taken under the SARFAESI Act of 2002 before the Debts Recovery Tribunal-I, Kolkata. An order dated August 12, 2009 was passed by the Debts Recovery Tribunal directing maintenance of status quo. The said order is subsisting. Such proceedings are pending adjudication.

f) During the pendency of such proceedings, the UCO Bank has purported to transfer its security interest in favour of ISRAC INDIA SME ASSET RECONSTRUCTIN COMPANY LIMITED having registered office at MSME Development Centre, C-11, G-Block, Bandar Karla Complex, Bandar (East), Mumbai 400051.

g) At all materials times, the Plaintiff No. 7 was and still is ready and willing to settle the just and legitimate dues of its secured creditors. The Plaintiff No. 7 through the Plaintiff No. 1 had entered into negotiations with the secured creditor to settle such claims.

h) The Plaintiff No. 1 suffers from various ailments. In view of the ailments relating to the kidney, the Plaintiff No. 1 is presently undergoing haemo dialysis twice a week.

i) Since it was increasingly becoming difficult for the Plaintiff No. 1 by reason of his failing health to manage and administer the affairs of the Plaintiff No. 7, it was decided amongst the shareholders of the Plaintiff No. 7 that the entire shareholding of and in the Plaintiff No. 7 would be sold to a suitable person who would meet all the liabilities of the Plaintiff No. 7 as on March 31, 2010 so that not only the liabilities of the Plaintiff No. 7 as at such date is liquidated, but also the personal assets of the members of the Parasramka family pledged and/or mortgaged with the secured creditor of the Plaintiff No. 7 is released.

j) The Plaintiff No. 7 is primarily engaged in the business of cold storage. The business of cold storage is seasonal in nature and its season commences from the month of February and ends in the month December of every year.

k) In or about January 2010, the Defendant No. 1 approached the Plaintiff No. 1 at the registered office of the Plaintiff No. 7 at 40, Strand Road, 2nd Floor, Room No. 36, Kolkata 700001 with, inter alia, the following proposals:

i) The Defendant No. 1 shall pay sum of Rs. 401 lakh and a sum of Rs. 4,07,021/- to the Plaintiff No. 1 and the other shareholders of the Plaintiff No. 7.

ii) The Defendant No. 1 shall purchase the shares of land in the Plaintiff No. 7 either in his own name or through his nominee or nominees. The purchase of the shares will be made in trenches. Until the entire consideration is paid by the Defendant No. 1, all share certificates shall remain with the respective transferor shareholders and the names of the transferees shall be brought on record of the Plaintiff No. 7 only on payment of full consideration.

iii) The liabilities of the Plaintiff No. 7 as at January 31, 2010 would be borne and cleared by the Plaintiff No. 1.

iv) The liability of the Plaintiff No. 7 from February 1, 2010 shall be borne and cleared by the Defendant No. 1.

v) The Plaintiff No. 1 will settle the claim of the secured creditor.

vi) The Defendant No. 1 shall pay a sum of Rs. 105 lakh to the Plaintiff No. 1 till the settlement is not reached with the secured creditor.

vii) A Memorandum of Understanding would be entered into between the parties stating the agreement between the parties.

viii) Time would be the essence of the contract between the parties.

ix) The Plaintiffs would be entitled to forfeit the amounts paid by the Defendant No. 1 in the event there was failure to discharge any of the obligations within the time stipulated in the Memorandum of Understanding.

l. On or about February 8, 2010, the Respondent No. 1 made over a sum of Rs. 10.51 lakh in cash as part consideration at the registered office of the Plaintiff No. 7 at 40, Strand Road, Kolkata 700001 within the jurisdiction aforesaid. The Plaintiffs and the Defendant Nos. 7 to 15 caused the Defendant No. 1 to be appointed as an additional director of the Plaintiff No. 7 and relevant Form 32 in that regard was filed with Registrar of Companies.

m. The Defendant No. 1 thereafter prepared a Memorandum of Understanding and obtained the signature of the Plaintiff No. 1 thereon. The said Memorandum of Understanding was executed by the Plaintiff No. 1, the Respondent No. 1 and was witnessed by the persons whose signatures appear in such Memorandum of Understanding. The said Memorandum of Understanding was entered to at the registered office of the Plaintiff No. 7 at 40, Strand Road, Kolkata 700001 within the jurisdiction aforesaid. The date of the Memorandum of Understanding was kept blank. The original of the Memorandum of Understanding was kept by the Defendant No. 1.

n. The Defendant No. 1 thereafter paid a sum of Rs. 6,34,000/- by various cheques all dated March 9, 2010 and a sum of Rs. 15 lakh in cash on March 12, 2010 and a sum of Rs. 9,01,000/- in cash on March 16, 2010 aggregating to Rs. 30,35,000/-. The Defendant No. 1 obtained the signature of the son-in-law of the Plaintiff No. 1 in respect of the payment of the sum of Rs. 15 lakh and Rs. 9,01,000/- on the original of the Memorandum of Understanding. The said two entries were not numbered when the son-in-law of the Plaintiff No. 1 had signed in the Memorandum of Understanding. The original of the Memorandum of Understanding had a space between the signatures of the parties and the witnesses and the two signatures of the son-in-law of the Plaintiff No. 1. The Respondent No. 1 caused two other entries to be made in the Memorandum of Understanding in the said space. The Plaintiffs came to know of the same from the criminal proceedings where the Defendant No. 1 by disclosing a fabricated version of the Memorandum of Understanding claimed that an alleged sum of Rs. 40 lakh and a sum of Rs. 26.34 lakh were allegedly paid on March 5, 2010 in cash and on March 9, 2010 in cash and cheque. The Plaintiffs and the Respondent Nos. 7 to 15 did not receive the sum of Rs. 40 lakh and the sum of Rs. 20.34 lakh in cash save and except a sum of Rs.

Amount Rs.	Date
Prior to MOU	10,51,000/-
March 9, 2010	6,34,000/-
March 12, 2010	15,00,000/-
March 16, 2010	9,01,000/-
	40,86,000/-

Sl. No.	Name	Age	Gender	Religion	Marital Status	Education	Occupation	Income	Assets	Liabilities	Net Worth
1	Prasanna	29	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
2	Standish	50	Male	Hindu	Married	Graduate	Business Owner	₹2,50,000	₹10,00,000	₹4,00,000	₹6,00,000
3	Standish	50	Male	Hindu	Married	Graduate	Business Owner	₹2,50,000	₹10,00,000	₹4,00,000	₹6,00,000
4	Standish	29	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
5	Standish	20	Male	Hindu	Single	Graduate	Student	₹0	₹0	₹0	₹0
6	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
7	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
8	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
9	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
10	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
11	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
12	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
13	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
14	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
15	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
16	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
17	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
18	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
19	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
20	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
21	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
22	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
23	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
24	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
25	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
26	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
27	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
28	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
29	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000
30	Prasanna	37	Male	Hindu	Married	Graduate	Software Engineer	₹1,20,000	₹5,00,000	₹2,00,000	₹3,00,000

r. Purporting to act in terms of the said Memorandum of Understanding, the Respondent No. 1 started to manage the cold storage of the Plaintiff No. 7 since February 2010 and is running the same. The Defendant No. 1 has, however, caused the factory license and the agricultural marketing license in respect of the cold storage facility for the Plaintiff No. 7 to

expire. The said Defendant has also prevented such licenses being renewed by the Plaintiffs. The Defendant Nos. 1 to 6 have collected about Rs. 90 lakh as hire charges from various hirers of the cold storage facilities of the Plaintiff No. 7 outside the jurisdiction aforesaid. The said Defendants have not accounted for the same in the books of accounts of the Plaintiff No. 7 or have deposited such sum in the bank account of the Plaintiff No. 7.

s. Under the Memorandum of Understanding, the Defendant No. 1 is to discharge the following obligations:

- i) The Defendant No. 1 is to pay a sum of Rs. 401 lakhs and Rs. 4,07,021/-.
- ii) The Defendant No. 1 will bear all liabilities of the Plaintiff No. 7 on and from February 1, 2010.
- iii) The Defendant No. 1 shall pay a sum of Rs. 105 lakhs till the settlement with UCO Bank is worked out.
- t) The Defendant No. 1 thereafter failed and neglected to discharge his obligations under the said Memorandum of Understanding. The Defendant No. 1 has failed and neglected to discharge, inter alia, the following obligations:
 - i) The Defendant No. 1 did not pay the sum of Rs. 401 lakh or Rs. 4,07,021/- or the sum of Rs. 105 lakh.
 - ii) The Defendant No. 1 has not been meeting the liabilities statutory or otherwise of the Plaintiff No. 7 since February 1, 2010.
 - u) The Defendant No. 1 had wrongfully and illegally stalled the settlement process between the Plaintiffs and the secured creditor of the Plaintiff No. 7. The Defendant No. 1 had wrongfully and illegally failed and neglected to discharge the liabilities of the Plaintiff No. 7 as at February 1, 2010.
 - v) Since the Defendant No. 1 had taken over the management of the cold storage of the Plaintiff No. 7 on January 9, 2010, the Defendant Nos. 1 to 6 had been dealing with the assets of the Plaintiff No. 7 without rendering any accounts of the same to the Plaintiffs and the Defendant Nos. 7 to 15. The Defendant Nos. 1 to 6 had claimed to have appointed Directors in the Plaintiff No. 7.
 - w) The Defendant No. 1 had shown the following persons to be appointed as directors of the Plaintiff No. 7.

Names of the Directors shown to be appointed by the Respondent No. 1

1. Rahul Agarwalla

2. Nitin Agarwalla

3. Garima Agarwalla

4. Fully Devi Agarwalla (since expired on October 6, 2010)

i) None of the Defendant Nos. 2 to 6 are shareholders of the Plaintiff No. 7 ii) In any event, the Defendant No. 1 had tendered a sum of Rs. 6,34,000/-towards purchase of shares which could constitute 30% of the total issued, paid-up and subscribed capital of the Plaintiff No. 7.

iii) The existing Board of Directors of the Plaintiff No. 7 did not hold any meeting of the Board to appoint the persons named in Paragraph 24 herein as additional directors of the Plaintiff No. 7.

iv) No general meeting of the Plaintiff No. 7 had been convened for the purpose of appointing the persons named in paragraph 24 as directors of the Plaintiff No. 7.

v) None of the Plaintiffs or the Defendant Nos. 7 to 15 had acquiesced or had accepted the purported appointment of the persons named in paragraph 24 as directors of the Plaintiff No. 7.

y) In order to put an end to the misdeeds of the Defendant No. 1, the Plaintiffs and the Defendant Nos. 7 to 15 had in an Extraordinary General Meeting of the shareholders of the Plaintiff No. 7 held on 13.9.2010 and 13.10.2010 had resolved to remove the Defendant No. 1 and its so-called directors appointed in the Plaintiff No. 7.

z) The entire books and records of the Plaintiff No. 7 are lying and situate at the registered office of the Plaintiff No. 7 at 40, Strand Road, Kolkata 700001.

aa) Various criminal proceedings were initiated by the Plaintiff No. 1 and the Defendant No. 1 against each other. Such criminal proceedings are pending adjudication.

bb) The Defendant Nos. 1 to 6, being in wrongful management of the cold storage of the Plaintiff No. 7, are exploiting the same to the detriment and prejudice of the Plaintiffs and the Defendant Nos. 7 to 15. The Defendant Nos. 1 to 6 are neither shareholders nor directors of the Plaintiff No. 7 and are not entitled to be in management of the cold storage of the Plaintiff No. 7. None of the Defendant Nos. 1 to 6 is entitled to utilize, manage, control or administer any asset of the Plaintiff No. 7, including the cold storage of the Plaintiff No. 7 in any manner whatsoever.

cc) The Defendant Nos. 1 to 6 have operated the cold storage of the Plaintiff No. 7 outside the jurisdiction aforesaid and have allowed agricultural products to be stored in such cold storage after obtaining hires from the hirers. The money received on hire has not been deposited in the bank account of the Plaintiff No. 7. The Defendant Nos. 1 to 6

have siphoned out such funds received from the hirers for their personal aggrandizement to the detriment and prejudice of the Plaintiffs and the Defendant Nos. 7 to 15. The hire received from the hirers in respect of the cold storage is the only income of the Plaintiff No. 7.

dd) The Defendant Nos. 1 to 6 have not been meeting the liabilities of the Plaintiff No. 7 since February 9, 2010. The liabilities of the Plaintiff No. 7 have accumulated due to the wrongful and illegal activities of the Defendant Nos. 1 to 6.

ee) Time being the essence of the Memorandum of Understanding and the Defendant No. 1 having acted in breach thereof, the said Memorandum of understanding stood terminated. The Plaintiffs are entitled to and have forfeited the sum of Rs. 40,86,000/- received by them from the Defendant No. 1. In any event, the Plaintiffs have issued a letter dated April 29, 2011 terminating the Memorandum of Understanding and stating that the amount of Rs. 40,86,000/- received by them has since been forfeited.

ff) The Defendant Nos. 2 to 6 are the nominees of the Defendant No. 1. The Defendant Nos. 1 to 6 are liable to render true and proper accounts of all dealings and transactions relating and concerning the Plaintiff No. 7 to the Plaintiffs and Defendant Nos. 7 to 15 at the registered office of the Plaintiff No. 7 at premises No. 40, Strand Road, Kolkata 700001 within the aforesaid jurisdiction.

gg) The Defendant Nos. 1 to 6 have interpolated on the original of the Memorandum of Understanding the date of the Memorandum of Understanding has been filled up by the Defendant Nos. 1 to 6. The following lines have been inserted on the last page:

i) Rs. 40 lakh (Rupees forty lakh) only paid on 04.03.2010.

ii) Rs. 26.34 lakh (Rupees twenty six lakh thirty four thousand) only paid in cash or cheques on 09.03.2010.

iii) Received Rs. 15 lakh (Rupees fifteen lakh) only in cash on 12.03.010.

iv) Received Rs. 9,01,000/- (Rupees nine lakh one thousand) only in cash on 16.03.2010.

The numbers 1, 2, 3, and 4 have also been inserted by the Defendant Nos. 1 to 6.

hh) An application for striking off the name of the Defendant No. 15 under the Easy Exit Scheme framed in terms of Section 560 of the Companies Act, 1956 is pending with the appropriate authority.

ii) The Plaintiffs claimed that they were entitled to and sought for a decree declaring that the Plaintiff Nos. 1 to 6 and Defendant Nos. 7 to 15 constitute 100% shareholding of the Plaintiff No. 7. The Plaintiffs also sought for a decree declaring the Defendant Nos. 1 to 6 are neither shareholders nor directors of the Plaintiff No. 7.

jj) The Plaintiffs and Defendant Nos. 7 to 15 claimed that they were entitled to and sought for a decree of eviction against the Defendant Nos. 1 to 6 from the cold storage of the Plaintiff No. 7 lying situate at Village Tora, Post Office Antupur, Police Station Jangipara, Dist Hooghly - 712424 and from such other properties of the Plaintiff No. 7 as may be found in their possession.

kk) The Defendant No. 1 to 6 should be directed by an appropriate decree to render true and proper accounts of all dealings and transactions that the Defendant Nos. 1 to 6 had in relation to Plaintiff No. 7 including the illegal collection of Rs. 90 lakh for the season 2001. Upon such true and proper accounts furnished and/or upon such accounts being taken, the Defendant Nos. 1 to 6 should be directed by an appropriate decree to pay such amount as much as may be found due and payable by them to the Plaintiffs forthwith.

ll) Alternatively, an enquiry be made into the loss and damages suffered by the Plaintiffs and Defendant Nos. 7 to 15 by the wrongful user, occupation and possession of the Defendant Nos. 1 to 6 in respect of the assets of the Plaintiff No. 7 and its cold storage and upon such enquiry being made, appropriate decree be passed thereon.

mm) The Plaintiffs claimed that they and Defendant Nos. 7 to 15 were entitled to and sought for a decree for perpetual injunction restraining the Defendant Nos. 1 to 6 either by themselves or through their men and/or agents and/or servants and/or assigns and/or howsoever from dealing with and/or disposing of and/or transferring and/or alienating and/or selling and/or encumbering and/or parting with possession and/or creating third party right over and in respect of the cold storage of the Plaintiff No. 7 or any asset of the Plaintiff No. 7 in any manner whatsoever.

nn) The Plaintiffs claimed that they and Defendant Nos. 7 to 15 were entitled to and sought for a decree for perpetual injunction restraining the Defendant Nos. 1 to 6 and/or their men and/or servants and/or assigns and/or howsoever from letting out any part or portion of the cold storage of the Plaintiff No. 7 or receiving any heir from any person in respect of any transaction relating to the cold storage or otherwise of the Plaintiff No. 7 and/or from operating any bank account of the Plaintiff No. 7 and/or opening any new bank account in the name of Plaintiff No. 7 and/or receiving any money from any creditors of the Plaintiff No. 7 in any manner whatsoever.

oo) The Plaintiffs asserted that they were entitled to the legal character and right in respect of the assets of the Plaintiff No. 7 the Defendant Nos. 1 to 6 are denying and/or interested to deny the right, title interest and the legal character of the Plaintiffs and Defendant Nos. 7 to 15 in respect thereof.

pp) The Defendant Nos. 1 to 6 were acting in breach of the obligations. The Defendant Nos. 1 to 6 are invading and/or threatening to invade the Plaintiffs' right to and enjoyment of property. The Defendant Nos. 1 to 6 are in the nature of trustees of the properties of the Plaintiff No. 7, there exists no standard for ascertaining the damage caused or likely

to be caused by the invasion. The invasion is such the compensation in money would not afford adequate relief. Injunction is necessary to prevent multicity of judicial proceedings.

qq) Inasmuch as a part of the cause of action as pleaded in Paragraphs 1, 5, 12, 13, 14, 26, 32 and 33 of the plaint has arisen within the jurisdiction of this Hon"ble Court and a part of the cause of action as pleaded in paragraphs 4, 19, 23, 30 and 32 of the plaint has arisen outside the jurisdiction of the Hon"ble Court and inasmuch as the registered office of Plaintiff No. 7 was lying and situate at 40, Strand Road, 2nd Floor, Room No. 36, Kolkata-700001 within the jurisdiction of the Hon"ble Court and the cold storage of the Plaintiff No. 7 was lying and situate at Village- Tora, Post Office Antpur, Police Station Jangipara, District- Hooghly, outside the jurisdiction of this Hon"ble Court, the Plaintiffs sought leave under Clause 12 of the Letters Patent, 1865 to file and institute the instant suit.

10. In connection with the aforesaid suit the Plaintiff came up with an application for interlocutory relief for:

a) A fit and proper person be appointed Receiver over and in respect of all assets and properties of the Petitioner No. 7, including its cold storage with a direction upon the Receiver to make an inventory thereof and to take actual physical possession thereof.

b) Injunction restraining the Respondent Nos. 1 to 6 and/or their men and/or agents and/or servants and/or each of them from entering into any contract for hires in respect of any assets and properties of the Petitioner No. 7, including any part or portion of the cold storage of the Petitioner No. 7 in any manner whatsoever.

c) Injunction restraining the Respondent Nos. 1 to 6 and/or their men and/or agents and/or servants and/or each of them from managing any assets and properties of the Petitioner No. 7, including its cold storage in any manner whatsoever.

d) Injunction restraining the Respondent Nos. 1 to 6 each of them either by themselves or through their men and/or agents and/or servants and/or assigns from interfering with the management and control of the Petitioner Nos. 1 to 6 and disturbing their possession in respect of the Petitioner No. 7.

e) Injunction restraining the Respondent Nos. 1 to 6 each of them either by themselves or through their men and/or agents and/or servants and/or assigns and/or howsoever from dealing with and/or disposing of and/or transferring and/or alternating and/or parting with possession and/or creating third party right over and in respect of any assets and/or properties of Petitioner No. 7, including the cold storage in any manner whatsoever.

f) Injunction restraining the Respondent Nos. 1 to 6 each of them either by themselves or through their men and/or agents and/or servants and/or assigns and/or howsoever from letting out any part or portion of the cold storage of the Petitioner No. 7 or receiving any hire from any person in respect of any transaction relating to the cold storage or

otherwise of the Petitioner No. 7 and/or operating any bank account in the name of Petitioner No. 7 and/or opening any new bank account in the name of Petitioner No. 7 and/or receiving any money from any creditors of the Petitioner No. 7 in any manner whatsoever.

g) Order directing the Respondent Nos. 1 to 6 to deposit the sum of Rs. 90 Lakhs in a suitable bank account in the name of the Petitioner No. 7.

h) Alternatively, the Respondent Nos. 1 to 6 be directed to render adequate and sufficient security to the extent of the sum of Rs. 90 lakhs pending adjudication of the suit.

i) In the event of the Respondent Nos. 1 to 6 failing to deposit the sum of Rs. 90 lakhs or securing the same to the satisfaction of the Petitioner, the personal assets and properties of the Respondent Nos. 1 to 6 be attached and/or and its sale proceeds kept as security for the claims of the petitioner in the suit.

j) Ad interim orders in terms of prayers above.

k) Costs of and incidentals to this application be paid by the Petitioner.

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

11. Mr. Mitra, the learned Advocate appearing on behalf of the Defendant, by relying upon the decision of a Division Bench of this Court in the case of [Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math and Others](#), , vehemently contended before us that the sole object of the Plaintiffs is to seek a decree for eviction against the Defendant Nos. 1 to 6 from the cold storage of Plaintiff No. 7 lying at Village Tora, Post Antpur, Dist-Hooghly and as such, it is substantially a suit for land. According to Mr. Mitra, in order to decide whether a suit is really one for land, the substance of the allegations of the Plaintiffs is to be looked into and if we apply the aforesaid principle, it would appear that it is a suit for land and thus, Clause 12 of the Letter Patent is not applicable and taking advantage of a part of cause of action accruing within the jurisdiction of this Court, the suit could not be filed in the Original Side of this Court.

12. Mr. Saha, the learned Advocate appearing on behalf of the Plaintiff, on the other hand, has, opposed the aforesaid contention of Mr. Mitra and has pointed out that the reliefs claimed by his client in the suit itself disclosed that the dispute was as regards the management of a company where the Defendant Nos. 1 to 6 are illegally interfering by violating the terms of an agreement and thus, this is a suit for declaration of title and permanent injunction. In support of such contention, Mr. Saha relies upon a decision of the Supreme Court in the case *Adcon Electronics Pvt. Ltd. v. Daulat and Anr.*, reported in AIR 2001 Supreme Court 3712.

13. After hearing the learned Counsel for the parties and after going through the aforesaid averments in the plaint, we find substance in the contention of Mr. Saha that the purpose of filing of the suit out of which this appeal arises was to get a decision on the dispute between the Plaintiffs and Defendants Nos. 1 to 6 over the control and management of the company, the Plaintiff No. 7, and the sole question involved is whether without complying with the terms of the agreement, the Defendant Nos. 1 to 6 could interfere with the management of a private limited company, the Plaintiff No. 7.

14. As pointed out by the Supreme Court in the case of *Adcon Electronics Pvt. Ltd. v. Daulat and Anr.* (supra), that even in a suit for specific performance of contract of sale of immoveable property unless the relief of recovery of possession is prayed for by the Plaintiff, the suit cannot be said to be a suit for land because in such a suit title to the immoveable property is not decided. The following observations made therein are quoted below:

In the instant case the suit is for specific performance of agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed as such it cannot be treated as a "suit for land".

We cannot also accept the contention of Mr. Chitale that the suit is for acquisition of title to the land and is a "suit for land". In its true sense a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject matter of the suit.

15. Applying the aforesaid principles to the facts of the present case, we find that the dispute in the suit is whether by virtue of the agreement between the parties the Defendant Nos. 1 to 6 became directors of the Plaintiff No. 7 and can interfere with the management of the Plaintiff No. 7. Thus, the mere fact that the Defendants were managing a cold storage which is the property of the company will not make the suit one for land because the title to the cold storage situated in District of Burdwan is not required to be adjudicated in the suit and the relief of recovery of possession of such property has also not been sought for.

16. Therefore, the suit cannot be said to be one for land so as to exclude the operation of Clause 12 of the Letters Patent.

17. We, thus, find that the cross-objection filed by the Defendant Nos. 1 to 6 is not tenable in the eye of law.

18. As regards, the appeal filed by the Plaintiff against the refusal of the part of the interlocutory reliefs claimed, we find that the learned Single Judge has sufficiently protected the interest of the Plaintiffs at the stage of ad interim order of injunction by restraining the Defendants from surrendering possession in respect of cold storage in favour of any person or creating third party's right in respect thereof. Whether this is a fit case for grant of a Receiver should be, in our opinion, decided after going through the

defence that will be disclosed by the Defendants in the affidavit.

19. We find that the discretion exercised by the learned Single Judge was quite justified at the stage of considering the prayer of interim relief and the main application being fixed for hearing in the month of August, we find no reason to interfere with the discretion at this stage.

20. Both the appeal and the cross-objection are thus dismissed.

21. In the facts and circumstances, there will be, however, no order as to costs.

I agree.