

**Order below Exh.6 in Summary Suit No.796/2022**

**Appearance:**

Mr. A. J. Mehta, learned advocate for the plaintiff.

Mr. M. M. Shaikh, learned advocate for the defendant.

**Coram:- Z. N. Munshi, Judge**

1. The plaintiff has filed the suit for recovery of legal due amount along with the present injunction application against the defendant.
2. The brief facts of the plaintiff's case are as under:  
The plaintiff has pleaded that she has filed the present suit for recovery of legal due amount from the defendant. The plaintiff has further pleaded that she has given hand loan amount of Rs.3,00,000/- to the defendant as the defendant was in need of financial aid, but the defendant has not repaid the hand loan to the plaintiff, therefore, the plaintiff has given notice to the defendant, but the defendant has not complied the said notice. The plaintiff has apprehension that if the defendant may sell his properties to third parties then the legal due amount of the plaintiff will be sinked therefore, it is necessary to prevent the defendant from selling his property as mentioned in para-5 of the present application. Hence, the plaintiff has filed the suit as well as present application and prayed relief as per para-9 of the application.

3. On service of summons, defendant has appeared before the Court through his learned advocate and filed his written objection vide Exh.14 and denied all allegation made by the plaintiff in her suit as well as present application. Furthermore, the defendant has stated that the suit as well as present application of the plaintiff is not maintainable at law. The defendant has further stated that there is no legal due of the plaintiff and the defendant is not able to read and write the Gujarati Language, hence, the plaintiff has taken false signature of the defendant in the documents and the defendant has never given any writing regarding legal due of the plaintiff, but in fact, the defendant has contacted the plaintiff to change her name in Torrent Power Ltd. Bill, but the plaintiff has taken the signature in the stamp paper. Hence, the suit as well as this application should be rejected with cost. The plaintiff has filed rejoinder affidavit vide Exh.17 and denied all statement made by the defendant in his written objection.
4. Learned advocate of the plaintiff has filed written arguments vide Exh.18, which is read by me. I have heard the argument of learned advocate Mr. M. M. Shaikh, appearing on behalf of the defendant.
5. Taking into consideration the pleadings as well as evidence of the parties on the record, following points are emerges for my consideration and determination to decide this application, which reads as under:

### P o i n t s

1. Whether the case of the plaintiff is prima-facie ?
  2. Whether the principle of balance of convenience is in favour of the plaintiff ?
  3. Whether refusal or denial of the injunction results into irreparable injury to the plaintiff which cannot be compensated in terms of money ?
  4. What order ?
6. My reply to the above points are as under:
1. In the negative.
  2. In the negative.
  3. In the negative.
  4. As per final order.
7. My reasons to the above reply of points are as under:

### R e a s o n s

#### Joint discussion of point nos.1 to 4:

8. Considering the fact of the application and submission made on behalf of the plaintiff as well as defendant, in the present case, the plaintiff has filed this application vide Exh.6. As

per the case of the plaintiff, the defendant has approached the plaintiff and stated that the defendant has asked amount of Rs.3,00,000/- for personal use and the plaintiff has given Rs.3,00,000/- in cash to the defendant and the defendant has executed one written note in favour of the plaintiff of Rs.3,00,000/-, which is duly notarized. But after the laps of time, the defendant has not paid any amount to the plaintiff and the plaintiff has apprehension that the defendant possessed the property and he may sell the said property and if do so, then the plaintiff's legal due amount will not be recovered. Hence, the plaintiff has filed the suit with this application. Hence, prayed to allow this application. Looking to the suit, is there any legal due or not is the matter of evidence and without taking any evidence, the injunction order cannot be passed. Furthermore, looking to the record, the plaintiff has not produced any documentary evidence to show that the defendant is owner of the property as mentioned by the plaintiff in para-5 of this application and as per the oral submission of the defendant, the said property is not belonging to the defendant, hence, without any documentary evidence, or without taking any oral as well as documentary evidence, the injunction against the said properties cannot be granted. Furthermore prima facie, looking to the averment in the suit, the legal due of the plaintiff is of Rs.3,00,000/- whereas the property of the defendant may have more value then the due of the plaintiff. Furthermore, looking to the cause title of the plaint, the

plaintiff has filed this suit under Order-37 of the C.P.C. and looking to the plaint, the plaintiff has admitted that he has filed this suit under Order-37 of C.P.C. and he has not claimed any other relief. Therefore, there is no provision to file this type of application in Summary proceeding. The plaintiff has not able to show any provision of interim injunction application in suit filed as Summary Suit. In Summary Suit, there is no provision regarding interim injunction. An order of interim injunction against the defendant, affects the right of the owner of the property to deal with the same even before any verdict is available against them as regards the claim of the plaintiff. Such an Order is not to be passed merely for the asking or in the routine manner. Furthermore, the plaintiff has to prima-facie prove that he has given amount of Rs.3,00,000- in cash to the defendant and the defendant has not paid legal dues. Hence, there is no prima-facie case made out by the plaintiff against the defendant for granting of order of interim injunction. It is well settled law that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if

that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. In this case plaintiff is not able to prove his prima-facie case. Hence, I held **Point Nos.1, 2 and 3** are in “**Negative**” and I pass the following order in respect of **Point No.4** in the interest of justice:

**: ORDER :**

1. An interim injunction application vide **Exh.6** is hereby **rejected**.
2. The costs shall follow the result of the suits.

Pronounced and signed in the open court on this 31<sup>st</sup> day of March, 2023.

Date : 31-03-2023.  
Place : Ahmedabad.

(Z. N. Munshi).  
Chamber Judge,  
Small Causes Court No.13,  
Ahmedabad.  
UIC No. GJ01034