

**MS (Com) – 9/2024**

**Present :: Neyaz Alam  
Judge Commercial Court at Rajarhat  
North 24 Parganas**

**CNR:WBNP19-000011-2024  
J.O Code – WB01398**

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**03.02.2024**

No caveat is filed as per note of the office.

The plaintiff/petitioner filed a put up petition praying for moving injunction application under Order 39 Rule 1 & 2 read with Order XXXVIII Rule 5 of CPC on the ground of urgency. Leave is also sought to move the injunction application without exploring the mandate of Section 12(A) of Commercial Court Act on the ground of urgency and the urgent relief so prayed if not granted the very purpose of the suit shall get defeated. Leave is granted at an ad-interim stage.

Heard. Considered and allowed.

The application under Order 39 Rule 1 & 2 read with Order XXXVIII Rule 5 of CPC is taken up for hearing.

Issue notice upon the respondents calling upon them to show cause within 15 days from the date of receipt of the notice as to why the temporary injunction as prayed for shall not be granted against them.

Perused the plaint, injunction application and the annexures filed on behalf of the plaintiff/petitioner.

Considered the submissions advanced by the Ld. Counsel for the plaintiff/petitioner.

The plaintiff is the sole proprietor of 'Ganapati Hosiery Industries', carrying on business of manufacturing, trading and/or selling of hosiery clothes and/or its allied goods and/or products.

Defendant is also the sole proprietor carrying on business under the name and style “Regent SME Industrial Park” engaged in the business of purchasing Hosiery clothes from the plaintiff.

**Brief fact of the suit** in or about 2018, the defendant approached the plaintiff for supply of hosiery clothes and the plaintiff agreed to supply the same at the office of the defendant at Block-B, 3rd Floor, Room No. 318, Saraswati Bridge, NH-6, Begri, Domjur, Howrah-711 302, Police Station Domjur.

From time to time, the plaintiff supplied the goods to the defendant and the same has been received by the defendant without any protest and/or demur. The

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plaintiff used to issue invoices and challans at the time of delivery of the said goods and the same has also been duly received by the defendant. The defendant also made payment from time to time on ad-hoc basis and the plaintiff maintains a running and continuous account. The plaintiff received the last payment on 19th May, 2023 and a sum of Rs. 92,94,952/- remained due and payable from the defendant. In the invoices, the plaintiff specifically mentioned the payment terms is 45 days from the date of receipt of the goods and in default, the interest would be charged at the rate of 18% per annum.

Further state the plaintiff requested the defendant to clear the aforesaid outstanding of Rs. 92,94,952/- and in part payment thereof, the defendant issued two cheques, bearing no. 000003 dated 12th July, 2023 for Rs. 20,00,000/- and no. 000004 dated 12th July, 2023 for Rs. 25,00,000/- respectively, drawn on AU Small Finance Bank. The plaintiff presented the said cheques but the said cheques were dishonored for insufficient funds showing dishonest and fraudulent intention of the defendant.

Further state the plaintiff filed complaint cases under Section 138 of the Negotiable Instrument Act, 1881 before the Learned Chief Judicial Magistrate at Howrah, being Case Nos. CS/814C of 2023 and CS/815C of 2023. The said proceedings are still pending before the Learned Chief Judicial Magistrate at Howrah.

It is stated by a letter dated 13th December, 2023, the plaintiff through his Advocate made a demand for payment of the outstanding dues of Rs. 92,94,952/- alongwith 18% interest upon the defendant. However, inspite of receipt of such demand notice, the defendant neither responded to the same nor clear the outstanding dues.

It is pointed out as on 8th January, 2024, there is an outstanding of Rs. 1,02,29,095/- (Rupees One Crore Two Lakhs Twenty Nine Thousand and Ninety Five only) payable by the defendant to the plaintiff.

Finally, defendant in order to defraud the plaintiff has been attempting to sell, alienate, encumber and/or create third party interest over and in respect of the movables and/or immovable properties and/or removing and/or withdrawing money from the bank account. As such, the plaintiff if invoke the pre- instituted mediation, the defendant would create third party interest over its immovable properties and

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withdraw all money from his bank account to make the suit and the injunction application infructuous and nugatory, hence preventive relief is sought for.

**:: Findings of the Court ::**

The plaintiff is the sole proprietor of 'Ganapati Hosiery Industries', carrying on business of manufacturing, trading and/or selling of hosiery clothes and/or its allied goods and/or products.

Defendant is also the sole proprietor carrying on business under the name and style "Regent SME Industrial Park" engaged in the business of purchasing Hosiery clothes from the plaintiff.

It is stated as per the order received from the defendant, the plaintiff supplied goods to the defendant with invoices and challans at the time of delivery goods and the goods were received without any protest and demur. The plaintiff received payment time to time on ad-hoc basis and last payment received on 19.05.2023 and a sum of Rs.92,94,952/- remained due and payable from the defendant. Every bill has to be paid within 45 days from the receipt of the goods in default 18% per annum interest accrues.

Thereafter, the plaintiff requested the defendant to clear the outstanding and the defendant in part payment issued to cheques bearing no.000003 dated 12th July, 2023 for Rs. 20,00,000/- and no.000004 dated 12th July, 2023 for Rs. 25,00,000/- respectively, drawn AU Small Finance Bank. The plaintiff on presentation the said cheques but the said cheques were dishonored for insufficient funds.

Anyway, cheques bounce proceedings are pending before the Howrah Court being no.CS/814C of 2023 and CS/815C of 2023 under Section 138 of the N.I.Act.

Instead of honouring the re-paying the dues, the defendant has attempting to sell, alienate and create third party interest over the movables and/or immovables properties, hence, interim relief is prayed for by-passing the mandatory mediation process otherwise, the claim of the plaintiff shall be a paper decree.

Therefore, from the chronological facts as stated hereinabove together with the annexed documents clearly reveals that the defendant received goods from the plaintiff and failed to pay the entire sum and pursuant to the transaction/outstanding part payment was to be made for which two cheques of Rs.20,00,000/- each were issued and both cheques on placement before the bank bounced and till date the outstanding amount has not been paid and furthermore to deprive the

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plaintiff/petitioner the defendant has been attempting to encumber his assets, thus the plaintiff/petitioner has made out a arguable prima facie case in his favour which requires adjudication at the time of trial. Balance and convenience and inconvenience is also inclined in favour of the petitioner and the plaintiff/ petitioner has been suffering irreparable loss and injury over the withholding of the outstanding amount due to the plaintiff.

Therefore, the plaintiff/petitioner has successfully qualified the requirement or touchstone of three principles in the grant of temporary injunction viz.

- a. Prima facie case,
- b. Balance of convenience and inconvenience,
- c. Irreparable loss and injury.

At this preliminary stage the court is restricted to the plaint, sworn statement of the plaintiff/ petitioner with annexed documents, together with the averment made therein. Thus, the law on the issue emerges to the effect that an ad-interim injunction shall be granted by the Court after considering all the pros and cons and preferably after issuing short notice but in exceptional cases, equitable and discretionary injunction can be exercised where by protective order needed to be passed as in the instant case at least to protect the right of the petitioner for time being.

Hence, it is,

## **O R D E R E D**

“an ex-parte ad-interim order of injunction is hereby granted restraining the defendant from selling, encumbering and/or creating any third party interest in respect of the immovable property as mentioned in the schedule of the injunction application till **19.02.2024**”.

Plaintiff/petitioner is directed to comply the provisions U/O 39 rule 3(a) and (b) of the code of Civil Procedure at once and furnish to the defendant :

1. a copy of the injunction application;
2. a copy of the affidavit filed in support of the temporary injunction application;
3. a copy of the plaint;
4. copies of documents on which the petitioner relies and
5. an affidavit stating that the copies stated above have been so delivered or sent.

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Requisites forthwith.

To date for S/R and appearance, hearing of temporary injunction application, W.O, if any, in the meantime.

**Sd/- Neyaz Alam**  
**Judge**  
**Commercial Court,**  
**Rajarhat, North 24 Parganas**