

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.34217 OF 2023
IN
COMMERCIAL SUMMARY SUIT (L) NO.32928 OF 2023
WITH
COMMERCIAL SUMMARY SUIT (L) NO.32928 OF 2023

NAGENDRA GANAPATI KINI)...PLAINTIFF

V/s.

ASHESH MEHTA)...DEFENDANT

Mr.Nihar Chitre a/w. Mr.Vivek Sharma i/by H.R.Sharma, Advocate for
the Plaintiff/Applicant.

None for the Defendant/Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 6th MARCH 2024

PC. :

1. This Interim Application seeks following interim reliefs in the
Suit seeking a decree for a sum of Rs.14,94,25,000/- :

*“(a) That pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to issue an order and direction against the Respondent and/or their servants and/or agents and/or any other person claiming through and/or under them, to **disclose** the total asset including movable and immovable of the Respondent as on date on an Affidavit of disclosure in order to secure the interest of the Applicant before this Hon’ble Court till the finality of the present suit;*

(b) That till the pendency of the present Suit, a direction or an order of injunction against the Respondent and/or its servants, agents and/or any other person claiming through and/or under them, to **restraining** in any manner, directly, or indirectly alienating, dealing with, disposing of, parting possession of and/or creating any third party rights in the properties disclosed by the Respondent as prayed in clause (a) including movable or immovable property of the Respondent depriving the Applicant of its total claim amount of INR 14,94,25,000/-;

(c) That till the pendency of the present Suit, a direction or an order of injunction against the Respondent and/or its servants, agents and/or any other person claiming through and/or under them, to **restraining** in any manner, directly or indirectly alienating, dealing with and/or disposing of the funds available in the Kotak Mahindra Bank Account of Respondent having Account No.3311653538, IFSC Code as KKBK0001365, Branch at Hubtown Solaris Branch, Andheri East, Mumbai depriving the Applicant of its total claim amount of INR 14,94,25,000/-;

(d) That till the pendency of the present Suit, inter alia, a direction or an order of injunction against the Respondent and/or its servants, agents and/or any other person claiming through and/or under them, **restraining** in any manner, directly, or indirectly alienating, dealing with, disposing of, parting possession of and/or creating any third party rights in the properties of the Respondent located in Kandivali, Goregaon East and Santacruz West, details of which ought to be disclosed by Respondent as prayed under clause (a) ;

(e) for any ad-interim relief in terms of prayer clause (a) to the (d);

(f) costs;

2. Mr.Chitre, learned Counsel, appears for the Plaintiff/Interim Applicant and submits that a copy of this Interim Application has been served upon the Defendant through the Jail Superintendent of Mumbai

Central Prison at Arthur Road. In support, learned Counsel seeks to tender across the bar a copy of the affidavit of service which indicates that on 10th February 2024, copy of the Interim Application along with the plaint has been received by the official at the Central Prison, Mumbai on 10th February 2024.

3. Despite service, none appears for the Defendant/Respondent.

4. Mr.Chitre submits that since the Plaintiff had invested his hard earned money of Rs.13,90,00,000/- through the Defendant/Respondent and initially the Respondent had paid monthly returns of approximately at the rate of 2% to 3.5% per month, however, when the Applicant approached the Respondent to make a regular enquiry about his investment on 19th June 2023, the Respondent failed to respond, despite several attempts. The Applicant then raised a withdrawal request on 19th June 2023 for refund of his full amount of Rs.13,90,00,000/- which was acknowledged by the Respondent and the Applicant was promised that the refund would be done within 24 hours. However, no monies were refunded to the Applicant. Thereafter, the Applicant was informed that the Respondent has been arrested in a cheating case. It is submitted on the basis of the Ledger Account

Statement from 2019 to 2023 maintained by the Respondent and available with the Applicant which shows that the amount of Rs.13,90,00,000/- is due and payable to the Applicant. Mr.Chitre submits that the Applicant apprehends that the Respondent will either dispose all his assets or divert the money lying in his account with Kotak Mahindra bank and therefore seeks protection in terms of Prayer clauses (b), (c) and (d).

5. It is observed that the Defendant/Respondent is not represented despite service.

6. Having heard the learned Counsel for the Applicant/ Plaintiff and having perused the proceedings, this Court is of the view that till the next date, ad-interim relief in terms of Prayer clauses (c) and (d) be granted, which read thus :

*(c) That till the pendency of the present Suit, a direction or an order of injunction against the Respondent and/or its servants, agents and/or any other person claiming through and/or under them, to **restraining** in any manner, directly or indirectly alienating, dealing with and/or disposing of the funds available in the Kotak Mahindra Bank Account of Respondent having Account No.3311653538, IFSC Code as KKBK0001365, Branch at Hubtown Solaris Branch, Andheri East, Mumbai depriving the Applicant of its total claim amount of INR 14,94,25,000/-;*

(d) That till the pendency of the present Suit, inter alia, a direction or an order of injunction against the Respondent

*and/or its servants, agents and/or any other person claiming through and/or under them, **restraining** in any manner, directly, or indirectly alienating, dealing with, disposing of, parting possession of and/or creating any third party rights in the properties of the Respondent located in Kandivali, Goregaon East and Santacruz West, details of which ought to be disclosed by Respondent as prayed under clause (a) ;*

7. List on **10th April 2024**.
8. Let a copy of this order be intimated to the Respondent/Defendant.

(ABHAY AHUJA, J.)