

**IA No. GA 1 of 2020
in
CS 142 of 2020**

**IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Commercial Division**

**ANUMATI CONSULTANCY AND SERVICES PRIVATE LIMITED
v.
WELLSIDE GLOBAL PRIVATE LIMITED**

For the Plaintiff : Mr. Ratnanko Banerjee, Sr. Advocate
Mr. Jishnu Chowdhury, Advocate
Mr. Shaurav Mitra, Advocate
Mr. Suryaksh Manot, Advocate

For the Defendant : Mr. Surojit Nath Mitra, Sr. Advocate
Mr. Samik Chakraborty, Advocate
Mr. Mayank Kakrania, Advocate

Hearing concluded on : February 9, 2021

Judgment on : February 19, 2021

DEBANGSU BASAK, J. :-

1. In a suit where the plaintiff has money claim against the defendant, the plaintiff has sought interim order of attachment before judgment and an order of injunction against the defendant by this application.

2. Learned Senior Advocate appearing for the plaintiff has submitted that, the plaintiff is not pressing for an order of attachment before the judgment at this stage. He has limited the prayers of the application to a prayer for injunction only.

3. Learned Advocate appearing for the plaintiff has submitted that, the parties agreed that the defendant will construct and sell three flats to the plaintiff. By reason of such agreement, the plaintiff had from time to time paid a sum of Rs. 14,06,70,000/-. The plaintiff had thereafter found that the defendant was not performing its part of the obligations. The plaintiff had terminated the agreement and called upon the defendant to refund the principal amount along with interest thereon. The defendant had claimed that, it was entitled to deduct an amount on account of premature termination of the contract by the plaintiff. The plaintiff had approached the National Company Law Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016. In such proceedings, the defendant had tendered a sum of Rs. 12,81,22,349/- claiming that such sum was due and payable after adjustment of the amount that the defendant was entitled to deduct under the contract. The National Company Law Tribunal (NCLT) had disposed of such proceeding. The plaintiff being entitled to the

entirety of the sum of Rs. 14,06,70,000/- together with interest thereon, had not accepted the tender of the sum of Rs. 12,81,22,349/- before the NCLT. The plaintiff has now a claim in excess of Rs. 81 crores as against the defendant.

4. Learned Senior Advocate appearing for the plaintiff has relied upon **2019 Volume 4 Calcutta High Court Notes 412 (Harleen Jairath v. Prabha Surana)** in support of the contention that, the plaintiff is entitled to an order of injunction as prayed for.

5. Learned Senior Advocate appearing for the defendant has submitted that, the petition does not contain any averment with regard to attachment before judgment. He has relied upon **2008 Volume 2 Supreme Court Cases page 302 (Raman Tech. & Process Engg. Co. & Anr. v. Solanki Traders)** in support of his contention that an order of attachment before judgment should not be passed in the facts and circumstances of the case.

6. Referring to the averments made in the application and relying upon **All India Reporter 2009 Calcutta (Sunil Kakrania & Ors. v. M/s. Saltee Infrastructure Ltd. & Anr.)** learned Senior Advocate appearing for the defendant has submitted that, the plaintiff is neither entitled to

an order of attachment nor an order of injunction. He has submitted that, the flats were agreed to be handed over in May, 2020. Prior to the expiry of time for handing over the flats, the plaintiff had unilaterally terminated the contract. Under the Contract, the defendant is entitled to deduct money from out of the consideration paid by the plaintiff in the event of premature termination of the contract at the behest of the plaintiff. He has submitted that, the plaintiff terminated the contract in April, 2019 much prior to the date of expiry of the time to perform the contract in May, 2020. According to him, the defendant cannot be said to be in breach of the contract. The defendant had offered to refund the price for the flats received from the plaintiff after deducting the amount stipulated under the contract for premature termination of the contract. The plaintiff did not accept such offer. Therefore, according to him, the defendant cannot be faulted.

7. ***Raman Tech. & Process Engg. Co. & Anr. (supra)*** has considered a petition under Order 38 Rule 5 of the Code of Civil Procedure, 1908. Since the plaintiff has given up the prayer for attachment before judgment, the ratio laid down in ***Raman Tech. & Process Engg. Co. & Anr. (supra)*** need not be discussed herein.

8. **Sunil Kakrania & Ors. (supra)** has considered applications both under Order 38 Rule 5 of the Code of Civil Procedure, 1908 as well as one under Order 39 Rule 1 and 2 thereof, in suit for recovery of money. In the facts of that case, the Court had found that the plaintiff therein was not entitled to an order of attachment before judgment. Again on facts, the Court had found that the plaintiff did not make out any case for grant of an order of injunction under Order 39 Rule 1(b) of the Code of Civil Procedure, 1908 in a suit for recovery of money.

9. **Harleen Jairath (supra)** has considered both **Raman Tech. & Process Engg. Co. & Anr. (supra)** as well as **Sunil Kakrania & Ors. (supra)**. After reviewing the various authorities on the subject, it has observed as follows :-

“49. In Chinese Tannery Owners' Association (supra) the Calcutta High Court was examining an interim order of injunction that had been granted in favour of the plaintiff in a suit for money decree. The defendant appellant raised the plea that the provisions of order 39 Rule 1 of the Code was not applicable and the Civil Court could not have invoked its inherent power under Section 151 of the Code. The Division Bench held that the mere fact that there are certain provisions as regards the issue of injunctions in Order 39 of the Code does not debar the Court from passing temporary injunctions

for doing justice in the exercise of its power under Section 151 of the Code. The relevant paragraphs are:

"3. It is necessary to consider first the point taken by Mr. Sen on behalf of the appellants that it is not open to the Court to pass any order of injunction in the exercise of its inherent jurisdiction under Section 151, Civil P. C. His argument is that where the Code has clearly and fully dealt with a matter, there is no scope for any action under inherent jurisdiction. He further argues in this connection that a reading of Section 94 of the Code makes it clear that the provisions of Order 39, Civil P. C. were intended to be exhaustive as regards this matter of temporary injunction. For this proposition he has relied upon the decisions in the case of 'HEMENDRALAL ROY v. INDO SWISS TRADING CO. LTD.', 24 Pat 496. and in the case reported in NAGABHUSHAN REDDY v. NARASAMMA, (1950) 2 Mad L J 482. Quite clearly an opposite view was taken in the Allahabad case of 'DHANESHWAR NATH v. GHANSHYAM DHAR', ILR (1940) All 201.

50. *There cannot be an absolute proposition that in a money claim no order of injunction or attachment or receiver could be made. Order 38 to Order 40 of the Code of Civil Procedure does not restrict the power of the court to pass any order that a court is empowered to pass just because it is a money*

claim. We have already discussed the circumstances when the court can exercise any of such power.

51. *If there were doubts about exercising power under any of the aforesaid provisions, it can be safely stated that the court has inherent power to pass an order of injunction or attachment upon an unimpeachable liquidated claim being demonstrated and upon it being established that the respondents are taking steps to improperly deny the realization of the claim.”*

10. In the facts of the present case, the plaintiff has claimed a decree for a sum in excess of Rs. 81 crores on the basis of an agreement under which, the defendant was to construct and deliver flats to the plaintiff. The ultimate agreement between the parties, had obliged the defendant to construct and make over unit Nos. 12W, 13W and 14W located on the 12th, 13th and 14th floor on the proposed building “Wellside Camac” to be constructed by the defendant upon the plaintiff paying the agreed consideration in respect thereof. Admittedly, the plaintiff had paid a sum of Rs. 14,06,70,000/- to the defendant. Apparently, the parties had fallen out of the contract. The parties have claimed differently with regard to the termination of the contract. According to the plaintiff, it has originally terminated the contract and the defendant is obliged to refund the entirety

of the consideration advanced along with interest at the rate of 18 per cent per annum. According to the defendant, the termination effected by the plaintiff has been premature therefore entitling the defendant to deduct amounts stipulated in the contract. According to the defendant, it has to pay a sum of Rs. 12,81,22,349/- to the plaintiff after deduction as claimed. The plaintiff has expressed its unwillingness to accept such sum in full and final settlement of its claim. This stand of the respective parties has raised triable issues.

11. As noted above, the parties to the instant suit have raised triable issues. However, it can be garnered out of the facts of the present case at this stage that, the defendant is liable to pay the plaintiff. The quantum of liability has to be decided.

12. Till such time such quantum of liability is decided and the defendant pays the same, and since, the contract that the parties had entered into related to units Nos. 12W, 13W and 14W on the 12th, 13th and 14th floor of the proposed building, it would be appropriate to grant an order of injunction restraining the defendant from creating any third party rights over and in respect of such units without the leave of the Court.

13. IA GA No. 1 of 2020 in CS 142 of 2020 is disposed of accordingly.

[DEBANGSU BASAK, J.]