

OCD-25

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA No. GA-COM/1/2024
In CS-COM/716/2024

SHREE GOPAL CONCRETE PVT LTD
VS
A R STEEL MANUFACTURERS

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : August 9, 2024.

Appearance :
Mr. Ritoban Sarkar, Adv.
Ms. Sanchali Bhowmik, Adv.
... for the plaintiff

The Court: Mr. Ritoban Sarkar, learned Advocate, is appearing for the plaintiff.

The plaintiff has filed the present application for grant of *ad interim* injunction.

The plaintiff is a company incorporated under the Companies Act, 1956. The defendant is a partnership firm. As per the discussion between the plaintiff and the defendant, the defendant had agreed to supply Reduction Gear Box and Input Shaft with Pinion Reduction Gear of different specifications. As per the discussion made by the plaintiff and the defendant it was agreed that delivery of the equipment will be completed within 8 to 10 weeks from the date of the techno-commercial clear order along with

advance. It was agreed that the 50% advance along with techno-commercial be accepted. In terms of the discussion between the plaintiff and the defendant, the plaintiff has paid Rs.10,00,000/- as advance and had issued purchase order on 29th June, 2022. In spite of receipt of advance amount as well as purchase order, the defendant has not supplied materials. Accordingly, by an e-mail dated 15th November, 2022 the defendant has informed the plaintiff that gear box and the internals for gear box are at various stages and it will be made ready by 6th December, 2022. Again on 12th January, 2023 the defendant has informed the plaintiff by an e-mail that the materials will be ready for dispatch by 22nd January, 2023 against the subject order and requested the plaintiff to release the balance amount of Rs.31,37,552/-. Even after the assurance given by the defendant in the emails, the defendant has not supplied the materials. Subsequently, the plaintiff has made several correspondences to the defendant but the defendant has neither delivered the materials nor has returned the advance amount to the plaintiff.

Counsel for the plaintiff submits that the plaintiff came to know that the defendant is in financial distress and the defendant has no capital and is not in a position to continue with the business. The plaintiff also submits that the plaintiff came to know the defendant is trying to deal with the property and alienate the property to some other third party. Counsel for the plaintiff submits that if the amount is not secured, in future if any

decree is passed, the same shall remain in paper only and the plaintiff will not be able to execute the decree.

Counsel for the plaintiff has relied upon judgment reported in **(2021) 6 Supreme Court Cases 418** in the case of *Rahul S. Shah vs. Jinendra Kumar Gandhi and Others* and submitted that in a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

Counsel for the plaintiff has also referred to the order passed by this Court at the *ad interim* stage in CS-COM/11/2024 dated 11th March, 2024 wherein this Court by relying upon the judgment passed in *Rahul S. Shah* (Supra) has passed an *ad interim* order.

Heard learned counsel for the plaintiff. Perused the materials on record and the judgment relied by the plaintiff.

This Court finds that it was agreed between the parties that the delivery of the equipment will be completed within 8 to 10 weeks from the date of techno-commercial clear order along with advance. As per the discussion between the plaintiff and the defendant, the plaintiff has already paid an advance of Rs.10,00,000/- and placed the purchase order. The defendant has admitted with regard to the receipt of the advance amount as well as the purchase order and has given assurance by e-mails that the

defendant will supply the same but till date the defendant has neither supplied the materials to the plaintiff nor has returned the advance received by the defendant.

Considering the above facts, this Court finds that the plaintiff has made out a *prima facie* case and the balance of convenience and inconvenience is in favour of the plaintiff. This Court also finds that this is a fit case wherein this Court can pass an order of injunction directing the defendant not to deal with the accounts maintained by the defendant without keeping aside the amount of Rs.13,30,000/-.

Accordingly, the defendant is restrained from dealing with his account without keeping aside an amount of Rs.13,30,000/- till 12th September, 2024.

The plaintiff is directed to serve the copy of the plaint, application and the documents and to file affidavit of service on the returnable date.

List the matter on 13th September, 2024.

(KRISHNA RAO, J.)

RS