

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA NO.GA 1 OF 2022

IN

CS 170 OF 2022

ADAIR DUTT ELECTRONICS PRIVATE LIMITED
Versus
EXHIBITORS SYNDICATE LIMITED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 9th November, 2022.

Appearance:

Mr.Chayan Gupta, Adv.

Mr. Pourush Bandyopadhyay, Adv.

Mr. S.Ray, Adv.

Mr. M.M.Chandra, Adv.

For plaintiff/petitioner

Mr. Shaunak Ghosh, Adv.

Mr. Subrata Goswami, Adv.

For defendant

The Court:- Affidavit of service filed in Court today is kept on record.

The suit is one for recovery of money lent and advanced by the plaintiff to the defendant.

In the suit the plaintiff has taken out an application, inter alia, for appointment of Receiver with regard to the immovable properties of the defendant and to furnish security for a sum of Rs. 20,81,187/-. The breakup of the said sum of Rs. 20,81,187/- is given in paragraph 24 of the plaint which comprises of a sum of Rs. 12,00,000/- as principal with accrued interest up to 31st March, 2018 and a sum of Rs. 8,81,187/- on account of accrued interest at the rate of 15% per annum from 1st April,

2018 to 31st December, 2021. The plaintiff in its application has annexed balance confirmation from the defendant. It appears from the confirmation accounts for the period of 1st April, 2017 to 31st March, 2018 made of 1st April, 2018 and annexed at page 27 of the said application that the defendant has apparently confirmed a closing balance of Rs.12 lakhs. The plaintiff, therefore, prays for security and in the alternative injunction and Receiver with regard to the immovable properties of the defendant.

The defendant is appearing on being served as directed by the order dated 31st October, 2022. The defendant says that operation of one of its bank accounts wherein a balance of about Rs. 10,000/- is lying has been enjoined by orders passed by this court in another suit instituted against the defendant. The immovable properties which the defendant has been developed and flats/units constructed thereat has been completely sold away. There are registered deed of conveyances with regard to such flats/units.

After hearing the parties and considering the materials on record, I find that prima facie a sum of Rs. 12 lakhs has been admitted to be due and payable by the defendant to the plaintiff as of 1st April, 2018.

The suit has been instituted in 2022 after about four years from such confirmation but the defendant has not been able to show any document paying the said sum of Rs. 12 lakhs or any part thereof to the plaintiff. The defendant has also submitted that at the present it does not have much business to secure the same as prayed for by the plaintiff.

The Hon'ble Supreme Court in the judgment reported in (2021) 6 SCC 418 (Rahul S.Shah Vs. Jinendra Kumar Gandhi & Ors.) has categorically held in paragraph 42.7 thereof 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. In the instant case the defendant has not been able to give any indication of the assets to the extent the defendant is being made liable in the instant suit. Prima facie, the balance confirmation is also to be taken to be true and correct unless dislodged with cogent supporting materials. The defendant has produced no such document. The defendant as recorded hereinabove has said that its immovable property has been developed and completely sold.

In the aforesaid facts and circumstances, before I grant an opportunity to the defendant to give particulars of its assets on oath, the defendant is required to be restrained in some form or the other failing which the plaintiff may be left remediless at the end for want of properties and assets to be proceeded with to realise its claim after passing of the decree.

The defendant, therefore, is injuncted from operating all its bank accounts opened against its PAN AAACE5734C in any form and manner whatsoever without leaving a consolidated balance of Rs. 12 lakhs in its bank accounts or Rs.12,00,000/- in any single bank account until further orders. The defendant shall also not sell and dispose of any of its fixed assets save and except in usual course of business without retaining to itself assets aggregating to the value of Rs. 12 lakhs until further orders.

Let affidavit be filed by the defendant which shall disclose the details of its bank accounts and the movable and immovable assets owned by it.

Let such affidavit be filed by 30th November, 2022; reply thereto, if any, be filed by 12th December, 2022.

Let this matter appear in the list on 19th December, 2022 under the heading “Adjourned Motion”.

(ARINDAM MUKHERJEE, J.)

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