

ODC-3

IA No. GA/1/2022

In

CS/182/2022

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

[COMMERCIAL DIVISION)

MAADHAWA REALPRO PRIVATE LIMITED

-VS-

SUSHILA JAIN AND ORS

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 29th September, 2022.

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Arun Kumar Upadhyay, Adv.
Mr. Kuldeep Mullick, Adv.
Mr. Santanu Mishra, Adv.
Mr. D. Paul, Adv.
... for the plaintiff

ORDER

Plaintiff has filed the suit for a decree of Rs. 9,90,00,000/-, perpetual injunction and interest. The plaintiff has filed the instant application praying for ad interim injunction. The plaintiff is engaged in the business of real estate

as well as other associated business. In the month of January, 2016, the defendants have approached the plaintiff for financial assistance for a commercial project for a sum of Rs. 2.50 crore with the condition that the defendant no. 1 would mortgage her assets and properties in favour of the plaintiff as security. After the negotiation, the plaintiff had agreed to give an amount of Rs. 2.50 crore in eight monthly installments on and from March, 2016 and the loan amount would carry 4% monthly interest. It was also agreed that the said loan amount shall return mandatorily after two years with interest i.e. 16.03.2018. The defendants have agreed that the defendant shall provide security by mortgaging their assets and properties. On finalization of the terms and conditions of agreement between the parties, the plaintiff and defendants have entered into an agreement 17.02.2016 and subsequently again the parties have entered into a supplementary agreement on 02.03.2016. As per the agreement from 02.04.2016 till 17.03.2016, the plaintiffs have paid Rs. 2.50 crore to the defendants by transferring the said amount in the account of the defendants.

As part of the security, the defendant no. 1 had deposited 3,19,500 nos. of equity shares held by the defendant no. 1 and the defendant no. 3 company of ₹10 being 51% of the total paid up share of capital in the defendant no. 3 company. In terms of the agreement, the entire amount along with the interest is to be repaid by the defendants to the plaintiff by 16.03.2018 but the defendant no. 1 failed to pay the interest as well as the principal amount even after expiry of two years.

As the defendants have not paid the principal amount and the interest accrued therein, accordingly the defendants have issued notices to the defendants and on receipt of the notice, the defendant no. 1 had issued several cheques amounting to Rs. 2,25,00,000/- in favour of the plaintiff but when the plaintiffs have presented the said cheques, the same have been dishonoured with the reason payee name deferred.

It is find from the record that the defendants have borrowed the loan of Rs. 2.50 crore from the plaintiffs with the condition that they will return the said amount within two years with interest @ 4% per month but the defendants have not return the said amount and the cheques issued by the defendants were also dishonoured. The defendants have mortgaged the original 3,95,00 nos. of equity share certificate along with deed of transfer of them in blank duly executed by the mortgager and also undertake to deposit 51% shares aggregate out of 97.559% shares of the companies and now the plaintiffs apprehend that the defendants will sell or transfer the assets and properties to third party by causing immense financial loss to the plaintiff.

Considered the submission made by the Counsel for the plaintiff, pleadings and materials on record, this Court finds that the plaintiff has made out a prima facie case and balance of convenience and inconvenience are in favour of the plaintiff. This Court also finds that if an order of ad interim injunction is not passed at this stage, there is every chance that the plaintiffs

will suffer loss and injury and thus ad interim injunction in terms of prayer (e) and (h) of the instant application is allowed till 28.11.2022.

(KRISHNA RAO, J.)

p.d