

2014 (0) AIJEL-HC 231789

GUJARAT HIGH COURT

Hon'ble Judges:S.H.Vora, J.

N.K.Industries Limited Versus Banpal Oil Chem Pvt Limited

APPEAL FROM ORDER No. 81 of 2014 ; *J.Date :- AUGUST 28, 2014

- INCOME-TAX ACT, 1961 Section - 179, 226(3)
- [CODE OF CIVIL PROCEDURE, 1908](#) Order - [43R.1\(r\)](#), [39R.1](#), [39R.2](#)

INCOME TAX ACT, 1961 - S.179 - S.226(3) - LIABILITY OF DIRECTORS OF PRIVATE COMPANY IN LIQUIDATION - OTHER MODES OF RECOVERY - CODE OF CIVIL PROCEDURE, 1908 - OR.43R.1(R) - OR.39R.1 - OR.39R.2 - APPEAL FROM ORDERS - CASES IN WHICH TEMPORARY INJUNCTION MAY BE GRANTED - INJUNCTION TO RESTRAIN REPETITION OR CONTINUANCE OF BREACH - APPLICATION DISMISSED.

Cases Referred to :

1. [Matrix Telecom Pvt.Ltd. V. Matrix Cellular Services Pvt. Ltd., 2011 3 GLR 1951 : 2011 JX\(Guj\) 348 : 2011 AIJEL HC 224802](#)
2. Wonder Ltd. And Another V. Antox India Pvt. Ltd., 1990 Supp SCC 727

Equivalent Citation(s):

2014 JX(Guj) 794 : 2014 AIJEL_HC 231789

JUDGMENT :-

1 Challenge in this appeal is the order dated 18.12.2013 passed by the learned 2nd Additional Senior Civil Judge Additional Chief Judicial Magistrate, Palanpur below Exh.5 in Special Civil Suit No.19 of 2013 whereby, the learned trial Judge directed both the parties to maintain status quo position qua the leasehold land situated at Mauje:Chandisar, Taluka: Palanpur, District: Banaskantha bearing Revenue Survey No.437/A/P of Chandisar Industrial Area of GIDC bearing Plot Nos.144/64, 144/65 and 144/66 together with factory premises constructed on it including plant and machinery lying in the said premises. (for short, the 'suit property').

2 Briefly stated, the plaintiff has filed the suit to pass order and decree of specific performance of Registered Deed of Assignment dated 02.09.2011 directing the defendant to execute and register sale deed in favour of the plaintiff and has further prayed to declare that the defendant or anybody claiming through it, are not entitled to transfer, assign, mortgage, sale and/or create any third party right in the suit property and not to create any disturbance in the plaintiff's peaceful possession and enjoyment of the plaintiff and not to dispossess the plaintiff without due process of law.

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3 Brief facts leading to the suit can be stated thus.

3.1. The suit property belongs to the present defendant and it had carried out construction of factory on the suit property and the defendant, on 18.12.2003, by deed of equitable mortgage/deposit of title deeds equitably mortgaged the suit property to State Bank of India, Siddhpur Branch and has obtained financial assistance. Similarly, the defendant, by deed of hypothecation dated 20.09.2003, created charge on the entire stocks of raw material, stock in process, finished goods, spares and receivables in favour of the State Bank of India, Siddhpur Branch and has obtained financial assistance. As the defendant failed to pay the dues of the said bank, account of the defendant with State Bank of India become non-performing asset and at that point of time, as the plaintiff was also in need for manufacturing unit for its products, the defendant approached the plaintiff to take over the suit property after compromising with the State Bank of India. As per the plaintiff's case, the defendant executed Registered Agreement for Assignment on 02.09.2011 whereby, the defendant agreed to assign and convey the suit property together with the factory premises including plants and machineries lying in the said premises for total consideration of Rs.1111 lacs. It is the case of the plaintiff that as per settlement arrived at between the parties to the suit, the defendant offered compromise vide letter dated 17.08.2010 and by letter dated 05.01.2011 to State Bank of India, who, in turn, did not accept the offer as One Time Settlement with the defendant. Thereafter, the defendant revised its compromise offer to State Bank of India vide letter dated 23.06.2011 and, in turn, State Bank of India, vide letter dated 18.08.2011, accepted as One Time Settlement with the defendant and as understanding reached between the parties, the plaintiff's associate company - N.K. Proteins Ltd. paid on behalf of the plaintiff to State Bank of India A/C Banpal Oilchem Pvt. Ltd. an amount of Rs.50 lacs on 05.02.2011. It is the specific case of the plaintiff that total sale consideration was Rs.1111 lacs and out of which, the plaintiff's associate company paid Rs.50 lacs and the plaintiff's said associate company, on 24.03.2011, further paid on behalf of the plaintiff, another amount of Rs.67 lacs to the defendant to settle Kotak Mahindra Bank dues as per One Time Settlement with that bank. Moreover, on defendant's representation, an amount of Rs.40 lacs was paid by the plaintiff's associate company on 24.05.2011 to the defendant to enable it to pay statutory dues such as Income Tax, Sales Tax, GIDC charges and other miscellaneous statutory dues. It is the case of the plaintiff that further amount of Rs.21 lacs was paid on 20.07.2011 by the plaintiff's associate company as reimbursement of the interest for delay in payment of One Time Settlement amount to the State Bank of India by the defendant. It is the case of the plaintiff that further amount of Rs.28,78,636/- was adjusted by the plaintiff towards the amount receivable from M/s.Shri Bhagvati Oil Mills, an associate concern of the defendant, for the purpose of Castor oil from the plaintiff's associate company. It is the case of the plaintiff that the defendant has agreed to obtain permission from the GIDC to transfer the suit property in favour of the plaintiff and to obtain no due certificate from State Bank of India in respect of the financial assistance availed by it against the security of equitable mortgage and hypothecation of assets of the defendants' company and also title clearance certificate from the solicitor of the plaintiff and further to get cleared all dues towards Sales Tax, Income Tax and other taxes/charges payable to the GIDC, Civil Authority or to the Municipal Corporation or towards any other statutory authority. It is specific case of the plaintiff that before execution of the Agreement for Assignment of the suit property, the plaintiff vide cheque dated 30.08.2011, paid an amount of Rs.869 lacs to the defendant. Thus, it is

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the case of the plaintiff that it has made total payment of Rs.1075.79 lacs out of agreed consideration of Rs.1111 lacs on or before 30.08.2011. It is the specific case of the plaintiff that after execution of the Agreement for Assignment and Power of Attorney as well as Deed of Indemnity, all dated 02.09.2011, the defendant gave peaceful and vacant possession of the suit property in compliance with the terms as described in the Deed of Indemnity for the period till the actual Deed for Assignment is executed in terms of agreement dated 02.09.2011. It is the case of the plaintiff that it being bona fide owner, pending signing and executing a formal deed of assignment and sale of suit property, work done on the suit property would be of complete ownership of the plaintiff for its profit or loss.

3.2. During the intervening period of 02.09.2011 and 15.01.2013, the plaintiff was seeking compliance of the terms of Deed of Assignment but the defendant was assuring to comply with the terms of Agreement for Assignment and sale of the suit property but the defendant was postponing giving frivolous and false reasons or seeking time on one or another pretext.

3.3. To resolve any issue which might be hindering the execution of the assignment and sale deed of the suit premises, a meeting was convened and at the end of discussion, an understanding was reached which was recorded through Memorandum of Settlement dated 15.01.2013 whereby, the total consideration was revised to Rs.1188.85 lacs from the previous consideration of Rs.1111 lacs and this amount including some matters which were not directly connected with the consideration against the assignment of leasehold rights of GIDC and factory. It is the case of the plaintiff that it has made payment of Rs.1154.14 lacs leaving net amount payable now at the time of execution of Deed of Assignment and sale deed for the factory for Rs.34.71 only which is held by it for various clearances including Income Tax clearance which the defendant produced as per Agreement for Assignment and sale of factory dated 02.09.2011.

3.4. It is the case of the plaintiff that the defendant was required to clear all the dues of Income Tax but to its shock and surprise, it received notice under Section 226/3 of the Income Tax Act dated 18.03.2013 claiming that sum of approximately Rs.213 lacs + interest due from the defendant for assessment year 2006-07 to 2009-10.

3.5. On all these broad facts, it is the case of the plaintiff that it has paid amount of Rs.97.06% towards sale consideration and only an amount of Rs.34.71 lacs was to be paid by the plaintiff to the defendant. Though the plaintiff was always ready and willing to perform its part of contract, which was agreed to be performed by the plaintiff as per the registered Agreement for Assignment and sale of factory premises dated 02.09.2011, the defendant has not performed its part of specific agreement but in furtherance of Agreement for Assignment dated 02.09.2011, the defendant has handed over vacant and peaceful possession of the suit property and, therefore, the present suit and injunction application Exh.5 came to be filed.

4 Per contra, the defendant has agreed as to the execution of deed on 02.09.2011 but denied payments of Rs.50 lacs to the State Bank of India, Rs.67 lacs to Kotak Mahindra Bank, Rs.40 lacs paid by the plaintiff's associate company on 24.05.2011, Rs.21 lacs towards Income Tax, Sales Tax, GIDC charges etc. and amount of Rs.28,78,636/- was adjusted by the plaintiff towards the amount receivable from M/s.Shri Bhagvati Oil Mills - defendants' associate

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concern for the purpose of Castor oil from the plaintiff's associate company which were to be adjusted towards balance sale consideration. It is contended that the plaintiff has paid only amount of Rs.869 lacs and, therefore, any adjustment by way of payment made to N.K. Proteins Ltd. cannot be considered as part payment towards balance consideration to be paid by the plaintiff to the defendant. It is specifically denied that the plaintiff was put into physical possession of the suit property. In reply para 10, it is specifically declared by the defendant that as per Deed of Assignment, the plaintiff is required to pay Rs.242 lacs + additional amount of Rs.77.85 lacs and if the plaintiff pays sum of Rs.3,19,85,000/- then the defendant is ready to execute Registered Sell Deed in favour of the plaintiff as per terms of registered Deed of Assignment dated 02.09.2011. Thus, the defendant denied that the plaintiff is now required to pay only Rs.34.71 lacs. On all these broad facts, the defendant has denied each and every averment made by the plaintiff except those averments admitted by the defendant in the reply.

5 The learned trial Judge after considering the pleadings and submissions made at bar, partly accepted the plaintiff's injunction application and directed both the parties to maintain status quo position qua the suit property and further directed both the parties not to create right or interest of third party but denied plaintiff's prayer to restrain the defendants from creating disturbance in the plaintiff's peaceful possession and enjoyment of the suit property and further not to dispossess the plaintiff without due process of law.

6 It requires to be noted that the Tax Recovery Officer has filed Civil Application No.6517 of 2014 for joining party and for direction. According to the applicant - Tax Recovery Officer, the defendant is liable to pay sum of Rs.2,87,01,082/-. It is the case of the Tax Recovery Officer that though the department was vigorously pursuing the recovery of said outstanding demands from the defendant but no recovery could be affected. Ultimately, the ACIT passed orders dated 25.03.2013 under Section 179 of the Income Tax Act fixing liability of the assessee company on its directors as well. In the said civil application, the applicant has prayed for various reliefs amongst one such that the applicant- Tax Recovery Officer be permitted to withdraw the entire amount deposited by the plaintiff.

7 I have heard submissions made by learned Senior Counsel Mr.K.S. Nanavati appearing with learned advocate Mr.Chudgar for Nanavati Associates for the plaintiff, learned Senior Counsel Mr.Shalin Mehta appearing for learned advocate Mr.Tushar Chaudhary for the defendant and also heard submissions of learned advocate Mr.V.K. Shah appearing for Tax Recovery Officer, who has filed civil application for joining party and for direction.

8 Before the submissions made at bar are considered, it is necessary and relevant to reproduce certain relevant terms and conditions relied upon by both the learned Senior Counsel at bar which read as under:-

"3. The consideration for assignment of leasehold rights and for sale of super-structure on the leased land and for the plant and machinery lying in the said factory premises is agreed to be paid by the Assignee to the Assignor as follows: (a) Advance amount as (Rupees Eight Crores earnest money/part Sixty Nine Lacs only) consideration of: paid by the Assignee to Rs.8,69,00,000/- the Assignor i.e. M/s.Banpal Oilchem Pvt. Ltd. by Cheque No.576707 dated 30.08.2011 drawn upon HDFC Bank. (b) Balance (Rupees Two Crores consideration of Forty Two Lacs Only) Rs.2,42,00,000/- will have to be paid by the Assignee to the Assignor on the date of execution and registration of the Deed of Assignment.

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5. The parties hereto confirm that possession of the plots described in the schedule has not been handed over by the Assignor to the Assignee by virtue of this agreement.

9 The Assignor has not handed over possession of the said plots under this agreement. However, as a security towards the payment to be made to State Bank of India by the Assignor, the Assignee shall be entitled to receive and keep into its possession the title deeds pertaining to the said plots as and when they are released by the said Bank for which the Assignor hereby permits the Assignee and has its consent to the Bank to deliver them to the Assignee.

19. Upon expiration of period of this agreement if the Assignor fails to perform its part of conditions to be performed under this agreement then the Assignee shall be liable for specific performance of this agreement.

20. The Assignor shall be liable to return to the Assignee, only if the Assignee agrees, the aforesaid earnest money along with interest thereon at the rate of 18% p.a. from the date of this agreement till the date of realization, as liquidated damages:

(a) if there exists any claim over the land of any other party or person; or

(b) if the Assignor fail to execute and register the Sale Deed/Deed of Assignment and to give total physical possession of the said plots on full payment of consideration as agreed herein; or

(c) if the Assignor commit breach of any of the terms and conditions of this Agreement;

(d) The Assignee has assured the Assignor that if the sale transaction does not go through within the period of this agreement due to any force majeure even or due to change in law subsequent to this Agreement or in case if there is a cut or alignment in the land and if there occurs force majeure event or there is change in law, the Assignor shall be liable to refund to the Assignee, the earnest money immediately on receipt of intimation from the Assignee.

In case the Assignor fails to repay the earnest money immediately as stated herein, he shall be liable to pay interest thereon at the rate of 18% p.a., from the date of this agreement till date of realization, as liquidated damages."

9. Similarly, relevant stipulations incorporated in the Deed of Indemnity relied upon by learned Senior Counsel Mr.Nanavati are also reproduced hereunder:-

"And whereas by an Agreement for Assignment of said plots and sale of factory premises together with Plant & Machinery, the Indemnifier has agreed to assign the plots and sell the said property on the leasehold plots together with Building and Plant & Machinery to the Indemnified on the terms and conditions contained therein; And whereas Indemnified has paid a major portion of consideration as agreed under the said agreement on the terms and conditions contained therein and only minimal part of consideration has remained payable; And whereas in the circumstances, the Indemnifier has undertaken to comply with the terms of said agreement to complete the transaction by obtaining necessary permission and transfer of clear and marketable

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title to the Indemnified and in the meantime, permitted the Indemnified to enter the premises, to use the plant & machinery and to have the first charge for the consideration already paid. 2. The Indemnifier further states and confirms that at the request of the Indemnifier, the Indemnified has paid major portion of consideration for the Assignment of said plots and sale of factory premises and plant and machinery to the Indemnified, which the Indemnified agreed to do and paid under the said Agreement so that the commitment of Indemnifier with State Bank of India as One Time Settlement (OTS) can be fulfilled and the property can be saved from futile litigation and that as against such gesture of Indemnified, the Indemnifier has permitted the Indemnified to utilize the premises and plant & machinery therein until the sale is completed in favour of the Indemnified."

10 At the outset, it requires to be noted that at the time of admission hearing of the appeal, the learned Single Judge vide order dated 24.02.2014 granted ad-interim relief in terms of para 5(A) on condition that the plaintiff deposits Rs.231 lacs before this Court within two weeks from the date of order. The said order dated 24.02.2014 has been complied with by the plaintiff and the said amount of Rs.231 lacs is lying with the Registry of this Court.

11 The issue raised for consideration of this Court in the present appeal is such whether the learned trial Judge has committed any error in not granting second part of relief, as claimed in para 24(a) of the injunction application filed below Exh.5. Vide second part of the relief in para 24(a) of the injunction application, the plaintiff has prayed that the defendant may be restrained from creating any disturbance in the plaintiff's peaceful possession and enjoyment of the plaintiff in the suit property and not to dispossess the plaintiff without due process of law. In other words, the plaintiff claims to be in possession of the suit property. In order to establish possession of the plaintiff, learned Senior Counsel Mr.Nanavati relied upon certain stipulations made in the Deed of Indemnity, as reproduced in para 9 hereinabove. Upon careful reading of stipulations relied upon by learned Senior Counsel Mr.Nanavati, it is quite clear that as the plaintiff parted with substantial amount of consideration to the defendant, the plaintiff permitted to enter the premises and to use plant and machinery lying in the suit property until the sale is completed in favour of the plaintiff. Meaning thereby, except use of plant and machinery, no further right is assigned to the plaintiff and entry in the certain premises is restricted for the limited purpose of use of plant and machinery until the sale is completed. Under the circumstances, contention raised by learned Senior Counsel Mr.Nanavati that the plaintiff is put into possession in light of stipulations made in the Deed of Indemnity does not hold any ground. On the contrary, condition Nos.5 and 9 of the Deed of Assignment, as reproduced in para 8 hereinabove, in terms, establish that possession of the suit property was not handed over by the defendant to the plaintiff by virtue of Deed of Assignment. Combined reading of both the deeds, namely, Deed of Assignment and Deed of Indemnity, it appears that under no terms and conditions or stipulations made therein, the plaintiff has been put into physical possession of the suit property. So, it appears that under the guise of stipulations made in the Deed of Indemnity, the plaintiff is out to dispossess the defendant from its lawful possession and, therefore, no Court of law would grant such relief which intends to take away possession from the defendant under the guise of stipulations made in the Deed of Indemnity. It is an admitted position that the plaintiff is claiming possession only on the basis of stipulations made in the Deed of Indemnity and when there is no other evidence on record to indicate that the plaintiff is put into possession by the defendant in a lawful manner, in that circumstances, the nature of relief, as sought for, is nothing but to dispossess the defendant under the guise of interim relief. Therefore, the

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learned trial Judge has rightly not granted relief, as prayed for, in second part of para 24(a) of the injunction application Exh.5.

12 Now, coming to the submission that the plaintiff's associate company - N.K. Proteins Ltd. made various payments prior to entering into Deed of Assignment which shall be considered as payment towards balance consideration to be paid by the plaintiff to the defendant is devoid of merits. The obvious reason is such that it is the case of the plaintiff that its associate company made various payments on behalf of the defendant, more particularly, described in para 4 of the injunction application which shall be considered or treated as part payment made towards balance consideration. It appears that all such payments made by the plaintiff's associate company, more particularly, described in para 4 of the injunction application, are made prior to 02.09.2011 and while executing registered Deed of Assignment dated 02.09.2011, the plaintiff has nowhere stated that such payment would be part payment towards balance consideration. Had it been so that the plaintiff would have adjusted/accounted such payment made by its associates company in the payment schedule of the Deed of Assignment itself. Upon perusal of the condition No.3 of the Deed of Assignment, it is evident that that plaintiff made payment of Rs.869 lacs by virtue of cheque dated 30.08.2011. It is further stated in the payment schedule that on the date of execution and registration of the Deed of Assignment, the plaintiff would pay balance consideration of Rs.242 lacs. The submission that various payments made prior to 30.08.2011 were made towards balance consideration is otherwise unbelievable in light of one Memorandum of Settlement dated 15.01.2013 executed between the parties which was executed to resolve certain issues which might be hindering the execution of the assignment and sale deed of the suit property. If the said payment, more particularly, described in para 4 of the injunction application was to be treated as part payment towards the sale consideration, then, the plaintiff ought to have mentioned about the same and further, would be considered as adjustment of balance sale consideration accordingly. Thus, none of the written documents executed between the parties indicate that whatever payment made by the plaintiff's associate company was to be treated as part payment towards balance consideration and thus, submission that such payments shall be treated as part payment is without any base and cannot be accepted on account of plaintiff's own conduct. If the payments so made by the plaintiff's associate company were part payment towards the suit transaction, then, the plaintiff would have mentioned in the Deed of Assignment itself. Not only that even while entering into Memorandum of Settlement dated 15.01.2013, no such fact is disclosed by the plaintiff. Therefore, the so called adjustment, prima facie, does not seem to be bona fide or genuine so as to believe the plaintiff's case as the said payment made towards balance consideration. In any case, prima facie, this Court does not agree with the submissions made by the learned Senior Counsel Mr.Nanavati to accept or believe the payment made by the plaintiff's associates company as payment made towards part consideration.

13 The offshoot of the above discussion is such that the plaintiff has failed to prove that the defendant has handed over possession of the suit property pursuant to either Deed of Assignment or Deed of Indemnity or at any point of time subsequent to execution of the both the deeds. The plaintiff further failed to prove that the various payments made by the plaintiff's associate company, more particularly, described in para 4 of the injunction application were towards part payment of sale consideration and the same were subject to adjustment is without any substance. Therefore, the learned trial Judge has rightly refused second part of relief, as prayed for, in para 24(a) of the injunction application.

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14 It is required to be kept in mind that the present Appeal from Order is filed under the provisions of Order 43 Rule 1(r) of the Code and challenge in this appeal is a discretionary order passed by the learned trial Judge under the provisions of Order 39 Rules 1 and 2 of the Code. In case of Matrix Telecom Pvt.Ltd. V/s. Matrix Cellular Services Pvt. Ltd. reported in 2011(3) GLR 1951, this Court, in paras 6 and 6.1, observed as under:-

"6. Before proceeding further it is required to be noted that the present appeal is against the rejection of interim relief and the main suit is still pending. If this court elaborately deals with the matter on merits it is likely that the same would prejudice the case of either side. Therefore, it is well settled law that this Court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the appellant-plaintiff has made out a prima facie case or not for grant of interim injunction. 6.1. It is required to be noted that it is well settled law that the Appellate Court may not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion."

15 Similarly, in the case of Wonder Ltd. and another V/s. Antox India Pvt. Ltd. reported in 1990 (Supp.) SCC 727, the Hon'ble Supreme Court in para 9 of the said decision, after considering the scope of Order 43 Rule 1(r) of the Code in an appeal wherein, the discretionary order passed by the learned trial Court is under challenge, observed as under:-

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which

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latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

16 So, in light of the limited powers of this Court, the Appellate Court can interfere with the discretionary order passed by the trial Court only in exceptional circumstances and the Appellate Court cannot interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except, where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. In nutshell, an appeal against exercise of discretion is said to be an appeal on principle. To put it differently, the Appellate Court cannot reassess the entire evidence so as to come to its own conclusion contrary to the conclusion arrived at by the trial Court, if two views are possible. Learned Senior Counsel Mr.Nanavati could not point out any infirmity or perversity in the findings recorded by the learned trial Judge while partly accepting the injunction application.

17 Now, coming to the civil application preferred by the Tax Recovery Officer for joining party and for direction, learned advocate Mr.V.K. Shah for the Tax Recovery Officer prayed that the applicant be permitted to be joined as party in the present appeal and he further prayed to vacate interim relief granted in favour of the plaintiff vide order dated 24.02.2014 passed in Civil Application No.1963 of 2014 in the present appeal and to permit the applicant - Tax Recovery Officer to take further measures for recovery including attachment and sale of the defendant's property i.e. the suit property and also to permit the applicant to withdraw the entire amount deposited by the plaintiff before this Court pursuant to the order dated 24.02.2014 passed by this Court in the said Civil Application No.1963 of 2014 in the present appeal. Firstly, the applicant is neither necessary nor proper party in the matter of specific performance of Deed of Assignment dated 02.09.2011 filed by the plaintiff against the defendant. As such, the nature of relief sought for by the Tax Recovery Officer in the present application is strange inasmuch as at no point of time either the trial court or this Court prevented it from initiating any action against the defendant for the subject matter of the suit property. Needless to say that the Tax Recovery Officer is always at liberty and permitted to take measures for recovery of its dues in accordance with law and for that purpose, no permission of this Court is required. So far as permission seeking withdrawal of the amount deposited by the plaintiff before this Court pursuant to the order dated 24.02.2014 is concerned, the applicant - Tax Recovery Officer cannot be permitted to withdraw the said amount at this stage for the simple reason that the said amount is deposited by the plaintiff, against whom, no Income Tax dues are outstanding. On the top of it, whether the amount deposited by the plaintiff would form part of sale consideration or not is the subject matter of evidence of the suit to be tried by the learned trial Judge and, therefore, at this stage, it cannot be concluded that the amount deposited by the plaintiff is paid towards part payment of sale consideration to be paid by the plaintiff to the defendant.

18 As recorded hereinabove, there is a dispute between the parties as to whether various payments made by the plaintiff's associate company, more particularly, described in para 4 of the injunction application are towards sale consideration or not and since the learned Single Judge, at the relevant point of time, to test bona fides of the plaintiff and further to grant interim relief, imposed the condition to deposit Rs.231 lacs with the Registry of this Court and in compliance of such order, amount so deposited by the plaintiff, cannot be permitted to be withdrawn by the applicant - Tax Recovery Officer or by the defendant.

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19 Under the circumstances, considering the nature of relief, as sought for, by the Tax Recovery Officer in the said civil application is devoid of merits and, therefore, the said application deserves to be rejected. But, it is clarified that any interim order passed by either trial court or by this Court would not come in the way of Tax Recovery Officer to initiate recovery proceedings of its tax dues qua the defendant including its suit property. It is further clarified that at the end of trial, if the defendant becomes entitle to get the amount of Rs.231 lacs or any part thereof, in that eventuality, the Tax Recovery Officer will be at liberty to take appropriate action including attachment /encashment of the said amount in favour of Tax Recovery Officer.

20 While parting with the order, it is clarified that this Court has examined the impugned order passed by the learned trial Judge within the limited scope of provisions of Order 43 Rule 1(r) of the Code, whereas the main controversy involved in the suit is at large before the trial Court to be adjudicated through full-fledge trial. Therefore, the learned trial Judge shall not be influenced by any observations recorded in the impugned order and observations recorded by this Court hereinabove while deciding the suit at the end of trial. The findings recorded either by the trial Court or by this Court at interlocutory stage of the suit are tentative in its nature and the learned trial Judge shall decide the case on its merit and as per evidence that may be led during the course of trial and decide the suit in accordance with law. It is open for the plaintiff to request the learned trial Judge to expedite hearing of the suit and the learned trial Judge shall consider the same in light of the workload in his Court.

21 Registry is directed to transmit the amount of Rs.231 lacs deposited by the plaintiff to the Registry of the trial court and the trial court, in turn, upon receipt of the said amount, shall deposit the same in cumulative F.D.R. in the name of the plaintiff in any nationalized bank initially for a period of one year which shall be renewed from time to time till final disposal of the suit.

22 In view of the above findings, present appeal preferred by the plaintiff is meritless both on law and on facts and, therefore, it deserves to be dismissed and accordingly, the same is hereby dismissed with no order as to costs. Similarly, Civil Application No.6517 of 2014 preferred by the Tax Recovery Officer is also dismissed but, with the following clarification.

(i) That any interim order passed by either trial court or by this Court would not come in the way of Tax Recovery Officer to initiate recovery proceedings of its tax dues qua the defendant including its suit property.

(ii) That at the end of trial, if the defendant becomes entitle to get the amount of Rs.231 lacs or any part thereof, in that eventuality, the Tax Recovery Officer will be at liberty to take appropriate action including attachment /encashment of the said amount in favour of Tax Recovery Officer.

Order in Civil Application Nos.1963 and 3141 of 2014 In view of the order passed in the Appeal from Order, these applications do not survive and the same are also dismissed.

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