

Plaintiff Under Order Xxxviii Rule 5 ... vs Tashee Nirman Private Limited & Ors on 28 September, 2021

Author: Asha Menon

Bench: Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 415/2021, CAV 30/2021, I.As.11342/2021 (by the plaintiff under Order XXXVIII Rule 5 read with Section 151 CPC for attaching the assets of the Defendants), 11343/2021 (by the plaintiff under Order XXXIX Rules 1 & 2 read with Section 151 CPC for temporary and permanent injunction against the defendants), 11344/2021 (by the plaintiff under Order XXXIX Rule 10 read with Section 151 CPC for deposit of the amount due to the defendants), 11346/2021 (by the plaintiff under Order XXXIX Rule 1 read with Section 151 CPC seeking extension of time for production of original documents) & 11347/2021 (by the plaintiff under Order XXXIX Rule 1(4) read with Section 151 CPC seeking leave to file additional documents)

ECL FINANCE LIMITED

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Through: Mr. Rajiv Nayar, Sr. Advocate,
Mr. Ajay Bhargava, Mr. Anil Chaturvedi, Ms. Wamika Trehan,
Mr. Shivank Diddi & Mr. Mihir Jain, Advocates.

versus

TASHEE NIRMAN PRIVATE LIMITED & ORS.

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Through: None.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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28.09.2021

1. Vide order dated 8th September, 2021, the plaint had been adjourned to 11th March, 2022 for further proceedings, relegating the plaintiff to pre-institution mediation under Section 12-A of the Commercial Courts Act, 2015.

2. The plaint has been listed today pursuant to the directions dated 22nd September, 2021 issued by the Division Bench of this Court in FAO(OS)(COMM) 125/2021. The directions issued are reproduced herein below:

"The suit proceedings and the interim application be listed before the learned Single Judge on 28.09.2021. Learned Single Judge may proceed to hear the appellant/plaintiff on the prayers for the interim relief on the said date, and pass appropriate orders."

3. Subject to the orders in FAO(OS)(COMM) 125/2021, since, the interim application is to be heard, it is directed that the plaint be registered as a suit.

4. Issue summons under Order XXXVII CPC and notice in the applications to the defendants, by all permissible modes, returnable before the Joint Registrar.

5. Mr. Rajiv Nayar, learned senior counsel for the plaintiff, submits that interim directions in terms of prayers-(a), (b) & (c) in I.A. 11343/2021 may be issued in view of the fact that the defendants were recalcitrant defaulters.

6. Learned senior counsel submitted that the suit has been filed for recovery of an admitted amount inasmuch as it is not disputed that pursuant to a Loan Agreement dated 25th June, 2019, the defendants had obtained a term loan from the plaintiff to the tune of Rs.17,50,00,000/- with interest @ 12% p.a. repayable on the last day of the 24th month from the date of the first disbursement.

7. Despite the legal notice issued on 14th July, 2021 for recalling the loan amount and the invocation of the guarantees, the defendants had failed to repay the loan. Furthermore, the post-dated cheques issued by the defendants to the plaintiff were also dishonoured on presentation.

8. In these circumstances, learned senior counsel prayed that an interim order be passed.

9. The prayers in the application i.e. I.A. 11343/2021 under Order XXXIX Rules 1& 2 CPC read as below :

"a. Pass an order directing the Defendants to disclose on oath all properties and investments/ assets/ receivables/ entitlements of the Defendants from 25 June 2019 till date of filing of respective affidavits in terms of this prayer (both movables and immovable and, in case of encumbered properties and assets, the extent of

encumbrance) including without limitation incomes from rent receivables and Bank accounts and all particulars of their entitlement and or receivables from third parties including from companies, partnership firms in which they are a shareholder or partner or from trusts in which they are a beneficiary; b. Pass an order restraining the Defendants, their agents and representatives from in any manner alienating, encumbering, transferring, selling, disposing off, parting with possession of or creating any third party right, title or interest of any nature whatsoever in respect of their respective immovable and movable assets, investments, properties of any nature, including but not limited to the Project Land owned by Defendant No.1, shares pledged in favour of the Plaintiff by Defendant Nos. 3 and 4, and the assets of Defendant Nos. 2 and 3 listed hereinabove, in favor of any third party, during the pendency of the present proceedings and till the recovery and realization by the Plaintiff of entire amount outstanding under the Loan Agreement;

c. Pass an order directing the Defendants to disclose on oath their respective bank account(s) and file bank statements from 25 June 2019 upto the date of filing of respective affidavits in terms of this prayer;

d. Pass an order restraining the Defendants, their servants, representatives and agents from operating any of their bank accounts;

e. Pass ad-interim ex parte orders in lieu of the above prayers; and f. Such further and other relief as may be deemed fit by this Hon'ble Court may be granted."

10. Learned senior counsel submits that he is pressing for relief in respect of prayers (a), (b) & (c) at this stage.

11. Having heard learned senior counsel for the plaintiff, it is noticed that the prayer (b) has no details whatsoever of such movable or immovable assets against which any interim directions can be issued. Hence, the same cannot be allowed at this stage. However, with regard to prayers (a) and (c), the defendants are directed to disclose their investments/ assets/ receivables/ entitlements and other movable and immovable properties within 10 days of the service of the summons in the suit.

12. List before the Joint Registrar for completion of service and pleadings on 11th November, 2021.

13. Order XXXIX Rule 3 be complied with.

14. The order be uploaded on the website forthwith.

ASHA MENON, J SEPTEMBER 28, 2021 ck