

Form J(2)
Sl.No. 01

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA No. GA-COM/1/2024
IN
CS-COM/728/2024

Pulak Modi And Anr.
Vs.
Jitendra Agarwal & Ors.

For the Plaintiffs : Mr. Suman Kumar Dutt, Sr. Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Tridibesh Dasgupta, Adv.
Mr. Subhradip Bhattacharyya, Adv.

For the Defendant Nos.1 to 4: Mr. Shuvasish Sengupta, Adv.
Mr. Bhavesh Garodia, Adv.
Ms. Swati Dalmia, Adv.
Ms. Sabarni Mukherjee, Adv.
Ms. Safura Ahmed, Adv.

Reserved on : 08.09.2026

Judgment on : 06.10.2026

ANIRUDDHA ROY, J.:

Facts:

1. The inescapable facts leading the plaintiffs to file the instant suit are only narrated.

2. By virtue of a **Share Sale Contract** (for short **“the contract”**) dated **April 14, 2023, Annexure-R7** at **page 120** to the Affidavit-in-Opposition (for short **“the said A/O”**) filed by defendant nos.1 to 4, the plaintiffs and the defendant nos.6 to 9 agreed to sell their shares of and in defendant no. 5 in favour of the defendant nos. 1 to 4 against an agreed total consideration of **Rs.15,87,40,000/-**. The plaintiff no.1 being the 50% shareholder of and in defendant no.5 claims his part of consideration to the extent of **Rs.7,93,70,000/-**. Admittedly, a sum of **Rs.1 crore** has been paid to the plaintiff no.1 and he has received the same. Therefore, the plaintiffs claim the balance consideration for a sum of **Rs.6,93,70,000/-** along with other consequential reliefs including liquidated damages. The prayers from the plaint are quoted below:-

“The plaintiffs pray for leave under Clause 12 of the Letters Patent, 1865 and leave dispensing with the requirement of compliance with pre-institution mediation and settlement as contemplated under Section 12A of the Commercial Courts Act, 2015 and claims:-

a) Decree for a sum of Rs.50,00,000 as pleaded in paragraph 26 hereinabove against the defendant nos. 1 to 4 jointly and severally;

b) Decree for a sum of Rs.6,43,70,000 as pleaded in paragraph 27 hereinabove against the defendant nos. 1 to 4 jointly and severally;

c) Decree for a sum of Rs.30,04,054/- towards interest by way of liquidated damages as pleaded in paragraph 28 hereinabove;

d) Decree for a sum of Rs.70,79,255/- together with interest of Rs.4,41,001/- by way of liquidated damages as pleaded in paragraph 29 hereinabove against the defendant nos. 1 to 5 jointly and severally;

e) Interim interest and interest upon judgment @ 15% per annum;

f) Receiver;

g) Injunction;

h) Attachment;

i) Such further or other reliefs.”

3. The particulars of the claim are set out in paragraph 30 of the plaint.

4. Since the balance consideration was not paid by the defendants, the plaintiff no.1 had issued a demand notice dated **March 14, 2024** at **page 64** to the instant application. The demand letter was replied on behalf of the defendants by a letter dated **April 12, 2024** at **page 67** to the application. The principal contention of the defendants are that despite a sum of Rs.1 crore having been paid, the defendants did not enjoy the fruit of the said contract, as the **steel plant at Georgia** (for short **“the said steel plant”**) was not in operational condition. A specific case of fraud has been pleaded by the defendants in their affidavit-in-opposition that before executing the said contract, the plaintiffs knew that they would not be able to hand over the said steel plant in a working condition and as a result, the defendants had suffered loss and damages. The defendants through the said reply dated **April 12, 2024 terminated** the contract and claimed refund of the said sum of Rs.1,00,00,000/- (one crore) paid to the plaintiffs. The defendants had also reserved their right to claim on account of further loss and damages, suffered by them.

5. Further two communications dated **April 16, 2024** at **pages 76 to 78** of the application and **June 10, 2024** at **page 83** to the application were exchanged by and between the parties. The documents showing acceptance of possession of the steel plant by the defendants signed by the defendant no.1 is also available at **page no.78** to the application.

6. In the above fact situation, plaintiffs have filed the instant application, when an ad interim order was passed by the Co-ordinate Bench restraining the defendant nos. 1 to 5 from operating the bank account of **Federal Bank** being account no. 110301000239718, C.R. Avenue Branch, by keeping aside an amount of **Rs.6,93,73,000** till **September 17, 2024**.

7. Being aggrieved by the said order of the coordinate Bench the defendants preferred an appeal being **AO-COM/32/2024**. The Hon'ble Division Bench by its judgment and order dated **December 1, 2025**, read with an order dated **December 8, 2025**, had disposed of the appeal with the following observations :-

“41. As noted above, the petition in which, impugned order was passed, is yet to be finally decided. Therefore, we are minded not to interfere at the ad-interim order stage. We are keeping all points open for the learned Single Judge to decide as to the nature and extent of the relief that the plaintiffs may be granted on final hearing of the application.

42. AO-COM 32 of 2024 along with all connected applications are disposed of without any order as to costs.”

8. Since sufficient balance was not there in the bank account, the plaintiffs filed a further application being **IA No. GA-COM/3/2024**, with the following prayers:-

- “a) Leave be granted to the petitioners to serve a copy of the present application on The Federal Bank Ltd, through its Manager and Operations (Head) having his office at C.R. Avenue, 11, Prafulla Sarkar Street, Ground Floor, Kolkata 700072.*
- b) An order be passed directing the Manager and Operations (Head) of the Federal Bank Ltd. to disclose and/or furnish the following:*
- (i) Particulars regarding the balance amount lying in account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch.*
- (ii) A statement of account in respect of the account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch for the period April 2024 till 20 August 2024.*
- (iii) Particulars of any other account maintained by the respondent nos. 2 to 5 with The Federal Bank Ltd., C.R. Avenue Branch, if any.*
- c) An order be passed directing the respondent No.1 to disclose and/or furnish the details of the amount that was available as balance in bank account No.11030100239718 standing in the name of the 4 IA No. GA-COM/3/2024 IA No.GA-COM/7/2025 In CS-COM/728/2024 A.R., J. respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch, as of April 2024.*
- d) An order be passed directing the respondent No.1 to disclose and/or furnish a statement of account in respect of the account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch for the period April 2024 upto 20 August 2024.*
- e) An order be passed directing the respondent No. 1 to 5 to disclose and/or furnish details and/or particulars of all bank accounts maintained by each of them forthwith.*
- f) An order be passed to the following effect:*
- (i) The respondent nos.1 to 3 be directed to furnish cash security for the sum of Rs.50 lakhs before the Registrar, Original Side of this Hon’ble Court.*
- (ii) The respondent no.4 be directed to furnish cash security for the sum of Rs.6,43,70,000/- lakhs before the Registrar, Original Side of this Hon’ble Court.*

(iii) *The respondent no. 5 be directed to furnish cash security for the sum of Rs.72,20,256/- lakhs before the Registrar, Original Side of this Hon'ble Court.*

g) *Order dated 13 August 2024 be modified by restraining the respondent No. 5 from operating any of its bank account without setting apart the sum of Rs.72,20,256/-.*

h) *Costs.*

i) *Such further and/or other orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."*

9. An application being **IA No. GA-COM 7 of 2025**, is an application (for short **"defendants' application"**), has been filed by the defendant nos.1 to 4 with the following prayers:-

"a) An order be passed directing the plaintiffs to furnish a security for a sum of Rs.12,54,25,000/- to the satisfaction of this Hon'ble Court;

b) In alternative, Show cause as to why the plaintiffs should not furnish security;

c) An order of injunction be passed restraining each of the plaintiffs and/or their men, agents, servants, assigns and/or representatives from transferring, alienating, encumbering, dealing with or disposing of or otherwise creating third party rights in respect of the steel plant at Georgia morefully described in Schedule "A" hereto;

d) An order of injunction be passed restraining the plaintiffs from withdrawing any money to the extent of Rs.12,54,25,000/- from the bank account, the details whereof are given in Schedule "B" hereto;

e) Ad interim orders in terms of prayers above;

f) Costs;

g) Such further and/or other orders can be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."

10. Both the said **IA GA - COM 3 of 2024 and IA GA COM - 7 of 2025** had been heard and disposed of by this Court by a composite judgment dated **January 6, 2026** with the following observations:-

"25. In view of the foregoing discussions and reasons, this Court is prima facie satisfied on the case made out by the plaintiffs and the balance of convenience and inconvenience also warrant IA No. GA-COM/3/2024 IA No. GA-COM/7/2025 In CS-COM/728/2024 necessary directions to be passed on the defendants, which are as follows:-

"(a) The plaintiffs shall serve a copy of this order upon the concerned branch of the Federal Bank.

*(b) The appropriate authority of the concerned branch of the Federal Bank by way of an affidavit shall disclose the current status with reference to the amount lying at the relevant bank account of the defendants mentioned in **prayer (b)** to the plaintiff's application with the supportive account statement positively within **three weeks** from the date of communication of this order.*

(c) The concerned authority of the branch of Federal Bank shall also state in the said affidavit if any other Bank account is there in the name of the defendant Nos. 1 to 4 with the said Bank.

*(d) The defendant nos. 1 to 4 by way of an affidavit shall disclose all the bank accounts held by them and in their name in whatever Banks they are with the supporting Bank statement as on the current date. Such affidavit shall be filed within **four weeks** from date.*

*(e) The defendant nos. 1 to 4 shall furnish a security for a sum of **Rs. 5,43,70,000/-** after giving an adjustment of Rs.1 crore for the time being, without prejudice to the rights and contentions of the plaintiffs, as an interim IA*

No. GA-COM/3/2024 IA No.GA-COM/7/2025
In CS-COM/728/2024 arrangement with the
learned Registrar, Original Side positively
within **six weeks** from date.”

26.In the event, such deposit is made, Registrar
Original Side shall invest the same in an interest
bearing Fixed Deposit Account with any
Nationalized Bank of his/her choice and shall
prepare a report and keep the same in the original
suit file. It is needless to mention that the Fixed
Deposit shall be kept in an auto-renewal mode.
The fate of the deposit shall abide by the final
result in the suit.

27. With the above observations and directions, IA
GACOM/3/2024 stands allowed and IA GA-
COM/7/2025 stands dismissed, without any
order as to costs.”

11. The defendant being aggrieved preferred an appeal being **APOT 25
of 2026**, when the Hon’ble Division Bench by its judgment dated **23rd
February, 2026** had disposed of the appeal with the following
observation:-

“8. This court is of the view that GA-
COM/3/2024 ought not to have been
considered by the single Bench or disposed of
when GA-COM/1/2024, the main application
for attachment before judgment couched as an
application under section 151 of the CPC, was
still pending. The application after exchange of
affidavits in its final hearing, could have
ramifications on GA-COM/3/2024. This Court,
is therefore, of the view that GA-COM/3/2024
could not have been disposed of without GA-
COM/1/2024 being disposed of.

9. Having regard to the above and given the
fact that both sides have substantial money
claims as well as claims for damages against
one and other, this court is inclined to keep in
abeyance the impugned judgment and order
dated 6th January, 2026 passed in GA-
COM/3/2025.

10. Since the affidavits are complete in GA-COM/1/2024, single Bench is requested, subject to its business permitting, to take up GA-COM/1/2024 and dispose of the same at the earliest and in accordance with law.

11. It is thereafter that the parties would be entitled to re-argue GA-COM/3/2024, with the observations in the impugned judgment dated 6th January, 2026 being deemed as prima facie and tentative.

12. It is made clear that this court has not decided any of the rival claims on the merits or the interim reliefs sought by the parties. The Single Judge shall proceed to deal with the matters on their own merits.

13. With the aforesaid observations, APOT/25/2026 stands disposed of.”

12. Pursuant to the above direction of the Hon’ble Division Bench the instant application being **IA GA-COM/1/2024** is taken up for final consideration.

13. Parties have filed and exchanged their respective affidavits.

14. Plaintiff filed its supplementary affidavits to which the defendant nos. 1 to 4 have filed affidavit-in-opposition.

15. Parties have also filed their respective written notes.

Submissions :

16. Mr. Suman Kumar Dutt, learned Senior Advocate appearing for the plaintiffs submits that the plaintiffs and the defendant nos. 6 to 9 where the share-holders of and in defendant no. 5. Plaintiffs held 50 percent of subscribed and paid up share capital and 50 percent of the paid preference shares of and in the defendant no. 5. The balance shares of and in defendant no. 5 held by defendant nos. 6 to 9.

17. The plaintiffs and the defendant nos. 6 to 9 (collectively, **sellers**) entered into a **Share Sale Contract dated April 14, 2023** (hereinafter, Share Sale Contract) with the defendant nos. 1 to 4 as buyers at **page 47** to the **application** in relation to the said shares of the defendant no. 5.

18. Plaintiffs sold their 50 percent equity and preferential share-holding of and in Defendant Company in favour of defendant nos. 1 to 4 for an agreed consideration of Rs.7,93,700,000.

19. Referring to clause 2 of the said Share Sale Contract, at **page 50** to the application, it is submitted that, the equity sale shares and the preference sale shares sold and transferred by the individual sellers and corporate sellers respectively to the purchasers are free from all encumbrances and confer on the purchaser full right, title and interest attached thereof. The sellers however, make no covenants, representation or warranties in relation to the steel plant and the physical possession thereof upon purchase of the shares by the purchasers has been received and accepted by the purchasers on as-it-is basis and as-it-is basis and the purchasers will not be entitled to raise any claim, issues or concerns in respect to thereof whether on account of the past or in future.

20. Referring to **clause 3** of the contract at **page 51** to the application learned Senior Advocate, Mr. Dutt submits that, the contract provided for the mode and manner of payment of the sale consideration. **Clause 5** of the contract provides that in case of delay in making payment, the sellers being the plaintiffs would be entitled to interest at the rate of 15

percent per annum on the outstanding sum. **Clause 6** of the contract at **page 52** to the application provides for joint and several liabilities of the defendant nos. 1 to 4/buyers for making payment of the sale consideration on account of the shares. **Clauses 8 and 9** of the contract at **page 52** of the application further provides that the shares would be transferred and the change in situation of the Board of Directors would take place simultaneously with the execution of the contract.

21. Mr. Suman Kumar Dutt, learned Senior Advocate submits on April 14, 2023 the plaintiff no. 1 sold and delivered its entire 50 percent equity share-holding of and in defendant no. 5 in favour of defendant no. 4. Consequently, Board of Directors of defendant no. 5 was reconstituted on the same day in terms of the contract.

22. Learned Senior Advocate, Mr. Dutt submits that transfer of shares by the plaintiffs in favour of the defendant nos. 1 to 4 and the reconstitution of the Board of Directors of defendant no. 5 have already been pleaded in **paragraph 8** of the application. Relevant documents are already disclosed at **pages 59 to 63** of the application and the defendant nos. 1 to 4 in its letter dated **April 12, 2024** at **page 67** of the application had admitted the same.

23. Mr. Dutt further submits that in acknowledgment of their obligations under the said contract, defendants had paid the first installment being a sum of **Rs.1,00,00,000** (one crore) as part consideration on April 14, 2023. In support, Mr. Dutt has referred to the averments made in paragraph 9 of the application and the

supportive bank statements of the plaintiff no. 1 at **page 58** of the application. A sum of Rs.6,93,70,000 remained due and payable by the defendant nos. 1 to 4 to the plaintiffs.

24. Learned Senior Advocate, then submits that the defendant nos. 1 to 4 had never raised any dispute in relation to the said shares having been sold and delivered by the plaintiffs in their favour. Only after issuance of the demand notice dated **March 14, 2024** at **page 64** of the application, the defendant nos. 1 to 4 for the first time raised the alleged dispute as an afterthought contending, inter alia that the defendants have not received the fruits of the share contracts, since it had not received the actual and physical possession of the Steel Plant at Georgia (hereinafter, the **Steel Plant**). Though the defendants admitted the transaction by its letter dated April 12, 2024 and has accepted the delivery of possession of the Steel Plant in writing dated **April 14, 2023** at **page 76** to the application.

25. Dealing with the contention of the defendant nos. 1 to 4 that the alleged representations made by the plaintiff as to the steel plant controlled by a wholly owned subsidiary of defendant no. 5 it is submitted that is contrary to the expressed terms under Clause 2 of the Share Sale Contract which specifically excludes any warranty or representation as to the Steel Plant.

26. Mr. Suman Kumar Dutt, learned Senior Advocate appearing for the plaintiffs submits that since the contract had been fully performed by the plaintiffs, there was no scope of question for termination of the same. The defendant nos. 1 to 4 by not paying the agreed

consideration amount on account of transfer of shares, have acted in breach thereof. The plaintiffs by its letter dated **April 16, 2024** at **pages 76 to 78** of the application have shown that possession of the Steel Plant was duly delivered and was accepted by defendant nos. 1 to 4 on as is where is basis, still the defendants, by its letter dated **June 10, 2024** at **page 82** of the application has reiterated their frivolous contentions.

27. On August 13, 2024 when the co-ordinate bench passed injunction on the bank account, learned Senior Advocate submits that the defendant nos. 1 to 4 was duly represented and have deliberately suppressed the facts that they did not have sufficient balance in the bank account on which injunction was levied and allowed the court to pass the order of injunction knowingly that it would be rendered infructuous. When the plaintiffs served the said order dated August 13, 2024 on the Federal Bank, the bank informed that only a sum of Rs.72,822 was available in the account of the defendants. The said ad-interim order was not interfered by the Hon'ble Division Bench.

28. In such circumstance, with the changed situation the plaintiffs filed IA GA-COM 3 of 2024 and order was passed on January 6, 2026 as already stated above.

29. Mr. Dutt, learned Senior Advocate referring to the said order dated August 13, 2024, December 1, 2025 and January 6, 2026 submits that throughout a *prime facie* case in favour of the plaintiff having been found direction was passed finally in IA GA-COM 3 of 2024 directing the defendant nos. 1 to 4 to secure the said sum of Rs.5, 43, 70,000

along with other consequential directions. The factual matrix then at the time of passing the said orders and on now remains the same. The indebtedness of the defendant nos. 1 to 4 has been established. The claims of the plaintiffs have been crystalized and an unimpeachable claim remains unsecured. The situation is just and proper where it demands order for security to be passed by this court. In support, he has relied upon the following judgments:-

(i) In the matter of: Rahul S. Shah V. Jinendra Kumar Gandhi & Ors. reported at (2021) 6 SCC 418 para 427;

(ii) In the matter of: Tata Chemicals Limited V. Kshitish Bardhan Chunilal Nath & Ors. reported at (2022) 1 HCC (Cal) 275 paras 101, 109 – 115.

30. Mr. Shuvasish Sengupta, learned advocate appearing for defendant nos. 1 to 4 referring to the petition has submitted that the present suit filed by the plaintiffs is in the nature of pure money claim. The same would be evident from the claim in the plaint also. The petition largely proceeds on the basis of the claim that the plaintiffs had transferred their share-holding of and in the defendant no. 5 in terms of the said Share Sale Contract to the defendant nos. 1 to 4. The consideration having been agreed and the defendant nos. 1 to 4 since have failed and neglected to pay the agreed consideration, are obliged to pay the residual value the shares to the plaintiffs after adjusting the amount already paid.

31. Mr. Shuvasish Sengupta then submits that the instant application has been filed praying for order of injunction and security, which is in the nature of attachment.

32. Referring to the order of Hon'ble Division Bench dated February 23, 2026 learned Advocate for the defendant nos. 1 to 4 has submitted that the Hon'ble Division Bench has requested this court to take up the instant application and disposed of the same. After which parties would proceed and reargue the IA GA – COM 3 of 2024, with the observation made in the judgment dated January 6, 2026 being deemed as prima facie and tentative.

33. Referring to the said Share Sale Contract Mr. Sengupta appearing for the answering defendants submits that though the plaintiffs, have attempted to limit the contract as agreed and understood by the parties simply transfers of shares of the defendant no. 5 but such is not the case. The plaintiffs have suppressed the material facts which would be evident from the reply letter dated **April 12, 2024** at **page 67** of the application.

34. Mr. Sengupta submits that one Uniglobal Papers Private Limited (for short, Uniglobal), the company owned and in control of defendant no. 1 has acquired BKM Industries Limited (for short, BKM). The assets of BKM Industries Limited included investments in Eurasian Ventures FZE, UAE and Eurasian Steel LLC, Georgia, which was the owner of the said steel plant. Accordingly, acquisition of BKM Industries Limited would have given control of the said steel plant. With knowledge of the rights which would flow upon acquisition of

BKM, plaintiff no. 1 approached the answering defendants claiming that defendant no. 5 through its 100 percent Georgian subsidiary, Ambicon Steels LLC had acquired a leasehold interest and other interests in the said steel plant and had been operating the same for some years.

35. Learned Advocate further submits that the plaintiff no. 1 had represented that the steel plant was fully operational and had all necessary licenses, permissions, authorizations for running the same. Accordingly, it was represented to the answering defendants that the plaintiffs were in a position to give the answering defendants an effective control and management of the said steel plant. On the basis of such understanding dated February 23, 2023 (the said **MOU**), the Share Sale Contract was entered into with the sole object of getting trouble free control and management of Ambicon Steels and the said steel plant. He refers to diverse clauses from the said Share Sale Contract. The valuation report made pursuant to the orders passed by the Hon'ble Division Bench also corroborates that the transaction could not merely for buying shares of defendant no. 5. The consensus between the parties was handing over the control of the steel plant and the transfer of share was only a mode to attain the same. Therefore, the purpose of entering into the said Share Sale Contract was not to get mere shares of the defendant no. 5 but to get trouble free control and management of Ambicon Steels and steel plant, which has not been received by the answering defendant.

36. Referring to the contract, Mr. Sengupta submits that the plaintiff have merely perform a nominal obligation by transferring the shares of defendant no. 5 and failed and neglected to transfer the possession and the control of Ambicon Steels and the steel plant. The shares without getting control over the said steel plant of no consequences, as there was no other business of defendant no. 5. Plaintiffs have not complied its obligation under **clause 9** of the Share Sale Contract at **page 52** to the application. The plaintiffs have not made any specific case in the application that they have transferred the control of Ambicon Steels and the steel plant to the defendants. The document dated April 14, 2023 at page 78 of the application relied upon by the plaintiffs is nothing but to signify a paper possession and not actual possession.

37. Mr. Shuvasish Sengupta, learned Advocate appearing for the answering defendants submits that the prayers sought for by the plaintiffs are in the nature of specific performance of the Share Sale Contract. Having not fulfilled its promise the plaintiffs are not entitled to enforce the said contract directly or indirectly and thus the plaintiffs are not entitled to claim any reliefs either in the plaint or in the instant application.

38. From the letter of the answering defendants dated April 20, 2024, it appears that the defendants have terminated the said Share Sale Contract and sought for refund of Rs.1,00,00,000 already paid by the defendants on account of transferred shares. The plaintiffs being aware of such termination of the said Share Sale Contract have not

challenged the termination but sought for specific performance of a terminated contract. Once the contract is terminated, specific performance is not permitted.

39. The suit, for the above reasons, is thus ex-facie not maintainable and as such no reliefs or consequential reliefs can be granted. In support, he has relied upon the following judgments:-

(a) In the matter of: I.S. Sikandar (Dead) By LRs. V. K. Subramani and Others reported at (2013) 15 SCC 27, paras- para 32.1 and 37;

(b) In the matter of: Sangita Sinha Vs. Bhawana Bhardwaj reported at 2025 SCC OnLine SC 723, paras 24 to 27.

40. Mr. Sengupta then submits that the defendant nos. 1 to 4 have already terminated the said Share Sale Contract and the remedy of the plaintiff, if any, lies in damages. After termination of contract, interim order of injunction cannot be granted. In support, he has relied upon the following judgments:-

(c) In the matter of: Rajasthan Breweries Ltd. V. Stroh Brewery Co., reported at 2000 SCC OnLine Del 481;

(d) In the matter of: Indian Oil Corpn. Ltd. V. Amritsar Gas Service, reported at (1991) 533 (para 12).

41. Mr. Sengupta learned Advocate with further reference to the said contract submits that the underlying object of the contract was to transfer an absolute trouble free control of the said steel plant to the defendant nos. 1 to 4. It was the duty of the plaintiff to apprise the

defendants of the encumbrances over the steel plant knowing that the defendants even after due diligence will not be able to obtain all the information. The consideration of the Share Sale Contract by itself is ex-facie proof of the fact that the petitioners have not apprised the defendants of the encumbrances including litigations concerning the steel plant. The answering defendants nor any commercially prudent person would have entered into the said contract with the sale consideration mentioned therein knowing the encumbrances towards the steel plant.

42. The particulars of plot have been summaries in paragraph 5 (qq) of the affidavit-in-opposition. It was agreed between the plaintiffs and the answering defendants that the said contract would be kept in abeyance and the payments were to be postponed till the issue relating to the steel plant is resolved. The plaintiffs did not agree to adhere to such understanding and mischievously and fraudulently filed the suit. *Prima facie* fraud stands established more particularly when the valuation report was taken into consideration.

43. Mr. Shuvasish Sengupta, learned Advocate appearing for the answering defendant nos. 1 to 4 submits that the expression “**as is where is**” must indicate the actual and existing state of affair of something. The plaintiffs never disclosed before the answering defendants that the existing condition of the steel plant was such, at the time of execution of the share sale contract, that the answering defendants would not be in a position to take actual physical control of the steel plant or to make it operational. Deliberate suppression on the

part of the plaintiffs which amounts to fraud practiced upon the answering defendants. The expression, therefore, would not be a savior for the plaintiffs since the plaintiffs has not discharged its obligation under the contract. Learned Advocate refers to the provisions laid down under Section 54 of the Transfer of Property Act, 1882. The said expression is not of blanket application but must result in a just and equitable outcome. If a buyer suffers not because he is not vigilant but because of active concealment, as in the instant case, the brunt must not fall upon the buyer. Due to changes in market dynamics, there is a rise in principle of caveat venditor. In support, Mr. Sengupta has relied upon the following decisions :-

(d) In the matter of: Kalyani (India) Pvt. Ltd. Vs. Punjab National Bank, reported at 2024 SCC OnLine Del 477;

(e) In the matter of: Official Liquidator, High Court Vs. Ujjain Nagar Nigam & Ors., reported at MANU/WB/0090/2009;

(f) In the matter of: Iisco Ujjain Pipe and Foundry Company Limited Vs. Ujjain Nagar Palika Nigam & Ors., reported at (2023) 8 SCC 138.

44. Mr. Shuvasish Sengupta, learned Advocate further submits that the expression “***as is where is***” was not drawn in an expansive manner and fell short of material stipulations in a manner which should have left no ambiguity that the purchaser has also to satisfy itself of the encumbrances in the property apart from the physical

properties which attributes all assets. The said expression used in the contract is not couched in a comprehensive manner as is laid down in the judgment referred to above and for such reasons, liability should not be foisted upon the defendant nos.1 to 4.

45. Learned Advocate Mr. Shuvasish Sengupta appearing for the answering defendants then submits that no prima facie case has been made out or demonstrate by the plaintiffs. The expression “*prima facie*” originates from latin meaning *at first sight, at first view* or based on first expression. A prima facie case has to be based on evidence which otherwise means evidence sufficient in law to raise a presumption of fact or established fact in question unless rebutted. The documents relied upon by the plaintiffs to show delivery of possession of the steel plant does not establish delivery of actual physical possession in favour of defendant nos.1 to 4 in respect of the steel plant. On the contrary, balance of convenience lies in favour of the answering defendants that they have paid a sum of Rs.1 crores under the said contract but has not received possession of the steel plant. In support, he has relied upon a decision ***In the matter of: State of Madhya Pradesh Vs. Balveer Singh, reported at (2025) 8 SCC 545.***

46. Learned Advocate Mr. Shuvasish Sengupta further submits that the plaintiffs at ad interim stage categorically submitted that its case in the application is made on the basis of Section 151 of Code of Civil Procedure, 1908 (hereinafter, **CPC**) and the ad interim order was passed on such basis. He refers to paragraphs 42 and 46 from the order dated August 13, 2024. He submits that relying upon a decision

of the Hon'ble Supreme Court ***In the matter of: Rahul S. Shah Vs. Jinendrakumar Gandhi, reported at (2021) 6 SCC 418***, no ad interim order should have been passed. Reliance on the said judgment was misplaced. The judgment was delivered in an execution case where the grievance was regarding delay in execution of the decree. Moreover, the directions made by the Hon'ble Supreme Court ***In the matter of: Rahul S. Shah (supra)*** was under Article 142 of the Constitution of India which has no precedential value, as not a declaration of law under Article 141 of the Constitution of India.

47. Mr. Shuvasish Sengupta, learned Advocate then submits that where there is a clear fraud or admission of debt or no unimpeachable claim on admission, only then the power under Section 151 of CPC can be exercised. In support, he has relied upon the following decisions :-

(g) In the matter of: Tata Chemicals Ltd. Vs. Kshitish Bardhan Chunilal Nath & Ors., reported at 2020 SCC OnLine Cal 3343;

(h) In the matter of: Harleen Jairath Vs. Prabha Surana, reported at (2019) 4 CHN 412.

48. The ratio laid down ***In the matter of: Rahul S Shah (supra)*** has not overruled the well-established principles that a unsecured debt cannot be converted into a secured debt and where there is no specific prima facie case is made out, no interim order can be passed. In support, he has relied upon the following decisions:-

(i) In the matter of: Raman Tech. & Process Engg. Co. Vs. Solanki Traders, reported at (2008) 2 SCC 302;

(j) In the matter of: V K Bajaj & Co. Vs. Nayati Healthcare and Research NCR Pvt. Ltd. & Anr., reported at 2021 SCC OnLine Del 5637.

49. Learned Advocate for the answering defendants further submits that it is well settled that when there is existences of specific provision under Code of Civil Procedure to meet a contingency, resort to Section 151 CPC cannot be taken in conflict with other provisions of CPC. In support, he has cited the following decisions :-

(k) In the matter of: Manohar Lal Gupta Vs. Rai Bahadur, reported at AIR 1962 SC 527;

(l) In the matter of: My Palace Vs. B. Mahesh, reported at 2022 SCC OnLine SC 1063;

(m) In the matter of: Padam Sen Vs. State of UP, reported at AIR 1961 SC 218;

(n) In the matter of: Vinod Seth Vs. Devinder Bajaj, reported at (2010) 8 SCC 1;

(o) In the matter of: Nain Singh Vs. Koonwarjee, reported at 1970 (1) SCC 732;

(p) In the matter of: Sunil Kakarania Vs. M/s Saltee Infrastructure Ltd. & Anr., reported at AIR 2009 Cal 260;

(q) In the matter of: Fertilizer Corporation Vs. Indian explosive, reported at 2005 SCC OnLine Cal 622;

50. It is submitted on behalf of the answering defendants that although plaintiffs' case is under Section 151 of CPC, the prayers made in the instant application though masked in the form of injunction is actually in the nature of attachment before judgment, as would be evident from the averments made in the application. He submits that the law is well settled that for the purpose of order XXXIX of CPC is not to convert an unsecured debt to a secured debt. Citing the decisions, he has submitted that there are instances wherein on the facts identical with this case Courts have also refused to accept the proposition laid down ***In the matter of: Rahul S. Shah (supra)***. In support, he has relied upon the following decisions:-

(r) In the matter of: Raman Tech. & Process Engg. Co. Vs. Solanki Traders, reported at (2008) 2 SCC 302;

(s) In the matter of: VK Bajaj & Co. Vs. Nayati Healthcare and Research NCR Pvt. Ltd & Anr., reported at 2021 SCC OnLine Del 5637;

(t) In the matter of: Anand Cargo Private Limited Vs. Amrit Cement Limited, reported at 2025 SCC OnLine Cal 10908;

(u) In the matter of: K. P. Credit & Traders Pvt. Ltd. Vs. Anurag Rungta, reported at 2025 SCC OnLine Cal 892.

51. Before granting an order of injunction or even an order of security as prayed for herein, Mr. Sengupta learned Advocate appearing for the defendant nos.1 to 4 submits that the three golden principles namely, *prima facie* case, balance of convenience and inconvenience and/or irreparable injury have to be considered strictly in the facts of each case. None of these cases exists in the facts of this case. Pleadings are insufficient. The claim in the plaint is purely money claim for which no injunction or security can be directed. In a money suit there is a high threshold to obtain any order of attachment. In support, learned Advocate has cited a decision ***In the matter of: Premraj Mundra Vs. Md. Maneck Gazi & Ors., reported at AIR 1951 Cal 156.***

52. In the light of the above, learned Advocate Mr. Sengupta submits that no *prima facie* case has been made out to pass any interim order or any order for security against the answering defendants. The instant application is otherwise without any merit and should be dismissed.

Decision :

53. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the execution of the said share sale contract has been admitted by the parties. The answering defendants have not denied or disputed the consideration agreed by and between the parties to the said contract for transfer of shares by the plaintiffs of and in the defendant no.5 in favour of the answering defendants. Plaintiffs have also admitted that out of the said total agreed consideration under the said contract,

plaintiffs have received a part consideration for a sum of Rs.1 crore. The answering defendants have also admitted that the plaintiffs have transferred their share-holdings of and in the defendant no.5 in favour of the answering defendants. Only plea taken by the answering defendants is that they have not received the actual and physical possession of the said steel plant at Georgia. They have not been in a position to operate the said steel plant, as the said steel plant was otherwise encumbered and the plaintiffs knowing such encumbrances on the steel plant deliberately and willfully did not disclose the same to the answering defendants and executed the contract and also received part consideration thereunder.

54. On reading the plaint case and the instant injunction application, this Court finds that since the plaintiffs had transferred the shares, they claimed the unpaid consideration payable by the answering defendants under the said contract. The records further show that **until April 12, 2024** till the time the answering defendants replied to the demands of the plaintiffs dated March 14, 2024, the answering defendants did not raise any objection or protest before the plaintiffs that the answering defendants did not receive the actual and physical possession of the steel plant and they could not make it operational. The records further show that on **April 14, 2023** at **Page 78** to the injunction application the answering defendants had duly confirmed and received the possession of the steel plant. The content from the said confirmation signed and issued by defendant no. 3 Jitendra Agarwal is quoted below :-

“I, Jitendra Agrawal representing the intending purchaser, namely, (1) Sri Jitendra Agarwal, (ii) Jitendra Agarwal (HUF), (iii) Smt. Shilpa Agarwal and (iv) Rashi Impex Private Limited, who have agreed to purchase and takeover the entire shareholding in Ambicon Ventures Private Limited having its registered office at 8A & 8B Satyam Towers, 3 Alipore Road, Kolkata 700027 and held by Sri Pulak Modi, Sri Ashish Chhawchharia, Sri Kshitiz Chhawchharia, Labh Combines Private Limited, Adarsh Mercantile Limited and Galton Holding Private Limited and consequently also takeover the control and management of it Wholly-owned Subsidiary, Ambicon Steels LLC, Georgia which is operating a Steel Plant at Kutaisi, Georgia, do hereby confirm that pending execution in India of the Share Sale Contract which has been negotiated, agreed and made ready for execution upon my return to India, I have on the 1st day of April, 2023 received khas physical possession of the said steel plant which has been handed over to me by aforesaid Sri Pulak Modi who had accompanied me to the said steel plant at Georgia for the purpose. A summary of the inventory of the assets and properties within the said Steel Plant undertaken and confirmed by me is attached hereto marked “Annexure-1” and I do hereby confirm having received physical possession thereof upon my undertaking to execute the said Share Sale Contract once I am back in India. Signed at Kolkata, India on this 14th day of April, 2023.”

55. On a *prima facie* reading of the stipulations from the said share sale contract, it appears that the answering defendants have taken possession and control of the steel plant **on as is where is basis and as is what it is basis** on the terms and price stated therein. The contract, inter alia, further stipulates that **the plaintiffs as the sellers, made no covenants, representations or warranties in relation to the steel plant and the physical possession thereof**

upon purchase of the said shares from the plaintiffs. It was further stipulated that ***the physical possession of the steel plant was received and accepted by the answering defendants on as is where is basis and as is what it is basis*** and ***the answering defendants were and are not entitled to raise any claims, issues or concerns in respect thereof whether on account of past or in future.*** The defendants received the possession of the steel plant on **April 14, 2023** and did not raise any objection whatsoever contemporaneously and until **April 12, 2024**.

56. In the above facts situation, the plaintiffs had filed the instant application where an ad interim order was passed by a Coordinate Bench dated **August 13, 2024** to the following effect :-

“46. In view of the above, this Court finds that this is a fit case for invoking the provisions of Section 151 of the Code of Civil Procedure, 1908. The defendant Nos.1 to 5 are restrained from operative the bank account of Federal Bank Account No.11030100239718, C.R. Avenue Brach, Kolkata by keeping aside an amount of Rs.6,93,70,000/- till 17th September, 2024.”

57. Being aggrieved, the answering defendants preferred an appeal being AO-COM 32 of 2024. The Hon'ble Division Bench by its judgment and order dated **December 01, 2025** read with **December 08, 2025** had disposed of the appeal **without interfering** with the said ad interim order dated August 13, 2024 but kept all points open for decision as to the nature and extent of the relief that the plaintiffs may be granted on final hearing of the application.

58. The record further shows that by a letter dated **August 14, 2024** Federal Bank had informed that only a sum of **Rs.72,822/-** was lying

in the bank account of the answering defendants at the relevant point of time, when the order dated August 13, 2024 was passed. It is significant to note that the answering defendants did not even divulge this fact before the Court at the relevant point of time and allowed the order of the Coordinate Bench to be rendered infructuous.

59. In such circumstance, the plaintiffs moved *IA-GA-COM/3/2024*. The reliefs are already quoted above. Answering defendants had also filed an application being *IA-GA-COM 7/2025* directing the plaintiffs to furnish a security for a sum of Rs.12,54,25,000/-.

60. Both the said applications were taken up for consideration by this Court. When this Court by its judgment dated **January 06, 2026** had disposed of both the said *IA-GA-COM/3/2024* and *IA-GA-COM 7/2025*, inter alia, directing the defendant nos.1 to 4 **to furnish a security for a sum of Rs.5,43,70,000/-** with the Registrar Original Side, without prejudice to their rights and contentions.

61. The said judgment of this Court was challenged by the answering defendants through APOT 25 of 2026. When the Hon'ble Division Bench by its judgment dated **February 23, 2026** had disposed of the appeal, inter alia, observing that since the GA-COM 1 of 2024, being the instant application was pending, GA-COM 3 of 2024 could not have been disposed of and hence, kept the said judgment dated January 6, 2026 **in abeyance** with a request to dispose of the instant application.

62. Since the Hon'ble Division Bench through its judgment dated February 23, 2026 did not interfere with the said judgment of this

Court dated January 6, 2026 and the same was kept in abeyance, the said judgment dated January 6, 2026 and the findings therein are still in force but kept dormant.

63. Affidavit-in-opposition filed by the answering defendants had not demonstrated any subsequent development or any subsequent event which had happened after January 6, 2026 or February 23, 2026. No such development has been brought on record by the answering defendants.

64. On overall *prima facie* assessment on the basis of the existing materials before this Court, this Court finds that the plaintiffs have complied its obligation under the said contract by transferring the shares and by handing over possession of the steel plant to the answering defendants. In acknowledgment of its liability, the answering defendants have paid part consideration of Rs.1 crores under the said contract to the plaintiffs. Till April 12, 2024 until the defendants replied to the demand letter of the plaintiffs dated March 14, 2024 demanding the balance consideration under the contract, the answering defendants did not raise any contemporaneous objection with regard to receiving possession of the steel plant.

65. Whether the plaintiffs knowingly mislead the answering defendants and practiced fraud at the time of execution of the said contract as alleged, are the question of facts and in the event such defense is taken by the answering defendants, the same shall be adjudicated during the trial of the suit and not at this interim stage.

66. The law is well settled that at the time passing interim order or refusing to pass interim order, the Court has to weigh the *prima facie* case, balance of convenience or inconvenience and the irreparable injury between the parties to the suit and shall not hold a mini trial. Allowing or refusing an interim order also largely depends on the discretion of the Court coupled with its equitable jurisdiction. In the facts of the instant case, when the ad interim order was passed by a Coordinate Bench on August 13, 2024, as already quoted above, the defendants did not have adequate balance in its bank account to the extent of a sum of Rs.6,93,70,000/- and the defendants knowingly did not disclose this fact before the Court when the order was passed. The said ad interim order was not interfered with by the Hon'ble Division Bench. In such circumstance, this Court is also of the *prima facie* view that the answering defendants have lost its commercial credibility before this Court. The contentions raised by the answering defendants with regard to stipulations on ***as is where is basis and as is what it is basis*** has to be read in the light of the stipulations under **Clause 2** and other stipulations under the said Share Sale Contract and is required to be assessed vis-à-vis the conduct of the plaintiffs during the trial and not at this interim stage.

67. On the basis of the available materials, this Court also *prima facie* finds that the plaintiffs have transferred the shares and handed-over possession of the steel plant, which was unconditionally accepted by the answering defendants. Even though, the answering defendants have alleged breach of contract against the plaintiffs, which is again a

triable issue and required to be decided during trial, if at all and not at this interim stage. Whether the alleged letter of termination dated April 20, 2024 would be of any effect or not, in view of the existing facts on record showing *prima facie* that the plaintiff have transferred the shares and delivered possession of the steel plant to the answering defendants but the answering defendants have not paid total agreed consideration under the said contract, shall also have to be adjudicated during the trial of the suit and not at this interim stage.

68. Once this Court *prima facie* finds that the plaintiffs, in terms of the said Share Sale Contract had transferred its shareholding of and in the defendant no.5 in favour of the answering defendants and had made over possession of the said steel plant in favour of the answering defendants and the answering defendants had accepted the delivery of possession and control of the steel plant, until the trial of the suit concludes, it can safely be found, as a *prima facie* view of this Court, that the plaintiffs have performed its obligation under the contract. It can also be found *prima facie* that in acknowledgement of such performance of the plaintiffs, the answering defendants have made part payment of Rs.1 crores, balance agreed price of the shares has not been paid.

Section 151 of the Code:

69. The law relating to exercise of power and authority by a Civil Court for securing a claim in a suit under **Section 151** of the Code, had undergone a sea change, though not by way of the amendment of CPC but through judicial review. The consistent view now has been settled,

that if a Civil Court finds a *prima facie* case in favour of the plaintiffs that a liability and/or a fiscal liability has been there against the defendants towards the plaintiffs and if the Court finds that the credibility and/or commercial probity or the substratum of the defendants is *prima facie* questionable, the Court in an appropriate case, has power and authority to exercise its inherent power to direct the defendants to secure the claims of the plaintiffs. Similarly, when a Civil Court finds that even if, the case made out by the plaintiffs does not fall within the four corners of the provisions laid down under Order XXXIX of the Code for passing an order of injunction or within the provisions of Order XXXVIII of the Code for attachment before judgment but the subject-matter of the suit or the claim of the plaintiffs in an appropriate case is required to be protected till the final adjudication of the suit, the Civil Court undoubtedly has a plenary authority and jurisdiction to exercise its inherent power to pass necessary interim order. *Prima facie* satisfaction of or *prima facie* view taken by a Court is always tentative and the same can be altered, modified or even reversed at the time of final hearing of the suit.

70. Exercise of inherent power by a civil court under Section 151 of the Code is not limited or restricted only at the stage of execution of decree. Such inherent power of the civil court is writ large and also can be exercised at the pre-execution stage of a decree, including at the interlocutory stage. A meaningful and harmonious construction of Section 151 of the Code does not prescribe that any restriction has been imposed by the legislature while legislating the said provision

under Section 151 of the Code that the same can only be exercised at execution stage and not at the interlocutory stage. The power is inherent and plenary and can be exercised by the civil court at any stage of the suit whenever the court finds in its discretion that the subject-matter of the suit or any part of it is required to be protected, even at the pre-decree stage, in an appropriate case. However, no doubt that exercise of discretion by the Court should be judicious in an appropriate case and shall depend and vary on the facts and circumstance of every case and there cannot be and shall not be any straight-jacket or thumb rule formula for the same.

71. The plaintiffs in the instant case, have not invoked Order XXXVIII Rule 5 of the Code as the natures of the reliefs sought do not require recourse to the said provision. In any case, Order XXXVIII Rule 5 of the Code was not relied upon at the stage of seeking ad-interim relief. Similarly, Order XXXIX Rules 1 & 2 have also not been invoked while praying for furnishing security by the answering defendants, which is not in the form of an injunction.

72. Learned Advocate appearing for the answering defendants submits that the direction to secure the claim of the plaintiffs by the answering defendants, in essence, akin to attachment before judgment under Order XXXVIII Rule 5 of the Code.

73. On reading Order XXXIX of the Code dealing with temporary injunction and interlocutory order, this Court is of the view that the reliefs by nature of preventive reliefs. It is a remedy in the form of an

order of the court addressed to a particular person that either prohibits him from doing or continuing to do a particular Act.

74. On reading of the ratio ***In the matter of Raman Tech (supra)***, this court finds that the expression *to obstruct or delay the execution of any decree that may be passed* against defendant, as mentioned under Order XXXVIII Rule 5 of the Code means, it is the duty of the court to be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendants and the defendant is likely to obstruct and delay the execution of such a decree, requiring attachment before judgment. If necessary case has not been made out by the plaintiff, this provision cannot be exercised by the court. It was further observed in the judgment that merely having a just or valid claim or a *prima facie* case will not entitle the plaintiff to an order of attachment before judgment, unless the plaintiff also establishes that the defendant is admitting to remove or dispose of his asset with the intention of defeating the decree that may be passed.

75. In the facts of this case, the application has been filed asking the court to invoke its inherent power under Section 151 of the Code. Inherent power when specifically provided for under Section 151 of the Code, it is vested with the Civil Court. There is no restrictive provision under Section 151 when such power cannot be exercised. The law is well-settled that in an appropriate case Civil Court shall exercise its inherent power. Therefore, the provisions under Order XXXIX or Order XXXVIII or Section 151 of the Code are independent of each other and a Civil Court is vested with these three distinct powers under the

Code. Thus, even if no case has been made out by the plaintiff either under Order XXXVIII or under Order XXXIX of the Code, the Civil Court is always vested with the power to exercise it under Section 151 of the Code in an appropriate case.

76. The inherent power of Court under Section 151 is in addition to the other powers specifically conferred on the Court. It is complementary to and in addition to the power under Order XXXIX or Order XXXVIII of the Code. Therefore, it can safely be construed and held that the Civil Court is free to exercise its inherent power under Section 151 of the Code, since exercise of this power is not in conflict with the expressed powers provided under Order XXXVIII or Order XXXIX of the Code or against the intentions of the legislature.

77. A mere direction upon the defendant in an appropriate case, to secure the claim of the plaintiff with the Court under its custody, would not amount to making payment to the plaintiff, where decree has not been pronounced. In the event, the plaintiff fails in the trial and the suit is dismissed the deposit will be returned with accrued interest to the defendant and the defendant would not suffer any loss or prejudice. However, considering in an appropriate case if the Court, *prima facie* has doubt in its mind with regard to solvency, bona fide or commercial substratum of the defendant, then if a decree is pronounced in favour of the plaintiff, there might be a situation that realization of the decretal dues may suffer prejudice and may be jeopardized, unless the defendant is directed to furnish security, at interim stage.

78. In the matter of: Rahul S. Shah (supra), the Hon'ble Supreme Court had *inter alia* held that a Court in a civil suit, **at any stage** in an appropriate cases during the pendency of **suit** using powers under Section 151 CPC, can **demand security** to ensure satisfaction of any decree.

79: The ratio laid down and the observation made by Hon'ble Supreme Court **In the matter of: Rahul S. Shah (supra)**, therefore, clearly defines the power of Civil Court when can be exercised under Section 151 of CPC and in exercise of such power, the Civil Court can *demand security* to ensure *satisfaction of any decree*. The ratio of the said judgment, therefore, is that satisfaction of any decree means and includes a decree already in existence and a future and prospective decree as well, which is yet to be pronounced is also required to be protected, as the power of Section 151 of the Code is held to be available to be exercised *at any stage* of the civil suit, in an appropriate case.

80: It is true that after enactment of Commercial Courts Act, 1915 (hereinafter, **C.C. Act**) though several provisions of the Code have been amended in the light thereof, but the provision under Section 151 of the Code has not been amended and its application has not been excluded in a commercial suit filed under the C.C. Act. Therefore, the plenary inherent power of a Civil Court is also available and its exercise is permitted while trying a commercial suit filed under the C.C. Act, in an appropriate case.

81. Exercising inherent power, the Hon'ble Division Bench of this Court ***In the matter of: Tata Chemicals Ltd. (supra)*** had also directed for securing the money claim.

82. With the promulgation of the C. C. Act, 2015, even while trying a commercial suit, if the Court *prima facie* finds that the conduct of the defendant is such that it might have lost its commercial credence and probity or substratum, commercial court at any stage of the suit can direct the defendant to secure the claim of the plaintiff and direction for such security would not amount to convert an unsecured claim of the plaintiff to a secured claim. It is merely a protective measure taken at interim stage, which is tentative in nature and the same can be altered, modified or even reversed at the final trial of the suit. Direction for such interim security can never be the final adjudication in the suit and, therefore, it cannot be construed to be conversation of an alleged unsecured claim into a secured claim.

83. *In the matter of: VK Bajaj (supra)* the interim order was refused on account of the Court disbelieving the acknowledgment of one of the parties to the suit and by holding that such acknowledgment had to be verified from the contemporaneous record. There was no dispute raised as to the proposition of law that discretion is vested with the civil court to direct furnishing of security. There, the Court found that the plaintiff was seeking to use the court proceeding to force the defendant to settle its claim. Thus, the ratio of the judgment would not apply in the facts and circumstances of this case.

84. In the matter of: K. P. Credit & Traders Pvt. Ltd. (supra) the Court found that plaintiff had not disclosed any material that the defendant has been transferring or transferred its property to third party without paying the dues of the plaintiff and the failed to establish a *prima facie* case. Hence, the Court refused to direct furnishing of security. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

85. In the matter of: Anand Carbo Private Limited (supra) the Court found that there were contemporaneous disputes as to quality of goods supplied by the plaintiff which was taken note of by the Court and it was categorically held that case had not be made out by the plaintiff that the defendant will immediately fly away. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

86. In the matter of: Kalyani (India) Pvt. Ltd. (supra) the judgment was passed in the writ jurisdiction and the court proceeded on the basis of standard of disclosure of instrumentality of state being more prominent than that of a private party. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

87. In the matter of: Iisco Ujjain Pipe and Foundry Company Limited (supra) an auction sale of immovable property was held by the official liquidation where the terms of sale were materially different from the instant case. The encumbrances known to the official liquidator were not disclosed. In the present case, **Clause 2** of the Share Sale Contract specifically provides that no warrantee was given

by the plaintiffs in relation to the steel plant. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

88. In the matter of: State of Madhya Pradesh (supra) the judgment was rendered in a criminal appeal from a final order. The instant case is at interim stage of the suit. The interim finding is always tentative. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

89. The instant case is not a case under Order XXXVIII Rule 5 of the Code. In this commercial suit since the defendants allegedly failed to pay the agreed share transfer consideration under the said contract, an ad-interim order of restraint was passed on the bank account of the answering defendants to secure the balance claim of the plaintiff. It revealed that adequate balance was not there and on the contrary far less an amount of few thousands were found to be in bank account. The plaintiffs have questioned the commercial credence of the answering defendants. Thus, the ratio of the judgment **In the matter of: Premraj Mundra (supra)** would not apply in the facts of the instant case.

90. The ratio decided **In the matter of: I.S. Sikandar (Dead) By LRs. (supra), In the matter of: Sangita Sinha (supra). In the matter of: Rajasthan Breweries Ltd. (supra)** and **In the matter of: Indian Oil Corpn. Ltd. (supra)** would not apply in the facts and circumstances of this case, since all those judgments were rendered in relation to the suits for specific performance at the final decree stage after the complete trial. The instant case is a simpliciter money claim

of the plaintiffs against the answering defendants and not for specific performance of any contract.

91. The ratio laid down *In the matter of: Manohar Lal Chopra (supra)* has to be read in the light of the recent law laid down by the Hon'ble Supreme Court *In the matter of: Rahul S. Shah (supra)*.

92. On a further reading of the provisions laid down under Order XXXVIII and XXXIX of the Code, this Court is of the considered view that those provisions have no conflict with the provisions laid down under Section 151 of the Code. In a suit, if the plaintiff can *prima facie* establish its claim and if the materials existing on record satisfy the judicial mind of the Court that an equitable, fit and proper case has been made out to direct the defendant to secure the claim of the plaintiff, the court has plenary power and jurisdiction to direct the defendant to secure the claim of the plaintiff on such terms and conditions as it deems fit, as an interim measure.

93. In view of the foregoing reasons and discussions this Court in exercise of its power under **Section 151** of the Code, is of the firm and considered opinion that, the defendant nos.1 to 4 shall have to secure the claim of the plaintiffs.

94. Accordingly, following directions are made:-

- (a) The defendant nos. 1 to 4 shall deposit a sum of **Rs.5,43,70,000/-** after giving an adjustment of Rs.1 crores paid by the answering defendants for the time being, without prejudice to the rights and contentions of the parties with the

learned Registrar, Original Side positively within **eight weeks from date**;

(b) In the event, such deposit is made, Registrar, Original Side, shall invest the same in an interest bearing Fixed Deposit account with any Nationalized Bank of his choice and shall prepare a report and keep such report in the original suit file;

(c) It is needless to mention that the Fixed Deposit shall be kept in **auto renewal mode**.

95. The fate of the deposit shall abide by the final result in the suit.

96. With the above observations and directions ***I.A.No.GA-COM/1/2024*** stands **allowed** without any order as to costs.

(Aniruddha Roy, J.)