

(2009) 08 MAD CK 0114

In the Madras High Court

Case No : C.M.A. No's. 2035 and 2036 of 2009 and M.P. No's. 1, 1 and 2 of 2009

R. Krishnamoorthy

APPELLANT

Vs

Dhanalakshmi Mills Ltd.

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (2009) 08 MAD CK 0114

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : T.V. Ramanujam, S.C. for G. Arul Murugan, for the Appellant; A. Somayaji, S.C. for Gupta and Ravi for R1 and P.S. Raman, S.C. for Pushpa Menon, for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—By consent, these appeals are taken up for final disposal.

2. The appeals are preferred against the order dated 09.07.2009 made in I.A. Nos. 1385 and 1399 of 2009 in O.S. No. 881 of 2008 by the

Additional District and Sessions Judge, Fast Track Court No. V, Tiruppur.

3. For the sake of convenience, the parties are referred to as in the suit.

4. Background facts in a nutshell are as follows:

The appellant-plaintiff is a businessman and a dealer in real estate. The first respondent-first defendant is a public limited company incorporated

under the Companies Act, 1956 on 29.04.1932 and it owns a textile undertaking comprising of land, building, plant and machineries of "A" and

"B" mills and other fixed movable assets situate at Tiruppur. Defendants 2 and 3 are ""strategic Investors"" of the first defendant. The plaintiff and

defendants 2 and 3 entered into a sale agreement on 10.01.2004 for the purchase of 7.5 acres of land with building and structure in Tiruppur

Municipal Town, which forms part of assets of Dhanalakshmi Mills Limited, who is the first defendant. The total consideration for the sale is Rs.

9,75,00,000/-. As per the said sale deed, defendants 2 and 3 agreed to receive Rs. 1 crore as advance from the plaintiff at the time of execution of

the agreement. But the plaintiff had to pay a further advance of 1,75,00,000/- within one month from the date of the agreement. Further, as per the

agreement, defendants 2 and 3 had to obtain requisite consent order from the Board for Industrial and Financial Reconstruction and also to secure

all other documents to effect the sale of the suit property. The plaintiff alleged that defendants 2 and 3 had not taken enough steps to execute the

sale deed. The plaintiff sent a legal notice to the defendants on 14.06.2006. Defendants 2 and 3 had sent reply to the plaintiff on 28.06.2006

denying all the allegations. To the said reply, the plaintiff has also sent rejoinder on 12.07.2006 to the defendants. Later, the plaintiff filed a suit

praying for a decree as under:

(a) directing the defendants to execute a sale of the property morefully set out in the schedule hereunder in terms of the agreement of sale and

deliver vacant possession without any encumbrance whatsoever in favour of the plaintiff and/or his nominees under one or more sale deeds;

(b) directing the defendants to pay the costs of the suit or

(c) alternatively and without prejudice to the above relief,

(i) directing the defendants to pay a sum of Rs. 7,20,14,593/- with subsequent interest on Rs. 3,37,50,000/- at the rate of 24% p.a from the date

of suit till the date of realisation;

(ii) creating the charge over the property morefully described hereunder for a sum of Rs. 7,20,14,593/- with subsequent interest on Rs.

3,37,50,000/- at the rate of 24% per annum from the date of suit till the date of realisation;

(d) directing the defendants to pay the plaintiff the cost of the suit.

5. The respondents/defendants filed written statement denying all the allegations and specifically stated that first defendant is not a party to the sale

agreement and defendants 2 and 3 are not authorised to enter into sale agreement on behalf of the company and further contended that defendants

2 and 3 are not Directors of the company at any point of time and also there is no authorisation to execute the sale deed. Subsequent to that, the

plaintiff filed I.A. No. 1385 of 2009 in O.S. No. 881 of 2008 praying to grant an order of temporary injunction restraining the respondents from

encumbering, alienating or transferring the property morefully set out and described in the accompanying petition in any manner whatsoever till the

disposal of the above suit and also grant an ad interim exparte order to the same effect till the disposal of the application. The plaintiff also filed

another I.A. No. 1399 of 2009 in O.S. No. 881 of 2008 praying to grant an temporary injunction restraining the respondents, their men, servants,

agents, partisans, or any other person claiming under or through them from in any way demolishing, removing the superstructure and building in suit

property till the disposal of the suit and also to grant an ad interim exparte order to the same effect till the disposal of the suit. The defendants also

filed counter to the said I.As denying the allegations and contended that it is not a fit case for granting interim injunction and prayed to dismiss the

same.

6. The trial Court took up the above I.A. Nos. 1385 and 1399 of 2009 in O.S. No. 881 of 2008 and disposed of on 09.07.2009 by common

order and considered the points, which are as follows:

1. Whether the petitioner/plaintiff is entitled to temporary injunction as prayed for in I.A. No. 1385/2009? And

2. Whether the petitioner/plaintiff is entitled to temporary injunction as prayed for in I.A. No. 1399/2009?

After considering the documentary evidence on record, the trial Court dismissed the applications and held as follows:

19. It is axiomatic that injunction is an equitable and discretionary relief. It rests on the principle, "he who seeks equity should come with clean

hands". In the present case, though the execution of the sale deed in Ex.P1 is true and the plaintiff has paid a huge amount as advance to the

defendants 2 and 3, it lacks sanction from the 1st defendant owner. The alleged ratification is shrouded with the vice of fabrication. For these

reasons, I hold that the plaintiff has not made out a prima facie case and that

the petitions are to be dismissed.

Aggrieved by that order, the plaintiff filed the present appeals.

7. Learned Senior Counsel appearing for the plaintiff submitted that in view of the sale agreement dated 10.01.2004 entered into between the

plaintiff and defendants 2 and 3, the plaintiff is entitled for a decree of specific performance. He further submitted that the trial Court should have

considered that in a suit for specific performance, no prejudice would be caused to either of the parties by allowing the application for an injunction

from alienating the properties under the agreement, particularly when the agreement is an admitted document. On the contrary great prejudice

would be caused if the application is not allowed and the defendants parts with the properties. He further contended that defendants 2 and 3 are

strategic investors for the first defendant company and the said defendants 2 and 3 paid the money to the creditors on behalf of the first defendant

from the advance received from the plaintiff. He also submitted that the trial Court failed to see that by a memorandum of understanding dated

20.10.2003, the first defendant company has transferred 2,59,045 equity shares in favour of respondents 2 and 3 and has authorised the second

defendant to take all decisions and in view of the same, the second defendant has filled Form No. 23 under the Companies Act, 1956 on

14.01.2003 before the Registrar of Companies, Coimbatore, in his capacity as Managing Director of the first defendant, which shows that the

entire first respondent company is being controlled by the second and third respondents. He further contended that the trial Court failed to see that

defendants 2 and 3 received total advance of Rs. 3,37,50,000/- from the appellant under the agreement of sale dated 10.01.2004, which was duly

acknowledged and issued receipt for the said sum vide Exs.P1 to P3. Further learned Senior counsel has brought to the notice of this Court that

ratification of sale agreement by the Board of Directors held on 30.03.2005 and submitted that the trial Judge ought to have considered that the

first defendant has ratified the agreement of sale executed by defendants 2 and 3 in favour of the plaintiff. He also submitted that after the date of

filing of the suit, there is no prohibition for transferring of assets of the company and that the trial Judge ought to have granted injunction and

dismissal of the interim application is not in accordance with law and the same

has to be set aside.

8. Learned Senior Counsel appearing for the first defendant submitted that the first defendant-company was not a party to the sale agreement

entered into between the plaintiff and defendants 2 and 3 and that they never authorised anybody to represent the company and also they have no

power of attorney to deal with the property. He further submitted that there is an order from the Board for Industrial and Financial Reconstruction

(BIFR) as early as on 22.02.1994 and 22.07.2004 to the effect not to dispose of the assets of the company and the learned single Judge in

W.P.M.P. No. 42148 of 2004 in W.P. No. 34935 of 2004, by order dated 17.03.2005, directed that none of the assets of the company should

be disposed of. In view of the proceedings of the BIFR as well as the order of the learned single Judge of this Court, the first defendant would not

have certainly entered into the agreement dated 10.01.2004. The first defendant also certainly could not have accepted or ratified the said

agreement in the Board Meeting on 30.03.2005. It is therefore submitted that the said agreement of sale dated 10.01.2004 is not binding on the

first defendant company and the same is not est in law. Further it is submitted that the purported resolution dated 30.03.2005 ratifying the alleged

agreement is a forged and fabricated document. Therefore the trial Court rightly rejected the injunction petition.

9. The learned Senior Counsel appearing for defendants 2 and 3 submitted that the agreement dated 10.01.2004 is not valid and hence not a

legally enforceable agreement. The defendants 2 and 3 had no status or locus standi to represent the first defendant company. They are also not

Directors at any point of time and also the first defendant is not a party to the agreement. Further it is vehemently submitted that if really the

company wanted to enter into any of the sale agreement the first defendant has to obtain specific approval of BIFR as well as the Board of

Directors. In addition, it is also submitted that the argument of plaintiff that the Board of Directors had ratified the said sale agreement is without

basis and justification as there is no actual ratification. It is only a fabricated document. The trial Court has considered all the facts and

circumstances and other relevant material and has rightly rejected the injunction applications.

10. Heard the learned Senior counsel on either side and perused the materials available on record. On behalf of the plaintiff as well as defendants

no one was examined. On the side of the plaintiff Exs.P1 to P22 were marked. On behalf of the defendants Exs.R1 to R6 were marked. Ex.P1 is

the agreement of sale between the plaintiff and defendants 2 and 3 dated 10.01.2004. Ex.P2 is the receipt issued for Rs. 50,00,000/- by

defendants 2 and 3 to the plaintiff dated 24.03.2004. Ex.P3 is the receipt issued for Rs. 50,00,000/- by defendants 2 and 3 to the plaintiff dated

16.04.2004. Ex.P4 is the letter dated 15.04.2005 of the first defendant company enclosing a copy of the resolution dated 30.03.2005 ratifying the

plaintiff's agreement of sale dated 10.02.1004. Ex.P5 is the copy of plaintiff's lawyer's notice to defendants 1 to 3. Exs.P6 to P8 are postal

acknowledgments. Ex.P9 is the reply notice by defendants 2 and 3 through their counsel. Ex.P10 is the copy of the rejoinder by plaintiff's lawyer

to defendants counsel. Ex.P11 is the acknowledgment card. Ex.P12 is the lawyer's notice issued by the plaintiff. Exs.P13 to P15 are the

acknowledgment cards. Ex.P16 is the statement of account of City Union Bank. Ex.P17 is the order passed by the High Court dated 24.09.2008.

Ex.P18 series are the photographs showing the present state of superstructure in the suit property. Ex.P19 is the copy of the complaint to police.

Ex.P20 is the receipt issued by the police. Ex.P21 is the certified copy of Form No. 23 with annexures. Ex.P22 is the copy of agreement to

transfer. Ex.R1 is the minutes book. Ex.R2 is the copy of the proceedings of BIFR. Ex.R3 is the copy of summary record of the proceedings of

BIFR. Ex.R4 is the order in case No. 105/93 of BIFR. Ex.R5 is the copy of order passed in W.P.M.P. No. 42148 of 2004 in W.P. No. 34935

of 2004 dated 17.3.2005. Ex.R6 is the printed copy of annual report of the first defendant mill for the year 2002-2003.

11. It is well established and accepted legal principle while deciding the issue of injunction, the Courts have to consider the cumulative factors,

which are as follows:

(i) prima facie case;

(ii) balance of convenience;

(iii) irreparable loss and injury and

(iv) conduct of the parties i.e. coming to the Court with clean hands.

12. The Apex court in the case of Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others, page 1 considered the scope of Order 39

Rule 1 and 2 and formulated certain factors to be considered before granting any injunction and held as follows:

21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz.

existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties

exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one.

We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The

courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the

part of the courts is imperative. Contentions raised by the parties must be determined objectively.

23. This Court in M. Gurudas v. Rasaranjan noticed: (SCC p.374, para 19)

19. A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a

conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been

sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in American Cyanamid Co. v. Ethicon Ltd. would have no

application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. and S.M. Dyechem Ltd.

v. Cadbury (India) Ltd. but we are not persuaded to delve thereinto.

Therein, however, the question in regard to valid adoption of a daughter was in issue. This Court held that Nirmala was not a validly adopted

daughter. This Court wondered: (M. Gurudas case, SCC p.379, para 34):

34. The properties may be valuable but would it be proper to issue an order of injunction restraining the appellants herein from dealing with the

properties in any manner whatsoever is the core question. They have not been able to enjoy the fruits of the development agreements. The

properties have not been sold for a long time. The commercial property has not been put to any use. The condition of the properties remaining wholly unused could deteriorate. These issues are relevant. The courts below did not pose these questions unto themselves and, thus, misdirected themselves in law.

24. Emphasis was also laid on the conduct of the parties while granting an order of injunction.

25. In *Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai* this Court held: (SCC p.294, para 30)

30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i)

existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for

protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the

defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the

plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will

be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

13. In the case of *Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan and Another*, , the Apex Court has held as follows:

7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of

discretion of the court. While exercising the discretion the court normally applies the following tests:

(i) whether the plaintiff has a prima facie case;

(ii) whether the balance of convenience is in favour of the plaintiff; and

(iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

8. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the

plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of

interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved.

The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately

compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has,

however, to 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. (See Gujarat Bottling Co. Ltd. v. Coca Cola Co. SCC at p.574.)

9. In *Dorab Cawasji Warden v. Coomi Sorab Warden* this Court, discussing the principles to be kept in mind in considering the prayer for

interlocutory mandatory injunction, observed: (SCC pp.126-27, paras 16-17)

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status

which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have

been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to

a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was

granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts

have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory

injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial

discretion of the court to be exercised in the light of the facts and circumstances

in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as a prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

14. In the case of M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , wherein the Apex Court has held as follows:

43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court.

While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of

convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is

disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed

by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief

by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be

resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be

adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such

protection has, however, to 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. [See: Wander Ltd. v. Antox India (P) Ltd. (SCC at pp. 731-32.) In order to

protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the

defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial....

47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted

earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction

of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

After taking into consideration the principles enunciated in the Apex Court judgments cited supra, let me consider the facts of the present case.

15. There is no dispute that the sale agreement is entered into between the plaintiff and defendants 2 and 3. Ex.P1 is the sale agreement dated 10.01.2004. It is clear from the agreement that the said defendants 2 and 3 have not purported to enter into the agreement on behalf of the first defendant-company or as representing the company and also, the said defendants 2 and 3 were not the Directors of the first defendant company at any point of time. It is also seen that defendants 2 and 3 also were not given power of attorney to act on behalf of the company. It is only mentioned in the said agreement that the name of the company alone is referred. Defendants 2 and 3 are only strategic investors. There is no evidence available to show that defendants 2 and 3 had any agreement with the first defendant to purchase the suit property to enable the defendants 2 and 3 to sell the same to third party. The suit property is the absolute property of the first defendant company. The Directors of the company alone are authorised by appropriate resolution and they can enter into an agreement regarding the sale of the property, so that the same is binding on the company. The fact remains that the plaintiff entered into agreement with the defendants 2 and 3 without any authority or any power

from the Board of Directors of the first defendant company. The first defendant company had become a Sick Industrial Company within the

meaning of the Sick Industrial Companies (Special Provisions) Act, 1985. There was reference u/s 15 of the Act and proceeding before the Board

for Industrial and Financial Reconstruction and also before the Appellate Authority. These proceedings were pending from the year 1993 to

29.08.2005. Only on 29.08.2005, BIFR discharged the company. During the interregnum period, there is a specific direction issued by the BIFR

not to alienate the property of the first defendant as per the proceeding dated 22.02.1994 as well as 22.07.2004. The present sale agreement is

entered into on 10.01.2004, which is much after the direction issued by the BIFR on 22.02.1994. So the agreement entered into between the

plaintiff and defendants 2 and 3 itself violates the specific directions of BIFR. Due to the relevant proceedings of BIFR and also from the order of

the learned single Judge dated 17.3.2005 in W.P.M.P. No. 42148 of 2004 in W.P. No. 34935 of 2004 the company certainly would not have

entered into any valid agreement for the sale of such property, because on entering into such agreement it would have been in violation of the

orders. Against the order of the learned single Judge one of the unions filed writ appeal and the same was dismissed. After taking into

consideration of the following facts,

1. The first defendant is not a party to the agreement dated 10.01.2004.
2. The agreement is only between the plaintiff and defendants 2 and 3.
3. The defendants 2 and 3 have no authority to enter into any agreement.
4. The property belongs to first defendant.
5. The restraining order by BIFR as well as this Court's order in WPMP. No. 42148 of 2004,

the inescapable conclusion is that there is no prima facie case established by the plaintiff.

16. The other argument advanced on behalf of the plaintiff is that a resolution purported to have been passed by the Board of Directors of

company on 30.03.2005. According to the plaintiff, the said resolution ratifies the agreement dated 10.01.2004 entered into between the plaintiff

and defendants 2 and 3. It is important to note that the said agreement dated 10.01.2004 supposed to have ratified on 30.03.2005, which is nearly

after 13 months. The minutes dated 30.03.2005 are in pages 87-90 of the minute's book. At page 87, before the act of ratification there is a

caption, which reads as follows:

To confirm the minutes of the previous meeting held on 38.03.2005.

Below the said caption the ratification reads as follows:

Chairman informed the Board the strategic investor has entered into an agreement of sale dated 10.01.2004 with one R. Krishnamurthy to

discharge the debts and has sought for ratification- so ratified.

The specific allegation by the defendants is that the above alleged ratification is not relevant to the caption and also it occupies the bottom line of

page 87. They are distinct and disjoint with the contents of the minutes book. The Chairman categorically stated in the counter that no such subject

regarding the agreement dated 10.01.2004 was considered and the same was placed before the Board and he further stated that he signed only at

the end of the minutes and not initialed at the end of the page. According to the defendants there is interpolation of the resolution relied on. The

language adopted by the resolution is different from the usual manner of passing resolution recorded in other places of the minute book. It is also

very pertinent to note that the first defendant has also filed an application in I.A. No. 1400 of 2009 for sending the minute book for expert opinion

of Tamil Nadu Forensic Science Department, Chennai, for the purpose of finding out whether it is interpolated or not. The same is pending before

the trial Court. On earlier occasions the plaintiff forged the document and he was charge sheeted in Crime No. 8/2008 before the Judicial

Magistrate No. II, Tiruppur. These facts clearly indicate that the conduct of the plaintiff and therefore he has not come to the Court with clean

hands.

17. Further the plaintiff also has not been able to point out any clear possibility of irreparable injury being caused to him if the temporary injunction

is not granted or could not be adequately compensated in damages recoverable in action if the case decided is in his favour at the trial. He is well

protected under the principle of ""lis pendens"". The balance of convenience is also in favour of the defendant. The first defendant is the owner of the

property and they are not a party to the agreement dated 10.01.2004, hence injunction cannot be granted against the company-the first defendant,

who is not even a party to the said agreement.

18. After taking into consideration of all the factors stated above, I hold that this is not a fit case for granting injunction. The findings given by the

trial Court are based on valid material and concrete evidence. It is a question of fact. It is not a perverse order. Hence I do not find any error or

illegality in the order so as to warrant interference. Accordingly the appeals are devoid of merits and the same are liable to be dismissed and the

same are dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are also dismissed.

19. However, in the interest of justice, the Additional District and Sessions Judge, Fast Track Court No. V, Tiruppur, is directed to take up the

main suit in O.S. No. 881 of 2008 and dispose of the same after giving opportunity to the parties concerned within a period of six months from the

date of receipt of a copy of the order. The parties are directed to co-operate with the trial Court for disposing of the suit without taking

unnecessary adjournments. It is needless to say that both the parties as well as the trial Court in considering the suit should not rely on the

observations made by this Court while disposing the suit.