IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

COMAP NO. 26 OF 2020
c/w
COMAP NOs. 27 OF 2020 AND 28 OF 2020

In COMAP No. 26 of 2020

BETWEEN:

Bank of Baroda,
A banking company established
Under the Banking Companies
(Acquisition and Transfer of
Undertakings) Act, 1970,

Having its Head Office at:
Baroda Bhavan, R C Dutt Road,
Alkapuri, Baroda – 390007.

Corporate Office at:
Baroda Corporate Centre,
Plot No.C-26, Block G,
Bandra Kurla Complex,
Bandra (East),Mumbai – 400 051

Represented by its duly constituted
Attorney and Assistant General
Manager – Legal, Mr. Tripathi Sudhakar Bhai
Son of Shri B.G. Bhai Tripathi,
Aged about 42 years,

. . . Appellant

(By Shri Udaya Holla, Senior Advocate for
Shri. Dharmendra Chatur and Shri. Rahul Prasad, Advocates)

AND:

1. Dr. Bavaguthu Raghuram Shetty,
(also known as Dr. B.R. Shetty)
Son of Late Shri Shambhu Shetty,
Aged about 77 years,

2. Dr. Chandrakumari Raghuram Shetty,
Wife of Dr. Bavaguthu Raghuram Shetty,
Aged about 70 years,

Both permanently residing at
No.63, Artillery Road,
Ulsoor, Bengaluru – 560 008.

Also at:
White House,
Next to Manjunatha Petrol Bunk,
Kinnimulki, Udupi – 576 101.

And at:
Next to Bharath Beedi Works H.O.,
Kadri Road, Mangaluru – 575 002.

. . . Respondents

(By Shri Shashikiran Shetty, Senior Advocate
for Shri Sandeep Lahiri, Advocate)

This Commercial Appeal (COMAP) is filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) and Section 104 of the CPC, praying to call for the records of Com.O.S. No. 01/2020 pending before the learned LXXXIII Additional City Civil and Sessions Judge, Bengaluru (CCH-84, Commercial Court) and to allow, in its entirely I.A.No.1 filed under order XXXIX Rules 1 and 2 r/w Section 151 of the CPC, 1908, (Annexure-C) and etc.

In COMAP No. 27 of 2020

BETWEEN:

1. Dr. Bavaguthu Raghuram Shetty,
(also known as Dr. B.R. Shetty)

Son of Late Shri Shambhu Shetty,
Aged about 77 years,

2. Dr. Chandrakumari Raghuram Shetty,
Wife of Dr. B.R. Shetty,
Aged about 70 years,

Having Residence at:
No.63, Artillery Road,
Ulsoor, Bengaluru – 560 008.

Also at:
White House, Next to Manjunatha Petrol Pump,
Kinnimulki, Udupi – 576 101.

Presently Residing at:
"Roshini", Near CV Nayak Hall,
Kadri Road, Kadri, Mangalore – 575 003.

. . . Appellants

(By Shri Shashikiran Shetty, Senior Advocate
for Shri Sandeep Lahiri, Advocate)

AND:

Bank of Baroda,
A banking company established
Under the Banking Companies
(Acquisition and Transfer of
Undertakings) Act, 1970,

Having its Head Office at:
Baroda Bhavan, R C Dutt Road,
Alakapuri, Baroda – 390007.

Having its Corporate Office at:
Baroda Corporate Centre,
Plot No.C-26, Block G,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051,
Represented by its General Manager.

. . . Respondent

(By Shri Udaya Holla, Senior Advocate
for Shri. Dharmendra Chatur
and Shri.Rahul Prasad, Advocates)

This Commercial Appeal (COMAP) is filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) and Section 104 of the CPC, praying to call for the records which caused in passing the impugned order dated 28.08.2020 made in Com.O.S.No.01/2020 passed by the Court of LXXXIII Additional City Civil and Sessions Judge, Bengaluru (CCH-84) and to allow the appeal and set aside the order dated 28.08.2020 passed on I.A.No.1 and etc.

In COMAP No. 28 of 2020

BETWEEN:

1. Dr. Bavaguthu Raghuram Shetty,
(also known as Dr. B.R. Shetty)
Son of Late Shri Shambhu Shetty,
Aged about 77 years,

2. Dr. Chandrakumari Raghuram Shetty,
Wife of Dr. B.R. Shetty,
Aged about 70 years,

Having Residence at:
No.63, Artillery Road,
Ulsoor, Bengaluru – 560 008.

Also at:
White House,
Next to Manjunatha Petrol Pump,
Kinnimulki, Udupi – 576 101.

Presently Residing at:
"Roshini", Near CV Nayak Hall,
Kadri Road, Kadri, Mangalore – 575 003.

. . . Appellants

(By Shri Shashikiran Shetty, Senior Advocate
for Shri Sandeep Lahiri, Advocate)

AND:

Bank of Baroda,
A banking company established

Under the Banking Companies
(Acquisition and Transfer of
Undertakings) Act, 1970,

Having its Head Office at:
Baroda Bhavan, R C Dutt Road,
Alakpuri, Baroda – 390007.

Having its Corporate Office at:
Baroda Corporate Centre,
Plot No.C-26, Block G,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051,
Represented by its General Manager.

. . . Respondent

(By Shri Udaya Holla, Senior Advocate
for Shri. Dharmendra Chatur
and Shri.Rahul Prasad, Advocates)

This Commercial Appeal (COMAP) is filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) and Section 104 of the CPC, praying to call for the records which caused in passing the impugned order dated 28.08.2020 made in Com.O.S.No.01/2020 passed by the Court of LXXXIII Additional City Civil and Sessions Judge, Bengaluru (CCH-84) and to allow the appeal and set aside the order dated 28.08.2020 passed on I.A.No.II and etc.

These appeals having heard and reserved for Judgment, coming on for pronouncement of Judgment, this day, ***Chief Justice*** delivered the following:

JUDGMENT

FACTS:

By Commercial Appeal No.26 of 2020 preferred under the provisions of Section 13 (1A) of the Commercial Courts Act, 2015 read with Rule 1 (r) of Order XLIII of the Code of Civil Procedure,

1908 (for short 'the said Code'), the appellant therein who is the original plaintiff has taken an exception to the judgment and order dated 28th August 2020 passed by the learned Judge of the Commercial Court at Bengaluru. By the said judgment and order, I.A.Nos.I and II filed by the plaintiff Bank in Commercial Suit being Commercial Original Suit No.1 of 2020 have been partly allowed. The appeal takes an exception to that part of the impugned judgment and order by which a part of the relief claimed on I.A.Nos.I and II was rejected. Commercial Appeal Nos.27 and 28 of 2020 have been preferred by the appellants therein who are the original defendants for challenging the same judgment and order. For the sake of convenience, the parties are hereafter referred by their status before the Trial Court, that is to say, plaintiff and defendants

2. The first defendant is a businessman who is stated to have multiple businesses spread over the world including India, United Arab Emirates, United Kingdom and United States of America etc. The second defendant is the wife of the first defendant and both the defendants are the residents of City of Bengaluru. It is pleaded in the plaint that the first defendant controls various companies/entities, having their branches at Abu Dhabi, Oman

and Mumbai etc. It is stated in the plaint that the plaintiff bank has sanctioned various credit facilities/loans to the said companies and to the said entities. The details thereof have been set out in paragraph 5 of the plaint. Clean demand loan facility has also been extended by the plaintiff to the first defendant. The case made out in the plaint is that as on 5th May, 2020, the plaintiff had advanced an aggregate sum of Indian Rs.2077,44,00,000 (Rupees Two Thousand Seventy Seven Crores and Forty Four Lakhs) to the first defendant and the companies/entitles controlled by him.

3. In paragraph 9 of the plaint, the plaintiff has set out the details of the personal guarantees executed by the first defendant in favour of the plaintiff. The details of the said personal guarantees are as under:

> "a. Personal Guarantee dated 28.02.2010, executed by Defendant No.1 to secure the repayment obligations of NMC specialty Hospital LLC, Dubai for various credit facilities obtained from plaintiff's Abu Dhabi Branch ("Personal Guarantee – NSHLLC").
>
> b. Personal Guarantee dated 25.03.2016, executed by Defendant No.1 to secure the

repayment obligations of BRS Ventures & Holdings Limited for various syndicated credit facilities through Citibank N.A. and others (including the plaintiff) ("Personal Guarantee-BRSV").

c. Personal Guarantees dated 14.09.2017 and 23.11.2017, executed by Defendant No.1 to secure the repayment obligations of Neo Pharma LLC for various credit facilities obtained from the Plaintiff's DIFC and Abu Dhabi Branches respectively ("Personal Guarantees – NPLLC").

d. Personal Guarantee dated 26.09.2017, executed by Defendant No.1 to secure the repayment obligations of NMC Healthcare LLC (Oman) for various credit facilities obtained from the plaintiff's Oman Branch ("Personal Guarantee – NHLLC, Oman").

e. Personal Guarantee dated 19.06.2019 executed by Defendant No.1 to secure the repayment obligations of UAE Exchange Centre LLC ("Personal Guarantee – UAEX").

4. It is stated in paragraph 15 of the plaint that as on 5th May, 2020, the liability of the first defendant and/or the companies/entities controlled by him is to the extent of Indian Rs.1912,52,80,000 (Rupees One Thousand Nine Hundred and Twelve Crore Fifty Two Lakh Eighty Thousand)

5. It is pointed out in the plaint that the first defendant and entities controlled by him are under distress and are under investigation by multiple Authorities including the agencies abroad. The details of the proceedings taken against the first defendant have been set out in the plaint.

6. Apart from the personal guarantees which are referred above, reliance is placed on Minutes of a Meeting held on 18th of March 2020 in the plaintiff's office at Bengaluru when the first defendant acknowledged the liability to pay to the plaintiff and agreed to provide an "all-out comfort" and secure his liability by providing several immovable properties available to him. Accordingly, he executed a letter of undertaking with Negative Lien and creation of mortgage dated 21st April, 2020 (for short "the Negative Lien Letter") in respect of his and second defendant's sixteen immovable properties situated in Bengaluru and Mangaluru etc., along with other assets in favour of the plaintiff. The detailed description of the said properties has been incorporated in paragraph 23 of the plaint. The second defendant also joined the first defendant in execution of the Negative Lien Letter which has been registered with the Central Registry of Securitization Asset Reconstruction and Security Interest of India.

7. As the defendants committed breaches of the Negative Lien Letter and failed to secure the interest of the plaintiff, a legal notice dated 3rd May 2020 was served by the plaintiff on the defendants on 3rd May, 2020. A reply dated 6th May 2020 to the said notice was issued by the first defendant from which it was clear that he has refused to comply with his obligations. Therefore, the subject suit being Commercial Original Suit No.1 of 2020 was filed by the plaintiff before the Commercial Court at Bengaluru containing following prayers:

> "(1) Specific performance of the Letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020, directing the Defendants to comply with their obligations therein, including but not limited to handing over the original title deeds of and create a mortgage on the immovable properties specified in the Schedule to the Letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020 (i.e. Plaint Schedule Property), and further direct the Defendants to take all such steps and execute all such documents as may be necessary to comply with their obligations under the said letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020;

(2) Permanent injunction restraining the Defendants from, in any manner whatsoever, directly or indirectly, committing any breach of the Letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020;

(3) Permanent injunction restraining Defendants, their agents, or any person acting under or through them, from, in any manner whatsoever, directly or indirectly, alienating, selling, transferring, encumbering, dissipating, mortgaging, pledging, creating a lien, creating any third-party rights or otherwise dealing with any of the assets or properties specified in the Schedule to the Letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020 (i.e. Plaint Schedule Property);

(4) Permanent injunction restraining Defendant No.1, his agents, or any person acting under or through him, from, in any manner whatsoever, directly or indirectly, committing any breach of the Personal Guarantees dated 28.02.2010, 25.03.2016, 14.09.2017, 23.11.2017, 26.09.2017 and 19.06.2019, produced as Document Nos.12 to 17;

(5) Permanent injunction restraining Defendant No.1, his agents, or any person acting under or through him, from, in any manner whatsoever, directly or indirectly, alienating, selling, transferring,

encumbering, dissipating, mortgaging, pledging, creating a lien, creating any third-party rights or otherwise dealing with any of his assets or properties, movable or immovable, tangible or intangible, including without limitation, shares, mutual funds, monies deposited in bank accounts and fixed deposits."

8. The payer made in I.A.No.I filed by the plaintiff before the Commercial Court was for following interim relief;

"For the reasons sworn to in the accompanying affidavit, it is most humbly prayed that this Hon'ble Court may be pleased to pass an order of temporary injunction restraining Defendant No.1, his agents, or any person acting under or through him, from, in any manner whatsoever, directly or indirectly, alienating, selling, transferring, encumbering, dissipating, mortgaging, pledging, creating a lien, creating any third party rights or otherwise dealing with any of his assets or properties, movable or immovable, tangible or intangible, including without limitation, the immovable properties specified in the Schedule to the Letter of Undertaking with Negative Lien and Creation of Mortgage dated 21.04.2020 as owned by Defendant No.1 (as more fully described in the Schedule hereunder, i.e. Item Nos.1 to 13 and 16 of Plaint Schedule property), his shares, mutual funds,

> monies deposited in bank accounts and fixed deposits, in the interest of justice and equity."

9. The aforesaid prayer in I.A.No.I was against the first defendant. In I.A.No.II filed by the plaintiff, there are more or less identical prayers sought against the second defendant in respect of item Nos 14 and 15. However, there is no injunction claimed in respect of her other assets save and except the immoveable properties in respect of which she has given undertaking. By the impugned judgment and order, the applications were partly allowed by granting following reliefs:

> "I.A.No.I and II filed by the plaintiff bank against the defendants No.1 and 2 under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC are allowed in part.
>
> Consequently the defendants No.1 and 2 are hereby restrained temporarily from alienating, encumbering, mortgaging or creating any lien with respect to I.A. schedule items No.1 to 16 properties till disposal of suit."

Thus, the relief of temporary injunction for preventing alienation of the other assets such as shares, mutual funds, monies deposited in bank accounts held by the first defendant as prayed in IA No.1 was not granted. However, injunction as

prayed for against second defendant in IA No.2 was granted as prayer was only in respect of immoveable property described in suit schedule.

SUBMISSIONS:

10. The learned counsel appearing for the plaintiff has taken us to the pleadings and documents on record. His basic submission is that the applications for interim relief being I.A.Nos.1 and 2 ought to have allowed in its entirety. He submitted that the Trial Court accepted that the first defendant and companies/entities controlled by him had borrowed a sum of Rs.2077,44,00,000/- (Two Thousand Seventy Seven Crores and Forty Four Lakhs) from the plaintiff as on 5th May, 2020 and as on the day, the first defendant and companies/entities controlled by him were liable to pay to the plaintiff more than Rs.1900 Crores**.** He submitted that the learned Judge of the Commercial Court has taken a very hyper technical view by observing that with respect to other properties and assets, there is no schedule incorporated in the pleadings and the details of the shares, mutual funds, fixed deposits held in the name of the defendants were not mentioned. He submitted that the Rule 11 of Karnataka Civil Rules of Practice could not have come in the way of considering the

prayer in both the applications. He submitted that the learned Judge of the Commercial Court has appreciated that a sum of Rs.1912 Crores of public exchequer was at stake. He submitted that the first defendant had refused to comply with his obligations under the guarantees and the Negative Lien Letter. He urged that even the second defendant did not comply with the Negative Lien Letter by executing a mortgage. He submitted that the learned Trial Judge ignored that a separate interlocutory application was filed by the plaintiff directing the first defendant to disclose his assets and properties. He submitted that even after recording a *prima facie* finding that the defendants have not complied with their undertakings under the Negative Lien Letter, the learned Trial Judge has rejected a part of the prayers for interim relief.

11. The learned Senior Counsel for the plaintiff has relied upon the decision of the Court of Appeal in United Kingdom rendered by Lord Denning MR in the case of ***Mareva Compania Naviera SA v International Bulk carriers SA the Mareva***[1]. He also relied upon a decision of Calcutta High Court in the case of ***Popular Jute Exchange Limited v Muralidhar Ratanlal***

[1] (1980) 1 All ER 213

Exports Limited and Another[2]. He also relied upon a decision of learned Single Judge of the Bombay High Court in the case of ***IL & FS Financial Services Limited v La-Fin Financial Services Pvt. Limited***[3].

12. The learned Senior Counsel relied upon a decision of the learned Single Judge of this Court in the case of ***Dr. Bavaguthu Raghuram Shetty v Bureau of Immigration and others***[4] and another connected matter. He pointed out that by the said writ petition, the first defendant had unsuccessfully challenged the lookout circulars of the plaintiff as well as the Panjab National Bank. He pointed out the submissions made by the first defendant in the said writ petition.

13. The learned Senior Counsel appearing for the defendants pointed out that the first defendant is only a guarantor and that public listed companies have taken the monies for their business purposes. He submitted that the loans granted by the plaintiff have been secured by assets, undertakings and guarantees. He submitted that the documents on which plaintiff has relied upon have been executed in Abu Dhabi. In fact, the documents have

---

[2] 1998 SCC OnLine Cal 15: (2006) 4 CHN 381
[3] 2014 SCC OnLine Bom 5014
[4] WP 15032/2020 C/w WP 13862 of 2020 dated 12th February 2021

been executed in favour of the Branch of the plaintiff at Abu Dhabi which is a different entity of the plaintiff. He submitted that the cause of action to file the present suit has arisen in United Arab Emirates. He relied upon the notification issued by the Ministry of Law and Justice of the Government of India on 17th January 2020 by which United Arab Emirates has been declared as a reciprocating territory for the purposes of Section 41-A of the said Code. He submitted that even a suit for specific performance of the Negative Lien Letter is not maintainable. Therefore, the prayer for injunction was not maintainable. He submitted that the interim relief sought cannot be granted as it is not in the aid of the final relief sought in the plaint. He urged that there is a non compliance by the plaintiff with the requirements of Section 12-A of the Commercial Courts Act, 2005. He submitted that the Commercial Court has exercised discretionary jurisdiction by denying a part of the relief for cogent reasons. He relied upon various decisions including the decision of the Bombay High Court in the case of ***Yaswantrao Martandrao Mukane deceased through legal representatives Digvijaysingrao and others v Khushal R. Bhatia***[5]. He also relied upon a decision of the Apex Court in the case of ***Seema Arshad Zaheer and Others v***

[5] 1986 SCC OnLine Bom 10

Municipal Corporation of Greater Mumbai and Others[6]. Relying upon the said decision, he submitted that this Court being an appellate Court should not ordinarily interfere with the discretion exercised by the Trial Court in the matter of grant of temporary injunction.

CONSIDERATION OF SUBMISSIONS:

14. We have given careful consideration to the submissions. Firstly, it is necessary to refer the decision of the Court of Appeal in the case of ***Mareva Compania*** (supra). The principles governing grant of an injunction which subsequently became known as "Mareva injunction" have been laid down in the said decision by Lord Denning MR. The relevant portion of the said judgment reads thus:

> "There is only one qualification to be made. The court will not grant an injunction to protect a person who has no legal or equitable right whatever. That appears from North London Railway Co v Great Northern Railway Co. But, subject to that qualification, the statute gives a wide general power to the courts. It is well summarized in Halsbury's Laws of England:

[6] (2006) 5 SCC 282

'…..now, therefore, whenever a right, which can be asserted either at law or in equity, does exist, then, whatever the previous practice may have been, the Court is enabled by virtue of this provision, in a proper case, to grant an injunction to protect that right.'

In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it is appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets."

(Underline supplied)

15. A Division Bench of the Calcutta High Court in the case of ***Popular Jute Exchange Limited*** *(*supra) has again succinctly laid down the principles governing Mareva injunction. Paragraph (1) of the said decision reads thus:

"Mareva Injunction is an established feature of English Law and the English Court has been categorical enough to record that there should not be any hesitation in the matter of such a grant where it appears likely that the plaintiff would recover judgment against the defendant for a certain or approximate sum

and there is reason to believe that the defendant has the assets within the jurisdiction to meet the judgment but may deal with the same, so that they would not be available or traceable when the judgment is given against him. One of the basic criteria for the grant of Mareva Injunction is that the assets must be located within the jurisdiction to confer jurisdiction on the Court to grant a Mareva Injunction. Be it noted that this concept of grant of Mareva Injunction is not different from the power of the High Court to grant interlocutory or final order of an injunction and under its general power of jurisdiction to grant an *ex parte* injunction the English Court has developed a principle that the Court has power to restrain the defendant from removing assets from the jurisdiction pending the trial of action whenever it was just and convenient to do so. This power was originally exercised when the defendant was out of the jurisdiction but has subsequently been extended so as to be available against a defendant even though he is based within the jurisdiction. This extension of power has its due statutory recognition in the Supreme Court Act, 1981 and in particular, reference may be made to section 37."

(Underline supplied)

16. We may also make a useful reference to a decision of Bombay High Court in the case of ***Liverpool and London Steamship Protection and Indemnity Association Limited vs.***

M.T. Symphony and Others[7]. In paragraph 5, the High Court held thus:

> **5.** We then come to the second contention as to whether an action in rem can be maintained only for security. Again this issue was in issue before another appellate bench of this court in the case of *Islamic Republic of Iran* v. *M.V. Mehrab*, 2002 (4) Mh.L.J. 584 : AIR 2002 Bom. 517. The learned appellate bench has taken a view that action only for security is maintainable. Apart from that there is clear support for that authority in the judgment of the Apex Court in *M.V. Elizabeth* v. *Harwan Investment & Trading Pvt. Ltd* , 1993 Supp (2) SCC 433 AIR 1993 SC 1014. I may advert to paragraphs 49 and 50 of the said judgment. The Apex Court in the case of *M.V. Elizabeth* (supra) observed as under:
>
> "49. A ship may be arrested (i) to acquire jurisdiction; or (ii) to obtain security for satisfaction of the claim when decreed; or (iii) in execution of a decree. In the first two cases, the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendant in the event of it being found that the arrest was wrongful and was sought and obtained maliciously or in bad faith. The claimant is liable in damages for wrongful arrest. This practice of insisting upon security being

[7] 2003 SCC OnLine Bom 73

furnished by the party seeking arrest of the ship is followed in the United States, Japan, and other countries. The reason for the rule is that a wrongful arrest can cause irreparable loss and damages to the ship owner; and he should in that event be compensated by the arresting party."

"50. The attachment by arrest is only provisional and its purpose is merely to detain the ship until the matter has been finally settled by a competent court. The attachment of the vessel brings it under the custody of the marshal or any other authorised officer. Any interference with his custody is treated as contempt of the court which has ordered the arrest. But the Marshal's right under the attachment order is not one of possession, but only of custody. Although the custody of the vessel has passed from the defendant to the marshal, all the possessory rights which previously existed continue to exist, including all the remedies which are based on possession. The warrant usually contains admonition to all persons interested to appear before the court on a particular day and show cause why the property should not be condemned and sold to satisfy the claim of the plaintiff."

It may be contended that this arrest can only be in respect if the action is maintainable before the very court itself for the main relief. However, the courts are now granting injunction, which are

described as Mareva injunction. A Mareva injunction is an order of a court to a party or other persons over whom the court has jurisdiction, directing the way in which the property is to be retained or dealt with so as to ensure that the property will be available to satisfy any judgement in the action. It may be noted that to obtain a Mareva injunction there must first be an action properly commenced within jurisdiction of the court. Courts have extended their jurisdiction also to action in rem to restrain the property from leaving jurisdiction. See *The Rena K.*, (1979) QB 377. The following paragraph is relevant:

"The Mareva injunction is granted in a case where a plaintiff has brought an action here against a foreign defendant, and the latter has moneys or chattels within the jurisdiction which, if he were not prevented from doing so, he would be free to remove out of the jurisdiction before the plaintiff could bring the action to trial, and, if successful, obtain and enforce a judgment against him.

The injunction takes the form of an order restraining the defendant, by himself, his servants or agents, from selling, disposing of or otherwise dealing with such moneys or chattels or from removing them out of the jurisdiction, usually until further order. Its purpose is to ensure that, if the plaintiff succeeds in the action, there will be property of the defendant available here out of

which the judgment which the plaintiff obtains in it can be satisfied."

The doctrine is however, evolving, permitting retaining security obtained until such time to satisfy the decree that may be obtained in proceedings commenced in other jurisdictions also. There can be therefore, no difficulty in maintaining an action for security as has been held by the Division Bench of this court. Even therefore, if the action is merely for security pending final action in the arbitral proceedings none the less it can read to mean security for satisfaction of the claim in respect of action, which may be pending also in some other jurisdiction. Considering this aspect of the matter, to my mind the proceeding as presently filed is maintainable. In the light of that the second question will also have to be answered in the affirmative.

That being the position, the reliefs in form of Prayer Clause (a) and (b) as sought in the motion at this stage must be rejected.

(Underline supplied)

17. The concept of Mareva injunction has been well accepted by various High Courts in India. As noted by the Division Bench of Calcutta High Court, one of the basic criteria for grant of

Mareva injunction is that the assets in respect of which injunction is claimed must be located within the jurisdiction of the Court.

18. Another Division Bench of Calcutta High Court in the case of ***Santosh Promoters Private Limited and Others v. Intrasoft Technologies Limited***[8] dealt with the same issue. Paragraphs No.21 to 23 of the said decision read thus;

> **"21.** Let us now consider the substance of such contention of the learned Counsel appearing for the parties. Even assuming that the principle relating to grant of Mareva injunction which was originated from the English Court is not applicable here but still then we cannot be oblivious of the provision contained in Order 39 Rule 1(b) of the Civil Procedure Code which authorizes the civil court to pass an order of temporary injunction for restraining the defendant from transferring any property which the defendant intends to transfer to defraud his creditors during the pendency of the suit for realization of money, even though the property in respect of which an order in the form of injunction is sought for, is not directly and/or indirectly involved in the suit.
>
> **22.** To understand the true implication of Order 39 Rule 1(b) of the Civil Procedure Code, it will be

[8] 2016 SCC Online Cal 8268

profitable for us to set out the said prevision hereunder which runs as follows:-

"Where in any suit it is proved by affidavit or otherwise that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditor, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossessing of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders".

23. If we consider the provision contained in Order 39 Rule 1 of Civil Procedure Code as a whole which is the source of grant of temporary injunction then it appears to us that though passing of an order of temporary injunction is respect of non-suit property is not permissible under order 39 Rule 1(a) and 1(c) of the Civil Procedure Code <u>but the Court's power to pass temporary injunction in respect of any property which is not the subject matter in dispute, is recognized under order 39 Rule 1(b) of the Civil Procedure Code and such power can be exercised only when the Court finds in a suit for realization of money, the defendant intends to transfer his properties to defraud his creditors."</u>

(Underline supplied)

19. In paragraph 27 and 28 of the said decision, the Division Bench of Calcutta High Court made a distinction between the remedy of attachment before judgment under Rule 5 of Order XXXVIII of the Code of Civil Procedure, 1908 (for short "the said Code") and the remedy of grant of injunction under Rule 1 (b) of Order XXXIX of the said Code.

Paragraphs 27 and 28 read thus:

> **"27.** At the very outset, we like to mention here that those two provisions operate in different fields altogether. Order 38 Rule 5 of the Civil Procedure Code contemplates post decree consequences. While dealing with such an application, the Court is required to find out first as to whether there is strong possibility of passing a money decree in favour of the plaintiff. If the court is satisfied that there is every possibility of passing a money decree in favour of the plaintiff, then only the court can pass any order of attachment before judgment provided the Court is satisfied that the defendant is either trying to dispose of whole or any of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, with an intent to obstruct or delay the execution of any decree that may be passed against him. Reading the said provision as a whole, we are of the view, that order of attachment before judgment cannot be passed by

any Court unless the Court is satisfied about the conditions as mentioned above.

28. Simultaneously if we consider the provisions contained in Order 39 Rule 1(b), of the Civil Procedure Code we find that while passing an order of injunction, the Court is not required to find out as to whether there is every possibility of passing a decree in favour of the plaintiff in the suit. While considering the application for temporary injunction, the Court is only required to ascertain as to whether a prima facie case has been made out by the plaintiff in the suit. Prima facie case means an arguable case meaning thereby that a reasonable dispute is raised before the Court which the Court is required to resolve ultimately in the suit. A prima facie case is distinguishable from a full-proof case. When the Court finds that a prima facie case is made out by the plaintiff then the Court passes an order of injunction so that the ultimate relief which is claimed by the plaintiff in this suit is not frustrated and the decree which may be passed in the suit will remain unexecutable."

(Underline supplied)

20. The learned counsel appearing for the defendants relied upon the well settled principle that interim relief can be granted only in the aid of final relief and in this case, there is no relief

prayed for recovery of money. He relied upon well known decision of the Apex Court on this aspect in the case of ***Cotton Corporation of India Limited v. United Industrial Bank Limited and Others***[9]. He also relied upon a decision of the Apex Court in the case of ***Haryana Financial Corporation v. Gurcharan Singh and Another***[10]. In the said decision, the Apex Court held that a mere undertaking to create a mortgage is not sufficient to create an interest in any immoveable property. The Apex Court observed that mere undertaking that a person would not dispose of the properties mentioned during the currency of the loan would not create any charge on the immoveable properties mentioned therein. It was a case where the first defendant before the Apex Court had borrowed money from Haryana State Financial Corporation, which is a Corporation constituted under the State Financial Corporation Act, 1951. The first defendant had given an undertaking not to dispose of the properties during the currency of the loan. The State Financial Corporation took over the property and sold the same. The wife of the second defendant before the Apex Court filed a civil suit and get a declaration that she was the absolute owner of the property sold by the State Financial Corporation. A declaratory suit was

[9] (1983) 4 SCC 625
[10] (2014) 16 SCC 722

filed by the State Financial Corporation claiming that the decree granted in favour of the first defendant's wife was null and void. The suit was decreed. The second defendant before the Apex Court (wife of the borrower) filed an appeal. The said appeal was allowed. The second appeal preferred by the State Financial Corporation was also dismissed and that is how the matter was carried to the Apex Court. The Apex Court in the facts of the case held that as there was no mortgage created in favour of State Financial Corporation, the undertaking was not sufficient to create an interest in the property and therefore, it could not have been sold by the State Financial Corporation. This decision has no relevance in this case, as the piaintiff bank is not seeking to sell the property in respect of which an undertaking was given by the defendants to create a mortgage. The Bank is seeking only prohibitory injunction pending the prayer for specific performance of the Letter of Negative Lien of which specific performance has been sought in the suit.

21. Now, we come back to the facts of the case in hand. In the plaint, specific performance of the Letter of Negative Lien has been sought. A permanent injunction was sought restraining the defendants from in any manner committing breach of the

undertakings in the Negative Lien Letter. We have already quoted the prayers of interim relief made in I.A.Nos.I and II.

22. In the guarantee executed by the first defendant on 28th February 2010, there is a clause in respect of the liability of the first defendant. It is provided that the plaintiff bank will have a lien on all securities belonging to him. In the plaint, reliance is placed on a personal guarantee executed by the first defendant in favour of the plaintiff on 14th September, 2017. Clauses No.4.2.1 and 4.2.2 are material for reconsideration which read thus:

> "4.2.1 The Guarantor has carefully reviewed each of the undertakings of the Borrower under the Facility Agreement (the **Borrower Undertakings**) and the Guarantor hereby undertakes to comply in all respects, throughout the Security period, with all of the Borrower Undertakings, which relate to them as if such Borrower Undertakings were given by them hereunder.
>
> 4 2.2 <u>The Guarantor hereby agrees that the Bank has an absolute right to call upon the Guarantor to declare on oath the details of all his/her/its assets and when called upon, the Guarantor will unconditionally, within a period of three (3) days, declare on oath, the details</u>

of all his/her/its assets (whether moveable or immoveable, whether tangible or intangible), whether held solely or jointly, and, whether constitutes Security for this Guarantee or not, in a form and manner satisfactory to the Bank. The Guarantor agrees and undertakes that such disclosed assets shall not be encumbered or disposed off by the Guarantor without the prior written approval of the Bank, till the Guarantor discharges his guarantee obligation herein or till the Bank discharges this Guarantee.

This Guarantor confirms that it shall if so required by the Lender(s), provide a networth statement from a chartered accountant, in the form and manner acceptable to the Bank, detailing the list of assets owned by the Guarantor."

(Underline supplied)

23. Clause 4.2.2 has some relevance to additional undertakings incorporated in the Schedule II in the said guarantee by the first defendant. Clause (ii) of the additional guarantee reads thus:

"(ii) The Guarantor hereby undertakes that he/she shall not sell, transfer, mortgage, charge,

> pledge or create any lien or in any way encumber his properties, assets and investments, without the Bank's prior written consent till the obligations under this Guarantee are discharged in full."
>
> (Underline added)

24. Apart from the aforesaid guarantee, there is also a personal guarantee dated 23rd November 2017 executed by the first defendant in which the first defendant agreed not to sell, transfer otherwise dispose of whole or any part of his assets. The same is the clause in the guarantee dated 19th June 2019 executed by the first defendant. In fact, there are six guarantees dated 28th February 2010, 25th March 2016, 14th September 2017, 23rd November 2017, 26th September 2017 and 19th June 2019 executed by the first defendant containing more or less similar covenants. Hence, the first defendant had undertaken to disclose all his movable and immoveable assets when called upon by the plaintiff and has undertaken not to dispose of the same without the prior written approval of the plaintiff bank.

25. Before we come to the Negative Lien Letter, there was a meeting held in Bengaluru on 18th March 2020, which was

attended by the Senior Officers of the plaintiff and the first defendant. It is relevant to note that the assurance given by the first defendant in the said meeting were recorded in the minutes of meeting. The relevant portion of the minutes reads thus:

> "Shri Shetty has assured Shri Murali Ramaswamy to provde all-out comfort to the Bank to secure the Bank's exposure with immovable properties available with him. During the course of the meeting itself, Shri Shetty has indicated to offer the immovable properties situated at various places viz Assam Tea Company; Property at Mukka, Suratkal Taluq, Mangalore; Property at B R Meadows, Ajjarkad, Udupi; Property at Udeshi Development, Bangalore; 03 open plots situated near Vijaya Cooperative Society, Vijaya Bank Layout, Bilekahalli, Bangalore, to secure the aggregate exposure of the Group. In response, Shri Murali Ramaswamy suggested that full details/photo copies of the documents of above mentioned properties be handed over to a representative of the Bank to complete required formalities to enable the Bank to create a charge."
>
> (Underline supplied)

26. Now, we come to the Negative Lien Letter. This letter is signed by both the defendants. In the said letter, the defendants have stated thus:

"Now, I/ we the Promoter/Guarantors in the account is/are offering the additional immoveable Assets situated in State of Karnataka – India, particularly mentioned/specified in the ***Schedule I*** hereunder, as security/ and purpose to create Negative Lien Charge of the Bank over the said Assets. It is agreed by me/ us that I/we shall convert the Negative Lien Charge of the Bank over the said assets (All Assets / Part assets, (mentioned in Sch 1) in Mortgage interest favouring the Bank as and when called by the Bank to do so."

(Underline supplied)

27. Schedule 1 contains detailed description of the properties held by the first and the second defendants. Some of the undertakings given in the said letter by the defendants are material.

Clauses 2 to 4 are material which read thus:

"2. I/We hereby undertake and confirm that we shall be transferring all right or benefits of the schedule mentioned properties/assets in favour of the Bank for securing aforesaid credit facility as and when called by Bank to do so.

3. I/We hereby irrevocably undertake to create mortgage by deposit of title deeds or by way of Simple Registered mortgage of my/our

property/ies detailed herein below in the Schedule / to secure / to additionally secure the borrowing (s) made by the captioned Borrower Companies and when called upon by the Bank to do so and also undertake not to create or grant to any person, except bank, any lien, security interest, encumbrance, charge on title, mortgage, pledge or similar interest in any of the property as mentioned in the Schedule I.

4. I/We hereby agree on demand by the Bank that to transfer and deliver to the Bank all securities, documents and papers in connection with the said properties and to execute such documents in favour of the Bank

as may be necessary or advisable to transfer such asset in favour of the Bank."

(Underline supplied)

28. *Prima facie*, the following are the obligations of the defendants under various documents executed by them:

(i) The first defendant guaranteed repayment of the amount advanced by the plaintiff bank to him and to the companies/entities controlled by him. Hence, he

is liable as a guarantor. In case of one loan facility, he is the borrower.

(ii) The first defendant agreed to disclose his other assets whether moveable or immoveable, tangible and intangible as and when called upon to do so and undertook not to sell or transfer or in any manner encumber his properties, assets and investments without approval of the plaintiff bank or till guarantee was discharged; and

(iii) Both the defendants agreed to create mortgage of sixteen immoveable properties mentioned in the schedule of the plaint for securing the outstanding loan.

29. We must refer to the correspondence exchanged between the parties before filing the suit. The plaintiff through his Advocate issued a notice dated 3rd May 2020 to the first defendant. The notice refers to all the documents executed by the defendants including the Negative Lien Letter executed by the defendants. By the said notice, the first defendant was called upon to provide list of his assets (whether movable or immovable) across the world along with all documents of ownership, right, title and interest and

was called upon solemnly undertake that he will not encumber or dispose of the said assets without prior approval of the plaintiff. The first defendant was called upon to hand over original title deeds of sixteen immovable properties specified in the schedule to the Negative Lien Letter and execute a mortgage by deposit of title deeds in favour of the plaintiff. The first respondent was called upon to secure outstanding debt equivalent to Indian Rs.1,742,04,53,503.56 (Rupees One Thousand Seven Hundred Forty Two Crore Four Lakh Fifty Three Thousand Five Hundred and Three Rupees and Paise Fifty Six only) as on 22nd April 2020. A similar notice was sent by the same Advocate for the plaintiff on 5th May 2020 to the second defendant making similar requisitions. The reports regarding service of the notices have been placed on record. It must be noted here that the notice addressed to both the defendants specifically relies upon the said Negative Lien Letter executed by both of them and other documents of guarantee executed by the first defendant. A reply was sent by the first defendant on 6th May 2020 to the Advocate for plaintiff. Perusal of the reply shows that it is as vague as possible. It is pertinent to note that in paragraph No.2 of the said reply, the first defendant has stated that:

> "2. Please note, that our Client shall be bound by the terms and conditions of only such of the Agreements and Undertakings which have been legitimately executed by him and not by any of the documents unilaterally printed on blank papers containing the signatures of our client, which have been taken by your client, from time to time, citing administrative reasons. This also applies to the documents which you have detailed out in the references portion of your aforementioned legal notice."

In paragraph No.5 of the said reply sent by the first defendant it is stated that:

> "Our client informs us that he has not become incapable of duly discharging all his legal obligations to all such parties to whom he legitimately owes such obligations and he is willing to discharge all such obligations, as and when he is legally and contractually bound to do so. The aforementioned allegation on the part of your client is highly mischievous and with an ulterior and *malafide* intention."

It is pertinent to note that in the said reply of the first defendant there is no denial of the execution of letter of Negative Lien and creation of mortgage dated 21st April 2020 as well as guarantee documents. In view of refusal of the first defendant to comply

with the notice dated 3rd May 2020, on 12th May 2020 the present suit was filed by the plaintiff. The defendants did not disclose their all assets (movable and immovable) though called upon to do so by the aforesaid notices.

30. In the statement of objections filed by the first defendant to I.A.No.I filed by the plaintiff, again there is no denial of the execution of the said Negative Lien Letter. But it is contended that it is not an agreement and it does not create rights and obligations in favour of either parties. It is contended that as the loan has been disbursed and is repayable in United Arab Emirates, all the rights and obligations arise at United Arab Emirates. It was contended that the said letter is not enforceable. Further it was contended that the letter has not been signed by the principal barrower. It is further contended that on the said letter which was a blank document, the signatures of the defendants were fraudulently obtained. It is contended that in the lockdown, the defendants have been forced to sign the said letter. There are the usual defences of borrowers of a Bank which are taken by way of an afterthought. In the statement of objections, the defendants have not denied the meeting held on 18th March 2020. About the advance of various amounts by the plaintiff to

the first defendant and other entities/companies controlled by him, there is a general denial. However, in paragraph 8, the first defendant has accepted that the amount as pleaded by the plaintiff was advanced to him.

31. Now, coming to the impugned order, in paragraph No.25, the learned Trial Judge has held that a prima facie case has been established by the plaintiff. He has also dealt with the stand taken by the defendants regarding revocation of the Negative Lien Letter dated 21st April 2020. While dealing with the said contention, the learned Trial Judge has rightly observed that in the reply dated 6th May 2020 sent by the first defendant to the legal notice served by the plaintiff, the said contention was not raised. The reason given by the learned Trial Judge for declining to give full relief have been recorded in paragraph 31 of the impugned order and judgment. The paragraph 31 reads thus:

> "**31.** If the properties movable or immovable held by the defendants were to be disposed off, the plaintiff bank will be put to hardship and irreparable loss and injury will be caused to the plaintiff bank. Thus there is balance of convenience lies in favour of the plaintiff bank in granting the relief as prayed in the interim applications. On going through the

recitals of the applications only with respect to immovable properties the schedules are mentioned which can be considered for granting of interim relief as claimed by the plaintiff. But with respect to movable properties and other properties and assets no such schedule mentioned in the interim applications with respect to such shares, mutual funds, fixed deposits, bank deposits held in the name of 1st defendant. Hence the blanket injunction cannot be granted with respect to those movable properties and provision of Order 39 Rule 1 (a) cannot be invoked. The Karnataka Civil Rules of Practice in rule 11 provides that every plaint or original petition where the interim relief sought with respect to movable or immovable property shall contain the description of the property, so as to clarify the identification of the properties. Without identifying the properties or ascertaining the movable properties and their details no such blanket injunction can be granted. The plaintiff has not produced the details of movable assets like shares, mutual funds, fixed deposits, bank accounts with respect to the defendant No.1 and without furnishing such details the question of granting the interim relief with respect to movable properties of the defendants cannot be considered."

(Underline supplied)

In paragraph 33, the finding on the issue of balance of convenience has been recorded in favour of the plaintiff. Paragraph 33 reads thus:

> **33.** On going through the entire documents, pleadings and on hearing both the sides, it is pertinent to note that huge money has to be recovered by the plaintiff bank from the principal borrower and also 1st defendant as the guarantor with respect to the said loan transactions and if the petition schedule properties were to be alienated by the defendants, the plaintiff bank would be put to hardship and thus there is balance of convenience lies in favour of the plaintiff bank in granting such interim relief as prayed in both the applications till disposal of suit. Under these circumstances, I answer points No.2 and 3 in favour of the plaintiff bank."

32. We have already quoted prayers made in I.A.No.I against the first defendant. Similar prayer has been made in I.A.No.II against the second defendant except for the fact that an injunction against her was confined to item Nos 14 and 15 in the Schedule in the plaint. The temporary injunction was prayed for in respect of item Nos.1 to 13 and 16 (owned by the first defendant) in the plaint schedule in I.A.No.I and item Nos.14 and

15 (owned by the second defendant) in the plaint schedule in I.A.No.II. This part of the injunction has been granted under the impugned order in respect of item Nos.1 to 16 in the schedule of property. However, relief has not been granted in respect of movable or immovable, tangible or intangible, properties, shares, mutual funds, monies deposited in bank accounts and fixed deposits of the first defendant. The only reason given by the learned Trial Judge is that the said properties have not been described in the plaint. It is pertinent to note that under the personal guarantee dated 14th September 2017 as well as in general form of guarantee executed on 25th February 2010, the first defendant had agreed that as and when called upon, within a period of three days from the date of receipt of the notice, he will unconditionally provide a list of all his assets (whether movable or immovable, whether tangible or intangible, whether held solely or jointly) across the world. It is further provided that the first defendant undertakes that such disclosed assets shall not be encumbered or disposed of by him without prior approval of the plaintiff bank. In fact, in the additional guarantee contained in general form of guarantee executed by the first defendant on 28th February 2010, he has undertaken not to sell, transfer, mortgage, charge, pledge or in any way encumber his properties without

plaintiff's prior consent. There are similar covenants in other guarantee documents executed by the first defendant. After quoting the said clauses in the legal notice dated 3rd May 2020, the first defendant was called upon to disclose the list of all his assets whether movable or immovable, whether tangible or intangible, whether solely or jointly owned across the world. Prima facie, in view of clauses in the guarantees, the first defendant was under an obligation to disclose all other assets held solely or jointly by him. Further, by sending a reply dated 6th May 2020, the first defendant refused to disclose the assets. That is the reason why the description of the assets held by the first defendant could not be specifically set out in the plaint except properties No.1 to 16 in the plaint schedule. That is the reason why a blanket injunction was claimed in respect of the other assets held by both the defendants. The reliance placed by the learned Judge of the Commercial Court on Rule 11 of the Civil Rules of Practice is not correct. The same are procedural rules. It is well settled that the procedure is a handmaid of justice. It cannot be used to defeat the substantive rights. Though the defendants were called upon to do so by a notice, they refused to furnish any details of their other properties. Therefore, the description of the said properties could not be incorporated in the plaint. That was no ground to

deny the relief. The first defendant cannot be allowed to take an advantage of his wrong by relying upon the procedural Rules.

33. The first prayer in the plaint is for specific performance of the terms of the Negative Lien Letter. Prayer (3) is for permanent injunction restraining the defendants from alienating, selling or transferring the sixteen properties mentioned in the schedule to the Negative Lien Letter. Prayer (5) which we have quoted above, seeks injunction restraining the defendants from alienating or creating third party rights in respect of the assets of the first defendant, his properties, movable or immovable, shares, mutual funds, money deposited in the bank accounts and fixed deposits are concerned. As noted earlier, the first defendant has agreed under the guarantee documents not to alienate, transfer or sell any of his properties and investments without prior consent of the plaintiff bank till the obligations under the guarantee are discharged or till guarantee is cancelled.

34. Considering the response given to the legal notice sent by the plaintiff, *prima facie* it appears that the first defendant has declined to disclose his other assets. The fourteen properties listed in the schedule to the said letter of Negative Lien are of the first defendant and two are of the second defendant. They have

not come forward to execute a mortgage in respect of the said sixteen properties. The question is whether they can be permitted to dispose of these properties. Whether the Negative Lien Letter can be specifically enforced or not is a question to be decided at the time of trial. Without performing their obligations under the said Negative Lien Letter of creating a mortgage in respect of sixteen properties, there is every likelihood of the defendants alienating the same for defeating the claim of the plaintiff. Moreover, the first defendant has undertaken not to sell, transfer or alienate his other assets without the approval of the plaintiff bank. Therefore, the immoveable assets of the defendants as mentioned in the Schedule in the plaint and other assets of the first defendant will have to be protected by grant of a temporary injunction.

35. The recovery of amounts outstanding will be a long drawn process. Therefore, the aforesaid assets of the defendants cannot be allowed to be transferred or alienated without the leave of the Court.

36. The apprehension expressed in the plaint is that the defendants may dispose of their assets so that the same would disappear by the time a judgment is delivered against them or

against the entities/companies controlled by the first defendant in recovery suit.

37. Perusal of plaint shows that the defendants are permanent residents of Bengaluru. Moreover, the suit is filed for enforcing personal obligations of the defendants under the documents executed by them. Therefore, in view of Clauses (a) and/or (c) of Section 20 of the Code of Civil Procedure, prima facie, the Commercial Court at Bengaluru has jurisdiction to entertain the suit.

38. A faint attempt was made by the learned Senior Counsel appearing for the defendants to argue on non compliance of Sub Section (1) of Section 12A of The Commercial Courts Act, 2015. Sub Section (1) of Section 12A of The Commercial Courts Act, 2015 reads thus:

> "**12A. Pre-Institution Mediation and Settlement.-** (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government."

Considering the nature of the present suit, it does contemplate urgent interim relief and therefore, Sub Section 1 of Section 12A is not at all applicable in the present case.

39. The submission of the learned senior counsel appearing for the defendants was that by relying upon examples of certain businessmen who have fled abroad with a view to avoid their liabilities, defendants are being targeted. He submitted that even look out notices have been issued against them. All this is irrelevant to decide the issues involved in the appeal.

40. The first defendant by his reply dated 6th May 2020 virtually declined to comply with the requisitions in the legal notice sent on 3rd May 2020. *Prima facie*, it is the obligation of the first defendant to disclose the details of all other movable and immovable properties held by him. He is under an obligation not to sell or transfer the same without consent of the plaintiff bank. Thus, there is no manner of doubt that a prima facie case was established by the plaintiff. It is obvious that considering the extent of amounts payable by the companies/entities of the first defendant and the first defendant in his capacity of the borrower and guarantor, the balance of convenience is in favour of the plaintiff. It goes without saying that

irreparable loss will be caused to the plaintiff which is nationalised bank, if injunction is not granted.

41. Hence, the appeal preferred by the Bank must succeed and the appeals of the original defendants must fail. Hence, injunction as prayed will have to be granted in both I.A.No.I and I.A.No.II. Hence, we pass the following:

ORDER

Commercial Appeal Nos.27 and 28 of 2020 are dismissed;

Commercial Appeal No.26 of 2020 is allowed;

There will be temporary injunction against the defendants in terms of prayers made in I.A. Nos. I and II of Commercial Original Suit No. 1 of 2020. However, as regards the other assets (other than immoveable property described in item Nos 1 to 13 and 16 of plaint schedule) held by the first defendant, it will be always open for the first defendant to apply to the plaintiff Bank for grant of permission to transfer the same;

There will be no order as to costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Mr/Vr