

**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT  
DINDOSHI,GOREGAON, MUMBAI**

**NOTICE OF MOTION NO.2657 OF 2018  
(CNR NO.MHCC04-006837-2018)  
IN  
S.C. SUIT NO. 2277 OF 2018**

**Mr. Anand S/o. Nagarmal Agrawal**

**...Plaintiff**

**Vs.**

**M/s. Supreme Transport Organisation  
Private Limited & Ors.**

**...Defendants**

**CORAM: H.H.AD-HOC JUDGE SHRI M.H.SHAIKH  
(C.R.NO.6)**

**DATE : 29<sup>th</sup> August 2018**

Adv. R.K.Singh i/b RKS Associates for plaintiff.  
Adv. V.R.Surve for defendants no.1 to 6  
Adv. Ranjana Sinha for defendants no.7 and 8.  
Adv. Siddharth Rajmohan for defendant no.11.

**AD-INTERIM ORDER**

1. This is a notice of motion taken out by plaintiff with a prayer that pending the hearing and final disposal of the present suit, defendant no.1 to 6 their agents, servants or anybody claiming through them be temporarily restrained from in any manner routing/diverting and or depositing the amounts receivable from the defendant nos.10, 11 and other debtors of the defendant no.1 in any other bank account bearing no.02072980000064 provided by defendant nos.1 to 9. An affidavit in support of the notice of motion is filed.

2. The suit is for declaration that the email dated 19/04/2018 annexed to the plaint as Exh.'E' which is communicated by defendant no.1 to its debtors be declared as illegal, bad-in-law and for consequential relief of

injunction.

3. In response to the notice served by the plaintiff upon the defendants, advocate for defendant no.1 to 8 and 11 appeared through their advocates. An Officer of defendant no.9 bank appeared in person. Defendant no.10 though served failed to appear.

4. Heard learned advocate for the plaintiff. He carried the Court to the averments of the plaint and the documents annexed to the plaint. He submitted that there is an agreement by defendant no.1 with defendant no.9 that the defendant and defendant no.9 had executed a sanction letter and the amount which will be receivable by the defendant no.1 from its debtors shall go in the account of defendant no.1 which is maintained with the defendant no.9 bank. He submitted that there is a contract in such a fashion and defendant no.1 has breached the said contract. Defendant nos.2 to 6 are actually in control of defendant no.1 company and they had issued the said email which is bad-in-law to the debtors. He submitted that therefore it is necessary that the defendant no.1 to 6 be directed to adhere to the agreement and the sanction letter in which they are the party alongwith other defendants and the plaintiff himself. Therefore he prayed for ad-interim relief in terms of prayer clause (a) of the notice of motion.

5. Learned advocate for defendant nos.1 to 6 filed a short reply to the notice of motion and also filed certain documents in support of his defence. By way of reply, the defendant nos.1 to 6 denied the contents of an affidavit in support of the notice of motion, so also the contents of the suit. A company petition was taken out by the plaintiff and similar type of prayer was sought. It is further case that three flats which are mentioned in para 11 are mortgaged with defendant no.9 bank and the defendant no.9 bank had

initiated a proceeding under a SARFAESI Act. Therefore as per the reply, a suit is barred by the principle of res-judicata. The other debtors are not joined as a party to the proceedings. Therefore the suit is bad for mis-joinder of parties and in this way defendant nos.1 to 6 tried to justify an email under challenge and therefore prayed for rejection of ad-interim prayer.

6. Learned advocate for defendant nos.1 to 6 argued in the same line as per his reply which is filed to the notice of motion. He invited the attention of the Court to the document which he has relied upon and pointed out that similar prayer was sought in the company petition. He further submitted that other debtors are not made party to the proceeding. So also if the ad-interim relief is granted it will amount to grant of final relief and in such scenario he submitted that ad-interim relief be refused.

7. Learned advocate for defendant nos.7 and 8 supported the plaintiff for grant of ad-interim relief.

8. An Officer of defendant no.9 submitted that no relief is claimed as against them. Further he submitted that there is an agreement and sanction letter and they should adhere to the same and an amount which are receivable by defendant no.1 company should be deposited with the defendant no.9 as per the terms of the contract. Infact he submitted that they have initiated legal proceedings and they are having an order of the Court with them and therefore he submitted to the orders of the Court.

9. The learned advocate for defendant no.11 submitted that he is submitting to the orders of the Court and will abide by the orders which will be passed by this Court.

10. Upon hearing and going through the material placed on record, what can be gathered is that there is an agreement between defendant no.1. and defendant no.9 bank. It is agreed that there shall be one account with the defendant no.9 bank and all the receivables from the debtors of defendant no.1 shall be deposited with the bank i.e. defendant no.9. Now if we perused an email which is under challenge at page no.98 of the plaint at Exh.'E', one will find that the defendant no.1 had addressed the said email to all its debtors stating therein that payments to be made to the HDFC Bank Ltd. And the details of the branch, account no. IFSC code and MICR are mentioned in the said email. Further it is mentioned in the email that the letter issued to defendant no.9 bank is illegal and that they are seeking legal measures against defendant no.9 bank. In the said letter, it is also mentioned that if the payments are made other than to HDFC Bank, said payments will not be considered as payments received by the defendant no.1 company. So what can be gathered from the email is that the defendant no.1 is diverting itself from an agreement which they had agreed. An agreement says that they will deposit an entire receivable from the debtors in the bank account of defendant no.9 and not with any other bank. Therefore prima facie it is seen that the defendant no.1 had diverted itself from the contract and had breach the contract. The learned advocate for defendant nos.1 to 6 tried to justify the stand by arguing that certain immovable properties are mortgaged with the defendant no.9 bank and they have proceeded against those immovable properties which were mortgaged with the bank and they had also initiated an action under the SARFAESI Act. Therefore it was his argument that bank can easily recover an amount and it is required for the defendant no.1 company to fulfill the salary and other expenses of the employees of defendant no.1 company. However the fact is that defendant no.1 company had diverted itself from an agreement and contract of depositing the entire receivables with the defendant no.9 bank. Defendant nos.1 to 6 did not justify the Court as regard

this. Therefore prima facie the plaintiff has made out case that the defendant nos.1 to 6 had breach the terms of contract about depositing receivables from the debtors of defendant no.1 with the defendant no.9 bank. Balance of convenience is concerned, it certainly tilts in favour of the plaintiff. If Defendant no.9 bank initiate action there will be multiplicity of litigation. On the other hand, if the defendant nos. 1 to 6 follow the contract then no irreparable loss will cause to the plaintiff. Therefore this Court finds that at this juncture, plaintiff has made out his case for grant of ad-interim relief. Therefore this Court proceeds to pass the following order.

**ORDER**

Ad-interim relief in terms of prayer clause (a) is granted but as regard debtors i.e. defendant nos.10 and 11 only.

(M.H.Shaikh)

Ad-hoc Judge, City Civil Court,  
Borivali Div. Dindoshi, Mumbai.

Dictated on : 29/08/2018  
Transcribed on : 30/08/2018  
Signed on : 31/08/2018

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 31/08/2018

Time : 5.00 P.M.

UPLOAD DATE AND TIME

Mrs. Manisha S. Putta

(H.G.Stenographer)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Shri M.H.Shaikh (C.R.No.6)
Date of Pronouncement of JUDGMENT/ORDER	29/08/2018
JUDGMENT/ORDER signed by P.O. on	31/08/2018
JUDGEMENT/ORDER uploaded on	31/08/2018