

IN THE HIGH COURT OF MANIPUR AT IMPHAL

CRP(CRP.Art.227) No. 42 of 2022

1. Alhaj Keramat Ali aged about 57 years S/o (L) Md. Haman Haji, resident of Yairipok Bamon Leikai, P.O. & P.S. Yairipok, Thoubal District, Manipur, Pin No. 795138.
2. Md. Maqbul Ahmad, aged about 33 years, S/o Keramat Ali, resident of Yairipok Bamon Leikai P.O. & P.S. Yairipok, Thoubal District, Manipur, Pin No. 795138.

....Petitioners

- Versus -

Nongmaithem Herojit Singh aged about 42 years S/o (L) N. Kuber Singh resident of Heigrujam Nongmaithem Leikai, P.O. & P.S. Nambol, Imphal West District, Manipur, Pin No. 795134.

...Respondent

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners	:	Mr. Md. Jalaluddin, Sr. Advocate
For the respondent	:	Mr. P. Tomcha, Advocate
Date of Hearing	:	28.03.2023 & 03.04.2023
Date of Judgment & Order	:	27.06.2023

JUDGMENT AND ORDER (CAV)

[1] By the present petition under Article 227 of the Constitution of India read with Section 115 of CPC, the petitioners/defendants challenged the impugned order dated 11.08.2022 passed by the learned District Judge,

Thoubal, in Civil Misc. Appeal Case No. 1 of 2021. By the impugned order, the learned District Judge set aside the order dated 15.07.2021 passed by the learned Civil Judge (Senior Division), Thoubal in Judl. Misc. Case No. 53 of 2021 (Ref: O.S. Suit No. 25 of 2021) and allowed the prayer of the respondent/plaintiff and passed an order of temporary injunction in favour of the respondent/plaintiff thereby restraining the petitioners/defendants, his men and privies from interfering in the business of running the disputed oil pump. Vide order dated 26.08.2022, this Court stayed the operation of the impugned order dated 11.08.2022 passed in Civil Misc. Appeal Case No. 1 of 2021 till the next date and permitted Mr. P. Tomcha, learned counsel for the respondent, to place on record the documents which were filed before the Trial Court and Appellate Court but not in this revision. The interim order is extended from time to time. Vide order dated 18.01.2023, this Court gave an opportunity to the parties to attempt a mutually acceptable settlement. As recorded in the order dated 02.02.2023 passed by this Court, Mr. Md. Jalaluddin, learned senior counsel for the petitioners/defendants, submitted that his clients were willing to refund a sum of Rs. 60,00,000/- (Rupees sixty Lakhs) in two installments of Rs. 30,00,000/- (Thirty Lakhs) each. However, vide order dated 16.02.2023, Mr. P. Tomcha, learned counsel for the respondent/plaintiff, stated that his clients was not willing to take final settlement of Rs. 60,00,000/- (Sixty Lakhs) and submitted that the matter be heard on merit. Accordingly, matter was heard on 28.03.2023 and 03.04.2023.

[2] The brief fact of the present case is that the respondent/plaintiff filed a suit being O.S. No. 25 of 2021 against the petitioners/defendants in the Court of Civil Judge (Senior Division), Thoubal, inter alia praying that the respondent/plaintiff, his men and agents have every right and authority to operate the disputed petrol pump in the name of M/S Keramat and Sons at Yairipok, Bamon Leikai, Thoubal District, till the determination of the lease as indicated in Money Receipt dated 05.02.2021 and also for mandatory injunction against the defendants, their men and privies from causing any disturbance to the plaintiff in the running of business of the disputed property. Along with the suit, the plaintiff also filed an application under Order 39 Rules 1 & 3 CPC, being Judl. Misc. Case No. 53 of 2021 for passing an ad-interim ex-parte injunction restraining the petitioners/defendants, their men and privies from entering the premises of the disputed property and from disturbing the respondent/plaintiff from peaceful operation of the disputed petrol pump. It is also stated that the respondent/plaintiff and petitioners/defendants are jointly running on business as dealers of Petrol/HSD Pump at Yairipok, Thoubal District, being License No. P/EC/MN/14/1(P51851), and the petrol pump was jointly registered in the name of the petitioners/defendants. It is also stated that an agreement between the respondent/plaintiff and petitioners/defendants under which the respondent was allowed to run the petrol pump under a lease and the petitioners/defendants took a sum of Rs. 60,00,000/- (Rupees sixty lakhs) from the respondent/plaintiff and allowed him to run the said petrol pump from the month of February, 2021. The money was received by

the petitioners/defendants on 05.02.2021 and necessary money receipt was executed on the same day clearly mentioning the intention of leasing of the petrol pump. Money Receipt dated 05.02.2021 acknowledging the receipt of Rs. 60,00,000/-(Rupees sixty lakhs) by the petitioners/defendants from the respondent/plaintiff was executed and recorded that the same was in connection with leasing of the petrol pump in the name and style of M/S Keramat and Sons at Yairipok, Thoubal District. It is also stated that due to Lockdown in view of the Covid-19 pandemic, formal lease deed could not be registered. However, the respondent/plaintiff through its employees has been running the petrol pump from the month of February, 2021 and was catering the need of the people even during the lockdown period. It is also stated that the petitioners/defendants started to disturb the plaintiff's business of running petrol pump from 05.06.2021 and threatened him to vacate the petrol pump within 10 minutes. The respondent/plaintiff approached the Superintendent of Police, Thoubal with a report on 07.06.2021 and again on 12.06.2021, but there was no further action. Having no alternative, the respondent/plaintiff approached the Court of the learned Civil Judge (Senior Division), Thoubal, for declaration that the plaintiff, his men and agents have every right and authority to operate the disputed petrol pump till the lease as mentioned in Money Receipt dated 05.02.2021 is lawfully determined; and also for a mandatory injunction. Along with the suit, the respondent/plaintiff has also filed an application under Order 39 Rules 1 & 3 CPC, being Judl. Misc. Case No. 53 of 2021 praying for temporary injunction.

[3] Vide order dated 19.06.2021 in Judl. Misc. Case No. 53 of 2021, learned Civil Judge(Senior Division), Thoubal, passed an ex-parte ad-interim order restraining the petitioners/defendants, their men and privies from entering the premises of the disputed property and disturbing the respondent/plaintiff, his men and privies at their peaceful operation of the petrol pump till the disposal of the application or modification of the order and fixed the matter on 30.06.2021 for appearance and filing of the written objection.

[4] The petitioners/defendants filed written statement stating that the respondent/plaintiff has no right, interest in running the business of the petrol pump as Memorandum of Agreement executed on 14.12.2013 between the petitioners/defendants and officials of the Indian Oil Corporation(IOC) Ltd, and the respondent/plaintiff is a third party. It is also stated that there was no lease deed or agreement executed between the respondent/plaintiff and the petitioners/defendants with respect to the oil pump and the petrol pump could not be sub-let in view of the memorandum of agreement dated 14.12.2013. However execution of Money Receipt dated 05.02.2021 was not denied.

[5] The petitioners/defendants also filed written objection to the application being Judl. Misc. Case No. 53 of 2021 inter alia stating that no agreement has been executed for leasing of the petrol pump to the respondent/plaintiff and such agreement is barred under the Memorandum of Agreement executed on 14.12.2013 between the petitioners/defendants

and IOC Ltd. However, nothing is mentioned about the Money Receipt of Rs. 60,00,000/- (Rupees sixty lakhs) executed by the petitioners/defendants acknowledging a receipt of sum of Rs. 60,00,000/- (Rupees sixty lakhs) from the respondent/plaintiff in connection with leasing of the petrol pump. The respondent/plaintiff also filed replication to the written objection filed by the petitioners/defendants in Judl. Misc. Case No. 53 of 2021 by stating that by execution of money receipt dated 05.02.2021, he was allowed by the petitioners/defendants to run the business of the oil pump on lease. With respect to clause 35 of the Memorandum of Agreement, it is stated that dealership can be sub-let subject to the provision of clause 35 of the memorandum and on earlier occasion also the petitioners/defendants executed registered lease deed with another person in respect of the disputed petrol pump and hence, they are barred by estoppel from raising operation of clause 35. It is also stated that the respondent/plaintiff has been paying a sum of Rs. 1,20,000/- every month as rent and has deposited a sum of Rs. 60,00,000/- (Rupees sixty lakhs) as security deposit. Vide order dated 15.07.2021, in Judl. Misc. Case No. 53 of 2021 the learned Civil Judge (Senior Division), Thoubal, disposed of the application filed by the respondent/plaintiff under Order 39 Rules 1 & 3 CPC and vacated the ex-parte ad-interim order dated 19.06.2021. It was held that there was a prima facie case in favour of the respondent/plaintiff to go for trial in view of the existence of the registered lease deed dated 12.11.2014 executed between the petitioners/defendants and one Hangoibam Suraj Sharma for a period of 20 years and oral lease deed on the basis of a money receipt dated

05.02.2021 between the petitioners/defendants and respondent/plaintiff. However, it was held that the balance of convenience was not in favour of the respondent/plaintiff as earlier registered lease deed was for a period of 20 years and there was nothing on record to show that oral agreement has been permitted by the IOC Ltd. Accordingly, it was held that on failure to prove existence of balance of convenience and irreparable loss in favour of the respondent/plaintiff, temporary injunction was not granted and accordingly ex-parte injunction order was vacated. Being aggrieved by the order dated 15.07.2021 vacating ex-parte ad-interim order, the respondent/plaintiff approached the learned District Judge, Thoubal, by way of an appeal, being Civil Misc. Appeal Case No. 1 of 2021 under Order 43 Rules 1 & 3 CPC amongst on the ground that the petitioners/defendants did not deny the correctness of the money receipt executed on 05.02.2021 and also receiving a sum of Rs. 60,00,000/- (Rupees sixty lakhs). It was also stated that while granting ex-parte ad-interim order, the learned Civil Judge (Senior Division) had already held that a person could not be evicted without due process of law and as such balance of convenience was in his favour and irreparable loss would cause to him. It is also stated that clause 35 of the Memorandum of Agreement between the IOC and the petitioners/defendants is only directory and no penal action has been provided for his noncompliance. Deposit slips produced by the respondent/plaintiff show prima facie evidence that he was running the business of the oil pump. Vide impugned order dated 11.08.2022, the learned District Judge set aside the order dated 15.07.2021 passed by the learned Civil Judge (Senior Division),

Thoubal in Judl. Misc. Case No. 53 of 2021 and passed an order of temporary injunction against the petitioners/defendants from interfering the respondent/plaintiff in running the business of the petrol pump and directed to hand over the keys of the petrol pump to the respondent/plaintiff.

[6] It may be stated that while admitting the appeal and vide order dated 02.08.2021 in Civil Misc. Appeal No. 1 of 2021, learned District Judge, Thoubal, stayed the order dated 15.07.2021 passed by the learned Civil Judge (Senior Division), Thoubal in Judl. Misc. Case No. 53 of 2021 till the next date of hearing. Against this order, the petitioners/defendants preferred a petition being CRP(CRP.Art.227) No. 29 of 2021 and this Court issued notice on 09.09.2021 and stayed the order dated 02.08.2021 passed by the learned District Judge, Thoubal, as no reason was given for staying the order dated 15.07.2021 passed by the learned Civil Judge (Senior Division). It is recorded in para 3 of the order dated 09.06.2022 passed by this Court in CRP(CRP.Art.227) No. 29 of 2021 and connected applications that taking advantage of the order dated 09.09.2021 passed by this Court, the petitioners/defendants secured the possession of the disputed oil pump on 10.09.2021 and respondent/plaintiff filed contempt Case (C) No. 3 of 2021 before this Court and misc. application for dismissal of the revision petition. While disposing the petition and the connected applications, this Court recorded in para 6 the admission made by the counsel for the petitioners/defendants herein that the possession of the petrol pump was handed over to the respondent/plaintiff on receipt of Rs. 60,00,000/-

(Rupees sixty lakhs) from him and he was operating the said petrol pump on the date of institution of the suit.

[7] In the impugned order dated 11.08.2022, learned District Judge recorded the admission made by the learned counsel for the petitioners/defendants herein in para 6 of the order dated 09.06.2022 in CRP(CRP.Art.227) No. 29 of 2021 passed by this Court to the effect that after receiving a sum of Rs. 60,00,000/- (Rupees sixty lakhs) from the respondent/plaintiff, the petitioners/defendants delivered possession of the petrol pump to him and he was operating the said petrol pump as on the date of institution of the suit and this fact has been recorded in para 27 of the impugned order. The learned District Judge observed in para 34 of the impugned order that the respondent/plaintiff has a strong prima facie case as he was in possession of the disputed oil pump at the time of presentation of the original suit before the Trial Court and this finding is also corroborated by the admission made by the counsel for the petitioners/defendants before this Court and supported by money receipts. Since the respondent/plaintiff was running the disputed oil pump till his dispossession by the petitioners/defendants, it was held that all the three cardinal principles of granting temporary injunction was in favour of the respondent/plaintiff. Accordingly, the application under Order 39 Rule 1 & 3 CPC was allowed.

[8] Being aggrieved by the impugned order, the petitioners/defendants approached this Court by way of revision petition under Article 227 of the Constitution inter alia on the ground that no

agreement was entered into between the parties for leasing of the petrol pump. It is stated that the petitioners/defendants took a sum of Rs. 60,00,000/- (Rupees sixty lakhs) on loan from the respondent/plaintiff by issuing a money receipt on 05.02.2021 for leasing of the oil pump. It is pointed out that clause 35 of the agreement entered between the petitioners/defendants and IOC Ltd. prohibits mortgage, sub-letting or transferring of the dealership to any party except as permitted by the IOC Ltd. and the petitioners/defendants did not execute any lease agreement in favour of the respondent/plaintiff. It is also stated that the respondent/plaintiff did not have possession of the disputed petrol pump at any point of time. In another suit being O.S. No. 30 of 2021, the IOC (defendant No. 3 therein) stated in their written statement that respondent/plaintiff has no legal right to operate the dealership unless specifically permitted in writing by IOC Ltd. It is stated that the petitioners/defendants are ready to refund an amount of Rs. 60,00,000/- (Rupees sixty lakhs) to the respondent/plaintiff taken from him in reasonable time.

[9] The respondent/plaintiff also filed counter affidavit to the petition and stated that the learned District Judge has taken into account all the relevant materials and passed a reasoned order. It is also stated that the present proceeding is arising out of O.S. No. 25 of 2021 and the pleadings of O.S. No. 30 of 2021 will not have a bearing on the present petition. The pleadings of IOC (Defendant No. 3 in O.S. No. 30 of 2021) will not have any

bearing on the present petition and stated that the issue involved in the present case is not about the refund of the amount. In their rejoinder affidavit filed before this Court, the petitioners/defendants reiterated that they never leased the oil dealership to the respondent/plaintiff and to any other person as the same is barred by clause 35 of the agreement executed between them and the IOC and learned District Judge, Thoubal, never considered the contents of the said agreement. It is also stated that the proceedings of O.S. No. 25 of 2021 and O.S. No. 30 of 2021 are same involving the same disputed petrol pump. It is also stated that the petitioners/defendants are bound to refund a sum of Rs. 60,00,000/- (Rupees sixty lakh) as lease could not be executed in terms of clause 35 of the terms of agreement.

[10] Mr. Md. Jalaluddin, learned senior counsel for the petitioners/defendants, submits that the learned District Judge, Thoubal, has committed serious error while granting temporary injunction by setting aside a reasoned order of the learned Civil Judge (Senior Division), Thoubal, rejecting the application for temporary injunction on the ground that the respondent/plaintiff could not show balance of convenience and irreparable loss in his favour. He further submits that the learned District Judge could not appreciate the fact that clause 35 of the memorandum of agreement executed between the IOC Ltd. and the petitioners/defendants specifically barred sub-letting, leasing, creating agency in respect of the petrol pump without permission of the IOC. Mr. Md. Jalaluddin, learned senior counsel, has pointed out that the respondent/plaintiff at most should have filed a suit

for recovery of Rs. 60,00,000/- (Rupees sixty lakhs) on the basis of the money receipt dated 05.02.2021 and the prayer in the suit being O.S. No. 25 of 2021 is barred by clause 35 of the memorandum of agreement. Regarding the factum of presumption of possession, Mr. Md. Jalaluddin, learned senior counsel, relies on the decisions of Andhra Pradesh High Court in the case of **G. Trinadha Swamy V. Gandham Satyanarayana & ors.** reported as **AIR 2006 Andhra Pradesh 381** wherein it was held that there is a presumption of possession of a property to a person having title over the same. In written submission dated 05.04.2023 submitted by the petitioners/defendants, it was reiterated that this Court in earlier proceeding observed that the lease agreement of money receipt produced by the respondent/plaintiff could not be considered and matter was remanded for early disposal. It is prayed that the impugned order be set aside and the order passed by the learned Civil Judge (Senior Division), Thoubal, rejecting the application for temporary injunction filed by the respondent/plaintiff be restored.

[11] Per contra, Mr. P. Tomcha, learned counsel for the respondent/plaintiff, submits that there is a concurrent finding of the learned Civil Judge (Senior Division), Thoubal, as well as learned District Judge, Thoubal, to the fact that there is a prima facie case in favour of the respondent/plaintiff and the petitioners/defendants have not challenged the finding of existence of prima facie case and the same attains finality. Learned counsel has pointed out that the petitioners/defendants did not deny the

money receipt dated 05.02.2021 in the written statement to the suit and in the written objection to the Judl. Misc. Case No. 53 of 2021, thereby admitting receipt of an advance deposit of Rs. 60,00,000/- (Rupees sixty lakhs) in consideration of executing a lease deed in favour of the respondent/plaintiff for running the business of the disputed petrol pump owned by the petitioners/defendants. It is only in the petition before this Court that the petitioners/defendants admitted the execution of the money receipt dated 05.02.2021. It is also an admitted fact that lease deed could not be executed due to the lockdown imposed to control covid pandemic. Referring to the admission made by the learned counsel for the petitioners/defendants herein before this Court as recorded in order dated 09.06.2022 in CRP(CRP.Art.227) No. 29 of 2021 to the effect that after receiving receipt of sum of Rs. 60,00,000/- (Rupees sixty lakhs) from the respondent/plaintiff, it has been reiterated that the petitioners/defendants delivered possession of the oil pump to him and he was operating the said petrol pump as on the date of the institution of the suit. Mr. P. Tomcha, learned counsel, has insisted that upon the execution of the money receipt dated 05.02.2021 as well as admission in the order dated 09.06.2022, it is clear that the possession of the petrol pump was with the respondent/plaintiff and he was running the petrol pump on the date of institution of the suit. In order dated 09.06.2022, it was also recorded that taking advantage of the interim order dated 09.09.2021, the petitioners/defendants secured the possession of the disputed petrol pump and out of this contempt case was filed. Learned counsel for the respondent/plaintiff submits that clause 35 of

the memorandum of agreement is only directory as no penal provision is provided for its violation. He draws the attention of this Court that the petitioners/defendants have also executed a registered sale deed dated 12.11.2014 for a period of 20 years with one Hangoibam Suraj Sharma for running of the business of petrol pump and as such by the principle of estoppel they cannot now plead that no lease or sub-letting can be done in view of clause 35. Mr. P. Tomcha, learned counsel for the respondent/plaintiff, submits that the learned District Judge has rightly held that balance of convenience and irreparable loss will be caused to the respondent/plaintiff if the application for temporary injunction is not granted. He prays that the present petition may be rejected and the well-reasoned order dated 11.08.2022 passed by learned District Judge, Thoubal in Civil Misc. Appeal No. 1 of 2021 be upheld.

[12] It is an admitted fact that both the learned Civil Judge (Senior Division), Thoubal and the learned District Judge, Thoubal have given a finding that there is a prima facie case in favour of the respondent/plaintiff. However, learned Civil Judge (Senior Division), Thoubal, was of the view that the pre-existing registered sale deed dated 12.11.2014 in favour of H. Suraj Sharma will have more evidentiary value than the oral lease deed between the petitioners/defendants and the respondent/plaintiff and held that balance of convenience is not in his favour and irreparable loss and injury will not be caused. Accordingly, the application for temporary injunction was rejected and the interim order dated 19.06.2021 was vacated by order dated

15.07.2021. On the other hand, learned District Judge, Thoubal, upon relying para Nos. 6 & 7 of the order dated 09.06.2022 passed by this Court in CRP(CRP.Art.227) No. 29 of 2021 where the petitioners/defendants have admitted possession of the respondent/plaintiff over the suit land as on date of institution of the suit after receiving a sum of Rs. 60,00,000/- (Rupees sixty lakhs) and also on perusal of the money receipt executed on 05.02.2021 held that respondent/plaintiff has a strong prima facie case in his favour. It was further held that balance of convenience was in favour of the respondent/plaintiff as he was in possession of the disputed petrol pump at the time of institution of the suit and was dispossessed by petitioners/defendants taking advantage of the interim order dated 09.09.2021 passed by this Court. It was further held that oral agreement giving permission to the respondent/plaintiff to run the disputed oil pump by the petitioners/defendants was permissible or not in view of the memorandum of the IOC was a matter to be decided at the time of the trial and not during the hearing of an application for temporary injunction under Order 39 CPC. In para 34, learned District Judge, Thoubal, gave a finding that prima facie case was in favour of the respondent/plaintiff, balance of convenience was in his favour as he was in possession and running the petrol pump at the time of the filing of the suit and irreparable loss will be caused to him if the injunction is not granted. Para 34 is reproduced as:

"34. The plaintiff has a strong prima facie case as he was in possession of the disputed oil pump at the time of presentation of the original suit before the Ld. Civil Judge. This finding is also

corroborated by the admission of the Ld. Counsel for the defendants before the Hon'ble High Court and supported by the money receipt. The plaintiff has been able to show that balance of convenience is also in his favour as he was running the disputed oil pump until his dispossession by the defendants. Thirdly, irreparable loss or injury would be caused to the plaintiff which cannot be compensated by money if the injunction is withheld as the loss could not be ascertained. Again, as the disputed oil pump is for the public at large, withholding of temporary injunction would not be in favour of the plaintiff."

[13] In the case of **Dalpat Kumar v. Prahlad Singh: (1992) 1 SCC 719**, Hon'ble Supreme Court explained the three principles of- (i) existence of prima facie case, (ii) balance of convenience and (iii) irreparable loss in the following para:

"4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, 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 ... or dispossession 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. Pursuant to the recommendation of the Law Commission clause (c) was brought on statute by Section 86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being

entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

[14] In the case in hand, there is concurrent finding from the two Courts about the existence of prima facie case in favour of respondent/plaintiff and this finding is not challenged before any competent Court and hence has attained finality. As rightly held by the learned District Judge, Thoubal, the possession is with the respondent/plaintiff as on the date

of institution of the suit as seen from the admission made by the learned counsel for the petitioners/defendants herein as recorded in order dated 09.06.2022 in CRP(CRP.Art.227) No. 29 of 2021 about the delivery of possession of the petrol pump to the respondent/plaintiff herein after receiving a sum of Rs. 60,00,000/- (Rupees sixty lakhs) except for illegal dispossession on the basis of interim order dated 09.09.2021 passed by this Court. In the Courts below, the petitioners/defendants did not deny the execution of money receipt acknowledging receipt of a sum of Rs. 60,00,000/- (Rupees sixty lakhs) in consideration for execution of a lease deed for running the petrol pump. It is only before this Court that the petitioners/defendants have stated that he borrowed a sum of Rs. 60,00,000/- (Rupees sixty lakh) from the respondent/plaintiff and admitted the execution of the deed. On perusal of the money receipt dated 05.02.2021, it is not simply a money receipt for a loan of Rs. 60,00,000/- (Rupees sixty lakhs) but the receipt of Rs. 60,00,000/- (Rupees sixty lakhs) is in consideration for leasing of the petrol pump to the respondent/plaintiff. Hence, it is clear that it is not a case of mere borrowing and lending of a sum of Rs. 60,00,000/- (Rupees sixty lakhs), but the same is in consideration for leasing out of the petrol pump. Whether leasing or sub-letting of agency of petrol pump without permission of the IOC is prohibited by clause 35 of the memorandum of agreement or not is a question to be decided in the proceedings of main suit as one of the main issues. While considering an application for temporary injunction, the Court has to examine whether the plaintiff have a prima facie case in his favour. The existence of money receipt

acknowledging a receipt of Rs. 60,00,000/- (Rupees sixty lakhs) as consideration for leasing of the petrol pump is a triable issue and prima facie case in favour of the plaintiff. As per the admission of the petitioners/defendants before this Court in order dated 09.06.2022, the possession of the petrol pump was handed over to the respondent/plaintiff by the petitioners/defendants and the respondent/plaintiff was running the petrol pump till he was dispossessed by the petitioners/defendants taking advantage of an interim order dated 09.09.2021 passed by this Court in CRP(CRP.Art.227) No. 29 of 2021. Since the respondent/plaintiff was in possession and running the petrol pump on the date of the institution of the suit, irreparable loss would be caused to him if the relief prayed for is not granted. This Court is of the view that the respondent/plaintiff has satisfied all the three cardinal principles of granting temporary injunction. There is no infirmity in the impugned order.

[15] Accordingly, the revision petition is dismissed and finding of the learned District Judge, Thoubal, in impugned order dated 11.08.2022 in Civil Misc. Appeal No. 1 of 2021 is upheld. Interim order dated 26.08.2022 is vacated.

[16] It is clarified that this Court does not express any opinion on the merit of the case in the main suit and nothing stated herein shall prejudice the case of the parties in the proceedings of the suit.

[17] Send a copy of this order to the learned District Judge, Thoubal, and as well as to the learned Civil Judge (Senior Division), Thoubal, for

information and proceedings as per law. Learned Civil Judge (Senior Division), Thoubal, shall make an endeavor to dispose of the suit expeditiously, preferably within a period of 6(six) months from the date of receipt of this order.

[18] Parties are to bear their own expenses.

JUDGE

FR/NFR

Indrajeet