

Injunction – Bank Guarantee – Invocation – Court ought not to have issued an injunction which had the effect of restraining the Bank from fulfilling its contractual obligation in terms of the bank guarantee

Description

Under the aforesaid provisions of the 1973 Code, ***the Court is required to make a preliminary inquiry and come to a prima facie finding about the offence alleged and Mr. Khosla's submission, as I have already recorded, is that no service of notice ought to be effected on the persons in respect of whom his client wants proceedings to be commenced***. None of the four authorities cited by Mr. Khosla, however, lays down that a Court considering an application brought under Section 340 of the 1973 Code is enjoined from hearing any of the accused persons, against whom inquiry is asked for. These authorities lay down the proposition that the persons against whom an inquiry is contemplated do not have the right of prior opportunity of hearing before such an inquiry is directed. ***The legislature has not provided in what manner an inquiry contemplated in Section 340 of the 1973 Code is to be conducted. It is for the Court making preliminary inquiry for the purpose of formulation of opinion that it is expedient in the interests of justice that an inquiry should be made to decide in what manner such preliminary inquiry ought to be made.*** If the Court at that stage considers it necessary to issue notice to any of the proposed accused persons to clarify on certain aspects of the controversy involved for the purpose of forming its opinion, I do not think in such a situation the Court would go beyond its jurisdiction.

Hungerford Investment Trust Limited V/s Turner Morrison & Co. Ltd. **2017 SCC OnLine Cal 3375**

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