

CS 247/18
JASPREET SINGH ARORA
Vs.
VISHAL KAUSHIK

29.07.2026

Present : Mr. Rohit Verma, Ld. proxy counsel for plaintiff.
Mr. Puneet Kumar Saxena, Ld. counsel for
defendant.

a) By way of this order, I shall decide the application under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908, filed on behalf of the defendant seeking leave to defend the present summary suit.

b) The case of the plaintiff is that the defendant, representing himself to be the owner of the suit property, namely half portion on the eastern side of the top floor with roof rights, admeasuring 92.5 square yards, forming part of property bearing No. C-59, Janta Garden, Pandav Nagar, Delhi-110092, entered into an Agreement to Sell dated 20.05.2017 with the plaintiff for a total sale consideration of Rs.45,00,000/-. It is averred that, pursuant to the said agreement, the plaintiff paid a sum of Rs.10,00,000/- as earnest money to the defendant, while the balance sale consideration of Rs.35,00,000/- was agreed to be paid on or before 15.12.2017 at the time of execution of the title documents.

c) It is further pleaded that despite receipt of the

earnest money, the defendant failed to take any steps for execution of the title documents. According to the plaintiff, in December, 2017, the defendant informed him that he was no longer interested in selling the suit property and sought cancellation of the agreement by offering to return the earnest money. However, neither was the sale transaction completed nor was the earnest money refunded. It is the case of the plaintiff that he was always ready and willing to perform his part of the contract and had arranged the balance sale consideration. The plaintiff further relies upon a clause contained in the Agreement to Sell providing that, in the event of default on the part of the defendant, he would be liable to pay double the earnest money. Accordingly, the present suit has been instituted under Order XXXVII CPC for recovery of Rs.20,00,000/-.

d) The defendant has filed the present application seeking leave to defend. It is contended that the suit has been instituted on manipulated documents and that no amount whatsoever was ever paid by the plaintiff. It is submitted that although the plaintiff alleges payment of Rs.10,00,000/- in cash, there is no independent receipt or documentary proof evidencing such payment.

e) The defendant has further pleaded that the Agreement to Sell dated 20.05.2017 was one of three interconnected agreements executed as part of a larger property exchange transaction involving the plaintiff, one Shri Pritam Singh, Shri Mukesh Gupta and Shri Kailash Chand Sati. According to the defendant, the plaintiff and the said persons had

agreed to transfer their interest in certain plots situated at Jungle Hill City, Uttarakhand, in exchange for the defendant's properties. It is alleged that the parties merely adjusted certain liabilities inter se and that no cash amount was ever paid to the defendant. It is further alleged that upon inspection of the plots at Jungle Hill City, the defendant found that their value was substantially lower than what had been represented, whereupon he declined to proceed with the transaction. According to the defendant, the plaintiff and the aforesaid persons had cheated him and, therefore, the present claim is wholly misconceived.

f) I have heard Ld. counsel for the parties and perused the record.

g) At the stage of deciding an application for leave to defend under Order XXXVII Rule 3(5) CPC, the Court is required to examine whether the defendant has disclosed such facts as may entitle him to defend the suit or has raised substantial or triable issues requiring adjudication. The Court is not expected to conduct a mini trial.

h) In the present case, the plaintiff claims to have paid a sum of Rs.10,00,000/- as earnest money entirely in cash. The defendant has categorically disputed the actual payment and has set up a specific defence that no cash consideration was ever received and that the transaction formed part of a larger arrangement involving exchange of properties and adjustment of liabilities. In these circumstances, the question whether the amount of Rs.10,00,000/- was in fact paid to the defendant

cannot be decided merely on the basis of pleadings and requires appreciation of evidence.

i) Further, the defendant has raised a specific plea that the Agreement to Sell dated 20.05.2017 was executed as one of three interconnected agreements and that the plaintiff, along with other persons, misrepresented the value of the properties proposed to be exchanged. On the contrary, the plaintiff asserts that the defendant alone committed breach of the agreement by refusing to execute the title documents despite the plaintiff's readiness and willingness to perform his obligations. Thus, the parties have raised rival versions regarding the very nature of the transaction and, more importantly, as to which party committed breach of the terms and conditions of the Agreement to Sell dated 20.05.2017. In view of this Court determination of these questions would necessarily require recording of evidence and cannot be undertaken in a summary proceeding.

j) Since the plaintiff's entitlement to recover double the earnest money depends upon establishing that the defendant alone was in breach of the contractual obligations, and the defendant has raised a bona fide and plausible defence disputing both the payment of earnest money as well as the alleged breach, this Court is satisfied that the defendant has disclosed substantial triable issues warranting grant of leave to defend.

k) Accordingly, the application under Order XXXVII Rule 3(5) CPC is disposed of as allowed. The defendant is granted unconditional leave to defend the suit. Application stands

disposed of accordingly.

The defendant shall file the written statement within 30 days from today, with advance copy to the plaintiff.

Upon receiving copy of the WS, replication, if any be filed within further four weeks with advance copy to defendant.

Both the parties are also directed to file their affidavits of admission/ denial of documents at least two weeks prior to the next date of hearing with advance copy to each other.

Put up on **04.11.2026** for completion of pleadings/ framing of issues/ proposed issues, if any.

(Hem Singh)
District Judge-01
(East)/KKD/Delhi/29.07.2026