

28 CS DJ ADJ 292/24 PRATAP SINGH Vs. SANTOSH KUMAR
TRIPATHI

18.12.2024

One of regular steno is on leave and no substituted steno is available.

Present: Sh. Ayush Acharjee, Ld. Counsel for plaintiff (through VC).
None for defendant.

1. Vide this order, this court shall dispose off pending applications i.e. u/o VII Rule 11 CPC filed on behalf of the defendants application u/o XXXIX Rule 1 and 2 CPC filed on behalf of the plaintiff.

2. Briefly stated, present suit for specific performance of agreement to sell and purchase dt. 04.02.2024 filed on behalf of the plaintiff for free hold SFS Flat bearing no. 381, Ground Floor, Pocket I, Sector 9, Category II, situated at Dwarka Residential Scheme, Dwarka, New Delhi-110077 (hereinafter referred as the “*suit property*”) thereby seeking following relief:

- i. *Pass a decree directing the Defendants to specifically perform the Agreement to Sell & Purchase dated 04.02.2024 especially with regard to delivery of actual vacant possession, handing over of original documents, payment of all statutory dues viz. Property Tax, Electricity Charges, Water and Sewerage Bills etc., and execution of all relevant documents viz. Sale Deed etc. pertaining to the suit property i.e. "Free Hold SFS Flat Bearing No. 381. Ground Floor, Pocket - 1, Sector-9, Category - II, situated at Dwarka Residential Scheme, Dwarka, New Delhi-110077" in favour of the Plaintiff;*
- ii. *Pass an order as to costs in favour of the Plaintiff;*
- iii. *Pass any other order or direction, as this Hon'ble Court may deem fit in the interest of justice and equity.*

3. It is averred that vide agreement to sell dt. 04.02.2024, defendant agreed to sell the suit property for total consideration of Rs. 1 crore 57 lacs, out of which Rs. 21 lacs was paid as advance and remaining amount of Rs. 1 crore 36 lacs was to be paid on or before 15.04.2024. It is further averred that, at the time of execution of agreement, Rs. 1 lakh was paid in cash while Rs. 20 lacs was paid via cheque no. 000046 dt. 11.02.2024 by the plaintiff but, same was unilaterally returned by defendant on 19.02.2024 without any consent of plaintiff hence, plaintiff was compelled to issue legal notice dt. 21.02.2024 whereby defendants were called upon to execute sale deed qua the suit flat in favour of plaintiff but, defendants failed to comply hence, present suit.

4. By way of present application, defendants are seeking rejection of plaint mainly on two grounds. *Firstly*, plaintiff has entered into agreement to sell dt. 04.02.2024 without any serious intention to buy the suit property as he was incapable to pay the consideration amount. *Secondly*, earnest money was refunded at the request of plaintiff only.

5. Admittedly, agreement to sell was executed between the parties wherein balance sale consideration of Rs. 1 crore 36 lacs was to be paid on or before 15.04.2024.

6. Careful perused of agreement to sell as well as receipt annexed to it reveals that, payment of Rs. 21 lacs was acknowledged by defendant as earnest money in following manner:

Amount	Mode of payment with details	Drawn on
Rs. 1,00,000/-	By cash	-
Rs. 20,00,000/-	By cheque no. 000046 dt. 11.02.2024	Bank of Baroda, New Delhi

7. It is the contention of the defendant that plaintiff was not in capacity to pay sale consideration hence, requested for refund and at his request only earnest money of Rs. 21 lacs was returned via RTGS. However, this court is not inclined to accept the plea taken by defendant as it is settled law that at the stage of considering an application under Order VII Rule 11 CPC, the court is only required to examine the plaint and the list of documents filed on behalf of the plaintiff alongwith the suit. Other pleas raised by the parties including those in the written statement are not relevant to decide the said application. Further, admittedly earnest money was returned much prior to the date of execution of sale deed. Thus, question of capacity cannot be raised. Once the parties has entered into the binding contract, it is obligatory upon them to comply with terms and conditions and in case of breach, defaulting party has to face the consequences. Hence, defendant cannot absolved from their liability mere by returning the amount for earnest money. In any case, whether earnest money was returned at the request of plaintiff or not is matter of trial and cannot be adjudicated at this stage. **Hence, present application u/o VII Rule 11 CPC stands dismissed.**

8. In view of the submissions made on behalf of plaintiff and considering the facts and circumstances of the present case, this court is of the considered opinion that all three ingredients i.e. *prima facie case*, *balance of convenience and irreparable loss* i.e. required for the purpose of interim injunction are satisfied. Hence, defendant is restrained to create any third party right in the suit property till the pendency of the present proceedings. **Application u/o XXXIX Rule 1 and 2 CPC stands disposed off as allowed.**

9. Nothing here-in-above tantamount to be opinion on the merits of this case and suit shall be decided as per its own merits.

10. Since pleadings and admission/denial of documents already completed, following issues are framed:

1. *Whether earnest money was returned by defendants at the request of plaintiff? **OPD.***
2. *Whether defendants have committed breach of terms of agreement to sell and purchase dt. 04.02.2024? **OPP.***
3. *Whether plaintiff is entitled for decree of specific performance to the agreement to sell and purchase as prayed for? **OPP.***
4. *Whether plaintiff is entitled for the cost of the suit? **OPP.***
5. *Relief.*

11. No other issue arises or pressed for.

12. List of witnesses be filed by both the parties within 15 days. Evidence by way of affidavit of the PWs be filed 15 days prior to next date of hearing with advance copy to other side.

13. Be listed for PE on **21.03.2025.**

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 18.12.2024 (sr)