

RAJAN SHARMA Vs. RAKESH KUMAR MADAN @ RAMESH
KUMAR ARORA

29.05.2025

Present: None

Order on application filed on the order 38 rule 5 CPC

1. Vide this order, I shall decide the application filed under order XXXVIII rule 5 CPC on behalf of the plaintiffs.
2. These defendants have not filed reply to the said application. Arguments heard and case file perused.
3. The present suit have been filed by the plaintiffs for the recovery of 80 Lakhs along with interest against the defendants on 16.01.2020.
4. It is averred by the plaintiffs that defendant no. 1 represented that he has the authority to sell flat bearing no. 162 Punjabi Bagh Apartments, Rohtak Road, New Delhi and allotment letter of the said flat has been issued in favor of Mr. Channi Ram. It is further averred by the plaintiffs that defendant no.1 has shown copy of allotment letter to them.
5. It is further averred by the plaintiff that plaintiffs agreed to purchase the said flat for an amount of Rs. 1,50,00,000/- and agreement to sell dated 13.05.2018 was entered between plaintiff no. 2, her son Sh. Anmol Sharma and defendant no.1. It is further averred that defendant no. 1 & 2 have received total amount of Rs. 80,00,000/- from the plaintiffs and sale deed of the said flat had to executed on or before 25.10.2018 by receiving balance sale consideration by the defendants.

6. It is averred by the plaintiffs that the defendants failed to execute the sale deed and started avoiding plaintiffs. It is further averred that it was later on reveals to the plaintiffs that the defendants did not have the authority to sell the abovesaid flat and they have cheated the plaintiffs and dishonestly withhold the amount of Rs. 80,00,000/- of the plaintiffs.

7. It is further averred that plaintiffs have got lodged FIR no. 63/19 PS Miyanwali Nagar u/s 420/468/471/201/506/174A/34 IPC against the defendants and defendant no. 1 was also arrested in the said FIR. The defendants have not disputed the lodging of said FIR, in their written statement.

8. In the written statement the defendants have claimed that the defendants agreed to sell flat no. 127 Punjabi Bagh, Rohtak road, Delhi to the plaintiffs and not flat no. 162. The defendants have admitted in their written statement regarding making of payment of Rs. 45,00,000/- by the plaintiffs to the defendants but the defence of the defendants is that the plaintiffs could not arrange the balance sale amount and did not pay the said balance amount to the defendants therefore, the earnest money of the plaintiffs have been forfeited. The defendants have not placed on record copy of any document regarding sale/purchase of flat no. 127.

9. The plaintiffs have averred in the application that defendants are the habitual cheater and are disposing off their immovable properties. They further averred that the defendants have already mortgaged their house bearing no. Flat no. 19, Ground floor, SFS Nagin Lake Apartment, Outer Ring, Piragarhi and two other flats in the same locality bearing no. 10 & 13, SFS, Nagin, Lake Apartment, Outer Ring Road, Piragarhi, Delhi.

10. It is further averred by the plaintiffs that defendants were having shop bearing no. 1 and shop bearing no. 5, DDA Market, Nagin Lake Apartment, Outer Ring Road, Piragarhi, which has also been locked and mortgaged by the defendants. Plaintiffs further averred that defendants have also disposed off

property in the name of defendant no. 2 i.e. DDA Flat bearing no. 144, Third Floor, Main Rohtak Road, Madhipur New Delhi.

11. It is further averred by the plaintiffs that on enquiry, the plaintiffs came to know that defendant no. 2 is the absolute owner of flat bearing no. 705, Block - C, Pocket GH4 sector 29, Rohini and the plaintiffs managed to get the copy of conveyance deed and electricity bill in the name of defendant no. 2 dated 21.06.2013. Plaintiffs further averred that there are chances of selling the aforementioned flat and the value of said property is approximately Rs. 1 crore as disclosed by neighbors.

12. It is further averred by the plaintiffs that the defendants want to siphon off the amount cheated from the plaintiffs by disposing off their immovable property with the intent to obstruct the execution decree that will be passed against them.

13. It is further averred that the defendants are disposing off their properties so that the plaintiffs may be unable to enjoy the fruits of decree which may be passed against them. It is further averred that if the defendants are successful in disposing off their immovable property bearing no. 705, Block -C, Pocket GH4 sector 29, Rohini, Delhi, the plaintiff will be unable to execute decree which may be passed in their favor.

14. On 07.01.2025, Ld counsel for the defendants argued that the defendants are not the owner and in possession of property bearing no. 705, Block -C, GH-4, Sector -29, Rohini, Delhi. He further argued that conveyance deed of the said flat has been executed by the DDA in favor of Sh. Jai Narayan. The defendants have filed their affidavits regarding their above said contention in the Court.

15. There is no document on record that the flat no. 705 Block -C, GH-4, Sector -29, Rohini, Delhi is in the name of any of defendants rather as per affidavits of the defendant they are not the owners of said flat. In view of the abovesaid facts, the said flat cannot be attached.

16. The defendants have admitted receiving of Rs. 45,00,000/- from the plaintiff but their defence is that the said amount was paid for the sale of flat no. 127 and not flat no. 162. The defendants have not placed on record any document to show that any sale/purchase of flat no. 127 was taken place between them. So without any document on record, the abovesaid plea of defendant is not believable. Moreover, the plaintiffs have paid amount of Rs. 45,00,000/- to the defendants by way of RTGS/Account Payee Cheque. The transactions of Rs. 45,00,000/- to the defendants is through bank and plaintiffs have also attached copy of their bank statements.

17. The plea of the defendants that they have forfeited the earnest money of Rs. 45,00,000/- of the plaintiffs, due to non payment of balance sale price of flat no. 127 is also not probable due to want of any document in this regard. Moreover, the abovesaid contention of the defendants cannot be decided in this present application and it can be decided after legal evidence. The plaintiffs have attached copy of agreement to sell dated 13.05.2018 which is signed by the defendant and this agreement to sell is in respect of flat no. 162.

18. In view of the above said facts and observation prima-facie case has been made in favor of the plaintiffs for directing the defendants to give valuable security atleast of the amount of Rs. 45,00,000/- which has been admitted to be received by the defendants and also corroborated by the bank statements of the plaintiff. Plaintiffs have already got lodged FIR no. 63/19 PS Miyanwali Nagar against the defendant which is not disputed by the defendants in the FIR . In the said FIR section 174 A has also been added by the police which is used to be added when any of the accused is declared PO by the Court. Plaintiffs have also alleged that the defendants are now disposing of their immovable properties and also mortgaging the said properties due to which the plaintiffs will not able to realize the fruits of their decree. The said contention of the plaintiffs also appears to be genuine in view of the abovesaid facts and this Court is of the view that if

the defendants are not directed to furnish valuable security of the amount of Rs. 45,00,000/- then plaintiffs will suffer irreparable loss and injury and they will not be able to realize the fruits of their decree, in case such decree has been passed in their favor in future.

19. In view of the forgoing discussions the application fo the plaintiffs filed under order 38 rule 5 CPC stands allowed. Defendants are directed to give valuable security of the amount of Rs. 45,00,000/- to the Court before next date of hearing. Application stands dispose of accordingly.

20. Nothing observed in this order shall be treated as an observation on the merits of the case.

21. Put up for completion of pleadings and awaiting giving of valuable security on 30.07.2025.

(SHIV KUMAR)
DJ-02(W)THC:Delhi
29.05.2025