

**IN THE COURT OF SHIV KUMAR :
DISTRICT JUDGE, (WEST)-02,
TIS HAZARI COURTS: DELHI.**

CS No. 441/2024

CNR No. DLWT01-004662-2024

Mr. Nand Kishore

..... Plaintiff

Versus

Mrs Manju

.....Defendant

ORDER ON APPLICATION UNDER ORDER 39 RULE 1 & 2 CPC.

1. Vide this order I shall decide application filed under order 39 rule 1 & 2 CPC read with section 151 CPC, on behalf of plaintiff for ad-interim injunction.
2. It is averred in the application that Plaintiff has filed the present suit for specific performance and permanent injunction and pendente lite and future damages.
3. It is further averred in the application that plaintiff was in search of residential accommodation and visited various property dealers and thereafter husband of the defendant met him through property dealers and plaintiff visited the property of defendant and

both agreed to sale and purchase the property in all detailed terms and conditions mentioned in agreement to sell dated 10.12.2023.

4. It is further averred by the plaintiff in the application that on 10.12.2023, the plaintiff had entered into an agreement to sell with the defendant for purchase of one property ad-measuring 36.54 sq. meter, bearing No. DDA, Janta flat No. 666 A, Pocket-1, Paschim Puri, New Delhi-110063 comprising of still parking, ground floor, first floor, second floor, third floor with terrace rights (hereinafter referred to as 'the suit property') for a total consideration of Rs. 1,06,00,000/-. It is further averred that the defendant had also handed over to the plaintiff the copy of registered sale deed executed in his favour. It is further averred that the above said written agreement to sell dated 10.12.2023 was executed in the presence of husband of defendant, another attesting witness namely Prahlad.

5. It is further averred in the application that at the time of execution of agreement to sell dated 10.12.2023, the plaintiff had paid a sum of Rs. 10,00,000/- (10 lacs) (Rs. 2 lacs in cash and Rs.8,00,000/- through cheque bearing no. 000033, drawn on ICICI Bank, Branch West Avenue, Punjabi Bagh, New Delhi) to the defendant as an earnest money, out of the above said agreed sale consideration amount. It is further averred that the above said bayana amount was duly received by the defendant.

6. It is further averred in the application that it was further agreed between both the parties that plaintiff would make the entire outstanding payment to the defendant on or before 25.05.2024 and accordingly, the defendant would execute the Sale Deed in favour of the plaintiff in respect of the property in question and it in case, the defendant fails to execute the sale deed in favour of the plaintiff on or before 25.05.2024, the defendant shall pay the double amount of the earnest money or the plaintiff shall have a right to get registered the sale deed documents in his favour through the court of law, as per clause 10 of the agreement to sell.

7. It is further averred in the application that in the first week of February, 2024, at the request of husband of the defendant, the plaintiff had further paid a sum of Rs. 10,00,000/- by way of cash to the defendant in addition to the above said payment in the presence of Sh. Shrawan Kumar and other witness namely Prahlad vide receipt. It is further averred in the application that on the same day i.e. 08.02.2024, with an intent to cheat, the defendant changed the date of execution of sale deed from 25.05.2024 to 25.04.2024, which is not signed by the plaintiff.

8. It is further averred in the application that as per agreement to sell, the plaintiff was liable to pay only balance amount of Rs. 86,00,000/- to the defendant on or before 25.05.2024 for the purpose of getting registered the sale deed

9. It is further averred in the application that as per the above contract, the plaintiff made the arrangements of the balance payment for the purpose of purchasing the suit property in question through selling his property and from near dear friends as well as relatives and also his three sons in the month of March. It is further averred in the application that in the first week of March, 2024, the plaintiff had informed to the husband of defendant as well as defendant that payment is ready and asked defendant to execute the sale deed in his favour. On this the defendant offered to plaintiff to pay the balance amount of Rs. 86,00,000/- without executing the sale deed but plaintiff specifically denied to pay the whole amount without executing the sale deed and plaintiff also said to the defendant if he required some more part payment, he is ready to pay part payment, but not the whole amount.

10. It is further averred in the application that plaintiff specifically made it clear to the defendant, first he gives the date and which date he will visit the Sub-registrar office for executing the sale deed in favour of the plaintiff and on that point defendant as well as her husband was silent and not given any proper answer to the plaintiff. It is further averred in the application that in the month of April 2024, plaintiff again approached to the husband of defendant as well as defendant in respect of execution of sale deed but they rudely behaved and said to the plaintiff that his time of execution of sale deed is 25.05.2024 and assured to the plaintiff that defendant will execute the sale deed in favour of plaintiff on or before 25.05.2024. It is further averred in the application that at that

time, the defendant told him that don't disturb him and his family as his wife is not well, the plaintiff saw the defendant lying on the bed and due to this reason, the plaintiff returned back to his house.

11. It is further averred in the application that on 15.05.2024, when the plaintiff again approached the husband of defendant for execution of sale deed, the husband of the defendant said to the plaintiff that he has lost an amount Rs. 10,00,000/- and now he and his family are mentally disturbed and asked him to meet after 25.05.2024 and then he will talk with him. It is further averred in the application that the defendant has committed breach of contract by way of not performing her part of contract and having failed to execute the sale deed in favour of the plaintiff despite repeated requests of the plaintiff. It is further averred that thereafter, the plaintiff became doubtful due to the conduct of the defendant as the defendant started avoiding the legitimate requests of the plaintiff and using the delay tactics with an intention not to perform the agreement to sell.

12. It is further averred in the application that recently, it has come into the notice of the plaintiff that defendant and her husband have been dealing with the property dealer with regard to sell the suit property to any other interested/subsequent buyer and hence if she is not restrained from transferring, alienating, selling or creating any third party interest in the suit property till disposal of the case, in that event, the plaintiff shall suffer irreparable loss and injury which cannot be compensated in terms of the money. It is further

averred in the application that plaintiff has prima facie well case in his favour and he is likely to succeed in the above said matter as the defendant has committed breach of contract. Therefore by way of the present application, the plaintiff prayed that the defendant, her other family members, authorized representative etc, may be restrained from transferring, alienating, selling or creating any third party interest in the suit property i.e. property ad-measuring 36.54 sq. meter, bearing No. DDA, Janta flat No. 666 A, Pocket-1, Paschim Puri, New Delhi-110063 comprising of still parking, ground floor, first floor, second floor, third floor with terrace rights.

13. The defendant has filed written statement alongwith reply to the present application and has taken the preliminary objection that the plaintiff has no cause of action to file and institute the present suit against the defendant and the plaint of plaintiff is liable to be rejected under order 7 rule 11 CPC. It is further contended that suit of the plaintiff is the total abuse of process of law and has been filed only to unnecessary harass the defendant to extract money dishonestly and fraudulently with ulterior motive.

14. It is further contended in the written statement that the plaintiff has no locus-standi to file the present suit as the plaintiff has no right and claim whatsoever in the suit property. It is further contended that as per the agreement to sell dated 10.12.2003, the plaintiff made a part payments, earnest money, out of above total sale consideration of Rs. 1,06,00,000/-. It is further contended that as per the terms and conditions of agreement to sell, the date for

paying the balance payment and execution of the sale documents was already fixed for 25.05.2024 but after execution of the said agreement to sell, the plaintiff himself requested to change the said date for execution and making the balance payment of the sale consideration in the presence of the dealers and others and the date was changed to 25.04.2024 from 25.05.2024. Hence the date of performance of execution of documents and making the balance payment was changed as 25.04.2024 finally by mutual consent of both the parties and same has been admitted by the plaintiff in para 6 of his legal notice. It is further contended that at that time, it was made very clear by the defendant to the plaintiff that plaintiff has to arrange and make the said balance payment of total sale consideration on or before 25.04.2024, otherwise, defendant shall be at liberty to forfeit the earnest money as per clause 10 of the said agreement. It is further contended that the said original agreement to sell is in custody of the plaintiff since the date of execution of said agreement till date.

15. It is further contended that in the mid of month of April, 2024, the defendant contacted the plaintiff to perform the terms and conditions of the agreement as defendant was ready and willing to abide by the terms and conditions of the agreement. It is further contended that after lot of persuasions and requests, the plaintiff had agreed to give time to the defendant for execution of sale documents on 23.04.2024 and he also assured that he shall appear before Sub-Registra, Pubjabi Bagh, Delhi on 23.04.2024 alongwith draft of

original sale deed attached with stamp duties and balance payment as per said agreement.

16. It is further contended that as per the assurance and request of the plaintiff, the defendant visited at Sub-Registrar, Pubjabi Bagh, Delhi alongwith all original documents and all keys of the suit property with her husband for performing her part of agreement dated 10.12.2023 and waited at Sub-Registrar, Pubjabi Bagh for the plaintiff during official time but the plaintiff neither appeared before Sub-Registrar, Punjabi Bagh for execution of sale deed nor tendered the balance amount to the defendant and hence the defendant had failed to perform his part of contract.

17. It is further contended that since the plaintiff had failed to make the payment as per schedule given in the agreement, the defendant was constraint to forfeit the earnest money as per clause 10 of the said agreement. Therefore, the said agreement was deemed to cancel and the defendant has forfeited the said earnest money as the plaintiff had failed to perform terms and conditions as stipulate in the said agreement.

18. It is further contended in the written statement that plaintiff with malafide intentions and ulterior motive is unnecessarily blackmailing, harassing to the defendant who is a house wife and also threatening the defendant and her family to face dire consequences. It is further contended in the written statement that the suit of the plaintiff is bad for non-joinder and mis-joinder of

necessary parties to the suit or that plaintiff has neither properly valued the suit nor affixed the appropriate court fees. On merit all the contents of the plaint have been denied by the defendant.

19. It is further contended in the reply of the present application that there is no balance of convenience and prima facie case is made out in favour of the plaintiff. It is further contended that plaintiff has not come with clean hands and had suppressed the true and material fact from this court and plaintiff cannot be allowed to take advantage of his won wrongs and the present application otherwise is not maintainable in view of the provisions of well settled law.

20. Arguments heard. Case file perused.

21. It is settled law that before the grant of interim injunction under Order 39, rules 1& 2 CPC, the court must have satisfied about the existence of Following conditions: -

- (1) Whether plaintiff has a Prima facie case?
- (2) Whether the balance of convenience is in favour of the plaintiff?
- (3) whether the plaintiff would suffer Irreparable injury if his prayer for interim injunction is not granted.

The above said three conditions are called “three pillars” on which the foundation of every injunction order rests and also known as triple test for deciding application for grant of interim injunction under Order 39, rules 1& 2 CPC.

22. In a case titled as “**Dalpat Kumar And Anr. vs Prahlad Singh And Ors, AIR 1993 SC 276**”, Hon’ble Apex Court has discussed the principles for dealing with interim injunction application moved under Order 39, rules 1& 2 CPC and held in Para No.5 t as follows:

“ 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 it 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.”

23. It is admitted by the plaintiff as well as the defendant that agreement to sell dated 10.12.2023 for the sale and purchase of suit property was entered between them. It is also admitted by the parties that the total sale consideration of the suit property was fixed at Rs. 10600000/-. It is also admitted by the parties that in the agreement to sell, the date of execution of sale deed and making of payment of balance sale consideration was fixed as 25.05.2024. The defendant has admitted receiving of amount of Rs. 20 lakhs from the plaintiff as part payment of sale consideration amount.

24. As per defendant, the date for execution of sale deed was changed from 25.05.2024 to 25.04.2024, on the request of the plaintiff and the plaintiff assured to make payment of the balance sale amount on 23.04.2024 by visiting the sub-registrar office, Punjabi Bagh. It is further contended that the defendant visited the office of sub-registrar on 23.04.2024 for executing the sale deed in favour of the plaintiff by the receiving balance sale price but the plaintiff did not appear in the sub-registrar office and did not pay balance sale amount. It is further contended by the defendant that the defendant has legally forfeited an amount of Rs. 20 lacs, given

by the plaintiff due to default made by plaintiff in performing his part of agreement to sell.

25. The plaintiff has denied the fact that the date for execution of sale deed was changed from 25.05.2024 to 25.04.2024, on the request of the plaintiff. During arguments, Ld counsel for the plaintiff has admitted that the date was changed with the consent of both parties from 25.05.2024 to 25.04.2024. The plaintiff has averred that he was ready and willing to pay the balance sale consideration amount on or before 25.04.2024 as he has arranged the said amount in March, 2024. The plaintiff has further averred that the defendant has taken time for executing the sale deed and thereafter, the defendant avoided to take the calls of the plaintiff and sent the legal notice to the plaintiff.

26. I have perused the copy of agreement to sell filed by the plaintiff. In the agreement of sell, the date for execution of sale deed is mentioned as 25.05.2024 and thereafter, it written as April but there is no signatures of any party on the said hand written word April in the agreement to sell. There is also overwriting on the date 25.04.2025, in the digit 5 and it has been made 4 and there is signatures of defendant on the said over-writing but there is no signatures of the plaintiff on the said over-writing.

27. During arguments, Ld counsel for the plaintiff submits that the plaintiff is still ready to pay the balance sale consideration amount by deducting earlier paid Rs. 20 lacs. On 29.08.2025, the

defendant submitted in the court that she is not agreed to execute the sale deed by receiving balance consideration amount by reducing earlier paid an amount of Rs. 20 lacs by the plaintiff. Ld counsel for the petitioner has further submitted that the petitioner is ready to deposit entire balance sale consideration amount by way of demand draft in the name of Court, if the Court directs the plaintiff to do so.

28. The contention of the defendant that the defendant has legally forfeited the earnest money of the plaintiff, is matter of trial and this fact cannot be decided on the basis of pleadings of the parties. Ld counsel for the defendant has argued that the time was essence of agreement to sell, if the contention of defendant is considered valid then date of execution of sale deed which was initially fixed as 25.05.2024, was essence of agreement to sell, at the time of execution of agreement to sell containing Clause IV for forfeiting the earnest money and not the change date of 25.04.2024 gives right to the defendant to forfeit the earnest money of plaintiff. Moreover, the earnest money was given as Rs. 10 lacs and the remaining Rs. 10 lacs were paid later on as part payment of sale price by the plaintiff to the defendant. The defendant has refused to execute the sale deed before 25.05.2024 by giving reply dated 22.05.2024 of the legal notice of plaintiff.

29. The plaintiff has the right to pursue his case for getting relief of specific performance of agreement to sell. The burden is upon the plaintiff to prove the grounds for seeking of specific performance of agreement to sell.

30. From the abovesaid facts, it is established that agreement to sell dated 10.12.2023 was entered between the plaintiff and the defendant. It is also admitted by the defendant regarding receiving Rs. 20 lakhs from the plaintiff. It is also admitted that the date of execution of sale deed was initially fixed as 25.05.2024. As per legal notice dated 18.05.2024, the plaintiff was ready to pay balance sale amount to the defendant and to get executed the sale deed from the defendant but as per reply dated 22.05.2024 given by the defendant, the defendant was not ready to execute the sale deed by receiving balance sale amount from the plaintiff.

31. If the defendant succeeded in selling or creating third party interest upon suit property then it will frustrate the relief of the plaintiff seeking specific performance of agreement to sell and the plaintiff will suffer irreparable loss and injury as right of the plaintiff to get executed sale deed of suit property in his favour will be suffered.

32. This court is of the view that prima facie case and balance of convenience lies in favour of plaintiff and the plaintiff will suffer irreparable loss and injury, in case, the defendant succeeds in transferring or creating third party interest upon the suit property till disposal of the present suit. Moreover, it will also multiply the litigation as subsequent buyers will also be made party by the plaintiff and it will also prejudiced the subsequent buyers and

persons, who give loan upon the suit property as they would be unnecessarily entangled in the litigation.

33. In view of the facts and observations, the application filed by the plaintiff under order 39 rule 1 & 2 CPC stands **allowed**.

34. The defendant and her representatives are restrained from transferring or creating third party interest on the suit property i.e. DDA, Janta flat No. 666 A, Pocket-1, Paschim Puri, New Delhi-110063 till disposal of the present suit.

35. Nothing expressed in this order should be considered as expression on merit of the suit.

Application stands disposed off accordingly.

**Announced in open Court
today on 23.09.2025**

(SHIV KUMAR)
DJ-02, Court no. 127,
West Distt. THC Delhi.