

Civ DJ 1094/23

RAJAT DHINGRA Vs. EMANSHI GULATI MARWAHA

07.03.2025

Present: Sh. Akhil Roy, Id counsel for plaintiff (VC).

Sh. S.K. Pawar, Id counsel for defendant.

O R D E R

1. Vide this order, this Court shall decide the application under Order 39 Rule 1 & 2 read with Section 151 CPC moved on behalf of plaintiff.
2. Arguments have already been heard. Record perused.
3. Brief facts of the case relevant for deciding the present application are that as per case of plaintiff, defendant is permanent resident of Canada and absolute owner of property i.e. Flat No.Q-60, Ground Floor, Rajouri Garden, New Delhi (hereinafter referred as 'suit property'). It is submitted that in the year 2020, defendant through her paternal uncle Sh. Surinder Bajaj approached the plaintiff for sale of suit property and after telephonic discussion, defendant agreed to sell the suit property to plaintiff for consideration amount of Rs.1,81,00,000/- and as per instructions of defendant, on 12.12.2020, plaintiff paid the token amount of Rs.2 Lakhs to Sh. Surinder Bajaj.

4. It is submitted that on 20.12.2020, as per the instruction of defendant, plaintiff paid another sum of Rs.10 Lakhs to defendant by bank transfer in her account. It is submitted that on the same day, as per the instruction of defendant, plaintiff further paid the amount of Rs.9 Lakhs in cash to Sh. Surinder Bajaj. It is submitted that after that defendant promised on several occasions to come to India to complete the deal, however, she delayed the matter on one or other ground.
5. It is submitted that in April 2023, defendant came to India and asked the further payment of Rs.45 Lakhs and agreed to execute a written agreement regarding the deal after receipt of said amount and accordingly, on 12.04.2023, defendant and plaintiff executed a written sale agreement in respect of above transaction and on 15.04.2023, plaintiff paid another sum of Rs.45 Lakhs to defendant. It is submitted that parties also agreed to complete the transaction by 15.07.2023.
6. It is submitted that after entering into written sale agreement, plaintiff approached the Axis Bank for home loan and bank agreed to sanction the same. It is submitted that with the consent of both parties, date for finalization of deal was extended, however, defendant did not execute the sale documents in favour of plaintiff. It is submitted that due to behaviour of defendant, plaintiff was constrained to send a legal notice to

defendant, however, despite service of the same, defendant did not execute the sale documents in favour of plaintiff.

7. It is submitted that plaintiff was always ready and willing to perform his part of contract, however, defendant did not perform her part of the contract. Feeling aggrieved, present suit has been filed by the plaintiff against defendant seeking the relief of Specific Performance of Contract and in the alternative, also seeking the recovery of Rs.66 Lakhs alongwith interest. Plaintiff has also prayed for the relief of Permanent Prohibitory Injunction. In the present application, plaintiff has made the prayer that defendant or her agents be restrained from creating any third party interest in the suit property till the disposal of the suit.

8. In pursuance of the suit, summons were issued to defendant and appearance was made on behalf of defendant and defendant filed written statement.

9. In her written statement, defendant has taken the plea that plaintiff has concealed the material facts from the Court. It is submitted that parties entered into Agreement to Sell dated 12.04.2023 in respect of suit property and uncle of defendant Sh.Surinder Bajaj introduced the defendant to plaintiff, however, except introduction, there was no role of uncle of defendant. It is

submitted that the sale consideration amount of suit property was Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only), out of which, plaintiff agreed to pay the amount of Rs.10 Lakhs as earnest money, however, she transferred the amount of Rs.9,99,100/- to defendant through RTGS.

10. It is submitted that agreed time for making the balance payment was upto 15.07.2023, which was extended till 31.10.2023, however, plaintiff failed to make the balance payment in said time and Agreement to Sell stood cancelled and as per the terms and condition of Agreement to Sell, defendant forfeited the amount of Rs.9,99,100/-, which was paid by plaintiff. It is submitted that plaintiff has forged the receipts of Rs.56 Lakhs. It is submitted that defendant did not give any authority to anyone to receive the payment on her behalf from plaintiff. It is alleged that plaintiff and Sh. Surinder Bajaj in collusion with each other have manufactured the receipts of payment. Prayer has been made for dismissal of the present suit.

11. This Court is of the considered view that while deciding any application under Order 39 Rule 1 & 2 CPC, Court has to see three material ingredients :

- (1) *Prima facie* case;
- (2) Balance of convenience &
- (3) Irreparable injury.

12. This Court is of the considered view that defendant has admitted that she agreed to sell the suit property to plaintiff and the extended period for final payment was 31.10.2023. Although, defendant is not admitting that amount of Rs.66 Lakhs were received from plaintiff, however, she is admitting that in pursuance of said Agreement, amount of Rs.9,99,100/- was received from plaintiff. Defendant has taken the plea that as payment was not made by agreed date, so she did not execute the sale deed *qua* suit property in favour of plaintiff.

13. Perusal of record shows that plaintiff has filed on record the documents issued by the Axis Bank, as per which, loan was sanctioned in favour of plaintiff by said bank. The date of sanction letter is 04.08.2023. On the other hand, it is admitted on the part of defendant that she is permanent resident of Canada. Perusal of record shows that the date for finalization of deal was 31.10.2023, however, defendant has not filed on record any document to show that on that day, she was present in India for execution of sale deed or on that day, any of her Power of Attorney holder was present in India to execute the sale deed on her behalf.

14. In view of above, it is clear that plaintiff had arranged the money to fulfill the agreement on his part, however, no such

willingness and readiness of defendant can be inferred from record. In view of the same, *prima facie* case is shown in favour of plaintiff. This Court is of the further view that balance of convenience also lies in favour of grant of relief to plaintiff as otherwise, he will suffer irreparable injury. Accordingly, defendant or her agent are restrained from creating any third party interest in the suit property till the disposal of the present suit. Application is disposed of accordingly.

Nothing expressed hereinabove shall tantamount to the expression of opinion on the merits of the case.

Matter be put up for replication, admission-denial of documents and framing of issues on **19.07.2025**.

Announced in the open Court
on this 07th day of March, 2025.

(Dharmender Singh)
District Judge-01 (West),
Tis Hazari Courts, Delhi.