

## Order below Ex.5

1. This order of mine shall dispose of the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short CPC) of applicant/plaintiff dated 11/11/2021.

2. Briefly stated, facts necessary for the disposal of the present application are that the plaintiff instituted present suit for recovery of money and in alternative to execute sale-deed of the suit property as described in Para 1 of the plaint. The suit of the plaintiff is on the ground that he has entered into an agreement with defendants for sale of suit property for consideration of Rs. 21, 00,000/- and out of which he has paid Rs. 17, 00,000/-but the defendants are not performing their part of agreement and are neither executing sale-deed in plaintiff's favour, nor are returning the money advanced. Moreover the cheque issued by defendant no. 1 in favour of plaintiff was also returned with endorsement of funds insufficient; thus the plaintiff has prayed for the above mentioned relief.

3. It is submitted that the defendant no.1 has after oral agreement to sell with plaintiff has refused to act as per agreement and he is not returning the amount of Rs. 17, 00,000/- as given to him. The plaintiff further submit in Para 6 of the plaint that the cause of action arose when the defendant after taking amount of Rs. 17, 00,000/- is neither taking the balance amount of consideration and is not performing his part of agreement, though the plaintiff was and is ready to perform his part of agreement; nor returning the amount of Rs. 17, 00,000/- as given to him and the cheque issued by defendant no.1 in favour of plaintiff repaying the amount was also returned with endorsement of funds insufficient and to support his case, the plaintiff has produced the xerox copies of various documents vide mark 3/1 to 3/3.

4. On the lines of the suit, instant application under Order XXXIX Rule 1 and 2 of CPC is also filed.

5. Notice was issued to all the defendants and the same was served to the defendants vide Ex-6 to 21 but except defendant no. 1 no one

*Principal Civil Judge  
Matar (Distt.Kheda@Nadiad)*

appeared and as no adjournment application was made on their behalf and hence as per law the Court on 29/08/2022 passed an order below Ex.1 to proceed the suit ex parte against defendant no. 2 to 8. Moreover as the defendant no. 1 also failed to file written statement within time, his right to file written statement was also closed on 29/08/2022.

6. Arguments heard. File perused.

7. Before deciding the application of temporary injunction i.e. Ex-5, the following issues are to be decided:-

**1. Whether prima facie case is made out in favour of the plaintiff?**

**2. Whether balance of convenience tilts in favour of the plaintiff?**

**3. Whether irreparable injury will be caused to the plaintiff if the relief of injunction is not passed in his favour?**

**4. What Order?**

The decision of the court on the above issues is as following:

1. in affirmative
2. in affirmative
3. in affirmative
4. as per the final order

## **REASONS**

8. As issue No.1 to issue No.3 are inter-linked with each other, so all these issues are being discussed jointly.

9. Before going into the merits of the present application first it has to be seen what the meaning of prima facie case is. Prima facie case means whether the contention of the plaintiff in the suit appears to be plausible i.e. whether the suit of applicant/plaintiff has some such substance in the suit to have to continue further. At this stage the merits of the case are not examined and the court has only to see

whether the allegation on which the application has been made is prima facie sustainable or not. The Hon'ble Supreme Court in the case of **Martin Burn Ltd. Vs Banerjee AIR 1958 SC 79** explaining the ambit and scope of the connotation "prima facie" case, observed

*"A prima facie case does not mean a case proved to the tilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."*

10. The second one is balance of convenience which means that if the order of temporary injunction has not been passed, what will be the adverse effect upon the interest of the applicant and further that if temporary injunction is passed what is the extent of adverse effect upon the interest of the other party. Then the court will have to weigh as to which loss will be greater and then it will be decided in favour of the person to whom the greater loss will be caused. It will be said that the balance of convenience tilts in his favour and accordingly the order will be passed.

11. The third one is irreparable injury. It is something which cannot be compensated as there is no other remedy open to the applicant by which he can protect himself from the consequence of the apprehended injury. The injury must be material one. Here it is appropriate to quote the remarkable observations of **Lord Diplock** made in the case of **American Cyanamid Co. Vs Ethicon Ltd. 1975 AC 396**:

*"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were*

*resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies.*

12. And in the present case the plaintiff has produced the copy of cheque by mark 3/1. The plaintiff has further produced the certified copy of complaint under section 138 of the Negotiable Instruments Act and the certified copy judgment by mark 36/1 and 36/2, which shows that the defendant no. 1 has been convicted by the Court for dishonour of cheque. It was the duty of defendants to defend their case, but defendant no.2 to 8 have not remained present and thus nothing has been produced to refuse the claim of the plaintiff prima facie. Though defendant no.1 remained present, he also produced nothing to refuse the claim of the plaintiff prima facie. Moreover, the averments whatsoever has raised by the plaintiff can be decided after the appraisal of evidences at the same time, the right of the plaintiff to protect his right whatsoever over suit property should not vanish during the pendency of the suit. Taking into consideration the whole facts of the case file prima facie case is made out in favour of the plaintiff. It is the cardinal principle of the Civil jurisprudence that if prima facie case is made out in favour of the plaintiff, then there are chances that balance of convenience will be also lie in favour of the plaintiff/applicant and in this case it is on record that there is registered agreement to sell executed between the parties and the same is not disputed by anyone till date and if above-mentioned two issues are in affirmative, then there can be chances that irreparable loss would be caused to the plaintiff if the present application is not allowed.

13. But at the same time it is mentioned that these observations will not have any bearing on the merits of the case. Hence in the interest of justice, I pass the following order:

### **Order**

1. The present application of the applicants/plaintiffs of temporary injunction i.e. Exhibit-5 is hereby allowed.

2. The defendants are hereby directed not to alienate the suit property till any further order of the Court to avoid the multiplicity of litigation.
3. The parties are ordered to bear their own expenses.

Order signed and pronounced today in open court on this 1st day of August 2025.

Date : 01.08.2025  
Place : Matar.

**(Narender Kumar)**  
**Principal Civil Judge,**  
**Matar, (GJ01440).**