

**IN THE COURT OF MS. MANU VEDWAN,
LD. ADDITIONAL DISTRICT JUDGE-2,
NORTH EAST DISTRICT, KARKARDOOMA COURTS,
DELHI**

CS No. 20/2022

Santosh Kumar Gupta

....Plaintiff

Versus

Rasheedan

.... Defendant

19.04.2023

**ORDER ON APPLICATION UNDER ORDER XXXIX RULE
1 & 2 READ WITH SECTION 151 CPC MOVED ON BEHALF
OF PLAINTIFF**

1. Vide this order, I shall dispose of an application under Order XXXIX Rule 1 & 2 read with section 151 CPC moved on behalf of plaintiff.
2. It is stated in the application under Order XXXIX Rule 1 & 2 read with section 151 CPC that the contents of the plaint be read as part and parcel of the application. It is stated in the plaint that the defendant was/is the absolute owner and in the possession of property bearing number E-2/85 & 86, out of Khasra Number 58,

measuring about 20 square yards situated at 5th Pushta, Gali No. 7, Near Akbari Masjid, Sonia Vihar, Delhi (hereinafter referred to as **suit property**). Plaintiff and defendant had entered into an agreement with regard to the sale of the suit property on 07.01.2019 whereby, defendant had agreed to sell suit property for a total consideration amount of rupees 7,75,000/-. It is further stated that an amount of rupees 4,50,000/- was given by the plaintiff to the defendant as an earnest money. An agreement was executed between the plaintiff and the defendant in that regard in the presence of witnesses on 07.01.2019. It is further stated that it was also agreed between the parties that the balance amount of rupees 3,25,000/- would be paid on or before 28.03.2019 that is at the time of execution of title documents of the suit property.

It is further stated that the plaintiff had approached the defendant on various occasions before 28.03.2019, to receive the outstanding amount, but, defendant had avoided to receive the same. On 28.03.2019, plaintiff went to the Sub Registrar office with the outstanding amount but defendant had not reached there. It is stated that from the attitude of defendant, it seems that the defendant is not interested in honouring the agreement. It is further stated that as per the agreement if first party/seller would refuse to sell the property then the second party/purchaser would be entitled to recover the double amount of rupees 4,50,000/- from the first party that is the defendant. It is therefore requested in the application under Order XXXIX Rule 1 & 2 CPC that the defendant, her agents, relatives, attorneys, successors etc. be restraining from alienating or creating

third party interest in the suit property till the disposal of the suit.

3. Despite service of summons and various opportunities, defendant has not filed its reply.

4. Submissions of Ld. Counsel for plaintiff at length heard.

5. In issuing temporary injunction the tests to be applied are (i) whether the plaintiff has a *prima facie* case, (ii) whether the balance of convenience is in favour of the plaintiff, and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for temporary injunction is disallowed. This Court is required to see *prima facie* case, balance of convenience as well as irreparable loss. Also, while considering irreparable injury comparatively, which of the parties would be put to more or substantial mischief in the event of refusal to grant a temporary injunction and if the Court considers that the subject-matter of the suit must be maintained status quo, then discretion must be exercised in favour of the party seeking temporary injunction, so, that the subject matter of the suit in dispute can be preserved. In the instant case, plaintiff has relied upon the agreement entered into between the plaintiff and the defendant in which defendant had undertaken to sell the suit property to the plaintiff on receiving the complete amount. Plaintiff has also filed stamp papers as well as cash receipt pertaining to the Sub Registrar Office dated 28.03.2019. Hence, it can be safely assumed that plaintiff has been able to show *prima facie* case in his

favour. Balance of convenience also lies in favour of the plaintiff. Court is also convinced that the plaintiff shall suffer irreparable loss and injury, if interim protection is denied to the plaintiff.

6. Accordingly, in the totality of circumstances, application under Order XXXIX Rules 1 & 2 r/w section 151 CPC moved on behalf of plaintiff is disposed of as allowed. defendant, her agents, relatives, attorneys, successors etc. are restrained from alienating or creating third party interest in the suit property till, the disposal of the suit.

7. Nothing stated herein above shall tantamount to expression of opinion on the merits of the case.

8. Needless to say that the plaintiff shall continue to make the payment of electricity as per the demand to be raised by the defendant in future for usage of electricity.

9. Nothing stated herein above shall tantamount to expression of opinion on the merits of the case.

10. Copy of this order be given *dasti*

(Manu Vedwan)
ADJ-02/North-East, KKD Courts,
Delhi/19.04.2023