

Order 02

21.09.23

The Ld. Advocate for the plaintiff moves the application under Order 39 Rules 1 and 2 read with section 151 CPC for an ad-interim order.

It is reported from the office that no caveat is pending. Perused the endorsement of “no caveat has been filed” on the first page of the injunction application. Accordingly the application praying for an order of ad-interim injunction is taken up for hearing.

Heard the Ld. Advocate for the plaintiff at length.

Issue notice upon the defendants, calling upon them to show cause within 15 days from the date of receipt of this notice as to why the temporary injunction shall not be granted against them.

Requisites have been filed.

In short, the case of the plaintiff is that the defendant nos 1 and 2, being the owners of the entire A schedule property, entered into a registered Deed of development agreement along with execution of a registered power of attorney in favour of defendant no 3 for the purpose of developing the A schedule property. The defendant no 3 has already obtained sanctioned municipal building plan and has commenced construction of a multi storeyed building thereat. The plaintiff, being desirous to purchase a residential flat, approached the defendant no 3 and accepted the offer to purchase the B schedule flat at a consideration price of Rs. 15,30,000/- only, for which an agreement for sale was entered into by him with the defendant no 3 against payment of a sum of Rs. 2,00,000/- by way of earnest money with the further condition that upon payment of the balance consideration price and handing over possession of the B schedule flat, requisite deed of sale would be executed and registered. Thereafter the petitioner kept paying amounts to the defendant no 3 in tranches totaling a sum of Rs. 9,30,000/- to the OP 3, who duly acknowledged the receipt thereof. But subsequently the defendant no 3, by a letter dtd 10.9.22, proposed to refund the entire booking money to the plaintiff citing the reason of facing certain issues in development of residential project in the A schedule property, but the plaintiff refused to accede to such proposal. Thereafter the plaintiff caused enquiries and came to know that the defendant no 3 was actually contemplating to transfer the B schedule flat to another customer, who was willing to make payment of much more amount than that the plaintiff for purchasing the

said flat. It is contended by the plaintiff that the defendant no 3, in a most arbitrary and illegal manner, has sought for cancelling the allotment of the B schedule flat in favour of the plaintiff, for which the plaintiff has been compelled to file this suit along with the instant application.

Upon considering the submission of the Ld. Advocate for the plaintiffs and taking into consideration the copies of documents relied upon, it appears that the plaintiff has filed this suit for reliefs in the shape of declaration and injunction without filing a regular suit for specific performance of contract for reasons best known to the plaintiff himself. According to the averment of the plaintiff himself, the defendant no 3 is all along ready and willing to refund the entire amount received by her from the plaintiff. The defendant no 3 has also assigned the reason in her letter dtd 10.9.22 as to what prompted her to request the plaintiff to take refund of the entire booking amount.

Considering this aspect, I find that the plaintiff at this stage has not been able to make out any good prima facie case and I do not also find any exigency involved in the matter.

As such the prayer for an adinterim order of temporary injunction is considered and refused.

Fix 14.12.23 for S/R and A/D.

D/C by me

Judge

Judge 2nd Bench