



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3072 OF 2025
IN
COMMERCIAL SUIT NO.36 OF 2025

Celadon Real Estate Pvt. Ltd.

...Applicant/Plaintiff

V/s.

H.K. Pujara Builders and Anr.

...Defendants

Mr. Rohaan Cama with *Mr. Pheroze Mehta and Ms. Priya Chaubey i/b. Ms. Sapana Rachure for the Plaintiff.*

Mr. Karl Tamboly with *Mr. Zahan Setlavad, Mr. Amit Pradhan and Ms. Ujwala Deshmukh i/b M/s. Pradhan and Rao for the Defendants.*

CORAM: SANDEEP V. MARNE, J.

DATED: 30 SEPTEMBER 2025

Order:

1) Interim Application is filed by the Plaintiff seeking temporary injunction against the Defendants for appointment of Court Receiver for taking over possession of the suit office and to hand over possession thereof to the Plaintiff. Plaintiff has also sought temporary injunction to restrain the Defendants from selling, transferring, alienating, encumbering, parting with possession of or creating third party rights in the suit office. Plaintiff has also sought a direction for deposit of amount of Rs.10,26,26,841/- towards losses suffered by the Plaintiff.

2) The Plaintiff's case, as pleaded in the Plaint, is that it was looking for a commercial unit in the year 2006. The Director of Plaintiff-

Mr. Ashu Dutt approached the Defendants for purchasing a commercial unit. By letter of allotment dated 18 April 2006, an office admeasuring 2000 sq.ft. on rear side of 7th floor in the proposed building on Plot No.A-4, CTS No.694, Veera Desai Road, Andheri West, Mumbai-400 053 (**suit office**) was allotted in favour of the Plaintiff for total consideration of Rs.87 lakhs. The Plaintiff paid an amount of Rs.10,00,000/- and amount of Rs.48.20 lakhs was agreed to be paid before 30 June 2006. The remaining amount of consideration of Rs.28.80 lakhs was payable on completion of R.C.C. work of the proposed building. The Plaintiff claims to have paid total amount of Rs.59,00,000/- to the Defendants for purchase of the suit office. According to the Plaintiff, the Defendants never informed it about status of construction of the building. Several correspondence took place from Plaintiff's side enquiring about status of construction of building and seeking possession of the suit office. In some of the correspondence, Plaintiff also gave alternative offer of refund of consideration with 18% interest. The last correspondence was of 6 December 2019 whereafter no correspondence took place due to Covid-19 Pandemic. On 22 November 2022, Plaintiff filed application for pre-institution mediation under Section 12A of the Commercial Courts Act, 2015. In the meantime, Plaintiff also filed complaint under Section 156(3) of the Code of Criminal Procedure, 1973 before the Metropolitan Magistrate. The mediation between parties failed and failure report dated 2 May 2023 was submitted. In the Complaint filed by the Plaintiff Magistrate directed registration of FIR, which was registered on 5 July 2023. The Defendants filed proceedings before this Court seeking quashing of the FIR. However, on account of filing of 'C' summary report by the police, said proceedings were withdrawn by the Defendants.

3) In the above background, Plaintiff has instituted the present Suit for specific performance of the alleged contract of sale and for handing over possession of the suit office. Plaintiff has also sought injunction against Defendants from alienating or creating third party rights in the suit office. Plaintiff has also sought damages of Rs.10,26,26,841/- in alternative to the relief of specific performance or the damages of Rs. 23,26,81,847 with further interest.

4) In its Suit, Plaintiff has filed present Application seeking temporary injunction for appointment of Court Receiver in respect of the suit office for taking over possession thereof from Defendants and handing over the same to the Plaintiff. Plaintiff has also sought temporary injunction to restrain the Defendants from alienating or creating third party rights in respect of the suit office. Plaintiff has also sought direction for deposit of amount of Rs.10,26,26,841/-.

5) Mr. Cama, the learned counsel appearing for the Plaintiff would submit that there is a valid, binding and subsisting contract of sale between the parties under which Defendants are under obligation to handover possession of suit office to the Plaintiff against payment of balance amount of consideration. That out of agreed consideration of Rs.87 lakhs, Plaintiff has already paid an amount of Rs.50 lakhs by cheque and Rs.9 lakhs by cash. That Plaintiff was always ready and willing to perform his part of contract. However, Defendants delayed construction of the building and never informed Plaintiff about status of the construction. He would take me through various correspondence made by the Plaintiff with the Defendants and would submit that Defendants never refused to perform the contract. He would also take me

through the pleadings in Criminal Application No.1127 of 2023 raised by the Defendants admitting their obligations under the contract to handover possession of the suit office. That Defendants have falsely claimed in the said pleadings that possession was offered to the Plaintiff and that it refused to take over possession. That there are pleadings in the Complaint to indicate that the Defendants were willing to handover possession of the suit office right till August-2023.

6) Mr. Cama would then take me through the averments made by the Defendants in their written statement in support of his contention that Defendants have admitted the contract for sale as well as their liability to handover possession of the suit office. He would submit that since substantial consideration is paid by the Plaintiff and since the suit office is still available for grant of possession, this is a fit case for appointment of Court Receiver in respect of the suit office. That Plaintiff is willing to deposit balance amount of consideration in this Court. That if directed, Plaintiff is willing to deposit balance amount of consideration alongwith interest. He would therefore submit that the Court Receiver be appointed for handing over possession of suit office to the Plaintiff. Alternatively, he would submit that Defendants be restrained from creating any third-party rights in respect of the suit office. He would also press for prayer for deposit of amount of damages by way of ad-interim injunction.

7) The Application is opposed by Mr. Tamboly, the learned counsel appearing for the Defendants. He would submit that the Plaintiff was never sure about taking over possession of the suit office. He would take me through various correspondence to indicate lack of clarity in the mind of Plaintiff about the exact course of action to be adopted. That

Plaintiff has shown willingness to withdraw from transaction and to opt for refund of the amount. That most vital document in the form of letter dated 14 July 2015 containing plain request for refund has been suppressed by the Plaintiff. That Plaintiff had marital discord with his wife, on account of which he was actually not willing to take possession of the suit office. He would submit that the Defendants are willing to refund the entire amount paid by the Plaintiff alongwith interest as was desired by the Plaintiff on numerous occasions. He would submit that no injunction be granted in Plaintiff's favour based on mere allotment letter executed in the year 2006. He would pray for rejection of the Interim Application.

8) Rival contentions of the parties now fall for my consideration.

9) Plaintiff's Suit is for specific performance of the allotment letter dated 18 April 2006, which Plaintiff perceives as a contract for sale. Except the allotment letter dated 18 April 2006, no other written agreement is executed between the parties. On the basis of the allotment letter dated 18 April 2006, Plaintiff has apparently paid total amount of Rs.50 lakhs in favour of the Defendants. Plaintiff claims payment of additional amount of Rs.9 lakhs in cash. However, in absence of any document evidencing payment in cash, it is not possible to infer such payment made by the Plaintiff. However, there appears to be no major dispute to the position that Plaintiff has paid an amount of Rs.50 lakhs in favour of the Defendants in pursuance of the transaction of purchase of suit office. The last tranche of the consideration of Rs.20 lakhs was paid by Plaintiff to the Defendants on 20 June 2006. Thereafter, no payment is apparently done by the Plaintiff to the Defendants.

10) It is Plaintiff's case that Defendants did not commence construction of the building by citing pretext of presence of tenants and encountering of hard rock at the site. According to the Plaintiff construction of the building commenced in the year 2011.

11) The Plaintiff, who paid substantial consideration of Rs.50 lakhs to the Defendants for purchase of suit office, was apparently not diligent in prosecuting the claim of specific performance. The first correspondence made by the Plaintiff to the Defendants was of 9 long years when Plaintiff sent letter dated 7 July 2015 merely recording payment made by it to the Defendants and enquiring about status of the project. The Defendants did not respond to the said letter and Plaintiff again maintained silence for next two years, when it sent one more letter dated 12 April 2017, this time requesting for possession of the suit office. Thereafter there is again no correspondence between the parties for next two long years. Plaintiff is relying on WhatsApp chats exchanged between them in the year 2018. However, Plaintiff wrote to the Defendants only on 14 January 2019 and this time instead of only seeking possession of suit office, Plaintiff gave option to the Defendants of refunding the amount of consideration alongwith interest @ 18% per annum.

12) The refund offer was renewed vide letter dated 12 March 2019. Plaintiff thereafter adopted criminal remedies by addressing a complaint to the police on 29 April 2019. On 6 December 2019 it again gave option to the Defendants either to handover possession of suit office or refund the paid amount alongwith interest. According to the Plaintiff no further steps were taken on account of Covid-19 pandemic and

Plaintiff finally approached mediation center vide application dated 12 November 2022.

13) In the above chain of correspondence, there is one vital document in the form of letter dated 14 July 2015 addressed by the Plaintiff to the Defendants in which Plaintiff sought refund of the entire paid amount alongwith interest. Letter dated 14 July 2015 did not contain any request for handing over possession of the suit office. For some unknown reason, Plaintiff has chosen not to produce copy of letter dated 14 July 2015 alongwith the Plaint and the Defendants accuses Plaintiff of suppressing the same. The said letter was apparently attached by the Defendants in Criminal Application No.1127 of 2023 filed for quashing of FIR. While Plaintiff has produced several letters addressed by it to Defendants requesting for possession or refund, non-production of letter containing request for only refund has given a room for Defendants to accuse Plaintiff of suppression. Be that as it may. Without ascribing any motive to the Plaintiff in not producing the letter dated 14 July 2015, it would be suffice to infer at this juncture that Plaintiff was willing to accept refund alongwith interest at some point of time. True it is that in subsequent correspondence Plaintiff did ask for possession of the suit office and refund of the consideration with interest was only an option given to Defendants.

14) The Suit has been instituted by the Plaintiff after 19 long years of issuance of the allotment letter dated 18 April 2006. While Plaintiff may lead evidence to prove that the Suit is within limitation, the delay in filing the Suit would obviously be one of the important considerations while considering Plaintiff's prayer for temporary injunction. Coupled with delay in filing the Suit and delay in applying for

temporary injunction, Plaintiff was apparently willing to accept refund of paid consideration alongwith interest as is clear from contents of letter dated 14 July 2015. True it is that Defendants have taken a plea in the written statement that they were willing to execute and register agreement for sale upon receipt of balance consideration in the year 2016. At the same time, it would not be prudent to block the suit office for an indefinite period of time till decision of the Suit.

15) To succeed in a suit for specific performance, it is incumbent for the Plaintiff to prove readiness and willingness to perform his part of contract. Based on correspondence between the parties, it is difficult to infer, at this juncture, that Plaintiff was always willing and ready to pay balance amount of consideration and to take over possession of the suit office. In fact, Plaintiff's letter dated 14 July 2015 shows that he was disinterested in completing the transaction of purchase of suit office. Though Defendants have sought to attribute motives to the Plaintiff in not seeking possession of the suit office in letter dated 14 July 2015, I am not delving deeper into the said aspect. Whatever may be the reason, the fact remains that the Plaintiff sought refund of the amount paid by it to the Defendants by way of letter dated 14 July 2015. The said letter did not contain any alternate prayer for handing over possession of the suit office. It is therefore, difficult to hold at this stage that the Plaintiff was ready and willing to perform his part of the contract.

16) While Plaintiff is willing to pay balance amount of consideration with some interest, the Defendants are no longer interested in selling the suit office to Plaintiff. During the course of submissions, some allegations are made by Defendants personally against the director of Plaintiff about his marital relations and also disputes in other projects.

In my view, it is not necessary to delve deeper into those aspects. Since Plaintiff itself was willing to accept refund of consideration on several occasions, there is no point in blocking sale of the suit office indefinitely till the suit is decided. Such course of action would benefit none.

17) Thus, there is no prima facie case in Plaintiff's favour for injunctioning the Defendants from alienating the suit office. Plaintiff would not suffer irreparable loss if temporary injunction as prayed for is not granted. On the contrary Defendants would suffer irreparable loss by blocking the sale of suit office. The balance of convenience can be secured adequately by directing deposit of consideration with interest.

18) Considering the peculiar facts and circumstances of the case, interests of the Plaintiff would be protected to a large extent by directing Defendants to deposit the amount of consideration received by them alongwith some interest. The Defendants have shown willingness to refund the entire amount of consideration alongwith simple interest @ 10.85% per annum, which is Marginal Cost Lending Rate plus 2% as is required to be paid under Real Estate (Regulation and Development) Act, 2016. The total amount payable to the Plaintiff alongwith simple interest @ 10.85% would be roughly to the tune of Rs.1.54 cores. However, for not putting any fetter on sale of suit office, Mr. Tamboly has shown willingness to deposit amount of Rs.1.90 crores in the Court.

19) In fact, this Court had suggested to the Plaintiff to settle the dispute by accepting an amount to Rs.1.90 crores. However, on account of higher expectation of Plaintiff, parties are not able to settle the disputes. In that view of the matter, it would be appropriate to direct the Defendants to deposit an amount of Rs. 1.90 cores in this Court with a view to secure the interest of the Plaintiff to some extent. If Plaintiff

ultimately succeeds, it can be awarded higher amount at the time of final disposal of the suit.

20) The Application is accordingly partly allowed, and I proceed to pass the following order:-

- (i) The Defendants shall deposit in this Court an amount of Rs.1.90 cores on or before 31 December 2025 without prejudice to their rights and contentions.
- (ii) Registry shall invest the deposited amount in interest bearing deposits.
- (iii) Beyond direction for deposit, Plaintiff is not entitled to any further temporary injunction during pendency of the suit.

21) The Interim Application is **partly allowed** in above terms and disposed of.

[SANDEEP V. MARNE, J.]