IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.3851 OF 2025
IN
SUIT NO.116 OF 2025

Expertsource Global Services Private Ltd. *.....Applicant/Plaintiff*

: Versus :

Rajan Kumar Surajprakash Manchanda *.... Defendant/Respondent*

Mr. Rohan Savant *with Ms.Jyoti Singh & Mr.Ashish Jain i/b AJA Legal for the Applicant/Plaintiff.*

Dr. Abhinav Chandrachud *with Ms. Pragya and Ms.Darshana Vora i/b Legal Vision for the Defendant/Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 25 SEPTEMBER 2025.

P.C :

1) Plaintiff has filed the Interim Application seeking temporary injunction to restrain the Defendant from alienating and/or transferring and/or encumbering and/or disposing of and/or creating third party rights in respect of the suit flat during pendency of the Suit. Plaintiff has also sought temporary injunction for appointment of Court Receiver in respect of the suit flat.

2) Plaintiff's case, as pleaded in the plaint, is that it was looking for an investment opportunity for residential accommodation for its senior management. Plaintiff proposed to purchase a flat for residence of its

C.E.O. Mr. Anil Wadhwa. A common friend informed Mr. Kapil Puri, father of Mr. Anuj Puri (shareholder of Plaintiff) that Mr. Kamal Khandelwal, who had entered into a deal for purchase of suit flat, was likely to cancel the same and that Plaintiff could purchase the same. Pursuant to the discussions, Defendant issued letter dated 5 May 2021 to the Plaintiff offering suit flat at consideration of Rs.11 Crores in the event of Mr. Khandelwal opting to cancel allotment in his favour. Plaintiff was called upon to pay advance amount of Rs.50 Lakhs for purchase of the suit flat. Another letter dated 16 June 2021 was issued by the Defendant to the Plaintiff requesting for further amount of Rs.25 Lakhs. Defendant confirmed receipt of amount of Rs.75 Lakhs in three tranches vide letter dated 29 June 2021. On 27 November 2021, Defendant issued letter to the Plaintiff extending the offer by further period of 90 days till 15 February 2022. Defendant also acknowledged receipt of total sum of Rs.85 Lakhs from Plaintiff.

3) Since there was no update on the status of allotment of Mr. Kamal Khandelwal, Plaintiff issued letter to Mr. Kamal Khandelwal on 7 March 2024 inquiring about his status of investment. Mr. Khandelwal replied to the Plaintiff on 27 March 2024 stating that the allotment in his favour was cancelled. Plaintiff waited for response from the Defendant, who unilaterally transferred amount of Rs.77 Lakhs in the account of Plaintiff from June 2024 to September 2024. Plaintiff wrote an e-mail dated 12 November 2024 seeking supporting documents for transfer of amount in Plaintiff's account. Defendant responded on 12 November 2024 stating that the refund of amount was towards repayment of loan and showed willingness to remit balance amount of Rs.8 Lakhs. Plaintiff wrote to the Defendant on 19 November 2024, asserting that the Defendant's payment was towards purchase of flat. Certain correspondence thereafter took place between the parties. Defendant remitted balance amount of Rs.8 Lakh to the Plaintiff on 30 Novmber 2024. In the above background, Plaintiff has instituted the present suit seeking a declaration that the agreement reflected in letters dated 5 May 2021, 16 June 2021 and 27 November 2021 is valid, subsisting and binding between the parties. Plaintiff has sought specific performance of the said three letters. Plaintiff has sought alternate prayer of damages in the event of non-grant of decree of specific performance. Plaintiff has also sought permanent injunction against the Defendant from creating third party rights in respect of the suit flat. In its suit, Plaintiff has field the present Interim Application seeking temporary injunction to restrain the Defendant from creating third party rights in respect of the suit flat and for appointment of Court Receiver.

4) Mr. Rohan Savant, the learned counsel appearing for Plaintiff would submit that there is a valid, binding and subsisting contract for sale of suit flat by Defendant to the Plaintiff. He would submit that despite expiry of the period initially agreed between the parties, as extended on 27 November 2021, the parties, by their conduct, have kept the contract alive. That once the parties have elected to keep alive the contract, mere passage of time agreed for performance cannot be a ground for denying relief of specific performance. He would submit that the contingency agreed between the parties has taken place, as Mr.Khandelwal has not purchased the suit flat. Since the contingency has taken place, Plaintiff is entitled to specific performance of the agreement for purchase of the flat. In support of his contention that contract can be kept alive by conduct of parties notwithstanding expiry of agreement timeline, Mr. Savant has relied upon the judgments of the Apex Court in **Panchanan Dhara & Ors. Vs. Monmatha Nath Maity (Dead) through**

LRs & Anr.[1] and **S. Brahmanand & Ors. Vs. K.R.Muthugopal (Dead) & Ors.**[2]. He would submit that if temporary injunction is not granted in Plaintiff's favour, it would rendered remediless. Lastly, he would submit that the Plaintiff is willing to deposit amount of Rs.85 Lakhs in the Court in one week and that the entire agreed consideration of Rs.11 Crores would also be deposited by the Plaintiff within a period of three months.

5) *Per contra*, Dr.Chandrachud, the learned counsel appearing for Defendant disputes the position that there is any binding or subsisting agreement between the parties for sale of the suit flat. That the transaction between the parties was that of a loan. That the transaction is nothing but a routing transaction, under which the plaintiff routed monies through the Defendant in favour of Plaintiff's companies. He would submit that the monies are found to be routed through Mr.Kapil Puri, who is undergoing investigations under Prevention of Money Laundering Act, 2002 by the Enforcement Directorate. That Mr.Kapil Puri is a known offender and that therefore transaction would take his colour. He would submit that entire transaction is bad one. He would submit that Plaintiff is not entitled to specific performance in non-existing agreement and that therefore, there is no question of grant of any temporary injunction in its favour.

6) I have considered the submissions canvassed by the learned counsel appearing for the parties and have perused the records of the case filed along with the pleadings.

7) At the outset, it must be observed that the parties entered into a rather strange transaction. Plaintiff claims the transaction to be for

1 (2006) 5 SCC 340

2 (2005) 12 SCC 764

purchase of suit flat, whereas the Defendant brands its merely as a loan transaction effectuated mainly for routing the monies. Plaintiff was to purchase the suit flat if one Mr. Kamal Khandelwal was not to purchase the same. Plaintiff's case for specific performance is premised on letter dated 5 May 2021 issued by Defendant to the Plaintiff under which Defendant allegedly offered the suit flat to be purchased by Plaintiff at consideration of Rs.11 Crores in the event of Mr. Kamal Khandelwal opting out of the transaction and cancelling the allotment due to personal reasons. The letter, however, is bereft of any details relating to Mr. Kamal Khandelwal and the alleged transaction entered into with him. It does not describe the suit flat, except mentioning 'flat on the first floor'.

8) The letter dated 5 May 2021 on which Plaintiff relies on, and of which specific performance is sought, contains a specific stipulation that the advance amount would be refunded in the event Plaintiff did not wish to go ahead with the transaction or if the deal with Mr. Khandelwal was scrapped within maximum period of six months. Letter dated 5 May 2021 reads thus:-

> *"Dear Mr. Wadhwa,*
> *Greetings!*
>
> *Kindly recall the discussion we had at my Site Nidhi Towers. I would like to inform you that the flat on the first floor of my project was allotted to Mr.Kamal Khandelwal. It is likely that he may opt out and cancel the allotment due to his personal reasons.*
>
> ***As discussed I will offer the flat to you @ Rs.11 crores, if the present allotment is cancelled at the request of Mr.Khandelwal and you are still interested in purchasing the same**. You will advance me the sum of Rs 50 lacs as a token of showing your interest in buying the flat. You have also agreed that you will pay the balance allotment amount of Rs.10.5 crs within 15 days of my raising the request, should the present allotment be cancelled for reasons stated above.*
>
> ***You have agreed to take back your advanced amount of Rs.50 lacs with a simple transaction charge of Rs 5 lacs (Subject to TDS deduction) in case you do not wish to go ahead with the transaction within 6 Months, or if the present deal with Mr.Khandelwal is not scrapped within a maximum period of 6 months**.*
>
> *(emphasis added)*

9) The letter dated 5 May 2021 is followed by some correspondence about payment of total amount of Rs. 85 Lakhs. Apart from the letter dated 5 May 2021and correspondence between the parties relating to payment thereafter, there is no other document which can create an impression that there is any valid contract for purchase of suit flat by Plaintiff from Defendant.

10) Even if letter dated 5 May 2021 is to be construed as an agreement for sale of flat between the parties, the said agreement was clearly contingent on Mr. Kamal Khandelwal opting out/cancelling the allotment. The transaction was to be cancelled on occurrence of contingency of Mr. Khandelwal not opting out of the transaction within maximum period of six months. It is an admitted position that Mr. Khandelwal did not write to the Defendant for scrapping of the transaction within six months from the date of issuance of letter dated 5 May 2021. Thus advance amount of Rs.50 Lakhs paid by Plaintiff became refundable on account of deal with Mr. Khandelwal not getting scrapped within a period of six months. The alleged agreement vide letter dated 5 May 2021 thus came to an end on expiry of period of 6 months.

11) Faced with the above situation, Plaintiff has relied on letter dated 27 November 2021 by which the period mentioned in the letter dated 5 May 2021 was extended by further 90 days i.e. upto February, 2022. Letter dated 27 November 2021 reads thus :-

> *"Dear Mr. Wadhwa,*
> *This is in continuation to my letter dated 5th May 2021 and subsequent letter dated 16th June, 2021.*
>
> ***As discussed, pleased to mutually extend the offer as mentioned in my letter dated 5th May 21 by 90 days till 15th Feb 2022***
>
> *This proposal now extended for the entire amount of Rs.85 lacs. Which I have received from you as under :-*

Sr.No.	*Date*	*Amount*
1.	*12.05.2021*	*25,00,000*
2.	*17.05.2021*	*25,00,000*
3.	*17.06.2021*	*25,00,000*
4.	*13.09.2021*	*10,00,000*
Total		*85,00,000*

Rest of the transaction value and terms and conditions of the flat remains same at Rs.11 crs.
In case the deal doesn't go through, then we will now be offering you compensation of Rs.10 lacs for the entire period from 5th May 21 to 15th Feb 22.
Thank you for showing keen interest in my project and kindly acknowledge the receipt of this letter."

12) Thus, even letter dated 27 November 2021 clearly specified a contingency where the deal of purchase of flat by Plaintiff was to get crystallized only in the event of the deal with Mr. Khandelwal getting scrapped upto 15 February 2022. There is nothing on record to indicate that Mr.Khandelwal scrapped the deal at any point of time upto 15 February 2022. Therefore, even if letters dated 5 May 2021 and 27 November 2021 are to be construed as agreement between the parties, it is clear that Plaintiff's right to purchase the flat did not get crystallized, on account of Mr. Kamal Khandelwal not scrapping the deal upto 15 February 2022. There is no correspondence on record to indicate that Plaintiff enquired with the Defendant about status of deal with Mr. Khandelwal at any time upto 15 February 2022.

13) Ideally therefore Plaintiff ought to have sought refund of amount of Rs. 85 Lakhs paid to the Defendant after 15 February 2022. It however maintained a stoic silence. Instead of inquiring with Defendant about deal with Mr. Khandelwal or seeking refund, Plaintiff claims to have written directly to Mr. Kamal Khandelwal on 7 March 2024 enquiring about status of his deal. This alleged inquiry was after lapse of period of two years from the agreed date of 15 February 2022. Mr. Khandelwal, with whom there was no privity of contract with Plaintiff, allegedly replied to it on 27 March 2024 informing about cancellation of his deal. At this point of time, after learning that Mr. Khandelwal had cancelled the deal, Plaintiff did not write to the Defendant insisting for purchase of flat by offering the balance consideration, but chose to keep quiet. He waited for the Defendant to refund the amount of Rs.77 Lakhs in three tranches on 12 June 2024, 31 July 2024 and 28 September 2024. Thus, despite learning cancellation of deal by Mr. Khandelwal on 27 March 2024 (two years after the deadline of 15 February 2022), Plaintiff never wrote to the Defendant for purchase of the suit flat by offering balance amount of consideration. All that it did on 12 November 2024 was to merely enquire about the reason why the amount of Rs.77 Lakhs was refunded. This conduct of Plaintiff does not appear to be consistent with its claim of the transaction being of purchase of flat.

14) The above conduct between the parties again does not indicate that there is any valid agreement for purchase of suit flat by the Plaintiff from the Defendant. Even if it is momently assumed that there is a valid contract between the parties for purchase of the flat, its conduct would make the Plaintiff disentitled for grant of any temporary injunction. As per Plaintiff's own case, the flat was to be purchased for consideration of Rs.11 Crores. Beyond paying an amount of Rs.85 Lakhs in May and June 2021, Plaintiff has not paid any further amounts to the Defendant. Even the amount of Rs.85 Lakhs paid by Plaintiff to Defendant has been admittedly refunded by the Defendant well before filing of the suit. In my view, therefore, no case is made out for grant of any temporary injunction in plaintiff's favour, so as to restrain the

Defendant from creating any third party rights in respect of the suit flat or for appointment of Court Receiver.

15) Reliance by Mr. Savant on judgments of the Apex Court in **Panchanan Dhara** (supra) and **S. Brahmanand** (supra) does not cut any ice. The two judgments are on the point of extension of contract by conduct of parties. However, even if the proposition is applied to the present case by accepting Plaintiff's contention of extension of time and contract by conduct of parties, there is nothing on record to indicate that the time was extended beyond 15 February 2022. In fact, Plaintiff slept over his alleged right to purchase the flat and did not take any steps after issuance of letter dated 27 November 2021. It woke out of deep slumber after two long years and allegedly made enquiry with Mr. Khandelwal on 7 March 2024. It then accepted the refund of amount paid to Defendant without any demur. Except inquiring the details of transaction of refund, it did not raise any protest as to why the amount was being refunded. Therefore, it would not be prudent to grant the equitable relief of temporary injunction in favour of Plaintiff who has already received refund of the alleged amount of consideration and who never offered to purchase the flat within reasonable time of occurrence of the contingency.

16) Considering the above position, in my view, if Plaintiff's case as pleaded in the plaint is taken into consideration, it is difficult to hold that any *prima facie* case is made out by the Plaintiff for grant of temporary injunction. In that view of the matter, it is not even necessary to take into consideration the three defences raised by the Defendant of (i) the transaction being of loan, (ii) that it was a mere money routing transaction and (iii) the Enforcement Directorate investigating Mr. Kapil Puri. These defences would further weaken the case of Plaintiff, which is otherwise not very sound.

17) The other two tests of balance of convenience and irreparable loss are also clearly against the Plaintiff and in favour of the Defendant. On payment of paltry advance amount of Rs.85 Lakhs as against the alleged agreed consideration of Rs.11 Crores (which again is refunded to it), Plaintiff cannot seek temporary injunction to restrain the Defendant from alienating or creating third party rights in the suit flat. No irreparable loss would be caused to the Plaintiff, if the relief of temporary injunction is denied as Plaintiff can be compensated in terms of money in the event, the suit flat is sold during pendency of the suit. In fact, there is a prayer for recovery of damages of difference of amount in prayer clause (c) of the plaint.

18) Plaintiff's belated offer of depositing the refunded amount of Rs. 85 Lakhs within a week and for deposit of total amount of Rs. 11 Crores does not appeal to me. Plaintiff never protested about refund of Rs. 85 Lakhs and accepted the refund without demur in four tranches on 12 June 2024, 31 July 2024, 28 September 2024 and 30 November 2024. If it was a genuine transaction for purchase of flat, Plaintiff would have raised a protest immediately after receiving the first tranche of refund on 12 June 2024,which it did not. For four long years, it never offered to pay the alleged balance amount of consideration. Therefore the offer for deposit now made by Plaintiff deserves no consideration.

19) In my view, therefore, no case is made out by the Plaintiff for grant of temporary injunction. Interim Application is accordingly **rejected**.

[SANDEEP V. MARNE, J.]

20) After the order is pronounced, Mr.Savant would pray for continuation of limited protection granted vide order dated 15 April 2025. The request is opposed by Dr. Chandrachud. Considering the nature of findings recorded while rejecting the Interim Application, I am not inclined to continue the order dated 15 April 2025 any further. Prayer is accordingly rejected.

[SANDEEP V. MARNE, J.]