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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 33/2024

SUDESH ARORA & ANR. .....Appellants

Through: Ms. Kushika Chachra, Advocate.

versus

DEEPAK SETHI .....Respondent

Through: Mr. Pranav, Advocate.
Mr. Abhishek Gupta, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **06.04.2026**

<u>CM APPL. 5246/2024 (Delay)</u>

1. This is an application seeking condonation of a delay of 280 days in filing the accompanying appeal.

2. It is submitted that appellant nos. 1 and 2 are senior citizens, both aged above 74 years, who have been suffering from various age-related ailments. Statedly, appellant no. 2 met with an accident on 03.06.2023 wherein his pelvic bone was fractured, confining him to bed for several months. The medical records in support of the same have been annexed to the application. It is further contended that owing to these medical exigencies and a lack of timely

legal advice, the appellants were unable to seek recourse within the period of limitation.

3. For the reasons stated in the application and keeping in view the advanced age of appellant nos. 1 and 2, this Court is of the opinion that sufficient cause has been shown for the delay. In the interest of justice, the delay of 280 days in filing the accompanying appeal is condoned.

4. The present application is disposed of in the above terms.

FAO 33/2024 and CM APPL. 19617/2024 (Stay)

1. The present appeal has been preferred challenging the order dated 01.11.2022 passed by the learned ADJ-03, North West, *Rohini* Courts, in CS DJ No. 561/22, whereby respondent no. 1/plaintiff's application under Order XXXIX Rules 1 and 2 CPC was allowed.

2. Respondent no. 1 filed the underlying suit for specific performance and permanent injunction against the appellants/defendants regarding the property bearing no. *999, Block and Pocket C-1, Sector-37, Rohini, Delhi* (hereinafter the "suit property"). The case of respondent no. 1 is that appellant nos. 1 & 2 entered into an Agreement to Sell dated 07.10.2020 (hereinafter the "ATS") for a total consideration of Rs.88,00,000/-, against which earnest money of Rs.3,00,000/- was paid. Along with the suit, respondent no. 1 filed an application under Order XXXIX Rules 1 & 2 CPC seeking to restrain the appellants from creating any third-party interest in the suit property.

3. The suit property was originally allotted by the DDA in the names of appellant nos. 1 and 2. The case of the appellants is that the ATS is unregistered and, significantly, does not bear the signatures of appellant no. 1,

who is a co-allottee. The appellants further rely upon Clause 5(a) of the Perpetual Lease dated 18.02.2021, which contains a restrictive covenant prohibiting the transfer of the property for a period of 10 years. Further, it is their contention that respondent no. 1 has failed to establish readiness and willingness, as no bank documents or proof of funds were placed on record to show the capacity to pay the substantial balance consideration of Rs.85,00,000/-.

4. *Vide* the impugned order, the application filed by respondent no. 1 under Order XXXIX Rules 1 & 2 CPC was allowed, and the appellants were restrained from creating any third-party interest in the suit property during the pendency of the suit.

5. Learned counsel for the appellants contends that the amount paid by respondent no. 1 is too insignificant in relation to the total agreed-upon sale consideration for the grant of an injunction. He further argues that the Trial Court overlooked the absence of the co-allottee/appellant no. 1's signature on the ATS and the mandatory restrictive covenants of the DDA lease, on account of which the ATS lacks any binding value.

6. Learned counsel for respondent no. 1, while supporting the impugned order, submits that the property ought to be preserved during the pendency of the litigation and refers to the principle of *lis pendens* under Section 52 of the Transfer of Property Act, 1882.

7. I have heard the learned counsels for the parties and examined the record.

8. It is trite that in an application seeking the grant of a temporary

injunction, the applicants are required to satisfy the Court *qua* the triple test: i) a *prima facie* case; ii) the likelihood of suffering irreparable loss; and iii) the balance of convenience (Ref: <u>*Gujarat Bottling Co. Ltd. Vs. Coca Cola Co.*</u>[1]).

9. Further, it is settled that to secure an interim injunction in a suit for specific performance, the plaintiff must demonstrate 'a strong *prima facie* case' supported by 'undisputed facts'. Reference may be made to the decision of the Supreme Court in <u>*Ambalal Sarabhai Enterprises Ltd. Vs. K.S. Infraspace & Ors.*</u>[2]: -

> "*15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.*
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> *XXXX*
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> *21. We are therefore of the considered opinion that in the facts and circumstances of the present case, and the nature of the materials placed before us at this stage, whether there existed a concluded contract between the parties or not, is itself a matter for trial to be decided on basis of the evidence that may be led. If the plaintiff contended a concluded contract and/or an oral contract by inference, leaving an executed document as a mere formality, the onus lay on the plaintiff to demonstrate that the parties were ad idem having discharged their obligations as observed in Brij Mohan [Brij Mohan v. Sugra Begum, (1990) 4 SCC 147]. ...*"

10. In the present case, respondent no. 1 has paid only Rs.3,00,000/- against the total sale consideration of Rs.88,00,000/-. This amount constitutes less than 4% of the agreed price. In <u>*Vibhor Kumar Gupta & Ors. Vs. Anupama Kapoor*</u>

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[1] (1995) 5 SCC 545
[2] (2020) 5 SCC 410

& Ors.[3], the Coordinate Bench of this Court, while dealing with a case where the payment was less than 10% of the total sale consideration, observed that such an amount was too insignificant to warrant the grant of interim relief. The relevant observations in the facts of that case are reproduced below: -

> "*21.* ***It is the case of the plaintiffs that the total consideration for the suit property was fixed at Rs.14,00,00,000/-. Out of the aforesaid sum, only a sum of Rs.90,00,000/- has been paid to the defendant nos.1, 2 and 3. Remaining amounts of Rs.50,00,000/- in cash and Rs.21,00,000/- have been paid to the defendant no.5. Whether these amounts were remitted by the defendant no. 5 to the defendant nos. 1, 2 and 3 is a matter of trial. The amount of Rs.90,00,000/- is less than 10% of the total consideration. Further, even the possession of the suit property has not been handed over to the plaintiffs.*** *It may also be noted here that prior to issuance of legal notice, the plaintiffs had got cancelled the demand drafts in respect of the remaining consideration. This also creates a doubt with regard to readiness and willingness on part of the plaintiffs to perform their part of the contract.*
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> *22. In view of the discussion above, the plaintiffs have failed to make out a prima facie case in their favour for grant of interim injunction. As noted above, I am not satisfied that in the present case, there was a valid and binding contract executed between the parties.* ***Further, the consideration paid by the plaintiffs to the defendants is too insignificant in relation to the total consideration, which would disentitle the plaintiffs for grant of interim relief.*** *I have also noted above that it was not disclosed to the Court at the time of passing of ad interim order dated 15th January, 2020 that there was only an oral agreement to sell between the plaintiffs and the defendants.*"
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> ***(emphasis supplied)***

11. Adverting to the facts of the present case, respondent no. 1 has failed to substantiate his readiness and willingness, as no bank documents or financial records have been placed on record to demonstrate the availability of the nearly 97% balance consideration. While the learned counsel for respondent no. 1 referred to the doctrine of *lis pendens*, the same does not dispense with the

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[3] CS(OS) 13/2020, decided on 19.04.2022

requirement of satisfying the triple test for the grant of an injunction. It is further observed that the Trial Court, while granting the interim relief, did not even direct respondent no. 1 to deposit the balance consideration, or any portion thereof, to establish his *bona fides*.

12. Since the payment remitted is insignificant compared to the total sale consideration and the readiness and willingness of respondent no. 1 remains unsubstantiated, the requirements of a *prima facie* case and balance of convenience are not met. Additionally, the presence of a restrictive covenant in the Perpetual Lease and the absence of the appellant no. 1's signature on the unregistered ATS further weaken the claim for equitable relief at this stage.

13. Accordingly, finding the reasoning in the impugned order to be insufficient in light of the aforementioned facts, the present appeal is allowed and the impugned order dated 01.11.2022 is set aside.

14. The present appeal, along with the pending application, is disposed of in the above terms.

15. Needless to observe that any observations made herein are only for the purpose of disposing the appeal and will not influence the Trial Court in any manner.

MANOJ KUMAR OHRI, J

APRIL 6, 2026
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