



2026:DHC:2551



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.03.2026

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FAO 86/2026, CM APPLs 17510-11/2026**SHRI AJAY KUMAR**

.....Appellant

Through: Mr. Tushar Sharma, Advocate.

versus

SHRI AJAY KAPUR & ANR

.....Respondents

Through: Mr. Akhil Sibal, Senior Advocate,
with Mr. Gurmukh Singh Arora, Ms.
Ridhi Bajaj, Ms. Sarah Haque, Mr.
Sparsh Aggarwal, Mr. Kenet Paul,
and Mr. Siddharth Arora, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)**

1. The appeal has been preferred by the appellant, who is the plaintiff before the Trial Court, against the order dated 21.02.2026 passed in CS DJ/1394/2025.

Vide the impugned order, the application filed by the plaintiff under Order XXXIX Rules 1 & 2 CPC seeking grant of interim injunction came to be dismissed. The impugned order came to be passed in the context of a suit filed by the plaintiff for specific performance and permanent injunction.

2. For the sake of convenience, the appellant is referred to as the “plaintiff” and the respondents are referred to as the “defendants”.



3. In the plaint, it was claimed that defendant no. 1/Ajay Kapur approached the plaintiff for a loan, citing an urgent need for funds. The plaintiff resisted, but was approached again by both the defendants on 14.08.2025. On that date, the defendants represented that they were the actual owners of the property bearing *Khasra* no. 70/2/2 (2 *bigha* 2 *biswa*) and *Khasra* no. 70/9 (4 *bigha* and 16 *biswa*), with the total land measuring 6 *bigha* and 18 *biswa*, situated on a 60-feet road within *Village Burari, Delhi – 110084* (hereinafter referred to as the “suit property”)

4. The defendants offered to sell the suit property, whereafter the plaintiff, having made careful inquiries from common friends and having examined the property documents such as mutation records/sale deeds, agreed to purchase the suit property. The plaintiff claimed that the sale consideration was agreed at a sum of Rs.1 Crore, which would be payable within two months. In consequence of the oral settlement arrived at between the parties, the plaintiff made payment of Rs.99,998/- through UPI into the accounts of the defendants in equal consideration towards the partial sale consideration. A further sum of Rs.10 lakhs was paid through bank transactions; Rs.5 lakhs each were paid to the respective accounts of both the defendants. The plaintiff approached the defendants for execution of the sale deed; however, the defendants did not come forward and later reneged from their understanding by stating that they would be selling the suit property to another party, who is offering a higher amount. The plaintiff has relied upon the WhatsApp communications wherein defendant no. 1 mentioned the *Khasra* no. and also the account details of both the defendants.



5. On summons being served, the defendants contested the suit and filed the written statement. While denying any oral agreement for the sale of the suit property, it was claimed that it was the plaintiff who approached the defendants under the guise of a steel scrap dealer who wanted to purchase old scrap material from the defendants. The scrap material was lying at *Khasra* no. 70/2/2, for which reason the details of the said *Khasra* were shared with the plaintiff through a WhatsApp message. The total scrap transaction was for a consideration of Rs.1,25,000/-, for which the plaintiff made an advance payment of Rs.99,998/- through bank transactions. When the remaining amount of Rs.25,002/- was not paid, the defendants, *vide* letter dated 08.09.2025, asked their bank to reverse the said transactions. After three months, the defendants were surprised to note the credit of Rs.5 lakhs each in their bank accounts, following which they approached the Cyber Crime Cell and lodged an online complaint. Similarly, a complaint was also given to P.S. *Model Town* on 10.12.2025. Simultaneously, the defendants also instructed their banks through a letter dated 09.12.2025 to not only reverse the credit entries, but also to ensure that no further transactions are made in their accounts.

6. Learned counsel for the plaintiff contends that an oral agreement to sell is enforceable. The plaintiff has advanced a sum of Rs.1 lakh to the defendants, who have been dishonest and thus, wanted to renege from their commitment. He submits that besides the WhatsApp messages, the defendants had also shared with him a copy of the *khatauni* showing their possession of the suit property.

7. Mr. Akhil Sibal, learned Senior Counsel appearing on behalf of the



defendants on advance notice, disputes the submissions and further submits that the plaintiff is guilty of suppressing material facts. In the plaint, it has not been disclosed that the credit entries were reversed prior to the filing of the suit. Further, the defendants took immediate steps upon coming to know of the bogus credit entries in their accounts, which further strengthens the fact that there was no oral understanding between the parties. *In arguendo*, learned Senior Counsel submits that even otherwise, in a suit for specific performance, the plaintiff is required to show his readiness and willingness, for which no supporting documents have been placed on record.

8. In a suit for specific performance based on an oral agreement, the burden of proof which the plaintiff is required to discharge is very high. The plaintiff is required to establish a strong *prima facie* case on undisputed facts for seeking the relief of an injunction. In Ambalal Sarabhai Enterprise Ltd. Vs. KS Infraspace LLP Ltd. & Anr.¹, the Supreme Court made the following observations:

“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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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

¹ (2020) 5 SCC 410



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]*. The plaintiff failed to show the same on admitted facts. The draft MoU dated 30-3-2018 in Clause C contemplated payment of the income tax dues of Rs 18.64 crores as part of the consideration amount only whereafter the agreement was to be signed relating back to the date 29-3-2008. Had this amount been already paid or remitted by the plaintiff, entirely different considerations would have arisen with regard to the requirement for execution of a written agreement remaining a mere formality. Needless to state the balance of convenience is in favour of the defendants on account of the intervening developments, without furthermore, *inter alia* by reason of the plaintiff having waited for seven months to institute the suit. The question of irreparable harm to a party complaining of a breach of contract does not arise if other remedies are available to the party complaining of the breach. The High Court has itself observed that from the negotiations between the parties that “some rough weather was being reflected between the plaintiff and the defendant ...”. The Special Civil Judge failed to address the issue of delay. The High Court noticed the arguments of the defendants with regard to delay in the institution of the suit but failed to deal with it.”

9. In *M.P. Mathur Vs. DTC*², the Supreme Court had laid down the factors relevant for consideration of an application seeking an interim injunction in a suit for specific performance:

“14. The present suit is based on equity. The term “equity” has four different meanings, according to the context in which it is used. Usually it means “an equitable interest in property”. Sometimes, it means “a mere equity”, which is a procedural right ancillary to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean “floating equity”, a term which may be used to describe the interest of a beneficiary under a will. Fourthly, “the right to obtain an injunction or other equitable remedy”. In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider—

² (2006) 13 SCC 706



the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (Snell's Equity, 31st Edn., p. 366). In the present case, applying the above test, we do not find an iota of mutuality. There is no contract between DTC and the plaintiffs. There is no communication at any point of time between DTC and the plaintiffs. No sale consideration was ever fixed. The plaintiffs were never called upon to make payment. The decision to allot remained tentative. In the circumstances, neither contract nor equity existed at any point of time so as to compel DTC to convey the tenements to the plaintiffs.”

10. Even in Anil Kumar Vs. Seema Thakur & Ors.³, this Court stipulated the essential ingredients to be established at the *prima facie* stage for the establishment of a contract. In the context of an oral agreement for the purchase of property, the relevant observations are extracted hereunder:

“12. The rulings of this Court in Aggarwal Hotels (P) Ltd. v. Focus Properties (P) Ltd., 63 (1996) DLT 52; and Amarjit Singh Johar & Company (DC) v. Shri Prakash Chand Brahmin, 79 (1999) DLT 289 : 1999 (50) DRJ 169, state what are essential ingredients to an agreement to sell immovable property. Those were cases where the plaintiff had inter alia, relied on a receipt of money. The Court held that the following four essential ingredients should be necessary for an inference about prima facie existence of a contract to purchase property:

- (i) particulars of consideration;*
- (ii) certainty about identity of parties*
- (iii) certainty about to the property to be sold; and*
- (iv) certainty as to other terms relating to probable cost of conveyance, time, etc.*

The Court also held that in the absence of any of the above elements, it could be concluded that there was no binding agreement. This view was

³ 2010 (115) DRJ 62



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endorsed, and followed High Way Farms v. Sh. Chinta Ram, 85 (2000) DLT 355.”

11. Coming back to the facts of the present case, in light of the principles of law encapsulated above, concededly, there is no written agreement between the parties. In support of the case for an oral understanding, the plaintiff submits that it was the defendants who shared the details of the suit property and bank details through WhatsApp messages. A perusal of the WhatsApp messages shows that they only reveal one *Khasra* no., i.e., no. 70/2/2. The suit property, however, comprises two *Khasra* numbers, i.e., nos. 70/2/2 and 70/9. The defendants have explained the WhatsApp messages by stating that the same were in relation to a transaction of steel scrap material which the plaintiff wanted to purchase from the defendants, as the material was lying at *Khasra* no. 70/2/2, and for which reason the details of only one *Khasra* were sent through WhatsApp. Further, it was the plaintiff who asked for the bank details to be shared with him. The plaintiff has also relied on an additional document, being in the nature of the *khatauni* stated to have been supplied by the defendants, however, the same is disputed by the defendants by stating that the same is a public record which can be easily accessed. It is the case of the plaintiff that the sale transaction of the suit property was to be completed within two months; however, there is no explanation as to why the plaintiff made the second part-payment after a period of little less than four months from the first payment, and that too, not of the full amount, but only a small part. On the other hand, the stand of the defendants is that since the plaintiff had failed to make the full payment towards the transaction of the steel scrap material,



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they instructed their bank to reverse the credit entry via a letter dated 08.09.2025, enclosing the bank statement showing the credit entries. In December 2025, after coming to know of further credit entries in their accounts, the defendants again immediately rushed to their bank and asked the bank not only to reverse the credit entries, but also further instructed the bank to get their accounts temporarily frozen.

12. The Court is also conscious of the defendants' submission that the plaintiff suppressed the factum of reversal of the credit entries, which he claimed was earnest money towards part-payment of the sale consideration. The reversal was done prior to the filing of the suit. This Court, in a *catena* of decisions, has held that a person who approaches the Court with unclean hands cannot get discretionary relief. The Trial Court *vide* the impugned order while noting the aforesaid facts, also observed that there are no pleadings as to the financial capacity of the plaintiff to pay the balance sale consideration. A monetary transaction without any written agreement, receipt, or any sale documentation is wholly inconsistent with a genuine transaction for the purchase of the suit property as per any agreement whatsoever as alleged. Further, the Trial Court observed that the sale consideration was grossly understated, as the value of the suit property is stated to be in the range of Rs.30 Crores. Further, the plaint was found to be silent on essential ingredients of the alleged concluded contract, which requires unqualified and unequivocal acceptance, consensus *ad idem* and certainty of material terms such as the subject property, consideration, timelines, and mutual obligations of the



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parties. The findings are obviously on *prima facie* basis.

13. In the totality of the facts and circumstances, this Court finds the reasoning adopted by the Trial Court to be just and proper. On a *prima facie* opinion, the plaintiff has failed to discharge the essential burden cast upon him for seeking relief.

14. The appeal fails and is, accordingly, dismissed. Needless to state that the observations made hereinabove are only for the purpose of disposal of the appeal and shall not influence the proceedings before the Trial Court in any manner whatsoever.

15. Pending applications shall stand closed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 20, 2026/pmc