



2025:DHC:8931-DB



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

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Judgment reserved on: 23.09.2025

Judgment pronounced on: 09.10.2025

+ **FAO (COMM) 140/2025 and CM APPL. 31893/2025**

DEVIKA SHARMA & ORS.

.....Appellants

Through: Mr. Sumit Chander, Mr. Harish Malik, Mr. Gurdeep Chauhan, Ms. Mahak Dua and Ms. Alankrita Singh, Advs.

versus

NIRA INFRASTRUCTURES ENGINEERS PVT. LTD. & ORS.

.....Respondents

Through: Mr. Surjendu Sankar Das, Ms. Annie Mittal, Ms. Aarushi Singh, Advs. for R-1.
Mr. Anurag Ojha, Mr. Aayushman Bhatt, Advs. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule (1)(r) of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], assailing the correctness of the order dated 11.02.2025 [hereinafter referred to as "Impugned Order"] passed by the District Judge (Commercial Court)-06, South East, Saket Courts, New Delhi in CS(COMM) 3954/2024 captioned ***Nira Infrastructures Engineers Pvt. Ltd. vs. Devika Sharma and Ors.***, whereby directions have been



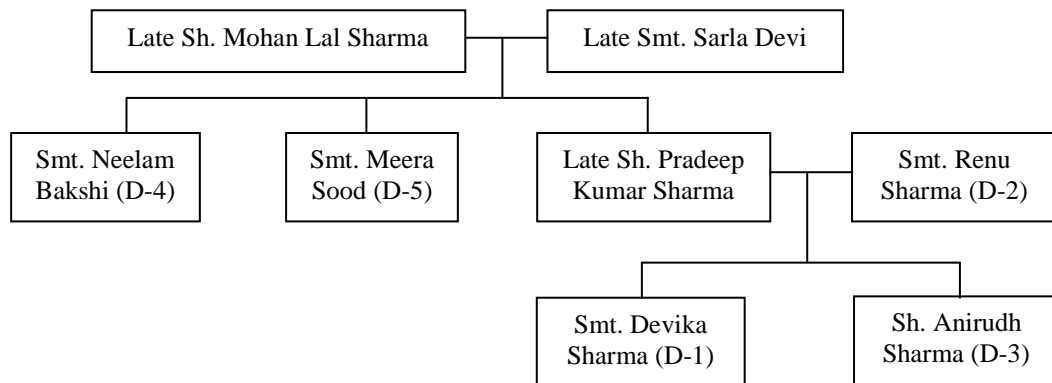
issued to the Appellants (Defendant Nos. 1 to 3 before the Commercial Court) to hand over possession of the Ground Floor of the property bearing No. E-169 Greater Kailash-II, New Delhi – 110048 [hereinafter referred to as ‘Suit Property’] to the Respondent No.1 (Plaintiff before the Commercial Court) within a week from the date of the Impugned Order.

2. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

3. Herein, the parties shall be referred to by their status in the impugned suit CS (COMM) 3954/2024.

FACTUAL MATRIX

4. The genealogy of the family is extracted as under:



5. After the demise of late Sh. Mohan Lal Sharma and late Smt. Sarla Rani, Defendant Nos.1 to 5 are the only co-sharers in the Suit Property.

6. On 12.03.2021, Defendant Nos.1 to 5 executed a Memorandum of Understanding of Family Arrangement [hereinafter referred to as



‘MoU’] for arriving at an understanding with regard to the rights of ownership of the Suit Property and also to get the property developed through some agency. On the same day, a Collaboration Agreement [hereinafter referred to as ‘Collaboration Agreement’] was executed between the Defendant Nos.1 to 5 as the First Party and the Plaintiff (Developer) as the Second Party. The Collaboration Agreement provided reconstruction of the building by constructing a Basement, Stilt for car parking, Ground Floor, First Floor, Second Floor, and Third Floor of the Suit Property within a period of 24 months. In lieu of the same, the First Party was to transfer ownership rights and title of the Second Floor, along with proportionate rights in the stilt and the land underneath, to the Plaintiff.

7. It is the case of the Defendant Nos.1 to 3 that the Plaintiff failed to complete the construction but was offering possession of Basement and Ground Floor to Defendant Nos.4 and 5 (Respondent Nos.2 and 3 herein), namely, Smt. Neelam Bakshi and Smt. Meera Sood.

8. It is to be noted here that the First Floor of the Suit Property, which was earmarked to fall into the share of Smt. Renu Sharma remained incomplete, and a similar position prevailed with respect to the Third Floor.

9. Defendant Nos.1 to 3 filed CS SCJ 1248/2024 captioned ***Renu Sharma and Ors. (Sr. Citizen) vs. Nira Infrastructures Engineering Pvt. Ltd.***, along with an application under Order XXXIX Rules 1 and 2 of the CPC, claiming that despite the extension of the period of construction, the same has not been completed, and the Plaintiff, with



2025:DHC:8931-DB



the sole intent to delay the construction, has created an atmosphere of fear amongst the co-owners.

10. In the aforesaid suit, the Civil Court passed the Order dated 07.11.2024 dismissing the Application of the Defendant Nos. 1 to 3, seeking temporary injunction against the Plaintiff. The same has been reproduced hereinbelow:

“Perusal of the record reveals that in the order dated 09.10.2024 the date of the collaboration agreement has been inadvertently recorded as "12.03.2024" instead of "12.03.2021". The same stands modified to this extent.

Ld. Counsel for the defendant no. 1 has filed written statement along with supporting documents and affidavit under Section 63 of BSA, 2023 via petition box with advance copy to the other side. The same are taken on record.

Ld Counsel for the defendant no.1 has filed an application under Order 1 Rule 10 CPC on behalf of defendant no.2, with advance copy to the other side. The same is taken on record. He seeks time to file his Vakalatnama on behalf of defendant no.2. Let the same be done on or before the NDOH.

Plaintiff is at liberty to file reply to the aforesaid application on or before the NDOH, with advance copy to the other side.

Ld proxy counsel for the plaintiff seeks additional time to file reply to the application under Order 7 Rule 11 CPC filed by the defendant no. 1 on the ground that the main counsel is unwell. He has furnished medical documents to corroborate his submissions. The same are seen and returned.

At this stage, Ld. Counsel for the plaintiff seeks a short pass over to counsel his clients to allow defendants access to the suit property in terms of the order dated 09.10.2024.

In the interest of justice, put up at 12:00 PM.

At 12:12 PM

Ld Counsel for the plaintiff, Sh. Tanish Mnuja seeks permission to withdraw his Vakalatnama from the present suit. He submits that the plaintiffs have engaged a new counsel to represent their interest in the present suit.



2025:DHC:8931-DB



Statement of Ld. Counsel for the plaintiffs to this effect has been recorded separately.

*In view of the statement of Ld. Counsel for the plaintiffs, **the Vakalatnama is permitted to be withdrawn.***

Sh. Mayank Shanna, Ld. Counsel for the plaintiffs seeks time to file his Vakalatnama and undertakes to file his memo of appearance during the course of the day. Let the same be done.

The matter is fixed for orders on the application under Order 39 Rule 1 & 2 CPC.

*Ld. Counsel for the defendants submits that despite court directions vide order dated 09.10.2024, plaintiffs particularly plaintiff no.2 has prevented/obstructed defendants and their agents from entering the suit property bearing no. E-169, G. K. Part-II, New Delhi-110048 (hereinafter referred to as **suit property**). He submits that a separate contempt application has been filed with respect to the same which has been registered as Misc. SCJ no. 177/24.*

He submits that a videograph containing evidence of plaintiff no.2 disobeying the court order dated 09.10.2024, and obstructing/preventing defendant's agent from entering the suit property has also been placed on record in the said case. He submits that the same may also be considered while deciding the present application under Order 39 Rule 1 & 2 CPC.

He submits that since, plaintiffs have failed to show their bona-fide conduct in the present case, accordingly, their application under Order 39 Rule 1 & 2 CPC may be dismissed on this ground alone. He further submits that plaintiffs have violated the collaboration agreement dated 12.03.2021, by taking forceful possession of the ground floor and the 1st floor of the suit property before its completion.

Ld. Counsel for the plaintiffs explained plaintiffs disobedience of the order dated 09.10.2024 passed by this court on the ground that defendants have been sending bouncers at the suit premises and no labourers have been sent by the defendants. He submits that defendants have malafide intention to cause discomfort to the plaintiffs and breach their mental peace, because of which they have been sending goons/bouncers at the suit property. He further submits that it is for this reason and in anticipation of the agony and the harm that defendants might cause to the plaintiffs that they have been preventing defendants from accessing the suit property.

Submissions heard. Record perused.



The three-fold test of establishing (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss or harm, for grant of interim relief is well-established.

*In addition to this Hon'ble Supreme Court India in **Gujarat Bottling Company Limited And Others v. Coca Cola Company And Others**, AIR1995 SC 2372, observed as under:-*

"50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of civil procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the CPC, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings."

(emphasis supplied)

In the present case, the plaintiffs and defendants had entered into a collaboration agreement dated 12.03.2021. As per the agreement, the plaintiffs had handed over possession of the suit premises to the defendants for demolition of the existing super structure on the suit land and for construction of a new building comprising of a basement ground floor with stilt parking and 4th floors above that.

As per the collaboration agreement, after the completion of the proposed building, the builder i.e. the defendant no.1 was supposed to get ownership over the 2nd floor and proportionate share in the stilt parking and land underneath. The remaining



portion of the new building was to be shared by the plaintiffs and Ms. Neelam Bakshi and Ms. Meera Sood.

Perusal of the collaboration agreement also reveals that plaintiffs along with Ms. Neelam Bakshi and Ms. Meera Sood had to vacate the existing building and hand over vacant possession thereof to the defendant no.1, in order to enable him to demolish the existing structure and construct the new building. As per clause 12 of the collaboration agreement, defendant no.1 had to complete the construction within 24 months from the date of receipt of sanction plan from the concerned authority or from the date of receipt of vacant possession of the suit premises from the plaintiffs and Ms. Neelam Bakshi and Ms. Meera Sood, whichever was letter.

Admittedly, defendant no.1 got vacant possession of the suit premises on 02.08.2021. Accordingly, as per the collaboration agreement, the construction was to be completed by defendant no.1 latest by 02.08.2023. It is an admitted case that defendant no.1 failed to complete the construction within the stipulated timeline. Defendant no.1 admittedly also failed to pay penalty of Rs. 50,000/- in terms of Clause 12 of the collaboration agreement to the plaintiffs despite his inability to construct the new building within the stipulated timeline. Due to this, plaintiffs were constrained to enter into the partly constructed building and took possession of the first floor and the ground floor of the property on 16.09.2024.

Thereafter, anticipating a counter blast of their unjustified actions plaintiffs filed the present suit on 26.09.2024 along with an application under Order 39 Rule 1 & 2 CPC and Order 2 Rule 2 CPC. By way of the present application, plaintiffs seek the following reliefs:-

"A. Pass an ex-parte ad-interim injunction in favour of the Plaintiffs and against the Defendants restraining the Defendants their representatives, attorneys, heirs, executors, administrators, successors and permitted assigns from interfering with the peaceful possession of the Plaintiff of property situated at E-169, Greater Kailash, Part-II, New Delhi-110048: and

B. Pass an ex-parte ad-interim injunction in favour of the Plaintiffs and against the Defendants restraining the Defendants their representatives, attorneys, heirs, executors, administrators, successors and permitted assigns from dispossessing the Plaintiffs from the property situated at E- 169, Greater Kailash, Part-II, New



*Delhi-110048 without following due process of law;
and*

C. Pass an ex-parte ad-interim injunction in favour of the Plaintiffs and against the Defendants restraining the Defendants their representatives, attorneys, heirs, executors, administrators, successors and permitted assigns from directly or indirectly creating any Third Party Rights in the property situated at E-169, Greater Kailash, Part-II, New Delhi-110048, any manner whatsoever."

Summons of the suit along with notice of the application under Order 39 Rule 1 & 2 CPC was issued on 26.09.2024. On 01.10.2024, defendant no.1 entered appearance through his counsel and sought time to file reply to the application under Order 39 Rule 1 & 2 CPC. Thereafter, on 09.10.2024, defendant no.1, inter-alia, filed his reply to the application under Order 39 Rule 1 & 2 CPC. On the same date, arguments were heard on the application under Order 39 Rule 1 & 2 CPC on behalf of both the parties and the matter was fixed for orders and further proceedings on 07.11.2024.

In the interregnum, while balancing the safety and right to shelter of plaintiffs and defendants right/obligation to complete the construction as per the collaboration agreement entered between the parties, the following directions were issued:-

*"In the interregnum, since as per the plaint, plaintiffs are currently occupying ground floor and first floor of the suit property bearing no. E-169, G. K. Part-II, New Delhi-110048 (hereinafter referred to as suit property). **Therefore, in the interest of justice, till the NDOH, defendants are directed not to enter or obstruct possession of the plaintiffs with respect to the ground floor and the first floor of the suit property. However, it is made clear that this order does not in any manner restrain the defendants from acting upon the collaboration agreement dated 12.03.2024, entered upon between the parties or from entering the remaining portion of the suit premises.**"*

At this stage, it is pertinent to mention that as per Clause 17 of the collaboration agreement, defendant no.1 was to hand over the peaceful and physical possession of plaintiff's share of the suit property after completion of the construction of the building along with the completion certificate from the MCD.



It is an admitted fact that the proposed building, as per the collaboration agreement, was not completely constructed when plaintiffs forcefully entered into the ground floor and the 1st floor of the suit property on 16.09.2024. The completion certificate was also not issued by the appropriate authority at the time when plaintiffs took wrongful possession of the ground floor and the first floor of the suit property.

This prima facie shows that plaintiffs were not entitled to take possession of the suit property as per the collaboration agreement mutually agreed by them and defendant no.1. Since, plaintiffs have taken wrongful possession of the suit property, therefore, in light of the decision in Gujarat Bottling Saket C blame (supra), it is held that plaintiffs conduct was not free from blame and plaintiffs have failed to show that they were not at fault and not responsible for bringing about the state of things complained of and that they were not in equitable in their dealings with the defendants. Accordingly, plaintiffs do not have a prima facie case in their favour.

In addition to this, considering the admission made by ld. counsel for the plaintiffs regarding their disobedience and disregard with respect to the specific directions of this court further establishes the fact that plaintiffs have not approached this court with clean hands and have mala fide intent to file the present suit and the present application.

*It is a settled proposition of law that when a party fails to prove prima facie case in its favour, the question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material as even if the party has made out a case of balance of convenience being in his favour and would suffer irreparable loss, no injunction can be granted. (Reference may be made to the case of **Kashi Math Samsthan & Anr. V. Srimad Sudhindra Thirtha Swamy & Anr. AIR 2010 SCC 296**). Since the plaintiff has not been able to show prima facie case in its favour, **the present application under Order 39 Rule 1 & 2 CPC is hereby disposed off as dismissed.***

*Further, considering the fact that plaintiffs are preventing defendants from accessing the suit premises in violation of the collaboration agreement mutually executed by them. This court also deems it appropriate to prevent the ends of justice from being defeated to direct the SHO concerned to provide necessary police assistance, to ensure that defendants/their agents/their representatives are granted access to the suit property. **The SHO concerned is permitted to break open the locks, if any, installed by the plaintiffs to prevent defendants from accessing the suit property.***



2025:DHC:8931-DB



It is further clarified that this order does not in any manner entitle the defendants from dispossessing the plaintiffs from the ground floor or the first floor of the suit property, admittedly in possession of the plaintiffs, without due process of law.

Put up for consideration the application under Order 7 Rule 11 CPC on 14.01.2025.

Copy of this order be given dasti”

11. Thereafter, on 14.12.2024, the Plaintiff filed CS(COMM) 3954/2024 for recovery of money, damages, and for the grant of relief of mandatory injunction. He also filed an Application under Order XXXIX Rule 1 and 2 of the CPC, with the following prayers:

“In the light of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be please to:

- (a) Pass an ex parte ad interim injunction in favour of the Plaintiff and against the Defendant Nos. 1 to 3 to vacate and hand over the keys of the Ground Floor of the Suit Property at E-169, Greater Kailash, Part-II, New Delhi -110048;*
- (b) Pass any other or further order (s) which this Hon'ble Court deem fit, just and proper under the facts and circumstances of the case.”*

12. The learned District Judge has directed the Defendant Nos.1 to 3 to hand over the possession of the Ground Floor of the Suit Property on the following reasons:

- i. The Civil Suit CS SCJ 1248/2024 has been cleverly drafted to claim the entire Suit property, whereas the Defendants Nos.1 to 3 are only entitled to the First Floor and the Third Floor of the Suit Property.
- ii. Defendant Nos.4 & 5 have not been impleaded as parties.
- iii. Defendant Nos.1 to 3 have no right over the Ground Floor, Basement, and Second Floor, as the Basement and Ground



Floor have fallen to the share of Defendant Nos. 4 and 5, whereas the Second Floor falls in the share of the Plaintiff.

iv. Defendant Nos.1 to 3 have committed a breach of the Collaboration Agreement.

CONTENTIONS OF THE PARTIES

13. Heard learned counsel representing the parties at length and, with their able assistance, perused the paper book.

14. Learned counsel representing the Appellants/Defendant Nos.1 to 3 contends as under:

i. At the interim stage, relief of mandatory injunction should not have been granted.

ii. Plaintiff has no right to claim the Ground Floor of the Suit Property.

iii. The toilets and bathrooms of the First Floor have not been properly constructed, hence, Defendant Nos.1 to 3 are forced to use the toilets and bathrooms of the Ground Floor of the Suit Property.

iv. The Plaintiff has adopted the policy of *Divide and Rule*.

15. *Per contra*, learned counsel representing the Respondent No. 1/Plaintiff, while referring to the Collaboration Agreement, submits that if there was a delay in construction, the Plaintiff could be made to pay the penalty as agreed. However, Defendant Nos.1 to 3 had no



right to take over the possession of the Ground Floor and Basement of the Suit Property.

ANALYSIS & FINDINGS

16. This Court has considered the submissions. At the very outset, it is observed that as per the Specific Relief Act, 1963 [hereinafter referred to as 'SRA 1963'], specific performance of only specified contracts is permissible. Section 10 of the SRA 1963, which provides for specific performance of a contract, is an enabling provision. The provision is to be read in conjunction with Sections 11(2), 14, and 16 of the said Act, which provide for situations in which specific performance of a contract may not be invoked or is barred.

17. It is trite law that continuous readiness and willingness on the part of the person seeking the relief of specific performance is a condition precedent for the grant of such relief. The onus to prove continuous readiness and willingness falls upon the person seeking the relief. A distinction can be drawn between readiness and willingness to perform the contract. Both ingredients are necessary to be established for the grant of relief of specific performance.

18. In the facts of the present case, the Contract stipulates that if the construction of the Suit Property is not completed within a period of 24 months from the date of receipt of the sanctioned plan, a penalty Rs. 50,000 per month is to be paid by the Developer, however, the construction timeline is further extendable only for another 18 months beyond the scheduled completion date except force majeure and delay due to no faults of the Plaintiff. Though such a condition of extension



of the completion period exists, the time period within which the construction was to be completed ought to have been reasonable. Thus, the time period cannot be completely ignored.

19. Additionally, it is also not disputed that even after expiry of 24 months or extended period as per the Collaboration Agreement, the construction was not completed. Additionally, Defendant Nos.1 to 3 claim that the quality of construction was found to be very poor, and toilets and bathrooms on the First Floor were still not constructed completely. Thus, the conduct of the Developers clearly lacks the requirement of continuous readiness and willingness to perform the contract.

20. Further, Section 14 of the SRA 1963¹ sets out certain classes of contracts that are not specifically enforceable. Clause (d) of the same provides for one such class of contracts, i.e., contracts, which are in their nature determinable.

21. Reliance in this behalf may be placed to the case of ***Rajasthan Breweries Ltd. v. Stroh Brewery Co.***², wherein this Court has held as follows:

“In view of long catena of decisions and consistent view of the Supreme Court, I hold that in private commercial transaction the parties could terminate a contract even without assigning any reason with a reasonable period of notice in terms of such a clause in the agreement. The submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, therefore, is apparently fallacious and is accordingly, rejected.

¹ Section 14.

² 2000 SCC OnLine Del 481.



Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.”

(Emphasis supplied.)

22. Keeping in view the above discussion, the Collaboration Agreement, being a commercial transaction between the private parties, by its very nature is determinable, even if there is an absence of any termination clause in the Collaboration Agreement.

23. The learned Counsel for the Plaintiff has relied upon the judgment rendered by this Court in ***DLF Home Developers Limited v. Shipra Estate Limited and Ors.***³, whereby the Developer intends to develop the Sale Property. The entire transaction between the parties, as recorded in the Agreement to Sell, is premised on the basis that Developer would use the Sale Property for the development of its real estate project. Insofar as other parties are concerned, one of them can

³ 2021 SCC OnLine Del 4902.



always be compensated in terms of money. Another party, which had mortgaged the Sale Property to secure the repayment obligations of the Borrowers, would stand discharged of its liability on receiving the consideration as provided under the Agreement to Sell. Herein, the parties had agreed that the Sale Property is a ‘special property’ and damages would not be an adequate remedy. The Court found that in these facts, the balance of convenience is in favour of the grant of an interim injunction in favour of the Developer.

24. The next reliance is placed upon the judgment rendered by the Kerala High Court in *T.O. Abraham v. Jose Thomas*⁴, whereby the determinability of a share transfer agreement was decided under the unamended Specific Relief Act. The Court held that for a contract to become determinable, it has to be first shown that its clauses and terms are such that it would become possible for either of the parties to determine and terminate it without any reason. It is to be noted that the term used in Section 14(1)(c) of the unamended Act is ‘inherently determinable’.

25. Therefore, the judgments rendered in *DLF Home Developers Ltd.* (*supra*) and *T.O. Abraham* (*supra*) deal with facts different from the present one and hence, do not apply to the instant dispute between the parties.

26. Hence, the Collaboration Agreement may be specifically enforceable *qua* the Second Floor. However, *prima facie*, neither the Suit for specific performance *qua* the remaining part of the Suit

⁴ 2017 SCC OnLine Ker 19872.



Property is maintainable nor it has been sought by the Plaintiff in this suit. Further, there is such no negative covenant in the Collaboration Agreement to make out a case for an injunction.

27. Additionally, the Defendant Nos. 1 to 3 have already terminated the Collaboration Agreement *vide* its notice dated 24-12-2024. Further, stopping the payment of the penalty amount by the Developer leads to the inherent termination of the Collaboration Agreement. Hence, the remaining relief which may be sought by the Developer is to seek damages, if any.

28. It is to be noted here that where the Collaboration Agreement is terminated, without a challenge to the same, the aggrieved party cannot be held to be entitled to claim interim relief, specifically under Section 10 of the SRA 1963.

29. Additionally, Defendant Nos.4 and 5 have not come to the Court claiming possession. Herein, the Suit is at the preliminary stage. The Defendant Nos.1 to 3 are co-owners of the Suit Property along with the Defendant Nos.4 and 5. Therefore, the Plaintiff cannot be permitted to use the Defendant Nos.4 and 5 to take over the possession of the portion of the Suit Property, to which it has no right.

30. Further, the District Judge has also committed an error in observing that Defendant Nos.1 to 3 have committed a breach of the Collaboration Agreement.

31. It is a trite law that, at the interim stage, the relief of mandatory injunction can only be granted in rare and exceptional cases. Reliance



is placed upon the judgment rendered by the Apex Court in *State of UP & Ors. v. Ram Sukhi Devi*⁵, whereby the final relief sought for in the Writ Petition was granted as an interim measure by the Allahabad High Court, and the same was assailed before the Apex Court. The Apex Court held as reproduced herein:

“8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the government order dated 26-10-1998 was, to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] (SCC at p. 265), State of Rajasthan v. Swaika Properties [(1985) 3 SCC 217] (SCC at p. 224), State of U.P. v. Visheshwar [1995 Supp (3) SCC 590 : 1995 SCC (L&S) 1423 : (1995) 31 ATC 511] , Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa [1995 Supp (2) SCC 593] , Shiv Shankar v. Board of Directors, U.P. SRTC [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018 : (1995) 30 ATC 317] and Commr./Secy. to Govt. Health and Medical Education Deptt. Civil Sectt. v. Dr. Ashok Kumar Kohli [1995 Supp (4) SCC 214] .] No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above, that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow

⁵ (2005) 9 SCC 733.



2025:DHC:8931-DB



compass, we request the High Court to dispose of the matter as early as practicable, preferably within six months from the date of receipt of this judgment.”

(Emphasis supplied.)

32. In this case, the disputed questions of fact are required to be adjudicated after the parties are permitted to lead evidence. In such circumstances, it was not appropriate for the Court to grant the relief of mandatory injunction at the interim stage.

33. The Plaintiff is stated to have filed a separate suit for specific performance of the Collaboration Agreement with respect to the Second Floor of the Suit Property. The Civil Suit CS SCJ 1248/2024 filed by Defendant Nos.1 to 3 is also pending, in which an interim order has been passed.

34. Keeping in view the aforesaid discussion, the present Appeal is allowed. The Impugned Order is hereby set aside, while requesting the Presiding Judge of the Commercial Court to take appropriate steps for expeditious disposal of the Suit.

35. It is needless to state that the observations made in the Impugned Order or by this Court shall not be construed as final expressions on the merits of the case, and the Suit shall be decided independently and uninfluenced by the observations made in the Impugned Order or by this Court.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 09, 2025

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