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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% *Date of decision: 18.11.2025*  
+ FAO 39/2025 & CM APPL. 17589/2025  
JEENAT JAHAN AND ANR .....Appellants

Through: Mr. Sarthak Ahuja and Ms. Sabika  
Ahmad, Advocates.

Versus

SUPERTECH INDIA PRIVATE LIMITED AND ANR.

.....Respondents

Through: Mr. Dharmendra Kumar, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

**JUDGMENT (ORAL)**

**CHANDRASEKHARAN SUDHA, J.**

1. The present appeal under Section 104 read with Order XLIII of the Code of Civil Procedure, 1908 (the CPC) has been filed by the appellants/plaintiffs in CS No. 3363/2024 against order dated 11.02.2025 passed by the learned District Judge – 06, South-East District, Saket Courts, New Delhi, whereby application filed by the appellants/plaintiffs under Order XXXIX Rule 1 & 2 of CPC was dismissed.

2. Briefly stated, in August 2023, the parties entered into an agreement for sale of the suit property i.e. Flat No.153-A, Ground



Floor, Pocket-12, Group-II, Jasola, New Delhi, for a consideration of ₹33,00,000/-. The appellants/plaintiffs paid ₹3,00,000/- by cheque dated 19.08.2023 and undertook conversion expenses, with conversion carried out on 30.04.2004. The appellants/plaintiffs thereafter faced difficulty in procuring a home loan as the property was not freehold, however, they ultimately secured a loan of ₹20,00,000/-. During this period, fearing that the property might be sold to a third party, they moved an application for interim injunction. The respondents then resiled from the agreement, claiming the property's value had increased to ₹42,00,000/- and alleging delay by the appellants/plaintiffs, as also communicated in an e-mail dated 03.08.2024. Meanwhile, the ownership of the property had been transferred to M/s Supertech India Assets Pvt. Ltd. *vide* order dated 10.01.2024 passed by the NCLT, and on 07.10.2024, the new owner entered into an agreement to sell the property with one Ms. Ruby for ₹40,00,000/-, of which 60% had been paid.



3. The trial court had initially granted ad-interim status quo but dismissed the appellants’/plaintiffs’ injunction application on 11.02.2025, leading to the present appeal. On 27.02.2025, this Court heard both sides. The relevant portion of order dated 27.02.2025 reads thus:-

**“FAO 39/2025**

*3. This hearing is being conducted through hybrid mode.*

*4. The appellants are assailing impugned order dated 11.02.2025 passed by the learned District Judge-06 (South-East), Saket Court, Delhi [“trial Court”] whereby the application preferred by the appellants under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”] for maintaining status quo with regard to property bearing Flat No. 153-A, Ground Floor, Pocket-12, Group II, Jasola, New Delhi-110025 [“subject property”], was dismissed.*

*5. Learned counsel for the respondents is present on advance notice.*

*6. Having heard the learned counsels for the parties and on perusal of the record, it is brought out that on 19.08.2023, the parties entered into an Agreement to Sell whereby the subject property was agreed to be bought by the appellants for a total sale consideration of Rs. 33 lacs which had to be paid to the respondent No.1 within 120 days of the execution of the Agreement to Sell.*

*7. It is evident that the appellants applied for conversion of the subject property from leasehold to freehold in October, 2023 and due to their own efforts, the same was converted into*



*freehold sometime in May, 2024. Thereafter, the appellants applied for a home loan and eventually they were sanctioned a home loan facility of Rs. 20 lacs on 31.07.2024.*

*8. In the interregnum, apart from the initial amount of Rs. 3 lacs which was paid at the time of execution of the Agreement to Sell, the appellants had also paid a sum of Rs. 10 lacs to the respondent No.1. The delay in conversion of the subject property from leasehold to freehold is also attributed to the respondent.*

*9. It however appears that upon the failure on the part of the respondents to execute a sale deed in their favour and hand over the possession of the subject property to the appellants, the appellants instituted a suit for specific performance, bearing No. CS DJ No. 3363/2024 before the learned trial Court, wherein the learned trial Court vide order dated 23.10.2024 passed the following order:*

*“Matter is listed for service of defendants. Report on dasti summons received. Same is perused. It is submitted by learned counsel for defendants that vakalatnama on behalf of defendants shall be filed alongwith the pleadings. Be filed accordingly. At this stage, learned counsel for plaintiffs has pressed for grant of ad-interim interim injunction in favour of plaintiffs agents etc. from selling, alienating and/or creating any third party interest in the property bearing Flat No.153-A, Ground Floor, Pocket-12, Group II, Jasola, New Delhi-110025 (hereinafter referred to as suit property). Submissions heard. Record perused. During the course of arguments, learned counsel for defendants submits that defendants have already sold out the suit property to a third party. As requested, defendants are given opportunity to show documents pertaining to selling out of the suit property to the subsequent purchaser with an advance copy to the opposite party against receiving. List for orders during the course of the day.”*

*10. As the matter stands, subsequently, after hearing the parties on the application under Order XXXIX Rules 1 & 2 CPC moved on behalf of the appellants, the impugned order came to be passed by the learned trial Court, thereby dismissing the said*



*application.*

*11. A bare perusal of the impugned order would show that the primary consideration which has weighed in the mind of the learned trial Court is that there has been no clear averment on the part of the appellants to the effect that they have been ready and willing to perform their part of the contract at all relevant times.*

*12. Learned counsel for the appellants has argued that in terms of the amended Section 16(c) of the Specific Relief Act, 1963 [‘SRA’] read with explanation clause (ii), the appellants are yet to prove in the course of trial that they were ready to perform and have always been ready and willing to perform the essential terms of the contract. It is urged that the purport of the newly amended Section 16(c) of SRA has been overlooked by the learned trial Court while passing the impugned order.*

*13. Learned counsel for the appellants has also apprised this Court that the respondents have now entered into another agreement to sell the subject property at a higher value to the detriment of the appellants.*

*14. Learned counsel for the respondents, on the other hand, vehemently urged that, firstly, time was of the essence of the contract, and secondly, while referring to the text messages exchanged between the parties, it was urged that the appellants were not having the financial capacity to make the payment of sale consideration, the respondent No.1 was constrained to sell the subject property for valuable consideration in favour of a third person.*

*15. This Court has no hesitation to hold that the impugned order cannot be sustained in law. At this stage, after some arguments, learned counsel for the respondents has requested that the appellants may be directed to make payment of the balance amount of sale consideration of Rs. 20 lacs in a time bound manner. It is vehemently urged that respondents are suffering losses to the tune of Rs. 4 lacs per month for non-user of the subject property.*



16. *The appellants, who are present in the Court, submit that the subject property is yet to be physically inspected by the lending bank i.e. Hinduja Housing Finance Ltd., and only thereafter, the loan amount would be disbursed in favour of the appellants.*

17. *At this stage, learned counsel for the respondents also submits that if the entire balance amount of sale consideration is paid by the appellants within four weeks, the respondents shall hand over the possession of the subject property to the appellants within 7 days thereafter.*

18. *In view of the above discussion, it is directed that as and when the lending financial institution requires the subject property to be physically inspected, the respondents shall allow the same. The Security Officer at the site in question shall allow the appellants to visit the subject property along with the concerned officials of the lending financial institution for the purpose of inspection. The respondents shall ensure compliance of this order.*

19. *It is further directed that as soon as the subject property is physically inspected and the loan is sanctioned, the appellants shall be at liberty to move an application before this Court for interim relief in the nature of making payment of balance amount of sale consideration and handing over of the possession of the subject property.*

20. *Let an appropriate sanction order/letter with regard to the loan be obtained by the appellants from the financial institution within six weeks from today.*

21. *Let notice of the present appeal be issued.*

22. *Notice is accepted by the learned counsel for the respondents.*

23. *Let a reply be filed within six weeks from today.*

24. *In view of the contradictory stand espoused by the learned*



*counsel for the respondents, there is no cogent material on the record to establish that possession of the subject property stands delivered to a third party. Therefore, in the meanwhile, the respondent No.1 is hereby restrained from creating any third party rights in the subject property by executing any sale deed and also restrained from handing over the possession of the subject property to any third person.*

*25. Re-notify before the Joint Registrar for completion of pleadings on 17.03.2025 and before this Court on 20.05.2025.”*

4. On 20.03.2025 the respondents filed a petition to review the order dated 27.02.2025, which this Court declined to entertain, reiterating on 26.03.2025 that inspection by bank officials must be facilitated and the balance sale consideration be paid thereafter without delay.

5. Today, it is submitted by the learned counsel for the appellants/plaintiffs that they were unable to comply with the earlier orders of this Court as the respondents did not permit the officials concerned of the bank to visit the property, as a result of which the sanctioning of the loan has been delayed.

6. The respondents/defendants are apparently not ready to convey the property to the appellants/plaintiffs. Hence, there is no



point in keeping the appeal pending in this Court.

7. The trial court was not inclined to grant an order under Order XXXIX Rule 1 CPC on the ground that there are no sufficient pleadings relating to readiness and willingness in the plaint. All these aspects needs to be decided after evidence is adduced and the trial is conducted. Till the matter is finally decided by the trial court, the subject matter of the suit needs to be preserved.

8. Hence, the impugned order is set aside and it is directed that the respondents/defendants shall not create any third-party interest in the property until the disposal of the suit.

9. The appeal is disposed of in the above terms. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**NOVEMBER 18, 2025**  
*mj/RN*