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

% Date of Decision: 03.09.2026

CNR No. DLHC010273672023

\+ **FAO 175/2023 & CM APPL. 36494/2023**

SUSHIL KUMAR .....Appellant

Through: Mr. Akshay Makhija, Senior Advocate with Mr. Faisal M. Khan, Mr. Shekhar Dasi, Mr. Ayush Dassi, Mr. Mohd. Talna, and Mr. Divyansh Malhotra, Advocates

versus

SHIVANI TYAGI .....Respondent

Through: Mr. Rakesh Malviya, Mr. Prithvi Paul Chathrath, Mr. Manish Choudhary, Mr. Jasdev Singh, and Ms. Jaanvi Suri, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been preferred against the order dated 09.06.2023 passed by the learned ADJ-03, South District, *Saket* Courts, in CS DJ No. 215/2023, whereby the appellant/plaintiff's application under Order XXXIX Rules 1 and 2 CPC was dismissed.

2. The appellant/plaintiff filed the underlying suit for specific performance of contract/agreement to sell, possession, and permanent

injunction against the respondent/defendant regarding agricultural land measuring 3 *Bighas* 10 *Biswas* falling in *Khasra* No. 1516 (min.) situated in the revenue estate of *Village Bhati, Tehsil Saket, New Delhi* (hereinafter the “suit property”). The case of the appellant is that the respondent entered into an Advance Receipt cum Agreement to Sell and Purchase dated 03.01.2022 (hereinafter the “ATS”) for a total sale consideration of Rs.1,56,29,771/-, against which earnest money of Rs.16,00,000/- was paid by the appellant *vide* cheque no. 000062 dated 27.12.2021. Along with the plaint, the appellant filed the subject application under Order XXXIX Rules 1 and 2 CPC seeking an interim injunction restraining the respondent from alienating, transferring, or creating third-party rights in the suit property during the pendency of the underlying suit.

3. The case of the respondent/defendant is that the ATS stipulated a strict stage-wise schedule of payments, whereby 10% was to be paid at the time of execution, 20% on or before 20.01.2022, and the remaining balance amount on or before 31.03.2022. The respondent contended that time was of the essence of the contract and the appellant failed to adhere to the agreed schedule by defaulting on the 20% instalment due in January 2022 as well as the balance consideration due at the end of March 2022. Consequently, the respondent terminated the agreement and forfeited the earnest money *vide* notice dated 01.10.2022. Further, the appellant failed to establish his readiness and willingness to perform the contract, as no

bank statements or financial documents were placed on record with the plaint to show availability of funds or capacity to pay the substantial balance consideration of about 1.4 crore rupees.

4. The Trial Court dismissed the subject application *vide* the impugned order, holding that the appellant had failed to demonstrate a *prima facie* case and that the balance of convenience did not lie in his favor. The Trial Court observed that the appellant had only paid approximately 10% of the sale consideration and had produced nothing on record to establish his capacity or readiness and willingness to pay the remaining balance amount of Rs.1,40,29,771/- on or before 31.03.2022 as per the terms of the ATS.

5. Learned Senior Counsel appearing for the appellant, while assailing the impugned order, contends that the appellant has always been ready and willing to complete the transaction, and in this regard places strong reliance upon the affidavit of one Mr. *Rajkumar Kasana* annexed to the appeal paperbook to demonstrate the availability of funds to pay the balance sale consideration.

6. Learned counsel for the respondent, while supporting the impugned order, reiterated that the appellant paid a mere 10% token amount and sat idle for about a year after the expiry of the contractual cut-off date of 31.03.2022 before issuing the first legal notice in February 2023. He submits that the appellant possessed neither the financial capacity nor the *bona fide* intent to complete the transaction, and the belated introduction

of a third-party financier's affidavit in the appellate proceedings cannot cure the absence of readiness and willingness on the part of the appellant himself.

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) balance of convenience; and iii) irreparable injury (Ref: *Gujarat Bottling Co. Ltd. Vs. Coca Cola Co.*[1]).

9. In the present case, the appellant has paid only Rs.16,00,000/- against the total agreed sale consideration of Rs.1,56,29,771/-. This amount constitutes approximately 10% of the total sale price. In *Vibhor Kumar Gupta & Ors. Vs. Anupama Kapoor & Ors.*[2], 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*

[1] (1995) 5 SCC 545
[2] CS(OS) 13/2020, decided on 19.04.2022

> <u>*the suit property has not been handed over to the plaintiffs.*</u> *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.*
>
> *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.* <u>*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.*</u> *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.*"

(emphasis supplied)

10. Adverting to the facts of the present case, the ATS expressly stipulated a stage-wise payment schedule requiring 20% to be paid on or before 20.01.2022 and the balance consideration to be paid on or before 31.03.2022. The appellant failed to place any bank document, statement of account, or financial record before the Trial Court to demonstrate that he possessed the necessary financial capacity to pay the substantial balance amount of Rs.1,40,29,771/- during the relevant period. Mere bald averments in the plaint regarding readiness and willingness, without any documentary substantiation, cannot suffice to establish a *prima facie* case for the grant of discretionary equitable relief.

11. To cure this defect, the appellant has, for the first time in the present appeal, produced an affidavit of a third party, one Mr. *Rajkumar Kasana*, along with certain bank statements, contending that the said

person had agreed to purchase/finance the purchase of the suit property. In the opinion of this Court, this belated submission does not aid the appellant. On the contrary, the introduction of an external financier at the appellate stage only reinforces the conclusion that the appellant himself lacked the requisite funds to discharge his contractual obligations within the stipulated period.

12. Furthermore, any alienation or third-party interest created during the pendency of the underlying proceedings is subject to the doctrine of *lis pendens* enshrined under Section 52 of the Transfer of Property Act, 1882. As observed hereinabove, the payment of a nominal 10% advance without demonstrable readiness and capacity to pay the remaining 90% consideration does not justify tying the hands of the owner of the property by granting an interim injunction. Consequently, the appellant has failed to establish a *prima facie* case, the balance of convenience does not lie in his favor, and no irreparable injury can be said to have been caused.

13. Accordingly, this Court finds no infirmity, illegality, or perversity in the impugned order. The present appeal, being devoid of merit, is dismissed.

14. At this stage, learned Senior Counsel prays that the respondent/defendant may disclose to the appellant/plaintiff the transfer of the suit property to a third party as and when it takes place. Ordered accordingly.

15. The present appeal, along with the pending applications, is

disposed of in the above terms.

16. Needless to state that any observations made hereinabove are only for the purpose of deciding the present appeal and shall not be construed as an expression on the merits of the matter, and the Trial Court shall proceed with the matter uninfluenced by the same.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 03, 2026
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corrected and released on 14.09.2026