



2026:DHC:3788



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

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Date of Decision: 25.04.2026

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FAO 44/2025 & CM APPL.11815/2025

NATESH MALHOTRA

.....Appellant

Through: Mr. Ashish Mohan, Senior Advocate
Mr. Sumit Rajput and Mr. Auritro
Mukherjee, Advocates

versus

RAMESH KUMAR SETHI

.....Respondent

Through: Mr. Akash Nagar, Mr. Sundar Bansal,
Mr. Mayank Jha, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****ORDER****25.04.2026**

[The matter has been taken up today as 03.03.2026 was declared holiday and 25.04.2026 being declared as Court sitting day.]

1. The present appeal has been preferred by the appellant, who was the plaintiff before the Trial Court, being aggrieved with the order dated 31.01.2025 in CS DJ No. 152/2024, whereby the application under Order XXXIX Rule 1 & 2 CPC filed by the appellant was dismissed.
2. The facts in a nutshell are that the plaintiff had preferred the underlying suit for specific performance and permanent injunction, or in alternative, recovery of Rs.91,10,000/-. In the suit, it was stated that the plaintiff was inducted as a tenant on the first floor of the property, comprising of ground and first floor of the property bearing no. B-20,



admeasuring 160 sq. yards, *Jungpura* Extension, *New Delhi*-110014 (hereinafter referred to as ‘the suit property’) in the year 2016. The respondent, being the defendant before the Trial Court, was the landlord and owner, residing at the ground floor of the suit property. On 27.12.2022, the plaintiff entered into an Agreement to Sell with the defendant in respect of the first floor of the suit property, with the sale deed to be executed within five years. Thereafter, the defendant has obtained a clear title of the property as his brother executed a relinquishment deed thereby relinquishing 1/3rd share in the freehold property in favour of the defendant.

3. It is further averred that at that stage, the defendant also expressed his interest to sell the ground floor, and a meeting between the plaintiff and the defendant was held on 10.09.2023, pursuant to which a fresh agreement to sell came to be executed between the parties on 12.09.2023 with respect to both the ground and first floor of the suit property. At the request of the defendant, the sale consideration was fixed at Rs.1,65,00,000/- in accordance with the circle rate. The plaintiff further claims to have paid a total of Rs.45,55,000/- through RTGS/IMTS transactions in the following manner:

- (i) Rs.10,00,000/- (Ten Lakh) via RTGS No.R/INDBR32023090700645369 dated 07/09/2023;
- (ii) Rs.10,00,000/- (Ten Lakh) Via RTGS No.R/INDBR32023090700645192 dated 07/09/2023;
- (iii) Rs.3,90,000/- (Three Lakh Ninety Thousand) via RTGS no.R/INDBR32022040500559248 dated 05/04/2022;
- (iv) Rs.4,65,000/- (Four Lakh Sixty Five thousand) via RTGS no.R/INDBR32022041200706811 dated 12/04/2022;
- (v) Rs.9,00,000/- (Nine Lakh) via RTGS no.INDBR2202109160080461 dated 16/09/2021;



2026:DHC:3788



- (vi) Rs.2,00,000/- (Two Lakh) via IMPS/P2A/125708105412 dated 14/09/2021;
- (vii) Rs.5,00,000/- (Five Lakh) via RTGS no. R.INDBR32022033000430198 dated 30/03/2022;
- (viii) Rs. 1,00,000/- (One Lakh) via IMPS/P2A/215313333633 dated 02/06/2022.

4. It is further the case of the plaintiff that on 14.11.2023, the plaintiff offered to pay a sum of Rs.63,35,000/- i.e., the remaining consideration, through Demand Draft, the same was refused by the defendant.

5. In this backdrop, the underling suit came to be instituted. On being served, the defendant appeared and contested the suit. While admitting the first Agreement to Sell dated 27.12.2022, the defendant claimed that the plaintiff had deliberately concealed the sale consideration of Rs.2,26,00,000/- with respect to the first floor of the suit property. It was further claimed that the said concealment was made only to seek specific performance with respect to second alleged Agreement to Sell, which, according to the defendant, was forged and fabricated. A criminal complaint is also stated to be lodged against the said act of forgery, and the defendant has categorically denied having executed the second Agreement to Sell. The defendant further questioned the plausibility of the plaintiff's case by claiming that if the first floor alone was agreed to be sold at sale consideration of Rs.2,26,00,000/-, it is inconceivable that both the ground and the first floor would be agreed to be sold together, at a much lesser rate i.e., only at Rs.1,65,00,000/-.

6. Before this Court, Mr. Mohan, learned Senior Counsel, who appears for the appellant/plaintiff, contended that the sale consideration of Rs.1,65,00,000/- mentioned in the second Agreement to Sell was fixed at the



behest of the defendant, who had requested the same in line with the circle rate. It is next contended that the defendant has further failed to explain the receipt of Rs.45,55,000/- paid by the plaintiff.

7. Learned counsel for the defendant, on the other hand, submitted that the counter-claim filed by the defendant was allowed under Order XII Rule 6 CPC, against which the plaintiff has preferred an RFA, which is pending consideration before this Court. It is stated that the possession of the first floor by the plaintiff already stands protected in the said proceedings.

8. Before proceeding further, a gainful reference may be made to the decision of the Supreme Court in Gujarat Bottling Co. Ltd. vs. Coca Cola Co.¹, wherein it was observed that in an application seeking the grant of an interim injunction, the applicants are required to satisfy the Court *qua* the triple test:-

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and remain uncertain till they are established at the trial on evidence.”

9. Further, it is well settled that while exercising appellate jurisdiction against an interlocutory order granting or refusing an injunction, the Appellate Court ought to be slow in interfering with the discretion exercised

¹ (1995) 5 SCC 545



by the Trial Court. Interference is warranted only where such discretion is shown to have been exercised arbitrarily, capriciously, perversely, or in disregard of settled principles of law. [Reference: Wander Ltd. v. Antox India (P) Ltd.²; Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan³].

10. The grant of a temporary injunction is governed by the well-settled triad of principles, namely, the existence of a *prima facie* case, the balance of convenience being in favour of the applicant, and the likelihood of irreparable injury in the event relief is denied. These principles must co-exist and are to be assessed on a cumulative basis. [Reference: Dalpat Kumar v. Prahlad Singh⁴].

11. Tested on the anvil of the aforesaid principles, it is evident that the appellant has failed to establish a *prima facie* case. A perusal of the impugned order would show that, the Trial Court observed that in the plaint there has been a definite concealment of the sale consideration that was agreed in first Agreement to Sell dated 27.12.2022. From the pleadings, it is apparent that, the plaintiff, being a tenant in the first floor, had not been paying rent from October 2023 onwards, for which a legal notice dated 16.12.2023 was also issued by the defendant calling upon him to pay arrears as well as to vacate the property.

12. The plaintiff has tried to explain execution of the second Agreement to Sell by only saying that it was the defendant's wish to bring the sale consideration at par with the circle rate. The Trial Court has expressed serious doubt regarding the genuineness of the said agreement, particularly in view of the fact that the first Agreement to Sell dated 27.12.2022 in

² (1990) Supp SCC 727

³ (2013) 9 SCC 221



respect of the first floor alone recorded a much higher sale consideration of Rs. 2,26,00,000/- , whereas, the second Agreement to Sell which includes the ground as well as the first floor records a sale amount of Rs.1,65,00,000/-. However, the second Agreement to Sell makes no mention of the first Agreement to Sell. It is further noted that most of the amounts that are claimed to be paid by the plaintiff were made prior to execution of the first Agreement to Sell. Only a sum of Rs.20,00,000/- appears to have been paid after the first Agreement to Sell, but prior to the second Agreement to Sell. This Court also takes note of the observations of the Trial Court that the plaintiff is guilty of *suppressio veri* and *suggestio falsi* for not disclosing the sale consideration of the first Agreement to Sell. Had that been disclosed, the Trial Court would not have passed the initial order of *ex-parte* ad-interim injunction. In such circumstances, the balance of convenience does not lie in favour of the plaintiff, nor is any irreparable injury demonstrated.

13. Accordingly, this Court concurs with the finding *prima facie* recorded by the Trial Court in dismissing the application.

14. The appeal is dismissed. Pending application shall also stand closed.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 25, 2026/pmc

⁴ (1992) 1 SCC 719