

**(2007) 03 DEL CK 0055**  
**In the Delhi High Court**  
**Case No : FAO 100 of 2007**

Smt. Renu Bala Joshi and Shri Panchanan Joshi APPELLANT  
Vs  
Shri Sukhdev Singh Sandhu RESPONDENT

**Date of Decision :** 19-03-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Specific Relief Act, 1963 — Section 5

**Citation :** (2007) 03 DEL CK 0055

**Hon'ble Judges :** J.M. Malik, J

**Bench :** Single Bench

**Advocate :** J.C. Mahindro, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

J.M. Malik, J.—In this appeal, appellants have picked up a conflict with the ad interim injunction granted under Order 39 Rules 1 and 2

CPC against them and in favor of the respondent. Adumbrated in brief, the facts of this case are these. Both the appellants are the owners of DDA

LIG flat No. 57-B, Lawrence Road, Delhi. Appellants agreed to sell the said flat in favor of the respondent for a consideration of Rs. 8,50,000/-

in presence of Smt. Asha Gupta and wife of the respondent on 20.4.2005. Respondent paid a sum of Rs. 10,000/- to Shri Panchanan Joshi,

appellant No. 2, vide receipt executed on the same day. It was also stipulated in the receipt that the respondent would pay Rs. 1,00,000/- within

one month and remaining amount of Rs. 7,40,000/- would be paid within three months, on the condition that appellants would get the property

freehold within the above said leeway of three months from the DDA. Thereafter the respondent paid Rs. 1,00,000/- as part payment on

15.5.2005 to Shri Panchanan Joshi, appellant No. 2 in presence of his wife Smt. Renu Bala Joshi, appellant No. 1 and Smt. Asha Gupta. There

was delay in getting the suit property freehold and Shri Panchanan Joshi, on request of the respondent executed an agreement on 20.9.2005. The

said agreement was got attested from a notary public. The respondent purchased the non-judicial stamp paper, as per appellants' request for the

purpose of execution of the sale deed. On 31.10.2005, the respondent requested the appellants to give the requisite documents of the flat.

However, the appellants refused to part with the original documents to the respondent with ulterior motive, to force the respondent to withdraw

from the sale transaction as they were offered better amount by others. The respondent sent legal notice dated 19.11.2005 but it fell on deaf ears.

Ultimately, the respondent filed the instant suit u/s 5 of Specific Relief Act 1963.

2. In their written statement, the appellants listed the following defenses. The suit was not properly valued for the purpose of court fees and

jurisdiction. Agreement to sell is insufficiently stamped. It was not possible to make the suit property freehold within three months and as such

appellant Shri Panchanan Joshi had asked the respondent to take back the amount and also extended the period himself. Thereafter, the flat was

got converted into freehold but the respondent declined to pay the balance amount. Consequently, the deal was got cancelled. The respondent was

asked to collect the amount paid by him in the sum of Rs. 1,10,000/- within one week i.e. by 12.12.2005 but he refused to collect the amount.

Consequently, Shri Panchanan Joshi sent a cheque for Rs. 1,15,000/- to the respondent as refund of earnest money.

3. I have heard counsel for the parties. Learned Counsel for the appellants pointed out that it was not possible for him to part with the documents

related to the flat till the sale deed was registered. He argued that as a matter of fact, the respondent wanted to secure money from the bank by

mortgaging the original title deeds with the bank. Second submission made by him was that the appellant is a very honest and upright person and

that is why he had sent the cheque himself. He explained that this proves bonafide on the part of the appellant. In support of his case, he has cited

two authorities reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Ashok Aggarwal v.

Bhagwan Das Arora 88 (2000) DLT 606. The facts of the first authority are altogether different. In the second authority, it was stipulated in the

agreement that if the Sale Deed was not executed within the period of four months of its execution, the plaintiff could have claimed double the

earnest money, if the default in completing sale transaction was on the part of the defendant.

4. In the instant case, there is no such stipulation. On the contrary, the relevant stipulations are reproduced as hereunder:

3. That the first party hereby assures the second party that the said Property under sale is free from all sorts of encumbrances such as Sale,

Mortgage, Gift, Lien Decree etc. etc., and there is no legal defect in the title of First Party, if it is proved, then the second party is fully entitled to

recover all losses/damages suffered in this connection from the first party or his/her/their legal heirs can get it enforced through court of law by

specific performance of suit at the risk and cost of the first party.

7. That in case the first party fails to complete his/her/their part of contract within the above said period, then the second party shall have full right

to get completed the above said transaction in his/her/their favor or his/her/their, nominee through court of law under Specific Performance Suit at

the costs and risks of the first party...or/... he/she/they will recover the double amount of his/her/their earnest money.

8. That if the second party fails to pay the balance payable within the above said period, then his/her/their earnest money/biana shall be forfeited

and this agreement shall stand cancelled.

5. There lies no legal impediment for the respondent to file a suit for specific performance as was agreed by both the parties. The plaintiff had a

choice. The facts are eloquent and speak for themselves. A prima facie case stands established. This case is clearly distinguishable from the above

said authority reported in Ashok Aggarwal v. Bhagwan Das Arora (supra). In that case, the plaintiff had no other option but to sue for double

amount. There was no agreement between the parties that he could also sue for specific performance.

6. Para 6 of the agreement runs as follows:

6. That the first party will deliver the all previous documents relating to the above said property to the second party, at the time of execution of final

sale documents.

Prima facie, it appears that appellants themselves had asked the respondent to purchase the non-judicial stamp paper. It must have entailed a huge

money. Even if the respondent asked the appellants to hand over the title papers to him, it does not go to prove mala fides on the part of the

respondent. Appellants could have refused to part with the title deeds unless there was actual execution of final sale documents.

7. The fact that the appellants themselves sent back the earnest back through cheque and did not respond to the legal notice dated 19.11.2005

smacks of the mala fide intention on their part and the fact that despite receipt of cheque, the appellants did not present it for encashment as stated

in the replication, clearly reveals bona fide intention on their part.

8. In view of this discussion, ponderable questions have cropped up. It is too early to speak by piece. The respondent has established a prima

facie case in his favor. The balance of convenience is in his favor. He is likely to suffer irreparable loss if the stay is not granted in his favor.

9. The appeal has no merit and the same is, Therefore, dismissed at the point of its admission.

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In view of the dismissal of the appeal, no further orders are required to be passed in the application. Dismissed.