

(1995) 12 CAL CK 0025
In the Calcutta High Court
Case No : Suit No. 1 of 1995

Sohanlal Dugar

APPELLANT

Vs

Dwarka Nath Jha, Chairman and others

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : AIR 1996 Cal 279

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Judgement

1. This is an application of the plaintiff for appointment of receiver over premises Nos. 42A, 42B and 41/1, at Jawa-harlal Nehru Road, Calcutta (hereafter referred to as the "said property"), injunction restraining the defendants from selling, making any construction on or parting with possession of the said property, injunction restraining the defendants from registering any convenience relating to said property, obtaining any sanction for construction thereon and for an order of maintenance of status quo regarding the said property. This application has been made in a suit for specific performance of an agreement dated 28th December, 1991 for sale of the said property and for recovery of damages in addition to specific performance of the agreement for sale dated 28th December, 1991.

2. Before going into the merits of the case and respective submissions of the parties, I would like to state the undisputed facts relating to the property in question. The property in question originally belonged to Maharaja Dhiraj Shri Kameshwara Singh Bahadur, who died leaving a Will, which will has since been probated by this Court. By that Will the Late Maharaja vested the entire residue of his estate in a Board of Trustees for the benefit of the persons named in the Will and ultimately 1/3rd thereof on the demise of his two wives for public charitable purposes. It appears that after the demise of the Late Maharaja, various suits and proceedings were initiated in various Courts for obtaining

control of the estate of the Late Maharaja. All such litigations came to an end by filing a compromise petition and a memorandum of correction before the Supreme Court of India on 15th October, 1987. The said compromise provided that for the purpose of meeting the tax liabilities of the estate the trustees of the residuary estate of the Late Maharaja will sell the said property. In the mean time, the name of one Ram Prasad Mahato, being the defendant No. 5 in this suit, who has not appeared before me, was mutated in the records of the Calcutta Municipal Corporation in relation to the said property. To set aside the said mutation the trustees instituted suit No. 156 of 1989 wherein an interlocutory application being made a receiver was appointed for the purpose of collection of rents, issues and profits of the said property. The trustees referred an appeal against the said order which was registered as Appeal No. 262 of 1990. The Division Bench of this Court dealing with the said appeal by a judgment and order dated 15th June, 1992 concluded that Ram Prasad Mahato has failed to show prima facie title to the said property and the document dated 13th May, 1946 purporting to be the deed of gift on which reliance was placed by Ram Prasad Mahato appears to be a fabricated document on the fact of it and therefore, allowed the appeal. The Division Bench, however, observed "we, however, make it clear that sale of the disputed property will be subject to confirmation by the Court". On 21st January, 1993 the trustees applied in Appeal No. 262 of 1980 for confirmation of sale of the said premises at a price of Rs. 10.40 crores in favour of defendant Nos. 6 to 19. With the application an agreement dated 18th January, 1993 entered between the trustees and the defendant Nos. 6 to 19 for sale of the said premises was annexed. When the said application was pending one Raman Bhai Shah and one S. N. Dutta & Co. appeared before the Division Bench and proposed to purchase the said premises. The Appeal Court directed Raman Bhai Shah and S. N. Dutta & Co. to make certain deposits, while Raman Bhai Shah failed to make any such deposit. S. N. Dutta & Co. after obtaining extension of time made a deposit as was directed. Thereafter, S. N. Dutta & Co. applied for confirmation of sale of the said premises in favour of Star Industrial Development Co. Pvt. Ltd. However, on 8th April, 1993 when the matters were taken up for consideration by the Division Bench, S. N. Dutta & Co. submitted that they are not interested to proceed further in the matter and as such the Division Bench tentatively approved the sale of the said property by the trustees in favour of the defendant Nos. 6 ,to 19 and the money deposited by S. N. Dutta & Co. was directed to be refunded to them. S. N. Dutta & Co. thereupon applied for recalling of the order dated 8th April, 1993 and for confirmation of sale of the said property in favour of Star Industrial Development Co. Pvt. Ltd. One Atiur Rahaman also made an application for being added to the said disposed of appeal. S. N. Dutta & Co. thereafter, made a fresh application for filing Vakalatnama through a different Advocate and for withdrawal of the application made for recalling of the order dated 8th April, 1993. In that application it was contended by S. N. Dutta & Co. that the arrangement made by them with Star Industrial Development Co. Pvt. Ltd. has been cancelled or determined. The Division Bench thereupon consider all the said applications and

by its order dated 11th June, 1993 rejected the application of Atiur Rahaman for being added as a party to the disposed of appeal, permitted S. N. Dutta & Co. to withdraw its application for recalling of the order dated 8th April, 1993 and refused to go into the internal disputes between S. N. Dutta & Co., and Star Industrial Development Co. Pvt. Ltd. The Division Bench thereupon by the said order dated 11th June, 1993 itself allowed the application of the trustees made for confirmation of sale of the said property in favour of the defendant Nos. 6 to 19 on various terms and conditions contained in the said order itself. Subsequently thereto by an order dated 9th April, 1993 passed by consent of the parties the Division Bench modified to some extent its earlier order dated 11th June, 1993. Star Industrial Development Co. Pvt. Ltd. filed a SLP before the Supreme Court against the order dated 11th June, 1993 wherein Kailash Chandra Srivastava, being defendant No. 4 in this suit, made an application dated 23rd November, 1993 for leave to intervene. The Supreme Court on 26th November, 1993 dismissed the SLP of Star Industrial Development Co. Pvt. Ltd. and also rejected the application of Srivastava for leave to intervene in the said special leave petition. In the mean time on 20th September, 1993 Sohanlal Dugar, the plaintiff in this suit, filed a writ petition in the Allahabad High Court for a writ of mandamus against the Land Ceiling Authority, Allahabad, not to grant permission for sale of the said property in favour of defendant No. 6 and to grant permission for sale of the said property in favour of Sohanlal Dugar. On 12th December, 1993 Kailash Chandra Srivastava, being defendant No. 4 in this suit, also filed a writ petition in the Allahabad High Court for a writ of mandamus directing the Land Ceiling Authority, Allahabad, not to grant permission for sale of the said property to the defendant No. 6 and to grant permission for sale of the said property in favour of the plaintiff. In October, 1993 both the said writ petitions were dismissed by the Allahabad High Court, Sohanlal Dugar thereupon filed a SLP against the order of dismissal passed by the Allahabad High Court. The Supreme Court dismissed the said SLP by an order dated 18th February, 1994. Thereafter, on 25th April, 1994 Kailash Chandra Srivastava applied in appeal No. 262 of 1990 for recalling of the order dated 11th June, 1993 when the Division Bench of this Court dismissed the said application. On 28th July, 1994 Sohanlal Dugar, the plaintiff above named, applied in Appeal No. 262 of 1990 for recalling of the order dated 11th June, 1993 which application is still pending and has not been disposed of. On 15th September, 1994 Kailash Chandra Srivastava filed an application for review of the order dated 25th April, 1994 which was dismissed with liberty to make a fresh duplication. On 2nd January, 1995, the instant suit was filed. On the same day i.e. 2nd January, 1995 Kailash Chandra Srivastava filed another application for review of the said order dated 25th April, 1995. The said application too was dismissed. Kailash Chandra Srivastava filed a SLP against the order of dismissal which was dismissed by the Supreme Court by an order dated 20th November, 1995.

3. The material averments in the plaint relating to claim of the plaintiff, Sohanlal Dugar, for specific performance of the agreement for sale dated 28th December,

1991 are as follows:--

(Para-3) "At all material times, the defendant No. 4, Kailash Chandra Srivastava, Advocate, has been acting as the Standing Counsel for the Trustees of the Residuary Estate of Late Maharaja Diraj Sir Kamesh-war Singh of Darbhanga Raj Estate. The defendant No. 4 has been authorised and/or empowered to do all things and deeds for and on behalf of the Trustees of the Residuary Estate by virtue of holding power of Attorney."

(Para-10) "The plaintiff states that the plaintiff was approached by the defendant No. 4 Kailash Chandra Srivastava, standing counsel of the Residuary Trust Estate of Late Maharaja Dhiraj Sir Kameshwar Singh of Darbhanga and enquired as to whether the plaintiff was agreeable to purchase the aforesaid premises. Such intimation and/or approach was made in or about December, 1991 by the defendant No. 4 at the plaintiffs said place of business at P-12, New Howrah Bridge Approach Road, Baiju Chowk, Calcutta, within the jurisdiction aforesaid".

(Para-11) "Immediately thereafter, the plaintiff wrote a letter dated the 27th December, 1991 from its place of business at Calcutta within the jurisdiction aforesaid addressed to the Trustees of the Residuary Estate of Late Maharaja Dhiraj Sir Kameshwar Singh of Darbhanga outside the jurisdiction aforesaid making an offer to purchase the said three properties being premises Nos. 42A, 42B and 42/1, Jawaharlal Nehru Road, Calcutta, at a price of Rs. 11.05 crores (Rupees eleven crores five lakhs only) on "as is where is" basis. Along with the said offer the plaintiff enclosed a cheque bearing No. 083149 dated the 27th December, 1991 drawn on Bank of Rajasthan Ltd. for a sum of Rs. 1,00,00,000/- (Rupees one crore) only. By the said offer the plaintiff proposed to pay the balance amount in the following manner:--

- a) Rs. 6 crores at the time of entering into the agreement;
- b) The balance amount within 6 months at the time of execution of the said deed.

A copy of the said letter/offer of the plaintiff dated 27th December, 1991 is annexed hereto and marked with the letter "A", and the same may be treated as a part of the plaint".

(Para-12) The plaintiff states that the said letter was duly received on 28th December, 1991 by the defendant No. 4, Kailash Chandra Srivastava, Advocate for himself and on behalf of the Trustees of the Residuary Estate of Late Maharaja Dhiraj Sir Kameshwar Singh of Darbhanga, on the basis of his authority and power of Attorney that the defendant No. 4 has been then holding.

(Para-13) "The plaintiff states that the said offer along with the cheque amounting to Rs 1 crore was duly accepted by the defendant No. 4 for and on behalf of himself as well as the defendant Nos. 1, 2 and 3, i.e., Trustees of the Residuary Estate of Late Maharaja Dhiraj Sir Kameshwar Singh of Darbhanga. The said acceptance, however, specifically provided that Rs. 6 crores would be given at the time of entering into agreement after obtaining the order from the

Hon"ble Court. The said facts have been duly recorded by the said defendant No. 4 in his own hand in the original letter kept with the defendant No. 4 and in the copy letter handed over to the plaintiff.

(Para-14) "The plaintiff states that by reason of the aforesaid fact, and unequivocal and unambiguous acceptance of the plaintiffs offer by the defendant No. 4 on behalf of the Trustees of the Residuary Estate of late Sir Kameshwar Singh of Darbhanga being the defendant Nos. 1, 2 and 3, a binding and conclusive agreement dated 28th December 1991 was entered into between the plaintiff and the defendant Nos. 1, 2, 3 and 4 relating to the said three Calcutta properties."

(Para-15) "The plaintiff states that the said agreement which is entered into by course of conduct and dealing amongst the parties by correspondence or otherwise contains, inter alia, the following terms and conditions:--

a) The properties sold being premises Nos. 42A, 42B and 42/1, Jawaharlal Nehru Road, (formerly, Chowringhee Road), Calcutta.

b) The. said properties contain an area of about 93 cottahs of land including the buildings and structures standing thereon.

c) The purchase price was Rs. 11.05 crores.

d) The sale is on "as is where is" basis.

e) An earnest money of Rs. 1 crore sent through cheque No. 083149 dated the 27th December, 1991 through the Bank of Raja-sthan Ltd.

f) The sum of Rs. 6 crores shall be paid by the plaintiff at the time of entering into an agreement and the balance will be paid within six months at the time of execution of the sate deed.

g) The same, however, is subject to obtaining an order from the Hon"ble Court."

(Para-20) "The plaintiff states that after hearing of the parties by the judgment and order dated the 11 th June, 1993, the Hon"ble Appeal Court was pleased to confirm the sale of the said premises being premises Nos. 42A, 42B and 42/1, Jawaharlal Nehru Road, Calcutta, in favour of the defendant No. 6 Maxgrow Merchandise Pvt. Ltd. and 13 others being the defendant Nos. 7 to 19 for an aggregate consideration of Rs. 10,40,00,000. At the time of confirmation of the said sale, the defendant Nos. I, 2, 3 and 4 wrongfully and illegally did not place the highest offer given by the plaintiff towards purchase of the said three properties. The Hon"ble Appeal Court did not have any occasion to consider the plaintiff's highest offer and as such the purported confirmation of sale of the said three properties in favour of the defendant Nos. 6 to 19 is illegal and invalid."

4. In addition thereto it was contended in the plaint that as requested by the defendant No. 4 by his letter dated 20th January, 1994, the plaintiff under cover of a letter dated 25th January, 1994 furnished to the defendant No. 4 a cheque

for Rs. 1 crore and a cheque for Rs. 11.05 crores which were again requested to be replaced by the defendant No. 4 by a letter dated 16th June, 1994 which was done by the plaintiff on 22nd June, 1994. It was also contended that the defendant Nos. 6 to 19 upon making some payments neglected to make payment of the entire purchase price and at the same time did not apply for extension of time to make such payment. It was then contended that the defendant Nos. 1, 2 and 3 (the trustees) and the defendant No. 4 (Kailash Chandra Srivastava) have failed and neglected to execute the conveyance and to register the same in favour of the plaintiff or his nominees inspite of request; made verbally and in writing and in support thereof relied on a letter dated 23rd December, 1994.

5. The present application was filed on or about 2nd May, 1995 wherein the plaintiff, in addition to relying on the averments made in the plaint and the copy documents annexed thereto, relied on certain orders and letters with an object of showing that the defendant Nos. 6 to 19 have failed to make payment in time.

6. The present application is being contested by the defendant Nos. 1, 2 and 3, who are the trustees, and the defendant Nos. 6 to 19 who have purchased the property in question and are claiming to be in possession thereof by virtue of the said order of the Division Bench of this Court dated 11th June, 1993. The application is being supported, however, by Kailash Chandra Srivastava, the defendant No. 4 in the suit. The contesting parties as well as the supporting party have filed affidavits and supplementary affidavits. The plaintiff too has filed reply affidavits as well as supplementary affidavits.

7. It is the case of the trustees, the defendant Nos. 1, 2 and 3, that Kailash Chandra Srivastava, the defendant No. 4 was never granted any power of attorney by any of the trustees, nor he was at all authorised in any manner whatsoever by or on behalf of the trustees to accept any offer for sale of the said property. The defendant Nos. 6 to 19 have contended principally that the said defendants are bona fide purchasers without notice and it is not the case of the plaintiff that the said defendants were ever put to notice in regard to the alleged agreement for sale entered between the trustees and the plaintiff. Therefore, it was the contention of the defendant Nos. 6 to 19 that the sale in their favour should not be affected in any manner whatsoever at the instance of the plaintiff. They, further, contended that unless sale in their favour is set aside, there is no question of affecting their interest to the property in question either by the plaintiff or by any one else. They further contended that there is no prayer in the plaint for setting aside of such sale and in any event such setting aside can be made only if the order of the Division Bench dated 11th June, 1993 as modified by the order dated 9th July, 1993 is either set aside or modified or altered and a single Judge of this Court cannot do so and in any event no such prayer has been made in the plaint. Kailash Chandra Srivastava, the defendant No. 4, has contended in his affidavit, which was filed after the affidavits-in-opposition were filed by the defendant Nos. 1, 2 and 3 and 6 to 19 and replies thereto had been

filed by the plaintiff, that he was authorised to receive offers for sale of the said property and in pursuance therewith he obtained three offers including the offer of the plaintiff dated 27th November, 1991. He further, contended that on instruction of one of the trustees, the defendant No. 1, he accepted the said offer of the plaintiff. He further contended that subsequently a meeting was held on 13th January, 1993 at which meeting the plaintiff was enquired about his willingness to purchase the said property and when the same was agreed too. It was contended that at the said meeting, 8 persons including two of the trustees were present. Name of one of the trustees was given as Dwarka Nath Jha but the name of the other trustees was not given. The said affidavit was affirmed on 17th November, 1995 on which date a supplementary affidavit was filed on behalf of the defendant Nos. 6 to 19. In reply to the said supplementary affidavit of the defendant Nos. 6 to 19, the plaintiff filed a supplementary affidavit affirmed on 24th November, 1995. In the said supplementary affidavit the plaintiff contended inter alia that a meeting was arranged on 13th January, 1993 where amongst 8 persons Dwarka Nath Jha and Kamala Kumar Jha (said to be a printing mistake and should be read as Kamnath Jha) were present, where the plaintiff was enquired about his readiness and willingness to purchase the said property and the plaintiff having expressed his desire to do so, it was decided that the trustees would sell the said property to the plaintiff at a price of Rs. 11.05 crores subject to the approval of such sale by this Court.

8. Mr. Dipak Kumar Basu, learned coun-sel. appearing on behalf of the plaintiff submitted before me that his client has produced ample evidence to show that the defendant No. 4 was authorised to bring offers. He submitted that his client gave a higher offer. Such higher offer was not brought to the notice of the Division Bench by the trustees wrongfully despite the same having been accepted by the defendant No. 4 on the instructions of the defendant No. 1. He then submitted that the defendant Nos. 6 to 19 have failed to make payment in accordance with the direction contained in the order dated 11th June, 1993 as modified by the order dated 9th July, 1993. In that view of the matter, he submitted a meeting was held on 13th January, 1994 where the offer of the plaintiff was accepted by two of the trustees Mr. Basu submitted that there is no denial to such assertion by the trustees. He further submitted that the contention of the defendant No. 4, Kailash Chandra Srivastava, to the effect that he accepted the offer of the plaintiff dated 27th December, 1991 on the instructions of the defendant No. 1, Dwarka Nath Jha, has not been denied by Dwarka Nath Jha by filing an affidavit, although a reply affidavit has been filed to the affidavit of the defendant No. 4 by the defendant Nos. 6 to 19. He contended, therefore, whether the instruction was, in fact, given by Dwarka Nath Jha to Kailash Chandra Srivastava for accepting the offer of the plaintiff dated 27th November, 1991 and whether the ultimate agreement was arrived at on 13th January, 1994 are matters, as the present state of things stands on affidavits, require trial for coming to a definite conclusion. Mr. Basu, therefore, submitted that if at the trial it is held that such instruction was given by Dwarka Nath Jha or subsequently on

13th January, 1994 an agreement was arrived at then his client will be entitled to specific performance of the agreement, as according to him the sanction of this Court is a matter of procedure and this Court would definitely grant such sanction having regard to the fact that the offer of the plaintiff is higher than the offer of the defendant Nos. 6 to 19. Mr. Basu then submitted that he has come to Court with a plausible case which cannot be brushed aside at this stage but requires trial. Mr. Basu, further submitted that at the trial a serious question is required to be determined relating to the said instruction and the said subsequent agreement and prima facie it cannot be said that the case of the plaintiff is altogether frivolous.

9. Mr. Basu then submitted that his client is entitled to an interlocutory order for the purpose of preservation of the status quo and balance of convenience and inconvenience is overwhelmingly in favour of grant of such an order. He submitted that in third party the trial, the plaintiff is in a position to prove his case as pleaded but by then the defendants alter the status quo and create 3 parties interests, in such event, inspite of winning the case, the plaintiff will be remedy-less. He further submitted that in order to show bona fide his client has filed an affidavit and has stated therein that if this Court directs he would deposit in Court a sum in excess of Rs. 11.05 crores. He further submitted that two weeks time will be enough for his client to make such deposit. He contended that his client is agreeable to deposit interest on Rs. 11.05 crores as was directed by the order, dated 11th June, 1993. Mr. Basu further submitted that in the event of deposit of Rs. 11.05 crores and interest thereon by the plaintiff as a condition for grant of an interlocutory order maintaining status quo of the property in question, the defendant Nos. 6 to 19 will not, nor can at all suffer any prejudice in as much as in the event of the plaintiff losing at the trial the damages suffered by the defendant Nos. 6 to 19 for maintenance of status quo can be compensated out of such deposit.

10. Mr. Jishnu Saha, learned advocate, appearing on behalf of the trustees, being defendant Nos. 1 to 13, submitted that at no point of time any authority was given by the trustees to Shri Kailash Chandra Srivastava, being the defendant No. 4, to accept any offer for the property in question. He further submitted that neither the plaintiff, nor the defendant No. 4 has been able to show either by way of any direct evidence or from course of conduct that the defendant No. 4 was ever authorised by the trustees to accept offer for sale of the property in question. Mr. Saha also contended that the alleged letter dated 27th November, 1991 and the purported acceptance thereof by the defendant No. 4 on 28th November, 1991 did not see the light prior to 11th June, 1993. He submitted that the plaintiffs' case is that the agreement is dated 28th November, 1991 and not the purported agreement dated 13th January, 1994. The alleged agreement dated 13th January, 1994 was put forward for the first time by Kailash Chandra Srivastava in his affidavit-in-opposition which was filed during the course of hearing of the instant application. No such assertion was ever put forward even by Kailash Chandra Srivastava in any of the large number of petitions and

affidavits filed by him in various Courts, and therefore, I should not take any note of the alleged agreement. Mr. Saha pointed out that Kailash Chandra Srivastava has not uttered a single word in his affidavit as to what he did with the purported cheque for Rs. 1 crore, although he alleged to have handed over the offer of the plaintiff dated 27th December, 1991 to Mr. B. K. Jha. Mr. Saha further contended that in the affidavit of Srivastava not one single whisper has been made in regard to the replacement cheques and with regard to the cheques for Rs. 11.05 crores, although a large number of totally irrelevant allegations have been made in the said affidavit of Kailash Chandra Srivastava. Mr. Saha stated before me that the entire consideration has been paid by the defendant Nos. 6 to 19 and such payment has been accepted by the trustees. Mr. Saha also contended that this is a totally harassing suit and has been filed with the sole object of harassing the defendant Nos. 6 to 19 and to extract if possible, moneys from the said defendants. Mr. Saha also submitted that from the course of event; it will be evidenced that the plaintiff and Kailash Chandra Srivastava are after ego with each other. .

11. Mr. P. K. Das, Senior Advocate, appearing on behalf of the defendant Nos. 6 to 19 submitted before me that a litigant is entitled to an interlocutory order in aid of the reliefs prayed by him in the plaint. He submitted that if it is found that the plaintiff is not entitled to the main relief as prayed for, then he would necessarily be held to be not entitled to any interim relief. He contended that the principal claim of plaintiff is two fold, one specific performance of an agreement dated 28th December, 1991 and the other a money claim of Rs. 1 crore. He submitted that no clear contract emerges on the basis of the averments made in the petitions, affidavits and documents relied on. He contended that the plaintiff and the defendant No. 4 have failed to establish the authority of the defendant No. 4 to accept an offer for purchase to bind the trustees and to make them obliged to sell the subject property to the offerer. Assuming such authority was there Mr. Das submitted that the contract as pleaded was subject to payment of earnest money amounting to Rs. 1 crore and confirmation by Court. Admittedly earnest money has not been paid and no arrangement had been made for payment of the same. The cheque for Rs. 1 crore was issued from a bank account in which during the relevant period not more than Rs. 35,000 was lying to the credit of the plaintiff. He further submitted that prior to filing of the suit or even subsequent thereto no application has been made for confirmation of the sale in favour of the plaintiff. In that view of the matter, it was contended by Mr. Das that the contract as pleaded is still born. He, therefore, submitted that the plaintiff has not been able to make out either any prima facie or any arguable case for specific performance. Mr. Das next contended that the sale in favour of the defendant Nos. 6 to 19 has been confirmed by an order of the Division Bench of this Court. Unless the said order is set aside or modified or altered the rights created in favour of the defendant Nos. 6 to 19 by virtue of the order of the Division Bench of this Court cannot at all be affected. He submitted that it is not the case of the plaintiff that the said order of the Division Bench of this Court is a

nullity and therefore, the same should not be looked into. Mr. Das further contended that there is no allegation either in the plaint or in the petition or in a large number of affidavits filed by the plaintiff that the sale in favour of the defendant Nos. 6 to 19 was with notice to the said defendants in regard to the alleged agreement put forward by the plaintiff. In that view of the matter, he submitted that it is an admitted position that the defendant Nos. 6 to 19 are bona fide purchasers without notice. Under those circumstances it was contended by Mr. Das that no discretionary relief should or can be granted in favour of the plaintiff even at the final hearing of the suit. It was, therefore, contended by Mr. Das that the plaintiff has failed to make out any case whatsoever for specific performance. Mr. Das then contended that from a reading of the plaint, petition and various affidavits filed by the plaintiff, it appears that the grievance of the plaintiff is non-placement of his offer before the Division Bench. He submitted that for that purpose if the plaintiff has suffered any loss the same can be compensated and the plaintiff has specifically prayed for a decree for Rs. 1 crore against the defendant Nos. 6 to 19 in regard thereto. In respect of balance of convenience, Mr. Das has contended that his client has paid the entire purchase consideration amounting to Rs. 10.40 crores and at the same time got the property vacated by various occupiers, except the Ladies Golf Club, and thereby improved upon the property in question. Mr. Das further submitted that the status of the property as it was, has been changed since purchase of the same by the defendant Nos. 6 to 19 and if at this stage the said defendants are prevented from using or utilising the fruits of their investment, the said defendants will suffer irreparable prejudice, but on the other hand the plaintiff, who is a broker, will suffer no prejudice at all since up to date, he has not spent a single paise for or in respect of the property in question. Mr. Das further submitted that it is now clear from the allegations made in the affidavit of the plaintiff dated 24th November, 1995 that the plaintiff never had, nor has any resources to pay for the purchase of the property in question and is seeking to rely on one Kanak Projects Ltd. for that purpose and there is no evidence of the solvency of the said company. Mr. Das further contended that the fact that the plaintiff is a broker would further be evidenced from the said affidavit of the plaintiff itself where he has contended that Kanak Projects Ltd. authorised the plaintiff to bid for and negotiate purchase of the said property. Mr. Das therefore, submitted that no order should be passed on this application and if any such order is passed the defendant Nos. 6 to 19 will suffer irreparable loss and prejudice at the instance of a person who had and has no locus standi whatsoever in the matter. Mr. Das cited in support of his arguments three judgments, which have been reported in Dalpat Kumar and Another Vs. Prahlad Singh and Others,

12. In reply Mr. Dipak Basu submitted that in the suit for specific performance one need not have the money in his bank account, but he should be in a position to arrange for the money as and when called upon to do so. In support of the said proposition Mr. Basu has relied on a Judgment of this Court reported in

Jitendra Nath Roy Vs. Sm. Maheswari Bose, . He further submitted that Kanak Projects Ltd. was and is ready to give the money to the plaintiff as and when required. He also submitted that the plaintiff has on oath proposed to deposit Rs. 11.05 crores and interest thereon calculated at the rate of 12 per cent, which would amount to Rs. 5 crores approximately and without giving an opportunity to the plaintiff to make such deposit, one cannot come to a conclusion that the plaintiff was and is not ready and willing to deposit the purchase price. Mr. Basu also cited a Judgment of the Suareme Court reported in Satyabrata Biswas and others Vs. Kalyan Kumar Kisku and others, for the proposition that a Court's Order is required to be complied with strictly and if not, such an Act has no sanctity. He submitted that admittedly no money was paid by the defendant Nos. 6 to 19 to the receiver in terms of the Order dated 11th June, 1995 and as such the payments alleged to have been made by the defendant Nos. 6 to 19 are no payments in the eye of law and therefore, it cannot be concluded at this stage that the defendant Nos; 6 to 19 are bona fide pur-, chasers or that purchase by them is complete.

13. Interlocutory reliefs are discretionary. Such reliefs can be granted in aid of the main relief. The purpose of granting interlocutory reliefs is to preserve the status quo inter se the parties or inter se the subject-matter of dispute between the parties. Prima facie case, arguable case, trial of serious question, etc., are guidelines for use of discretion. Similarly balance of convenience and inconvenience is also a parameter for use of discretion. A Law Court would also refuse to use discretion if it is approached by a person with unclean-hand. Having heard the submissions of the parties made over a period over 4 days I would first venture to find out as to whether the plaintiff has come to this Court with clean-hand.

14. The Plaintiffs case is that the defendant No. 4 was authorised to do all things and deeds for and on behalf of the trustees by virtue of holding a power of attorney. Inspite of opportunities given, neither the plaintiff, nor the defendant No. 4 has produced any such power of attorney. The plaintiff has not stated anywhere as to how did he come to learn about such authoriy of the defendant No. 4 and as to how did he come to know about the alleged power of attorney.

15. In the affidavit of Kailash Chandra Srivastava, he contended in Paragraph 4 that he was authorised by the trustees to obtain offers from intending purchasers and accordingly he received 3 offers including that of the plaintiff dated 27th December, 1991. In Paragraph 5 of the said affidavit Kailash Chandra Srivastava contended that after he received letter of the offer of the plaintiff he had a talk with Dwarka Nath Jha and under his instructions Kailash Chandra Srivastava accepted the said offer of the plaintiff. In the supplementary affidavit which was filed by the plaintiff subsequent to the filing of the affidavit of Srivastava it was contended in Paragraph 8 that Srivastava accepted the offer of the Plaintiff after receiving instructions from Dwarka Nath Jha, the defendant No. 1. It was then not an omnibus authority of Srivastava as has been pleaded in the plaint, but a

restricted authority received for a particular purpose by instruction. This story does not find place in any of the proceedings filed by Srivastava and the plaintiff in this Court, Allahabad High Court and the Supreme Court. This has not also been endorsed on the letter dated 27th December, 1991.

16. The plaintiff has contended that his letter of offer dated 27th December, 1991 was accepted by the defendant No. 4 on behalf of the trustees on 28th December, 1991 and by virtue of the same a binding enforceable contract was entered into by and between the plaintiff and the trustees, the defendant Nos. 1, 2 and 3. The plaintiff is seeking specific performance of the said agreement. The defendant No. 1 who filed an affidavit-in-opposition on behalf of the trustees stated in Paragraph 6 thereof that the plaintiff in the year 1993-94 met the defendant No. 1 several times but never brought it to his notice in regard to the offer alleged to have been made by the plaintiff to the defendant No. 4 or that the plaintiff was interested to buy the property in question. In his reply affidavit while dealing with the averments made in Paragraph 6 of the affidavit of the defendant No. 1, the plaintiff contended "I deny that I have ever met the said Dwarka Nath Jha as wrongly alleged." Then came the affidavit of the defendant No.4. In Paragraphs of the said affidavit the defendant No. 4 contended "subsequently a meeting was held at the house of Prabir Roy Chowdhary, Barrister-at-law on 13th January 1993 at 6 p.m. wherein about 8 persons were there including trustee Dwarka Nath Jha, his Advocate Pulak Chandra Das, . one other trustee, myself, the plaintiff, plaintiff's Advocate Mrs. Maitrai Ghosh. In this said meeting plaintiff was enquired about his willingness to purchase the Calcutta Property, when the same was agreed to by the plaintiff." Subsequent thereto the plaintiff filed an affidavit and in paragraph 8 thereof contended "subsequently a meeting was arranged at the residence of Mr. Prabir Roy Choudhary, Barrister-at-law, at Bhawani-pore, who was the counsel of the trustee. The said meeting was fixed on 13-1-1993 at 6 p.m. A letter was written by Kailash Chandra Srivastava on 11th January, 1993 addressed to me wherein the meeting was fixed at the residence of Mr. Prabir Roy Choudhary on 13th January, 1993 who confirmed and communicated to me. The said meeting was held at the residence of Prabir Roy Choudhary wherein as far as I could recall 8 persons were present namely, the trustees, Dwarka Nath Jha, Kamal Kumar Jha and their Advocate Mr. Pulak Chandra Das, Kailash Chandra Srivastava, myself and my Advocate Mrs. Maitrai Ghosh. In the said meeting I was enquired about my readiness and willingness to purchase the Calcutta Property and I having expressed my desire to do so, it was decided by them that trustees would sell the Calcutta Property to me at the price of Rs. 11.05 crores subject to the approval of such sale by the Hon''ble Court." Kailash Chandra Srivastava and the plaintiff have filed various proceedings as narrated above in this Court, in the Allahabad High Court and in Supreme Court but nowhere the alleged agreement dated 13th January, 1993 has been whispered.

17. In the supplementary affidavit filed or: behalf of the defendant Nos. 6 to 19 it was contended by the said defendants that the plaintiff did not have Rs.

20,000 in his bank account on which cheques for Rs. 1 crore and for Rs. 11.05 crores had been drawn and alleged to have been made over to Srivastava. In support of the said contention a statement of account pertaining to the relevant bank Account of the Plaintiff was also annexed. In the reply affidavit to the said supplementary affidavit of the defendant Nos. 6 to 19 the plaintiff at paragraph 4, contended that for some reason or the other the subject cheques were not encashed, though the same was handed over to the trustees. He then contended that Srivastava and the trustees were told that he was in a position to procure the money as and when required. Surprisingly, however, in paragraph 6 of the writ petition filed by the plaintiff before Allahabad High Court, he had contended "the petitioner had the money in bank for encashment". In this state of things as narrated above can it be said that the plaintiff has come to obtain discretionary relief with clean-hand? The inevitable answer is "no".

18. The plaintiff seeks specific performance of an agreement dated 28th December, 1991 which according to the plaintiff came into existence upon acceptance of his offer dated 27th December, 1995 by Srivastava on 28th December, 1991. This had been the consistent stand of the plaintiff as well as of Srivastava all through out in the proceedings initiated by them, particulars whereof have been furnished above. In the writ petition filed by Srivastava before the Allahabad High Court, Srivastava contended in paragraph 5 that he is the advocate of record of the trustees and has been authorised to accept offers on behalf of the trustees by a letter dated 15th December, 1986 issued from the office of the trustees. In paragraphs of the said writ petition, Srivastava then contended that he had received the offer of the plaintiff and then in paragraph 7 contended that he accepted the offer of the plaintiff. The same is also in nutshell the case of the plaintiff in his writ petition filed before the Allahabad High Court and also in the plaint. The story of authority was changed subsequent to filing of the affidavit-in-opposition by Srivastava in this proceeding where he contended or confessed that he was only authorised to receive offers. In the said affidavit, however, Srivastava further contended that he allegedly accepted the offer of the plaintiff on the instruction of the defendant No. 1 Dwarka Nath Jha. This change of story was promptly accepted by the plaintiff and he also started to play the same tune in his reply affidavit to the supplementary affidavit of the defendant Nos. 6 to 19 as mentioned above. Can it then be said, having regard to the state of affairs indicated above, that whether Srivastava was instructed by Dwarka Nath Jha to accept the offer of the plaintiff is a serious question to be tried. The conduct of the plaintiff and Srivastava, according to me makes it abundantly clear that they are changing their colour too fast to make out an implausible story a plausible one. On the other hand the conduct of the trustees will clearly demonstrate that whatever they have done, they have done by bringing the same of record in black and white. The trustees entered into an agreement in writing with the defendant Nos. 6 to 19 then applied for confirmation of the same before the Division Bench of this Court. In that application they had annexed a copy of the agreement entered by them with the defendant Nos. 6 to 19. In the

matter of entering into the said agreement or making such application to Court the trustees did everything themselves and not through any-one authorised by them. Even while giving instructions to reply the notice of the plaintiff the trustees made it clear in writing issued by them that the highest offer brought by Srivastava was for Rs. 10.10 crores and marked a copy of such instruction to Srivastava. Srivastava did not refute such contentions of the trustees. Therefore, it would be too risky on my part, if not disastrous to keep the property in status quo for trying whether the alleged instruction was given by Dwarka Nath Jha to Srivastava to accept the offer of the plaintiff.

19. The plaintiff as indicated above, denied on affidavit that he ever met Dwarka Nath Jha. Therefore, in the same proceeding he filed a supplementary affidavit and therein contended that a subsequent agreement was entered when Dwarka Nath Jha along with Kamnath Jha accepted the offer of the plaintiff at a meeting where the plaintiff and Dwarka Nath Jha and Kamnath Jha amongst others were present. The question is, can it be said to be a serious question requiring trial to ascertain as to whether in fact, such subsequent agreement was made or not? To my mind the answer is "no" for the reason that the plaintiff is not seeking specific performance of any such agreement and secondly the plaintiff having denied on oath in a sworn affidavit that he ever met Dwarka Nath Jha, the plaintiff should not be permitted to assert that he had met Dwarka Nath Jha and during such meeting an agreement was made.

20. Although, before the Allahabad High Court the plaintiff on a sworn petition had contended that the cheque for Rs. 1 crore given by him was backed up by money but in fact the same was not. The said fact having been established by cogent documentary evidence, the plaintiff contended that he was authorised by Kanak Projects Ltd. to bid for and negotiate purchase of the property in question. Nothing to that effect was indicated in the plaintiff's letter dated 27th December, 1991 although, the sale deed was sought in the name of the plaintiff or his nominee. The plaintiff has all most admitted that for payment of the money he requires assistance of Kanak Projects Ltd. and without their assistance the plaintiff is unable to pay the money. If that be so who is the plaintiff? Is it a front man of Kanak Projects Ltd. or simply a broker? Whatever he may be, he appears to me not the person capable of his own to purchase the property. At least that is my impression. The question is therefore, whether I should use my discretion in favour of such a person. To my mind if I do so I will be doing something which is not permissible under the Law.

21. On the basis of the papers and documents filed before me I have every doubt whether the alleged agreement was in fact entered on 28th December, 1991. Neither the offer letter of the plaintiff nor the acceptance thereof and similarly neither the letter of Srivastava for replacement of cheques, nor the letters of the plaintiff replacing the cheques had been sent through post. The plaintiff and Srivastava filed writ petitions in Allahabad High Court in September/October, 1993. The said writ petitions were dismissed in October, 1993 and even the SLP

filed against the said order of dismissal was also dismissed on 18th February, 1993. The plaintiff, however, did not approach this Court immediately although the Allahabad High Court at the time of dismissal of the writ petition made it clear that the plaintiff should approach this High Court. The plaintiff thereupon took recourse to replacement of cheques. Such replacement was made on 25th January, 1993 and when the same was still valid the second replacement took place on 22nd June, 1994. Thereafter, on 28th July, 1994 the plaintiff applied before the Division Bench of this Court for recalling of the Order dated 11th June, 1993. In the meantime on 25th April, 1994 the application of Srivastava made before the Division Bench of this Court for recalling of the order dated 11th June, 1993 met with the rate of dismissal. This state of affairs makes it doubtful and very much doubtful as to the genuineness of the purported offer, acceptance and replacement of cheques.

22. Assuming the plaintiff was a genuine intending purchaser and he in order to show his bona fide genuinely drew up a cheque for Rs 1 crore in favour of the trustees and made over the same to Srivastava for encashment and keeping the proceeds thereof as earnest money and the said offer was accepted by Srivastava on 28th December, 1991, but is it possible that such a person would be totally oblivious of the matter until 20th September, 1993 when he filed the writ petition before the Allahabad Court or until 23rd December, 1994 when he called upon the trustees to specifically perform the agreement, when he never had sufficient funds to honour the cheque I am of the view, a person genuinely interested cannot at all do so. Therefore, the conclusion is either the thing is totally sham or the plaintiff had full knowledge of the things happening in Court and no justifiable reason has been furnished as to why the plaintiff did not approach the Division Bench of this Court prior to or immediately after passing of the order dated 11th June, 1993. I would always refuse to use discretionary power in favour of such a plaintiff.

23. I, therefore, hold that the plaintiff has failed to make out a prima facie or an arguable case and there appears to be no serious question to be tried at the suit. This observation of mine is prima facie and for the purpose of guiding me for use of my discretionary power relating to this interlocutory application.

24. In view of my aforesaid conclusion it is not necessary for me to go into the question of balance of convenience and inconvenience but even then I am prima facie of the view that the balance of convenience in this case is overwhelmingly in favour of refusing to pass an Order as prayed for by the plaintiff for the reason that, I am of the opinion, the plaintiff was not interested to purchase the property for his own purpose but for the benefit of someone else. The plaintiff was desirous of making a profit by nomination. Therefore, the monetary loss the plaintiff may suffer for being unable to sell the property to his nominee or nominees, can be compensated in money.

25. Further, when the plaintiff has not alleged that the defendant Nos. 6 to 19 had noticed of his agreement and the sale in favour of the defendant Nos. 6 to

19 has been confirmed by an Order of the Division Bench of this Court, it will be disastrous if I pass any Order either directly or indirectly interfering With the said order of the Division Bench of this Court or if I anyway affect the right of the defendants Nos. 6 to 19 who are purchasers of the property in question without notice by virtue of an Order passed by the Division Bench of this Court.

26. I make it clear that all my above observations are prima facie and the same shall not be binding at the trial of the suit. I had to arrive at such prima facie view for the arguments advanced by the parties before me and to guide me in the matter of user of discretion while called upon to deal with this interlocutory application.

27. In regard to the assertions of the plaintiff to the effect that the defendants Nos. 6 to 19 have committed default in complying with the directions contained in the Order of the Division Bench of this Court dated 11th June, 1993, I only say that in this lis I cannot go into any such question because I have not been called upon to do so by the frame of the reliefs prayed for in the plaint but even if I had been called upon to do so I am doubtful whether I could at all do so in law and even if permitted whether I would have at all done so at the instance of the plaintiff. The Judgments cited by the parties and referred to above are high authorities. They are all binding on me but none of the said judgments has any application in so far as the case at hand.

28. For the reasons aforesaid I dismiss this application with cost assessed at Rs. 10,000 to be paid by the plaintiff to the defendant Nos. 1, 2, and 3 and Rs. 10,000 to be paid by the plaintiff to the defendant Nos. 6 to 19.

29. Application dismissed.