

**Neutral Citation No. - 2025:AHC:134227**

**AFR**

**Judgment Reserved On 28.07.2025**

**Judgment Delivered on 07.08.2025**

**Court No. - 83**

**Case :-** FIRST APPEAL No. - 237 of 2006

**Appellant :-** Vinod Kumar Jalaun

**Respondent :-** Kailash Jaiswal

**Counsel for Appellant :-** Arvind Srivastava, Akhilanand Mishra, Anand Srivastava

**Counsel for Respondent :-** Rahul Sripat, Abhishek

Mishra, Asheesh Mani Tripathi, Ashok Mani Tripathi, C.K. Parekh, D.V. Jaiswal, H.P. Dube, K.N. Mishra, Manish Goyal, Nipun Singh, Pankaj Dubey, Pramod Kumar Jain, Rakesh Pande, Raunak Parekh, Ravindra Kumar Tripathi, Satish Mandhyan

**Hon'ble Shekhar Kumar Yadav, J.**

1. Heard Sri Anil Tiwari, learned Senior Counsel for the defendant/Appellant, and Mr. Manish Goyal, learned Senior Counsel assisted by Mr. Nipun Singh, learned counsel for the plaintiff/Respondent at great length.
2. This First Appeal under Section 96 of the Code of Civil Procedure has been filed by the appellant, Vinod Kumar Jalan (hereinafter "the defendant"), challenging the judgment and decree dated 07.03.2006 passed by the learned Civil Judge (Senior Division), Gorakhpur, in Original Suit No. 570 of 2004. By the impugned judgment, the trial court declared the sale deed dated 16.06.2003 to be ineffective and granted a permanent prohibitory injunction restraining the defendant from interfering with the plaintiff's possession over the disputed property.
3. During the course of final hearing of the present appeal, learned counsel for the defendant/appellant has filed one application under Order 41 Rule 27 of CPC seeking some additional documents to be brought on record, which according to the appellant were necessary for the adjudication of the present controversy, upon which the matter was adjourned by giving opportunity to plaintiff/respondent to file any affidavit, if required. On which learned counsel for the plaintiff/respondent submitted that he had already filed reply to one of the application filed under Order 41, Rule 27 of CPC and same may be read as reply to the said application.

4. During argument, this Court was further informed that another application under Order 41 Rule 27 of CPC had also been filed by the defendant/appellant, also bringing on record certain documents for the adjudication of the controversy involved in the present matter, to which, a detailed counter affidavit had already been filed by the plaintiff/respondent, but record reflects that no rejoinder to the said counter was filed even despite giving various opportunities. This Court finds that another application under Order 41 Rule 27 of CPC has also been filed by the plaintiff/respondent for bringing on record the gift deed dated 01.06.2011, which was executed during the pendency of the present appeal by the sole defendant in favour of his son.

5. This Court would deal the merits of the applications under Order 41 Rule 27 of CPC filed by the defendant/appellant at the end of this judgment.

### **FACTS OF THE CASE**

6. The **Plaintiff, Kailash Jaiswal**, admittedly, was the owner and in possession of Plot No. 125 area 1084.39 sq. meters land situated at Mauja Araji Chhavani, Tappa-Qasba Pargana Haveli, Tehsil and District Gorakhpur, instituted Original Suit No. 570 of 2004 for a declaration that the sale deed executed by him in favour of the Defendant on 16.06.2003 for a property situated in Gorakhpur be declared as null, void, and ineffective, and for a permanent injunction.

7. The Plaintiff's case was that the property was agreed to be sold for Rs. 46,00,000/-. Out of this, Rs. 1,00,000/- was paid in cash, and for the balance of Rs. 45,00,000/-, a post-dated cheque (No. SPI MC BJ A.B. 797760 dated 30.09.2003, drawn on Oriental Bank of Commerce, Gorakhpur) was issued by the Defendant. A crucial condition was incorporated in the sale deed that if the said cheque was dishonoured for any reason, the sale deed would automatically be considered cancelled ("वाजा हो कि मुस्तरी मजकूर द्वारा दिया गया उपरोक्त चेक यदि किन्हीं कारणों से भुगतान नहीं होता तो ऐसी सूरत में बैनामा निरस्त समझा जायेगा।"). The Plaintiff contended that the cheque dated 30.09.2003 was dishonoured due to insufficient funds. At the Defendant's request, the date on the cheque was altered by the Defendant to 07.04.2004, and he signed the alteration. This re-validated cheque was again presented and dishonoured on 08.04.2004, and subsequently again on 08.07.2004, due to insufficient funds. The Plaintiff asserted that due to the non-payment of the consideration as per the agreed terms, and in light of the specific clause, the sale deed had become automatically null and ineffective, and he continued to be the owner in possession.

The Defendant, however, allegedly threatened to alienate or encumber the property based on the said sale deed.

8. The Defendant, in his written statement, admitted the execution of the sale deed but contended that physical possession of the property was not delivered to him. He claimed that the Plaintiff had assured him that the cheque would not be presented for payment until physical possession was handed over and mutation of names was effected. The Defendant stated his readiness to pay the balance amount of Rs. 45,00,000/- provided the Plaintiff delivered possession of the suit property.

9. Perusal of written statement shows the admission of the defendant/appellant, which is also not disputed by the counsel of appellant/defendant that entire sale consideration had not been paid and the delivery of possession has also not been given by the plaintiff/respondent to the defendant/appellant.

10. In order to prove the case, the plaintiff/respondent himself appeared as PW-1 and similarly, defendant/appellant appeared as DW-1. This court has examined the evidence of PW-1, which is as under:-

Plaintiff-responder Kailash Jaiswal, who examined himself as P.W.1 in his oral evidence, clearly stated that the cheque was issued by the defendant-appellant towards sale consideration but the cheque was dishonoured by the bank when it was tendered for encashment on the ground that there was insufficient fund in the account of defendant-appellant. It was also stated by the plaintiff-responder that the defendant-appellant re-validated the cheque by mentioning new date and signed the same and was trying to alienate the property on the basis of sale deed, which was void ab-initio.

11. The attention of this court was further invited to the cross examination of defendant/appellant, which is as under:-

In cross-examination, the question was put to the P.W.1 on behalf of defendant-appellant that whether he was aware of the fact that the name of defendant-appellant could not be mutated over the property in Revenue Record on account of reason that the property was found to be government property. The P.W. 1 specifically replied that he has got property freehold in his name and freehold deed plaintiff- responder in favour had never been subjected to any proceeding. Therefore, findings the order of the Tehsildar is of no bearing. The plaintiff- responder also stated that he has already filed suit for ejectment against the sales tax department in the court of small cause and the

order of the ejectment has already been passed in the year 2003.

12. The learned Civil Judge, Senior Division, Gorakhpur, after framing issues and considering the evidence on record, found, inter alia, that the sale deed dated 16.06.2003 had become ineffective due to the dishonour of the cheque for Rs. 45,00,000/-, based on the specific condition in the sale deed. The Plaintiff was entitled to an injunction as the sale deed was ineffective and the Defendant was not in physical possession. The suit was maintainable and the court had jurisdiction. The trial court accordingly declared the sale deed ineffective and restrained the Defendant from interfering with the Plaintiff's possession. However, the relief of formal "cancellation" of the sale deed was not granted as the appropriate court fee for such relief under Section 31 of the Specific Relief Act had not been paid by the Plaintiff.

13. It is an admitted fact that the physical possession of the disputed property was never handed over to the Defendant/appellant and has always remained with the Plaintiff/respondent.

14. The trial court had meticulously examined the entire controversy involved in the present matter and after considering the entire circumstances came to a definite opinion that the recital in the sale deed is decisive to gather the real intention of the parties as to whether it was mandatory to get the sale deed completed once the entire sale consideration is paid or as to whether the plaintiff/respondent could have recovered the sale consideration at later stage.

15. Heard learned counsel for the parties and perused the record.

### **ARGUMENTS IN APPEAL**

#### **On behalf of Appellant**

16. It is contended by learned counsel for the defendant/appellant that the impugned judgment is contrary to the provisions of the Transfer of Property Act (TPA) and the Indian Contract Act. The non-compliance with the condition in the sale deed regarding cheque payment did not render the sale deed void. The Appellant always intended to comply with the conditions, and the Trial Court made perverse findings, ignoring the Plaintiff's conduct in not delivering possession. Material documents were ignored by the court below, and there was no demand for the amount due by the Plaintiff. It is further submitted that the

judgment is contrary to Section 55(4)(b) and Section 54 of the Transfer of Property Act, arguing that the Appellant was always ready and willing to enter into the sale agreement.

17. The finding that the sale deed is void upon dishonor of the cheque is misconceived, as it was open to the Plaintiff to recover the amount under Section 138 of the Negotiable Instruments Act, which in fact he had already filed and the same has also been dismissed for want of prosecution. Payment of consideration was complete upon the Plaintiff's receipt of the cheque. The judgment was passed on surmises and conjectures and is perverse, based on non-application of mind. He further vehemently relied upon section 55(4)(b) of the Transfer of Property Act. Section 55(4) of the Transfer of Property Act is being reproduced hereunder:-

***(4) The seller is entitled—***

*(a) to the rents and profits of the property till the ownership thereof passes to the buyer;*

*(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].*

18. On the contrary, counsel for the plaintiff/respondent has vehemently argued that in the present appeal, only a very limited and short question has to be considered for the adjudication of the real controversy involved between the parties as to whether if the sale consideration has not been passed in toto, the sale deed would be treated as cancelled or null and void or the plaintiff would be at liberty to recover the same by any means or the sale deed would be treated as concluded.

19. Learned counsel for the plaintiff/respondent further submitted that the sale deed explicitly provides for its automatic cancellation/ineffectiveness upon the dishonor of the cheque for the balance consideration. The cheque for Rs. 45,00,000/- was repeatedly dishonored due to insufficient funds, validating the condition. Since the entire sale consideration was not paid, the sale deed automatically became null and ineffective as per its agreed terms stipulated in the sale deed. It is further submitted that possession of the property was never transferred and remains with the Plaintiff. The Defendant's claim linking payment to possession is false, and his conduct demonstrates no bona fide intention to pay the remaining amount.

20. It is further submitted that the Plaintiff's applications under Order 41 Rule 27 of CPC to bring on record a subsequent gift deed dated June 1, 2011, executed by the Defendant in favor of his son during the appeal's pendency, demonstrates the Defendant's ongoing attempts to alienate the property despite the Trial Court's declared the original sale deed as ineffective.

21. This court considered the arguments raised by both the parties in detail and also perused the judgment of trial court in its entirety by further perusing the evidence of both the parties and after considering all the above aspect has come to a definite conclusion that for the purpose of adjudication of the present appeal, following point of determination is required to be formulated for determination:-

*i. Whether the sale deed dated 16.06.2003 was rightly declared ineffective due to the dishonour of the cheque and the specific clause in the deed?*

*ii. Whether the trial court rightly granted a permanent injunction in favour of the plaintiff?*

*iii. Whether the sale deed could be considered a concluded and enforceable contract despite non-payment of the substantial sale consideration?*

### **DISCUSSION AND ANALYSIS**

**Issues I & III: These issues relate to the effect of the Specific Contractual Condition and Concluded Contract, hence they are being decided together: -**

22. On going through the judgement of the Trial Court, it is abundantly clear that Trial Court correctly centered its decision on the explicit condition within the sale deed dated June 16, 2003. This clause unequivocally stipulated that if the cheque for Rs. 45,00,000/- was dishonored, the sale deed would be deemed automatically cancelled/ineffective.

23. It is a well-settled principle, affirmed by the Hon'ble Supreme Court on numerous occasions, that courts must ordinarily give effect to the terms of a contract mutually agreed upon by the parties. Parties possess the autonomy to define the terms of their agreement and the consequences of a breach thereof, provided such terms are not unlawful or contrary to public policy. The Hon'ble Supreme Court has consistently held that the terms of a contract, when clear and unambiguous, must be enforced as they reflect the will of the parties.

24. In the present case, the consequence of the dishonor of the cheque was unequivocally stated, and the Trial Court rightly

upheld this contractual term. The transaction, by virtue of this specific clause, partook the nature of a conditional sale, where its ultimate efficacy was dependent on the honouring of the cheque. The Hon'ble Supreme Court in catena of decisions has recognized the validity of contracts with conditions subsequent, where the failure of a specified condition can lead to the termination or invalidation of rights accrued thereunder.

25. It is trite law that the intention of parties, as reflected in the contractual document, is decisive in determining whether a contract is conditional. The Hon'ble Supreme Court in ***Kaliaperumal v. Rajagopal* [(2009) 4 SCC 193]** affirmed that title does not pass if the sale deed is conditional upon payment and such payment is not made. Perusal of the record itself discloses that in the alleged sale deed at Page 43/44 it has been specifically mentioned that "यदि चेक का भुगतान किन्हीं कारणों से नहीं होता है तो ऐसी सूरत में बैनामा स्वतः निरस्त सम्झा जायेगा". In the present case, the sale deed contained an express stipulation that dishonour of the cheque would result in automatic cancellation of the deed. This clause was clear, unequivocal, and mutually agreed upon.

26. The Trial Court meticulously analyzed the conduct of the Appellant, noting that the cheque was repeatedly dishonoured for "insufficient funds." The failure to ensure sufficient funds despite the extension of the cheque's validity, which was done at the Appellant's instance. The Appellant's attempt to get the property mutated in his name vide application dated June 17, 2003, even before the original due date of the cheque and without ensuring payment. This application was subsequently rejected by the Tehsildar on October 3, 2003, as "अदम हकीकी का है", strongly suggesting an intent to secure rights without fulfilling the corresponding obligation. The Trial Court pertinently observed that the Appellant had ample opportunity to pay the amount, even after the suit was filed, or could have deposited the amount with the Registrar or the Court, but failed to do so. The Trial Court's conclusion that the Appellant's assertion of being ready to pay was a "भुलावा" (deception) is well-founded on the evidence and consistent with the Appellant's conduct, which this Court finds no reason to interfere with.

27. The Appellant's argument that non-payment was due to non-delivery of possession is not convincing in the face of the specific contractual term. Payment of consideration, or at least ensuring the cheque would be honored, was a primary obligation of the Appellant, the failure of which directly led to the contractual consequence of the sale deed becoming ineffective. The Trial Court rightly noted that generally, payment is made before or at the

time of registration. The special arrangement involving a post-dated cheque was explicitly tied to the validity of the deed itself. The argument that the mere receipt of a cheque amounts to complete payment of consideration is legally untenable; a cheque is a conditional payment, and if dishonored, the underlying debt or obligation remains unsatisfied. While it is true that mere non-payment of consideration after registration may not always automatically invalidate a sale, and the seller may have a charge for unpaid price under Section 55(4)(b) of the Transfer of Property Act, this general principle does not preclude parties from agreeing to a more stringent consequence, such as the sale itself becoming ineffective or being deemed cancelled, if a foundational term regarding payment is breached. The non-payment of Rs. 45,00,000/- out of Rs. 46,00,000/- was not a minor part of the consideration, and its non-payment, linked to the specific clause, strikes at the root of the transaction.

28. In ***Motilal Sahu v. Ugrah Narain Sahu and Others* (decided on 22 December 1949)**, the Patna High Court held that although a sale deed was executed by the defendant in favour of the plaintiffs, the transaction did not operate to transfer title or possession because the stipulated consideration was never paid. The Court found that the parties intended the sale to be conditional upon payment, and in the absence of such payment, the execution of the deed alone was insufficient to effect a transfer of ownership. Consequently, the High Court restored the trial court's decree dismissing the suit, holding that no right to possession or title accrued to the plaintiffs under the incomplete transaction.

29. In the case of ***Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr.*, (2011) 6 SCC 555, under para 13** it has been held that a registered sale deed may not transfer title where full consideration is not paid. The relevant extract is quoted hereunder:

“... if the sale deed expressly or by necessary implication provides that title will not pass until consideration is paid in full and registration receipt is handed over, then the title does not pass upon execution and registration alone.”

30. Learned counsel appearing for the respondent would submit that the sale deed was registered by the recital of the engrafts that "यदि चेक का भुगतान किन्ही कारणों से नहीं होता है तो ऐसी सूरत में बैनामा स्वतः निरस्त सम्झा जायेगा" then in case the cheques are dishonoured the sale deed would be cancelled, therefore, if the cheques which were tendered dishonoured which automatically would cancel the sale deed as per the intention of the parties. Learned counsel would place reliance upon the decision rendered by the Supreme Court in

the matter of **Kaliaperumal v Rajgopal and Another, (2009) 4 SCC 193** to submit that the recital in the sale deed would be relevant to know the nature of the transaction. He would further submit that the learned trial Court has rightly held that as per the document the possession of the land is with the seller, therefore, the sale deed though was executed cannot be given effect.

31. In order to decide as to whether the sale deed is concluded or the same is incomplete, the intention of the parties have to be gathered from the recital of the sale deed. Therefore, this Court has meticulously read the entire sale deed and its recital from where this Court has gathered that the intention of the parties were mentioned in absolutely unambiguous and unequivocal terms that in case, the entire sale consideration is not paid and the cheque is dishonored, the sale deed would be declared as null and void.

32. This Court has further considered one of the important aspects that the total sale consideration was Rs.46 lacs, but out of Rs.46 lacs, only Rs.1 lac was paid, which was just about 2% of the total sale consideration of the sale deed, therefore, even otherwise the equity lies in favour of plaintiff/respondent because the plaintiff/respondent cannot be directed to recover 98% balance sale consideration even if the cheque, which was supposed to be encashed, has been dishonored by further directing him to deliver the possession of the property.

33. This Court further considered that neither any counter claim was filed nor any possession was ever asked by the defendant/appellant, therefore, even if the judgment of the trial court is turned down, then also the defendant/appellant would not get anything as any claim for seeking possession in terms of the sale deed dated 16.06.2003 would be barred by limitation.

34. This Court further considered that once the intentions of the parties were very clear, there is no scope of interpreting the said specific clause which says that in case, the cheque is dishonored, the sale deed would be declared as null and void.

35. In the case of **Kaliaperumal Versus Rajagopal and Another [Supra]**, the question for consideration was whether title to the disputed properties passed to the Appellant therein, when the sale deed dated 26/06/1983 was registered on 26/10/1983, though admittedly no amount was paid towards consideration to the respondents. In that case, neither the possession of properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter and it was held that the parties intended that title of ownership to the suit

properties would pass to the purchaser, only after payment of full consideration by the purchaser to the vendor as a condition precedent and the parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. It is observed in Paragraph Nos.18 and 19 as follows:-

"18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act. "

36. In the present case, the very sale deed on which the appellant predicates his title contains a stipulation that non-realisation of the cheque would result in the automatic cancellation of the transaction. This is not a mere collateral clause but one that strikes at the root of the contract. The appellant has, by his own admission, failed to honour the cheque despite being given time. His plea that possession was not delivered is a red herring, as there is no convincing evidence that possession was a pre-condition to payment. The respondent, on the contrary, has established that possession was not transferred owing to the appellant's failure to honour the financial terms of the deed.

37. The argument that the sale deed, once registered, could not be declared ineffective in view of Section 55 of the Transfer of Property Act is untenable as the intention and conduct of parties are pivotal in determining the legal effect of any transaction. These provisions presume unconditional sales, whereas the present sale deed was expressly made conditional.

38. On going through the record of the case and the evidence on record, this court found that the **intention of the parties was expressly conditional**: the sale was agreed upon for ₹46,00,000, out of which only ₹1,00,000 was paid in cash at the

time of execution, and the remaining ₹45,00,000 was to be paid via a post-dated cheque. Crucially, the sale deed itself included a clear stipulation that **if the cheque was not honoured for any reason, the sale deed would be deemed null and void**, and the seller (plaintiff) would continue to be the rightful owner of the disputed land. This clause was not an afterthought or a separate agreement—it was incorporated directly into the deed, reflecting the parties' mutual understanding and intention.

39. Perusal of the record further would go to show that the cheque was presented multiple times but was dishonoured due to insufficient funds. The buyer (defendant) even modified the date on the cheque and re-signed it, yet still failed to ensure payment. The court observed that such conduct, along with the defendant's failure to deposit the balance sale consideration even after repeated opportunities—including during litigation—demonstrated a lack of bona fide intention to fulfill the contractual obligation. Furthermore, the court emphasized that the buyer's inaction and subsequent attempts to assert ownership without payment reflected a design to take advantage of legal formalities while avoiding financial liability. Referring to legal principles and precedents, the Trial Court reiterated that "intention" in such matters is to be gathered not only from the recital of the sale deed but also from the conduct of the parties and the evidence on record. Here, the express clause in the sale deed and the defendant's actions evidenced a clear conditional intent—that ownership and effectiveness of the sale deed were contingent upon actual payment. Since that condition was not fulfilled, the court declared the sale deed ineffective and unenforceable.

40. The appellant's plea of readiness and willingness is not borne out by conduct. If he had intended to honour the consideration, he could have deposited the amount in the respondent's account or moved the competent court for appropriate directions. Instead, he allowed the cheque to lapse, even after altering the date twice, and made no substantial effort to discharge his part of the contract.

41. As regards the prayer for cancellation of the deed, the trial court has rightly held that the respondent is entitled to declaratory relief and injunction, but not to cancellation in absence of requisite court fee. This is in line with the legal principle laid down in **Anil Kumar Harda v. Smt. Suman Bala [AIR 1980 Delhi (DB)]**, wherein it was held that declaratory relief cannot be used as a device to evade court fee in cases where the real prayer is one of cancellation.

42. The finding of the trial court that the sale deed is ineffective and the respondent continues to be the owner in possession of the suit property is supported by the evidence and consistent with legal principles governing conditional sales. Thus, there being no perversity or material illegality in the findings recorded by the learned trial court, this Court sees no reason to interfere.

43. **Issue No. II** relates to grant of a permanent injunction. The Defendant/Appellant explicitly admitted in their written statement and oral testimony that physical possession of the disputed property was never handed over to them by the Plaintiff/Respondent.

44. Since the sale deed has been declared ineffective due to the failure of consideration as per its own terms, and the Plaintiff/Respondent has always remained in physical possession, the Trial Court was perfectly justified in granting a permanent prohibitory injunction. This prevents the Defendant/Appellant from interfering with the Plaintiff's peaceful possession of the property. The right to injunction naturally flows from the Plaintiff's continued ownership and possession coupled with the nullity of the purported transfer.

45. Admittedly, possession is still with the plaintiff/respondent, therefore, trial court has rightly granted permanent injunction.

#### **APPLICATION UNDER ORDER XLI RULE 27 CPC**

46. Two applications for taking on record additional evidence have been filed on behalf of the defendant appellant. The first application for bringing on record the additional evidence was filed by the defendant appellant on 22.07.2015 and the second application under Order 41 Rule 27 CPC was filed on 16.07.2025 at the time when the final argument started in the matter. The additional evidence sought to be adduced is unworthy inasmuch as the additional evidence application was filed in the year 2015 for an incident which is alleged to have happened in the year 2010 and almost 5 years have passed before filing the said application for which no reason has been brought on record by the defendant appellant to explain the uncalled for delay.

47. It has been vehemently argued that in the application under Order 41 Rule 27 of CPC, the appellant, during the pendency of appeal, has paid certain amount and in this regard, he sought to bring on record one unsigned, undated alleged agreement having allegedly executed between the parties, to which the plaintiff/respondent has vehemently opposed that no document which is unregistered having no signature and date, can be accepted as additional evidence particularly when the same is

inadmissible in evidence as none of the parameters mentioned under Order 41 Rule 27 of CPC is attracted.

48. The second application that was filed at the time when hearing of the present appeal started, to bring on record the order sheets of plaint case filed by the plaintiff against the defendant under Section 138 of NI Act. All proceedings under Section 138 of NI Act are irrelevant for adjudication in the present appeal inasmuch as the cause of action for institution of the instant suit was to seek declaration to the effect that the sale deed is a nullity. Moreover, the accused namely the defendant appellant passed away on 19.01.2022 and as such the proceedings under Section 138 of NI Act stands abated. Therefore, to bring on record and considering the proceedings under Section 138 of NI Act particularly in the absence of pleading to that effect in the written statement cannot be read as additional evidence even if admitted when the defendant appellant had complete knowledge of those proceedings for past 17 years. Thus, there being no application seeking amendment in the written statement, additional evidence cannot be adduced.

49. Order 41 Rule 27 of the Code of Civil Procedure (CPC) allows an appellate court to take additional evidence at the appellate stage, but only under specific conditions. The general principle is that the appellate court should not deviate from the record of the lower court, but this rule provides an exception. The appellate court can take additional evidence in the situations, if the trial court refused to admit evidence that should have been admitted or if the party appealing can demonstrate that the evidence was not within their knowledge at the time of the trial or could not be produced despite due diligence and further, if the appellate court requires the evidence to pronounce a judgment or for any other substantial cause. The party seeking to adduce additional evidence must demonstrate that the conditions of Order 41 Rule 27 are met. The purpose of Order 41 Rule 27 is not to fill gaps in the evidence or patch up a weak case.

50. In the case of **Union of India Vs Ibrahim Uddin and Another, (2012) 8 SCC** has held under para 26 as under:

"The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any

additional evidence to enable it to pronounce judgment.”

51. This Court finds that the applications under Order 41 Rule 27 of CPC filed by the defendant/appellant are nothing but an abuse of process of law. Now the Court considers second application under Order 41 Rule 27 of CPC, which is also liable to be rejected as the same was filed after many rounds of final hearing that too bringing on record the order sheet of criminal case filed u/s 138 of N.I. Act, to which the counsel for the respondent replied that there is a deemed abatement of the criminal case after the death of main accused Vinod Kumar Jalan. Therefore, this court finds no good reason to entertain the second application under Order 41 Rule 27 of CPC, which is also liable to be dismissed. All the applications filed by the defendant/appellant under Order 41 Rule 27 of CPC for additional evidence are liable to be dismissed as the same indicated the defendant's attempts not only to introduce irrelevant or inadmissible evidence at a later stage but also an attempt to further alienate the property despite the Trial Court having already declared the original sale deed ineffective. Thus, these applications are highly belatedly and untenable and an attempt to create a defence.

52. Accordingly, all the applications filed by the defendant/appellant under Order 41 Rule 27 of CPC are hereby dismissed.

53. The law is very well settled that sale deed without sale consideration is no sale deed in the eyes of law. Under Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void unless it falls under specific exceptions. In the present case, the failure of the Defendant to ensure payment of 98% of the consideration invalidates the transaction not only under the terms of the contract itself but also under the foundational principles of contract law. The essential element of consideration, which underpins any valid contract, was never fulfilled.

54. In view of above discussions, this Court finds that the learned Civil Judge, Senior Division, Gorakhpur, has appreciated the facts, evidence, and legal provisions in their correct perspective. The finding that the sale deed dated June 16, 2003, became ineffective due to the non-payment of the consideration amount (dishonor of the cheque for Rs. 45,00,000/-) as per the explicit condition in the said deed is based on sound reasoning and evidence. The consequential relief of permanent injunction granted to the Plaintiff is also fully justified. The grounds urged by the

Appellant in this appeal fail to demonstrate any illegality, perversity, or misapplication of law in the impugned judgment.

55. The first appeal is devoid of merit and is accordingly **dismissed**. The judgment and order dated March 7, 2006, passed by the Civil Judge, Senior Division, Gorakhpur, in Original Suit No. 570 of 2004 are hereby **affirmed**. Parties shall bear their own costs in this appeal.

All pending applications under Order XLI Rule 27 of CPC, if any, stands dismissed.

**Order Dated: 07.08.2025**

**RKS/**

**(Justice Shekhar Kumar Yadav)**