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

+ FAO(OS) 268/2017 & CM Nos.36618-19/2017

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Reserved on : 29th May, 2018

Date of decision : 2nd August, 2018

DALJIT SINGH & ANR

..... Appellants

Through : *Mr. A.S. Chandhiok, Sr. Adv. with Ms. Manmeet Arora, Mr. Rishabh Bansal, Ms. Samapika Biswal, Mr. Keshav Sehgal, Ms. Sweta Kakkad and Mr. Angad Baxi, Advs.*

versus

**HARI STEEL & GENERAL
INDUSTRIES LTD & ORS**

..... Respondents

Through : *Mr. C. Mukund, Mr. Manish Aggarwal, Ms. Runul Rastogi, Ms. Sudha Nim and Ms. Geetika Matta, Advs. for R-1 to 6. Mr. Ashish Dholakia, Mr. Rohan Chawla, Mr. D. Kishore Kumar and Mr. Gautam Bajaj, Advs. for R-7.*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present appeal assails the order dated 24th July, 2017 passed by the Id. Single Judge dismissing I.A.No.1557/2007 (*under Order XII*

Rule 6 of the CPC), filed by the appellants herein (*plaintiffs in the suit*) seeking a judgment on admission in **CS(OS)No.2046/2006, Daljit Singh & Anr. v. Hari Steel & General Industries Ltd & Ors.** as the purchasers under an agreement to sell of an immovable property from the owners i.e. the respondent nos.1 to 6 (*defendant nos. 1 to 6 in the suit*).

The admissions attributed by the plaintiffs to the respondent nos.1 to 6 relate to the execution of the agreement to sell in question and to material terms contained therein.

2. We briefly set out hereafter the factual narration giving rise to the present appeal.

3. M/s Hari Steel & General Industries Ltd. (*respondent no. 1 company*) is stated to be the owner of the immovable property being a plot of land admeasuring 19074.69 sq. mtrs. bearing no.A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi as well as construction thereon.

4. Its business was being carried out by the respondent nos. 2 to 6, family members and shareholders of the respondent no.1 under the name and style of the '*South Delhi Toyota*'.

5. So far as the dealership rights of Toyota Kirloskar Motors Pvt. Ltd. were concerned, they had been awarded to the respondent no.2 Shri Ram Dilawari, who had stated that he had assigned the same in favour of the respondent no.1 company.

6. An agreement to sell was arrived at with regard to the above property and business between the respondent nos.1 to 6 as the sellers on the one hand and the appellants as purchasers. The agreement

concluded on 7th April, 2005 and came to be executed on 3rd May, 2005.

7. The agreement was for sale of land and building for a sum of ₹49 Crores and for sale of goodwill of the running dealership of South Delhi Toyota for a sum of ₹6.50 crores, the consideration thus totalling a sum of ₹55.50 Crores.

8. Sh. Ram Dilawari (*respondent no. 2/defendant no. 2*) is stated to be Managing Director of the respondent no.1 Company, while his wife Smt. Swarna Dilawari, (*respondent no.3 / defendant no.3*); three sons – Sh. Lalit Dilawari, (*respondent no.4 / defendant no.4*); Sh. Kapil Dilawari, (*respondent no.5 / defendant no.5*) and Sh. Ajay Dilawari, (*respondent no.6 / defendant no.6*) stand arrayed in the plaint as shareholders of the company. The agreement to sell was signed by Sh. Ram Dilawari as the person responsible for and incharge of the affairs of the defendant no.1 company and therefore, authorized to execute contracts and make promises on its behalf.

9. Additionally, Shri T.R. Arya, Director of the respondent no.1 company, has been impleaded as defendant no.7 in the suit (*and respondent no.7 herein*)

10. At the time of execution of the agreement to sell, the appellants paid a sum of ₹1 crore in cash and ₹1 crore by way of a cheque no.840711 dated 7th April, 2005 drawn on the ICICI Bank Ltd., Punjabi Bagh (West), New Delhi towards the sale consideration in favour of the respondent no.1.

11. It is noteworthy that so far as the difference between the valuation of other assets and liabilities of the running business was

concerned, the parties agreed to consider the same separately. It was also agreed that a MOU shall be executed within a week thereof. The receipt of this amount and the agreement was acknowledged by the respondent no.2 - Shri Ram Dilawari on a hand written receipt dated 7th April, 2005.

12. The agreement between the parties was reduced into writing by way of a formal writing dated 3rd May, 2005 which records that Shri Ram Dilawari was authorized to execute the agreement, by a resolution dated 25th April, 2005 of the Board of Directors of the respondent no.1. The material terms in this agreement may, for expediency, be extracted hereunder :

*“3. And whereas the vendor for its bonafide needs and requirements has **agreed to sell** to the Purchasers and the Purchasers have **agreed to purchase** the said property i.e. the **land measuring 19074 sq. yds. and the entire built up property bearing no. A-22, situated at Mohan Co-operative Industrial Estate, on Mathura Road, New Delhi** along with the running business of South Delhi Toyota with all rights of ownership, possession, privileges, profit, easement and appurtenances for a **total consideration of Rs.55,50,00,000/-** with a breakup of **Rs.49,00,00,000/-** (Rs. Forty Nine Crores Only) for the purchase of Land and building at A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi and the balance of **Rs.6,50,00,000/-** (Rs. Six Crore Fifty Lacs only) **for the purchase of running business as aforesaid.***

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2.(a) That out of the total consideration of Rs.55,50,00,000/- (Rs. Fifty Five Crores Fifty Lacs only) the Purchasers have paid to the vendor a sum of Rs.5,00,00,000/- (Rs. Five Crores only) as part consideration; at the time of execution of this Agreement to Sell in the following manner :

- a) ***Cheque No.840711 dt. 7.4.2005 drawn on ICICI Bank, Punjabi Bagh, West, New Delhi – Rs.1,00,00,000/- (Rs. One Crore Only)***
- b) ***Cheque No.840633 dt. 28.4.2005 drawn on ICICI Bank, Punjabi Bagh, West, New Delhi – Rs.1,00,00,000/-.***
- c) ***Cash – Rs.3,00,00,000/- (Rs. Three Crores Only)***

The receipt of which the vendor hereby acknowledges.

(b) The payment of the balance sale consideration of Rs.50,50,00,000/- (Rs. Fifty Crores Fifty Lacs only) shall be paid by the Purchasers as follows :

- i) ***Rs.11,50,00,000/- (Rs. Eleven Crores Fifty Lacs only) on or before 30.06.2005.***
- ii) ***Rs.5,00,00,000/- (Rs. Five Crores only) on or before 31.12.2005.***
- iii) ***Rs.34,00,00,000/- (Rs. Thirty Four Crores only) shall be paid by the Purchasers to the vendor with in 12 (Twelve) months from the date here of with a grace period of 6 (Six) months thereafter on payment of interest @ 6 (Six)% p.a. during the grace period.”***

13. Thus as per this agreement, out of the total sale consideration of ₹55 crores, the purchasers had paid to the vendor a sum of ₹5 crores, of which ₹2 crores had been paid by cheque while a sum of ₹3 crores had been paid in cash.

14. The agreement to sell also clearly prescribed that the period within which the balance payment had to be made. In terms of the

agreement dated 3rd May, 2005, an amount of ₹11.50 Crores was payable on or before 30th June, 2005 and ₹5 crores on or before 31st December, 2005. The balance payment of ₹34 Crores was required to be paid to the vendor “*within 12 months from the date here of*” with a grace period of six months thereafter on payment of interest @ 6% per annum during the grace period.

15. It appears that unknown to the appellants herein, the respondent/defendant no.1 had entered into a prior memorandum of understanding dated 24th May, 2003 with Shri Parveen Kumar Jolly – (*defendant no.8 in the suit and respondent no.8 herein*) whereby the respondent no.1 had agreed to sell the same property No.A-22, Mohan Co-operative Estate, Mathura Road, New Delhi to the defendant no.8 for a sum of ₹ 22 crores. The defendant no.8 had instituted a civil suit being ***CS(OS)No.1508/2005 Parveen Kumar Jolly v. Hari Steel & General Ind. Ltd. & Anr.*** seeking specific performance of the said agreement dated 24th May, 2003. The defendant no.8 claims to have paid ₹4 crores (i.e. *₹3 crores in Cheque and ₹1 crore in cash*), to the defendants towards part consideration.

16. Along with the suit, Shri Parveen Kumar Jolly filed an application being I.A.No.8749/2005 wherein by an order dated 28th October, 2005, the Id. Single Judge on the Original Side of this court, directed the present defendant no.1 and defendant no.2 that *status quo* in respect of the property shall be maintained. Additionally, it was directed that, subject to the defendant no. 8 (*plaintiff in that suit*) depositing ₹9.10 crores in court and giving a bank guarantee for the balance ₹10 crores within two weeks from the date of the order, the

respondent no. 1 herein (*defendant no.1 in that suit as well*) shall not alienate, assign, sell/transfer or create third party interest in the property in question.

17. Shri Parveen Kumar Jolly got published on 1st November, 2015 in the Hindustan Times, a National Daily regarding the above suit and order of injunction. Learning about the same, the appellants herein sent a response dated 3rd November, 2005 to Shri Jolly enclosing copy of the receipt and the agreement dated 3rd May, 2005.

18. On the 5th of November 2005, Shri Parveen Kumar Jolly – respondent no.8 herein, filed an application being IA No. 8899/2005 (*under Section 151 of the CPC*) seeking a prayer for modification of the order dated 28th October, 2005. This application was premised on the following submissions :

“3. That before complying with the Orders of this Hon’ble Court, the Plaintiff wanted to ascertain the factual position with regard to various allegations made by Defendant No.1, which were in the form of reply to legal notice issued by the Plaintiff and also the submissions made to this Hon’ble Court on the last date of hearing i.e. 28th October, 2005.

*4. That accordingly, the **Plaintiff** has got a **public notice issued to inform the general public** about the **proceedings pending** between the Parties hereto with regard to the suit property. A copy of the public notice, appeared in The Hindustan Times, on 01st November, 2005, is annexed hereto and marked as **ANNEXURE ‘A-1’**.*

5. That in response to the said public notice, on 03rd November, 2005 the Plaintiff has received a communication from one Mr. Daljit Singh wherein it was informed to the Plaintiff that he and one Mr. Sarvjit Singh have agreed to purchase the above property from Defendant No.1 for a

consideration of Rs.49,00,00,000/-. It was further informed that the above is part of a bigger deal struck between the Defendant No.1 and the above said persons, whereby the ***directors/shareholders of Defendant No.1 have agreed to transfer their shareholding in, and business of, Defendant No.1 Mr. Daljit Singh and Mr. Sarvjit Singh, for a consideration of Rs.55,50,00,000/-, i.e. :***

- *Rs.49,00,00,000/-, towards consideration for sale and transfer of land and buildings at A-22, MCIE, Mathura Road, New Delhi; and*
- *Rs.6,50,00,000/- towards goodwill of running dealership of South Delhi Toyota.*

It was further informed to the Plaintiff that a copy of the Receipt followed by Agreement dated 03.05.2005, executed by Defendant No.1 confirming the above and the fact that Defendant No.1 received part-consideration of Rs.5 crores from the said Mr. Daljit Singh and another under that transaction, has already been forwarded to the Plaintiff. Copies of receipt and Agreement dated 03.05.2005, since received by Plaintiff, by registered post, is annexed hereto and marked collectively as ANNEXURE 'A-2'.

(Emphasis supplied)

19. Shri Parveen Kumar Jolly had thus enclosed a copy of the receipt of ₹2 crores executed by Shri Ram Dilawari on behalf of the respondent no.1 in favour of the appellants, and a copy of the agreement dated 3rd May, 2005 as annexures to this application.

20. Material in the present consideration, are the averments made by Shri Ram Dilawari – respondent no.2, on behalf of himself and the respondent no. 1, in the reply to I.A.No.8899/2005 with regard to the transaction with the present appellants. We extract hereunder the relevant portion thereof:

*“.....The defendant No. 1 denies and disputes the allegation that the property is encumbered inasmuch as (i) **after the Plaintiff failed to adhere to the terms of the MOU**, more particularly, having failed to deposit the two installments of Rs. 4 Crores each on 30.09.2003 and 31.12.2003 and having agreed for the termination of the MOU accepted the refund of the substantial advance amount; **the Defendant No.1 was free to enter into negotiation with other prospective buyers**, (ii) **after 18 months thereof, 03.05.2005 the Defendant No.1 entered into an arrangement with other prospective buyers, namely, Daljit Singh and Sarvjit Singh** and the terms of this Agreement are yet to be fulfilled.*

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5. In reply to **para 4** it is stated that the contents of the public notice is a distorted presentation of the direction of this Hon'ble Court. The Plaintiff has concealed the fact from the public that the direction of this Hon'ble Court was conditional upon the Plaintiff depositing the amount of Rs. 9.10 Crores and also furnishing bank guarantee of Rs. 10 Crores and that too within a period of two weeks.

6. It is stated in reply to **para 5 of the application that the Agreement with Daljit Singh and Sarvjit Singh were entered into after the MOU dated 24.05.2003 between the Plaintiff and Defendant No. 1 came to an end**. However, the terms and conditions of the Agreement remain to be fulfilled by the concerned parties. Furthermore, the very Agreement makes it more incumbent on the part of the Plaintiff to deposit the money since he cannot sit pretty by locking in litigation the property worth crores of Rupees and derailing any prospective deal on the said property. **The Defendant No1. states that the Plaintiff was aware of the Agreement and it is false that the Agreement was received by the plaintiff through registered post.**

7. In reply to para 6 of the Application the Defendant No.1 states that the **Agreement dated 03.05.2005 cannot be said to be a subsequent event**, especially, when the Plaintiff has

failed to show that he came to know of the Agreement only after the filing of the suit. Therefore, the Plaintiff has no right to file any application under Order VI Rule 17, C.P.C. It is submitted that the Agreement with Sh. Daljit Singh and Sarvjit Singh has no bearing on the direction passed by this Hon'ble Court to the Plaintiff to deposit and furnish Bank Guarantee totaling Rs. 19.10 Crores. Since the Defendant No. 1 has agreed to abide by the direction of this Hon'ble Court, the Plaintiff cannot be permitted to jeopardize the prospects of the suit property without any binding liability.”
(Emphasis by us)

21. The said reply dated 11th November, 2005 was filed after the defendant nos.1 and 2 before us, had admittedly seen a copy of the agreement to sell dated 3rd May, 2005 annexed by Shri Parveen Kumar Jolly along with his suit and as Annexure A-2 to I.A.Nos.8899/2005. The defendants unconditionally and unequivocally admitted it in the reply and in fact pressed its enforceability.

Notably the defendants raised no dispute either to signatures of Shri Ram Dilawari on all pages thereon or to the terms and conditions of the agreement.

22. I.A.No.8899/2005 filed by Shri Parveen Kumar Jolly in his suit being CS(OS)No. 1508/2005 was taken up for consideration by the Id. Single Judge on 14th November, 2005 when the following directions were recorded by the court :

“..... By means of this application the plaintiff wants waiver of the aforesaid condition imposed upon him on various grounds. The primary ground which is raised is that the plaintiff has now come to know that the defendant has already entered into an agreement to sell the suit property with another person, which fact was not known to the plaintiff and the same could not be brought to the notice of

the Court on 28th October 2005 when the aforesaid interim order was passed.

*Both the parties have addressed their arguments on this application. However **during argument** it transpired that as per the **agreement entered into by the defendant with third party, the defendants have to receive balance sale consideration on 31st December 2005 and, therefore, counsel for both the parties propose that IA No. 8749/2005 be heard on date before 31st December 2005.** It appears to be a reasonable suggestion. **Accordingly, the date of hearing in IA No. 8749/2005 is preponed to 8th December 2005.** The defendant shall file reply to the said application as well as written statement within two weeks and the plaintiff shall file rejoinder and replication before the next date of hearing, i.e. 8th December 2005*

Till the next date, the order dated 28th October 2005 directing plaintiff to deposit Rs. 9.10 crores and furnish bank guarantee of 10 crores is kept in abeyance.”
(Emphasis by us)

23. Notably this order records the request of the ld. counsel for the respondent no.1 based on the payment to be received under the agreement dated 3rd May, 2005.

24. Clause 2b of the agreement dated 3rd May, 2005, extracted above, stipulates that additional amounts were payable to the defendant nos.1 and 2 by the appellant no.1 before 31st December, 2005 which fact has been stated by the defendants even in the suit being CS(OS)No.1508/2005 filed by Shri Parveen Kumar Jolly. On 14th November, 2005, the defendant has made the request for posting the case premised on receipt of payments under the agreement dated 3rd May, 2005 before the ld. Single Judge.

25. The agreement to sell dated 3rd May, 2005 was also noted in another order passed in CS(OS)No.1508/2005 in the presence of the respondents herein. On the 6th of December 2005, the appellants herein filed I.A.No.9950/2005 under Order I Rule 10 of the CPC for impleadment in CS(OS) 1508/2005 with an intent to protect their interest. Ms. Manmeet Arora, ld. counsel for the appellants has placed the order dated 28th February, 2006 passed by the ld. Single Judge on this application (I.A.No.9950/2005) passed in the presence of ld. counsel for the respondent nos.1 and 2 and deserves to be also considered *in extenso*. The same reads thus :

“IA No.9950/2005

As per the defendant No.1's own admission after the agreement to sell dated 24th May, 2003 vide which the defendant No.1 agreed to sell the suit property to the plaintiff, the defendant No.1 entered into another agreement to sell with the two applicants who have filed this application for their impleadment. Without going into the controversy raised in respect of the said agreement, it is clear that the applicants are necessary and/or proper parties. Prayer made in this application is accordingly allowed and the applicants are impleaded as the defendants 3 and 4. Fresh memo of parties shall be filed within one week.

This application is disposed of.

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(Emphasis by us)

26. Apart from filing CS(OS)No.1508/2005, a complaint dated 14th November, 2005 was also filed against Shri Ram Dilawari – respondent no.2 and his wife by Shri Parveen Kumar Jolly –

respondent no.8, which resulted in registration of FIR No.517/06 at P.S. Sarita Vihar.

27. The defendant no.1 was allegedly pleading a legal disability from performing the obligations under the contract dated 3rd May, 2005 with the plaintiffs. Therefore, they were of the view that the intention of the defendants had turned *mala fide* and that they were unwilling to perform their obligations under the agreement to sell dated 3rd May, 2005. As a result, asserting that they were left with no option but to seek recourse by way of legal redressal for specific performance of the Agreement to Sell dated 7th April, 2005 and 3rd May, 2005, the appellants/plaintiffs therefore, on or about 1st November, 2006, filed a suit being CS(OS)No.2046/2006 *inter alia* seeking specific performance of the agreement dated 7th April, 2005 and 3rd May, 2005 (*the present pending proceedings*).

28. In para 13 of the plaint, the appellants have explained the circumstances which necessitated filing of CS(OS)No.2046/2006 :

“13. On the receipt of the summons from the Delhi Police, the Plaintiffs made further inquiries, which revealed that the said Shri Praveen Kumar Jolly had also filed a civil suit on or around 28th October 2005 is numbered CS(OS) 1508/2005 titled “Praveen Kumar Jolly Vs. M/S Hari Steel & General Industries Ltd. & Anr.” seeking specific performance of an alleged MoU dated 24.5.2003. The suit which contained ex facie false averments has clearly been filed by Shri Praveen Kumar Jolly in collusion and conspiracy with the Defendant no.1 Company with a view to obtain an ad-interim injunction against defendant no.1 restraining it from transferring the suit property, to defeat the claims of the plaintiffs herein by suppression of material facts. The defendants have categorically admitted the execution of the agreement to sell

with the plaintiffs herein in CS(OS) 1508/2005 filed by Shri Praveen Kumar Jolly.”

29. An application being I.A.No.12108/2006 (*under Order XXXIX Rules 1 & 2 of the CPC*) for interim protection, accompanied the suit. By an interim order dated 6th November, 2006, the respondent nos.1 to 6 were restrained from alienating, selling, assigning or creating third party interest in the suit property. This interim order was made absolute *vide* a subsequent order dated 8th April, 2009.

30. Our attention has been drawn to the order passed on bail applications (*being Bail Application Nos.4109-10/2006*) which were in the meantime filed by Shri Ram Dilawari – respondent no.2 and his wife Smt. Swarna Dilawari, who were both directors of M/s Hari Steel & General Industries Ltd. who were apprehending arrest in FIR No.517/06 seeking orders of anticipatory bail from arrest.

31. These bail applications were considered by the Id. Single Judge of this court who recorded an order dated 20th December, 2006, the material extract whereof reads as follows :

“It is alleged that the buyer Praveen Jolly came to know in November 2005 that the petitioners had entered into a second agreement for selling entire property owned by them in the name of their company Hari Steel & General Industries Ltd. by entering into a MOU dated 03.05.2003 with Daljit Singh and Sarabjit Singh to whom they agreed to sell the entire property for Rs. 55.50 Crores out of which they paid 5 crores to them as advance payment. The terms of MOU with the second buyer are not relevant for deciding the instant bail application of the petitioners. It was at that point of time that the first buyer Praveen Jolly filed a complaint with the Police 14.11.2005 wherein he alleged that he was cheated by the petitioners inasmuch as they misrepresented

was free from all encumbrances though in fact it was substantially encumbered not only for the payment of statutory liabilities of house tax, misuser charges to the DDA and MCD but also it was encumbered with M/s Kotak Mahindra Bank and State Bank of India. During investigation of the FIR registered by the Police on the complaint of first buyer Praveen Jolly, the second set of buyers namely Daljit Singh & Sarabjit Singh also come on the front and they were also examined during investigation. The second set of buyers disclosed to the Police that the petitioners had not disclosed about the first sale agreement, which they had entered with the first buyer Praveen jolly and thereby the second set of buyers also alleged cheating with them by the petitioners.

*The Petitioners have filed an additional affidavit disputing the contention that the property agreed to be sold by them was encumbered as alleged or that any misrepresentation on that count was made. The counsel for both the parties have brought it to my notice that civil litigation is pending between the parties in respect of their rights and liabilities based upon the MOUs of dated 24.05.2003 and of dated 03.05.2003. The learned counsel for the petitioners relying upon the terms of the **MOU dated 24.05.2003** at pages 30-31 of the paper book has vehemently argued that **it was the first buyer who committed default** and did not pay the sale amount within the stipulated time period and the said default on the part of the first buyer led the petitioners to enter into an agreement with the second set of buyers vide MOU dated 03.05.2005. The learned counsel for the petitioners has further contended that the petitioners had returned a letter to the first buyer Praveen Jolly before entering into second agreement with Daljit Singh & Sarabjit Singh that as he had committed default, he can take refund of his balance sale amount of Rs. 2.90 Crores lying with the Petitioners. The learned counsel for the petitioners has argued before the court that even today that his clients are prepared to return the balance amount of Rs. 2.90 Crores to the first buyer Praveen Jolly immediately with reasonable*

interest that may be fixed by the court and the contention is made in order to show the Bona-fides on the part of the petitioners that they never intended to cheat either the first buyer or the second buyer. The learned counsel for the petitioners has further submitted that his clients are also ready and willing execute sale deed of the property in question in favor of the second set of buyers in terms of MOU dated 03.05.2005. This prima facie shows the bona-fide on the part of the petitioners. The offer of refund of Rs. 2.90 crores given by the Petitioners before that Court today has been declined by the first buyer Praveen jolly who is also present in court. During the course of hearing, it has transpired that till the time matter regarding sale of the property in question is settled with the first buyer, the sale transaction in respect of the said property with the second set of buyers also can not be given effect. The rights of the parties in respect of their properties based upon MOUs dated 24.05.2003 & 03.05.2005 shall be determined in appropriate civil proceedings pending between them before the Civil Court.”

(Emphasis by us)

Thereafter based on the readiness to refund the balance amount of the sale consideration by the respondent nos.2 and 3 to Shri Parveen Kumar Jolly and standing by their commitment under the agreement dated 3rd May, 2005, Id. Single Judge passed an order of anticipatory bail in favour of the said respondents. No dispute to the execution or terms of agreement, as noted in the bail order, was made by the respondents.

32. It is noteworthy that even the bail order clearly records receipt of ₹5 crores as advance payment under the first agreement dated 3rd May, 2005 with the appellants, out of the total sale consideration of

₹55.50 crores.

33. Two years and eight months after the agreement dated 3rd May, 2005 and having obtained the order of anticipatory bail based on a confirmation of the agreement dated 3rd May, 2005, in CS(OS)No.2046/2006 filed by the appellants, the respondent nos.1 to 6 (i.e. *the defendant nos.1 to 6*) filed a joint written statement dated 24th January, 2007 setting up a completely contradictory defence which was detailed in preliminary submissions in the written statement and reads as follows :

“4. The Defendant No 1 to 6 state that although an arrangement was entered into with Mr. Daljit Singh and Mr. Sarvjit Singh for the sale of the land admeasuring 19074.69 sq yards bearing No. 22, Mohan cooperative Industrial Estate, Mathura Road, New Delhi- 110004 but the same was never concretized into an agreement as the nature, extent and various clauses as also the amount of consideration were yet to be finalized. This is also evident from the fact that almost all the necessary columns were left blank to be filled in after mutual agreement only. The incomplete/unsigned document, which was taken away and was lying either with Mr. Daljit Singh and Mr. Sarvjit Singh, or with Mr. T. R. Arya, who, with vested interest, had been instrumental all through in negotiating/influencing the purported transaction.

*5. That when a **copy of the said document was produced in the ongoing proceedings of Civil Suit (O.S) No. 1508 of 2005**, the Defendant No 2 was shocked to see that not only the columns which were left blank had been filled up with distorted facts and figures, but the document also bore the forged signatures of the Defendant No. 2. The statement of defendant No 2 recorded before this Hon’ble Court testifies to the forgery/fraud committed by the Plaintiffs.*

Copy of the Statement/deposition of the Defendant No 2 in C.S. (OS 00 1508 of 2005 on 28th February 2006 is annexed as ANNEXURE-A.

6. *Considering the fact that the subject property is invaluable, the Applicants in connivance with Mr. T.R. Arya have faked/fabricated facts and figures including the signatures of Defendant No.2 on the purported agreement only to claim before this Hon'ble court their rights/interests in the subject property on the strength of forged document.*

7. *The extent of forgery/fabrication committed by the Plaintiffs colluding with Mr. T.R.Arya is so much pervasive that even the receipt of the payment of the payment of Rs. 2 Crores have been prepared with forged signatures of the director of Defendant No. 2 in the handwriting of Mr. T.R. Arya. The statement of Defendant No.2 dated 28th February 2006 bears testimony to this fact.*

8. *The Defendants also state that an **amount of Rs. 2 Crores as intentionally taken up by Mr. T.R. Arya from the Plaintiffs in May 2005 in the absence of Mr. Ram Dilawri allegedly for running of the business of the Company.** The ploy was devised by Mr. T. R. Arya only to mount pressure on the Defendants to yield to the unscrupulous methods of the Plaintiffs to part with the subject property. However on coming to know about the said amount having been taken by Mr. T.R.Arya, in the name of the Company the Defendant No. 2 immediately returned the said amount to the Plaintiffs."*

(Emphasis supplied)

34. The defendant nos.1 to 6 for the first time, thus sought to dispute the signatures of the defendant no. 2 on the agreement to sell dated 3rd May, 2005. The defendant nos.1 to 6 admit that copy of the said agreement was produced in the ongoing proceedings of CS(OS)No.1508/2005 which was filed by Shri Parveen Kumar Jolly

against them. We have extracted above the assertions made by Shri Parveen Kumar Jolly in the plaint as well as in I.A.No.8899/2005 enclosing a copy of the agreement dated 3rd May, 2005 with both. Shri Parveen Kumar Jolly had clearly stated that the defendant no.1 (*M/s Hari Steel and General Industries Ltd.*) had received part consideration of ₹5 crores under that transaction.

35. In view of the conduct of the respondent nos.1 to 6, the ld. Single Judge passed an order dated 12th February, 2007 in CS(OS) No. 1508/2005, asking Shri Ram Dilawari – respondent no.2 to appear in person for recording his statement, under Order X of the Code of Civil Procedure.

36. Pursuant to this order, Shri Ram Dilawari – respondent no.2 appeared before the court on 21st September, 2007 when his statement under Order X Rule 2 of the CPC was recorded in both suits being CS(OS) No. 1508/2005 and CS(OS) No. 2046/2006. The respondent no.2 stated as follows:

“Statement of Mr. Ram Dilawri, s/o Mr.B.R.Dilawri, 70 years, R/o 15, Arjun Marg, Gurgaon and also at I-7, Jangpura-B, Mathura Road, New Delhi-110014

on SA

The defendant no.1 Company has five directors, all of whom are my family members. I do not remember the subscribed share capital of the company. I have been managing the day to day affairs of M/s Hari Steel and General Industries Ltd. I and my family members were not the original shareholders of M/s Hari Steel and General Industries Ltd when it was incorporated. I and my family members purchased the shareholding in the year 1998. The shareholding is held by

all the directors. I do not remember what is my personal share holding.

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I do accept that an Agreement dated 03.05.2005 was entered into with Daljit Singh and Ors for sale of the whole property. The total price was Rs 55.5 crore. This was for the sale of the whole company. I now state that actually there were only negotiations going on since I did not have the consent of the other share holders and directors as also from the M/s Toyota Kirloskar Motors Pvt. Ltd whose agency was obtained by M/s Hari Steel and General Industries Ltd. It is agreed that under the MOU/Agreement dated 03.05.2005 (ExP-2) there are two figures mentioned of 49 crores for Land and Building and Rs 6.5 crore for the goodwill.

It is correct that the S.R.Varshney and Company are my chartered accountants. I have been shown a copy of the letter dated 14.11.2005 addressed by S.R.Varshney and Company to me. I do accept that this is the letter which was received by me (Exhibited as Ex 'X').

I have been shown Ex P-2 which is an agreement dated 03.05.2005. It is correct that this agreement does state that the same is being executed in pursuance to a Board Resolution dated 25.04.2005. However, no such Board Resolution had been passed. I have been shown the written statement filed in the suit Daljeet Singh and Anr v. M/s Hari Steel and General Industries Ltd. The written statement has been signed and verified by me and is supported by my affidavit. I identify my signatures. It is correct that in my written statement in para 14 in the last line I have admitted to the authorization in my favour as per the Board Resolution passed on 25.04.2005.

I have been shown the memo of parties in the suit filed by Mr. Daljeet Singh and Others v. M/s Hari Steel and General Industries Ltd. It is correct that the list of shareholders and directors consist only of defendant nos. 2

to 7. It is correct that the written statement has been signed and verified by me on behalf of defendant nos.1 to 6.”
(Emphasis by us)

37. Three material admissions in the above statement recorded on 21st September, 2007 pointed out by Ms. Manmeet Arora, ld. counsel for the appellants are the admission of the agreement to sell dated 3rd May, 2005; that it was executed pursuant to the resolution dated 25th April, 2005 and receipt of a letter dated 14th November, 2005 addressed by M/s S.R. Varshney & Company to him. We shall consider the impact thereof at a later point in this judgment.

Amendment of the plaint

38. The appellants, sought amendment of the plaint by way of IA No. 3370/2007 (under Order VI Rule 17 of the CPC), being CS(OS)No.2046/2006. The plea sought to be incorporated by way of addition as para 11A in the plaint reads as follows :

“11A. That the Plaintiffs being bona fide purchasers have already been and continue to be ready and willing to perform their part of the obligations under the terms of the Agreement to sell concluded on 07.04.2005 and further recorded on 03.05.2005 between the Plaintiffs and the Defendant No.1 Company.”

39. By way of an order dated 16th April, 2007, the ld. Single Judge permitted amendment of the plaint, noting as follows:

***“IA No.3370/2007 (U/o 6 R 17 of CPC)
Notice was served on this application, but no reply has been filed.The plaintiff by the present application seeks to add certain averments in para 11 of the plaint and to insert Para 11(A). The additions are in the nature of formal***

averments of readiness and willingness to perform the obligations in view of a plea raised in the written statement that there were no such specific averments in that behalf. Taking into consideration the nature of the amendments, I see no reason why the same should not be allowed. The application is accordingly allowed subject to payment of Rs 2,500/- as costs."

40. We note that an application being I.A.No.11349/2008 was filed by the defendants to file amended written statement to the amended plaint. This application was rejected by an order dated 13th October, 2009. This order has not been assailed and has attained finality.

41. No reply was filed to I.A.No.3370/2007. No written statement stands filed. As such, the respondents are deemed to have admitted the above averments made by the appellants herein with regard to the readiness and willingness of the appellants to perform their part of obligations under the terms of the agreement to sell dated 3rd May, 2005 between the plaintiffs and the defendant no.1.

Letter dated 14th November, 2005 (Exh. 'X')

42. During recording of his statement on 21st September, 2007 Shri Ram Dilawari – respondent no.2 admitted receipt of the letter dated 14th November, 2005 signed by Shri S.R. Varshney, partner of the firm S.R. Varshney & Co., the statutory auditors of the respondent company, addressed to himself (*Shri Ram Dilawari-defendant no.2*), which stands exhibited as Ex.X. This letter deserves to be considered *in extenso*. Exh.'X' reads as follows :

***“Mr. Ram Dilawari
Managing Director,
Hari Steel & General Inds. Ltd.
A-22, Mohan Co-Op. Indl. Estate
Mathura Road, New Delhi***

Dear Sir,

Sub:- Confirmation of cash deposit received by you for and on behalf of the company and kept in your personal custody.

We have observed certain facts during the course of audit of your books of accounts for the half year ending 30.09.2005.

1. *Please refer to the notes to accounts (at serial no.11) annexed with the **Balance Sheet as on 31.03.2005**, which was duly signed by you and by us. We have submitted our **Statutory Auditors Report** on your Financial Statements on 25.08.2005. You have stated that the deposit of Rs.1,90,00,000/- shown in the Balance Sheet was received from Sh. Praveen Jolly for the Sale of one half property, A-22 Mohan Co-Op. Indl. Estate, Mathura Road, New Delhi.*
2. *On further enquiry from your accounts department we have come to know that **in fact you received the following amounts from Sh. Praveen Jolly on 23.05.2003.***

(a)	By Cheques	Rs.3,00,00,000/-
(b)	In Cash	<u>Rs.1,00,00,000/-</u>
		<u>Rs.4,00,00,000/-</u>

Our of Rs.4,00,00,000/-, a sum of Rs.1,10,00,000/- was returned to him in August 2004. The balance comes to Rs.2,90,00,000/- where as you have shown only Rs.1,90,00,000/- as on 31.03.2005.

Your account staff has informed us that the cash of Rs.1,00,00,000/- received on 23.05.2003 is in your custody and was never informed to company.

3. *We were also informed that you have further entered into an agreement with Sh. Daljit Singh and Sh. Sarvjit Singh for the sale of whole of property and the running business of your car dealership M/S SOUTH DELHI TOYOTA on 03.05.2005. You received the following payments as advance.*

(a)	<i>By Cheques</i>	<i>Rs.2,00,00,000/-</i>
(b)	<i>In Cash</i>	<i><u>Rs.3,00,00,000/-</u></i>
		<i>Rs.5,00,00,000/-</i>

4. *The perusal of accounts show a deposit of Rs.2,00,00,000/- only and the cash receipt of Rs.3,00,00,000/- is not accounted for in the books of account of the company.*

Your accounts staff has informed us that the cash of Rs.3,00,00,000/- is in your personal custody.

We request you to please confirm us the above facts so that proper accounting entries be made. We wish to advice you to deposit the cash of Rs.4,00,00,000/- lying in your custody in the bank account of the company.

Thanking you

Yours Truly

**FOR S.R. VARSHNEY & CO.
CHARTERED ACCOUNTANTS**

s/d

(S.R. VARSHNEY) PARTNER”

(Emphasis supplied)

43. The respondent no.2 admitted receipt of this letter. No reply thereto was ever sent. The contents of this letter have not been disputed at any stage by the respondents till date. Clearly an implied admission of the correctness of the contents thereof.

Filing of IA No. 1557/2017 (by plaintiffs under Order XII Rule 6 of the CPC) seeking judgment on admission

44. Given the above narration of facts, the appellants filed I.A.No.1557/2007 dated 9th February, 2007 under Order XII Rule 6 of the Code of Civil Procedure seeking a judgment on admission against the defendants in terms of the prayers made in the plaint.

45. On the 30th of May, 2011, while hearing this application, the Id. Single Judge directed the defendant no.1 to “*place on record within four weeks a copy of this detailed audited balance sheet for the year 2006-07*”.

46. The plaintiffs/appellants also issued a *Notice of production of documents under Order XII Rule 8 of the Code of Civil Procedure, 1908* dated 3rd November, 2011 to the defendants through their counsel calling upon them to produce the following documents :

“1. Balance Sheet as filed by M/s Hari Steel and General Industries Limited with the Registrar of Companies and the Income Tax Department for the financial year 2005-06.

2. Balance Sheet as filed by M/s Hari Steel and General Industries Limited with the Registrar of Companies and the Income Tax Department for the financial year 2006-07.

3. Balance Sheet as filed by M/s Hari Steel and General Industries

Limited with the Registrar of Companies and the Income Tax Department for the financial year 2007-08.”

47. As the defendants failed to comply the order of the court or with the notice demand, the plaintiffs were compelled to file I.A.No.15401/2010 under Order XI Rules 12 & 14 of the CPC on 24th August, 2012, seeking a direction to the defendants to produce the documents enumerated therein, (*which included the documents for which notice of production dated 3rd November, 2011 was issued*) and also to produce the balance sheet filed by the defendant nos.1 to 6 with the Registrar of Companies and the Income Tax Department for the year ending 31st March, 2007.

This application was considered by the Joint Registrar (Judicial) and was partially allowed. By the order dated 10th January, 2014, the Joint Registrar directed the defendant nos.1 to 6 to produce the documents being the documents sought in the notice dated 3rd November, 2011 as well as the balance sheets and returns with the Registrar of Companies and the Income Tax Department for the year ending 31st March, 2007.

The defendants failed to comply with even this order.

48. Consequently, the plaintiff filed I.A.No.22988/2014 under Order XI Rule 21 read with Section 151 of the CPC seeking striking off the defence of the defendant nos.1 to 6 because of non-compliance of orders of the court.

49. On the 17th of August 2017, the defendant nos.1 to 6 sought 8 weeks time to file their balance sheet(s) and returns for the period in

question. In view thereof, further hearing of IA No. 22988/2014 was deferred to a date after 8 weeks. The respondents failed to comply with the said orders as they did not file duly signed balance sheets but merely some print outs purporting to be financial statements of the company.

50. The appellants have complained that I.A.No.1557/2007 remained pending for nine years till orders were reserved thereon on 28th April, 2016. The matter was listed for directions on 3rd July, 2017 and again on 21st July, 2017 when, after some clarifications, orders were reserved thereon again. Thereafter, by the impugned order dated 24th July, 2017, the ld. Single Judge dismissed I.A.No.1557/2017 noting that though the respondent nos.1 to 6 admit the execution of the receipt and agreement to sell dated 7th April, 2005 and 3rd May, 2005 however, they dispute the receipt of ₹3 crores in cash and thereby raise a triable issue requiring evidence. As noted above, this order has been assailed before us.

51. We have heard Mr. A.S. Chandhiok, ld. Senior Counsel and Ms. Manmeet Arora, ld. counsel for the appellants; Mr. C. Mukund and Mr. Manish Aggarwal, ld. counsels for the respondent nos.1 to 6 and Mr. Ashish Dholakia, ld. counsel for the respondent no.7, who have carefully taken us through the entire suit record called for by us. Elaborate legal submissions stand placed. We have given our thoughtful consideration to the same.

What is an admission and what would be the effect thereof – legal position

52. Before considering the factual matrix, we may briefly allude to the applicable law thereon. The expression ‘*admission of execution of a party to attest document*’ has been statutorily defined in Section 17 of the Evidence Act, 1872 as follows:

“17. Admission defined.—An admission is a statement, oral or documentary 1[or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.”

53. The Black’s Law Dictionary explains the expression ‘admission’ as follows :

“Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true.”

54. In the pronouncement of this Court reported at ***ILR (2007) I Delhi 499, Satya Bhushan Kaura v. Vijaya Myne***, it was held thus :

“53. Section 17 of the Indian Evidence Act, 1972 defines the expression admission as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact and which is made by any of the persons. In (2005) 5 SCC 784 : 2005(6) JT 289, Divisional Manager, United India Insurance Co. Ltd. v. Samir Chandra Chaudhary, the Supreme Court reiterated the principles laid down in (1979) 4 SCC 790 : AIR 1979 SC 861, Avadh Kishore Das v. Ram Gopal, and held that an admission is the best piece of evidence against the person making it. Undoubtedly, evidentially admissions may not be conclusive proof of the facts admitted and may be explained or shown to be wrong. However, it raise an estoppel and shifts the burden of proof of placing it on the

person making an admission or its representative in interest. Unless the admission is shown or explained to be wrong, the admission is an efficacious proof of the facts admitted. Thus, unless an admission is successfully withdrawn or proved erroneous, it is the best evidence that an opposing party can rely upon.”

(Emphasis by us)

55. It has been held that admission is the best piece of evidence against a person making it.

56. Order XII Rule 6 of the Code of Civil Procedure confers a discretion on the court, at any stage of the suit, either on application of any party or on its own motion and without waiting for the determination of any other question between the parties, to make such order or give such judgment as it may think fit, having regard to such admissions of fact made either in the pleadings or otherwise, whether oral or in writing.

57. It is trite that this power has been conferred on the court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. Such judgment has to be passed on admissions of fact which are clear and unequivocal, unconditional and may relate to the whole claim or part of it. These admissions may be made specifically or expressly and could be constructive admissions as well. The challenge in the present case has to be decided on these basic, sound and binding principles.

Specific admissions on court record by the respondent nos.1 to 6 / defendant nos.1 to 6

58. We have extracted the several pleadings of the defendant nos.1 to 6 wherein the case of the plaintiffs has been admitted by explicit admissions.

59. In the reply dated 11th November, 2005, filed by Shri Ram Dilawari – respondent no.2 to I.A.No.8899/2005 (*for modification of the interim injunction order dated 28th October, 2005*) the defendants clearly admitted the agreement to sell dated 3rd May, 2005 and did not dispute either the execution of the agreement or the receipt of the amount of ₹5 crores from the appellants.

60. We have also extracted above the submission made on behalf of the respondent nos.2 and 3 in Bail Application Nos.4109-10/2006 on the 21st of December 2006 thus admitting the correctness and bindingness of the agreement dated 3rd May, 2005. No dispute was made to either the execution of the agreement or the receipt of ₹ 5 crores under the sale transaction from the present appellants.

61. Clearly, the pleas taken in the written statement dated 24th January, 2007 are a hopelessly false defence concocted by the defendants more than two years eight months after making the above admission sought to be asserted to the appellants suit for specific performance of the agreement to sell dated 3rd May, 2005. The explicit admissions made by the defendants bind them and they cannot wriggle out of them under any circumstance.

Constructive admissions by the respondent nos.1 to 6

62. So far as such admissions are concerned, in ***AIR 1974 MP 75, Shikharchand & Ors. vs Mst. Bari Bai***, the court held that a judgment under Order XII Rule 6 of the CPC can be passed on a statement made by the parties *de hors* the pleadings and such admissions could be either express or constructive.

63. Before us are several court orders, including orders dated 14th November, 2005 and 6th December, 2005; 28th February, 2006 in CS(OS) 1508/2005. In this regard, orders dated 16th April, 2007 in CS(OS) 2046/2006 (*present suit*) are also pertinent.

64. These orders were passed in the presence of the lawyers for the defendants and/or the defendants without any objection with regard to the execution and bindingness of the agreement. The defendants are clearly constructively deemed to have admitted the execution of the agreement as well as receipt of the balance sale consideration when these defendants have in fact relied upon the execution of the agreement dated 3rd May, 2005, unequivocally admitted receipt of ₹5 crores and pressed bindingness of this agreement.

65. Most significant are the orders dated 20th December, 2006 granting anticipatory bail to Shri Ram Dilawari and his wife Smt. Swarna Dilawri (*in Bail Application Nos. 4109-10/2006*).

Admissions contained in statutory returns submitted by the respondents under the Companies Act, 1956 and effect thereof

66. The record of the case shows that the appellants had obtained certified copies of the records which had been filed by the respondent no.1 – company with the Registrar of Companies and in the light of the failure of the respondents to produce the ordered documents had produced the same on record in 2011 itself. The documents of the respondent no.1 which have been produced included certified copies of Form 23AC (*a form in compliance of Section 220 of the Companies Act, 1956 for filing Profit and Loss Account and other documents with the Registrar*) with copies of the balance sheets of the respondent no.1 – company for the year ending 31st March, 2005.

67. The appellants had also produced Form 23ACA enclosing the balance sheets for the year ending 3^{1st} March, 2005. The form was submitted by Shri Ram Dilawari – respondent no.2 and bears his digital signatures.

68. The documents submitted by respondent No.1- Company contain a “Notice” to the Registrar of Companies included a notice of the Annual General Meeting of the members of M/s Hari Steel & General Industries Ltd. (*respondent no. 1 company*), which was to be held at the premises of the company on 30th November, 2005. The notice was accompanied by the Balance Sheet and a Director’s report.

69. In this Director’s Report, a statement regarding the management of the company was made disclosing that the directors - Shri Ram Dilawari, Shri Lalit Dilawari, Shri Kapil Dilawari and Shri Ajay Dilawari had never come to India nor participated in the affairs of the

company and had resigned from their directorship w.e.f. 1st April, 2005 and that two new directors, namely, Shri Hari Om Dilawari (*elder brother of the respondent no.2*) and Shri Deepak Dilawari were appointed in their place. In the section “*Future Prospects*”, it was disclosed thus :

“FUTURE PROSPECTS

“xxx

xxx

xxx

The management and the owners of the company are not satisfied with the present car business in India and financial affairs of the company. Since the company owns a big land at A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi and to improve the finances of the company it entered into an MOU on 23.05.2003 for the sale of one half of the property to Mr. Praveen Jolly for Rs. Twenty Two Crores against an advance payment of Rs. Three Crores only. The agreement could not be materialized due to non payment of the balance money by him and was thus called off and annulled.

Mr. Praveen Jolly was refunded a sum of Rs. One Crore Ten Lacs on 21.08.2004 and the balance of Rs. One Crore Ninety Lacs is due to him. After cancelling his MOU. Company entered into an Agreement to sell on 03.05.2005 for the sale of whole of land and buildings and running business of Car dealership with M/s Daljit Singh Sarvjit Singh for a sum of Rs.49 Crores and Rs. 6.5 Crores respectively. An advance of Rs. Five Crores has been received against this Agreement to Sell.

(Emphasis supplied)

70. This Director’s Report was duly signed by Shri Ram Dilawari - respondent no.2 as well as one more director on all pages. It also included an auditor’s report duly signed by Shri S.R. Varshney for and on behalf of M/s S.R. Varshney & Co., Chartered Accountants.

71. Our attention has been drawn also to Form 23 ACA for the year ending 31st March, 2006 which was digitally signed by Shri Ram Dilawari – respondent no.2 herein. This return had also enclosed the Directors Report given by the Directors (being the Annual Report together with the Audited Accounts for the year ending 31st March, 2006) to the Members of the respondent no.1 Company in Annual General Meeting held on 29th December, 2006. Clearly the reporting and the balance sheets were approved and therefore filed with the Registrar of Companies. We find that this Director’s Report contains the following elaborate reference to the sale transactions of the property :

*“ It has come to the knowledge of the company through legal case filed by **Mr. Praveen Jolly** that company received an advance of Rs. Four Crores from him and after refund of Rs.1.10 Crores a sum of Rs.2.90 Crores is due to him. The Managing Director **Mr. Ram Dilawri** has admitted to have received Rs. One Crore in cash and the same is in his custody. The correction has been made in the books of account in the financial year 01.04.05 to 31.03.06.”*

72. Also enclosed with the above return are Schedules to the accounts. We extract hereunder the extract of Schedule VI of the “Schedule to the accounts for the year ending 31st March, 2006” which reads as follows:

<u>“SCHEDULE TO THE ACCOUNTS</u>		
<i>PARTICULARS</i>	<i>CURRENT YEAR</i>	<i>PREVIOUS YEAR</i>
	<i>AMOUNT (Rs.)</i>	<i>AMOUNT (Rs.)</i>
xxx	xxx	xxx

SCHEDULE-VI
CASH & BANK
BALANCES

xxx

<i>Cash (against sale of property) in the custody of Mr. Ram Dilawri, Managing Director</i>	40000000	-
--	-----------------	----------

<i>Cash in the custody of Mr. Ram Dilawri, Managing Director</i>	9300000	-
---	----------------	----------

xxx

xxx

xxx”

73. This Schedule when read against the Director’s report clearly, establishes that so far as the sale of the property by respondent no.1 to Shri Parveen Kumar Jolly was concerned, consideration of ₹4 crores had been paid by the purchaser.

74. The above statement shows that Shri Ram Dilawari had returned only ₹1.10 crore paid by Shri Parveen Kumar Jolly and that he was still holding ₹1 crore in cash.

75. Most importantly, the transaction with the appellants/plaintiffs thus stands ratified and confirmed in the Annual General Meeting of the respondent no.1 Company. Schedule VIII to the same accounts (for the year ending 31st March, 2006), contains a statement of its current liabilities. These current liabilities include the following :

“SCHEDULE TO THE ACCOUNTS

<i>PARTICULARS</i>	<i>CURRENT YEAR</i>	<i>PREVIOUS YEAR</i>
	<i>AMOUNT (Rs.)</i>	<i>AMOUNT (Rs.)</i>

xxx

xxx

xxx

SCHEDULE-VIII
CURRENT LIABILITIES

xxx

xxx

xxx

Deposit from:

Sh. Praveen Jolly

29000000

19000000

***M/s Daljit Singh & Sarvjit
Singh***

50000000

-

xxx

xxx

xxx”

76. Similar admissions are contained also in the filings on behalf of the respondent no.1 for the year ending 31st March, 2007. Again Form 23AC was submitted with the Registrar of Companies under the digital signatures of Shri Ram Dilawari – respondent no.2 herein.

77. In the notes which form part of the balance sheet as on 31st March, 2007, the following has been reported :

“14. Deposit against Sale of Property

- a) *The deposit of Rs.2,90,00,000/- has been received from Mr. Praveen Jolly against an understanding to sell one half of the property A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi. In fact a sum of Rs. Four Crores was received on 23.05.2003 from Sh. Praveen Jolly out of which Rs.1,10,00,000/- was returned in August, 2004 as the deal was mutually called off. The balance payment of Rs.2,90,00,000/- is due to him (The earlier note to accounts annexed with Balance Sheet as on 31.03.2005 is wrong. The correction in account has been made accordingly by debiting Rs. One Crore to Sh. Ram Dilawri, Managing Director).*

- b) After the cancellation of MOU with Sh. Praveen Jolly a deposit of Rs.5,00,00,000/- (Rs. Five Crores Only) was received from M/s Daljit Singh & Sarvjit Singh as advance against the sale of whole of property A-22, Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi and the running business of Car dealership 'South Delhi Toyota' for a total sales consideration of Rs.55.50 Crores. However, the terms of this agreement are yet to be fulfilled due to dispute with Sh. Praveen Jolly pending in Delhi High Court."
(Emphasis by us)

78. At Schedule VI to this return, the respondents had disclosed the following cash and bank balance as on 31st March, 2007 :

<u>"SCHEDULE TO THE ACCOUNTS</u>		
<i>PARTICULARS</i>	<i>CURRENT YEAR AMOUNT (Rs.)</i>	<i>PREVIOUS YEAR AMOUNT (Rs.)</i>
xxx	xxx	xxx
<u>SCHEDULE-VI</u>		
<u>CASH & BANK</u>		
<u>BALANCES</u>		
<i>Cash in hand</i>	25507	158803
<i>Cash (against sale of property) in the custody of Mr. Ram Dilawri, Managing Director</i>	40000000	40000000
xxx	xxx	xxx"

79. Again in the Schedule VIII to the accounts (for the year ending 31st March, 2007), the respondents had disclosed as follows :

“SCHEDULE TO THE ACCOUNTS

<i>PARTICULARS</i>	<i>CURRENT YEAR</i>	<i>PREVIOUS YEAR</i>
	<i>AMOUNT (Rs.)</i>	<i>AMOUNT (Rs.)</i>

xxx

xxx

xxx

SCHEDULE-VIII

CURRENT LIABILITIES

<i>Sundry Creditors</i>	2502567	8481840
<i>Adv. from customers for</i>	-	7802493
<i>Booking of Vehicles</i>		

Deposit from:

<i>Sh. Praveen Jolly</i>	29000000	29000000
<i>M/s Daljit Singh & Sarvjit</i>	50000000	50000000
<i>Singh</i>		

xxx

xxx

xxx”

(Emphasis by us)

80. As noted above, the receipt of the cash component of ₹4 crores by Shri Ram Dilawari – defendant no.2 has been clearly disclosed and repeatedly admitted. In the statement made in the return for the year ending 31st March, 2006, the respondent no.2 has also clearly disclosed that out of the part consideration received from Shri Parveen Kumar Jolly, only ₹1 crore was in cash. Thus out of the total cash of ₹4 crores in the hands off the respondent no.1, the normal consequence of this statement is that the balance amount of ₹3 crores out of ₹4 crores had been received from the subsequent purchaser i.e. the appellants. The statements contained in these statutory filings are categorical admissions of the execution of the agreement and receipt of the amount.

81. It is also important to note that in the balance sheets for the year

ending 31st March, 2006 and 31st March, 2007, there is a categorical specific admission of the receipt of amount of ₹5 crores from the appellants against sale of property.

82. These documents were placed before the Id. Single Judge. The respondents do not dispute the veracity or correctness or bindingness of these documents. The respondents also do not dispute their signatures on any of the documents which include the director's statement as well as balance sheets.

These judgments would clearly apply to the undisputed, unambiguous and clear admissions made repeatedly by the respondent nos.1 to 6/defendant nos.1 to 6 in their statutory returns in the present case, as detailed above.

83. All statutory returns stand filed during the pendency of CS(OS)No.1508/2005. The returns for year ending 31st March, 2006 and 2007 stand filed during the pendency of CS(OS)No.2046/2006.

84. It has been urged by Mr. A.S. Chandhiok, Id. Senior Counsel for the appellants that in para 38 of the impugned order dated 24th July, 2017, the Id. Single Judge has erroneously noted as an incongruity in the facts and figures and noted that while the plaintiffs claimed to have paid ₹3 crores in cash under the agreement, the balance sheet of the defendant no.1 company as on 31st March, 2007, showed cash in hand against sale of property in the custody of Shri Ram Dilawari, Managing Director, as ₹4 crores.

85. In the judgment of the Supreme Court reported at **(2000) 7 SCC 120, Uttam Singh Duggal & Co. v. Union Bank of India**, reliance was placed by a party on statements contained in resolutions and the

minutes of meeting of the Board of Directors containing admissions entitling the plaintiff to a judgment on admission. We may extract the observations of the Supreme Court *in extenso* on this issue :

“13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order 12, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute, and the Court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.

14. Before the trial Judge, there was no pleading much less an explanation as to the circumstances in which the said admission was made, so as to take it out of the category of admissions which created a liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order 12 Rule 6 CPC, the stand is clearly to the contrary. Statements had been made in the course of the minutes of the Board of Directors' meeting held on 30.5.1990 which we have already adverted to in detail. In the pleadings raised before the Court, there is a clear statement made by the respondent as to be undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30.5.1990 in the letter

dated 4.6.1990 what is stated in the affidavit-in-opposition in application under Order 12 Rule 6 CPC is save what are matters on record and save what would appear from the letter (sic resolution) dated 30.5.1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.

(Emphasis by us)

86. The Supreme Court had held that the statements contained in the resolutions and minutes of meeting were an unequivocal admission which bind the party.

87. In the pronouncement reported at **(2011) 11 SCC 571 Usha Rectifier Corpn. (I) Ltd. v. CCE**, the Supreme Court dismissed an appeal filed against an order of the CEGAT imposing duty on a company, based on admissions made by it, in their Balance Sheets which stood substantiated in their Director's Report. The Court held as follows:

“10. The aforesaid position is further corroborated by the Director's Report appearing at p. 2 of the annual report for the year ending December 1988, wherein it was mentioned that during the year the Company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors. Once the appellants have themselves made admission in their own balance sheet, which was not rebutted and was further substantiated in the Director's Report, the appellant now cannot turn around and make submissions which are contrary to their own

admissions. (See Calcutta Electric Supply Corpn. v. CWT [(1972) 3 SCC 222], SCC para 8.)”

88. The director’s statements and the balance sheets of a company incorporated under the provisions of the Companies Act, 1956 are statutory records mandated by the provisions of the enactment. Sections 210 to 220 of the Companies Act, 1956 set out the contents thereof and require that the same is signed by the directors and filed with the Registrar of Companies. It is these records of Hari Steel and General Industries Ltd. which are relied upon by the appellants.

89. The respondents have unequivocally admitted the receipt of the amount of ₹5 crores from the appellants in these documents which bear the signatures of the directors of the respondent no.1. Additionally, the respondent no.2, who is a Chairman-cum-Managing Director of the respondent no.1 has confirmed to be holding an amount of ₹4 crores in cash out of which only ₹1 crore was received from the previous buyer i.e. Mr. Parveen Kumar Jolly. The only other transaction referred to in the document is the agreement with the appellants herein and amounts received from them. The respondents are bound by the admissions contained in this record.

Inference and admission includes one that can be inferred from the facts and circumstances of the case without any dispute.

90. There is substance in the submission that this finding is erroneous inasmuch as the respondents have themselves explained the amount of ₹4 crores in the Director’s statement stating that ₹1 crore in cash, had in fact been received from Shri Parveen Kumar Jolly.

Whether the defence raised in the suit raises a triable issue or requires to be tested by way of evidence?

91. It is now necessary to consider the staunch opposition made by the defendant nos.1 to 6 to the appeal.

92. In the present case, Mr. C. Mukund and Mr. Manish Aggarwal, Id. counsel for the respondent nos.1 to 6 have heavily relied on the stand taken by the respondents in their joint written statement dated 22nd January, 2007.

93. We have extracted heretofore the defence set-up by the respondent nos.1 to 6 in their joint written statement dated 22nd January, 2007 to the effect that signatures of the defendant no.2 on the purported agreement have been forged/fabricated by the appellants in connivance with Shri T.R. Arya, defendant no.7; that the receipt of the payment of ₹2 crores has been prepared with forged signatures of the defendant no.2.

94. What is to be noted is that even in the written statement filed by respondent nos.1 to 6, it is admitted that a cash amount of ₹2 crores was paid in May, 2005 by the appellants to the company – respondent no.1. The plea set up is that this amount was intentionally taken by Shri T.R. Arya from the appellants/plaintiffs in May, 2005 in the absence of Shri Ram Dilawari for “*running the business of the company*”.

95. There is not a single document supporting such plea. No explanation anywhere on record as how and why the appellants having entered into the agreement to sell in April, 2005 and May, 2005, would have given any amount for running respondent no.1’s business.

96. Additionally, as per the resolutions in the Annual General Meetings dated 30th November, 2005; 29th December, 2006 and 14th September, 2007 of respondent no.1, its affairs were being wound up. In fact, no business was being run. Not only was the Company in losses, but it was in deep trouble with action by the Enforcement Directorate having been taken records and computers of the company stood seized by the authorities.

97. So who was Shri T.R. Arya? The documents on record show that Shri T.R. Arya was a Chartered Accountant with M/s. S.R Varshney & Co.

98. The documents from the Registrar of Companies for the year ending 31st March, 2006, shows that Shri T.R Arya was a Director on the Board of Directors of the respondent no.1. No resignation by Shri Arya or any removal from directorship is on record.

99. The balance sheet for the year ending 31st March, 2006 placed before us also contains statement of remuneration paid to Shri T.R. Arya as Director of the respondent no.1. The respondent no.2 has made no complaint or taken any action against the respondent no.7, either under the Companies Act, 1956 nor for any penal enactment.

100. On the contrary, the above statutory filings of the respondent no.1 duly signed by the respondent no.2 establishes the confidence reposed by the respondent nos.2 to 6 in Shri T.R. Arya.

101. We have before us yet another circumstance manifesting the falsity in the defence set up before us.

102. Ms. Manmeet Arora, Id. Counsel for the appellants and Mr. Ashish Dholakia, Id. Counsel for respondent T.R. Arya have placed

before us another material document executed by the defendant no.2 during the pendency of CS(OS)No.1508/2005. This document is a power of attorney dated 25th May, 2006 executed by Shri Ram Dilawari – respondent no.2 as Chairman and Managing Director of the respondent no.1 after the respondent nos.1 to 6 had admittedly received a copy of the agreement dated 3rd May, 2005 in CS(OS)No.1508/2005. By this attorney, the respondents have appointed and empowered Shri T.R. Arya, Chartered Accountant to appear and represent them in *“assessment proceedings, miscellaneous review and/of appellate proceedings, to accept services of notices, to produce and take back documents/equipment, to apply for and take delivery of copies of order and documents to do clerical works in the office of Sales Tax Authorities in all stage and also before officers, Assistant Commissioner, Deputy Commissioner of Sales Tax and Appellate Tribunal office without being personally responsible for our acts/shortcomings, if any whatsoever, to apply for refund and receive the refund voucher, cheques, pay orders, to deposit and withdraw money, to arrange for and accept any compromise on my behalf in any proceedings, inspect files record papers and documents filed and orders therein to present us in the matters and to every other necessary and lawful act incidental in this case of connected proceeding on our behalf”*.

103. This power of attorney was not only signed by Shri Ram Dilawari but was duly witnessed by Major General Surain Kakin and Shri Deepak Dilawari.

104. We may note that so far as the execution of the general power

of attorney dated 25th May, 2006 is concerned, the same is not disputed even in the hearings before us. On the contrary, it is explained by Mr. C. Mukund, ld. counsel, on instructions from Mr. Manish Aggarwal, ld. counsel for the defendant nos.1 to 6, that this General Power of Attorney was executed by the respondent no.2 appointing Shri T.R. Arya – respondent no.7 as the attorney only for the purposes of sales tax and income tax matters and in no way impacts the present case.

105. The record shows that the original of this power of attorney has been filed by Shri T.R. Arya – defendant no.7 in the suit as a document on his behalf. The same was put to the defendants for admission/denial and stand admitted by the defendant no.2 appearing personally by the Joint Registrar on 4th April, 2007. The same has been exhibited as Ex.D7/118.

106. In a letter dated 2nd January, 2006, purportedly addressed by the respondent no.2 to the appellants, it is stated that he had received a copy of the agreement dated 3rd May, 2005 through the court in November, 2005.

107. It is noteworthy, that in this letter dated 2nd January, 2006, there is reference to concoctions/fabrications of facts and figures only. Even in the letter dated 2nd January, 2006, the respondent no.2 does not dispute his signatures on the agreement at all.

108. Furthermore, in this very letter dated 2nd January, 2006, the respondent admits receipt of ₹2 crores by the two cheques, one being no. (No. 840711) dated 7th April, 2005 and the other being dated 28th April, 2005 (No. 840633). The receipt on record refers to receipt of

₹1 crore by cheque no. 840711 dated 7th April, 2005 and ₹1 crore in cash.

109. Significantly on the same plea as that in the written statement, the defendants filed an application being I.A.No.61/2006 under Section 340 Cr.P.C. in CS(OS)No.1508/2005. This application was never pressed by them.

110. We have extracted above the balance sheets of the company for the years ending 31st March, 2005; 31st March, 2006 and 31st March, 2007 all of which unequivocally and categorically acknowledge and admit receipt of cash amount from the appellants. The dispute to the signatures on two pages of the amount of cash received by the respondent from the appellants is really sham.

111. The stand of forgery and fabrication is clearly a blatant concoction on the part of the respondents to create a false defence to the suit claimed.

112. We have noted above the Annual General Meetings held on 30th September, 2005; 29th December, 2006 and 14th September, 2007. In each of these meetings, one of the ordinary business considered by the members of the company was appointment of the auditors and fixation of their remuneration.

113. By the letter 21st September, 2007, Shri Ram Dilawari as Managing Director of M/s Hari Steel & General Industries Ltd. (*respondent no. 1 company*) informed M/s. S.R. Varshney & Co. that they had been re-appointed as statutory auditors of the company in the Annual General Meeting.

114. It is undisputed by the respondent that Shri T.R. Arya was one

of the chartered accountants who was working with M/s. S.R. Varshney & Co. Additionally, Shri T.R. Arya has continued to be a Director of the company at all material times.

115. The respondent no.2 was impleaded as defendant no. 2 in CS(OS)No.1508/2005 and was appearing therein. He was fully aware of the agreement to sell dated 3rd May, 2005. The appointment of the defendant no.7 as the attorney shows that the defendants had full confidence in his abilities and trust in his conduct and had therefore, authorized him to represent the company and also to appear on their behalf before the authorities.

116. It is completely inconceivable that, after the stand of the defendants if the aforesaid position regarding fraud and forgery by Shri T.R. Arya is correct, then despite knowledge thereof from the plaint of Shri Parveen Kumar Jolly in CS(OS)No.1508/2005, the respondents would appoint such a person as their attorney on 25th May, 2006 or an auditors firm in which he was concerned. The allegations against Shri T.R. Arya are clearly trumped up.

117. The respondents have disputed that there was any admission by them. It has been submitted by Mr. Manish Aggarwal that it was the stand of the respondents that there was no concluded contract. Placing reliance on the pronouncement of the Supreme Court reported at **(2015) 9 SCC 287, S.M. Asif v. Verender Kumar Bajaj**, it is contended that the use of the expression 'may' in Order XII Rule 6 CPC would show that the power of the court under Order XII Rule 6 of the CPC is discretionary and cannot be claimed as a matter of right. Where the defendants raise objections which go to the root of the case,

it would not be appropriate to exercise jurisdiction under Order XII Rule 6 of the CPC.

There can be no dispute with the principles laid down in this judicial pronouncement.

118. However, in *S.M. Asif*, the appellant tenant had admitted relationship of tenancy and period of lease agreement but resisted the respondent landlord's claim for eviction by setting up defence of agreement for sale of the claimed premises in his favour and payment of advance amount pursuant thereto. The appellant tenant had also filed a suit for specific performance of such agreement.

119. In the present case, the respondents have categorically admitted the agreement repeatedly on judicial record including at the time of the grant of the bail. We have discussed above several admissions, made by the defendants on judicial record as well as in their statutory returns. No legal action at all has been initiated by the respondents to support their pleas. The judgment in *S.M. Asif* has no application to the present case.

120. Placing reliance on the pronouncement reported at **(2010) 8 SCC 452, *Kapil Corepacks Private Limited & Ors. v. Harbans Lal (since deceased) Thr. LRs.***, it is contended by Mr. Manish Aggarwal, Id. counsel that the sole object of an examination under Order X Rule 2 of the CPC is to identify the matters in controversy and not to prove or disprove the matters in controversy, nor to seek admissions, nor to decide the rights or obligations of parties.

121. We fail to understand as to how the above principle applies to the proceedings in the present case. More so when the respondents

have not challenged the order passed by the Id. Single Judge directing the presence of the respondents for recording their statement under Order X of the CPC nor have they challenged the statement which stands recorded.

122. So far as the reliance on para 26 of the judgment in ***Kapil Corepacks Private Limited*** is concerned, the same may be extracted hereunder :

“26. Admission must obviously be a conscious and deliberate act. Admission can be explained. An admission of a signature is not an admission of execution of a document. The power to identify the matters in controversy by examination of parties at the pre-trial stage under Order 10 Rule 2, is completely different from the power exercised by the court under Section 165 of the Evidence Act to put any question it pleases in any form, to a witness or a party in order to discover or to obtain proper proof of relevant facts, or the power under Order 18 Rule 17 of the Code to recall and examine any witness. The court's anxiety to do justice by speeding up the process of the suit should not itself lead to injustice.”

(Emphasis by us)

123. Again there can be no dispute with regard to the principles laid down above. In the present case, the admissions of the defendants in pleadings, court record and statutory are clearly well thought out and conscious. We may also note that there has been no hurry or anxiety in the present case and that the respondents have been able to delay adjudication even on the application under Order XII Rule 6 of the CPC for the period of almost ten years from 2007 when it was filed, till 2017 when it was decided.

124. Mr. Manish Aggarwal, Id. counsel for the respondent nos.1 to 6

has drawn our attention to the Division Bench pronouncement reported at **2006 AIR (Del) 266, Raj Kumar Chawla v. M/s Lucas Indian Services**. Again this pronouncement merely restates the well-settled principles to be adhered to while exercising jurisdiction under Order XII Rule 6 including *inter alia* that the provisions of Order XII Rule 6, incorporated by way of amendment, are intended to provide expeditious grant of decree on the basis of admissions; the powers are to be exercised on the facts and circumstances of each case; that judgment on admission is not a matter of right but a matter of discretion.

125. In order to invoke the provisions of Order XII Rule 6 of the CPC, the court has to scrutinise the entire material in detail. The court is required to ignore vague, evasive and unspecific denials and inconsistent pleas in the written statement and replies. Even a contrary stand taken while arguing the matter would require to be ignored. (*Ref. : AIR 2003 Delhi 142, Rajiv Saluja v. M/s Bhartia Industries Ltd. & Anr. ; AIR 2004 Delhi 248, Rajiv Sharma & Anr. v. Rajiv Gupta*).

126. We are conscious of the fact that the judgment on admission is not a matter of right and is a matter of discretion of the court which has to be carefully exercised. We have therefore, carefully examined the entire record and we find that the admissions on behalf of the defendants are clear.

127. We have found above that the pleas taken in the written statement are controverted by the documents executed and declarations given by the defendants in statutory returns during the

pendency of CS(OS) No.1508/2005 as well as the record of the present suit. The defendants have obtained favourable orders from courts premised on these admissions including orders of anticipatory bail from this court. The admissions noted above are unambiguous, clear, unconditional and unequivocal. The same are supported by the conduct of the respondents in the court proceedings and admissions can be clearly inferred from the same. There is therefore, no legal bar for the court to act upon the same.

128. The respondents have had more than adequate opportunity to explain their conduct and their said admissions, declarations and statements. However, no explanation at all or of any kind has been offered.

129. From the above discussion, therefore, we find that the admissions of the respondents of the agreement dated 3rd May, 2005, the sale consideration and the amount received from the appellants can be summed up thus :

	<i>I*</i>	<i>II*</i>	<i>III</i>	<i>IV*</i>
<i>Reference</i> <i>(Date of Statement)</i>	<i>Reply dated 11.11.2005 to I.A. 8899/05 in Suit 1508/05</i> <i>(Praveen Jolly's suit) of appeal</i> <i>Note : No dispute to agreement or amount</i>	<i>Statement recorded by High Court on 20.12.2006 while granting anticipatory bar arising out of the criminal proceedings</i>	<i>Statement made in written statement dated 22.01.2007 in present suit</i>	<i>Statement on oath dated 21.09.2007 recorded by the Court on present suit.</i>
<i>Date of Agreement to Sell</i>	03.05.2005	03.05.2005	<i>"An arrangement was entered into but the same was never concretized into an agreement".</i> ... <i>"Even date of</i>	03.05.2005 (Pg. 204) <i>Statement that agreement entered into</i>

			<i>Agreement was to be put in"</i>	
<i>Amount of consideration</i>	<i>In paragraph 5 of the application I.A.No.8599/2005 it was categorically stated that the defendants received a sum of Rs. 5 crores as advance and the total sale consideration is Rs. 55,50,00,000/-</i> <i>In the reply, the defendants did not deny these averments.</i>	<i>"Rs. 55.50 crores "</i>	<i>"Amount of consideration (was) yet to be finalized".</i>	<i>Rs.55,50,00,000</i>
<i>Signature of defendants</i>	<i>"Agreement with (the Plaintiffs) was entered into"</i>	<i>"(The Defendants Nos. 1 to 6 had entered) into an agreement with (the Plaintiffs) vide MOU dated 03.05.2005".</i>	<i>"Incomplete/unsigned document" ; "the document also bore the forged signatures of the Defendant No. 2".</i>	<i>"I do accept that an Agreement dated 03.05.2005 was entered into with Daljit Singh and Ors for sale of the whole property. The total price was Rs. 55.5 crore. This was for the sale of the whole company. I now state that actually there were only negotiations going on since I did not have the consent of the other share holders (i. e. Respondent No. 7 and family members of Respondent No. 2) and directors as also from the M/S Toyota Kirloskar Motors Pvt. Ltd. whose agency was obtained by M/S Hari Steel and General Industries Ltd".</i>
<i>Enforceability of the Agreement to Sell dated</i>		<i>"(The Defendants 1 to 6) are ready and willing to execute the sale deed of the property in question in favor of (the Plaintiffs) in terms of the MOU dated</i>	<i>"No finalized agreement having come into existence, there is no question of any cause of action arising in favor of the Plaintiffs to seek specific</i>	

		03.05.2005"	performance of the subject property"	
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130. It is noteworthy that in the above statements marked at I, II and IV, there is no reference to any role of Shri T.R. Arya or to any forgery.

131. There are clear, unconditional and unequivocal admissions in the director's reports and the balance sheets for the years ending 31st March, 2005; 31st March, 2006 and 31st March, 2007 of the agreement to sell with the appellants; also the sale consideration and the receipt of the amount of ₹5 crores from the appellants. The respondents admit the signatures of the directors thereon and do not dispute the correctness or authenticity of the balance sheets.

132. It is to be noted that even in the statement recorded by the court in the suit on 2^{1st} September, 2007 by Id. Single Judge, the respondents first admitted the agreement and only at a later stage do they say that there were only negotiations.

133. An objection taken by these respondents is that by an order dated 2nd February, 2010, the issues stand framed in suit. Issue no.2 was modified by an order dated 5th May, 2010 and the parties are to stand trial on the following issues :

"6. The amended issues shall be as under:-

- (1) Whether the plaintiffs are entitled to a decree for specific performance of the agreement to sell dated 3.5.2005. If so, to what effect? OPP*
- (2) Whether pages 3 and 4 of the agreement dated 3rd May, 2005 have not been executed by defendant No.2*

- and there are insertions/interpolations in the agreement? If so, to what effect? OPD-1 to 6.*
- (3) *Whether there was no concluded contract between the parties? OPD-1 to 6.*
- (4) *Whether the receipt dated 7.4.2005 is forged and fabricated? OPD-1 to 6.*
- (5) *Relief.”*

134. It is submitted by Mr. C. Mukund and Mr. Manish Aggarwal, Advocates that the issues having been framed, the defendant nos.1 to 6 have a legal right and entitlement to prove their said defence.

135. So far as framing of issues is concerned, at this stage, the court merely examines the pleadings of the parties and frames issues based on what material propositions of facts and law the parties are at variance.

136. We have considered at great length the admissions made by the defendants in the present case. A completely contradictory defence has been propounded in the written statement. Despite such stand having been taken, the respondents have made material admissions in fact of the entire case of the plaintiffs in statutory returns filed by them even when the said defence was pending under consideration clearly giving the lie to the truthfulness and veracity thereof.

137. The Code of Civil Procedure contains provisions for summary trial of suits under Order XXXVII of the CPC. In a suit under this provision, the defendant is required to seek leave to defend the same at which stage, the court examines the strength of the defence. The principles governing leave to defend a summary trial have been laid down by the Supreme Court in **(1976) 4 SCC 687, Mechelec**

Engineers and Manufacturers v. Basic Equipment Corporation.

138. The principles which apply to consideration of an application for leave to defend under Order XXXVII of the CPC, have been held to be akin to the approach which is to be followed by a court while considering an application under Order XII Rule 6 of the CPC. It was so held by the Division Bench of this court in the pronouncement reported at **(2010) 166 DLT 84, P.P.A. Impex Pvt. Ltd. v. Mangal Sain Metal** in the following terms :

“9. It appears to us that the approach to be taken under Order XII Rule 6 is akin to what has been enunciated by the Supreme Court in Mechalac Engineers & Manufacturers v. Basic Equipment Corporation, (1976) 4 SCC 687, in the context of Order 37 of the CPC with regard to granting leave to defend a summary suit. This is that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting leave to defend and by decreeing the suit forthwith. The Courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to trial.”

139. The Id. Single Judge followed the above principles while considering application under Order XII Rule 6 of the CPC in the judgment reported **(2013) 202 DLT 756 Grammy Communications Pvt. Ltd. v. Emaar MGF Land Ltd.**, when it was held as follows :

“6. Having heard learned Counsel for the parties, I am of the view that the plaintiff is entitled to partial relief in the present application. For the purpose of Order 12 Rule 6, CPC, what is relevant is the defence set up by the defendant. It has to be examined whether the defendant had made an admission of

liability in the written statement or the documents relied upon by it, and also whether the defence set up by the defendant is moonshine or not. This is so, because, if the defence is found to be moonshine, the Court shall be justified in passing a decree on admission on the ground that the defendant has not disclosed a triable defence...”

140. In a recent pronouncement of the Supreme Court reported at **(2017) 1 SCC 568, IDBI Trusteeship Services Ltd. v. Hubtown Ltd.**, the Supreme Court has laid down the following binding principles on the manner and scrutiny which the court is required to undertake while considering an application seeking leave to defend a suit. The court held thus :

“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as

payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

141. The present case is clearly covered by the direction of the Supreme Court given in para 17.5 above. The respondent nos.1 to 6 before us have admitted the case of the plaintiffs; raised no genuine defence at all. In fact, the stand taken by the respondent is completely contrary to the pleadings on court record as well as the statutory filings which effected during the pendency of the suit, even after filing the written statement. The defence is contrary to the specific admissions made in the court proceedings. As such, though issues have been framed, however, on a consideration of the totality of the facts and circumstances, there is no genuine triable issue which could

justify the trial in the suit.

Readiness and willingness of the appellants/plaintiffs to perform their part of the agreement

142. We have noted above that in para 11A of the plaint, the plaintiffs have categorically stated that they have been able, ready and willing to perform their part of the agreement. The respondents have not contested this statement by the appellants.

143. In a suit for specific performance of an agreement to sell, apart from establishing execution of an agreement to sell, a plaintiff has to aver that he was at all material times ready, willing and able to perform their part of the agreement (*Ref: Section 16(c) of the Specific Relief Act. 1963.*)

144. We also find a letter dated 20th August, 2005 addressed by the appellants to the respondent no.1 and marked to the respondent no.2. It has been categorically stated that the appellants were ready with the instalments which was due to be paid on 30th June, 2005 which the respondent no.2 had suggested to receive on 22nd August, 2005 at the time of handing over of the business along with assets and liabilities as on 15th August, 2005. The appellants have clearly stated that they wish to make the payment as per the agreement and any delay on the part of the respondents would result in consequential losses to the appellants. The respondent nos.1 to 6 do not seem to have responded to or repudiated the above.

145. The respondents have not controverted the assertions of the plaintiff in para 11A of the amended plaint. The factum of the

plaintiff's ability, readiness and willingness part of the agreement therefore, stands established on record.

146. In the judgment reported at (2011) 15 SCC 273, *Himani Alloys Limited v. Tata Steel Limited*, the Supreme Court has reiterated the following well settled principles :

“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] , Karam Kapahi v. Lal Chand Public Charitable Trust [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .) There is no such admission in this case.”

(Emphasis by us)

147. We are examining the admissions made by the respondents in the present case on these very sound principles. The admissions made by the defendants satisfy all these tests.

Habitual Litigants

148. The defendants are no strangers to legal proceedings. They cannot plead ignorance of any of the orders passed in the presence of their counsels.

149. In fact, in the Directors Report of the company, appended to the Annual Report and Audited Accounts for the year ending 31st March, 2006, the company discloses the following situation of its legal and business affairs:

“FINANCIAL RESULTS AND AFFAIRS OF THE COMPANY”

xxx

xxx

xxx

xxx Due to circumstances beyond our control the principal manufactures, Toyota Kirloskar Motors have cancelled out franchise on 31.07.06. The company is not doing any car business after that. The business premises of the company were visited by the Enforcement Cell of Department of Trade & Taxes, NCT of Delhi on 11.05.06 and due to some incriminating documents found by them the premises were sealed by the department on 21.08.06...

MANAGEMENT

The management is busy in the matters relating to Delhi Trade & Taxes and legal cases filed by Mr. Praveen Jolly and M/s Daljit Singh Sarvjit Singh. Mr. Praveen Jolly has filed a suit on the High Court of Delhi for the specific performance of his MOU. Similarly M/s Daljit Singh Sarvjit Singh has also filed a suit in Delhi High Court for the specific performance of their Agreement to Sell. Mr. Ram Dilawri and Mrs. Swarna Dilawri are busy and looking after the receivable, payable and accounts of the company. Mr. Deepak Dilawri is looking after the taxes and legal matters.

FUTURE PROSPECTS

*The car dealership is cancelled by Toyota Kirloskar Motors and the business premises are sealed. The company is not doing business **except solving legal and financial complications...***

(Emphasis by us)

150. In the Directors Report appended with the Annual Report and Audited Accounts for the year ending 31st March, 2007, the defendants make an identical disclosure.

151. Therefore, the defendants are conversant with legal procedures and that they are in active litigation. Infact the order sheets reflect presence of counsels on their behalf on each date, including Senior Advocates.

Admission for authority of the respondent no.2 to execute the agreement

152. We find a loose attempt by the defendant nos.1 to 6 to dispute the authority to execute the agreement. However, there is a reference to Resolution of the Board of Directors dated 25th April, 2005 in the Agreement to Sell dated 3rd May, 2005 whereby the respondent no.1 company authorized its Shri Ram Dilawari - Managing Director to execute the agreement. This agreement stands ratified by the company in the Annual General Meetings of the company held on 30th November, 2005; 29th December, 2006 and 14th September, 2007.

153. This authorization has been duly admitted by the respondent no.2 in the statement dated 21st September, 2007 recorded under Order X Rule 2 of the CPC in both the suits being CS(OS)Nos.1508/2005

and 2046/2006.

So what would be the judgment to follow on these admissions?

154. The plaintiff had filed a suit for specific performance. In a suit for specific performance of agreement to sell and purchase of immovable property, the court would be required to consider the two issues :

- “(i) *whether the agreement of sale as alleged by the plaintiff is lawful, validly executed and binding.*
- (ii) *whether the plaintiff, who is a purchaser, has complied with the provisions of Section 16(c) of the Specific Relief Act by pleading and establishing that it has performed and has been ready, willing and able to perform his part of the contract.”*

155. We found that the respondents have categorically admitted the agreement to sell. These are material admissions of the amount received by the respondents. Readiness and willingness of the appellants stand admitted.

156. Nothing has been placed before us which would disentitle the appellants in the present case to exercise of this jurisdiction in his favour for granting the relief of specific performance. There is not even a plea or suggestion that it would be inequitable to grant a relief of specific performance of the contract.

157. It may be noted that barely two years prior to 3rd May, 2005 when the respondents entered into the agreement with the plaintiffs, the respondents had entered into a memorandum of understanding

with Shri Parveen Kumar Jolly for purchase of the same property for a paltry sum of rupees twenty two crores. On 3rd May, 2005, the property was sold to the appellants at a whopping increase of rupees forty nine crores.

158. There is therefore be no warrant for not exercising jurisdiction under Order XII Rule 6 of the Code and granting the relief of specific performance to the plaintiffs.

Costs

159. With regard to the agreement dated 3rd May, 2005, the appellants were compelled to file CS(OS)No.2046/2006 on or about 1st November, 2006 that is about 12 years ago.

160. On the 30th of May 2011, the Id. Single Judge directed the respondent no.1 to place on record a copy of the detailed balance sheets of the company for the year 2006-07 within four weeks of the date of the order. This was not complied with. Thereafter a notice dated 3rd November, 2011 under Order XII Rule 8 of the CPC issued by the plaintiff to the defendants calling upon them to produce the documents was not complied with. Even an order dated 10th January, 2014 made by the Joint Registrar on I.A.No.15401/2010 (*filed by the plaintiffs under Order XI Rules 12 & 14 of the CPC*), directing the defendants to produce the documents enumerated therein was also not complied with.

161. The defendants successfully obstructed the orders against them on I.A.No.22988/2014 (*filed by the plaintiffs under Order XI Rule 21 read with Section 151 of the CPC*) seeking striking off the defence of

the defendant nos.1 to 6 because of non-compliance of orders of this court.

162. On 17th August, 2017, the defendants dishonestly sought time to file their balance sheets and returns for the period in question, and based on this statement, secured deferment of adverse orders on I.A.No.22988/2014. Instead of complying with their commitment to the court, the respondent nos.1 to 6 merely filed some print outs purporting to be financial statements of the company.

163. We find that hearing on I.A.No.1557/2007 filed by the plaintiffs under Order XII Rule 6 of the CPC seeking a decree on admission has been successfully dragged by the defendant nos.1 to 6/respondent nos.1 to 6 for over nine years till orders were firstly reserved thereon on 28th April, 2016.

164. The respondents vigorously contested the application seeking judgment on admission before the Id. Single Judge. They have also vehemently opposed the present appeal on completely untenable, factual and legal pleas contrary to the record of the case. We have found that these pleas are absolutely contrary to the statutory returns of the defendants; their pleadings on court records as well as submissions in other court proceedings. Such pleas have been brazenly pressed before us with impunity clearly manifesting the dishonesty of the respondents and scant respect for judicial proceedings. The defendant nos.1 to 6 have clearly abused the process of the court.

165. In our view the dilatory tactics adopted by the defendants and such conduct of the defendants merits imposition of stringent costs

against the defendant nos.1 to 6.

166. The proceedings on the Original Side of this court are governed by the ***Delhi High Court Original Side Rules, 2018***. So far as the costs against the parties who engaged in such dilatory tactics are concerned, Chapter XXIII of these Rules would have a bearing on the case. The relevant portion thereof reads as follows:

“1.Power of Court/ Registrar General/ Registrar to impose cost.-(i) If the Court considers any party abusing the process of Court or in any manner considered dilatory, vexatious, mala fide and abuse of process by them, the Court shall require the delinquent party to make deposit / payment upfront, in the manner directed by Court of such costs as the Court deems appropriate, before proceeding further in the matter. For the purpose of this Chapter, the expression ‘Court’ shall mean and include the Court, the Registrar General and the Registrar, as the case may be.

(ii) In addition to exercise of powers under Rule 1(i) above, the Court may impose suitable costs upon any party at any stage of the proceedings, including at the stage of filing any interlocutory application; framing of issues; determining order and conduct of recording evidence etc., if it considers imposition of such costs just, necessary and proper, according to the proceedings in the matter.

(iii) While determining costs, the Court may also take into consideration factors, such as, inconvenience caused to parties/ witnesses/ other persons connected with the proceedings; previous conduct of parties; the stage at which the offending conduct is committed by the delinquent party; the probability and likelihood of success of vexatious efforts of the delinquent party; the relevancy of number and nature of witnesses; questions (including depositions by way of examination-in-chief)

put to the witnesses and such other conduct as the Court considers inappropriate.

(iv) Failure of the said party in making payment/ deposit of costs may result in all consequences provided in the Code for defaults and adverse orders being passed against the said party, as the Court deems appropriate and proper, besides enabling the other party to file execution proceedings against the delinquent party for recovery of said costs.

2. Imposition of actual costs.-*In addition to imposition of costs, as provided in Rule 1 of this Chapter, the Court shall award costs guided by and upto actual costs as borne by the parties, even if the same has not been quantified by parties, at the time of decreeing or dismissing the suit. In this behalf the Court will take into consideration all relevant factors including (but not restricted) the actual fees paid to the Advocates/ Senior Advocates; actual expenses for publication, citation etc.; actual costs incurred in prosecution and conduct of suit including but not limited to costs and expenses incurred for attending proceedings, procuring attendance of witnesses, experts etc.; execution of commissions; and all other legitimate expenses incurred by the party, which the Court orders to be paid to any party.*

In addition to imposition of costs as above, the Court may also pass a decree for costs as provided in Sections 35-A and 35-B of the Code or under any applicable law."

167. For the view we have taken, we are required to pass orders on the application in the suit as well. Therefore, this court would have the jurisdiction to pass consequential order of costs in the suit as well.

168. Additionally the appellant has contributed heavily to the unwarranted burden on the courts on account of unnecessary litigation,

as in the present case. The respondents must be required to compensate the legal system for such conduct.

169. The justice of the case and interests of justice demands that the respondents is directed to do so by paying costs to the Delhi High Court Legal Services Committee; Delhi High Court Mediation and Conciliation Centre and the Delhi International Arbitration Centre.

Payment of sale consideration under the agreement

170. Under the agreement dated 3rd May, 2005, a total of ₹55.50 Crores was payable towards the purchase of immovable property as well as the business. An amount of ₹5 crores stands paid as part consideration till date leaving a balance of ₹50.50 Crores.

171. Out of this amount, an amount of ₹ 11.50 Crores was payable on or before 30th June, 2006 i.e. two months therefrom.

172. A further amount of ₹5 crores was payable on or before 31st December, 2005 i.e. within about 7 months of the agreement.

173. The remaining amount of ₹34 crores was payable to the defendant no.1 within 12 months of the agreement. As such, the plaintiffs had a period of almost one year in totality to pay the balance amount.

Result

174. As a result of the above discussion, it is directed as follows :

(i) The order dated 24th July, 2017 passed by the Id. Single Judge on I.A.No.1557/2007 in CS(OS)No.2046/2006 is hereby set aside and

quashed.

(ii) I.A.No.1557/2007 is hereby allowed and consequently the prayers of the plaintiffs in the suit, as prayed for, are decreed.

(iii) The Registry shall draw up a decree sheet accordingly.

(iv) The appellants shall pay the balance amount of ₹50.50 Crores to the defendant no.1 within a period of three months and 15 days from today.

(v) Upon receipt of the amount, the respondents shall forthwith execute the sale deed in favour of the appellants as well as any other documents, as may be required. It shall be the responsibility of the respondent no. 2 to complete the formalities including obtaining permissions, if any, from any authority or department and ensure execution of the registered sale deed forthwith in favour of the appellants.

(vi) In case the respondents do not accept the payment of the amount from the appellants, the amount shall be deposited by the appellants in CS(OS)No.2046/2006 by way of cheque in the name of Registrar General of this court. Upon the deposit, the said cheque shall be encashed by the Registry and the amount thereof shall be kept in a Fixed Deposit Receipt initially for a period of six months to be kept renewed till further orders of the Id. Single Judge in the suit proceedings.

(vii) In such eventuality, the appellants shall be entitled to seek

appropriate remedy for execution of the judgment and decree by appropriate proceedings by the Id. Single Judge.

(viii) Given the delay caused by the respondents in the adjudication of the matter and their conduct before the court, the respondents shall pay costs to the appellants at the rate of ₹1 Lac for each year of the litigation w.e.f. 1st November, 2006 to July, 2018 being a total of ₹11,50,000/- for the period of 11½ years

(ix) Costs of ₹1,00,000/- each are directed to be paid to the Delhi High Court Legal Services Committee; Delhi High Court Mediation and Conciliation Centre and the Delhi International Arbitration Centre, which shall be paid by the respondents within 15 days from today and proof of deposit shall be filed with the Registry. The copy of the receipts shall be made available to the appellants through counsel immediately upon the deposit.

(x) In case the respondents fail to deposit the costs as at S.no. (viii) & (ix) above, as directed, the appellants shall be entitled to deduct the amount of costs out of the balance sale consideration and to deposit the costs of ₹1 lakh with each of the DHCLSC, DHCMCC & the DIAC. Proof of deposit shall be sent to the defendants.

(xi) In view of the order we are passing regarding payment up to date costs in the suit, we are refraining from imposing further costs on the respondents in the present appeal.

(xii) The appeal is allowed in the above terms.

All pending applications are disposed of, as having been rendered infructuous, as a result of the final judgment in the appeal.

ACTING CHIEF JUSTICE

AUGUST 02, 2018/aj

C.HARI SHANKAR, J

