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

% *Date of Decision: 02nd March, 2023*

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+ RFA 130/2023

SMT. SANTOSH DEVI MITTAL Appellant
Through: Mr. Deepak K. Tyagi,
Advocate.
versus

SMT. SHALINI KESWANI & ORS. Respondents
Through: Mr. Manish Gandhi, Mr. Ankit
and Mr. K.K. Goel, Advocates.

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+ RFA 161/2023

SMT. SANTOSH DEVI MITTAL Appellant
Through: Mr. Deepak K. Tyagi,
Advocate.
versus

SMT. SHALINI KESWANI & ORS. Respondents
Through: Mr. Manish Gandhi, Mr. Ankit
and Mr. K.K. Goel, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 9631/2023 (Exemption) in RFA 161/2023

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.M. APPL. 9632/2023 (delay) in RFA 161/2023

3. Present application has been filed by the Appellant seeking condonation of delay of 24 days in refiling the appeal.
4. Issue notice.
5. Mr. Manish Gandhi, learned counsel accepts notice on behalf of the Respondents.

6. For the reasons stated in the application, the same is allowed.
7. Delay of 24 days in refiling the appeal is condoned.
8. Application stands disposed of.

RFA 161/2023 & C.M. APPL. 9630/2023 (stay)

RFA 130/2023 & C.M. APPL. 8067/2023 (stay)

9. RFA 161/2023 has been filed by the Appellant against the judgment and decree dated 22.11.2022, passed by the learned Trial Court, directing the Appellant to hand over vacant and peaceful possession of the suit property bearing No. 158, Ground Floor and First Floor, Block F-1U, Pitampura, Delhi, ad-measuring 126.687 sq. yards to the Respondents along with damages of Rs. 3 lakhs with interest @ 6% per annum. RFA 130/2023 is filed by the Appellant challenging the judgment and decree dated 22.11.2022, whereby the Trial Court has dismissed the counter claim of the Appellant. Since the appeals arise out of a common judgment and decree and issues in both are inextricably linked, both appeals are being decided by this common judgment. Appellant was the Defendant before the Trial Court and Respondents were Plaintiffs and parties are hereinafter referred to by their litigating status before the Trial Court.

10. Plaintiffs had appeared on Caveat and were put to notice for today. With the consent of the parties, both the appeals have been taken up for hearing and final disposal.

11. Brief facts as put forth by the Plaintiffs are that Defendant was the owner of the suit property and after due deliberations between the parties, it was agreed that Defendant would sell the suit property to the Plaintiffs for a total consideration of Rs. 1 Crore. In furtherance thereof, a Sale Deed was executed between the parties on 10.07.2013 and payment was made by the Plaintiffs to the Defendant vide three separate Demand Drafts and the Sale Deed was registered. Details of

the Demand Drafts are as follows:-

<i>S. No.</i>	<i>DD NO.</i>	<i>Date</i>	<i>Amount</i>	<i>Drawn on</i>
1.	003824	09.07.2013	49,50,000/-	IDBI Bank, Ashok Vihar, Delhi
2.	003828	09.07.2013	24,75,000/-	-Do-
3.	008254	09.07.2013	24,75,000/-	HDFC Bank, Shastri Nagar, Delhi

12. After the execution of the Sale Deed and in accordance with the terms incorporated therein, Defendant handed over symbolic possession of the suit property to the Plaintiffs, but sought 15 days to vacate the premises and assured payment of licence fee for the said period. Defendant was thus liable to vacate the suit premises by the last week of July, 2013, but failed to do so with dishonest intention to usurp the property and instead sent a legal notice dated 02.08.2013, falsely stating that the Demand Drafts were not received by her. Plaintiffs immediately responded to the notice on 05.08.2013, denying the contents of the notice and also sent a legal notice dated 10.08.2013, calling upon the Defendant to vacate the premises under her unlawful occupation.

13. When the Defendant refused to hand over the possession of the suit property and Plaintiffs learnt that Defendant was in the process of selling the property, Plaintiffs filed the suit from which the present appeals arise, seeking decree of possession, mesne profits/damages @ Rs. 30,000 per month, from the date of filing of the suit till actual delivery of possession as well as for mandatory injunction restraining the Defendant and her assignees, etc. from creating third-party rights in the suit property.

14. Upon receipt of summons, Defendant filed her written statement as also a counter claim for declaring the Sale Deed dated 10.07.2013 as null and void and for permanent injunction restraining the Plaintiffs from creating third-party rights and/or any other encumbrances in the suit property.

15. Based on the pleadings of the parties, Trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to a decree for possession of the Ground and First floors of the property bearing no. 158, Block F-1U, Pitampura, Delhi-110088, admeasuring 126.687 sq yards?OPP.

2. Whether the plaintiffs are entitled for mesne profits/damages @ Rs. 30,000/- per month with effect from filing of the suit till the actual date of delivery of possession? OPP.

3. Whether the plaintiffs are entitled to a decree for mandatory injunction thereby restraining, the defendant, its assigns, attorney, successor-in-interest, Directors, from creating third party interest in respect of the ground and first floors of the property property bearing no. 158, Block F-1U, Pitampura, Delhi-110088? OPP.

4. Whether the Plaintiffs are entitled for interest, if yes, at what rate? OPP.

5. Whether the plaintiffs do not have any legal right, title, interest or locus-standi to file and contest the present suit, as the sale deed dated 10th July, 2013 has been cancelled by the defendant? OPD

Issues in Counter-claim.

6. Whether the defendant/ counter claimant is entitled to a decree for declaration against the plaintiffs, declaring the sale deed dated 10th July, 2013 as null and void? OPD/CC.

7. Whether the defendant/counter claimant is entitled to a decree for permanent injunction restraining the plaintiffs from creating any third party interest in respect of the suit property on the basis of the alleged sale deed dated 10th July, 2013?OPD/CC

8. Relief.”

16. By the judgment impugned before this Court, Trial Court decreed the suit in favour of the Plaintiffs and dismissed the counter claim of the Defendant as follows:-

“RELIEF

28. In view of the above discussion, the plaintiff are entitled in

the following reliefs:-

(1) The defendant shall deliver the vacant peaceful possession of the suit property i.e. property bearing no. 158, Ground floor and First floor, Block F-1U, Pitampura, Delhi ad-measuring 126.687 sq yards to the plaintiffs. The plaintiffs shall assist the defendant in the revalidation of the demand drafts which were handed over by them to the defendant at the time of the execution of the Sale deed.

(2) The defendants are restrained from creating any third party interest in the suit property.

(3) The defendant shall pay a lump-sum damages of Rs. 3,00,000/- to the plaintiffs along with interest @ 6% p.a from the date of institution of the suit till its realisation.

29. The counter claim filed by the defendant is dismissed. Parties to bear their own cost. However, the plaintiff is awarded the cost of the court fees and the Local Commissioner who recorded the evidence in the present matter. Decree sheet be prepared accordingly. File be consigned to Record Room.”

17. Assailing the impugned judgement, learned counsel for the Defendant argues that the Trial Court has erred in not considering the most material evidence on record which is the Sale Deed dated 10.07.2013 exhibited as Ex.PW1/1 and clause 2 thereof as per which the Defendant had delivered actual, physical and vacant possession to the Plaintiffs at the time of execution and registration of the Sale Deed and it is not open for the Plaintiffs to contend that Defendant was a licensee contrary to the said covenant. Section 92 of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Act’) provides that no party is permitted to set up a case which contradicts or varies the terms of a duly executed and registered instrument of sale.

18. It is further submitted that the Trial Court also erred in appreciating that no cogent, credible or reliable material was placed on record by the Plaintiffs and no evidence, oral or documentary, was led to support the case of the Plaintiffs that the original Demand Drafts were handed over to the Defendant. In fact, quite to the contrary, PW-3, the Assistant Manager of the IDBI Bank stated in her cross-

examination that the two Demand Drafts in question had not been encashed and were lying in DD Suspense Account of the Bank, till date. PW-4, who was the Assistant Branch Manager of the HDFC Bank also stated in the cross-examination that the third Demand Draft was also not encashed and was lying in the DD Suspense Account of the said Bank.

19. It is also contended that once the sale consideration did not pass to the Defendant, the Sale Deed was null and void and the Trial Court ought to have decreed the counter claim in favour of the Defendant. Trial Court did not apply the ratio of the judgment of the Supreme Court in *Kewal Krishan v. Rajesh Kumar & Ors., 2021 SCC OnLine SC 1097*, wherein it is held that once a document is void, a party need not seek a declaration to that effect and this plea can be set up and proved in collateral proceedings.

20. It is also argued that the Trial Court failed to appreciate that the Defendant in her legal notice dated 02.08.2013 had called upon the Plaintiffs to pay Rs. 1 Crore with interest @ 12% towards the sale consideration within 7 days, failing which the Sale Deed dated 10.07.2013 would be deemed to be null and void and cancelled. Despite the legal notice, Plaintiffs did not tender the sale consideration and instead sent false and frivolous notices seeking possession, despite knowing that they were at fault.

21. *Per contra*, learned counsel appearing on behalf of the Plaintiffs argues that sale consideration amount of Rs. 1 Crore was debited from the accounts of the Plaintiffs and the three Demand Drafts were duly handed over to the Defendant before the Sub-Registrar at the time of execution and registration of the Sale Deed Ex. PW-1/1, as per its terms. This was proved by the Plaintiffs, by the evidence of PW-3 and PW-4, the Bank officials, who testified that the Demand Drafts were

drawn from the accounts of the Plaintiffs and money had been debited *albeit* the DDs were lying unpaid in the DD Suspense Accounts of the respective Banks. Once the Sale Deed recorded that the Demand Drafts were handed over and it is not disputed that the Sale Deed is a registered document, no oral evidence could be led or even a defence set up by the Defendant that the Demand Drafts did not pass into the hands of the Defendant under the Sale Deed. Section 92 of the Act in fact comes to the aid of the Plaintiffs inasmuch as its provisions preclude a party from leading evidence contrary to the terms of a written document.

22. It is further submitted that once the Plaintiffs performed their part of the obligations and handed over the three Demand Drafts to the Defendant and the amounts were debited from their accounts, they cannot be blamed if the Defendant chose not to encash them. In fact, the Plaintiffs in their legal notice dated 10.08.2013, had offered to help the Defendant by issuing duplicate Demand Drafts, in case the original Demand Drafts were lost by her.

23. I have heard learned counsels for the parties and examined their rival contentions.

24. It is not in dispute that the Defendant, being the owner of the suit property agreed to sell the property to the Plaintiffs for a total sale consideration of Rs. 1 Crore and on 10.07.2013, a registered Sale Deed was executed. Parties fell apart when Defendant refused to hand over the possession and while Plaintiffs contend that three Demand Drafts towards the sale consideration were given by them in the Office of the Sub-Registrar and is so recorded in the Sale Deed, Defendant claims that the Drafts were not received and are lying un-encashed in the Banks.

25. Plaintiffs led evidence and examined 5 witnesses, including Plaintiff No.3, the Bank officials of the two Banks and an employee (UDC) working in office of the Sub-Registrar. Plaintiff No.3 was examined as PW-1 and proved the certified copy of the Sale Deed as Ex.PW-1/1, certificate issued by IDBI Bank regarding DD No.3824 dated 09.07.2013 for Rs.49,50,000/- (Ex.PW-1/2) as well as certificate regarding DD No.3828 dated 09.07.2013 for Rs.24,75,000/- (Ex.PW-1/3) and certificate by HDFC Bank pertaining to the instrument dated 09.07.2013 for Rs.24,75,000/- (Ex.PW-1/4). He also proved the legal notice dated 02.08.2013, reply by the Plaintiffs to the said notice and the legal notice dated 10.08.2018, sent by the Plaintiffs to the Defendant.

26. Ms. Rekha Rani, Assistant Manager, IDBI was examined as PW-3 and deposed that Demand Draft dated 09.07.2013, in the sum of Rs.24,75,000/- was issued by the Bank by debiting the amount from the joint bank account in which Sh. Naresh Keswani is the first holder and Smt. Chandni Keswani is the second account holder. She proved the print screen of the Demand Draft and the copy of the statement of the joint account for the relevant period. A similar statement was made in respect of Demand Draft dated 09.07.2013, in the sum of Rs.49,50,000/- in favour of the Defendant, issued by debiting the amount from the bank account of Smt. Shalini Keswani. PW-4 testified in support of issuance of Demand Draft dated 09.07.2013 in the sum of Rs.24,75,000/- in favour of the Defendant and stated that the amount was debited from the account in the name of Atul Agencies. PW-5 was working as U.D.C. in the Office of Sub-Registrar and produced the summoned record being Register Volume No. 4741 and Book No. 1, maintained in the Office as well as the original Sale Deed executed by the Defendant in favour of the Plaintiffs. He

deposed that as per practice, first the buyer of the property pays the consideration to the seller and then the sale deed is registered in their Office. Defendant examined herself as DW-1 and proved the Sale Deed as well as legal notices. Her son was examined as DW-2.

27. On perusal of the evidence led before the Trial Court, it is evident that Plaintiffs have proved: (a) execution and registration of the Sale Deed before the learned Sub-Registrar (PW-5); (b) debit of Rs. 1 Crore from the Bank accounts of the Plaintiffs; and (c) handing over of the Demand Drafts to the Defendant. It is relevant to note that the execution of the Sale Deed is not in dispute between the parties and as rightly noted by the Trial Court, it is clearly mentioned at Page No.8 of the Sale Deed that consideration amount of Rs. 1 Crore was received by the vendor from the vendees and the details of the Demand Drafts were also given. Since the Sale Deed itself reflected payment of sale consideration, the Trial Court rightly relied on Section 92 of the Act, which provides that when terms of any contract, grant or other disposition of property or any matter required by law to be reduced to the form of document, have been proved in accordance with Section 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from, its terms. Relevant part of the Sale Deed is extracted hereunder for ready reference:

“AND WHEREAS the Vendor for her bonafide legal needs and requirements has agreed to sell the ENTIRE GROUND FLOOR & FIRST FLOOR WITHOUT ROOF RIGHTS, part of Built-up Free hold Property No. 158, built on land area measuring 126.687 Sq.Mtrs., in Block-FIU, Situated in the layout plan of Pitampura Residential Scheme, and entrance, alongwith the proportionate fee hold rights of the land underneath and all fittings and fixtures of electric, water sanitary, with its connections and wooden work unto the Vendees, as under:

- i) *50% Undivided Share of the said property to SMT. SHALINI KESWANI*
- ii) *25% Undivided Share of the said property to SMT. CHANDNI KESWANI*
- iii) *25% Undivided share of the said property to CHANDI RAM CHAWLA.*

they have also agreed to purchase the same from the Vendor, for a total consideration amount of Rs.1,00,00,000/- (RUPEES ONE CRORE ONLY); which the Vendor have received from the Vendees, as per details given below:-

- i) *Rs.49,50,000/- vide Pay Order No.003824, dt. 09.07.2013, drawn on IDBI Bank, Ashok Vihar, Delhi, on account of SMT. SHALINI KESWANI.*
- ii) *Rs.24,75,000/- vide Pay Order No.003828, dt. 09.07.2013, drawn on IDBI Bank, Ashok Vihar, Delhi, on account of CHANDNI KESWANI.*
- iii) *Rs.24,75,000/- vide Pay Order No.008254 dt. 09.07.2013, drawn on HDFC Bank, Shastri Nagar, Delhi, on account of CHANDI RAM CHAWLA.*
- iv) *Rs.1,00,000/- adjusted on account of TDS Tax, which is paid by the Vendees in the name of the Vendor.*

prior to the execution of this sale deed, the Vendor do hereby acknowledge the receipt of the same.”

28. It is not the case of the Defendant that the Sale Deed was not executed between the parties. In this view, the defence set up that Demand Drafts were not handed over to her clearly contradicts and varies the terms of a duly executed and registered sale instrument. In ***Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595***, the Supreme Court while dealing with Section 91 of the Act observed as under:-

“13.

This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the “best-evidence rule”. It is in reality declaring a doctrine of the substantive law, namely, in the case of a written contract, that all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thayer's Preliminary Law on Evidence, p. 397 and p. 398; Phipson's Evidence, 7th Edn., p. 546; Wigmore's Evidence, p. 2406.) It has been best described by Wigmore stating that the rule is in no sense a rule of evidence but a

rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process — the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of proving it is merely that dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into play when the counsel offers to “prove” it or “give evidence” of it; otherwise, any rule of law whatever might be reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects — sale, contract etc. there are specific requirements varying according to the subject. On the contrary there are also certain fundamental elements common to all and capable of being generalised. Every jural act may have the following four elements:

- (a) the enactment or creation of the act;*
- (b) its integration or embodiment in a single memorial when desired;*
- (c) its solemnization or fulfilment of the prescribed forms, if any; and*
- (d) the interpretation or application of the act to the external objects affected by it.*

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This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p. 294.) As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase “best evidence” is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted.

17. It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Starkie on Evidence, p. 648.)”

29. In **Ramaswamy (Dead) By LRs v. M. Lobo (Dead) By LRs., (2001) 10 SCC 176**, the Defendant was the owner of the suit property and transferred the same in favour of the Plaintiff by a registered Sale Deed. On the same day, property was leased to the Defendant, however, on account of default in payment of rent Plaintiff sought recovery. One of the defences set up by the Defendant was that the Sale Deed was in fact a security for loan advanced to the Defendant. The Supreme Court rejected the argument by observing that the Sale Deed was a registered document and no oral evidence could be adduced to show that no title passed to the Plaintiff under the Sale Deed. In **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through Its Secretary v. Bipin Kumar, (2004) 2 SCC 283**, the Supreme Court held as follows:-

“7. ...
Section 92 of the Evidence Act precludes a party from leading evidence contrary to the terms of a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a price of Rs 15.40 per sq yard the real market value was Rs 120 per sq yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents do not reflect the correct market value. Therefore, as per sale instances of the comparable lands, the market value, on dates of sales, were in the region of Rs 15.37 to Rs 15.40 per sq yard.”

30. In *Sanjay Gupta v. Cottage Industries Exposition Ltd., 2008 SCC OnLine Del 10*, parties had entered into a registered lease deed and while the Plaintiff claimed that lease was for residential purpose and Defendant misused the same, Defendant's stand was that lease was for commercial purpose. To determine the purpose of letting, the Court examined covenants in the lease deed and relying on Sections 91 and 92 of the Act held as under:-

"20. The defence set up by the defendant that the plaintiff had agreed to get the user of the premises changed to commercial is in the teeth of Sections 91 and 92 of the Evidence Act since the defendant is seeking to contradict, vary, add to the terms of the registered lease deed. The Bombay High Court in Dinkarra Lalit Kumar v. Sukhdayal Rambilas, AIR 1947 Bombay 293 held that the terms of a contract reduced to writing cannot be ascertained by allowing parole evidence as to what transpired antecedent to the contract or what the parties did subsequent to the contract. Once the contract between the parties is reduced to writing, the court can only look at the writing alone in order to construe what the terms of the contract were.

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22. In S. Saktivel (dead) by LRs v. M. Venugopal Pillai, (2000) 7 SCC 104 the Supreme Court held that where under the law a contract or disposition is required by law to be in writing, its terms cannot be modified, altered or substituted by an oral contract, or disposition. Under Section 92(4) of the Evidence Act no parole evidence is admissible to substantiate such oral contract or disposition. Where a document for its validity or effectiveness is required by law to be given in writing, no modification or alteration or substitution of such written document is permissible by parole evidence and it is only by another written document that the terms of the earlier document can be altered, rescinded or substituted. The Supreme Court also held that parole evidence cannot be permitted to substantiate the subsequent oral agreement where the original agreement is contained in a registered document. This is not permitted by Section 92(4) of the Evidence Act. The terms of a registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement is allowed to be substantiated by parole evidence it would mean re-writing of the registered document which is not permissible."

31. It would be profitable to refer to another judgment in *Sharex Acting Through Vinod Kumar Chadha v. Sudershan Suri, 2010*

SCC OnLine Del 2233, relevant part of which is as under:-

“20. To conclude, in the instant case the execution of the lease deed has been unequivocally admitted by the appellant. Once the execution of the document has been admitted, Sections 91 and 92 of the Evidence Act, come into play. Section 91 lays down that when the terms of a contract or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract or other disposition of property, except the document itself. Section 92 further lays down that when the terms of any such contract or other disposition of property have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting therefrom. Thus, quite obviously, the pleas raised by the appellant against the contents of the lease deed are barred by Sections 91 and 92 of the Evidence Act and appear to have been made only for the purpose of delaying the trial of the case. Such pleas as ruled by this Court in the Parivar Seva Sansthan case (supra) can be ignored by the Court while adjudicating an application under Order 12 Rule 6, CPC if otherwise the Court finds, either on an application of any party or on its own motion, that the admissions made in the pleadings or otherwise taken as a whole justify the passing of a decree thereon. In fact, the Court in the said case has gone so far as to say that even a constructive admission firmly made can be made the basis of the decree. All that the Court is required to do is to satisfy itself that the question raised in the suit can be determined without evidence”

32. Examined in the light of the observations and law laid down in the aforementioned judgments, this Court is of the view that the plea/defence set up by the Defendant is wholly barred under Sections 91 and 92 of the Act. Since the instrument of sale clearly records the factum of the Demand Drafts towards the sale consideration being received by the Defendant, it is impermissible for the Defendant to contradict the terms of the written instrument. As held by the Supreme Court, the terms of the registered document can be altered, rescinded or varied only by a subsequent registered document and not otherwise. If written arrangement is allowed to be substituted by an alleged oral arrangement it would amount to rewriting the registered document. Defendant has not produced any written document to prove that the

contents of the registered Sale Deed are false and has only made bald and oral pleas. If an oral stipulation is to be pitched against a written document, no doubt the former would have to give way to the terms of a written document, which alone shall bind the parties thereto.

33. It may also be noticed that the Defendant herself produced a legal notice sent by the Plaintiffs on 10.08.2013, Ex.DW-1/4, wherein Plaintiffs referred to the Demand Drafts and also stated that in case they were lost by the Defendant, Plaintiffs were willing to assist by issuing duplicate Demand Drafts. No argument was addressed by the counsel to refute the said document before this Court.

34. Banking norms and the law in respect thereof are fairly well settled that pay orders, banker's cheque or demand drafts are equivalent to cash-in-hand. A Division Bench of this Court in ***Kohli Housing and Development Pvt. Ltd. v. Convenience Enterprises Pvt. Ltd., 2009 SCC OnLine Del 1136***, held that a Pay Order/Bank Draft/Banker's cheque is issued after debiting a party's account and is almost as good as cash. In the said case, consideration was held to have passed between parties on delivery of Pay Orders and the plea of failure to pay the consideration for the reason of return of Pay Orders as unpaid was negatived. In ***Radhey Shyam Gupta v. Commissioner of Income Tax, 1998 SCC OnLine Raj 503***, the Rajasthan High Court *albeit* in a case pertaining to income tax, held that where a Demand Draft in the name of an assessee was seized by the Income Tax Department, even though it was not encashed, once the appeal was decided in favour of the assessee, the amount under the Demand Draft was refundable by the Department. It was observed that it made no difference whether cash or Demand Draft was seized since Demand Draft is as good as cash and even if it is kept in the office of the Department and not encashed, the fault is of the Department and it is

liable to pay interest. The ratio of these decisions is clearly applicable to the present case and therefore, once the Plaintiffs had given the Demand Drafts to the Defendant and the money was debited from their accounts, which the Plaintiffs have successfully established, it makes no difference if the Defendant chose not to encash them and it is rightly held by the Trial Court that the sale consideration towards the sale of the suit property would be treated to have passed to the Defendant.

35. In view of this, the Trial Court has rightly decreed the suit in favour of the Plaintiffs directing the Defendant to hand over vacant and peaceful possession of the suit property as well as restraining her and her assignees etc. from creating third party rights therein. Since the Plaintiffs have discharged the onus that the suit property was purchased by them on payment of sale consideration and a registered Sale Deed was executed, no infirmity is found in the impugned judgment even to the extent the counter claim of the Defendant has been dismissed.

36. No arguments were addressed by counsel for the Defendant with regard to the award of damages and the interest thereon.

37. For all the aforesaid reasons, this Court finds no infirmity or illegality in the impugned judgment and decree dated 22.11.2022 and both the appeals are dismissed, being devoid of merit.

38. Pertinent it is to note that the Trial Court has directed the Defendant to deliver the vacant possession of the suit property to the Plaintiffs and has directed the Plaintiffs to assist the Defendant in revalidation of the Demand Drafts. It is, therefore, left open to the Defendant to avail the opportunity of seeking revalidation of the Demand Drafts, which offer was made to the counsel for the Defendant, at the outset, to put a quietus to the litigation, but was

declined, on instructions.

39. All pending applications stand dismissed.

JYOTI SINGH, J

MARCH 02, 2023/shivam/rk/kks

