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

Pronounced on: 04.03.2024

+ **CS(COMM) 719/2021 & IA No.17586/2021**

SHRI SANJEEV JOON Plaintiff

Through: Mr. Naresh K. Daksh, Adv.

versus

SHRI SURENDER BASOYA & ANR Defendants

Through: Mr. Anurag Singh, Adv.

+ **CS(COMM) 720/2021 & IA No.17589/2021**

SHRI SANJEEV JOON Plaintiff

Through: Mr. Naresh K. Daksh, Adv.

versus

SHRI SURENDER BASOYA & ANR Defendants

Through: Mr. Anurag Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

IA No.10520/2022 in CS(COMM) 719/2021

IA No. 10444/2022 in CS(COMM) 720/2021

1. CS(COMM) 719/2021 has been filed by the plaintiff seeking the following reliefs:

(a) to pass a Decree of recovery of sum of Rs. 2,27,42,104/- (Rupees Two Crores Twenty Seven Lacs Forty Two Thousand One Hundred Four)



together with interest @ 18% per annum since 22.12.2021 till realization of entire amount in favour of the Plaintiff and against the Defendants, jointly and severally;

Or in alternate of Prayer (a), the Prayer (b) and (c)

(b) to pass a Decree of Declaration thereby declaring that the Sale Deed dated 15.9.2016 executed by Plaintiff and in favour of Defendant No. 1 in respect of Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62 -A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065 is without consideration and is void ab initio and nullity and no title has transferred and passed in favour of Defendant No. 1 and also subsequent two Gift Deeds dated 14.3.2019 executed by Defendant No. 1 in favour of Defendant No. 2 and also ordering endorsement of cancellation on said Sale Deed and Gift Deeds by the concerned Sub-Registrar; and

(c) to pass a Decree of Possession in favour of the Plaintiff and against the Defendants thereby directing the Defendants jointly and severally, their associates, successors, assign, attorney, representative or any other person claiming on their behalf to restore back the possession of the Property i.e. Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62-A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065 to the Plaintiff;

(d) to pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their family members, successor-in-interest, associates, assignee or any other person acting on his behalf from raising any construction, entering into any Agreement, transferring, alienating and/or parting with possession or creating third party interest in whatsoever manner in respect of Property i.e. Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62-A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065 or any portion thereof;

(e) to award the costs of the present suit throughout in favour of the Plaintiff and against the Defendants;



(f) to pass any further or other order, relief or directions in favour of the Plaintiff and against the Defendant which this Hon'ble Court may deem just, fit and proper in the interest of justice and equity."

2. CS(COMM) 720/2021 has been filed by the plaintiff seeking the following reliefs:

"(a) to pass a Decree of recovery of sum of Rs. 2,07,70,000/- (Rupees Two Crores Seven Lacs Seventy Thousand) together with interest @ 15% per annum since 21.12.2021 till realization of entire amount in favour of the Plaintiff and against the Defendant,;

Or in alternate of Prayer (a), the Prayer (b) and (c)

(b) to pass a Decree of Declaration thereby declaring that the Agreement to Sell dated 20.6.2016 executed between Plaintiff and Defendant in respect of Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi- 110065 without consideration and is void ab initio and nullity and the Defendant has no title, right and interest of whatsoever nature in the said Plot of land; and

(c) to pass a Decree of Possession or direction in favour of the Plaintiff and against the Defendant thereby directing the Defendant, his associates, successors, assign, attorney, representative or any other person claiming on his behalf to restore back the possession of the Property i.e. Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065 to the Plaintiff;

(d) to pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendant thereby restraining the Defendant, his family members, successor-in-interest, associates, assignee or any other person acting on his behalf from raising any construction, entering into any Agreement, transferring, alienating and/or parting with possession or creating third party interest in whatsoever manner in respect of Property i.e. Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2] (Min) at Village Garhi Jharia Maria, New Delhi-110065 or any portion thereof;

(e) to award the costs of the present suit throughout in favour of the Plaintiff and against the Defendant; and/or

(f) to pass any further or other order, relief or directions in favour of the



Plaintiff and against the Defendant which this Hon'ble Court may deem just, fit and proper in the interest of justice and equity."

3. Two applications [IA No.10520/2022 in CS(COMM) 719/2021 and IA No. 10444/2022 in CS(COMM) 720/2021] have been filed by the plaintiff under Order VIII Rule 10 Code of Civil Procedure, 1908 seeking striking off the defence of the defendants in the present suits and also seeking pronouncement of judgement in favour of the plaintiff and against the defendants, in terms of the prayers made in the plaint.

Factual Matrix

4. The present suits concern two properties, viz. -(i) property bearing No. 62-A/1, admeasuring 400 sq. Yards and (ii) adjoining plot bearing Khasra No. 136/1/2 (Min) admeasuring 400 sq. Yards, situated at Village Garhi, Jharia Maria, New Delhi.

5. Ms. Anju Bansal was the owner of the said aforesaid properties. In 2013, the defendant no. 1 had purchased 300 sq. yards out of aforesaid properties from Anju Bansal.

6. Plaintiff claims right in the remaining 500 sq. yards of the aforesaid properties on the basis of a Settlement Agreement dated 12.06.2015, which was executed between the plaintiff and Anju Bansal, and which forms part of the decree dated 17.07.2015 passed in CS(OS) 1915/2014, wherein it was agreed between the said parties that in the event of sale of the said property measuring 500 sq yards, 80% of the sale consideration was to accrue to the benefit of the plaintiff and 20% was to accrue to the benefit of Anju Bansal.

7. In the month of September 2016, the defendant no. 1 approached the plaintiff and Anju Bansal for purchase of another 270 sq. yards of aforesaid properties [hereinafter referred to as "suit property-1"]. The plaintiff and



Anju Bansal agreed to the same, for the total sale consideration of Rs. 1,58,00,000/-. This agreement was reduced into writing vide Sale Deed dated 15.09.2016, registered on 15.10.2016, in which the plaintiff was recorded as the "Confirming Party". The entire sale consideration was paid by the defendant no.1 by way of post-dated cheques. The said property is subject matter of CS(COMM) 719/2021.

8. The details of seven post-dated cheques executed by the defendant no. 1 in favour of the plaintiff; two post-dated cheques, executed by the defendant no. 1 in favour of the Anju Bansal, are reflected in the covenants of the Sale Deed. Clause 6 of the Sale Deed mentioned the consequences of dishonour of cheque and/or non-payment of amount thereof. The said Clause 6 read as under:

"That the VENDOR hereby further covenants with the VENDEE that in case said Property or any portion of the Property hereby sold is lost to the VENDEE on account of any legal defect in the title and right of the VENDOR to transfer the same or the possession or quite enjoyment of the said Property by the VENDEE in any manner disturbed on account of litigation started by anyone claiming title thereof or on account of some act and omission of the VENDOR then the VENDOR shall be liable and responsible for all the losses, damages, costs and expenses sustained by the VENDEE. Simultaneously, the VENDEE has also agreed and undertaken that since the payment of sale consideration is payable in future, the cheque issued in favour of the CONFIRMING PARTY shall be honoured/encashed on presentation and in the event of dishonour of any of cheques and/or non-payment of amount thereof within seven days of such dishonour, the Sale shall stand cancelled automatically and whatsoever money paid by the VENDEE shall stand forfeited and the CONFIRMING PARTY exclusively shall have absolute right either to take possession of Said Property and/or to seek recovery of entire sale consideration from the VENDEE as agreed herein and in such eventuality, the VENDEE shall be liable to pay the entire sale consideration together with interest @ 18% per annum from the date of present Sale Deed till realization / payment to the CONFIRMING PARTY and the VENDEE shall exclusively be responsible and liable for all such action, liabilities and obligations as may be undertaken by him on the basis of present Sale Deed. It is also agreed that in such eventuality, the VENDOR shall not have any right



either in the Property or the amount receivable by the CONFIRMING PARTY and the VENDOR shall also be bound to execute the Sale Deed in favour of the CONFIRMING PARTY or his Nominees, as the case may be for the remaining amount.”

9. All the cheques issued by the defendant no. 1 were dishonoured. The plaintiff issued a demand notice to the defendant no. 1, resulting in an agreement dated 20.06.2017, whereby the defendant no.1 agreed to discharge his liability towards sale consideration mentioned in the Sale Deed. In terms of the said agreement, the defendant no. 1 issued four new cheques, amounting to Rs.1,26,40,000/- in favour of the plaintiff and undertook that in the event of default in payment or dishonour of said cheques, the defendant no. 1 shall be liable to pay interest @ 18% per annum from the date of Sale Deed and the plaintiff will also have the right to seek cancellation of Sale Deed.

10. On 20.06.2017, an unregistered Agreement to Sell (hereinafter referred to as ‘ATS’) was also executed between the defendant no.1 with the plaintiff, qua the remaining 230 sq. yards of the aforesaid properties [hereinafter referred to as suit property-2]. The said property is subject matter of CS(COMM) 720/2021.

11. In terms of the said ATS dated 20.06.2017, the plaintiff agreed to sell his undivided rights and interests in the suit property-2 in favour of the defendant no.1 for a sale consideration of Rs. 1,24,00,000. For the said purpose, a post-dated cheque for the like amount was issued by the defendant no.1 in favour of the plaintiff. It was also mentioned in the ATS that defendant no.1 will directly deal with Smt. Anju Bansal as regards her



title, right etc. It was also agreed that the defendant no.1 will take possession from Smt. Anju Bansal or any other person/occupant.

12. The cheque given to the plaintiff in terms of ATS dated 20.06.2017 was presented for encashment on 29.05.2018, but was dishonoured. The four cheques given to the plaintiff in terms of agreement dated 20.06.2017 were presented for encashment on 19.07.2018, but were also dishonoured.

13. The plaintiff, in the circumstances, issued demand notices to the defendant no.1 and requested the defendant no.1 to pay requisite amount to the plaintiff under the agreements between the parties. Criminal complaints under Section 138 of the Negotiable Instruments Act, 1881, were also initiated by the plaintiff against the defendant no.1.

14. It also transpires that the defendant no. 1 has transferred the suit property-1, in favour of his wife i.e., the defendant no. 2 by way of two registered Gift Deeds dated 14.03.2019.

15. During pendency of aforesaid Complaint Case, a total sum of Rs.15,00,000/- (Rupees Fifteen Lakhs) has been paid / got transferred by the defendant no. 1 to the plaintiff.

Contention of the parties

16. Learned counsel for the plaintiff has submitted that upon the striking of the defendants' written statements from the record, it is evident that they have not been able to raise any defence to the present suits, leaving the plaintiff's claims unrebutted.

17. It is submitted that the Sale Deed has been rendered null and void due to the failure of defendant no. 1 to fulfil his obligation to tender the entire sale consideration as stipulated within the Sale Deed. It is submitted that Clause 6 of the Sale Deed, explicitly outlines the ramifications of



dishonoured cheques and non-payment of sale consideration, which includes cancellation of the Sale Deed. In light of this, it is submitted that a decree of cancellation of Sale Deed, is warranted. Furthermore, it is submitted that the purported Gift Deeds dated 14.03.2019, executed by defendant no. 1 in favour of defendant no. 2, are similarly rendered null and void as a consequence of defendant no. 1's lack of valid title to the suit property-1. It is further submitted that in the Complaint Case filed under Section 138 of the Negotiable Instruments Act (filed qua the cheques given under the Sale Deed), defendant no. 1 in his application under Section 145(2) asserted that the dishonoured cheques were subsequently settled through cash payment. However, in its Statement filed pursuant to the court order dated 14.11.2022, defendant no. 1 fails to mention this alleged cash payment or provide any supporting evidence. It is submitted that the plaintiff's case rests on the stipulation contained in the registered sale deed, and any oral submission or evidence is inadmissible under Section 91 and 92 of the Evidence Act. It is submitted that the plaintiff's allegations remain unrebutted, eliminating the need for a trial.

18. As far as CS(COMM)720/2021 is concerned, it is submitted that cheques given under the ATS have been dishonoured, rendering the ATS null and void, being without consideration. It is submitted that the plaintiff has been ready to execute a Sale Deed pertaining to suit property-2 at the defendant no. 1's convenience; however, the said defendant has failed to evince any readiness and willingness in this regard. Furthermore, it is evident that defendant no. 1 is unwilling to tender the consideration as stipulated within the ATS, yet continues to enjoy possession of the aforementioned property without any lawful basis. This untenable situation



has effectively impeded the plaintiff's ability to engage in any alternative transactions involving the property. In light of these circumstances, the plaintiff seeks the relief of cancellation of the ATS.

19. It is submitted that in the present suits no issue is required to be framed and there is no impediment in passing the judgement / decree. It is submitted that Order 13-A CPC also empowers this Court to give a summary judgement once it is found and considered that there is no real prospect of a defendant succeeding or successfully defending the claim.

20. Learned counsel for the plaintiff has also relied following judgements in support of its submissions: *Venezia Mobili (India) Pvt. Ltd. v. Ramprastha Promoters & Developers Pvt. Ltd. & Ors.* 2019 (259) DLT 13; *Oxbridge Associates Limited v. Mr. Atul Kumra* 2019 (178) DRJ 398; *Pawandeep Singh & Anr. v. Gurdeep Singh Viridi* 2019 (7) AD (Delhi) 506; *C.N. Ramappa Gowda v. C.C. Chandregowda* 2012 (5) SCC 265; *Kewal Krishan v. Rajesh Kumar & Ors.* 2021(14) SCALE 68; and *Placido Francisco Pinto (D) By Lrs & Anr. v. Jose Francisco Pinto & Anr.* 2021 (11) SCALE 575.

Analysis and Finding

21. I have perused the record and heard learned counsel for the parties.

22. Vide order dated 19.12.2022, the applications [IA No.11302/2022 in CS(COMM) 719/2021 and 11303/2022 in CS(COMM) 720/2021] filed by the defendants seeking condonation of delay in filing the written statements, was dismissed since, admittedly, the written statements were filed beyond the period of 120 days from the date of service of summons upon the defendants. Consequently, the written statements filed by the defendants have been taken off the record. Procedure to be followed when a party fails



to present written statement within the time permitted is delineated in Order VIII Rule 10, CPC, which may usefully be reproduced as under:

“10. Procedure when party fails to present written statement called for by Court. — Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

23. In **C.N. Ramappa Gowda v. C.C. Chandregowda**, (2012) 5 SCC 265, the Supreme Court has held as under:

“25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy



trial.

27. However, if the court is clearly of the view that the plaintiff's case even without any evidence is *prima facie* unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit."

24. Recently, in **Asma Lateef v. Shabbir Ahmad**, 2024 SCC OnLine SC 42, the Supreme Court has held as under:

"13. Prior to answering the above question, we consider it appropriate to examine the scope and extent of power exercisable under Rule 10 of Order VIII, CPC.

14. Rule 10 of Order VIII, CPC, used as the primary source of power by the Trial Court in passing the order dated 5th August, 1991 against Samiullah, postulates the procedure that could be adopted when a party fails to present its written statement upon the same being called for by the court. Rule 10 reads as follows:

"10. Procedure when party fails to present written statement called for by Court.—

Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

15. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb 'shall' in Rule 10 [although substituted for the verb 'may' by the Amendment Act of 1976] does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which 'shall' equally applies would be rendered otiose.



16. At this stage, we consider it apposite to take a quick look at *Balraj Taneja (supra)* to examine the scope of Rule 10 of Order VIII. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII, CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement. The relevant paragraphs of the judgment are reproduced below for convenience:

“29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression ‘the court may, in its discretion, require any such fact to be proved’ used in sub-rule (2) of Rule 5 of Order 8, or the expression ‘may make such order in relation to the suit as it thinks fit’ used in Rule 10 of Order 8.”

17. No doubt this decision was rendered considering that the verb used in the provision is ‘may’, but nothing substantial turns on it.

18. What emerges from a reading of *Balraj Taneja (supra)*, with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. *Balraj Taneja (supra)* also lays down the law that provision of Rule 10 of Order VIII, CPC is by



no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

19. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.”

25. As such, even though the facts set out in the plaint are treated to be deemed admitted by the defendants, it is required to be examined if any fact mentioned in the plaint is required to be proved by the plaintiff, before a judgment can be passed against the defendants.

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26. A perusal of the Sale Deed reveals that the defendant no.1 after deducting TDS has handed over seven post-dated cheques to the plaintiff, amounting to Rs. 1,25,13,600/-. The said cheques on presentation were dishonoured. Thereafter, the plaintiff and defendant no.1 entered into an agreement dated 20.06.2017, wherein the defendant no. 1 admitted his liability towards sale consideration against the Sale Deed dated 15.09.2016 and also towards liability of TDS, and issued four fresh cheques in favour of



the plaintiff, amounting to Rs. 1,26,40,000/-. The said cheques on presentation were also dishonoured. The plaintiff thereafter issued a legal demand notice dated 03.08.2018 upon the defendant no.1 seeking payment due under the said four cheques. Criminal complaints under Section 138 of the Negotiable Instruments Act, have also been filed by the plaintiff against the defendant no.1. The defence of the defendant no.1 in the said criminal proceeding is that the payment due under the cheques has been paid through cash transfer.

27. The case of the plaintiff is that the defendant no.1 has not paid the sale consideration in respect of the Sale Deed dated 15.09.2016. It is further the case of the plaintiff that only an amount of Rs.15 lakh has been paid by the defendant no.1 to the plaintiff in the year 2020 through bank transfer, during the pendency of the criminal proceedings. As recorded in order dated 11.10.2022, the defendant no.1, who was present in court, admitted that only part of the sale consideration has been paid by him in respect of the suit property. Vide the said order dated 11.10.2022, the defendant no.1 was directed to place before the court a calculation of the balance sale consideration payable, according to the defendants, alongwith interest payable thereon and a schedule for payment of the same. The defendant no.1 has not complied with the said direction *stricto sensu* and has only filed a statement of payment made by the defendants to plaintiff, which admittedly shows that only a sum of Rs.15 lakh has been paid to the plaintiff after execution of the Sale Deed dated 15.09.2016. Notably, the said statement does not mention any cash transfer to the plaintiff after the execution of the Sale Deed. The relevant portion of the said statement is as under:



Sl.No.	Amount	Mode of payment	Date	Person to whom payment is made
1.	Rs.40,00,000/-	Cheque Bearing No.32	30.10.2013	Smt. Anju Bansal
2.	Rs.40,00,000/-	Cash	17.12.2013	Plaintiff
3.	Rs.10,00,000/-	Cash	Year 2013	Plaintiff though Sh.Shabu and Sh. Ramesh Sharma
4.	Rs.5,00,000/-	RTGS	23.05.2014	Anju Bansal
5.	Rs.20,00,000/-	RTGS	04.06.2014	Anju Bansal
6.	Rs.7,00,000/-	Account Transfer	25.06.2020	Plaintiff
7.	Rs.6,00,000/-	Account Transfer	25.08.2020	Plaintiff
8.	Rs.2,00,000/-	Account Transfer	27.08.2020	Plaintiff
		Total Amount Rs.1,30,00,000/- (Rs. One Crore Thirty lacs)		

28. The payments made by defendants to the plaintiff before execution of the Sale Deed dated 15.09.2016 are not relevant for the present controversy. The terms of the Sale Deed unequivocally stipulate that the entire sale consideration has been paid by way of post-dated cheques:

"2. That the VENDEE has paid the entire sale consideration of Rs.1,58,00,000/- (Rupees One Crore Fifty Eight Lacs only) to the VENDOR AND CONFIRMING PARTY and the VENDOR and CONFIRMING PARTY hereby admit and acknowledge the receipt of same, subject to encashment of said cheques on presentation, as detailed hereunder:

Chq.No.	Dated	Amount	Drawn on
000117	2-01-2017	18,00,000/-	SANJEEV JOON
000118	2-02-2017	18,00,000/-	-do-
000119	17-01-2017	16,00,000/-	ANJU BANSAL
000120	17-02-2017	18,00,000/-	SANJEEV JOON
000122	02-03-2017	18,00,000/-	-do-



000123	17-03-2017	18,00,000/-	-do-
000124	02-04-2017	18,00,000/-	-do-
000126	17-04-2017	17,13,600/-	-do-
000127	30-04-2017	15,28,400/-	ANJU BANSAL
		1,58,000/-	TDS

29. The version of the defendants which is in derogation of the contents of the registered sale deed, cannot be accepted in derogation of the express terms/ stipulations of the registered given sale deed in view of Section 92 of the Indian Evidence Act. In ***Placido Francisco Pinto v. Jose Francisco Pinto***, 2021 SCC OnLine SC 842 it has been held as under

“28. It is beyond dispute that a sale deed is required to be registered i.e. a document required by law to be reduced to the form of a document. Therefore, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding or subtracting from its terms. The proviso (1) of Section 92 of the Evidence Act on which reliance was placed is a proof of such fact which would invalidate any document such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law...”

30. In the present case, there is no factual controversy which is required to be proved through evidence. The suit property has been sought to be transferred and conveyed by the plaintiff by execution of Sale Deed dated 15.09.2016; the defendants have also been put in possession of the subject property ever since, however, only part of the sale consideration of Rs. 15 lakhs have been paid by the defendants to the plaintiff.

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31. As far as the unregistered ATS dated 20.06.2017 is concerned, the consideration mentioned therein was payable by way of a post-dated cheque



dated 10.03.2018. The said cheque on presentation by the plaintiff was dishonoured. The plaintiff has issued a legal notice dated 14.06.2018 to the defendant no.1 seeking payment of the amount due under the ATS. Criminal complaint under Section 138 of the Negotiable Instruments Act, has also been initiated by the plaintiff against the defendant no.1. The defence of the defendant no.1 in the said proceeding is that property which is subject matter of the ATS had already been sold to some other people and therefore the defendant no.1 is not liable to pay any amount to the plaintiff. Notably, no proceeding has been initiated by the defendant no.1 seeking cancellation or specific performance of the ATS. Furthermore, as mentioned in the plaint the possession of the said property i.e., suit property-2 was taken over by the defendant no.1 pursuant to the execution of the said ATS. This Court, in absence of any written statement of the defendants, has no reason to disbelieve the version of the plaintiff. Therefore, the defendant no.1 has taken over the possession of the suit property-2 pursuant to execution of the ATS but has not paid any amount due under the ATS to the plaintiff.

Relief

32. In both the suits, an affidavit has been filed by Anju Bansal stating that she has no interest which is averse to the rights and entitlements of the plaintiff and she has no objection if the Sale Deed, jointly executed by her and plaintiff in favour of defendant no.1 is cancelled and possession of the suit property-1 is handed over to the plaintiff. She also has no objection if possession of the suit property-2 is handed over to the plaintiff.

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33. The Supreme Court in *Kaliaperumal v. Rajagopal*, (2009) 4 SCC 193, has held that registration is only a *prima facie* proof of an intention to



transfer the property, it is not proof of operative transfer. It was *inter-alia* held as under:

“16. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs 100 or more and that is by a registered instrument.

17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 (“the Act”, for short) defines “sale” as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.

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

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

34. In ***Janak Dulari Devi v. Kapildeo Rai***, (2011) 6 SCC 555, it has been held as under:



“13. Where the sale deed recites that on receipt of the total consideration by the vendor, the property was conveyed and possession was delivered, the clear intention is that title would pass and possession would be delivered only on payment of the entire sale consideration. Therefore, where the sale deed recited that on receipt of the entire consideration, the vendor was conveying the property, but the purchaser admits that he has not paid the entire consideration (or if the vendor proves that the entire sale consideration was not paid to him), title in the property would not pass to the purchaser.”

35. Therefore, in the present case, if the intention of parties was that title should pass on execution and registration, the title would pass to the purchaser/ defendant no.1 even though the entire sale consideration has not been paid. In such an event, the remedy of the vendor/plaintiff is only to sue for the balance price. On the other hand, if the intention of parties was that the payment of entire sale consideration is a condition precedent for passing of title in the property, the title would not pass to the purchaser/defendant no.1 since the condition precedent (payment of entire sale consideration) is not fulfilled. In such an event, the vendor/plaintiff is entitled to seek cancellation of sale deed on the ground of non-payment of entire sale consideration.

36. A reading of the Sale Deed leaves no manner of doubt that the entire sale consideration was paid to the plaintiff and Anju Bansal by the defendant no.1, by way of post-dated cheques, and the title was sought to be conveyed, subject to encashment of the said cheques on presentation (Clause 2). Further, it was expressly agreed between the parties that in the event of dishonour of any cheques and/or non-payment of amount thereof within seven days of such dishonour, the Sale shall stand cancelled automatically and the plaintiff exclusively shall have absolute right either to seek



possession of the property or to seek recovery of entire sale consideration - (Clause 6). The cheques given under the Sale Deed were dishonoured.

37. The agreement dated 20.06.2017, under which new cheques were given by the defendant no.1 to the plaintiff to meet the liability under the Sale Deed, again provided that in the event of dishonour of any cheques or non-payment of entire amount before the agreed date, the plaintiff *inter alia* shall be entitled to initiate proceedings for cancellation of Sale Deed - (Clause 5). The cheques given under the said agreement were also dishonoured.

38. Therefore, it was mutually agreed between the parties that ownership of the suit property-1 would pass to the defendant no.1 only if cheques were honoured and/or the whole of the sale consideration was paid within the agreed timeframe. In case of dishonour of cheques and/or non-payment of entire sale consideration before the agreed timeframe, the Sale Deed was to be automatically cancelled and/or become void and/or gives right to the plaintiff to seek cancellation thereof. In other words, payment of entire sale consideration was a condition precedent for passing of title in the property.

39. The Bombay High Court in ***Santosh Dnyanoba Gawade v. Prakash Nensukh Navlakha***, (2022) 4 Mah LJ 699, when confronted with similar stipulations in a Sale Deed albeit in an appeal against an interim order, has held as under:

“11. Execution of sale deed dated 26th February, 2020 respecting the suit properties in favour of defendant No. 1 and 2, for lumpsum consideration of Rs. 4 Crores and its registration with the Sub-Registrar, Haveli-6, Pune are not disputed facts. Towards consideration of the sale, the defendant No. 1 and 2 paid part of agreed amount by RTGS and issued postdated cheques. Clause No. 10 of the sale deed provided, that in the event of dishonor of any of the cheques, for any reason whatsoever, the defendant No. 1 and 2 would be liable to pay interest @ 2% per month on



the outstanding amount of purchase price. The said clause also provided, that if defendant No. 1 and 2 further failed to pay the amount with interest within a period of three months, the instrument of sale shall automatically be rendered invalid and terminated,

Clause No. 11 of the sale deed, lays down that there would be a charge on the said properties of such unpaid purchase : price. Clause No. 13 provided, in the event of dishonor of any postdated cheques, the vendors cannot take recourse to remedy other than cancellation of the sale' deed. According to the plaintiffs, out of total consideration of Rs. 4 Crores, they have received only an amount of Rs. 79,74,171/- leaving balance of Rs. 3,20,25,289/-. Primary evaluation of these recitals and in particular clause 10 and 13 imply, that the parties intended the transfer of suit property to take place, only after receipt of entire consideration. Meaning thereby, merely by execution and registration of the sale deed, parties did not intend to transfer ownership and title to the property to the appellant No. 1 and 2. The judgment cited by Mr. Anturkar, also underlines, the same principle, that in order to constitute a sale, the parties must intend to transfer the ownership of the property and the intention is to be gathered from the recitals of the sale deed, the conduct of the parties and evidence on record....

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13. Having regard to the facts of the case and particularly the statement of facts contained in the recitals of the sale; deed prima facie in my view, the parties never intended to transfer the title in the suit properties to the purchasers and therefore the payment of entire consideration was a condition precedent for transfer of proprietary rights in the suit properties. This fact is clearly discernible from the recitals in Clause No. 10 and 13 of the sale deed.”

40. Thus, the Sale Deed merely remained an agreement to be performed and was not be a completed sale. This court is also of the opinion that Clause 6 in the Sale Deed amounts to “contract to the contrary” in terms of Section 55 of the Transfer of Property Act, 1882, conferring additional rights on the seller/plaintiff. The parties agreed that operative ownership of the property would not pass to defendant no.1, notwithstanding the execution of the sale deed. The payment of the entire sale consideration was a condition precedent for such transfer. All the actions, liabilities and



obligations undertaken by the defendant no.1 in the integrum i.e., from execution of sale deed till cancellation of the sale under Clause 6 of the Sale Deed, were at the risk of the defendant no.1, as specifically mentioned in the Sale Deed.

41. The judgement of the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, (2020) 7 SCC 366, is clearly distinguishable. In the said decision, the Supreme Court was not dealing with a covenant in a Sale Deed which provided for cancellation of Sale Deed on non-payment of the entire consideration within agreed time. Further, the said decision reaffirms that a transaction of sale necessitates, on the part of both parties, ‘a clear intention to transfer ownership of the property’, on the agreement to pay the price either in praesenti, or in future. Ascertaining this intention requires careful examination of the recitals within the sale deed, the conduct of both parties, and all relevant evidence. In the present case, to hold that the title of the property passed to the defendant no.1 without payment of entire sale consideration, and the only remedy available with the plaintiff is to seek recovery of balance sale consideration, would result in ignoring the clear intention of the parties as spelled out in Clause 6 of the Sale Deed and Clause 5 of the agreement dated 20.06.2017.

42. In ***Kewal Krishan v. Rajesh Kumar***, 2021 SCC OnLine SC 1097, the sale deeds were held to be void, when it is found that the consideration mentioned in the sale deeds was not actually paid by the purchaser to the seller. It was *inter alia* held as under:

“17. Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it



does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

18. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.”

43. The post-dated cheques having been dishonoured and the entire sale consideration having not been paid, the Sale Deed has been rendered without consideration and is liable to be cancelled. As such, the plaintiff is entitled to decree of cancellation of the Sale Deed and possession of the suit property-1. The subsequent transfers made by the defendant no.1 in favour of his wife i.e., defendant no.2 vide two gift deeds are invalid and illegal as the defendant no.1 had no transferable title, and the plaintiff is not bound by it. Plaintiff is entitled for a decree of declaration to this effect. The plaintiff is also entitled to a decree of permanent injunction in terms of prayer (d).



44. Accordingly, the CS (COMM) 719/2021 is decreed in terms of prayers (b), (c) and (d). The plaintiff is also entitled to costs, assessed at Rs. 2,50,000/- (including Rs. 224,450/- paid as court fee).

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45. It is well settled that an unregistered agreement to sell does not create any right in the property save the right to seek specific performance of the said agreement. Defendant no.1 has no right to remain in occupation of the suit property-2 or retain possession thereof merely because of the agreement to sell in his favour. This Court in ***Pawandeep Singh v. Gurdeep Singh Viridi***, 2019 SCC OnLine Del 9495, has held as under:

“19. The law on this aspect is clear. An unregistered Agreement to Sell cannot be used as a shield under Section 53 A of the TPA since Section 17(1-A) of the Registration Act, 1908 makes the documents containing a contract to transfer for consideration, any immovable property for the purpose of Section 53 A, compulsorily registrable. If such documents are not registered, they shall have no effect for the purposes of Section 53 A...”

20. The remedy, if any, for the appellant no. 1 would have been to sue for specific performance as Section 49 of the Registration Act, 1908 states that a suit for specific performance can be initiated on the basis of an unregistered Agreement to Sell...”

21. The appellants herein do not have any right to remain in possession of the suit premises till they acquire a title in pursuance to a decree for specific performance. It was so held in Sunil Kapoor v. Himmat Singh, ILR (2010) 11 Del 616. We may note that SLP (C) No. 6010/2010 against the said judgment was dismissed by the Supreme Court on 12.03.2010.”

46. The cheque given by the defendant no.1 under the ATS has been dishonoured. The defendant no.1, who is in the possession of the suit-property-2 pursuant to the ATS, is not willing to pay the amount due under the ATS to the plaintiff. In these circumstances, the plaintiff is entitled to a decree of cancellation of ATS. Further, in view of the affidavit filed by Anju



Bansal, there is no impediment in passing a decree of possession in favour of the plaintiff qua the suit-property-2. The plaintiff is also entitled to a decree of permanent injunction in terms of prayer (d).

47. Accordingly, the CS(COMM) 720/2021 is decreed in terms of prayers (b), (c) and (d). The plaintiff is also entitled to costs, assessed at Rs. 2,50,000/- (including Rs. 2,05,100/- paid as court fee).

Conclusion

48. The IA No.10520/2022 in CS(COMM) 719/2021 and IA No. 10444/2022 in CS(COMM) 720/2021 are allowed. The plaintiff is entitled to decree in terms of paragraphs 44 and 47.

49. Let decree sheets be drawn up accordingly.

46. Let a copy of the decree in CS(COMM) 719/2021 be sent to the concerned Sub-Registrar, where the Sale Deed dated 15.09.2016 is registered, as contemplated under Section 31(2) of the Specific Relief Act, 1963.

50. CS(COMM) 719/2021 and CS(COMM) 720/2021 are accordingly disposed of. All pending applications also stand disposed of.

MARCH 04, 2024/hg

SACHIN DATTA, J