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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 82/2022, CM APPLs. 51372/2022 & 54268/2022**

1. M/S JAINSONS WESTEND PVT LTD.

HAVING ITS OFFICE AT
5/7, W.E.A. KAROL BAGH,
NEW DELHI-110005

2. RAKESH JAIN,
S/O SHRI T.C. JAIN

3. ATULYA KUMAR JAIN,
S/O SHRI RAKESH JAIN,

BOTH RESIDENTS OF
D-422, DEFENCE COLONY,
NEW DELHI-110024

.....APPELLANTS

*(Through: Mr.Jayant Mehta. Sr.Advocate with Mr.Vinod Kumar Sachdeva
and Mr.Abdul Vahid. Advocates.)*

Versus

1. S TARJIT SINGH
S/O LATE S. SHARAM SINGH,
RIO R-846, NEW RAJINDER NAGAR,
NEW DELHI-110060.

2. DR. JAGJIT SINGH GAMBHIR (SINCE DECEASED)
(THROUGH HIS LEGAL HEIRS)

G. SMT. AMRIT GAMBHIR
W/O LATE DR. JAGJIT SINGH GAMBHIR,



H. MS. SHEETAL GAMBHIR
D/O LATE DR. JAGJIT SINGH GAMBHIR,

I. MS. SIMRAN GAMBHIR
D/O LATE DR. JAGJIT SINGH GAMBHIR,
ALL R/O R-846, NEW RAJINDER NAGAR,
NEW DELHI-110060

**3. SHANTI DEVI
SINCE DECEASED THROUGH HER LEGAL HEIRS:**

- (i) RAJINDER SETHI
- (ii) DEVINDER PAL KAUR
- (iii) S. TARJIT SINGH (RESPONDENT NO.1 HEREIN)

- (iv) DR. JAGJIT SINGH GAMBHIR (RESPONDENT NO.2 HEREIN)
- (v) MRS. TAJINDER KAUR

SINCE PREDECEASED THROUGH HER LEGAL HEIRS:

- (a) S. MOHANBIR SINGH,
- (b) S. HARMEET SINGH,

ALL C/O. S. TARJEET SINGH,
5/8, WEA, KAROL BAGH,
NEW DELHI-110005

.....RESPONDENTS

(Through: Mr. H.L. Narula, Mr.Ashutosh Lohia, Mr.Rohit Saraswat and Ms.Princy Sharma, Advs. Ms.Samapika Biswal and Mr.Aman Kumar Yadav, Advs for R-2.)

+ RSA 83/2022 &CM APPL. 51367/2022

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.....RESPONDENTS

(Through: Mr. H.L. Narula, Ms.Samapika Biswal and Mr.Aman Kumar Yadav, Advocates for R-2.)

+ **RSA 84/2022 &CM APPL. 51370/2022**

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+ **RSA 85/2022, CM APPLs. 51374/2022, 54266/2022 & 27001/2023**

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Having its Office at
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+ **RSA 86/2022 &CM APPL. 51365/2022**

1. M/S POPULAR SALES PVT LTD.

.....APPELLANTS

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.....RESPONDENTS

(Through: Mr. H.L. Narula, Ms.Samapika Biswal and Mr.Aman Kumar Yadav, Advocates for R-2.)

+ **RSA 10/2023**

1. S TARJIT SINGH

S/O LATE S. SHARAM SINGH,
R/O R-846, NEW RAJINDER NAGAR,
NEW DELHI-110060.

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NEW DELHI-110005

.....APPELLANTS

(Through: Mr. H.L. Narula, Ms.Samapika Biswal and Mr.Aman Kumar Yadav, Advocates for P-2.)

Versus

1. M/S JAINSONS FINANCE PVT LTD

Having its Office at
5/7, W.E.A. Karol Bagh,
New Delhi-110005

2. RAKESH JAIN,
S/O SHRI T.C. JAIN

3. ATULYA KUMAR JAIN,
S/O SHRI RAKESH JAIN,



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NEW DELHI-110024

.....RESPONDENTS

*(Through: Mr. Jayant Mehta. Sr. Advocate with Mr. Vinod Kumar Sachdeva
and Mr. Abdul Vahid, Advocates.)*

+ **RSA 11/2023**

1. M/S JAINSONS COLLECTIONS PVT LTD

Having its Office at
5/7, W.E.A. Karol Bagh,
New Delhi-110005

2. RAKESH JAIN,
S/O SHRI T.C. JAIN

3. ATULYA KUMAR JAIN,
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+ **RSA 12/2023**

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S/O LATE S. SHARAM SINGH,
R/O R-846, NEW RAJINDER NAGAR,
NEW DELHI-110060.



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Versus



1. M/S POPULAR SALES PVT LTD

1. M/S Popular Sales Pvt Ltd
Having its Office at
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+ **RSA 13/2023**

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+ **RSA 14/2023**

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%

Reserved on: 27.11.2024

Pronounced on: 14.01.2025

J U D G M E N T

The captioned appeals revolve around a similar controversy and, therefore, are being decided by this common order. For the sake of



convenience, the facts are extracted from RSA No. 82/2022.

2. The appeal has arisen out of the impugned judgment dated 25.05.2022 and decree dated 26.05.2022 passed by the Court of learned Additional District Judge-8, (Central District), Tis Hazari Courts, Delhi in RCA No.14/2017, whereby, the suit has been decreed while setting aside the judgment and decree dated 30.11.2016 passed by the Court of learned Civil Judge-10, Tis Hazari Courts, Delhi in Suit no.161/2005, dismissing the suit of the respondent/plaintiff seeking declaration and cancellation of the sale deed dated 10.06.2002 as null and *void*.

3. The contesting respondents i.e. Tarjit Singh and Dr. Jagjit Singh are claiming through their predecessor-in-interest namely, Shanti Devi and S. Sharam Singh, who were the owners of property bearing no.5/8, W.E.A., Karol Bagh, New Delhi (hereinafter referred as '*suit property*').

4. The facts of the case would further indicate that M/s Jainsons Westend was a partnership firm that was a tenant on the suit property *vide* a registered lease deed dated 31.05.1967. The property in question was a leasehold property and the owners were S. Sharam Singh and Shanti Devi each holding 50% shares in the property. S. Sharam Singh and Shanti Devi had filed a civil suit bearing no. 831/1989 for recovery of rent and possession of the tenanted premises against tenant partnership firm M/s Jainsons Westend.

5. During the pendency of the civil suit, S. Sharam Singh died on 18.05.1994, accordingly, his legal heirs i.e. the contesting respondents herein were brought on record. During the pendency of the said civil suit,



parties entered into a compromise. As per the terms of the said compromise, an Agreement to Sell dated 16.01.1995 was also entered into. The contesting respondents agreed to sell the suit property to five companies namely, M/s. Jainsons Westend Pvt. Ltd, M/s. Jainsons Collections Pvt. Ltd., M/s. Jainsons Finance Pvt. Ltd., M/s. Saville Row Collections and M/s. Popular Sales. The appellant/defendant herein agreed to purchase 1/5th of the suit property for a consideration of Rs.1,75,000/- subject to terms and conditions that the property will be first converted into freehold from leasehold and then sale deeds shall be executed.

6. In pursuance of the Agreement to Sell, one unregistered general power of attorney was also jointly executed by the owners in favour of Rakesh Jain and Neena Jain. In view of the compromise, civil suit no. 831/1989 came to be disposed of *vide* order dated 21.04.1995 *vide* a compromise decree. It appears that thereafter, a dispute further arose between the parties and another suit came to be filed by the appellant/defendant before this Court on 08.01.1998 seeking specific performance of the aforesaid Agreement to Sell and Perpetual Injunction. The said suit got transferred to the District Court after a change in pecuniary jurisdiction and subsequently, registered as suit no. 253/2002, which was eventually withdrawn by the appellant/defendant on 03.03.2003.

7. On 10.06.2002, Mr. Rakesh Jain appears to have executed a sale deed with respect to 1/5th share of the suit property in favour of M/s. Jainsons Westend Pvt. Ltd.

8. The respondent/plaintiff then filed a civil suit bearing suit no.



161/2005 on 30.05.2005 against the appellant/defendant seeking declaration and cancellation of the sale deed dated 10.06.2002 as null and void. The said civil suit came to be dismissed on 30.11.2016. However, on an appeal, the first Appellate Court *vide* the impugned judgment decreed the civil suit in favour of the respondent/plaintiff and hence, the appellant/ defendant has preferred the instant appeal.

9. Mr. Jayant Mehta, learned senior counsel appearing on behalf of the appellant/defendant submits that the impugned judgment and decree of reversal is illegal and improper, inasmuch as, the civil suit filed by the respondent/plaintiff itself was not maintainable in view of the express bar enshrined in Section 34 of the Specific Relief Act, 1963 (hereinafter referred as “SRA”). He argues that the respondent/plaintiff has filed the instant suit for cancellation and declaration of the sale deed as null and void, without claiming the relief of possession and confining the suit only to declaration. According to him, the respondent/plaintiff is not in possession of the suit property and thus, the civil suit filed by the respondent/plaintiff is not maintainable. To buttress his submission, he draws sustenance from the recitals of the terms of the compromise as well as the Agreement to Sell. He argued that the possession of the said property always remained with the tenant i.e., M/s Jainsons Westend and the actual vacant and physical possession was never handed back to the respondent/plaintiff.

10. Mr Mehta, further submits that the appellant/defendant has executed the terms of compromise as entered between the parties and has acted upon them, therefore, at a later stage, the respondent/plaintiff cannot object to the sale deed validly executed in terms of the settlement agreement. He argued



that as per the terms of the agreement, the appellant/defendant had paid a sum of Rs 1,75,000/- and now at a later stage the respondent/plaintiff cannot rescind the terms of the Agreement to Sell. So far as the contention of the conversion from leasehold to freehold property is concerned, he argued that as per the Agreement to Sell, it is the responsibility of the respondent/plaintiff to convert the property to freehold and in view of aforesaid, the appellant/defendant had duly paid the conversion charges. Moreover, he further submits that as per Clause 13 of the Agreement to Sell, if the respondent/plaintiff fails to execute the sale deed in respect of the suit premises, the appellant/defendant shall be deemed to have become the owner for all practical purposes. In view of aforementioned submissions, he submits that the impugned judgment suffers from material perversity and the appeal deserves to be admitted.

11. Mr. H.L. Narula, learned counsel for the respondent/plaintiff vehemently opposes the aforementioned submissions. He submits that the possession of the suit property was earlier with the tenant i.e. M/s Jainsons Westend and pursuant to the compromise decree, the tenant had handed over the vacant physical possession to the respondent/plaintiff and till date the actual possession is with the respondent/plaintiff.

12. He further assails the contention of the appellant/defendant on the ground that conversion of the property from leasehold to freehold was the condition precedent for the execution of a sale deed. He argues that since in the present case, admittedly the property was not converted to freehold, therefore, any transfer in the change of ownership is not at all permissible. On the force of said submissions, he submits that the instant appeal raises no



substantial question of law and deserves to be rejected.

13. I have considered the submissions made by learned counsel appearing on behalf of the parties and have perused the record.

14. The entire thrust of the contentions canvassed before this Court rested on the premise of the possession of the suit property. The principal legal objection under Section 34 of the SRA is essentially based on the claim that the respondent/plaintiff could not have claimed declaration without claiming the consequential relief of possession. Admittedly, the respondent/plaintiff filed a suit simpliciter for cancellation and declaration of the sale deed dated 10.06.2002 as null and void.

15. The first Appellate Court while reversing the judgment of the Trial Court and dealing with the question of possession has rendered the following pertinent findings:-

“30. The Ld. Trial Court further held that the suit of the plaintiff seeking declaration without seeking the ancillary relief of possession is not maintainable. The plaintiff has filed the present case suit seeking cancellation and declaration of sale deed dated 10.06.2022 as null and void. The same was executed by defendant No. 2 in favour of defendant No.1. Admittedly, the plaintiff is not the executant or signatory of the aforesaid sale deed.

31. In the judgment of Suhrid Singh Vs. Randhir Singh & Ors; (2010) 12 SCC 112 it was held that if the person is executant of the document then he has to seek the cancellation of the instrument but if the person is not the executant of the instrument then he has to seek a declaration thereof. Admittedly, the plaintiff is not the signatory or executant of the said sale deed. Therefore, the plaintiff should not have sought the relief of cancellation and his purpose would have been served by seeking the declaration only. However, the fact that the plaintiff has sought the relief of cancellation also does make any difference. Admittedly, the plaintiff has not executed any sale deed in this case. The next question which arises for consideration is whether



the suit of the plaintiff seeking declaration is maintainable without seeking the relief of possession of the suit property.

32. It is an admitted position between the parties that before the execution of agreement to sell and the power of attorney a compromise had taken place between the parties in the suit filed by predecessor-in-interest of the plaintiff. Vide legal notice Ex.PW1/8A dated 01.09.2003 of the plaintiff, the plaintiff had asked the rent @ Rs.2,800/- per month. The said notice was given under the provisions of Section 6-A read with Section 8 of DRC Act. The said notice was given after the defendants had withdrawn their suit for specific performance. The plaintiff had claimed the landlord-tenant relationship after the withdrawal of the suit by the defendants. The rate of rent claimed was below Rs.3,500/- per month. As per the provisions of DRC Act when the rate of rent is less than Rs.3,500/- per month then the tenant has the statutory protection and can only be evicted on the grounds mentioned therein. In such case, the Civil Court has no jurisdiction. Accordingly, the plaintiff could not have sought the relief of possession in this suit. The said fact was ignored by the Ld. Trial Court which resulted into grave injustice.

33. The plaintiff had filed a petition under Section 14 (1) (a) of the DRC Act. Vide order dated 31.08.2005 the Ld. ARC had refused to stay the proceedings, Against the said order, the defendants approached the Hon'ble High Court. Vide order dated 25.07.2006 the Hon'ble High Court had stayed the said petition till the time there is a final decision of the respective claims of the parties in the present suit. The plaintiff claimed that the landlord-tenant relationship existed after the withdrawal of their suit by defendants and therefore, he had filed a petition under Section 14 (i) (a) of DRC Act. Accordingly, the suit of the plaintiff seeking declaration simplicitor is maintainable as the relief of possession is hit by Delhi Rent Control Act, 1958. The plaintiff has sought the relief of declaration of sale deed dated 10.06.2002 to be null and void which affected his rights and title with regard to the suit property. Hence, in my considered opinion the trial Court did not appreciate the said fact correctly and came to an erroneous conclusion."

16. Thus, the first Appellate Court rendered a finding that the rent receipt in the present matter amounted to Rs. 2800/month, which was below the threshold of Rs. 3500/month as prescribed under the provisions of the Delhi Rent Control Act, 1958 (hereinafter referred as "RCA"). Based on the aforementioned rationale, the first Appellate Court came to the conclusion



that the respondent/plaintiff could not have claimed possession before the Civil Court as the jurisdiction of the Civil Court was barred as per Section 50 of the RCA. Put otherwise, the first Appellate Court was of the view that the relief of possession could only have been claimed in terms of RCA on the fulfilment of conditions stipulated therein.

17. Thus, it is appropriate to examine the rationale of the first Appellate Court on the fulcrum of the legislative mandate behind Section 34 of the SRA.

18. A bare perusal of Section 34 of the SRA clearly stipulates that while praying for the relief for declaration, the consequential relief must be prayed in the suit. The mere purpose of this Section is to avoid the multiplicity of proceedings and also the loss of revenue of court fees. It prohibits the splitting of relief and indicates that mere declaratory relief of title is not sufficient and consequential relief of possession ought to be prayed in suit. Having said that, it is relevant to note that an inquiry pertaining to the bar under Section 34 of SRA is a more nuanced inquiry and is not a straightforward one. The effect of the said provision is to be examined in the peculiar facts and circumstances of each case.

19. It is quintessential to bear in mind that Section 34 of the SRA is a rule of procedure which aims to curb the multiplicity of proceedings, in addition to the other objectives mentioned above. This Court in the case of **Promila Bhagat v. Munni Lal Gupta**¹ while extensively dealing with the scope of the underlying section has held that the procedural bar under Section 34 of

¹ 2024:DHC:9639.



the SRA cannot act as a hurdle in rendering substantial justice, especially when a fraud appears to have been played upon the Court. The relevant extracts of the said decision are as under:-

"92. A declaration sought on the basis of fraud is on a different footing as compared to a general declaration of right. In a case of fraud upon the Court, the Court becomes a stakeholder in the enquiry and it becomes expedient in the interest of justice to examine the same. Furthermore, a general declaration may not have a sweeping effect and consequential rights would not automatically flow from such a declaration, unless prayed. However, once fraud upon the Court is established, it takes within its sweep every consequential action based on such fraud and it does not matter if a certain consequence was envisaged or not. It happens by sheer operation of law.

93. Although, the procedural bar under Section 34 of the SRA is not attracted in an instant manner, it is nonetheless important to understand that the Court cannot lose sight of the fact that what is under consideration is a rule of procedure, which is manifested in Section 34 of the SRA. The rule manifested in the said provision is meant to prevent multiplicity of litigation and is intended to ensure that the suits instituted before the Courts are complete in all respects and the prayers are such that the dispute between the parties is brought to a quietus. It is also meant to ensure that the concern of the State with respect to the payment of Court fee is duly taken care of by preventing the parties from drafting their prayers in a clandestine manner or claiming their rights in a piecemeal manner. However, a rule of procedure is nevertheless a rule of procedure and it cannot disentitle the Court from enquiring into a case of fraud upon the Court. In Hamza Haji v. State of Kerala &Ors., the Supreme Court has pertinently observed that no Court will allow itself to be used as an instrument of fraud and no Court, by the application of the rules of evidence or procedure can allow its eyes to be closed to the fact that it has been used as an instrument of fraud. To permit so would offend against that principle of substantial justice and would perpetuate an illegality on the strength of a procedural bar. In A.V. Papayya Sastry and Ors. v. Government of A.P. and Ors.28, the Supreme Court observed that even after a cause has attained finality and has become law under Article 141 of the Constitution of India, if it is discovered that the finding was based on fraud, the same would stand vitiated."

20. Irrespective of whether the consequential relief of possession was mandated or not in the instant matter, it is unquestionable that the



competency of the Court to grant such consequential relief is a *sine qua non*, an essential pre-condition. The bar under Section 34 of the SRA would be applicable when the Court is competent to grant the consequential relief and the plaintiff has failed to include it despite the availability and necessity of such relief. If by virtue of an operation of law, the relief was barred then the party cannot be made to suffer for not praying such relief by the force of Section 34 of the SRA, which is essentially a rule of procedure. No party could be faulted for failing to do what was impermissible in the eyes of the law.

21. Reference can be made to the decision of the Supreme Court in the case of **Rajender Bansal v. Bhuru**², wherein, while referring to the tussle between the Rent Acts and the Civil Court's jurisdiction, the Court held that in order to oust the jurisdiction of the Civil Court, there must be a specific provision in the Act taking away the jurisdiction of the Civil Court. The relevant extracts of the said decision read as under:-

“18. From the aforesaid discussion in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284], Vineet Kumar [Vineet Kumar v. Mangal Sain Wadhera, (1984) 3 SCC 352], Ram Saroop Rai [Ram Saroop Rai v. Lilavati, (1980) 3 SCC 452], Ramesh Chandra [Ramesh Chandra v. III Addl. District Judge, (1992) 1 SCC 751] and Shri Kishan [Shri Kishan v. Manoj Kumar, (1998) 2 SCC 710] cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:

18.1. Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated.

18.2. If during the pendency of the suit, the Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not

² (2017) 4 SCC 202.



take away the jurisdiction of the civil court to dispose of a suit validly instituted.

18.3. In order to oust the jurisdiction of the civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of the Rent Act became available in respect of the said area/premises/tenancy.

18.4. In case the aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, unexecutable after the application of these Rent Acts in respect of such premises. This would not be in consonance with the legislative intent."

22. Furthermore, as per Section 3(c) of the RCA, the concerned Act would be applicable when, the rent of premises, whether residential or not, was below the threshold of Rs. 3500/month. The said Section was subject to challenge in the case of ***D. C. Bhatia v. Union of India***³, and the Supreme Court, while upholding the constitutional validity of the provision, held as under:-

"In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house-building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable up to the sum of Rs 3500 per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs 3500."

³ (1995) 1 SCC 104.



23. Thus, the jurisdiction of the Civil Court would be ousted if the rent in question falls below the threshold contemplated under the RCA. Admittedly, in the present case, the rent receipts amount to Rs. 2800/month, thus, below the threshold of Rs. 3500/month and in such a scenario, the RCA would be applicable. Therefore, the jurisdictional bar imposed upon the Civil Court by virtue of Section 50 of the RCA would be applicable in the present case. The first Appellate Court correctly dealt with the argument canvassed before it and held that in such a scenario, the bar under Section 34 of the SRA would not be applicable as the Civil Court was not competent to deal with the claim of possession by virtue of Section 50 of the RCA.

24. At this juncture, this Court has also perused the salient clauses of the compromise decree and Agreement to Sell.

25. As per Clause 9 of the Compromise decree, the five companies as noted hereinabove have purchased the premises. Furthermore, as per Clause 10(ii), by way of a compromise decree, M/s Jainsons Westend surrendered its tenancy with respect to some portion of the property and has also retained a certain portion of the property. The details of such portions are included in Clause 10(ii)(a) to (f). Moreover, Clause 11 states that for the portion retained by M/s Jainsons Westend, the respondent/plaintiff has no right or entitlement over the said portion. Clause 16 further states that pursuant to the said compromise, the parties shall withdraw the suit bearing no. 593/1993 and 1108/1993. For the sake of convenience, the relevant clauses of the compromise decree read as under:-

“9. That the abovenamed Five Companies have purchased the premises



as stated in paragraph 7 of the present petition of **which M/s Jainsons Westend is a tenant and are in actual physical possession of the same. Moreover the different tenancies now in occupation of M/s JAISONS WESTEND PVT. LTD. shall always remain with M/s Jainsons Westend as tenants and no part thereof have been handed over to the abovementioned five companies.**

10. That in pursuance to the above said compromise and for the sake of clarity all the parties mentioned herein above, do hereby state and submit that they have arrived at the following settlement:-

ii) That this defendant has by way of compromise of this suit and also in consideration of the plaintiffs having agreed to have their present suit dismissed, surrendered their tenancy rights in respect of some of the tenancy portion and handed over actual, physical, vacant possession thereof to the plaintiffs and have also taken certain portion of their tenancies with new portions as per details and particulars given hereinbelow:-

b) That the defendant M/s Jainsons Westend have also surrendered and have handed over the actual physical vacant possession of the portion of the hall on the first floor shown at point B-1 and B-2 of annexure B along with the toilet on the first floor shown at B-3 to the plaintiffs. Moreover the defendant M/s Jainsons Westend have surrendered and have actually handed over the actual vacant physical possession of stair case leading from the ground floor and from first floor to the second floor to the plaintiff. The remaining portion of the hall on the first floor shall remain with the defendant M/s Jainson Westend. Moreover, an additional portion on the back side of the hall more specifically pointed as F-1 and F-2 in the plan annexed as annexure A has been taken by the defendant M/s Jainsons Westend. A details site plan is annexed along with this petition whereby the premises now retained by M/s Jainsons Westend and Additional Portion handed over to Jainsons Westend is shown and is annexed as Annexure C. However, the rent of the present tenancy in now been reduced from Rs.2350/- to Rs.1100/- per month. The said tenancy will hereinafter be referred as second tenancy and which was earlier created in the month of August, 1967.

11. That as already stated hereinabove and as per annexure A-1 the portion now retained by M/s Jainsons Westend in respect of different tenancies has been sold by the plaintiffs to the above named five different companies and as such the abovenamed five different



*companies and as such the abovenamed five different companies and co-owner of the portion retained by M/s Jainsons Westend **and as such the plaintiffs have no title, right or interest whatsoever in respect of the portion earmarked as red in the site plan attached as annexure A-1. The entire rent of the above said five different tenancies of M/s Jainsons Westend shall be paid by M/s Jainsons Westend to the five different companies.***

The plaintiff have already received the following amount in consideration of the sale being made in favour of five different companies, as full and final payment.

15. That the plaintiffs further agree that they shall not cause any damage to the various portions at present under the tenancy of M/s Jainsons Westend as and when they make any constructions, additions, alterations or any structural change in their portions forming part of the property bearing No.5/8, WEA Ajmal Khan Road, Karol Bagh, New Delhi.

16. That it is further agreed between the plaintiff and defendant that both the parties shall withdraw their respective suits i.e. Suit No.593 of 1993 titled as Jainsons Westend...Vs..Tarjeet Singh and others, pending in the Hon'ble High Court of Delhi and similarly the plaintiff will also withdraw the suit for damages filed against the Jainsons Westend being suit No.1108/1993 titled as Sharam Singh and another..Vs..Jainsons Westend pending in the Hon'ble High Court of Delhi, New Delhi. Both the parties further undertake to take all necessary steps i.e. filing of an application under Order 23 Rule 3 or any other application connected therewith for the withdrawal of the said suits and this shall also be a part of the present compromise being entered between the plaintiff and the defendant. It is clarified that the defendant M/s Jainsons Westend has paid entire arrears of rent of the Plaintiff's w.e.f. 1.1.1993 to 31.12.1994 at the rate of Rs.6,500/- P.M. (Rupees six thousand five hundred only). The said rent has been paid to the plaintiff's vide cheque No.009614 dated 15.01.1995, down as Andhra Bank, Karol Bagh, New Delhi. The plaintiff's acknowledge the receipt of the said amount and further state that they have no further claim towards rent/damages in respect of suit No.1108/1993 pending in the Hon'ble High Court of Delhi against Jainsons Westend (Defendant) and the said suit has now become infructuous and shall be withdrawn. Apart from the above Civil Revision Petition No.593/1993 pending in the Hon'ble High Court of Delhi filed by the plaintiff against the defendant shall be withdrawn."

26. Pursuant to the said compromise decree, an Agreement to Sell was executed between the parties. As per the terms of the Agreement to Sell, the



respondent/plaintiff agreed to sell 1/5th of the undivided suit property to M/s Jainsons Westend Pvt Ltd, which has been retained by M/s Jainsons Westened pursuant to the compromise decree for a consideration of Rs 1,75,000/-.

27. Clause 7 of the Agreement to Sell states that the 1/5th undivided share of the property was in the possession of the tenant i.e., M/s Jainsons Westend. Furthermore, Clause (ii) states that the said transfer would be applicable after the conversion of the property from leasehold to freehold. Clause 6 further states that after the execution of the said agreement, the vendor i.e., the respondent/plaintiff shall have no right over the said property and the appellant/defendant shall be exclusive owners of the said property. It further stipulates that the M/s Jainsons Westened would come under the tenancy of the appellant/defendant and shall pay rent to the appellant/defendant accordingly.

28. Clause 12 and 13 of the Agreement to Sell further state that the respondent/plaintiff undertakes to immediately execute a sale deed in favor of the appellant/defendant after the conversion of the suit property. Clause 13 then states that if the respondent/plaintiff fails to execute the sale deed after conversion, then the appellant/defendant shall become the owner of the property. The aforementioned Clauses of the Agreement to sell read as under:-

"WHEREAS by virtue of a compromise being entered between the vendors and M/s Jainsons Westend, M/s Jainsons Westend is a tenant and shall continued to be a tenant in respect of portion as earmarked in Red in the the vendors have agreed to sell the earmarked portion in Red as Schedule A of the present agreement. The entire portion now in possession of M/s Jainsons Westend Comprises of various tenancies at different rates of rent.



And Whereas the vendors have agreed to sell the earmarked portion marked in Red as in Schedule 'A' to the present agreement and which is in occupation of M/s Jainsons Westend as Tenants and the purchasers have agreed to purchase the same on the terms and conditions recorded hereinbelow:-

7. Relying upon the aforesaid representations and assurances, the vendee have agreed to purchase the portion earmarked as red in the site plan attached as Schedule A i.e. 1/5th undivided share and now in possession with M/s Jainsons Westend who are the tenant and are enjoying the tenancy rights as distinct and separate tenancy for the agreed consideration of an amount of RS.1,75,000/- on the terms and conditions mutually agreed and which the parties are desirous of recording in the manner hereinafter appearing.

(a) the vendor shall sell and the vendee shall purchase the 1/5th (One fifth) undivided share of the portion earmarked in red in the site plan attached as Schedule A in the premises being No.5/8, Ajmal Khan Road, Karol Bagh, New Delhi, together with the rights and easements and appurtenances in any right, relating and pertaining to the any said premises for the price of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to be paid by the vendee to the vendors as follows:-

8. That the vendors have received the entire consideration and hence forth after the execution of this agreement to sell the vendors shall have no right, title, interest in the portion sold to the Vendee (Schedule A) and the vendees shall be exclusive owners of the premises. M/s Jainsons Westend immediately after execution of this agreement shall be a direct tenant under Vendees and all rental amount M/s Jainsons Westend shall be directly paying to the venees.

12 The Vendors further undertake to immediately execute a sale Deed in favour of Vendee with the portion sold after the above said premises are converted from lease hold to free hold.

13. If the Vendor fail to execute a proper Sale Deed in respect of the said premises in favour of Vendees immediately after the conversion, then notwithstanding to any thing contrary hereinabove the vendees shall deem to have been the owners for all practical purposes.

15. That the Vendors further undertake that after the execution of the present agreement to sell, the vendor have no right, title or interest of any kind over the portion 1/5th undivided which have been agreed to sell to the vendee and that M/s Jainsons Westend who are tenant in respect of the said portions shall become the direct tenants under the vendee and the



vendors acknowledge and confirm the same. *The remaining 4/5th and have/has been sold to other four different companies in the ratio of 1/5th each and present shall become co-owner along with other four companies in respect of the premises earmarked in red in the site plan attached as annexure A.”*

29. It appears from the conjoint reading of the aforementioned clauses that the possession of the property, pursuant to which the Agreement to Sell was entered, remained with the tenant i.e., M/s Jainsons Westend. The Compromise decree and Agreement to Sell only changed the ownership qua the 1/5th undivided share of the property, but the tenant i.e., M/s Jainsons Westend remained in the possession and its status of a tenant was not sought to be altered.

30. Thus, it appears from a reading of the aforementioned clauses that the possession of the suit premises was with the tenant and since, the said tenant was not a party to the present proceedings, it becomes imminent to examine whether, in such an atypical scenario, the respondent/plaintiff could even claim the possession from the appellant/defendant. This examination shall follow in the subsequent discussion.

31. At this juncture, it is appropriate to lend credence to the observations of the Supreme Court in the case of **Deo Kuer v. Sheoprasad Singh**⁴, wherein, it has been held that the consequential relief of possession is necessitated against the defendants only and if the property is not in possession of the defendants, then there is no requirement to pray for the consequential relief of possession. The relevant extracts of the said decision read as under:-

⁴ 1965 SCC OnLine SC 282.



“5. The authorities clearly show that where the defendant is not in possession and not in a position to deliver possession to the plaintiff it is not necessary for the plaintiff in a suit for a declaration of title to property to claim possession : see Sunder Singh — Mallah Singh Sanatan Dharam High School, Trust v. Managing Committee, Sunder Singh-Mallah Singh Rajput High School [(1957) LR 65 IA 106]. Now it is obvious that in the present case, the respondents were not in possession after the attachment and were not in a position to deliver possession to the appellants. The Magistrate was in possession, for whomsoever, it does not matter, and he was not of course a party to the suit. It is pertinent to observe that in Nawab Humayun Begam v. Nawab Shah Mohammad Khan [AIR (1943) PC 94] it has been held that the further relief contemplated by the proviso to Section 42 of the Specific Relief Act is relief against the defendant only. We may add that in K. Sundaresa Iyer v. Sarvajana Sowkiabil Virdhi Nidhi Ltd. [(1939) ILR Mad 986] it was held that it was not necessary to ask for possession when property was in custodia legis. There is no doubt that property under attachment under Section 145 of the Code is in custodia legis. These cases clearly establish that it was not necessary for the appellants to have asked for possession.”

32. Thus, it is clear that the proviso to Section 34 of the SRA would be applicable when the plaintiff could seek possession from the defendants i.e. when the defendants are in possession. In the present case, it appears that possession was with the tenant and not with the appellant/defendant and therefore, on that score as well, Section 34 of the SRA would not be applicable in the present case. Thus, there was no occasion for the respondent/plaintiff to claim possession in the suit.

33. In a second appeal, the Court must be mindful of the exposition of law under Section 100 of CPC, which clearly elucidates that the second appeal can only be entertained if it raises a substantial question of law. Pertinently, it is the settled exposition of law that as a Court of the second appeal, the Court would not interfere in the impugned judgment on the ground of erroneousness of the findings of fact, however gross or inexcusable the error



may seem to be.⁵ It is pertinent to point out that after the amendment in 1976, the scope of the second appeal under Section 100 CPC was further curtailed and only in cases wherein substantial questions of law arise, the second appeal is permissible. A second appeal under Section 100 CPC is now confined to cases where a question of law is involved and such question must be a substantial one. A substantial question of law is one which carries enough weight to turn the course of the issue between the parties to a suit and which does not find any answer in the realm of settled law. The said curtailment of the scope of a second appeal is a conscious curtailment by the legislature for the refinement of the civil procedure and is meant to prevent the re-agitation of factual issues before different forums.

34. In the case of *Thiagarajan v. Sri Venugopalaswamy B. Koil*⁶, the Supreme Court observed that where the findings of the fact by the lower Appellate Court are based on evidence, the second Appellate Court cannot ouster such findings and substitute them with its own finding on reappreciation of evidence merely on the ground that another view was possible. The Supreme Court further observed that it is the obligation of the Courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same.

35. As a second appeal is not the third trial on facts and the first Appellate Court is the final arbiter of facts, this interference by the second Appellate Court is rarity rather than regularity. In the case of *Jai*

⁵ *Ramratan Shukul v. Mussumat Nand*, (1892) 19 Cal 249 (252) (PC).

⁶ (2004) 5 SCC 762.



Singh v. Shakuntala⁷, the Supreme Court held that it is permissible to interfere even on questions of fact but it has to be done only in exceptional circumstances. The Court observed as under :-

“6. ... While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter—it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

36. In ***P. Chandrasekharan v. S. Kanakarajan***⁸, the Supreme Court laid down the exposition of law that interference in the second appeal is permissible only when the findings are based on a misreading of evidence or are so perverse that no person of ordinary prudence could take the said view. Moreover, the Court must be conscious that intervention is permissible provided the case involves a substantial question of law.

37. In the present case, the ground urged by the appellant/defendant as regards the bar under Section 34 of SRA has been dealt by the first Appellate Court in the correct perspective, as discussed above, and no question of law emerges from the case set up by the appellant/defendant before this Court. The issue raised finds an unequivocal answer from the law already settled by the Supreme Court and the legislative intent clearly discernible from the statutory provisions of SRA and RCA. No substantial question of law, necessitating any fresh elucidation of law, has been raised

⁷AIR 2002 SC 1428.

⁸(2007) 5 SCC 669.



before this Court. Therefore, on a careful consideration of the legal position and circumstances specific to the case in hand, this Court is not inclined to interfere with the findings of the first Appellate Court as the instant batch of appeals raises no substantial question of law.

38. Accordingly, the appeals bearing no. RSA 82/2022, RSA 83/2022, RSA 84/2022, RSA 85/2022 and RSA 86/2022 stand dismissed. In view of aforesaid, the cross-appeals bearing no. RSA No. 10/2023, RSA No. 11/2023, RSA No. 12/2023, RSA No. 13/2023 and RSA No. 14/2023, also stand disposed of.

39. All pending applications are also disposed of accordingly. No costs.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 14, 2025

Nc/am