



\$~46

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

+ **FAO(OS) 36/2025**

SUMIT WADHWA

.....Appellant

Through: Mr. B. S. Jakhar, Mr. Vikram Singh Jakhar, Mr. Neeraj Jakhar, Ms. Bhawna Jakhar, Mr. Viraj Rathee, Ms. Varnika Sharma and Mr. Shubham Dabas, Advs.

versus

VIKRAM TOKAS

.....Respondent

Through: Mr. Sudhir Tewatia, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

%

19.03.2025

CM APPL. 15970/2025 (Ex.)

Allowed, subject to all just exceptions.

The application is disposed of.

FAO(OS) 36/2025

1. The instant appeal is directed against the order dated 10 February 2025 passed by the learned Single Judge disposing of I.A. No. 11241/2020 and in terms of which the appellant sought recall of the order dated 24 November 2014.

2. It becomes pertinent to note that the suit itself had come to be decreed in terms of the settlement terms which had been taken on board. It was on the basis of that settlement that a decree ultimately came to be drawn and which fact stands duly recorded in the order of



24 November 2014. The Learned Single while dealing with the application which sought recall has observed as follows:-

“5. The entire genesis of filing of the instant application appears to be the execution of two agreements on the same date. One of which was the basis of the order dated 24.11.2014 and another one which Mr. Dalal seeks to rely on. It is seen that the agreement sought to be relied upon by Mr Dalal was not placed on record at the time when the order dated 24.11.2014 was passed.

6. Needless to state, the applicant of the present application himself was the party to the said agreement and if according to him, the same was required for proper adjudication of the case, nothing restrained the applicant from bringing on record the said agreement on record.

7. In any case, if there is another agreement, which according to the applicant, has not been acted upon by the opposite side, the remedy would lie elsewhere.”

3. As is manifest from the above, the entire case for reopening of the suit proceedings and recall of the order dated 24 November 2014 was based on an agreement which had never been placed on record at the time when the suit came to be originally decreed.

4. As the learned Judge has correctly recorded, in case the grievance of the applicant was that the terms of the settlement had not been complied with, the remedy clearly lay elsewhere. That could not have possibly been taken into account as a factor germane or which could be considered pertinent for characterizing the decree as being tainted by fraud.

5. The appeal, thus, lacks merit and is consequently dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 19, 2025/DR