



2025:DHC:9913



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: October 29, 2025
Pronounced on: November 13, 2025

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+ EX.F.A. 51/2023, CM APPL. 66249/2023-Stay

GOLD CAUSE CONSTRUCTION PVT. LTD. & ANR.

.....Appellants

Through: Mr. Manan Gupta, Mr. Sahil Garg,
Mr. Ankit Gupta, Mr. Mithil
Malhotra, Mr. Abhinav Jain and
Mr. Aryan Pandey, Advs.

Versus

ANAND PRAKASH GUPTA

.....Respondent

Through: Mr. Samar Bansal with Mr. Aryan
Arora and Mr. Navneet K Shukla,
Advs.

AND

+ EX.F.A. 52/2023, CM APPL. 66254/2023-Stay

GOLD CAUSE CONSTRUCTION PVT. LTD. & ANR.

.....Appellants

Through: Mr. Manan Gupta, Mr. Sahil Garg,
Mr. Ankit Gupta, Mr. Mithil
Malhotra, Mr. Abhinav Jain and
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....Respondent

Through: Mr. Samar Bansal with Mr. Aryan
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Advs.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The above appeals have been filed by the appellants/ judgement



debtors¹ against the common judgement dated 25.08.2023² passed by the learned Additional District Judge, West District, Tis Hazari Courts, New Delhi³ in Ex.P. Nos.98 and 99 of 2017⁴ filed by the respondent/ decree holder⁵ seeking execution of the common judgement and decree dated 17.10.2012⁶ passed by a Co-ordinate Bench of this Court in CS(OS) Nos.232 and 231 of 2012⁷ respectively.

2. *Succinctly put*, the facts leading to the above appeals are that the parties entered into two separate Agreements to Sell⁸ on 16.05.2005 and 17.05.2005 in respect of two separate commercial spaces bearing nos.F-39 and F-40 admeasuring 401.60 sq. ft. covered area and 617.85 sq. ft. super area, and 414.31 sq. ft. covered area and 637.39 sq. ft. super area respectively⁹, located on the First Floor of Paradise Mall, Plot No.23, Shivaji Place, District Centre, Main Ring Road, Raja Garden, New Delhi.

3. After part payment of the total consideration as per the Schedule(s) of the two Agreements, the respondent filed two separate suits against the appellant seeking common relief of specific performance of the two Agreements, wherein a Co-ordinate Bench of this Court passed an *ex parte* decree in respect of the original two shops in favour of the respondent and against the appellants.

4. Due to non-compliance of the aforesaid decree, the respondent had to initiate execution proceedings therefor against the appellants before the

¹ Hereinafter '*appellants*'

² Hereinafter '*impugned judgement*'

³ Hereinafter '*learned Executing Court*'

⁴ Hereinafter '*execution proceedings*'

⁵ Hereinafter '*respondent*'

⁶ Hereinafter '*decree*'

⁷ Hereinafter '*two suits*'

⁸ Hereinafter '*two Agreements*'

⁹ Hereinafter '*original two shops*'



learned Executing Court. During the pendency thereof, the appellants, pursuant to being served, duly appeared and filed a Compliance Affidavit dated 28.05.2018 in terms of order dated 18.05.2018. As per the appellants therein, due to change in the original Site Plan of the premises¹⁰ wherein the original two shops were situated as in the two Agreements, the original two shops were no longer existing, and new commercial spaces within the same premises bearing nos.F-03 and F-02 admeasuring 1098.09 sq. ft. super area and 1211.70 sq. ft. super area respectively¹¹ were identified by the appellants in the new Site Plan¹² submitted along with the said Compliance Affidavit.

5. Thereafter, pursuant to an application of the respondent, the learned Executing Court, *vide* order dated 05.08.2019, appointed a Local Commissioner to inspect the premises, who filed his Report on 14.10.2019. As per the said Report, during the execution of the commission, a completely different and purportedly newer Site Plan¹³ was handed over by a representative of the appellants to the Local Commissioner. In fact, on inspection of the premises as per the third Site Plan and with the aid of the appellants' representative revealed that in place of the original two shops, there existed one shop being F-03, shown on the third Site Plan as F-03A and F-03B.

6. The respondent then filed an application under *Section 151* of the Code of Civil Procedure, 1908¹⁴ objecting to the above Report primarily on the ground that the third Site Plan upon which the Report was based

¹⁰ Hereinafter '*original Site Plan*'

¹¹ Hereinafter '*new two shops*'

¹² Hereinafter '*second Site Plan*'

¹³ Hereinafter '*third Site Plan*'

¹⁴ Hereinafter '*the Code*'



was forged and fabricated, and was never served upon the respondent before the execution of the commission, amongst others.

7. After hearing arguments by learned counsels for both parties, the learned Executing Court passed the impugned judgement disposing of the execution proceedings along with the aforesaid application, directing the appellants to handover vacant and physical possession of the new two shops in terms of the second Site Plan to the respondent, as also to accept the balance sale consideration in terms of *Clause 27* of the two Agreements, and execute requisite title documents.

8. Thus, the appellants are before this Court in challenge to the impugned judgment, wherein it is the case of the appellants that the impugned judgement is liable to be set aside since the same has been passed without giving the appellants an opportunity of being heard, particularly since the learned Executing Court was seized of the objection application filed by the respondent against the Report of the Local Commissioner, and not of the execution proceedings in entirety. It is the case of the appellants that the learned Executing Court had no jurisdiction to decide the execution proceedings without adjudicating upon the authenticity of the said Report, and that too by traversing beyond the decree in terms of the total area awarded to the respondent.

9. Supporting the said Report, Mr. Manan Gupta, learned counsel for the appellants submitted that the Local Commissioner was an extended arm of the Court, and the Report filed by him amounted to evidence under *Order XXVI Rule 10* of the Code, to which the learned Executing Court could not have turned a blind eye, especially, whence it was clear therefrom that in place of the original two shops, there now existed one



common space, and no two shops could be identified anymore.

10. In any event, as per Mr. Manan Gupta, learned counsel, the learned Executing Court overstepped its jurisdiction, especially, since the total area allotted to the appellants by virtue of the two Agreements was approximately 1255 sq. ft., however, by virtue of the impugned judgment the respondent has been awarded a total area of approximately 2309 sq. ft. instead. This also amounted to transfer of roughly three shops instead of two shops as originally agreed between the parties and decreed by a Co-ordinate Bench of this Court. Not only that, the respondent has been unjustly enriched due to the impugned judgement, since the appellants have been directed to accept the balance sale consideration for the increased total area at the rate of Rs.4,950/- per sq. ft. in terms of the two Agreements executed way back in the year 2005. As per Mr. Manan Gupta, learned counsel, the appellants had to change the Site Plan only due to changes in the building bye laws which were beyond the control of the appellants, and the appellants have been made to suffer huge monetary losses, and the respondent received windfall gains, despite the appellants having committed no wrong(s), which goes against the principles of fair play.

11. Lastly, Mr. Manan Gupta, learned counsel submitted that the averments made by the appellants by way of the Compliance Affidavit dated 18.05.2018 have been misconstrued, and the same only amounted to an alternative offer made by the appellants to the respondent out of generosity, for either one of the new two shops. The learned counsel submitted that it was never the case of the appellants that both the new two shops could be taken by the respondent in place of the original two



shops, and it was not *Clause 27*, but *Clause 2* of the two Agreements which was invoked by the appellants. Based on the aforesaid, Mr. Manan Gupta, learned counsel sought setting aside of the impugned judgment.

12. *Per contra*, it is the case of the respondent before this Court that the impugned judgement is well-reasoned and has been passed after detailed consideration of all the material(s) on record, as well as, after affording both parties ample opportunity to be heard and to raise their objections and adduce their evidence, and generally adhering to the principles of natural justice.

13. On the conduct of the appellants, Mr. Samar Bansal, learned counsel for the respondent submitted that the same has been ripe with concealment and fraud right from the beginning. The appellants first refused to honor the two Agreements even after the respondent fulfilled his obligations thereunder, and then remained *ex parte* in the two suits wherein the decree was passed. Mr. Samar Bansal, learned counsel submitted that the appellants were bound by the decree which had attained finality, especially, since the application under *Order IX rule 13* of the Code filed by them for setting aside of the same had also been rejected. Despite the same, the appellants willfully disobeyed the directions issued therein, constraining the respondent to initiate execution proceedings.

14. Mr. Samar Bansal, learned counsel submitted that before the learned Executing Court, the appellants continued to conceal vital facts and only made admissions when caught on the wrong foot. The same is evident from the fact that the second Site Plan was only brought to the knowledge of the respondent well after initiation of the execution proceedings. Not only that, the third Site Plan bearing the signatures of



one Mr. Surinder Singh, an Architect, who had already been specifically objected to by the respondent when his name was suggested for appointment as Local Commissioner, was a forged and fabricated document, and was never served upon the respondent or brought to the notice of the learned Executing Court but directly handed over to the Local Commissioner during the execution of the commission, despite vehement objections by the respondent.

15. In fact, Mr. Samar Bansal, learned counsel submitted that a complaint with the Council of Architecture was lodged by the respondent against the said architect, Mr. Surinder Singh, for the very same forged and fabricated third Site Plan prepared by him. Pursuant thereto, the disciplinary committee found him guilty of professional misconduct and the Council passed an order dated 16.11.2023 suspending him for a period of 12 months. Based thereon, Mr. Samar Bansal, learned counsel submitted that the Report of the Local Commissioner, filed on the strength of a forged and fabricated document, could have formed no basis for consideration whatsoever.

16. To fortify his submissions, Mr. Samar Bansal, learned counsel drew attention of this Court to the appellants' Compliance Affidavit dated 28.05.2018, as well as the subsequent order dated 03.12.2018 passed by the learned Executing Court, and urged that the impugned judgement has been passed based on the very admissions made by the appellants. The second Site Plan, which is sanctioned by Delhi Development Authority¹⁵ and based whereupon the impugned judgement has been passed, was filed by the appellants themselves along with the aforesaid Compliance

¹⁵ Hereinafter '*DDA*'



Affidavit, wherein the appellants have also admitted to monetary adjustments to be made as per the two Agreements. The same, along with the provisions contained in *Clause 27* of the two Agreements, have rightly been taken into consideration by the learned Executing Court.

17. Mr. Samar Bansal, learned counsel lastly sought to rely upon the law laid down by the Hon'ble Supreme Court in *Bhavan Vaja v. Solanki Hanuji Khodaji Mansang*¹⁶, *Topanmal Chhotmal v. Kundamal Gangaram & Ors.*¹⁷ and *Pratibha Singh & Anr. v. Shanti Devi Prasad & Anr.*¹⁸ to submit that for satisfaction of the decree, the learned Executing Court was empowered to, and in fact, had a duty to construe the decree by perusing the documents before the said Executing Court. The present proceedings involved two Agreements executed *qua* two separate shops *inter se* the parties. Mr. Samar Bansal, learned counsel relying upon the decision of the Hon'ble High Court of Calcutta in *Kartick Chandra Pal v. Dibakar Bhattacharjya*¹⁹, submitted that when a decree is passed for execution of an agreement/ contract between the parties, it is up to the Executing Court to give effect to the real nature of such agreement/ contract in order to give effect thereto, and to do what the parties were bound to have done. Based on the aforesaid, Mr. Samar Bansal, learned counsel supporting the impugned judgement, sought dismissal of the present appeals.

18. This Court has heard both Mr. Manan Gupta, learned counsel for the appellants and Mr. Samar Bansal, learned counsel for the respondent

¹⁶ (1973) 2 SCC 40

¹⁷ 1959 SCC OnLine SC 22

¹⁸ (2003) 2 SCC 330

¹⁹ ILR (1950) 1 Cal 300



and perused the pleadings and accompanying documents on record as well as the judgments cited at Bar.

19. At the outset, it is undisputed that on 17.10.2012, a decree was passed in favour of the respondent and against the appellants in the two suits as under:-

“10. For the reasons stated hereinabove, I hold that the plaintiff is entitled to specific performance of the agreements dated 16.05.2005 for sale of commercial space no. F-39 admeasuring 401.60 sq. ft covered area equivalent to 617.85 sq. ft. super area and commercial space No. F-40 admeasuring 414.31 sq. ft. of covered area equivalent to 637.39 sq. ft super area on the first floor of Paradise Mall, Plot no. 23, Shivaji Place, District Centre, Main Ring Road, Raja Garden, New Delhi.

11. The plaintiff is directed to deposit the balance sale consideration by way of a pay order/ demand draft in the name of Registrar General of this Court within two weeks from today. The defendant shall thereafter execute the requisite document in favour of the plaintiff within four weeks of deposit of the balance sale consideration under intimation to it and shall hand over peaceful and vacant possession of the aforesaid commercial spaces to the plaintiff. If the defendant does not comply with the order within the time stipulated above, the plaintiff shall be entitled to apply to the court for appointment of a Local Commissioner to execute the documents on behalf of the defendant and for delivery of possession of commercial space No. F-39 and F-40 on the first floor of the Paradise Mall, Plot No. 23, Shivaji Place, District Centre, Main Ring Road, Raja Garden, New Delhi to him. The plaintiff shall also be entitled to costs of the suits.”

[Emphasis supplied]

20. Thus, by virtue thereof, the respondent has been held entitled to specific performance of the two Agreements in respect of the original two



shops, which remains unchallenged and binding upon the parties. The same, coupled with the Compliance Affidavit dated 28.05.2018 filed by the appellants before the learned Executing Court have been crystallized *vide* order dated 03.12.2018, as under:-

“Perusal of record shows that plaintiff has prayed for appointment of Local Commissioner. However, it is stated on behalf of JD that now in place of original shops F-39 and F-40 as shown in the site plan annexed with the agreement to sell shop no. F-2 and F-3 exists. It is stated that the total area of said shops is more than the total area of the shops which are agreed to be sold.

*JD has also stated that as per the agreement to sell, if the area to be transferred is more than the area agreed to be sold then DH shall pay for the surplus area to the JD. ...
... parties shall explore the possibility of compromise in terms if DH is ready to pay amount of surplus area as per agreement to sell and JD is also ready to transfer the title of shop no. F -2 and F-3 after receiving the amount, as per agreement to sell.”*

[Emphasis supplied]

21. Interestingly, there being no challenge thereto till date, the position as recorded therein is admitted by the appellants and stands tall.
22. Thereafter, the learned Executing Court has passed the impugned judgment, relevant extracts whereof are reproduced as below:-

“6. Perusal of the record shows that on 18/05/2018, the JD has stated that the earlier allotted shops do not exist and the JD is ready for the compromise of the matter and to identify the shops which are similar in area in all other aspects as agreed in the agreement to sell. The JD has also proposed for alternative shops for the allotment of the shops bearing no.F-03 (same as F-39) and F-02 (same as F-40) to the DH and were having super area of 1098.09 sq. ft. and 1211.70 sq. ft. respectively. The JD has also undertaken to



execute the requisite document/sale deed and to deliver the possession of the new allotted properties to the DH if the DH consented to the new/alternative allotment.

7. *Perusal of the record further shows that thereafter, the Decree Holder filed an application under Section 151 of the Code of Civil Procedure for the appointment of Local Commissioner primarily for the execution of the requisite documents/transfer titles and for delivery of possession of the New Allotted Properties. In order to proceed, it was essential to verify whether the New Allotted Properties existing in the said area are larger in size or not. Since, the area was increased as proposed toilets at backside of these Units were removed and are now included in the new allotted properties. Therefore, the DH has agreed and is willing to pay for difference of increased area in respect to Clause 27 of the agreements.*

xxx xxx xxx

10. *As per agreements dated 16 May 2005 in respect of two units, particularly in Para 27, it was agreed that, "If as a result of the above mentioned alterations, there is either a reduction or increase in the super area of the said premises or its locations, no claim monetary or otherwise will be raised or accepted except the agreed rate per sq. meter and other charges will be applicable for the changed area i.e. at the same rate at which the said premises was allotted and as such, a consequence of such reduction or increase in super area, the developer shall be liable to refund without interest only the extra price and other proportionate charges recovered or shall be entitled to recover from the allottee additional price and other proportionate charges without interest, as the case may be."*

xxx xxx xxx

12. *Therefore, the JD is directed to execute the requisite*



documents/ sale deeds/ transfer titled documents with respect to the two shops bearing no.F-02 (same as F-40) and F-03 (same as F-39) on behalf of the JD / seller. JD is further directed to immediate deliver the vacant and physical possession of both the commercial shops bearing no.F-02 (same as F-40) and F-03 (same as F-39) to the DH. JD is further directed to accept the amounts for Unit no.F-02 (same as F-40) in regard to the additional area of 574.31 sq. ft. calculated at the rate of Rs.4,950 per sq. ft. and similarly for Unit no.F-03 (same as F-39) in regard to the additional area of 480.24 sq. ft. calculated at the Rate of Rs.4,950 per sq. ft. as per the agreement. The afore-said amount shall be payable subject to adjustments of delayed penalty calculated @ Rs.50 per sq. ft. as per the terms of Clause 3 of the Agreements dated 16 May 2005 for the period of delay.”

[Emphasis supplied]

23. The aforesaid makes it amply clear that the impugned judgement has been passed after taking into consideration the decree passed in the two suits, the order dated 03.12.2018 passed by the learned Executing Court, the subsequent execution of the commission, the objections taken thereto by the respondent, the undisputed terms of the two Agreements executed *inter se* the parties, and most relevantly, the submissions made by both parties, especially the Compliance Affidavit dated 28.05.2018 filed by the appellants.

24. What clearly emerges therefrom is that it is an admitted position that there were two separate Agreements executed *qua* two separate shops *inter se* the parties, in respect of which the respondent instituted two separate suits, wherein a Co-ordinate Bench of this Court passed a common decree with respect to two separate shops, and then before the learned Executing Court, the appellants themselves identified two new shops which were vacant and available in place of the two original shops.



25. In view of the foregoing, it did not lie in the appellants' mouth to, *admittedly*, offer merely one of the new two shops in terms of the second Site Plan, or to subsequently offer one common space as per the third Site Plan with a mere separation thereby giving it semblance of two spaces, *albeit*, with a common entrance. The decree passed by the Co-ordinate Bench of this Court of which execution was sought by the respondent was pertaining to *two* Agreements *inter se* the parties by virtue whereof the appellants had to hand over possession of *two* shops in compliance thereof, and in place thereof, one common space with only a single opening discovered during the execution of the commission was clearly not within the purview of the decree. In any event, the appellants are estopped to contend so, since, they were the appellants themselves that brought forth the second Site Plan by way of the Compliance Affidavit dated 28.05.2018, wherein it is categorially asserted as under:-

"7. The total area of the earlier allotted shops, F-39 and F-40 was 1255.24 sq. ft. super area. The best available options are:

<i>S.No.</i>	<i>Shop Number</i>	<i>Location</i>	<i>Area</i>	<i>Floor</i>
<i>1.</i>	<i>F-03</i>	<i>Same as F-39</i>	<i>1098.09 sq. ft. super area</i>	<i>First</i>
<i>2.</i>	<i>F-02</i>	<i>Same as F-40</i>	<i>1211.70 sq. ft. super area</i>	<i>First</i>

8. The Decree-Holder can opt for either of the two above-stated shops, having a similar total area, location, specification, etc. In opting for the alternate shop, it is worthwhile to state that as the area of the new shop, although similar, is not exactly the same as that of the total of the earlier allotted shops, the Decree-Holder is entitled to refund of the shortfall area in terms of the Agreement dated 16.05.2005.



9. *That once the Decree-Holder opts from the available alternate commercial spaces, and after the adjustments as stated in the Agreement, the Judgement-Debtor shall immediately proceed with the execution of the respective sale deeds and handing over of the possession of the opted shop to the Decree-Holder.*”

[Emphasis supplied]

26. Thus, the only rider to the new two shops as per the appellants is that the respondent ought to have chosen either one from the two, was neither possible nor permissible, as the appellants could not have pled anything contrary to the decree of which the respondent was seeking execution.

27. Similarly, *paragraph nos.8 and 9* hereinabove are very categorical, inasmuch as when a reference to monetary adjustments *qua* the difference in area are made, the same is clearly a manifestation as well as an invocation of *Clause 27* of the two Agreements by the appellants, which, for ease of reference is reproduced as under:-

“27. That the DEVELOPER shall, under normal conditions, complete the said Building as per the plans designs and specifications seen and accepted by the ALLOTTEE with such additions, alterations, deletions and modifications in the layout and building plans including the number of floors as the DEVELOPER may consider necessary or any be required by any competent authority to be made in them or any of them while sanctioning the building plans or at any time thereafter. The ALLOTTEE agrees that no future consent of the ALLOTTEE shall be required for this purpose. Alterations may inter alia involved all or any of the changes in the said premises such as change in the position of the said premises, change in the area or change in its number of floors or change in the height of the building. In order to implement all or any of the above changes, a supplementary



sale deed/transfer, if necessary, will be executed and registered by the DEVELOPER in case sale deed/transfer has already been executed and registered in favour of the ALLOTTEE. If as a result of the above mentioned alterations, there is either a reduction or increase in the super area of the said premises or its locations, no claim monetary or otherwise will be raised or accepted except that the agreed rate per sq. meter and other charges will be applicable for the changed area i.e. at the same rate of which the said premises was allotted and as such, a consequence of such reduction of increase in super area, the DEVELOPER shall be liable to refund without interest only the extra price and other proportionate charges recovered or shall be entitled to recover from the ALLOTTEE additional price and other proportionate charges without interest, as the case may be.

[Emphasis supplied]

28. As such, *Clause 27* of the *two* Agreements deals with the compensation to be paid either to the appellants/ Developer therein or to the respondent/ Allottee therein, if due to a change in the Site Plan, the area transferred turned out to be greater or lesser than the area agreed to be transferred, which was admittedly the case herein.

29. Though, before this Court, by trying to read into its own Compliance Affidavit dated 28.05.2018, as well as the impugned judgment, the appellants, ignoring *Clause 27*, attempting to assert that *Clause 2* was invoked by them. However, a perusal thereof makes it evident that the said *Clause 2* has no connection/ correlation/ relevance with respect to the calculations of monetary adjustments *qua* the difference in area transferred as it only deals with the total consideration(s) for the commercial space(s) agreed to be transferred, and gives the Schedule(s) of payments as well as the timeline(s) and provision(s) for delay(s), if any, specifically for repayment/ refund



thereof, the only such provision therein is *qua* refund of excess charges for preferential location paid by any Allottee, like the respondent herein, which were *nil* in the present case, and hence not applicable.

30. In fact, there being no stipulation whatsoever *qua* calculations of monetary adjustments for difference in area transferred, the appellants, merely by mentioning *Clause 2* in its Compliance Affidavit dated 28.05.2018, could not have sought to draw any inference therefrom.

31. Thus, it is reaffirmed therefrom that the appellants themselves placed reliance upon *Clause 27* of the two Agreements at the time of providing the calculations of monetary adjustments due to change in area to be transferred.

32. In any event, considering that the decree had been passed entitling the respondent for specific performance of the two Agreements, finding support in *Bhavan Vaja (supra)*, *Topanmal Chhotmal (supra)* and *Kartick Chandra Pal (supra)*, which elaborate that though an Executing Court cannot go behind the decree, it is incumbent upon the Executing Court to ascertain the real and true effect of the decree, and to do the same, the jurisdiction vests in it to look to the documents and pleadings involved and to construe the same, this Court has no hesitation in holding that there is no infirmity in the impugned judgment. As such, the learned Executing Court was left with little choice but to give sanctity to the decree and take it to the logical conclusion thereof, that too based on the Compliance Affidavit dated 28.05.2018 filed by the appellants themselves. As such, mere absence of an explicit finding *qua* the veracity of the Report of the Local Commissioner, can also hardly be of any relevance.

33. In view of the afore-going analysis and reasonings, as also



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considering the peculiar facts and circumstances involved this Court does not find any illegality or infirmity in the learned Executing Court having adopted the only recourse available. As such, the impugned judgement passed by the learned Executing Court does not call for any interference by this Court.

34. Consequently, both the appeals along with pending application(s) therein, are dismissed, leaving the parties to bear their own costs.

SAURABH BANERJEE, J.

NOVEMBER 13, 2025/Ab/ratna