



2025:DHC:7963-DB



\$~

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

%

Judgment reserved on: 21.08.2025

Judgment pronounced on: 12.09.2025

+ RFA(OS) 108/2015, CM APPL. 7327/2016, CM APPL. 5940/2018 and CM APPL. 62748/2024

SEWA INTERNATIONAL FASHIONS LTDAppellant

Through: Mr. Dayan Krishnan, Sr. Adv.
with Mr. Arjun Syal, Mr.
Akhilesh Wahal, Mr.
Raghuveer Kapur, Mr. Sagar
Aggarwal and Mr. Shreedhar
Kale, Advocates.

versus

KALAWATI MATHRANI (DEAD) THR LEGAL
REPRESENTATIVESRespondent

Through: Mr. Mukul Talwar, Senior
Advocate with Mr. Varun
Kumar, Mr. Yogender Misra,
Ms. Ragini Kapoor and Mr.
Rohit Kumar, Advocates for R-
1 to R-3.

Dr. Arun Mohan, Senior
Advocate with Mr. Rakesh
Kumar & Mr. Sunil, Advocates
for R-4.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant (Plaintiff before the Trial Court) assails the correctness of the judgment and decree dated



01.09.2015 [hereinafter referred to as “Impugned Judgment”], passed by the learned Single Judge [hereinafter referred to as “LSJ”], whereby the suit filed by the Appellant, seeking relief of specific performance against the Agreement to Sell dated 24.04.2000 [hereinafter referred to as “agreement”] in respect of a free hold property bearing no. 16, Poorvi Marg, Vasant Vihar, New Delhi-110057 admeasuring 1219 sq. yds. [hereinafter referred to as “suit property”], was dismissed on account of the suit being barred by limitation alongside the Appellant’s non-willingness to perform his part of contract.

A. FACTUAL MATRIX

2. At the outset, it is noted that issues requiring adjudication of this Court are both procedural and substantive in nature, which are an offshoot of the turn of events arising from developments related to the payment of the remaining amount against the sale consideration. Therefore, only the dates and events leading to the material circumstances shall be referred to hereinafter.

3. With respect to the determination of the parties, it is noted that the suit was instituted by the Appellant (Plaintiff before the Trial Court) against Smt. Kalawati Mathrani (Original Defendant before the Trial Court), who passed away on 25.08.2005, through next friend Mr. Ranjit Mathrani. Upon her demise, her legal heirs, namely Mr. Ranjit Mathrani, Mr. Nirmal Mathrani, Ms. Aparna Choudhary, and Ms. Sheila Mathrani, were brought on record as Defendant Nos.1 to 4 respectively and are now the Respondent Nos. 1 to 4 before this Court.



4. For the sake of convenience, the parties before this Court shall be referred in accordance with their status before the LSJ.

5. The Original Defendant and the Plaintiff executed an agreement to sell dated 24.04.2000 in favour of the Plaintiff for purchase of suit property for a total sale consideration of Rs.7,50,00,000/- (Rupees Seven Crore and Fifty Lakhs Only), 15% out of the said amount, i.e., Rs.1,12,50,000/- (Rupees One Core Twelve Lakhs and Fifty Thousand Only), undisputedly stands paid by the Plaintiff. This amount comprises of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) paid towards earnest money deposit and Rs.37,50,000/- (Rupees Thirty Seven Lakhs and Fifty Thousand Only) towards an additional part payment, the receipt of which is not disputed by the Defendants. The said agreement stipulated that the sale transaction shall be completed by making the full and final payment of the balance sale consideration of Rs.6,37,50,000/- (Rupees Six Crore Thirty Seven Lakhs and Fifty Thousand Only) within 30 days from the communication of statutory approvals.

6. Since the core issue before this Court finds its genesis in the agreement, it becomes essential to examine the relevant clauses therein. This is particularly necessary to establish the Plaintiff's continuous readiness and willingness to perform the contract, as well as to ascertain the point at which the period of limitation was triggered. Accordingly, the relevant contents of the said agreement are extracted hereinbelow:

*"NOW THEREFORE THIS AGREEMENT TO SELL WITNESSETH
AS UNDER:-*



1. That in consideration of the sum of Rs. 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs only) out of which a sum of Rs. 75,00,000/- (Rupees Seventy Five Lakhs only) as earnest money and part payment has been received by the Vendor from the Vendee vide Seven Pay Orders of Rs. 10 Lakhs each Nos. 281880-281883 inclusive and Nos. 281885-281887 inclusive, and one Pay Order for Rs. 5 Lakhs No. 281884 all dated 24 April 2000 drawn on Indian Overseas Bank, Pusa Road, New Delhi, totalling Rs. 75,00,000/-, receipt of which the Vendor hereby admit and acknowledges, a further sum of Rs. 37,50,000/- (Rupees Thirty Seven Lakhs Fifty Thousand only) shall be received by the Vendor from the Vendee by Pay Order on or before 30 May 2000, and the balance sum of Rs. 6,37,50,000/- (Rupees Six Crores, Thirty Seven Lakhs, Fifty Thousand only) shall be received by the Vendor from the Vendee within 30 days of the communication of the approval by the appropriate authority.
2. That the Vendor and Vendee shall immediately file an application in the prescribed Form 37-1 with the appropriate authority under Section 269 UL of the Income Tax Act, 1961 for obtaining their prior permission.
3. That in case the appropriate authority exercises its pre-emptive right the payment made by the Vendee to Vendor shall be payable by the appropriate authority directly to the Vendee of all such amounts received by the Vendor so far. In case the payment is made to the Vendor by such authority, the Vendor shall immediately be liable to refund the amount so received to the Vendee.
4. That the Vendor shall also obtain the Income Tax Clearance Certificate in Form 34-A under Section 230A(1) of the Income Tax Act for the sale of said property.
5. That the Vendor shall execute the sale deed of the said property viz. GPA, Will Codicil etc. in favour of the Vendee or its. nominee(s) simultaneously at the time of receiving the full and final sale consideration by the Vendor from the Vendee. The Vendor shall execute an Indemnity Bond satisfactory to the Vendor to keep the Vendor indemnified as a precondition to the Vendor being required to execute a GPS and Will Codicil.
6. That in case Vendee commits breach of any of the covenants settled herein above it shall be open to the Vendor to forfeit the earnest money without any further notice to the Vendee. Likewise in the event of the Vendor committing any breach of the covenants it shall be open to the Vendee to either claim refund of the earnest money or to have this Agreement specifically enforced through the Court of Law."
7. It remains undisputed that on 16.08.2000, Defendant Nos.1 to 3 initiated proceedings before the learned Additional District Judge,



Delhi by filing Misc. Petition 1/2000 captioned ***Aparna Choudhary vs. State*** [hereinafter referred to as “inquisition proceeding”], seeking an inquisition into the mental condition of the Original Defendant. During the pendency of said proceedings, on 26.09.2000, the Plaintiff moved an application seeking appointment of a manager for the estate of the Original Defendant. However, during the pendency of said petition, the Original Defendant passed away on 25.08.2005, resultantly, no inquisition could be made, rendering the inquisition proceeding infructuous.

8. Prior to initiation of inquisition proceedings, the Defendant no.1 on 10.08.2000 wrote a letter to the Plaintiff, intimating him that requisite permission under Section 269 UC in Form 37-I of the Income Tax Act, 1961 [hereinafter referred to as “IT Act”] had been duly obtained by them. Additionally, the Plaintiff, through the said communication, was also apprised about the deteriorating health condition of the Original Defendant.

9. In response thereto, the Plaintiff, *vide* letter dated 25.08.2000, conveyed its readiness and willingness to discharge the balance sale consideration in accordance with the agreement. Thereafter, on 19.09.2000, the Plaintiff issued a legal notice to the Defendants, reiterating its readiness and willingness to make the balance payment, while simultaneously requesting the Defendants to obtain and provide clearance certificate in Form 34-D under Section 230-A of the IT Act. However, from date of issuance of legal notice until filing of the suit, there was a prolonged period of complete inaction on part of the Plaintiff. The suit filed on 10.11.2004 remained under objections and



was not registered or assigned a number until 15.03.2005, after an unexplainable delay of 125 days.

10. On the basis of pleadings and with consent of the parties, the LSJ framed six issues for consideration:

- “(i) Whether the plaintiff was ready, willing and able to perform its obligations under the Agreement to Sell dated 24.04.2000?*
- (ii) Whether late Smt. Kalawati Mathrani suffered from any mental infirmity making her incapable of entering into the Agreement to Sell dated 24.04.2000?*
- (iii) Whether the suit is barred by time?*
- (iv) Whether the Plaintiff is entitled to specific performance of the Agreement to Sell dated 24.04.2000?*
- (v) If issue no (iv) is answered against the plaintiff, whether the plaintiff is entitled to any alternative relief for damages?*
- (vi) Relief”*

11. Upon detailed consideration of pleadings, evidence and submissions made by the parties, the LSJ returned following findings on the issues framed:

11.1 **Issue No.(i)-** It was held that the Plaintiff was neither ready nor willing and able to perform its obligations under the agreement. The conduct of the Plaintiff, both prior to and subsequent to institution of the suit, coupled with failure to produce cogent evidence to prove its financial capacity, was viewed as indicative of a lack of *bona fide* intent.

11.2 **Issue No.(ii)-** The LSJ found that the Defendants, having raised the plea that the Original Defendant was mentally infirm and incapable of entering into the agreement, had failed to discharge the burden of proof. No cogent evidence was led in this regard and a consistent acknowledgement of the agreement by the Defendants



throughout the proceedings further undermined their plea. Accordingly, this issue was decided in favour of the Plaintiff.

11.3 Issue No.(iii)- The suit was held to be barred by limitation due to the inaction on behalf of the Plaintiff after issuance of legal notice and approval and/or waiver of pre-conditions under the agreement respectively.

11.4 Issue No.(iv)- In view of findings on Issue Nos.(i) and (iii), the relief of specific performance was denied to the Plaintiff, and this issue was decided in favour of the Defendants.

11.5 Issue No.(v)- It was found that the Plaintiff failed to seek any damages/ compensation in terms of Section 21 of the Specific Relief Act, 1963 [hereinafter referred to as “SRA”]. In absence of any such relief, the Plaintiff was held not entitled to any compensation or damages.

11.6 Issue No.(vi)- In order to ensure that the Plaintiff was not rendered remediless, the LSJ directed that earnest money amounting to Rs.1,12,50,000/- (Rupees One Core Twelve Thousand and Fifty Thousand Only) be refunded to the Plaintiff along with interest@12% per annum from date of payment until realisation, in interest of justice.

12. This Court has heard learned senior counsels representing the parties at length and, with their able assistance perused the paper book as well as the trial court record.



13. Learned senior counsels representing the parties have filed their respective written submissions and have relied upon judgments thereof. The contentions of the parties are examined hereinafter.

B. CONTENTIONS ON BEHALF OF THE PLAINTIFF

14. Learned senior counsel for the Plaintiff [hereinafter referred to as “LSCP”], while controverting the findings of the LSJ on aspect of limitation, has made following submissions-

14.1 It is submitted that, as per Clause 5 of the agreement, presence of the Original Defendant was a necessary precondition for execution of the sale deed, and remaining payment was to be made simultaneously with such execution. However, in light of the inquisition proceedings initiated by the Defendant Nos.1-3 and continuous mental incapacity of the Original Defendant from 04.07.2000 until her demise on 25.08.2005, it is contended that the period of limitation could only have been triggered upon death of the Original Defendant on 25.08.2005.

14.2 Additionally, it is contended that the suit filed by the Plaintiff on 10.11.2004 was merely a precautionary procedure, and period of limitation would commence only after the death of the Original Defendant in 2005.

14.3 The LSCP has also contended that the agreement did not prescribe any fixed time frame for execution of sale deed. Accordingly, the first part of Article 54 of the Limitation Act, 1963 [hereinafter referred to as “Limitation Act”], which mandates a “date



fixed for performance”, would not be applicable. In absence of a fixed date, it is contended that limitation period could not be said to have commenced. Additionally, reliance is placed on Section 6 of the Limitation Act to contend that the mental incapacity of the Original Defendant has acted as a contributing factor while calculating limitation on behalf of the Plaintiff.

14.4 Lastly, reliance has been placed on second half of Article 54 of Limitation Act to contend that a non-reply by a person of unsound mind cannot amount to a refusal, since refusal is a conscious act. In the present case, mere silence on account of the Original Defendant cannot be construed as refusal, more so when the Original Defendant was mentally incapacitated.

15. The LSCP, while dealing with aspect of the Plaintiff’s readiness and willingness to perform his part of the agreement, has made following submissions:

15.1 It is contended that the Plaintiff was under no obligation to file an interlocutory application under Order XXXIX of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], and therefore, an adverse inference drawn by the LSJ on this ground is misplaced.

15.2 Reliance is placed on letter dated 25.08.2000, legal notice dated 19.09.2000 and intervention application dated 26.09.2000 filed in the inquisition proceedings, to demonstrate *bona fide* of the Plaintiff. It is further contended that any subsequent adjournments or absence from inquisition proceeding cannot be construed as abandonment, since the said proceeding was primarily and fundamentally an inter-se dispute



between concerned parties, and the application filed by the Plaintiff was never dismissed for non-prosecution.

15.3 With respect to its financial capacity, it is contended that the Plaintiff's purchase of subsequent properties cannot be interpreted as an indication of its financial incapacity. On the contrary, such purchase reflects and establishes, in affirmative, the financial capacity of the Plaintiff to fulfil its obligations under the agreement.

15.4 Further, attention of this Court was drawn to explanation (i) to Section 16(c) of the SRA to contend that the Plaintiff was under no obligation to deposit any amount, since this Court, while granting a stay *vide* its Order dated 18.05.2017, did not direct the Plaintiff to pay any amount.

15.5 It is also contended that the LSJ failed to rely upon the audited balance sheet for year 2002 and wrongly rejected the CA certificate under Section 65(g) of the Indian Evidence Act, 1872 [hereinafter referred to as "IEA"]. The LSCP also argued that a balance sheet is a voluminous financial record comprising ledger books, cash books, bank books and general ledger, all of which were duly deposited during the examination of PW-2, by the Chartered Accountant of the Plaintiff Company. In addition to the aforestated, the Plaintiff also raised objections to the line of cross-examination undertaken, contending that the questions posed to the said witness were suggestive of the idea that the CA Certificate did not reflect a correct financial position of the Plaintiff.

C. CONTENTIONS OF THE DEFENDANT NOS. 1-3



16. *Per contra*, learned senior counsel for Defendant [hereinafter referred to as “LSCD”] Nos.1 to 3, on the aspect of limitation, made the following submissions:

16.1 It is contended that the Plaintiff issued a legal notice dated 19.09.2000, calling upon the Defendants to take steps to obtain the clearance certificate under Section 230(A) of the IT Act, stating that, in case of a default, the Plaintiff would seek specific performance of the agreement. A period of 14 days granted under the said notice expired on 04.10.2000, thereby triggering the commencement of limitation period from 04.10.2000. Nevertheless, no further steps were taken by the Plaintiff, and it was only on 15.03.2005 that the suit came to be registered, after a considerable delay.

16.2 Additionally, it is contended that, if the first part of Article 54 of Limitation Act is to be applied, the Plaintiff was required to make the balance payment within a period of 30 days from obtaining the requisite statutory approvals. Since, such requirement of obtaining a clearance under Section 230A(1) in Form 34-A stood deleted under the IT Act, with effect from 01.06.2001, limitation period for seeking specific performance commenced on 01.07.2001. Consequently, in view of such deletion limitation period concluded on 30.06.2004.

16.3 It is further contended that the Plaintiff has now taken a new plea before this Court that failure to make final payment was attributable to the mental incapacity of the Original Defendant. However, in the replication filed before the LSJ, the Plaintiff had



categorically denied the mental incapacity of the Original Defendant and as such, present contention is barred by the *doctrine of estoppel*.

16.4 With respect to issue of readiness and willingness of the Plaintiff, it is contended that conduct of the Plaintiff as evidenced by issuance of legal notice, filing of intervention application and re-filing of the suit after an unexplained delay, demonstrates a lack of urgency on account of the Plaintiff. It is submitted that these actions were merely calculated moves to delay proceedings, in anticipation of a rise in the price of suit property.

16.5 Raising serious concerns regarding the financial capacity of the Plaintiff, attention of this Court was drawn to cross-examination of PW-2, during which the witness conceded that the documents produced were insufficient to establish the financial capacity of the Plaintiff. Moreover, reliance is placed on Section 65(g) of the IEA, to highlight that financial records were limited merely to 20 pages, and despite a specific suggestion to produce details of the Fixed Deposit Reserves (FDR), the Plaintiff failed to do so before the LSJ.

16.6 Lastly, the learned senior counsel while placing reliance on ***Bhiku Ram Jain & Ors Vs Anis Ahmed Rushdie***¹, submitted that price of the property, having been fixed nearly 25 years ago, ought to be adjusted to reflect the current market value.

D. CONTENTIONS ON BEHALF OF THE DEFENDANT NO.4

¹ (2019) SCC Online Del 12304



17. In addition to submissions made on behalf of the Defendant Nos.1 to 3, the LSCD No.4 has made the following submissions:

17.1 It is contended that, even assuming *arguendo* that the Original Defendant was in good health, her continued silence following the legal notice dated 19.09.2000 must be construed as a refusal to perform the contract, thereby setting period of limitation in motion.

17.2 With respect to the Plaintiff's alleged lack of readiness and willingness, it is contended that, rather than instituting a suit for specific performance and depositing balance sale consideration, the Plaintiff, on 09.11.2000, diverted Rs.4,97,00,000/- (Rupees Four Crore Ninety Seven Lakhs Only) to its subsidiary company, Teletech Industries Ltd., which later purchased another property on 07.08.2001 for Rs.6,43,00,000/- (Rupees Six Crore and Forty Three Lakhs Only) . Moreover, even after the repeal of Section 230A of the IT Act with effect from 01.06.2001, which acted as a legal impediment for the registration of the sale deed, the Plaintiff failed to initiate legal proceedings. Instead, on 06.05.2002, it diverted another sum of Rs.9,35,00,000/- (Rupee Nine Crore Thirty Five Lakhs Only) towards the purchase of a commercial plot at Raja Garden, which, as per current valuation is worth approximately Rs.100,00,00,000/- (Rupees One Hundred Crores Only).

17.3 It is further contended that the Plaintiff failed to take appropriate steps to safeguard its alleged rights. Notably, despite asserting mental incapacity on part of the Original Defendant, the Plaintiff did not file an application for appointment of a guardian *ad-*



litem under Order XXXII Rule 3 of CPC in 2001 and chose to do so only later, on 10.11.2004, via the suit.

17.4 It is further contended that the Plaintiff abandoned its remedies even in the inquisition proceeding, although an intervention application was filed, the same was never pressed after 03.01.2001 and was effectively abandoned by 19.04.2001.

17.5 LSCD No.4 contends that period of limitation for seeking specific performance expired, firstly, on 09.09.2003, secondly, on 10.10.2003, and in any case, on 01.06.2004. Although, the plaint was signed on 23.09.2004, it was belatedly filed on 10.11.2004, kept under objection, and was re-filed only on 21.02.2005, and ultimately registered on 15.03.2005, well beyond the prescribed limitation period under law.

17.6 Lastly, it is contended that the Original Defendant died on 25.08.2005, leaving behind four legal heirs. Since then, the value of the suit property has appreciated exponentially. As per the circle rate applicable in April 2015, the suit property was valued at Rs.78,99,00,000/- (Rupees Seventy-Eight Crore and Ninety-Nine Lakhs Only), while its market value; being a corner plot, is estimated to be approximately Rs.80,00,00,000/- (Rupees Eighty Lakhs Only).

E. ANALYSIS & FINDINGS-

18. Having heard the rival submissions advanced by the learned senior counsel for the parties and upon perusal of record, we are limiting our consideration in this matter solely to three issues. We



intend to answer the controversy in three parts, carefully delineating the following issues:

- I. Limitation: Whether the suit was barred by time?
- II. Readiness and Willingness of the Plaintiff
- III. Plaintiff's entitlement to refund

I. LIMITATION: WHETHER THE SUIT WAS BARRED BY TIME?

19. At the outset, this Court squarely places reliance upon Clause 1 of the agreement, a perusal of which makes it amply clear that balance sale consideration amounting to Rs.6,37,50,000/- (Rupees Six Crore Thirty Seven Lakhs and Fifty Thousand Only) was to be paid by the Plaintiff within the 30 days from the communication of requisite approvals. Further, a perusal of Clause 5 of the agreement demonstrates that execution of sale deed was to be carried out simultaneously at the time of final payment of sale consideration. It is pertinent to note that a conjoint reading of Clauses 1 and 5 of the agreement, unmistakably affirms that contractual obligations to pay the balance sale consideration and execute the sale deed were to proceed *in tandem*, with no scope for undue delay by either of the parties to the agreement.

20. However, the Plaintiff's obligation to make a final payment was explicitly contingent upon fulfilment of two pre-conditions as outlined in Clauses 2 and 4 of the agreement. The first condition, stipulated under Clause 2 for seeking approval from the Income Tax Department in Form 37-I under Section 269 UL of the IT Act, was fulfilled and



duly communicated to the Plaintiff *vide* letter dated 10.08.2000, which has remained undisputed by the Plaintiff, and indeed, was acknowledged by the Plaintiff through its own correspondence dated 25.08.2000 and legal notice dated 19.09.2000. The second condition under Clause 4 of the agreement was unilaterally rendered redundant by the government's repeal of requirement under Section 230A of the IT Act, effective from 01.06.2001.

21. Accordingly, both the pre-conditions stood satisfied by 01.06.2001, thereby triggering obligation under Clause 1 of the agreement which clearly prescribes a time for the payment, i.e., within 30 days of the communication of the approval. Consequently, limitation period commenced on 02.07.2001, i.e., 30 days after waiver of second condition. In addition to the aforestated, this Court concurs with findings of the LSJ under paragraph no.26 of the impugned judgment that the Plaintiff cannot plead ignorance of law, additionally, it is also not the case of the Plaintiff that this requirement under Clauses 2 and 4 of the agreement, seeking prior approval from the Income Tax Department was not in its knowledge. Given that the Plaintiff was engaged in the business of real estate; it is reasonably expected that the Plaintiff would have been aware of such regulatory requirements and legal developments affecting property transactions.

22. Therefore, in view of a fixed timeline for performance as embedded in the agreement, this Court finds that only first part of Article 54 of the Limitation Act would be applicable to the present case. In contrast, it is pertinent to note that although Clauses 2 and 4 of the agreement make it mandatory to obtain statutory approvals,



however, the said clauses do not prescribe any fixed timeframe for seeking such approvals. Hence, the clock of limitation started to run on 02.07.2001 and stopped on 02.07.2004, especially, when the first pre-condition was satisfied by the Defendant no.1 and second condition was waived off by the government.

23. Section 6 of the Limitation Act, which has been invoked by the Plaintiff, is inapplicable in the present circumstances. The provision offers relief only to Plaintiffs who themselves suffer from a “legal disability” such as minority or mental incapacity, at time the cause of action accrues, and the limitation period commences. To put it in other words, it allows only the said persons to institute a suit or application, within the prescribed period under Article 54 of the Limitation Act, after their disability ceases. It does not extend protection to an able-bodied contracting party merely because they are in a contractual relation with a person alleged to be under disability. Therefore, the Plaintiff cannot invoke the protective ambit of Section 6 of the Limitation Act in its favour. Moreover, in the present case the Plaintiff is a body-corporate, by virtue of which the Plaintiff was legally competent to contract and litigate and cannot avail the remedies provided under the said provision.

24. Section 9 of the Limitation Act further reinforces the aforesaid conclusion, it states that once the period of limitation begins to run, it shall not be suspended by any subsequent disability or inability to institute a suit. Therefore, once the Plaintiff’s cause of action arose on 02.07.2001, there was no stoppage of time in running.



25. This conclusion is cogently reinforced by Section 51 of the Indian Contract Act, 1872 [hereinafter referred to as “ICA”], which provides that in contracts involving reciprocal promises to be performed simultaneously, a party is not compelled to perform unless the reciprocal party is demonstrably ready and willing to perform their obligation. In the present case, the Plaintiff, having failed to make the final payment within the contractually stipulated time, is not entitled to seek specific performance of the agreement.

26. In so far as other contentions of the LSCP that the Plaintiff was actively pursuing remedies in the inquisition proceedings during this time, this Court finds such submission to be devoid of merit on three accounts. *Firstly*, the LSJ, upon perusal of the orders passed by the appropriate Court in the inquisition proceedings, has rightly held that the Plaintiff’s representation before such Court during the intervening period of 2001 to 2005 was not effectively pursued. *Secondly*, the Plaintiff’s own conduct both prior to and following filing of the suit, makes it abundantly clear that the mental health of the Original Defendant had never been an impediment for the Plaintiff to pursue its case. *Thirdly*, as rightly noted by the LSJ in paragraph no.56 of the impugned judgment, the Plaintiff had not even raised a plea that it was entitled to exclusion of time under Section 14 of the Limitation Act, which provides for the exclusion of time spent in *bona fide* proceedings before a Court lacking jurisdiction. The Plaintiff failed to raise a plea that the inquisition proceedings were conducted in a forum which lacked jurisdiction to grant such relief which ultimately became a part of the prayer sought in the suit. Therefore, in absence of any



such plea, the Plaintiff cannot now claim/rely on the inquisition proceedings to either extend or suspend the period of limitation. Hence, raising a claim based on mental incapacity of the Original Defendant and any consequential proceeding thereof, at this stage is clearly an afterthought with an attempt to circumvent limitation.

27. Moreover, the Plaintiff's reliance on the mental incapacity of the Original Defendant is legally flawed in light of Order XXXII Rule 3 of the CPC. If the Plaintiff was indeed under a belief that the Original Defendant was of unsound mind at the relevant time, the appropriate and legally mandated course of action was to institute a suit through a guardian *ad litem*, as specifically required under the said rule.

28. To elaborate further, a plain reading of Order XXXII of the CPC makes it clear, that in case of a person suffering from mental disability, a suit can be filed against such a person through a guardian *ad litem*. There is no provision for stopping period of limitation once it has begun to run on account of the said ground. The law mandates that in cases where a defendant is of unsound mind, a suit must be instituted through a guardian *ad litem*, after compliance with the safeguards prescribed under Rule 3 of Order XXXII of the CPC. Therefore, the Plaintiff's decision to delay the institution of suit altogether, on the purported ground of the Original Defendant's mental incapacity, is both procedurally and legally unsustainable.

29. In light of the above findings, this Court finds it unnecessary to delve into arguments advanced by the learned senior counsel for the



parties regarding refusal on account of the Original Defendant, as also highlighted by the LSJ in his findings. The purpose of examining refusal would be to ascertain the commencement of limitation period under second part of Article 54 of the Limitation Act. However, since this Court has conclusively determined that the present case attracts first part of Article 54 of the Limitation Act, resultantly, any examination of facts and circumstances following any discussion on whether there was an actual or implied refusal becomes academic and irrelevant to outcome of the present proceeding.

30. In view of the foregoing analysis, this Court finds that the suit is barred by limitation under Article 54 of the Limitation Act. The agreement between the parties stipulated a fixed timeline for performance namely, a period of 30 days, which began on 01.06.2001 and expired on 01.07.2001. Resultantly, in the present case the period of limitation began to run from 02.07.2001 and ended on 02.07.2004. Further, an absolute silence on part of the Plaintiff during this period, coupled with its inexplicable inaction in pursuing its intervention application in the inquisition proceedings, undermines the current reliance on mental incapacity of the Original Defendant which is both factually misplaced and procedurally flawed. Moreover, the conduct of the Plaintiff clearly reflects a lack of urgency and due diligence, suggestive of strategic delay rather than a *bona fide* pursuit of its rights. Accordingly, this Court finds no merit in the submissions advanced on behalf of the Plaintiff and upholds the findings of the LSJ, dismissing the suit as barred by limitation.

II. READINESS AND WILLINGNESS OF THE PLAINTIFF



i. Willingness of the Plaintiff to perform its obligations

31. With respect to willingness of the Plaintiff to perform its part of agreement, it is noted by this Court that the Plaintiff cannot take shelter under the alleged mental incapacity of the Original Defendant, particularly when, by the clearance issued by the Defendant no.1 vide letter dated 10.08.2000, the Plaintiff implicitly acknowledged that Defendant No. 1 was stepping into the shoes of the Original Defendant, thereby recognising the creation of implied agency by conduct as per Section 187 of the ICA. It is pertinent to note that, by accepting the said clearance without objection, the Plaintiff effectively endorsed Defendant No. 1's authority to act in the Original Defendant's stead.

32. Nevertheless, the LSCP's argument with respect to presence of the Original Defendant for execution, is devoid of merit. The Plaintiff through its communications made vague and ambiguous affirmations such as being "ready and willing to perform", which fall short of precision required to evidence enforceable preparedness. The conduct of the Plaintiff lacked the specificity required to demonstrate actionable readiness, particularly concerning timelines, course of action, or contingencies arising from mental incapacity of the Original Defendant. An unamended Section 16(c) of the SRA, mandates that a Plaintiff seeking specific performance must not only plead but also prove an uninterrupted and continuous readiness and willingness to perform, since the inception of the agreement until execution of the decree, and such conduct shall be backed by concrete action and intention demonstrated by the Plaintiff. However, in the present case



the Plaintiff has approbated and reprobated, asserting readiness to perform at certain stages while subsequently showing lack of *bona fide* to actively pursue its part of performance under the agreement.

ii. Readiness of the Plaintiff to perform its obligations

33. With respect to arguments advanced to show the readiness of the Plaintiff to perform its obligation, this Court concurs with the findings of the LSJ at Paragraph No.29 that the Plaintiff failed to present any cogent evidence demonstrating sufficient funds to fulfil its obligations. Moreover, cross-examination of PW-2 has made it manifestly clear that the CA Certificate issued; based solely on documents provided to it by the Plaintiff itself, was not sufficient to prove the financial capacity of the Plaintiff. Additionally, the LSJ has rightly held that despite continuous suggestion made to PW-1, Mr. Subhash Chauhan/Director of the Plaintiff Company, the Plaintiff took no steps to file the requisite FDRs. With respect to the argument advanced by the LSCP, that the audited balance sheet was not taken into consideration by the Trial Court, it is noted that the Plaintiff was required to prove that it took steps to arrange for payment of the balance amount on 01.07.2001. The turnover of the Plaintiff company would not be sufficient to prove readiness on its part to honour the agreement.

34. In view of the aforestated, the reliance on Section 65(g) of the IEA and the contentions thereof, by the learned senior counsel for the parties, also hold no merit. Under the said provision, the Plaintiff was under an obligation to establish that production of original documents



which ultimately led to preparing of balance sheet was indeed a part of a larger and more complex set. However, the Plaintiff did not elucidate and/or emphasise on this plea to substantiate the impracticality of production of such documents. Moreover, the categorical absence of production of FDR, despite a suggestion to that effect being made by the LSJ, coupled with the consistent stand of PW-2 that the certificate rendered by it does not show the complete financial position of the Plaintiff, renders this plea as infructuous and devoid of merit.

35. Moreover, the Plaintiff on 10.11.2004 had instituted a suit under Order XXXII of the CPC, which governs proceedings involving minors. However, by virtue of Order XXXII Rule 15 of the CPC, these provisions also apply to persons of unsound mind, as is relevant in the present case. If the Plaintiff was capable of initiating proceedings through a next friend in 2004, it logically follows that the same could have been done in 2001, well within the prescribed period of limitation. This failure to take timely action demonstrates that the Plaintiff was neither ready nor willing to perform their obligations under the agreement at the relevant time.

III. PLAINTIFF'S ENTITLEMENT TO REFUND

36. At the outset this Court finds that the Plaintiff had not prayed for relief of refund under Section 22(2) of the SRA, moreover the language of this provision makes it clear that grant of any reliefs contemplated under Section 22 of the SRA is contingent upon a specific prayer to that effect. A perusal of the prayer clause of the



plaint reveals that no such relief for refund of earnest money or additional amount forming part of remaining amount of sale consideration under the agreement was ever sought by the Plaintiff.

37. As regards to the proviso to Section 22(2) of the SRA, which permits the Court to allow amendment of the plaint to include such reliefs, it is noted from the trial court records that no attempt was made by the Plaintiff to seek amendment at any stage. The Plaintiff, being *dominus litis*, chose to pursue only the relief of specific performance, without making any alternative prayer seeking refund of the monies. Moreover, once the suit was filed beyond the period of limitation, no decree in favour of the plaintiff could be passed. Hence, the refund granted by the LSJ, in the absence of any such prayer or amendment and the suit being barred by limitation, cannot be sustained in law and is accordingly set aside.

38. Furthermore, we deem it necessary to state that there existed an explicit clause for forfeiture in the agreement, which stipulated that the earnest money deposited would stand forfeited in any event of default by the vendee in fulfilling the terms of the agreement. At the cost of repetition, reliance is placed on Clause 6 of the agreement that explicitly provides for forfeiture of the earnest money in the event of a breach of any of the terms and conditions of the agreement. As already noted in the preceding paragraphs, the Plaintiff had failed to show its continuous readiness and willingness to perform its part of the agreement as required under Section 16(c) of the SRA. The conduct of the Plaintiff, as reflected in the record, is indicative of non-compliance with obligations stipulated under the agreement, thereby



constituting a clear breach within the meaning of Clause 6 of the agreement. Consequently, the amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) paid as earnest money stands forfeited.

39. Although, the Defendant had not filed any cross appeal against the part of decree granting refund of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) which was paid as earnest money and Rs.37,50,000/- (Rupees Thirty Seven Lakhs and Fifty Thousand Only) paid as an additional amount against the total sale consideration, this Court is empowered under Order XLI Rule 33 of the CPC to pass such decree or make such order as ought to have been passed or made, even in absence of any cross-appeal or cross-objection by the concerned party. The relevant provision reads as under:

ORDER XLI

33. Power of Court of Appeal.—*The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:*

[Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

40. In view of above provision and categorical breach on part of the Plaintiff and absence of any prayer or amendment for refund under Section 22(2) of the SRA, this Court is constrained to exercise its powers under Order XLI Rule 33 of the CPC to set aside the relief of



refund granted by the LSJ. Additionally, it is also pertinent to note that the suit filed by the Plaintiff, being barred by limitation, further disentitles it from any relief of refund, since such relief is maintainable neither in law nor in equity as the Plaintiff cannot benefit out of its own wrong.

41. In addition to the aforestated, it is of importance to note that, at one stage, LSCD No.4, Dr. Mohan, offered to return the earnest money without prejudice to the rights of the Defendants. However, instead of accepting this offer or the LSJ's judgment, against which the Defendants did not file any appeal, the Plaintiff made a choice of filing the present appeal, thereby securing a 10-year status quo on the directions of the LSJ. Resultantly, the claim of equity has diminished.

42. Now at this stage, when the suit has already been contested and decided and the Plaintiff has also filed an appeal, which is under consideration, this Court does not find it appropriate to pass an order refunding the amount, particularly when the claim for refund of the amount is barred by limitation. Moreover, now there is no offer by the Defendants to return the amount. Hence the money directed to be refunded by the LSJ is forfeited.

43. Accordingly, this Court, in view of the consistent lackadaisical conduct of the Plaintiff, particularly the default in complying with the terms of the agreement, holds that the forfeiture of the earnest amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) is legally justifiable and refund of additional amount of Rs.37,50,000/- (Rupees Thirty Seven Lakhs and Fifty Thousand Only) cannot be granted



2025:DHC:7963-DB



because the suit was filed beyond the prescribed period of limitation. In view of the aforesaid, the Plaintiff is not entitled to any refund, hence, the impugned judgment to the extent it grants such relief is hereby set aside.

F. CONCLUSION

44. For all the foregoing reasons, this Court has reached the conclusion that the suit filed by the Plaintiff was barred by limitation and the Plaintiff was not ready and willing to perform its part of the agreement. In such circumstances, this Court is not inclined to grant the relief of refund of earnest monies and the advance monies to the Plaintiff.

45. Hence, having found no merit, the present Appeal, along with pending applications, stands dismissed. However, the impugned judgment and decree with respect to refund of the amount is modified and partially set aside to the extent of directing the Defendants to refund the amount along with interest.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 12, 2025/sg/hr