OD-3

**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**ORIGINAL SIDE**

**APOT/260/2025**

**DR. NARINDER KOHLI**

**-VERSUS-**

**JAGNNATH MAROTHIA AND ORS.**

Present :
**The Hon'ble Justice Debangsu Basak**
**-And-**
**The Hon'ble Justice Md. Shabbar Rashidi**

For the Appellant : *Mr. Malay Kr. Ghosh, Sr. Adv.*
*Ms. Suchismita Ghosh, Adv.*
*Mr. Vivek Basu, Adv.*
*Mr. Pramod Kr. Bagaria, Adv.*
*Ms. Himika Saraf, Adv.*

For the Respondent : *Mr. Rupak Ghosh, Adv.*
*Mr. Nikunj Berlia, Adv.*
*Mr. Varun Kothari, Adv.*
*Ms. Urvashi Jain, Adv.*

HEARD ON : 05.02.2026

DELIVERED ON : 05.02.2026

## DEBANGSU BASAK, J.:-

1. Affidavit of service filed in Court, is taken on record.
2. Appeal is at the behest of the defendant no.3 in a suit for specific performance and damages.

3. Four issues were framed in such suit. A fifth additional issue was subsequently framed about the bar under Section 31 of the Foreign Exchange Regulation Act, 1973.

4. The fifth issue was answered by the impugned judgment and order dated July 22, 2025 by holding that the suit is not barred under Section 31 of the Act of 1973.

5. Learned senior advocate appearing for the appellant submits that, of the four issues initially framed and decided by the impugned judgment and order, a portion of the second issue, initially framed would stand affected. He submits, drawing the attention of the Court to the various portions of the impugned judgment and order that, the finding recorded would tantamount to *res judicata*, even at the interlocutory stage, if the impugned judgment and order is allowed to stand in the manner and form as it stands today. In particular, he draws the attention of the Court to the second portion of the second issue initially framed which relates to the Act of 1973 and the enforceability of the agreement in the context of the Income Tax Act, 1961 and the Act of 1973.

6. Learned advocate appearing for the plaintiff submits that, the suit is pending since 1990 and should be heard and decided expeditiously. According to him, the decision rendered on the fifth issue does not affect any of the issues which are presently pending trial. In any event, the plaintiff is entitled to refund of the money that was advanced for the purchase, if not anything else. He hastens to add, the plaintiff is not giving up any of its claim in the suit.

7. As noted above, in a suit for specific performance and alternative damages, four issues were initially framed.

8. The four issues framed on December 14, 1992 are as follows:

*i) Was the plaintiff ready and willing to perform the agreement dated 2nd January, 1989 ?*

*ii) Is the said agreement encorceable due to non-compliance of the provisions of the Income Tax Act, 1961 and the Foreign Exchange Regulation Act, 1973 as alleged in paragraphs 14(A) to 14(D) of the written statement ?*

*iii) Is the plaintiff entitled to any damage as alleged in paragraph 17 and 18 of the plaint ?*

*iv) To what relief, in any, is the plaintiff entitled ?*

9. One additional issue was framed on January 4, 2023 which is as follows:

*v) Is the suit barred by Section 31 of the Foreign Exchange Regulation Act, 1973 ?*

10. The additional issue framed on January 4, 2023 was taken up for consideration and decided by the impugned judgment and order. The additional issue was decided as against the appellant herein and in favour of the plaintiff.

*11.* There is some substance in the contention of the appellant before us that, the second portion of the second issue and the additional issue framed on January 4, 2023 may overlap to some extent. Therefore, the appellant may face difficulty on the issue of *res judicata.*

12. The suit is yet to be finally decided. Four issues which were framed on December 14, 1992 are yet to be finally pronounced upon by the learned trial judge. In the impugned judgment and order dated July 22, 2025, learned single Judge took trouble of limiting himself to the additional

issue framed on January 4, 2023. Learned trial Judge noted that there are other issues which were initially framed on December 14, 1992 and such issues are required to be decided at the appropriate stage.

13. In such circumstances, it would be appropriate to clarify that, the decision rendered on the additional issue framed on January 4, 2023, by the impugned judgment and order, is limited to such issue. It is clarified that, the decision rendered on the additional issue framed on January 4, 2023 will not prejudice any of the parties, in relation to the other four issues framed on December 14, 1992. The issue of legality, validity, sufficiency, enforceability and the effect of the agreement dated January 2, 1989 is kept open to be decided at the trial without being impeded in any manner and form by the impugned judgment and order.

14. It is further clarified that, the impugned judgment and order relates to bar under Section 31 of the Act of 1973. The other issue as to whether the agreement dated January 2, 1989 is not non-compliant with any other provision of the Act of 1979, are kept open to be decided in terms of the issue no (ii) as framed on December 14, 1992.

15. APOT/260/2025 and connected application, if any, are disposed of without any order as to costs.

**(DEBANGSU BASAK, J.)**

16. I agree.

**(MD. SHABBAR RASHIDI, J.)**

A/s.