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

+ **CS(OS) 154/2023 & I.A. 16135/2023**

SAM BUILDCON LLP

.....Plaintiff

Through: Mr. Dilip Kumar, Adv.

versus

SHEVINDER GILL

.....Defendant

Through: Mr. Prashant Katara, Adv.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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17.04.2026

**THIS MATTER HAS BEEN HEARD THROUGH VIDEO-
CONFERENCING**

1. The present Suit is for Specific Performance and Permanent Injunction filed by the Plaintiff seeking enforcement of Receipt-cum-Agreement dated 02.02.2021 in respect of the Suit Property, being the Second Floor along with Terrace of the Property No. S-55, Greater Kailash-II, New Delhi-110048, admeasuring 300 sq. yards, against the Defendant, along with a restraint against creation of third-party rights.

2. Facts, as discernible from the Plaint, discloses that the Defendant became the owner of the Suit Property by virtue of a duly registered Gift Deed dated 17.05.2010 executed by her mother in her favour. It is stated that in January 2021, the Defendant, through brokers, approached the Plaintiff for sale of the Suit Property and represented that she was the absolute and legal owner of the Suit property and that the property was free from



encumbrances and litigation. Relying upon these representations and after negotiations, the parties entered into a Receipt-cum-Agreement dated 02.02.2021 (*hereinafter referred to as 'the Agreement'*) for a total sale consideration of Rs.3,10,00,000/-. Pursuant thereto, in February 2021, the Plaintiff paid an advance sale consideration of Rs.21,00,000/- out of which Rs.15,00,000/- were paid in cash and Rs.6,00,000/- were paid through cheque dated 05.02.2021, which was duly acknowledged by the Defendant. Despite receipt of the advance amount, the Defendant deliberately did not encash the cheque portion and continued to assure the Plaintiff that it would be encashed shortly.

3. Subsequently, in February 2021, it came to the knowledge of the Plaintiff that the Suit Property was already the subject matter of a pending civil suit bearing CS SCJ No. 2010/2019, which was pending adjudication in the Court of Senior Civil Judge-cum-Rent Controller, South East, Saket Courts, New Delhi. The said fact was concealed by the Defendant at the time of execution of the Agreement together with the receipt of sale consideration amount. However, when the Plaintiff confronted the Defendant, she admitted her involvement in the said litigation but described it as a family dispute which was at the verge of settlement. It is further stated that the Defendant assured the Plaintiff that the sale transaction would be completed once the dispute gets resolved. Throughout 2021 and 2022, the Defendant continued to give repeated assurances to the Plaintiff regarding settlement of the dispute and completion of the transaction, thereby inducing the Plaintiff to remain ready and willing to perform his part of the contract. However, contrary to these assurances, the Defendant issued a legal notice dated 17.12.2022 alleging that the agreement had lapsed by efflux of time as



the final consideration amount was to be paid by the Plaintiff on or before 01.07.2021 and offered a refund of Rs.15,00,000/-, thereby repudiating the contract.

4. It is stated that aggrieved by the said Notice, the Plaintiff issued a reply dated 04.02.2023 denying the allegations and reiterated its readiness and willingness to perform the contract, while also calling upon the Defendant to furnish proof of settlement or withdrawal of the earlier litigation. It was thereafter discovered by the Plaintiff that the said civil suit had in fact been unilaterally withdrawn on 01.02.2023 in terms of Order 23 Rule 1 of Code of Civil Procedure, 1908. It is stated that despite this, the Defendant neither responded to the reply nor took any steps to complete the transaction and instead avoided all communication, even allegedly threatened the Plaintiff when attempts were made to contact her. It is stated that on 07.02.2023, the Plaintiff further learnt through brokers that the Defendant had started offering the Suit Property for sale in the open market with an intention to create third-party rights. It is stated that despite repeated efforts, the Plaintiff could not secure performance of the agreement, although it remained ready and willing to pay the balance consideration and to perform his part of obligation.

5. In these circumstances, the Plaintiff instituted the present suit on 20.02.2023 seeking specific performance of the agreement and permanent injunction against the Defendant.

6. Summons in the Suit were issued on 06.03.2023. Written Statement has been filed by the Defendant.

7. In the Written Statement, the Defendant has primarily raised objections to the maintainability of the present Suit and has stated that the



present Suit is not maintainable as the Suit Property already stands sold *vide* a registered sale deed dated 23.01.2023, and therefore no relief of specific performance can be granted in the present proceedings. The Defendant disputes the Plaintiff's version of negotiations and asserts that it was the Plaintiff who had approached her through a broker, namely Ashwini Rana. While admitting execution of the Agreement dated 02.02.2021, the Defendant clarifies that the understanding between the parties was conditional and specifically required the Plaintiff to make the entire balance payment on or before 01.07.2021, with time being the essence of the contract. According to the Defendant, the Plaintiff failed to adhere to this timeline, and consequently, the arrangement was terminated by efflux of time. The Defendant has also disputed the financial aspects of the transaction by stating that only a sum of Rs.15,00,000/- was received by the Defendant as token amount, and denies receipt of any additional amount, including issuance of any cheque, asserting that the cheque was never encashed at the request of the Plaintiff. It is also contended that the Plaintiff was fully aware of the pending litigation concerning the property and had, in fact, been independently negotiating with the Defendant's brother, Capt. Padam Ravinderjit Singh, for purchase of his share, thereby negating any allegation of concealment. The Defendant further asserts that the property involved in CS SCJ No. 2010/2019 was distinct from the Suit Property. Lastly, the Defendant asserts that since the agreement had already lapsed due to the Plaintiff's inaction and efflux of time, the Defendant was free to deal with the property, including selling it to third parties. On this basis, it is contended that no cause of action survives in favour of the Plaintiff and that the Plaintiff is not entitled to the relief of specific performance.



8. On 11.07.2024, while considering I.A. No. 20493/2023, which was filed by the Defendant seeking permission to deposit the token amount of Rs.15,00,000/- received from the Plaintiff, the Court recorded that the Defendant had already sold the Suit Property *vide* registered sale deed dated 23.01.2023, which was prior to the institution of the present Suit. This Court, therefore, came to the conclusion that no right, title or interest qua the Suit Property remained with the Defendant. In these circumstances, the Court allowed the said application and directed the Defendant to deposit Rs.15,00,000/- along with interest @ 8% per annum from 02.02.2021. This Court further held that the Plaintiff's application seeking interim injunction, being I.A. No. 4415/2023, had become infructuous due to the prior sale of the property. Accordingly, the said Application was disposed of and the matter was fixed for hearing on 09.12.2024 on the issue of maintainability of the Suit. On 09.12.2024, the Court recorded that the Defendant had deposited an amount of Rs.19,20,000/- with the Registry in terms of the order dated 11.07.2024. The Court further noted that arguments on maintainability were required to be addressed, however, the Plaintiff sought an adjournment on personal grounds. Accepting the request, the Court adjourned the matter to 30.01.2025. On 30.01.2025, learned Counsel appearing for the Plaintiff sought time to file an application under Order VI Rule 17 of The Code of Civil Procedure, 1908 for amendment of the Plaint. The Court granted time for the same and adjourned the matter. When the matter came up for hearing on 09.02.2026, this Court took note of the fact that despite earlier liberty, the Plaintiff had not filed any application for amendment of the plaint and passed the following orders:-

“1. Learned Counsel for the Plaintiff seeks an



adjournment on the ground that the arguing Counsel is not well.

2. It is stated by the learned Counsel for the Defendant that vide Order dated 11.07.2024, liberty was granted to the Plaintiff to amend the Plaint. However, till date, the Plaintiff has not filed an Application under Order VI Rule 17 of the CPC to amend the Plaint.

3. In view of the fact that the adjournment has been sought on the ground of ill-health of the arguing Counsel for the Plaintiff, this Court is inclined to accede to the same.

4. However, it is made clear that if an application under Order VI Rule 17 of the CPC is not filed by the Plaintiff before the next date of hearing, the present Suit shall be dismissed under Order VII Rule 11(a) of the CPC, for not showing cause of action as the property already stood sold prior to the filing of the present Suit.

5. List on 17.04.2026.”

9. In view of the aforesaid factual and procedural matrix, this Court is of the considered opinion that the present Plaint does not disclose any subsisting cause of action and is liable to be rejected under Order VII Rule 11(a) of The Code of Civil Procedure, 1908. It is an admitted position on record, as noted in the order dated 11.07.2024, that the Suit Property had already been sold by the Defendant *vide* registered sale deed dated 23.01.2023, i.e., prior to the institution of the present Suit. Consequently, the primary relief of specific performance sought in the Plaint had become infructuous. Recognising this position, this Court had granted sufficient opportunity to the Plaintiff to cure the defect by way of amendment of the Plaint, including liberty granted on 30.01.2025 and a categorical direction in



the order dated 09.02.2026 that failure to file an application under Order VI Rule 17 of The Code of Civil Procedure, 1908 will result in rejection of the Plaint for want of cause of action. Despite such repeated opportunities and explicit judicial directions, the Plaintiff has failed to take any steps to amend the Plaint. The continued absence of any amendment, coupled with the admitted fact that the Defendant no longer retains any right, title or interest in the Suit Property, renders the relief sought in the present Suit incapable of being granted. Accordingly, the Plaint, in its present form, fails to disclose a live or enforceable cause of action and is therefore liable to be rejected under Order VII Rule 11(a) of The Code of Civil Procedure, 1908.

10. The Suit is, therefore, dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

APRIL 17, 2026

Rahul