$~63

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

\+ **CM(M) 195/2020 & CM APPL. 6525/2020**

NEERAJ SHARMA & ANR .....Petitioners

Through: Mr. Pramod Ahuja, Mr. Anshul Sharma and Mr. Vishesh Tomar, Advocates along with petitioner in person.

versus

MOHAN LAL BANSAL & ANR .....Respondents

Through: Mr. V.P. Rana, Ms. Bhawana, Mr. Aviral Jain, Mr. Rohit Mathur, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **20.03.2026**

1. This petition has been filed, challenging the order dated 9th May 2019, passed by the Additional District Judge, Rohini Courts, Delhi in Civil ***Suit No. 60028/2016***, where the application moved on behalf of the petitioners (*original defendants*) under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('***CPC***'), for rejection of plaint, was dismissed.

2. As per the plaint, on 1st August 2009, late *Smt. Sneh Lata Sharma*, mother of the petitioners, entered into an agreement with respondent no.1/*Mohan Lal Bansal (original plaintiff)*, who was apparently their family friend, for construction including *car parking at plinth level plus 4 floors* as per approved drawings on property bearing number *E-144, Prashant Vihar, New Delhi-110052, measuring 80.78 square yards*.

3. As per the agreement, respondent no 1. was to get the drawings approved from the requisite authorities, including Municipal Corporation of Delhi (‘***MCD***’), and complete the construction from foundation to the top floor as per approved drawings at his own cost and expense. In lieu of the expenses incurred for such construction, respondent no.1 was to be paid *1.5%* of the total cost of the project.

4. Petitioner’s late mother and respondent no.1 had further agreed that, after completion of construction, the cost of the plot would be considered and agreed upon by both parties, and the construction cost would be added to it. The entire amount, along with interest at the rate of *15%,* would then be considered and divided in the ratio of the investment made. The investment was to be considered from the date of the actual commencement of the construction. Thereafter, the remaining profit was to be shared equally between the parties.

5. It was also stated in the said agreement that the son of the late *Smt. Sneh Lata Sharma*, the petitioner herein, and her husband would be assisting the respondent no.1 in the construction activities, but nothing extra shall be paid to them. It was stated in the plaint that despite assurance that the husband and the son would assist in construction of the property, they did not participate and abandoned the site.

6. The entire construction was to be completed in 8 months with effect from 1st August 2009; however, could be extended by mutual consent of both the parties.

7. As per respondent no.1/plaintiff, it transpired that after performing his part of the contract and engaging contractors, labourers, procuring raw materials, and spending huge amounts of money, for which records were maintained and were in the knowledge of late *Smt. Sharma*, her husband and

her son, the construction was completed. The total expenditure, as per the plaint, incurred by the respondent no.1/plaintiff was *Rs.44,68,195*/-. Books of accounts and the ledger books, supported by vouchers, were maintained by respondent no.1/plaintiff for the same.

8. As per the respondent no.1/plaintiff, on enquiry, late *Smt. Sharma* maintained that no floor was sold from 2010, i.e., the completion of the construction till August 2013, as they were not getting a price as per the demand. Respondent no.1/plaintiff states that he was in regular touch with her in this respect.

9. However, in October 2013, respondent no.1/plaintiff came to know that *two floors* of the project had been sold by late *Smt. Sharma.* This information had never been provided to them prior to the sale, and the transaction was done secretly. After coming to know about this fact, the Legal Notice dated 7th October 2013 was sent to late *Smt. Sharma,* apprising her of the terms and conditions of the contract and that the cost of the plot would be *Rs.1,80,00,000*/-. It was also stated that *Rs.45,00,000*/- had been expended by the respondent no.1/plaintiff in raising the construction.

10. Accordingly, a demand was made for a sum of *Rs. 1,45,00,000/-*, along with compensation/damages amounting to *Rs.35,00,000*/- and interest of 18% per annum. The said notice was replied on 29th October 2013, denying the existence of this agreement and factum of any construction was done on the said property. Accordingly, plaintiff attempted to sort out the issues and number of meetings were held between respondent no.1 and late late *Smt. Sharma*.

11. It is stated in the plaint that *Neeraj Sharma* agreed to pay a sum of *Rs.50,00,000*/- and providing proof of expenditure, which was provided, but no amount was paid. It is averred further in the plaint that late *Smt. Sharma*

stated that she will stand by her promise and since the consideration, which they have received after selling two floors, had already been used, the profit of the other two floors would then accordingly go to the benefit of respondent no.1/plaintiff. However, this promise was never accomplished.

12. Late *Smt. Sharma* passed away on 19th June 2016.

13. Some other meetings were held, and offers were made, and even after passing away of late *Smt. Sharma* on 28th August 2016, since no amount was paid, plaintiff filed a suit for recovery.

14. It is quite clear from the averments made in the plaint that the cause of action for the plaintiff arose in October 2013, when the plaintiff got confirmation that two floors of the property had been sold without their knowledge, in breach of contract and, moreover, the existence of the contract itself was being denied by late *Smt. Sharma*. Despite negotiations between the parties, no settlement could be arrived at, and consequently, the suit came to be filed on 26th October 2016.

15. In these circumstances, the plea raised by the petitioner herein that the said suit is barred by limitation and ought to be dismissed at the stage of consideration of the application under Order VII Rule 11 CPC may not be sustainable *inter alia* in terms of Article 54 of the Limitation Act 1963.

16. Counsel for petitioner also placed reliance on the decision of the Supreme Court in ***Shri Mukund Bhavan Trust And Ors. v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr.*** in Civil Appeal no. 14807/2024, the Supreme Court, while considering the law relating to Order VII Rule 11 of CPC, takes into account and cites the decision in ***Dahiben v. Arvindbhai Kalyanji Bhanushali*** (2020) 7 SCC 366, which clearly provides that in the determination of Order VII Rule 11 of

CPC, a duty is cast on the court to determine whether the plaint discloses the cause of action by scrutinizing the averments made in the plaint.

17. Having scrutinized the averments in the plaint, as stated above, the Court cannot come to a conclusion that the suit would be barred by limitation. The impugned order states that this is a question of fact and law and accordingly the same may be decided post the trial.

18. Counsel for petitioner states submits that the alleged agreement was never intended for the sale of the property or for payment of any money.

19. However, these are issues which do not fall within the scope of consideration under Order VII Rule 11 CPC, particularly when the plea raised is one of limitation, while this submission relates to the merits of the case and would require interpretation of the agreement and examination of evidence, which can only be considered during trial.

20. Accordingly, the said petition is dismissed. Pending applications are rendered infructuous.

21. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 20, 2026/ak/bp