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+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**
RFA 322/2026, CM APPL. 22251/2026 (For Interim Restraint), CM
APPL. 22252/2026 (Delay), CM APPL.22253/2026 (Exemption)

OMBIR

.....Appellant

Through: Counsel for Appellant (appearance
not given).

VERSUS

RAJESH @ KALA

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

07.04.2026

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RFA 322/2026

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 and Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Plaintiff / Appellant against the Judgment and Decree dated 17.11.2025 (*hereinafter referred to as 'Impugned Judgement'*) whereby the Suit of the Plaintiff / Appellant Mr. Ombir (*hereinafter referred to as 'Plaintiff'*) for Specific Performance has been dismissed, but has been allowed the refund amount of Rs.18,00,000/- along with the interest @10% p.a. Additionally, damages to the tune of Rs.2,00,000/-, have also been awarded.
2. The Plaintiff / Appellant had filed a *Suit bearing CS DJ No. 727/2021 for Specific Performance of Agreement to Sell, Possession, and Permanent Injunction.*



3. **The facts in brief**, as narrated in the Plaintiff are that in April, 2019, the Defendant / Respondent Mr. Rajesh @ Kala (*hereinafter referred to as 'Defendant'*) for his *bona fide* needs and requirements, offered to sell his 1/3rd share out of the total agricultural land, admeasuring 8 Bighas 3 Biswas out of Khasra No. 287 (0-10), 88/15/1/2 (2-17) & 16 (4-16), situated in the revenue estate of Village Ghumanhera, District South – West, Tehsil Kapashera, New Delhi (the share of the Defendant was about 2 Bighas and 13 Biswas (*hereinafter referred to as 'Suit Property'*), to the Plaintiff @Rs.54,00,000/- per acre/killla.
4. The parties entered accordingly into an *Agreement to Sell dated 11.04.2019* and the total sale consideration was agreed at Rs.30,56,250/-. At the time of signing the Agreement to Sell, Rs. 3,00,000/- was given through Cheque dated 11.04.2019, while Rs.1,50,000/- was given in cash, as earnest money. In all, *a sum total of Rs. 4,50,000/- was given by the Plaintiff to the Defendant.*
5. As per the Agreement to Sell, the parties mutually agreed that the balance amount of sale consideration shall be paid at the time of execution of the Sale Deed by the Defendant. The sale transaction was to be completed within the eleven months from the date of Agreement to Sell. It was further agreed that the Defendant will complete all the formalities for obtaining *No Objection Certificate (hereinafter referred to as 'NOC')*, from the Government Departments / Authorities and shall also clear all the Government dues, demands, taxes, charges, *etc.* of the Suit Property for getting the Sale Deed executed in favour of the Plaintiff. The Defendant was supposed to inform the Plaintiff on obtaining all the clearances from the concerned Authorities and was thereafter, to execute the Sale Deed.



6. As per the Plaintiff, on 09.05.2019, the Defendant approached the Plaintiff, and requested him for part payment of Rs.5,00,000/- in accordance with the Agreement to Sell, as he was in dire need of money and was in the process of obtaining NOC from the Revenue Department. According to the Plaintiff, the Defendant approached the Plaintiff on five occasions pleading his dire need to claim part amounts, which are as under:

S.No.	Amount	Amount Given on	Date of Cheque
1.	Rs.3,00,000/-	11.04.2019	11.04.2019
2.	Rs.5,00,000/-	09.05.2019	09.05.2019
3.	Rs.2,00,000/-	13.05.2019	13.05.2019
4.	Rs.3,50,000/-	24.05.2019	24.05.2019
5.	Rs.3,00,000/-	13.08.2019	13.08.2019

7. The Plaintiff claimed that in all, *he made payment of Rs.18,00,000/- towards earnest money.* The endorsement of each payment was made on the original Receipt.

8. When the Plaintiff did not receive any information from the Defendant till first week of March, 2020 in regard to the status of the NOC, he contacted the Defendant, to be informed that the NOC is yet to be issued by the Competent Authority and was likely to be issued within a week, after which the Sale Deed shall be executed. He also assured that as soon as he received the NOC, he would intimate the Plaintiff immediately.

9. Believing the assurances of the Defendant, the Plaintiff contacted the Defendant a number of times from March 2020 till August 2021. Again on 14.08.2021, the Plaintiff contacted and communicated to the Defendant that he was ready with the balance amount for registration of Sale Deed, and



requested him to provide the NOC as soon as possible, but the Defendant again told that he would get the NOC within 2-3 days after which, the Sale Deed would be executed. Again, after three days, the Plaintiff visited the house of the Defendant, but he avoided to meet the Plaintiff.

10. Thereafter, the Plaintiff sent a Legal Notice dated 24.08.2021 to the Defendant, through Speed Post and Regd. Post, but no Reply was received.

11. The Plaintiff came to know that the Defendant had been approaching property dealers/prospective buyers and was trying to sell the Suit Property to third parties. It was claimed that the Defendant had turned dishonest and was trying to back out from the Agreement to Sell, and he wanted to forfeit the money paid by the Plaintiff.

12. The Plaintiff, therefore, *filed the Suit for Specific Performance of the Agreement to Sell or in the alternative, Recovery of Rs.30,56,250/- for the breach of the Agreement and damages suffered by the Plaintiff*. He also sought a Permanent Injunction to restrain the Defendant from creating third party rights in the Suit Property.

13. The Suit was contested by the Defendant, who in his **Written Statement** took the *preliminary objection* that the averments were vague and false. It was asserted that the Defendant had in fact, taken a loan of Rs.18,00,000/- from the Plaintiff from time to time, in terms of an Oral Agreement that Defendant in exchange of this loan, would sell his crops to the Plaintiff. During this period, the Defendant sold his crops many a times to the Plaintiff for the total value of Rs.17,27,600/- and thereafter, paid an amount of Rs.2,00,000/- in cash and therefore, paid a sum total of Rs.19,27,600/-, which was much more than the loan amount of Rs.18,00,000/-. It was claimed that nothing more was due to the Plaintiff.



14. It was further asserted that at the time of giving the loan, the Plaintiff had got his signatures on some blank papers, and even after receiving the entire loan amount, had misused those blank signed papers, by executing false Agreement upon them. The case of the Plaintiff is based on false and forged documents. It was further claimed that the present Suit had been filed by the Plaintiff in unwarranted effort to extort more money from the Defendant.

15. **On merits**, the Defendant denied all the averments in the Plaint, and also about having entered into the Agreement to Sell. He asserted that the Suit is without merit and was liable to be dismissed.

16. The ***Issues were framed on 17.10.2022***, by the learned District Judge, which are as under:

(i) *Whether the Plaintiff is entitled to a Decree of Specific Performance of the Agreement to Sell dated 11.04.2019? OPP*

(ii) *Whether the Plaintiff and Defendant entered into an Agreement to Sell dated 11.04.2019? OPP*

(iii) *Whether the signatures of the Defendant were taken on blank papers and it was never his intention to enter into an Agreement to Sell? OPD*

(iv) *In the alternative, whether the Plaintiff would be entitled to a decree of Rs.30,56,250/- if specific performance is not granted? OPP*

(v) *Whether the Defendant took a loan of Rs.18,00,000/- from the Plaintiff? OPD*

(vi) *Relief.*

17. The Plaintiff examined himself as *PW-1*, and tendered his evidence by way of Affidavit. He also examined *PW-2 Mr. Dharmendra Singh*, and *PW-3 Mr. Ramnivas*, in support of his averments.

18. The Defendant examined himself as *DW-1*, and *DW-2 Mr. Yudhveer*



Singh, who supported the case of the Defendant.

19. ***The learned District Judge considered the evidence of the parties, and held that the parties had entered into the Agreement to Sell dated 11.04.2019*** and that the payments made by the Plaintiff, were towards the earnest money. The defence of the Defendant that he had taken a loan of Rs.18,00,000/-, or that the same was repaid, or that his signatures were obtained on blank papers, were disbelieved.

20. Having held the due execution of the Agreement to Sell, the next question for consideration before the learned District Judge was *whether the Plaintiff was entitled to a decree of Specific Performance of the Agreement to Sell, or was he entitled to decree of RS.30,56,250/-(double the earnest money)*. The learned District Judge noted that the Suit had been filed on 04.10.2021, and the Plaintiff was yet to pay a sum of Rs.12,56,250/- out of the total agreed consideration amount. The last payment was made to the Defendant on 13.08.2019, even though the entire balance amount under the Agreement was to be paid on 11.03.2020, noting that it was an undivided share in agricultural land for which, NOC was required to be obtained, aside from other permissions.

21. It was further observed that the Suit had been filed six months after the due date of making the payments, and also held that the Plaintiff despite seeking relief of Specific Performance, had not proved his readiness and willingness to complete his obligations under the Agreement to Sell. It was held that ***the Plaintiff was not entitled to the relief of Specific Performance of Agreement to Sell. In the alternative, the Suit was decreed for Rs.18,00,000/-, which had been paid as earnest money along with the interest @10% and also the pendente lite and future interest; in addition***



damages of Rs.2,00,000/- were also granted.

22. Aggrieved by the Impugned Judgment, the Plaintiff has preferred the present **Appeal**. The ***grounds of challenge*** are that, the learned District Judge ignored the entire evidence while passing the Impugned Judgment, which is against the principles of natural justice. It has not been appreciated that the *Plaintiff was always ready and willing to make the payment*, which had been pleaded and proved during the evidence. It has not been considered that once the execution of Agreement to Sell was proved, and had concluded that the Defendant had failed to prove that the signatures of the Defendant, were taken on blank papers and it was never his intention to enter into the Agreement to Sell, the learned Trial Court was bound to direct the enforcement of the Agreement to Sell, while deciding the issue in regard to execution of Agreement to Sell in favour of the Plaintiff; *the relief of Specific Performance has been wrongly denied*. The admissions made by DW-1 Mr. Rajesh @ Kale (Defendant) have not been considered in the right perspective.

23. It is further stated that the Defendant's son as DW-2, had admitted in his cross-examination dated 15.05.2025, receipt of multiple payments through cheques and acknowledged the signatures on the Receipt, and also admitted the hand written endorsements on the Receipt, thereby clearly proving that the payments were made under the Agreement to Sell.

24. There was no specific denial by the Defendant despite which, the learned District Judge failed to appreciate the *readiness and willingness on the part of the Plaintiff, to complete his part under the Agreement to Sell*. The Plaintiff had to prove his readiness and willingness at all times and even throughout the Plaint and his evidence.



25. It is further stated that the learned District Judge has failed to consider that the Plaintiff had proved the Agreement to Sell, and it was the Defendant who had failed to obtain the NOC within the requisite time. Out of the total sale consideration of Rs.30,56,250/-, substantial consideration amount of Rs.18,00,000/- already stood paid by the Plaintiff, accounting for nearly 60% of the total price, which shows *the readiness and willingness* on the part of the Plaintiff. On the other hand, from the evidence of the Defendant, it is emerged, that he did not apply for the NOC.

26. *Section 10 of the Specific Relief Act, 1963*, mandates the enforcement of a Specific Performance of a contract, which has not been considered. The law in regard to the Specific Performance has not been considered correctly.

27. Furthermore, though the Court has granted an alternate relief of Rs.18,00,000/-, but *it has not been considered that the alternate relief is to be given only when the main relief cannot be granted or becomes impossible to execute.*

28. The plaintiff has placed reliance on Annamalai vs. Vasanthi, 2025, 2025 INSC 1267, wherein the Supreme Court had held that once the execution of Agreement to Sell is proved and the defence of the Defendant is disbelieved, *denial of specific performance on technical or discretionary grounds results in miscarriage of justice.*

29. The Impugned Judgment is, therefore, liable to be set-aside and the Suit of the Plaintiff for Specific Performance of Agreement to Sell must be decreed with the direction to the Defendant to execute the Sale Deed.

Submissions heard and the record perused.

30. The Plaintiff has sought the Specific Performance of the Agreement to Sell dated 11.04.2019 by asserting that the parties had agreed for the sale of



the Suit Property for a total consideration of Rs. 30,56,250/-, out of which, the part sale consideration of Rs.18,00,000/- was duly paid to the Defendant, a fact which has been proved from the evidence of the parties.

31. The Defendant had taken a defence that sum total amount of Rs.18,00,000/- that was received by him through cheques from the Plaintiff, were towards a loan against which, the Defendant had agreed to supply his crops. He had not only supplied his crops, but had also paid Rs.1,50,000/- in cash to the Plaintiff, towards the return of the loan amount.

32. The learned District Judge, referred to the admissions of the cross-examination of DW-1, Mr. Rajesh @ Kala (Defendant), as well as the cross-examination of his son, DW-2, Mr. Yudhveer Singh from which, *it clearly emerged that, though there were transactions of sale of the crops through the Defendant, those were in fact independent transactions, which had no concern with the Agreement to Sell. It was concluded that parties indeed had entered into an Agreement to Sell against which, the part sale consideration of Rs.18,00,000/- was paid in five instances through cheque.* The defence of the Defendant that it was a loan or that he had returned Rs.19,27,600/-, which is more than the loan amount, was totally disbelieved. ***It was held that the parties had indeed entered into the Agreement to Sell.***

33. Once, it was held that there was an execution of Sale Deed, the next pertinent question, which arose was ***whether the Plaintiff was entitled to Specific Performance of the Agreement or was he entitled to alternate relief of return of the earnest money.***

34. The learned District Judge observed that in order to be entitled to a decree of Specific Performance, it has to be specifically pleaded and proved that the Plaintiff was ready and willing to perform his part of the Agreement.



35. The perusal of the Complaint and the Legal Notice merely states that the Plaintiff had approached the Defendant, and had conveyed that he was willing to pay the balance amount, and that the Sale Deed be executed in his favour.

36. *While the Plaintiff had claimed that he was having the balance amount, but significantly neither in his Complaint, nor in his evidence, did he ever make an averment that he was ready and willing to perform his part of the Agreement. **The willingness means that the Plaintiff had an intention to proceed further with the Agreement to Sell, but readiness involves the financial capacity to pay the balance sale consideration.***

37. Significantly, if the Complaint, the Legal Notice, or the Affidavit of evidence of the Plaintiff, are read holistically, it emerges that he had approached the Defendant for execution of the Sale Deed, but he then came to know that the Defendant had not applied for an NOC, which was mandatory for execution of the Sale Deed, and also came to know that the Defendant was intending to create third party rights and wanted to usurp Rs.18,00,000/-, which had been paid by the Plaintiff.

38. *There is not a whisper about the **Plaintiff having the capacity to meet his obligations under the Agreement to Sell; his concern** were only about forfeiture of the amount already paid by him and about creation of third-party rights in the Suit Property. While 60% of the total consideration may have been paid under the Agreement to Sell by the Plaintiff, *there is no evidence whatsoever, to show his financial capacity to pay the balance amount.**

39. It was also noted that the Legal Notice had been issued five months after the expiry of the time stipulated under the Agreement to Sell, and the



Suit had been filed after six months. The Suit may have been filed within the period of limitation, but *it cannot be overlooked that there had to be a readiness with the requisite funds to pay for the balance sale consideration. The learned District Judge has rightly observed that for execution of the Sale Deed, an NOC was required from the Government Authorities, which had never been applied nor was it available, which was a condition precedent for execution of the Sale Deed. In the absence of an NOC, neither a Decree for Specific Performance, nor Sale Deed could be executed.*

40. *The learned District Judge, therefore, rightly concluded that in the given circumstances, the discretion of directing the execution of the Sale Deed, was not merited and thus directed refund of the earnest amount of Rs.18,00,000/- along with the interest and also granted Rs.2,00,000/- for damages.*

41. The Plaintiff has placed reliance on the decision of the Hon'ble Supreme Court in *Annamalai vs. Vasanthi*, (2025) INSC 1267, to contend that once execution of the Agreement to Sell stands proved, and the defence set up by the respondent is found to be untenable, denial of specific performance on technical or discretionary considerations would occasion a failure of justice. It was also held that the discretionary relief under Section 20 of the Specific Relief Act ought not to be denied by re-appreciating evidence, leading to restoration of the First Appellate Decree.

42. This decision largely highlighted improper appellate interference with specific factual findings, rather than laying down any generally applicable proposition of law that denial of Specific Performance on discretionary grounds, ipso facto amounts to miscarriage of justice.

43. The applicability of the cited authority, necessarily depends upon the



facts and circumstances of the present matter, in light of the evidence led by the respective parties. In the given facts of this case, with no NOC available and no availability of remaining balance proved, it has been rightly observed that *the circumstances did not justify exercise of discretion in favour of the plaintiff.*

Conclusion:

44. In light of the above discussion, it is held that there is no infirmity in the Impugned Judgment. **The Appeal is without merits and is hereby dismissed.** The pending Applications are also disposed of, accordingly.

NEENA BANSAL KRISHNA, J.

APRIL 07, 2026/RS