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

\+ RFA 321/2026, CM APPL. 22247/2026 (Stay), CM APPL.22249/2026 (For Extension of Deposit of Court Fee), CM APPL.22250/2026

PRATAP SINGH .....Appellant

Through: Mr. Ayush Acharjee and Mr. Nahush Khera, Advocates.
Mr Sameer Vashisht (SC-Civil, GNCTD), Aryaman Vachher, Advocates along with Inspector Dharmendra Kumar, PS Gandhinagar.

VERSUS

SANTOSH KUMAR TRIPATHI & ANR. .....Respondents

Through: Mr. Narender Kumar, Advocate for R-3(i), 4(i) and (iv).

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **07.04.2026**

CM APPL. 22248/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The Application stands disposed of.

RFA 321/2026

3. Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant against the Judgment and Decree dated 30.03.2026 (*hereinafter referred to*

as 'Impugned Judgment') whereby the Suit of the Plaintiff / Appellant for Specific Performance of the Agreement to Sell dated 04.02.2024 (*hereinafter referred to as 'Agreement to Sell'*), has been dismissed.

4. The Plaintiff had filed the Suit bearing *No. CS DJ No. 292/2024* for Specific Performance of the Agreement to Sell.

5. **The facts in brief,** as stated in the Plaint are that the Plaintiff, through a Property Dealer, Mr. Raj Kumar, entered into the Agreement to Sell with the Defendant No. 1 / Respondent No. 1 Santosh Kumar Tripathi (*hereinafter referred to as 'Defendant No.1'*) and Defendant No. 2 / Respondent No. 2 Jyotishma Tripathi (*hereinafter referred to as 'Defendant No.2'*), for the purchase of the Suit Property bearing No. 381, Ground Floor, Pocket-1, Sector-9, Category – II, situated at Dwarka Residential Scheme, Dwarka, New Delhi - 110077 (*hereinafter referred to as the 'Suit Property'*), for a total consideration of Rs.1,57,00,000/- and the Plaintiff was to pay Rs.21,00,000/- as an advance. The sale consideration was to be paid on or before 15.04.2024. It was agreed that upon receipt of the balance sale consideration, the Defendants would deliver the actual and physical possession of the Suit Property. The Defendants were obliged to clear all the statutory charges, property tax (House Tax), electricity bills, water and sewerage bills, RWA maintenance charges, *etc*.

6. The Plaintiff paid an amount of Rs.20,00,000/- *vide* cheque to the Defendants, which was cleared on 13.02.2024. The Plaintiff made arrangement for the remaining funds and the contacted the Defendants to finalize the date of execution of the Sale Deed. The Defendants, however, stated that they would do it on some later date. Thereafter the Defendant No. 1 in blatant breach of the Agreement to Sell, returned Rs.21,00,000/- into the

account of the Plaintiff.

7. The Plaintiff aggrieved by such action, approached the property dealer, who had brokered the deal between the parties. However, despite persuasion, the Defendants refused to execute the Agreement to Sell. The Plaintiff then issued a Legal Notice dated 21.02.2024, through their counsel. Thereafter, the plaintiff filed the present Suit.

8. ***Joint Written Statement*** was filed by the two Defendants, who took a preliminary objection that the Suit was the gross abuse of process of the Court and that the Plaintiff had not approached the Court with clean hands. It was claimed that the breach was from the side of the Plaintiff as he had conveyed that he would not be able to manage the balance sale consideration and asked for the return of money. Consequently, the money was returned to the Plaintiff, through RTGS.

9. The Plaintiff in the ***Replication***, reiterated the averments made in the Plaint and denied that he had asked for the refund of the earnest money.

10. From the pleadings of the parties, **the issues were framed** on 18.12.2024, which are as under:

> 1. *Whether earnest money was returned by Defendants at the request of Plaintiff? OPD.*
> 2. *Whether Defendants have committed breach of terms of Agreement to Sell and Purchase dt.04.02.2024? OPP.*
> 3. *Whether Plaintiff is entitled for Decree of Specific Performance to the Agreement to Sell and Purchase as prayed for? OPP.*
> 4. *Whether Plaintiff is entitled for the cost of the Suit? OPP.*
> 5. *Relief.*

11. The Plaintiff examined himself as PW-1, and exhibited the Agreement

to Sell as Ex.D/P1. ***PW-2, Mr. Raj Kumar*** was also examined by the Plaintiff.

12. The Defendants in support of their case, examined four witnesses. ***DW-1 Mr. Santosh Kumar Tripathi*** (Defendant No. 1), supported his defence as taken in the Written Statement.

13. ***DW-2 Ms. Jyotsana Tripathi*** (Defendant No. 2), **DW-3 Mr. Shubham Triapthi**, **and DW-4 Mr. Pankaj Kumar**, were examined in support of the defence.

14. The **learned District Judge in the Impugned Judgment dated 30.03.2026**, on appreciation of the evidence, concluded that even though the Defendants had taken the plea of the Plaintiff not having sufficient funds, the Plaintiff failed to produce any evidence to show that he had requisite funds at the relevant time. The Legal Notice dated 21.02.2024 issued by the Plaintiff, never made any mention about the alleged meeting dated 18.02.2024, between the Plaintiff and the Defendants, though in the cross-examination, the Plaintiff had categorically admitted that there was a meeting between the Plaintiff and Defendant. *The defence of the Respondents that the Plaintiff himself had conveyed his inability to pay the balance sale consideration, was accepted and it was held that the Plaintiff was not entitled to the relief of Specific Performance;* ***the Suit was dismissed***.

15. Aggrieved by the Impugned Judgment, the present Appeal has been preferred. The ***grounds of challenge*** are that grave error has been committed in concluding that the earnest money / advance amount had been refunded to the Appellant, on his request. Though it is admitted that the Agreement to Sell was entered between both the parties and an advance

amount had been received by the Respondents, but it had been unilaterally returned on 20.02.2024 *i.e.,* much prior to the date fixed for performance *i.e.,* 15.04.2024. An adverse inference has been erroneously drawn against the Plaintiff merely for the non-filing of the Bank Statement, although, the Plaintiff had already paid an advance of Rs.21,00,000/- and had specifically pleaded his *readiness and willingness*.

16. The Plaintiff makes reference to *Basavaraj vs. Padmavathi & Anr.,* 2023 SCC OnLine SC 10, wherein it was held that no adverse inference can be drawn for non-production of passbooks / bank statements unless specifically summoned by the Court or the Defendant, and willingness and readiness is to be determined from the pleadings and the conduct of the party.

17. The Plaintiff further states that it has not been appreciated that the readiness and willingness under *Section 16(c)* of *the Specific Relief Act, 1963,* has to be inferred from the entirety of the pleadings, conduct, surrounding circumstances, and steps taken towards the performance.

18. Reliance is placed on *Aniglase Yohannan vs. Ramlatha & Ors.,* 2005 SCC OnLine SC 1374, wherein it was observed that if the conduct of the Plaintiff seeking Specific Performance of the contract has been blemished, and the pleadings manifest that the conduct of the Plaintiff entitles him to get the relief on perusal of the Plaint, then he should not be denied.

19. The capacity of the Plaintiff to pay the balance in consideration, could not have arisen prior to the due date for the payment. The presence of the Plaintiff during the meeting with the Defendants, is unsubstantiated. The case of the Defendants was full of contradictions as though in the pleadings, service of the Legal Notice dated 21.02.2004 was denied, but was

subsequently admitted in the cross-examination.

20. It is further asserted that from the testimony of the DW4 - Pankaj Kumar, it is evident that he was not present during the meeting between the Plaintiff and the Defendants, which took place in the month of February *i.e.*, prior to the end of the financial year.

21. DW3 - Shubham Tripathi evidently was neither a party to the Agreement to Sell, nor was he a witness to the transaction. Hence, his decision or wishes with regard to the Suit Property, had no bearing to the dispute in hand. The settled principle of appreciating the testimony of the witnesses, who are family members, has not been appreciated in the right perspective.

22. The Plaintiff had merely sought extension of time; the refund was based on misreading of evidence, and non-consideration of the stand of the Defendants that they had decided not to sell the Suit Property, on 14.02.2024.

23. It is therefore, submitted that the Impugned Judgment be set aside and the Suit of the Plaintiff be decreed.

Submissions heard and the record perused.

24. The admitted facts are that the Defendants agreed to enter into the Agreement to Sell with the Plaintiff for the sale of the Suit Property, for a total sale consideration of Rs. 1,57,00,000/-, out of which the amount of Rs.21,00,000/- was paid by the Plaintiff as an advance, in terms of the Agreement to Sell. The Agreement to Sell was to be concluded on or before 15.04.2024, when the balance sale consideration was to be paid and thereafter, the Sale Deed was to be executed.

25. It is further not in dispute that the Defendant No. 1 returned the

amount of Rs. 21,00,000/- through RTGS dated 20.02.2024 into the account of the Plaintiff, and immediately thereafter, Legal Notice 21.02.2024 was sent by the Plaintiff through the counsel, claiming Specific Performance of the Agreement to Sell.

26. The defence taken by the Defendants was that in the month of February, the Plaintiff had conveyed his inability to arrange for the balance funds and consequently, the Defendant No. 1 returned the earnest money of Rs. 21,00,000 through RTGS, on 20.02.2024.

27. *The first main aspect for consideration* is whether it was the Plaintiff who had expressed his inability to arrange the funds for payment of the balance sale consideration, or whether it was the Defendants who had unilaterally rescinded the Agreement to Sell without any basis, on 20.02.2024, even though the term of the Agreement to Sell was till 15.04.2024.

28. The Defendant No.1 in his testimony, gave his reason for the return of money, as that the Plaintiff had visited them on 17.02.2024, to express his inability to arrange for the balance sale consideration and had sought extension of time till August or September 2024, which the Defendants were not in a position to grant. Defendant No. 1 had further stated in his affidavit of evidence, *that the Plaintiff then requested for the refund of the advance amount.* He also admitted in his cross-examination, that he had decided not to sell the Suit Property on 17.02.2024, which is the date on which the Plaintiff had visited him. He thus, immediately returned by Defendant No. 1 through RTGS, on 20.02 2024.

29. The same defense has been reiterated by DW2 - Jyotishma Tripathi, and DW3 - Shubham Tripathi. DW4 - Pankaj Kumar, had also deposed that

indeed, the Meeting did take place on 17.02.2024. He further clarified that the Plaintiff had not assigned any reason, for his inability to make the payment.

30. Thus, the testimony of all the defence witnesses was consistent with respect to the fact that the Meeting took place between the parties on 17.02.2024 wherein the Plaintiff sought extension of time for making payment of the balance amount.

31. The Plaintiff had also admitted that the meeting had taken place, but asserted it to be on 18.02.2024, while according to the Defendant, it had taken place on 17.02.2024.

32. The factum of meeting is thus, confirmed; whether it took place on 17.02.2024 or 18.02.2024. It is also established that the earnest money was returned, immediately thereafter. The preponderance of probability reflects that it was the meeting which triggered the return of money, or else there was no reason for the Respondent to have returned the money.

33. It was argued on behalf of the Plaintiff that in fact, the Defendants had decided to sell the Suit Property even prior to the Meeting on 18.02.2024. However, *the learned District Judge has rightly observed that on examination of the Defendant No.1 holistically, it is evident that he had decided not to sell the property, on the same day when the Plaintiff expressed his inability to arrange funds by the due date, and sought the extension.*

34. Though the Plaintiff denied that he had sought any extension, *the first document of significance, is the Legal Notice dated 21.02.2024*, which was sent by the Plaintiff to the Respondent, on receiving back the amount of Rs.21 lakhs in his account, on 20.02.2024. In the said Notice, it was

mentioned that the money was returned on 19.02.2024, and that the Defendants unilaterally committed breach of the Agreement to Sell by returning the amount of Rs. 21 lakhs on 19.02.2024, by stating that they were no more interested in the sale of the Suit Property to the Plaintiff.

35. *There was no mention of the alleged Meeting between the parties*, or that the Plaintiff had shown any inclination or had indicated that he was having sufficient funds for execution of the Sale Deed. The Appellant claimed that he was willing to perform his part of the Agreement to Sell *i.e.,* to pay the entire sale consideration and execute the Sale Deed and asked **the Defendants to honor the Agreement to Sell.**

36. The best way for the Plaintiff to have rebutted this assertion of the Defendant that he had sufficient funds, was to have proved his financial capacity, aside from claiming that he had sufficient funds. No evidence whatsoever has been led by the Appellant nor any document has been proved to corroborate his claim that he had the sufficient funds on the said date to honor the Agreement to Sell, within the time frame affixed under the Agreement to Sell. In the circumstances on preponderance of evidence, *the learned District Judge was right in concluding that it was indeed the Plaintiff who had sought more time for making the payment of balance amount, which was not acceptable to the Defendants who chose to rescind the Agreement to Sell.*

37. The other aspect which is of immense significance is that *to be entitled to a Decree for Specific Performance of the Agreement to Sell, the Plaintiff had to prove* ***his continuous readiness and willingness to perform as part of the contract.*** Mere institution of the present suit may be interpreted as his willingness to go ahead with the Agreement to Sell, but ***to***

establish his readiness, his financial capacity to pay the balance consideration amount had to be established, which he has miserably failed to do. No details had been given about the availability of the requisite funds. Further, no documentary evidence such as bank statements, income tax returns, *etc*. had been produced by the Plaintiff to prove his readiness to perform as part of the Agreement to Sell. *The learned District Judge has rightly held that this omission goes to the root of the matter and is fatal to the Plaintiff's Suit*.

38. Reliance has been placed on *Kamal Kumar vs. Premlata Joshi & Ors*., (2019) 3 SCC 704, while referring to *P. Daivasigamani vs. S. Sambandan*, (2022) 14 SCC 793, the Apex Court had observed that the *grant of relief of specific performance is a discretionary and equitable relief*. In order to be successful, one of the essential elements to be proved is whether the Plaintiff is ready and willing to perform his part of the contract. Furthermore, whether it is equitable to grant the relief of specific performance to the Plaintiff against the Defendant, or it would result in any kind of undue hardship to the Defendant.

39. Likewise, in *Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar*, (1967) 1 SCR 227, it was held that *to be successful in a Suit for Specific Performance, a continuous readiness and willingness to perform has to be established before the Court*. Similar observations were made in *J.P. Builders & Anr. vs. A. Ramadas Rao & Anr.*, (2011) 1 SCC 429, and *Sangita Sinha vs. Bhawna Bhardwaj & Ors*., (2025 INSC 450).

40. In the present case, first and foremost, it has been proved that the Plaintiff had a financial constraint, and needed more time to honor the Agreement to Sell, which is further corroborated from his failure to explain

the availability of the finances with him. On the other hand, the Defendants were able to prove that the parties had a Meeting in which the Plaintiff had sought further extension of the time for making the payment, which was not acceptable to them, and consequently, as a good gesture, immediately returned the earnest money on 20.04.2024. *The learned District Judge therefore, rightly observed that the equity was not in favor of the Plaintiff to allow the specific performance of the Agreement to Sell. The Suit of the Plaintiff was rightly, dismissed.*

41. There is no merit in the present Appeal which is hereby, dismissed. The pending Applications are disposed of, accordingly.

NEENA BANSAL KRISHNA, J.

APRIL 07, 2026/*RS*