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

% ***Reserved on: 10th August, 2026***
Pronounced on: 27th October, 2026
Uploaded on: 27th October, 2026

\# **CNR No. DLHC010365232026**

\+ **RFA 814/2026, CM APPL. 52540-52541/2026**

1. **Sh. Somnath Kharbanda,**
(Since Deceased) Through His Lrs.

1.1 Smt. Parveen Rani (Deceased),
W/o Late Sh. Som Nath Kharbanda,
R/o 6/2, 2nd Floor, Ramesh Nagar,
New Delhi-110015

1.2 Sh. Gagan Kharbanda,
S/o Late Sh. Som Nath Kharbanda,
R/o 6/2, 2nd Floor, Ramesh Nagar,
New Delhi-110015

2. **Sh. Anoop Kharbanda,**
(Since Deceased) Through his LRs

2.1 **Smt. Kavita Kharbanda,**
W/o Late Sh. Anoop Kharbanda.

2.2 **Vaani Kharbanda,**
(Minor daughter),
D/o Late Sh. Anoop Kharbanda,
Through her Mother/Natural
Guardian Smt. Kavita Kharbanda.

2.3 **Pranshul Kharbanda,**
(Minor Son),
S/o Late Sh. Anoop Kharbanda,
Through his Mother/Natural

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Guardian Smt. Kavita Kharbanda.

All R/o 6/2, 2nd Floor,
Ramesh Nagar, New Delhi-110015. ....Appellants
Through: Ms. Tejasvi Mohan, Advocate.

versus

1. **Smt. Arvinder Kaur,**
(Since Deceased) Through Her Lrs

1.1 Sh. Ranjit Singh Maggu,
S/o Late Sardar Rawail Singh,
R/o B-5, Saraswati Garden,
New Delhi-110015.

1.2 Sh. Gagandeep Singh
S/o Sardar Ranjit Singh Maggu,
R/o 41, Chateau Rise,
Flat Bus Aucki, and

1.3 Ms. Jasmine Kaur
D/o Sardar Ranjit Singh Maggu,
R/o B-5, Saraswati Garden,
New Delhi-110015. .....Respondents
Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Appeal under Section 96 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') has been filed on behalf of the Appellants/Defendants against the Judgment and Decree dated 20.03.2026,

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whereby the Suit of the Plaintiffs/Respondents was **partly decreed for refund of Rs. 4,00,000/-,** being the earnest money paid to them, along with pendente lite and future interest @ 6% p.a., by the learned District Judge Delhi.

2. The Plaintiff had filed a Suit Civ. DJ No. 9472/2016 for recovery of a total sum of Rs. 8,00,000/- along with interest @ 12% p.a., as compensation for breach of Agreement to Sell dated 21.06.2008.

3. The ***facts, in brief,*** are that Ms. Arvinder Kaur, the original Plaintiff (since deceased who is now represented by her legal heirs), entered into an Agreement to Sell dated 21.06.2008 with the original Defendants, Mr. Somnath Kharbanda and Mr. Anoop Kharbanda, for a sale consideration of Rs. 40,00,000/-(forty lacs). A sum of Rs. 4,00,000/- was paid in cash as earnest money under the Agreement to Sell and a Receipt was duly executed in acknowledgment of the payment.

4. It was stipulated in the Agreement to Sell that the balance consideration would be paid to the sellers, on or before 05.09.2008. It was further stipulated that if the seller failed to comply with the Agreement, then he would be liable to pay double the amount of the earnest money/bayana to the purchaser. Likewise, if the purchaser failed to comply with the Agreement, then the said amount would be forfeited by the seller, and the purchaser would have no claim or objection whatsoever, in respect thereof.

5. The Plaintiff asserted that before 05.09.2008, she requested the Defendants on several occasions, to provide her with copies of the title documents in respect of the suit property, so that the title could be verified. However, despite repeated requests, the Defendants failed to produce the

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title documents. Therefore, the Plaintiff did not consider it prudent to pay the balance sale consideration of Rs. 36,00,000/-.

6. Thereafter, the Plaintiff sought refund of double the earnest money, i.e., Rs. 8,00,000/-, from the Defendants on account of their failure to abide by the terms of the Agreement to Sell, inasmuch as they failed to produce the title documents. She also requested the Property Dealer, who had negotiated the deal, to ensure that either the money was refunded or, if the Defendants had title to the suit property, the property be transferred in her name. However, on 15.04.2009, the Property Dealer conveyed to the Plaintiff that the Defendants were not willing to abide by the terms of the Agreement to Sell, dated 21.06.2008.

7. Consequently, the Plaintiff filed **the Suit for Recovery of Rs. 8,00,000/-, i.e., double the earnest money, along with interest @ 12% p.a.**

8. The Defendants, in their ***Written Statement***, admitted that the Agreement to Sell dated 21.06.2008 was duly executed between the parties. However, it was claimed that it was the Plaintiff who failed to honour the terms of the Agreement to Sell, by failing to pay the balance sum of Rs. 36,00,000/-. Consequently, the Defendants forfeited the bayana amount.

9. It was further stated that the Defendants, as a follow-up to the transaction with the Plaintiff, had entered into an Agreement to Sell and Purchase with one Mr. Paramjeet Singh for the purchase of another property, using the sale proceeds to be realised from the sale of the suit property to the Plaintiff.

10. After receiving Rs. 4,00,000/- from the Plaintiff, Defendant No. 1 paid a bayana amount of Rs. 4,60,000/- to Mr. Paramjeet Singh. However,

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the Defendants were unable to finalise the deal, because of the Plaintiff's failure to abide by the Agreement to Sell. Consequently, the bayana amount paid by Defendant No. 1 to Mr. Paramjeet Singh was forfeited, by the latter. It was thus, asserted that there was no merit in the Suit filed by the Plaintiff, which was liable to be dismissed.

11. Issues on the pleadings, were framed on 16.03.2012, as under:-

(i) Whether the defendant failed to show the titled documents of property No.6/2, Second Floor with roof right, Ramesh Nagar, Delhi to the plaintiff? OPP

(ii) Whether the plaintiff is entitled to recover double of the earnest money paid by him for purchase of above property. OPP?

(iii) Whether the defendant informed the plaintiff that they are entered to agreement to purchase another property from Pramjeet Singh and consequently time was the essence of the contract. OPD?

(iv) Whether the defendant forfeited the earnest money. OPD?

(v) Whether the suit is barred by limitation. OPD?

(vi) Whether the plaintiff is entitled to interest pendent-lite and future interest? If so, at what rate.

(vii) Relief.

12. The Plaintiff, in support of her case, **examined herself as PW-1** and produced the Agreement to Sell, Ex. PW-1/1, and the receipt, Ex. PW-1/2.

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13. PW-2, Mr. Rajender Bali, was an attesting witness to the Agreement to Sell, who corroborated the evidence of the Plaintiff, about the execution of Agreement to Sell, between the parties.

14. PW-3, Mr. Ranjeet Singh, her husband, in his affidavit of evidence Ex. PW-3/A, corroborated the testimony of PW-1. PW-2, Mr. Rajender Bali, was the attesting witness to the Agreement to Sell, and deposed

15. Defendant No. 1, Mr. Somnath Kharbanda, tendered his evidence by way of affidavit, but his cross-examination could not be completed as he died during the pendency of the trial.

16. DW-1A, Ms. Parveen Rani, the wife of Defendant No. 1, was dropped from the list of witnesses, vide Order dated 28.05.2025.

17. DW-1B, Ms. Kavita Kharbanda, and DW-1C, Mr. Gagan Kharbanda, corroborated the defence set up in the Written Statement. The copy of the registered GPA executed by Mr. Jai Prakash and Mr. Girish Kumar in favour of Mr. Somnath Kharbanda and Mr. Roop Kharbanda was marked as Mark A, while the registered Agreement to Sell and Purchase executed by them in favour of Mr. Somnath Kharbanda and Mr. Anoop Kharbanda, was marked as Mark B.

18. The **learned District Judge, on appreciation of the evidence,** held that the execution of the Agreement to Sell dated 21.06.2008 Ex. PW-1/1 and payment of Rs. 4,00,000/- as bayana, evidenced by the receipt Ex. PW-1/2, were admitted.

19. The contention of the Plaintiff that after the execution of the Agreement to Sell, the Defendants had failed to produce the title documents for verification, was not accepted by the learned Trial Court, and it was held that the Plaintiff was not entitled to recovery of double the earnest money.

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20. It was further observed that the Plaintiff had failed to produce any document to establish her financial capacity. Rather, an Application under Section 149 CPC had been filed for enlargement of time to pay the court fees, indicating that the Plaintiff was facing financial difficulty. It was further observed that the Plaintiff *had failed to establish her readiness and willingness to perform the Agreement to Sell, as the balance sale consideration was not readily available with her by the stipulated date.*

21. It was further noted that the Defendants had taken the defence that they had suffered a loss because the proposed purchase transaction with Mr. Paramjeet Singh could not be completed on account of the Plaintiff's failure to abide by the Agreement to Sell, and that the earnest money paid by them in that transaction, had been forfeited. However, the learned Trial Court rejected this defence, and held that *the Defendants could not be said to have rightly forfeited the earnest money paid by the Plaintiff.*

22. It was thus, held that the Plaintiff and her legal representatives were entitled to recover Rs. 4,00,000/- paid as bayana, under the Agreement to Sell dated 21.06.2008. ***Consequently, the Suit of the Plaintiff was partly decreed for Rs. 4,00,000/-, along with pendente lite and future interest @ 6% p.a.***

23. *Aggrieved by the Judgment and Decree,* ***the legal representatives of the deceased Defendants have filed the present Appeal.***

24. The ***grounds of challenge*** are that the learned Trial Court travelled beyond the pleadings and the Issues framed on the pleadings. There was no specific issue framed regarding the ownership or validity of the title documents of the Appellants. Therefore, the observations in this regard

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introduced a new question, which neither arose from the pleadings nor formed part of the Issues framed on 16.03.2012.

25. It is further contended that the learned Trial Court failed to appreciate that the Suit was merely for recovery of double the earnest money and not for a declaration regarding the title of the Appellants. It was asserted that no relief can be granted on a case that has not been pleaded, and that no evidence can be considered, in respect of such a case.

26. Neither in the Plaint nor in the evidence, had the Plaintiff challenged the legality or enforceability of the title documents of the Defendants and, therefore, the findings in regard thereto, are liable to be set aside. The reliance placed by the learned Court on *Shakeel Ahmed vs. Syed Akhlaq Hussain*, 2023 SCC Online SC 1526, was totally misconceived and not applicable to the facts, since this is not a Suit for Declaration of title or specific ownership rights.

27. Reliance is also placed on *Bachhaj Nahar vs. Nilima Mandal*, 2008 INSC 1072; *Rohit Singh vs. Parimal Bhattacharjee*, 2024 DHC 8175; *Trojan & Co. vs. Nagappa Chettiar*, (1953) 1 SCC 456; *Krishna Priya Ganguly vs. University of Lucknow*, (1984) 1 SCC 307; *Om Prakash vs. Ram Kumar*, AIR 1991 SC 409; *Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi,* (2010) 1 SCC 234; *Fertilizer Corp. of India Ltd. vs. Sarat Chandra Rath*, AIR 1996 SC 2744.

28. The learned Trial Court observed that, admittedly, the Agreement to Sell dated 21.06.2008 was executed after the Plaintiff had understood the nature of the documents and the possession of the suit property. It was also observed that it was not believable that a person would enter into an Agreement to Sell in respect of the suit property and a payment of Rs.

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4,00,000/- would be made, without verifying its ownership documents. Moreover, the Plaintiff had neither raised any objection in regard to the title of the Defendants at the time of execution of the Agreement to Sell nor thereafter. The burden of proving Issue No. 1 lay on the Plaintiff, who failed to discharge it. It is contended that, once the foundation of the Suit itself stood demolished, no decree for recovery of Rs. 4,00,000/- could have been passed in favour of the Plaintiff.

29. It is asserted that the Plaintiff never sought cancellation of the Agreement to Sell dated 21.06.2008 and the terms of the Agreement continued to bind the parties. The earnest money had been validly forfeited as the Plaintiff had defaulted in performing the essential terms of the Agreement to Sell.

30. The Appellants further contended that the learned Trial Court failed to consider the provisions of the Transfer of Property Act, which do not require the seller to have perfect title to the suit property at the time of entering into an Agreement to Sell, as the title is required to be conveyed at the time of execution and registration of the Sale Deed. It is contended that, despite returning findings in favour of the Appellants/Defendants and noting the Plaintiff's lack of readiness and willingness, the learned Trial Court erroneously directed refund of Rs. 4,00,000/-.

31. It is further contended that the Plaintiff failed to pay the balance sale consideration of Rs. 36,00,000/- and that the Defendants had, therefore, rightly forfeited the earnest money, in terms of Clause 5 of the Agreement dated 21.06.2008. It is further contended that Defendant No. 1 had entered into an Agreement to purchase another property from Mr. Paramjeet Singh,

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but that transaction could not be completed, on account of the Plaintiff's non-performance of the Agreement to Sell.

32. The Appellants have placed reliance on *K.R. Suresh v. R. Poornima & Ors.*, 2025 INSC 617, wherein the Supreme Court held that, in a Suit for Specific Performance, the relief of refund of earnest money cannot be granted, unless it is specifically claimed in the Plaint or sought by way of amendment. In the absence of such a specific prayer, the Court cannot *suo motu* grant the relief.

33. In the present case, the time was the essence of the Agreement to Sell, in view of the specific terms and stipulations contained therein. The Plaintiff had failed *to establish readiness and willingness to perform her part of the Agreement to Sell.* Since the Plaintiff had not sought a Declaration or challenged the validity of the title documents, the learned Trial Court could not have adjudicated upon their validity and thereby travelled beyond the pleadings to grant the *suo motu* relief. The Appellants, therefore, prays for the setting aside of the impugned Judgment and Decree.

Submissions heard and the record perused.

34. It is an admitted fact that the parties entered into an Agreement to Sell dated 21.06.2008 Ex. PW-1/1 and that the Plaintiff had paid Rs. 4,00,000/- as *bayana*, vide Receipt Ex. PW-1/2, under the Agreement. It is also not in dispute that, under the terms of the Agreement to Sell, the balance sale consideration of Rs. 36,00,000/- had to be paid on or before 05.09.2008, which admittedly remained unpaid.

35. The Plaintiff had sought recovery of Rs. 8,00,000/-, being double the earnest money of Rs. 4,00,000/- paid by her under the Agreement to Sell, on

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the ground that the defendant defaulted in performance of the Agreement to sell. In order to consider her entitlement, it became pertinent to decide *which party had committed the default.*

36. The main contention of the Plaintiff was that the title documents were not shown at the time of entering into the Agreement and even thereafter, which dissuaded her from continuing with the deal. The ld. Trial Court, on appreciation of evidence, rightly held that it was not believable that a person entering into an Agreement and paying Rs.4,00,000/-, would not first see the documents of title.

37. The Ld. trial Court further went into the financial capacity of the Plaintiff to pay the balance sale consideration of Rs. 36,00,000/- by 05.09.2008, the stipulated date for payment of the balance sale consideration, though it was not required, as the more relevant aspect was **whether the Defendants had a right to forfeit the earnest money (bayana).**

38. In this context, it is relevant to state the law on the subject.

39. **Section 74 of the Indian Contract Act, 1872** reads as under:

> *"74. Compensation for breach of contract where penalty stipulated for.- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation*

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not exceeding the amount so named or, as the case may be, the penalty stipulated for."

40. A plain reading of Section 74, makes it evident that the sum stipulated in the contract does not become automatically recoverable, merely upon proof of breach. The aggrieved party is entitled only to "*reasonable compensation"* not exceeding the sum named or the penalty stipulated. The Constitution Bench of the Supreme Court in *Fateh Chand v. Balkishan Das*, (1964) 1 SCR 515, held that the words *"whether or not actual damage or loss is proved"* merely dispense with proof of the precise quantum of loss, and does not dispense with the existence of legal injury. Section 74 "*does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted".*

41. The principles were comprehensively re-stated by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, wherein it was held as under:

"43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.

...

43.6. The expression 'whether or not actual damage or loss is proved to have been caused thereby' ***means that where it is possible to prove actual damage or loss, such proof is not dispensed with.*** *It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage*

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or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

42. Thus, the forfeiture of earnest money paid under an Agreement to Sell, is not an automatic consequence of breach. The amount named in the contract, only defines the ***outer limit of compensation***. The party seeking to retain it, *must establish that legal injury has resulted from the breach, and where the loss is capable of proof, it must be proved.*

43. In the present case, *Clause 5 of the Agreement to Sell dated 21.06.2008* stipulated that the purchaser would forfeit the bayana in the event of her default, and that the seller would pay double the bayana in the event of his default. It is thus, a sum agreed in the contract, to be paid in case of breach, which squarely falls within the ambit of Section 74.

44. Pertinently, the Defendants sought to prove the loss and damage caused to them on account of non-performance of contract, by asserting that, the defendant had entered into a forward transaction to purchase another property from Mr. Paramjeet Singh and paid the bayana of Rs. 4,60,000/-, which he lost as he was unable to complete his deal, as a consequence of the Plaintiff's default, and lost his Rs. 4,60,000/-, which was forfeited by Mr. Paramjeet Singh.

45. Although the defendant had made these assertions on oath, but the Receipt and Agreement to Sell were de-exhibited, as the defendant failed to

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produce the original documents. No other cogent evidence was led to establish that the Defendants had entered into a further Agreement to Sell with Mr. Paramjeet Singh or the reasons for its non-performance.

46. The loss so pleaded, was neither difficult nor impossible to prove; it was capable of being established by documentary evidence and by examining Mr. Paramjeet Singh. The Defendants, therefore, failed to lead any cogent evidence to show that they had suffered any loss in terms of Section 73 of the Indian Contract Act. ***Therefore, the learned District Judge was justified in directing the refund of Rs. 4,00,000/- to the Plaintiff.***

47. Much was agitated by the Appellants that the learned Trial Court had made certain observations regarding the title of the Appellants/Defendants, although the validity of the title documents, was not specifically in issue.

48. The learned Trial Court considered the Plaintiff's contention that the Defendants were not the owners of the suit property, as they failed to produce the title documents and merely had an Agreement to Sell and no Sale Deed in their favour, while examining her explanation that she had not proceeded with the transaction because the Defendants had failed to produce the title documents. The learned Trial Court did make observations regarding the legal effect of the documents relied upon by the Defendants, but it was not any findings on the title of the Defendant; the observations were confined to adjudicate whether the plaintiff was justified in rescinding the Agreement to Sell and was not a finding on the title of the defendant over his property. Such observations were only incidental and not on the merits.

49. It has also been contended that the *question of readiness and willingness was not relevant*, as the present Suit was not one for specific

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Performance of the Agreement to Sell. However, as is evident from the impugned Judgment, the reference to the Plaintiff's readiness and willingness was made, while examining her conduct and the parties' respective obligations under the Agreement to Sell, and not to adjudicate a claim for Specific Performance, which was not the relief sought in the Suit.

50. The other contention raised by the Appellants is that the relief of refund of earnest money has been granted, despite there being no specific prayer in this regard. However, this contention is absolutely fallacious for the simple reason that the Plaintiff had not filed a *Suit for Specific Performance,* but had merely sought recovery of Rs. 8,00,000/-, i.e. double the amount of earnest money paid by her. It was a simpliciter Suit for Recovery of bayana amount, which had to be decided in terms of the law relating to the forfeiture of the amount paid under the Agreement to Sell.

51. Therefore, it is evident that the Defendants could have forfeited the bayana, only if they were able to establish that they had suffered a loss on account of non-performance of the Agreement to Sell. The principle laid down in *K.R. Suresh v. R. Poornima & Ors.*, 2025 INSC 617, regarding the requirement of a specific prayer for refund under Section 22(2) of the Specific Relief Act, 1963, is applicable only in Suit was not one for Specific Performance. The Trial Court awarded Rs. 4,00,000/- against the monetary claim of Rs. 8,00,000/- made in the Suit, and did not grant an unclaimed alternative relief in a Suit for Specific Performance.

52. It was a simpliciter Suit for Recovery of bayana amount, which had to be decided in terms of the law relating to the forfeiture of the amount, paid under the Agreement to Sell.

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Conclusion:

53. The aforesaid discussion reveals that there is no merit in the Appeal, which is hereby, dismissed.

54. The pending Applications are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

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