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

% *Date of decision: 12th January, 2026*

+ RFA 682/2024, CM APPL. 1271/2025 (for vacation of stay)

M/S. AGGARWAL GRANITES

S/o Sh. Ramesh Gupta
R/o B-5/333, Sector-8,
Rohini, Delhi-110085.

.....Appellant

Through: Ms. Charu Bhardwaj, Advocate.

versus

MAHESH KUMAR PARWAL

S/o Late Sh. Gulab Chand Parwal
R/o B-34, First Floor, Naraina Vihar,
New Delhi-110028.

.....Respondent

Through: Mr. Gaurav Kumar and Mr. Raj
Kapoor, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

RFA 682/2024

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been preferred on behalf of the Appellant to challenge the impugned Judgment dated 06.06.2024 whereby the decree of Possession in respect of property bearing No. E-2/A, Mansarovar Garden, New Delhi-110015 comprising of 147 Sq. yards of front side of ground floor and 247 Sq. Yards. of the First Floor, (*hereinafter referred to as the 'Suit Property'*), has been passed against the Appellant

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under Order 12 Rule 6 CPC, in a Civil Suit for possession.

2. **Brief facts** of the Case are that the Plaintiff/Respondent filed a Suit bearing No. CIV DJ 914/2022, titled *Mahesh Kumar Parwal vs. M/s Aggarwal Granites* for Possession and Permanent Injunction in respect of the Suit Property. According to the Plaintiff, he is the owner of property having a Sale Deed dated 24.04.2018 executed in his favour.

3. The Appellant/Defendant, who is the proprietor of *M/s Aggarwal Granites*, was inducted as a tenant in the Suit Property by virtue of a Lease Agreement dated 20.07.2018, for 109 months @ Rs.2,00,000/- per month w.e.f. 01.09.2018. The rent was payable by 5th day of each calendar month. The Appellant had also deposited Rs.4,00,000/- as security, which was refundable at the time of vacating the property.

4. According to the Respondent/owner, the rent was paid upto March, 2019, after which the Appellant/tenant stopped paying the rent on account of an Agreement to Sell dated 12.12.2019 executed between the Appellant and the Respondent herein, whereby the Plaintiff had agreed to sell the Suit Property to the Appellant.

5. Thereafter, a Legal Notice dated 25.11.2019 was sent to the Appellant to claim rent/possession, which he failed to comply. Thereafter, the Suit for Possession and Permanent Injunction was filed.

6. The Appellant in his **Written Statement/ Reply** admitted that he was inducted as a tenant *vide* Lease Deed dated 20.07.2018. However, he asserted that there was an Agreement to Sell dated 12.12.2019 executed between the Appellant and the Respondent in respect of the Suit Property i.e. the ground floor and the first floor without terrace rights (in which the Defendant/Appellant was already in possession as the tenant, as well as, the



third floor including the terrace rights) for a total consideration of Rs.2,71,00,000/-. In terms of the Agreement to Sell, Rs.50,00,000/- were paid by the Appellant in part performance of the Agreement *vide* two RTGS transactions of Rs.25,00,000/- each dated 13.02.2019 and 14.02.2019.

7. Further, as per the terms of the Agreement to Sell, the amount of Rs.4,00,000/- given as a security, was also to be adjusted towards the sale consideration. The Appellant claims that the balance sale consideration was payable on or before 31.10.2020. The Respondent after receipt of earnest money/part-payment and despite repeated requests never came forward to accept the balance sale consideration and to execute the Sale Deed. Furthermore, despite the Appellant having informed the Respondent, he failed to present himself at the office of concerned Sub-Registrar for the execution of the Sale Deed.

8. However, the Respondent in order to counter the Agreement to Sell, filed a false Complaint on 28.05.2021 consequent to which, FIR No. 20/2022 under Section 420/464/467/468/471/120B dated 06.01.2022 at Police Station Kirti Nagar, was registered against the Appellant.

9. The Respondent filed an Application under Order 12 Rule 6 CPC claiming a decree of possession of Suit Property on the basis of admissions, which was allowed *vide* Impugned Judgment dated 06.06.2024.

10. Aggrieved by the Judgment, *the present Appeal has been preferred* on the **grounds** that the factum of Agreement to Sell dated 12.12.2019 between the parties has not been considered by the learned District Judge. By virtue of this Agreement to Sell, the tenancy came to an end and the possession was agreed to remain with the Appellant, till the Sale Deed was executed. He was neither liable to pay any rent nor for eviction. The impugned Decree



directing him to return the possession without the return of earnest money of Rs.50,00,000/-, is bad in law.

11. The facts and issues in the Suit, were intermingled and intertwined with the rights of the Appellant arising from the Agreement to Sell. Therefore, there was no admission on the part of the Appellant and no decree under Order XII Rule 6 CPC, could have been passed, without leading of evidence and its appreciation thereto.

12. It is further contended that it has not been appreciated that it is the Respondent, who had put the Appellant in possession and therefore, he cannot seek the recovery. Though there was an Agreement to Sell, but its execution and payment of part consideration, has been denied by the Respondent, which raised a triable issue and should not be decided in such a prejudicial manner.

13. The Respondent/Plaintiff has paid Rs. 25 Lakhs which he claims to have returned however, the said Rs. 25 Lakhs was paid for purchase of marble/granite. The Appellant was in the process of filing a Suit for Specific Performance of Agreement to Sell dated 12.12.2019. In case the Suit is decreed, the present Order would be prejudicial to the intended Suit for Specific Performance.

14. Insofar as the FIR is concerned wherein the Respondent has alleged that the Agreement to Sell was a forged document, the Appellant has already been granted Bail by the learned CMM on 08.04.2022. During the investigations, the signatures on the Agreement to Sell to be that of the Respondent had been verified in FSL Report. However, the Charge-Sheet in the FIR has not been filed since more than two years.

15. The learned District Judge erroneously relied on the documents,



which were submitted along with the written arguments and did not form the basis of the pleadings.

16. Reliance is placed on Karan Kapoor vs. Madhuri Kumar, Civil Appeal No. 4645/2022 in SLP (C) No. 13800/2021.

17. *A prayer is, therefore, made that the impugned Order dated 06.06.2024, be set-aside.*

Submissions Heard and record perused.

18. From the pleadings as well as the Impugned Order under O12 Rule 6 CPC, it emerges that the Appellant was admittedly, inducted in the Suit premises as a tenant in respect of property, i.e. Ground Floor and First Floor *vide* Lease Deed dated 20.07.2018 at a monthly rent of Rs.2,00,000/-.

19. The entire defence of the Appellant rests on the *Agreement to Sell dated 12.12.2019*, according to which the Respondent had agreed to sell the Suit Property and Third Floor with Terrance rights to the Appellant for Rs.2,71,00,000/-. The Appellant had claimed that out of this sale consideration, a sum of Rs.50,00,000/- had been paid in part performance in two transactions of Rs.25,00,000/- each, dated 13.02.2019 and 14.02.2019. It was further stated that Rs.4,00,000/- which were given as security at the time of execution of the Sale Deed, was also agreed to be adjusted towards the sale consideration. It was claimed that *the entire sale consideration was to be paid on or before 31.10.2020*, after which the Sale Deed was to be executed.

20. The Appellant has asserted that this alleged Agreement to Sell was entered into in respect of area measuring 147 sq. Yards of *Ground Floor, entire First Floor without roof rights and entire third floor with roof rights*



(*which was not a part of tenancy*) area measuring 247 sq. Yards out of the western portion of freehold property No.E-2A, Mansarovar Garden, Delhi.

21. The relevant part of Agreement to Sell, including Clause 2, reads as under:

“WHEREAS First party is the owner and in possession of 8/9th UNDIVIDED SHARE OF FRONT PORTION OF GROUND FLOOR AREA MEASURING 147 SQ. YDS., ENTIRE FIRST FLOOR WITHOUT ROOF RIGHT AND ENTIRE THIRD FLOOR WITH ROOF RIGHTS AREA MEASURING 247 SQ. YDS. OUT OF WESTERN PORTION OF FREEHOLD BUILT UP PROPERTY BEARING NO. E-2-A, SITUATED IN THE AREA OF VILLAGE BASSAI DARAPUR, DELHI STATE, DELHI NOW COLONY KNOWN AS MANSOVER GARDEN, NEW DELHI- 110015 and the proportionate freehold rights of land under the said property WHEREIN AFTER CALLED THE PROPERTY UNDERSALE.

...

1. That the second party have already in possession of the front portion of Ground Floor area measuring 147sq. yds. And Entire First Floor with aggregate of 247 sq. yard. approx. without roof rights of above said property as a tenant/ lessee as for Lease Deed registered as document No. 8400 in Book No. I Volume No. 23829 on pages No. 151 to 157 duly registered on dated 20-07-2018 in the office of Sub-Registrar SR-II, Basai, Darapur, New Delhi executed between both the parties and it is also agreed between the both parties that on receipt of balance payment the first party shall deliver the vacant and physical peaceful possession of the remaining portion of above said property under sale to the second party and execute/sign the necessary transfer/sale document in the office of the concerned Sub-Registrar in the name of second part or his their Nominee without extra demand or so.

2. That the second party has not paid the monthly rent to the first party from 1-04-2019 of the portion of above said property which is in possession of the second party and now it is also agreed between both the parties that the first party



shall demand the dues of rent of the above said property from the second party and it is also agreed between both the parties that the second party shall not pay the monthly rent to the first party for the remaining period.”

22. There are certain facts, which cannot be overlooked. **Firstly**, the Appellant was in possession of ***front portion of ground floor*** admeasuring *147 sq. yards* and *entire first floor* with an aggregate of *247 sq. Yards* without roof right, as a tenant by virtue of Lease Deed registered on 20.07.2018. However, this Agreement to Sell pertained to *Ground Floor, First Floor without roof rights and third floor with terrace rights*. There is nothing on record that the Appellant was in possession of the third floor. He admittedly, also had no tenancy rights in respect of Third Floor.

23. **Secondly**, the Contract was to be concluded and entire payment to be made till 31.10.2020. Aside from claiming that the Appellant has paid Rs.50 lacs through two RTGS transfer in February, 2019, there is no further averment of any kind that any payment towards alleged balance sale consideration was ever made by the Appellant.

24. Another significant aspect is that no Suit for Specific Performance has been filed by the Appellant, even after the expiry of the deadline of 31.10.2020 mentioned in the Agreement to Sell, till date. Even if he had any right of specific performance, the same already become *barred by limitation*.

25. Appellant had contended that the Respondent had wrongly denied his signatures on the Agreement to Sell and had got FIR No.20/2022 registered against the Appellant on the allegations that the signatures on the Agreement to Sell were forged. However, as per ***Status Report*** dated 16.10.2024, filed by the I.O. in FIR No.0020/2022 under Sections 420/464/467/468/471/120B



IPC, registered at PS: Kirti Nagar, Delhi, during investigations of FIR, signatures were sought to be verified through FSL, which gave its Report that the signatures of the Respondent on the Agreement to Sell were genuine and the Closure Report was intended to be filed in the FIR.

26. Even if the best case of the Appellant is accepted that there was an Agreement to Sell duly executed between the parties, but as noted above, once no action has been taken under the Agreement to Sell for Specific Performance, no rights can be claimed by the Appellant under the said Agreement to Sell.

27. It is mentioned in the Agreement to Sell itself that the sale consideration was agreed to be Rs.2,17,00,000/- (which included the third floor and terrace, which was not in the tenancy and the possession of the Appellant). It was further stated in the Agreement to Sell that the total sale consideration was Rs.2,71,00,000/- out of which, Rs.50,00,000/- (Rs.25,00,000/- each through RTGS dated 13.02.2019 and 14.02.2019 had been made in the Account of the Appellant).

28. The Appellant has contended that in the FIR, the Respondent had taken a stand in respect of Rs.50,00,000/- in FIR No. 20/2022 and it had been alleged that Rs.50,00,000/- was a friendly loan taken by the Respondent/Plaintiff from the Appellant out of which, he had returned Rs.25,00,000/-. However, a contradictory stand was taken in the Suit, wherein it was alleged by the Plaintiff/Respondent that the Appellant had paid Rs.25,00,000/- for purchase of Marble/Granite.

29. The Respondent explained that in February, 2019, since the Appellant was busy in fixing the marriage of his daughter, he had transferred Rs.50,00,000/- in the Account of M/s Golden Granites Proprietorship Firm



of the Plaintiff, for the purchase of marble. He has the Bills for Rs.25,00,000/- for which the Marble was purchased. Thereafter, the Appellant asked to cancel the Order of his client as the same was no longer required and requested for return of his money. The Plaintiff returned Rs.14,34,000/- on 21.02.2019 and Rs.7,66,000/- in cash, which transaction was acknowledged by the Appellant in the WhatsApp Chat.

30. Amount of Rs.10,00,000/- were returned through RTGS on 27.03.2019 and Rs.15,00,000/- through RTGS on 25.04.2019, a fact which is not disputed by the Appellant. Rs. 50,00,000/- were thus, returned to the Appellant.

31. The Appellant asserted that there are two different averments made by the Respondent, which can be adjudicated only after recording of evidence.

32. While different explanation has been given by the Respondent, but it is pertinent to refer to the Agreement to Sell wherein it was specifically mentioned that Rs.50,00,000/- had been transferred through RTGS as part sale consideration. Therefore, whatever be the explanations given, the same are not tenable. It is on record that part sale consideration of Rs.50,00,000/- was paid as mentioned in the Agreement to Sell. Pertinently, the Respondent has asserted that Rs.25,00,000/- have been returned to the Appellant in March, April 2019, a fact which has not been disputed by the Defendant.

33. The Appellant has relied heavily on part payment of sale consideration, to claim that he is not liable to pay the rent after the execution of the Agreement to Sell dated 12.12.2019.

34. It is pertinent to mention that the Appellant on 16.03.2019, he paid Rs.4,32,000/- towards the rent for February and March, 2019. He had issued two cheques of Rs.10,00,000/- and Rs.5,12,000/- respectively, towards the



rent of seven months, but both got dishonoured and a Complaint under Section 138 Negotiable Instruments Act, was filed by the Respondent/Appellant.

35. The Appellant had denied having issued two cheques of Rs.10,00,000/- and Rs.5,12,000/- respectively, towards the rent and claimed that no such cheques were ever issued by him. It was explained that the Plaintiff and the Defendant were in the same business i.e. trading in Granite and various other types of stones, Marble, tiles etc, which were used in construction of building floors. One of the customers of the Defendant/Appellant, had requested him to procure a huge quantity of White Marble Slabs, which were not available with the Defendant Firm. He thus, requested the Plaintiff, to arrange the same for the Appellant upon which, on the asking of the Plaintiff/Respondent, the aforesaid two cheques i.e. one for Rs.10,00,000/- and other was a blank cheque on which the amount was to be filled for the balance amount, which may be due on account of purchase of the Marble Slabs by the Plaintiff for the Defendant, had been handed over to the Plaintiff/Respondent.

36. The Plaintiff, however, could not arrange the goods as the officials of DRI conducted a raid at his premises and the Appellant also did not try to contact him. The two cheques, therefore, remained in the possession of the Plaintiff. It was thus, asserted that the two cheques were not towards payment of arrears of rent but for purchase of Marble Slabs. The cheques have been misused and misappropriated by the Plaintiff/Respondent.

37. It was further contended that once the Agreement to Sell dated 12.12.2019 was entered into between the parties, there was no question of issuing the aforesaid cheques towards the rent as asserted by the Plaintiff. In



the Agreement to Sell dated 12.12.2019, it had been clearly mentioned that Rs.50,00,000/- have been received by the Plaintiff, a fact which has been concealed in the Plaint. The Plaintiff has fabricated a false story in respect of the two cheques, which have been misused by him.

38. Whatever may be the controversy of the amount having been paid by the Respondent or returned by the Appellant, the *core question* here is that the Agreement to Sell dated 12.12.2019 was to be executed by 31.10.2020, which admittedly has not happened and no Suit for Specific Performance has been filed.

39. The question which thus arises, is *whether the Appellant ceased to be the tenant and his possession matured into that of an owner*. In this regard, reliance may be placed on *Hari Gopal Manu vs. B.S. Ojha*, 2016 SCC Online Delhi 985 wherein similar facts were considered. It was held that a mere Agreement to Sell of immovable property does not create any right in the property save to enforce the Agreement. Even if it is found that the Plaintiff had agreed to sell the property, which had been let out to the Appellant/Defendant on rent, the Defendant would not get any right to occupy the property as a purchaser.

40. In *Jiwan Das vs. Narain Das*, AIR 1981 Delhi 291, it was held that no rights enure to the agreement purchaser not even after the passing of decree for Specific Performance till the conveyance in accordance with law is executed. The appellant's right to remain in the occupation of the premises or to retain the possession of the premises merely because of the Agreement to Sell in his favour.

41. In *M.R. Sawhney vs. Doris Randhawa*, AIR 2008 Delhi 110 (SLP No. 13820/2008) against this Judgment was dismissed on 22.10.2010 held “ex



facie, once a tenant always remains a tenant, unless the status changes by contract or by operation of law.” In Abdul Hakim Mia vs. Pana Mia Miaji, AIR 1919 Calcutta 293 (DB), it was held that where a person is inducted as a tenant and is in possession, the character of possession cannot be altered without the consent of Plaintiff. The principle of estoppel under Section 116 of the Indian Evidence Act, 1881, continues even after the expiration of period of the lease and unless the tenant surrenders the possession, he is estopped from contesting the title of the landlord.

42. The Supreme Court of India in Sant Lal Jain vs. Aytar Singh, (1985) 2 SCC 332 held that the Defendant who is a licensee, must be deemed to be always a licensee. It is not open to him, during the subsistence and after the revocation of license to set up a title to the property in himself or anyone else.

43. In the present case, even though the parties had agreed to enter into an Agreement to Sell, but it was subject to its performance by 31.10.2020, which has not happened. The parties may have agreed that the rent would not be payable till the execution of the Sale Deed, but there is not a single averment to show that the title of the Appellant ever changed into that of an owner.

44. It is also pertinent to note that the Appellant has primarily relied upon an unregistered Agreement to Sell, he cannot seek the benefit of 53A of the Transfer of Property Act, 1882, on the basis of an unregistered Agreement to Sell, to protect his possession.

45. Pertinently, the learned District Judge in its Order dated 09.12.2023 had noted that the Respondent has filed Civil (Comm) Suit No. 702/2022 for Recovery of Rs.49,56,000/- along with the interest @ 9% p.a. in regard to



the arrears of rent, which is still pending trial.

46. It is also pertinent to observe that Appellant had made RTGS of Rs.25,00,000/-, which was sought to be explained by the Respondent, as an advance payment for supply of marble granite by the Appellant, for which a Civil Suit has already been filed.

47. The averments therein are that two cheques, one of Rs.10,00,000/- and second of Rs.5,12,000/- both dated 15.12.2019, had been issued by the Appellant towards arrear of rent, but the same on presentation, got dishonoured. A Complaint under Section 138 NI Act was filed, though the same was withdrawn.

48. The learned District Judge was right in considering the admission of the Appellant of having been inducted as tenant in the suit premises and in rejecting the defence of Agreement to Sell as not tenable, to decree the suit for possession.

49. There is no merit in the present Appeal, which is hereby **dismissed**. Pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 12, 2026
RS