



2026:DHC:129-DB



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

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Judgment reserved on: 02.12.2025
Judgment pronounced on: 09.01.2026
Judgment uploaded on: 09.01.2026

+ **FAO(OS)116/2018**
ROMI GARG

....Appellant

Through: **Mr. Manish Vashisht, Sr. Adv.**
With Ms. Nandini Sahni, Mr.
Vedansh Vashisht and Mr.
Swapan Singhal, Advs.

versus

BDR BUILDERS & DEVELOPERS PVT. LTD & ORS

.....Respondents

Through: **Mr. R.K. Mishra, Adv. for R-1.**
Ms. Anumeha Singhai, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J

1. Through present Appeal, the Appellant assails the correctness of the orders dated 16.01.2018 and 14.03.2018 [hereinafter referred to as 'Impugned Order-1' and 'Impugned Order-2'], passed by the learned Single Judge [hereinafter referred to as 'LSJ'] in a case being CS(OS) 14/2018 titled "*Romi Garg v. BDR Builders & Developers Pvt. Ltd. & Ors*".

2. The issue which arises for consideration in the present Appeal

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2026:DHC:129-DB



is whether in the absence of any specific provision, will it be appropriate to invoke the inherent power under Section 151 of the CPC to advance the cause of justice.

3. For the sake of convenience, the parties before this court shall be referred to in accordance with their status before the LSJ.

FACTUAL MATRIX

4. The present case has a chequered history. Sh. Lalit Modi [the Defendant No.2 herein] was the owner of the property bearing No. 32, Paschimi Marg, Vasant Vihar, New Delhi [hereinafter referred to as 'Suit Property'].

5. The Plaintiff asserts that an Agreement to Sell [hereinafter referred to as 'ATS'] was executed in his favour by Defendant No.2 on 09.07.2012 with respect to the sale of Suit Property, which was subsequently novated on 14.07.2016.

6. BDR Builders and Developers Pvt. Ltd. [the Defendant No.1 herein] on the other hand, claims that Defendant No.2 executed another ATS in its favour on 24.06.2014, also pertaining to the Suit Property.

7. It is further stated that on account of dispute between Defendant No.1 and Defendant No.2, Mr. Naresh Gupta ['Defendant No.3' herein] was appointed as Sole Arbitrator. The said Arbitrator allegedly passed a consent award on 21.11.2016, which was published on 12.01.2017 granting the remedy of specific performance of the ATS dated 24.06.2014 in favour of Defendant No.1.

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Signing Date: 09.01.2026 FAO(OS)116/2018

16:30:14



2026:DHC:129-DB



8. On 05.03.2017, the Plaintiff instituted a suit seeking specific performance of his ATS, along with the consequential relief of possession. The Plaintiff also filed another civil suit being CS (OS) 14/2018 for Declaration, that the ATS dated 24.06.2014, the Arbitration Award dated 12.01.2017 and the General Power of Attorney [hereinafter referred to as 'GPA'] and Will dated 10.02.2016 executed by Defendant No.2 in favour of Defendant No.1 is not binding upon him, in view of prior subsisting ATS in his favour.

9. The Plaintiff's said suit came up for preliminary hearing before the LSJ on 16.01.2018, where the learned senior counsel for the Plaintiff was confronted with the Judgement in ***Lala Durga Prasad v. Lala Deep Chand***¹. The counsel on instructions from the Plaintiff, withdrew the suit, which was accordingly dismissed as withdrawn. The Plaintiff thereafter filed an application for the recall of Impugned Order-1, however, the said application was dismissed on 14.03.2018.

10. While dismissing the recall application, the LSJ distinguished the judgement relied upon by the learned counsel for the Plaintiff, namely ***Bharat Karsondas Thakkar v. Kiran Construction Company***,² and ***Lala Durga Prasad v. Lala Deep Chand*** (*supra*) and thereafter, held as under:-

“16. Lala Durga Prasad supra, is a case of the title of the vendor in the property, of the contract of sale of which specific performance was sought, having, after the extension of contract of sale, vested in the custodian and who was impleaded in the suit. Supreme Court, after holding the plaintiff/ agreement purchaser to be entitled to a decree of specific performance, pondered the proper form of decree to be passed in such a situation. It was noticed that the practice of the

¹ AIR 1954 SC 75

² 2008 (13) SCC 658



courts in India had not been uniform; according to one point of view, the proper form of decree is to declare the subsequent purchase void as against the plaintiff and direct conveyance by the vendor alone; a second considers that both the vendor and vendee should join while third would limit execution of the conveyance to the subsequent purchaser alone. It was held (i) that the title to the property had validly passed from the vendor to the subsequent transferee; the sale to him was not void but only voidable at the option of the other party to the contract; (ii) that since the title no longer vested with the vendor, it would be illogical to compel him to convey title to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of subsequent sale or by a reconveyance from the subsequent purchaser to him; (iii) that the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him, to the plaintiff.

17. *Per contra, in **Bharat Karsondas Thakkar** supra, the plaintiff in the suit for specific performance of a subsequent Agreement to Sell was not permitted to amend the plaint to challenge the decree in a suit pertaining to the earlier Agreement to Sell and to which decree the vendor had consented. Supreme Court, in para 23 of the judgment, noticed that Lala Durga Prasad supra was a case of a suit for specific performance by a prior purchaser against the vendor and a subsequent purchaser and in the said context held that in a suit filed by the prior purchaser, the decree of the form laid down had to be passed. It was further held in para 31 of the judgment that the decision in Lala Durga Prasad supra could not be brought to the aid of the case of the plaintiff in Bharat Karsondas Thakkar supra.*

18. *It would thus immediately be clear that the facts of the present case match with that of Lala Durga Prasad supra and not with the facts of Bharat Karsondas Thakkar supra. The plaintiff therein also claims the Agreement to Sell in its favour to be of a date prior to the date of the Agreement to Sell in favour of defendant No.1. Thus, the proper course for the plaintiff in the present case is under Section 19(b) of the Specific Relief Act only and not by way of the present suit.*

19. *The application for recall of the order dated 16 January, 2018, irrespective of maintainability thereof, is not maintainable because the plaintiff himself withdrew the suit, even if on a wrong premise.”*

11. In the meantime, the suit filed by the Plaintiff for specific performance, after contesting on merits, was decreed on 14.05.2020, which was subsequently modified to a limited extent on 17.06.2020. The said decree has attained finality, as the Defendant No. 2 never



2026:DHC:129-DB



filed any appeal challenging it.

12. At present, therefore, the position is that, on the one hand, there exists an Award passed by the learned Arbitrator i.e. Defendant No.3, which is based upon the consent of the Defendant No.1 and Defendant No.2.

13. It is further noted here that the Defendant No.1 had also filed a Civil Suit on 26.06.2020 challenging the correctness of the decree for specific performance dated 14.05.2020, which is stated to be pending adjudication. Additionally, the Execution Petition filed by the Defendant No.1 seeking enforcement of the Arbitration Award, which is deemed to be a decree, is also pending before the Court.

14. In view of the above factual matrix, this Court is now called upon to determine whether the Impugned Order No.1 and Impugned Order No.2 are liable to be set aside.

15. While dismissing the application made by the Plaintiff for recall of Impugned Order No.1, the LSJ has observed that the recall application, irrespective of its maintainability thereof, cannot be sustained, because the Plaintiff herself withdrew the suit, even if on a mistaken premise. The LSJ further clarified that it will not preclude the Plaintiff from seeking appropriate remedies under Section 19(b) of the Specific Relief Act, 1963 [hereinafter referred to as 'SRA'].

CONTENTION OF THE PARTIES

16. Learned Counsel for the Plaintiff while controverting the findings of the LSJ has advanced the following submissions:

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Signing Date: 09.01.2026 16:30:14

FAO(OS)116/2018

Page 5 of 15



2026:DHC:129-DB



16.1 The Plaintiff asserts that the LSJ erred both in law and on facts and passed the Impugned Orders on surmises and conjectures. It is argued that the Plaintiff's case was not heard on merits at the first hearing, and the suit was dismissed solely based on oral arguments without considering the pleadings or any documentary evidence. It is further contended that the Plaintiff's counsel was persuaded to withdraw the suit under a mistaken belief and on incorrect legal advice, particularly concerning the applicability of the judgement in ***Lala Durga Prasad*** (*supra*). Allegedly, the Plaintiff himself was not present at the time when Impugned Order-1 was passed.

16.2 On the premise of the alleged applicability of ***Lala Durga Prasad*** (*supra*), the LSJ erred in holding that the suit filed by the Plaintiff was not maintainable in view of Section 19(b) of SRA, 1963. The Plaintiff contends that the ***Lala Durga Prasad*** (*supra*) has no application to the facts and circumstances of the present case, is clearly distinguishable and therefore, the suit filed by the Plaintiff ought to have been restored by the LSJ on 14.03.2018. The Plaintiff submits that her case is squarely covered by the judgement of ***Bharat Karsondas Thakkar*** (*supra*).

16.3 The LSJ failed to appreciate that the Impugned Award is collusive and fraudulent, despite the availability of sufficient documentary evidence including Sale Deeds, which conclusively indicates that Sh. Naresh Gupta [Defendant No.3 herein], is an advocate engaged by Defendant No.1. Therefore, his conduct as arbitrator could hardly be expected to be objective or neutral, considering he was on the pay rolls of Defendant No.1. Thus, the LSJ



2026:DHC:129-DB



failed to appreciate that there was a clear violation of Section 12(1), 12(2), and 12(5) of Arbitration and Conciliation Act, 2015 [hereinafter referred to as ‘ACA’] as learned Arbitrator has failed to disclose his relationship with Defendant No.1 even prior to entering into alleged reference or during the pendency of the alleged arbitration proceedings. Consequently, the entire arbitration proceedings, including the award, is a nullity.

16.4 The LSJ also failed to appreciate the objections filed by the Defendant No.2 against the Award under section 34 of the ACA, which is pending adjudication before the Court. Even Defendant No. 2 has categorically asserted that no arbitration proceedings ever took place before the Arbitrator and the same is sham and bogus and a gross abuse of process of law.

16.5 The Plaintiff specifically submits that at the time of hearing on 16.01.2018, the counsel for the Plaintiff did not have a copy of the judgement of ***Lala Durga Prasad v. Lala Deep Chand*** (*supra*) and subsequently it became evident that the said judgement is clearly distinguishable and is not applicable. As held in ***Bharat Karsondas Thakkar*** (*supra*), a suit for specific performance of an agreement cannot be permitted to be converted into a suit for declaration of title and possession nor can its scope be enlarged by impleading a third party/stranger to the contract to challenge the nature or character of the suit.

16.6 The Plaintiff further contends that it was pointed out before the LSJ that due to typographical error, the liberty granted to file fresh



2026:DHC:129-DB



suit or any other legal proceedings on same cause of action in accordance with the law was given to the Plaintiff but was inadvertently omitted in the Impugned Order No.1. Therefore, there exists sufficient grounds to modify the said order.

17. *Per contra*, the learned counsel for the Defendants herein made the following observations:

17.1 Learned counsel for the Defendants submits that the suit was unconditionally withdrawn by the the Plaintiff on 16.01.2018 and therefore, she cannot be allowed to seek its revival. It is further contended that an Execution Petition filed by Defendant No.1 is pending and the Plaintiff may raise objections under Section 47 of the CPC to challenge the correctness of Award, particularly since the Plaintiff alleges that the Award is the result of collusion between the Defendant No.1 and Defendant No.2. Reliance is placed upon the judgement passed in case being C.R.P 97/2014, titled ***Smt. Shakuntala Gupta v. Shri Manmohan Gupta*** and Order dated 17.12.2020 passed in case being EX.P. 69/2017, titled ***BDR Builders & Developers Pvt. Ltd. V. Shri Lalit Modi***.

17.2 The Defendant also submits that in the subsequent suit filed by the Plaintiff seeking a declaration that the Award is not binding on her, the Plaintiff has not claimed the relief of specific possession.

ANALYSIS AND FINDINGS

18. This court has heard learned senior counsel for the parties at length and, with their able assistance, perused the paper book.

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Signing Date: 09.01.2026 16:30:14

FAO(OS)116/2018

Page 8 of 15



2026:DHC:129-DB



19. It is a well settled principle that civil court retains inherent powers under Section 151 of the CPC to recall or set aside an order where the interest of justice so demands, and where no express provision of the Code operates as a bar. While such inherent powers cannot be invoked to override the substantive framework of the CPC or to nullify the effect of an unconditional withdrawal of a suit, the Courts have consistently held that recall is permissible where the order impugned is shown to have been obtained under a mistaken belief, due to manifest procedural irregularity, or by reason of fraud, misrepresentation, or any circumstances demonstrating that the party was denied an effective opportunity of being heard. In such exceptional circumstances, the Court is empowered to restore the proceedings or recall a conditional order, so as to prevent miscarriage of justice and to ensure that the judicial process is not employed as an instrument to defeat legitimate rights. The power under Section 151 of the CPC, though to be exercised sparingly, remains available to cure palpable injustice where the situation is not expressly covered by any other provision of law.

20. This Court has carefully read the judgment passed in ***Lala Durga Prasad and Anr. (supra)***. This judgment does not address with maintainability of a separate suit by a prior agreement holder against the original owner/subsequent transferee. Moreover, the Supreme Court in ***Jet Ply Wood Private Ltd. & Anr. vs. Madhukar Nowlakha & Ors.***³ has clarified that in the absence of specific provisions in the CPC for enabling the recall of an order permitting withdrawal of a

³2006 (3) SCC 699



2026:DHC:129-DB



suit, the recourse may be had to Section 151 of the CPC to restore the suit in the interest of justice.

21. Notably, in ***Jet Ply Wood Private Ltd. &Anr. (supra)***, the suit for specific performance of ATS was withdrawn on account of ongoing settlement between the parties. The judgment underscores that procedural technicalities such as the failure to seek "liberty to file a fresh suit" at the time of withdrawal cannot obstruct the court's duty to prevent a miscarriage of justice or an abuse of the judicial process.

22. A reading of both the Impugned Orders also suggests that the learned judge proceeded under an erroneous understanding of the scope of Section 19(b) of the Specific Relief Act, 1963. In fact, the judgement was rendered in the year 1953, when the SRA, 1963 had not yet been enacted. Moreover, Section 19(b) of the SRA provides for the manner of enforcing a decree for specific performance of contract. Under Clause (b), the decree-holder is entitled to enforce the same against any other person claiming a title arising subsequently, to the contract. Hence, Section 19(b) has no bearing whatsoever upon the maintainability of the subsequent suit.

23. A perusal of the Impugned Order No.1 reveals that the Plaintiff never withdrew the suit voluntarily, rather, the withdrawal was prompted solely by the prima facie observations of the LSJ. The Plaintiff's act, therefore, cannot be treated as an informed or unconditional abandonment of rights but as one induced by a manifestly erroneous legal premise adopted by the Court itself, thereby undermining the voluntariness of the withdrawal.



2026:DHC:129-DB



24. The Plaintiff has specifically contended that counsel proceeded to withdraw the suit under a mistaken understanding of law, particularly regarding the applicability of *Lala Durga Prasad* (*supra*) and the effect of Supreme Court's decision in *Bharat Karsondas Thakkar* (*supra*). The latter judgement squarely supports the Plaintiff's position that a suit for specific performance cannot be converted into a declaratory suit, nor can third parties be impleaded to alter the scope of the original cause of action, an aspect which directly undermines the assumption on which the suit was withdrawn. Courts have consistently held that when the order is procured under a legal misconception that goes to the root of the matter, the same may be recalled preventing manifest injustice.

25. With regard to the Plaintiff's grievance concerning the alleged fraudulent nature of the arbitral award, and the undisclosed relationship between Defendant No.1 and the learned Arbitrator, these issues strike at the very validity of the Award. If substantiated, these grounds strike at the root of the arbitral process. *Prima facie*, the Plaintiff has brought on record material showing that Defendant No.3 (Arbitrator) was acting as an advocate for Defendant No.1, and was therefore in a direct relationship requiring mandatory disclosure under Section 12(1), 12(2) and 12(5) of the ACA. The statutory mandate is clear, where such circumstances exist, giving rise to justifiable doubts as to the independence or impartiality of the arbitrator, the appointment is invalid and the proceedings are rendered a nullity. The failure to disclose such relationship impugns the very neutrality, independence and jurisdiction of the arbitral forum and the Award



2026:DHC:129-DB



passed subsequently, is alleged to be collusive and fraudulent. Even Defendant No.2, in its objections under Section 34 of the ACA, has categorically pleaded that no arbitration proceedings were ever conducted and that the purported award is entirely sham and fabricated. This fortifies the Plaintiff's plea of allegation of collusion and fraud.

26. It is trite law that fraud vitiates all judicial acts, and where the Arbitrator's award facilitates or shields a fraud by unintentionally shutting out the Plaintiff's remedy, the Court retains inherent power to recall such order. Thus, the LSJ erred in failing to consider these serious allegations despite the availability of sufficient material on record.

27. In line with, the Plaintiff has further demonstrated that the LSJ declined to consider the pleadings, documents, and merits of the case, and dismissed the suit merely based on oral submissions at the very first hearing. This procedural irregularity, coupled with an incorrect application of law, prevented the Plaintiff's case from being adjudicated on merits. It is a settled principle that where an order is passed without proper appreciation of the record or without affording adequate opportunity, such order can and ought to be revisited under the Court's inherent jurisdiction to secure the ends of justice.

28. The Defendants contend that the Plaintiff may raise objections under Section 47 of the CPC in the pending execution petition. The Executing Court will be bound to get the decree implemented. Keeping in view the scope of the court while deciding objection under



2026:DHC:129-DB



Section 47 of the CPC, the alternative remedy suggested by learned counsel for the Defendants may not be sufficient. Moreover, the mere existence of an alternative remedy does not bar the Plaintiff from seeking recall/restoration of his own suit, particularly when the original withdrawal was induced by a mistake of law. Additionally, the pendency of objections under Section 34 of the ACA by Defendant No.2 itself indicates that the validity of the so-called arbitral award is already sub-judice. In these circumstances, the Plaintiff cannot be shut out at the threshold, especially when the challenge raised by him is distinct, substantive and supported by independent material.

29. Further, the Plaintiff has further explained that the order dated 16.01.2018 was intended to grant him liberty to institute fresh proceedings but the operative portion inadvertently omitted the said liberty due to a typographical error. The Plaintiff raised this issue promptly. Such an omission, when it affects the substantive rights of a litigant and is brought to the Courts attention at the earliest, constitutes a sufficient ground for modification/recall.

30. It is pertinent to note that the Defendants have failed to demonstrate that recall or restoration of the suit would cause any prejudice or harm to them. On the contrary, allowing adjudication on merits would ensure a fair determination of rights and obviate the need for multiplicity of proceedings.

31. Furthermore, the Plaintiff cannot be left without any remedy. The suit filed by the Plaintiff for specific performance of ATS has



2026:DHC:129-DB



already been decreed, albeit a conditional one, which has attained finality. In contrast, the so-called Arbitral award in favour of Defendant No.1 is in essence, nothing more than a consent award, its character being that of a contractual arrangement between the consenting parties, merely clothed with the nomenclature of an arbitration award. The legal position is unequivocal that an arbitration award passed with the consent of the parties cannot be binding upon the persons who were not parties to the arbitration award, hence, the suit filed by the Plaintiff, was in substance a suit seeking declaration claiming that such arbitration award is not binding upon him having been procured with the clear intent to defeat and circumvent the rights accrued to him under a prior and subsisting ATS in his favour. The Plaintiff was therefore justified in seeking judicial intervention to protect the sanctity of his earlier decree and to prevent the misuse of arbitral machinery to nullify his vested rights.

32. In view of the foregoing circumstances, this court finds merit in the Plaintiff's contentions. The Court is of the view that invocation of the inherent powers under Section 151 of the CPC is not only justified but imperative to recall the Impugned Order No.1. Such intervention is necessary to prevent miscarriage of justice, to correct manifest procedural and substantive errors, and to restore the suit, so that the Plaintiff's rights may be adjudicated on their true merits. Therefore, the Impugned Orders deserves to be set aside, directing the LSJ to adjudicate the suit on merits.



2026:DHC:129-DB



CONCLUSION

33. Accordingly, in light of the above findings, it is concluded that the LSJ has erred in passing the Impugned Orders. Keeping in view the aforesaid circumstances, this Court is inclined to allow the present Appeal.

34. Hence, the present Appeal is hereby allowed. The Impugned Orders are hereby set aside and the suit is restored to its original number.

35. The parties through their counsels are directed to appear before LSJ (Roster Bench) on 22.01.2026.

36. The present Appeal stands disposed of.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

JANUARY 09, 2026

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