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

Reserved on: 10th March, 2026
Pronounced on: 15th July, 2026

\+ RFA 253/2016

KRISHAN GOPAL AGGARWAL .....Appellant

Through: Mr. Ankur Mahindro, Mr. Rohan Taneja, Mr. Ankush Satija, Mr. Raghav Kalra, Mr. Animesh Dubey, Ms. Geesha Shastri, Ms. Jhanak Setia and Ms. Radhika Agrawal, Advs.
Mob: 9891051888
Email: ankur.mahidro@kredjure.in

versus

DALIP SINGH .....Respondent

Through: Mr. Sanjay Deewan, Sr. Adv. with Mr. Satvinder Singh, Mr. Yash Chopra, Mr. Nikhil Goel, Ms. Arshia Kohli, Advs.

\+ RFA 254/2016

RAVINDER KUMAR AGGARWAL .....Appellant

Through: Mr. Ankur Mahindro, Mr. Rohan Taneja, Mr. Ankush Satija, Mr. Raghav Kalra, Mr. Animesh Dubey, Ms. Geesha Shastri, Ms. Jhanak Setia and Ms. Radhika Agrawal, Advs.
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versus

DALIP SINGH .....Respondent

Through: Mr. Sanjay Deewan, Sr. Adv. with Mr. Satvinder Singh, Mr. Yash Chopra, Mr. Nikhil Goel, Ms. Arshia Kohli, Advs.

\+ RFA 255/2016

VIJAY KUMAR AGGARWAL .....Appellant

Through: Mr. Ankur Mahindro, Mr. Rohan Taneja, Mr. Ankush Satija, Mr. Raghav Kalra, Mr. Animesh Dubey, Ms. Geesha Shastri, Ms. Jhanak Setia and Ms. Radhika Agrawal, Advs.
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DALIP SINGH .....Respondent

Through: Mr. Sanjay Deewan, Sr. Adv. with Mr. Satvinder Singh, Mr. Yash Chopra, Mr. Nikhil Goel, Ms. Arshia Kohli, Advs.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

INTRODUCTION:

1. The present Regular First Appeals **("RFAs")** have been filed under Section 96 of the Code of Civil Procedure, 1908 **("CPC")**, thereby challenging the common judgement dated 21st December, 2015 **("impugned judgement")**, passed by the Court of Additional District Judge – 01

(Central), Tis Hazari Courts, Delhi **("ADJ")** in *Civil Suit No. 214/14/2009,* titled as *"Sh. Krishan Gopal Aggarwal Versus Sh. Dalip Singh"*, *Civil Suit No. 213/14/2009,* titled as *"Ravinder Kumar Aggarwal Versus Dalip Singh",* and *Civil Suit No. 212/14/2009*, titled as "*Vijay Kumar Aggarwal Versus Sh. Dalip Singh",* which were in the nature of counter-claims. By way of the impugned judgement, the Trial Court dismissed the counter-claims filed by the appellants herein.

2. The plaintiff/respondent had originally instituted three civil suits against each of the three defendants/appellants. In each suit, the plaintiff sought a declaration that the Agreement to Sell **("ATS")** dated 29th September, 1995, had been executed by the plaintiff under undue influence, and is therefore, illegal, sham, unenforceable, *void ab initio*, etc., and that the same stands terminated *vide* Notice dated 14th August, 2002. There was further prayer for rendition of accounts with respect of the rent/occupation charges *qua* the respective portions of the property bearing No. *A-13, Wazirpur Industrial Area, Delhi – 110052*.

3. The three counter claimants/appellants, on 28th January, 2005, filed their respective written statements along with counter-claims, to the three main suits filed by the respondent. Each of the counter-claims had been filed by the respective appellants seeking specific performance of the ATS dated 29th September, 1995, and Compromise dated 30th April, 2004. A further prayer was made for a decree of permanent injunction, restraining the plaintiff/respondent from creating any third-party interests or interfering in the possession of the property admeasuring 870 sq. yds., bearing No. *A-13,*

Wazirpur Industrial Area, Delhi – 110052 **("suit property")**.

4. On 09th October, 2009, the plaintiff/respondent unconditionally withdrew the three main suits; however, the counter claimants/appellants continued with their respective counter-claims, which subsequently got registered as three independent suits, being *CS Nos. 212/14/2009, 213/14/2009* and *214/14/2009.*

5. The Trial Court, *vide* the impugned judgement, collectively dismissed the aforementioned counter-claims. Hence, the present appeals have been filed.

5.1. Before adverting to the facts of the present appeals, it is noted that this Court, *vide* order dated 02nd May, 2016, had issued notice in the present appeals, and the applications filed by the appellants, seeking stay of the impugned judgement were dismissed as withdrawn.

5.2. The appellants again filed applications, being *C.M. APPL. 16436/2022*, *16316/2022* and *16312/2022*, seeking stay of the impugned judgement. However, the aforementioned applications were dismissed by this Court, *vide* order dated 01st April, 2022, on the ground that the applications were *prima facie* abuse of the powers of this Court, and the appellants cannot be permitted to reagitate their claims with regard to stay of the impugned judgement, when the earlier applications in this regard had been withdrawn by the appellants themselves.

RELEVANT FACTS:

6. The facts relevant for adjudication of the present appeals are as follows:

6.1. The respondent and his brother, i.e., Sh. Hanwant Singh, were allotted a plot admeasuring 2300 sq. yds. bearing No. *A-13, Wazirpur Industrial Area, Delhi – 110052*, *vide* a perpetual Lease Deed dated 08th March, 1973, by the Delhi Development Authority **("DDA")**. The respondent and his brother divided the entire property into two equal parts, whereby the respondent became exclusively entitled to 1150 sq. yds. in *A-13, Wazirpur Industrial Area, Delhi – 110052.*

6.2. The counter claimants/appellants are three brothers. The respondent had let out a portion of the aforesaid property on rent to Sh. Prem Chand Aggarwal, i.e., the father of the appellants, on 26th December, 1980. Subsequent to the demise of Sh. Prem Chand Aggarwal on 31st May, 1985, the appellants continued as tenants in the portion of the property that had been initially let out.

6.3. Out of his 1150 sq. yds. share in the property, the respondent intended to sell a portion measuring 280 sq. yds. to Sh. Naresh Chand Aggarwal, i.e., brother of the appellants, *vide* an ATS dated 18th May, 1989, for a consideration of Rs. 7 Lacs.

6.4. Subsequently, the respondent herein filed a civil suit, being *CS No. 1118/1993* against Sh. Naresh Chand Aggarwal seeking injunction against carrying out any additions or alterations in the portion of the property consisting of, *inter alia,* a tin shed hall. An application filed by the respondent herein, seeking interim relief in the said suit, was dismissed *vide* order dated 25th August, 1993. The respondent herein filed an appeal, being *MCA 171/1993* against the said order dated 25th August, 1993, however, the aforesaid appeal was subsequently dismissed as withdrawn/compromised.

6.5. Thereafter, the respondent intended to sell portions measuring 290 sq. yds. each in his property to the three appellants. In this regard, the respondent executed a set of documents being ATS, irrevocable General Power of Attorney **("GPA")**, Special Power of Attorney **("SPA")**, Will, Affidavit and Receipt, all dated 29th September, 1995, respectively, in favour of each of the three appellants. Thus, the respondent executed ATS in favour of each of the appellants, for a total of 870 sq. yds. in the property of the respondent.

6.6. As per Clause 1 of the ATS dated 29th September, 1995, the plaintiff agreed to sell 290 sq. yds. of his property for a consideration of Rs. 5 Lacs. Out of this, the ATS records that Rs. 35,000/- was already paid, and a further payment of Rs. 65,000/- had been made at the time of execution of the said ATS.

6.7. Thus, out of Rs. 5 Lacs, a payment of Rs. 1 Lac had already been made, and the balance sale consideration of Rs. 4 Lacs was to be paid over a period of 5 years, in equal monthly instalments, commencing from 07th November, 1995 till 07th October, 2000, along with an approximate lump-sum interest of Rs. 2.5 Lacs. Thus, the total sale consideration for sale of 290 sq. yds. of the property was Rs. 7.5 Lacs.

6.8. Under the ATS dated 29th September, 1995, the plaintiff also undertook to clear the arrears of house tax, electricity dues and arrears of whatever nature of DDA up to 30th September, 1995, by 31st March, 1998.

6.9. Further, the ATS dated 29th September, 1995, mentioned that the property is in use and occupation of a tenant, i.e., Smt. Prem Kanta Jain, and that the appellants were given symbolic possession of the property, who were entitled to realize commission amount from her.

6.10. Subsequently, the respondent and his brother, i.e., Sh. Hanwant Singh received a letter dated 29th January, 1996, from the DDA with respect to termination of the perpetual Lease Deed in terms of order dated 15th October, 1995, passed by the Lieutenant Governor of Delhi. Aggrieved by the said termination, the respondent herein, along with Sh. Naresh Kumar Aggarwal, filed a civil writ petition before this Court, being *CWP No. 843/1996,* titled as *"Dalip Singh & Anr. Versus Govt. of NCT of Delhi"*, challenging the said order.

6.11. The writ petition was ultimately disposed of *vide* order dated 13th October, 2003, wherein the Court noted that the perpetual Lease Deed had been terminated on two accounts, i.e., due to running of the business of steel rolling mills in contravention of the master plan, and the allegation that the brother of the respondent herein, i.e., Sh. Hanwant Singh, had sold his 50% share in the property to one Smt. Ram Pyari. In view of the statement of the counsel for the petitioners therein that the property shall be used only for the purpose permitted in the master plan, the Court directed that upon stoppage of the misuse of the property and payment of the requisite charges by the petitioners therein, the perpetual Lease Deed shall be restored and the petitioners' case would be considered for conversion of the land from leasehold to freehold.

6.12. As per the respondent, three Mutual Agreements, each dated 07th

November, 1996, had also been executed between the respective appellants and the respondent, for an additional payment of Rs. 10,835/- per month in cash for a period from 07th November, 1996, to 07th October, 2000, as additional consideration under the ATS dated 29th September, 1995.

6.13. The respondent also addressed a letter dated 24th July, 1996, to the Deputy Assessor and Collector, House Tax Department, Municipal Corporation of Delhi **("MCD")**, informing them that he had sold portion of his property measuring 870 sq. yds. to the three appellants, and that he was responsible for the house tax dues with respect to the property till 30th September, 1995. He further sought full details of the house tax payable, so that he could clear the dues.

6.14. In February, 1997, officials from the MCD came to the property to recover house tax arrears of approximately Rs. 19 Lacs. Subsequently, the appellants also discovered arrears of electricity charges due towards the Delhi Vidyut Board **("DVB")** to the tune of Rs. 8.7 Lacs. In regard to the said arrears, the appellants contend that they approached the respondent, who under the ATS dated 29th September, 1995, was obligated to clear the arrears of house tax and electricity up to 30th September, 1995. However, as per the appellants, the respondent failed to take steps to make good the arrears.

6.15. Till January 1997, the appellants had made a total payment of Rs. 2,62,522/- each to the respondent, with respect to their shares in the suit property. However, in view of the non-clearance of the house tax and electricity dues by the respondent, the appellants ceased the payment of monthly instalments with respect to the balance sale consideration, without any notice to the respondent.

6.16. Furthermore, the appellants filed a suit, being *CS No. 187/2000* for permanent injunction against the respondent, however, the said suit was dismissed *vide* order dated 19th April, 2002. The appellants preferred a regular civil appeal, being *RCA No. 141/2002* against the aforementioned order of dismissal.

6.17. During the pendency of the regular civil appeal, the respondent issued Notices dated 14th August, 2002 to the appellants, stating that *vide* Cancellation Deeds dated 07th May, 2002, the Will, GPA and SPA dated 29th September, 1995, executed by the respondent in favour of each of the appellants for transfer of the suit property, have been cancelled. Further, by way of the Notice dated 14th August, 2002, the respondent also sought to cancel the ATS dated 29th September, 1995, as executed in favour of each of the appellants.

6.18. Thereafter, on 06th January, 2003, the respondent filed three civil suits against each of the three appellants, seeking declaration that the ATS dated 29th September, 1995, had been executed under undue influence and had been terminated *vide* the Notices dated 14th August, 2002, issued by him. He further sought rendition of account of rent/commission/occupation charges in respect of the suit property. The three suits were originally filed before the High Court, however, pursuant to enhancement of the pecuniary jurisdiction of the District Courts, the three suits were transferred to the District Court.

6.19. In the meanwhile, the appellants contend that they had issued a Notice dated 05th July, 2003, seeking the respondent to specifically perform his obligations under the ATS dated 29th September, 1995.

6.20. During the pendency of the three suits, a compromise application under Order XXIII Rule 3 of the CPC was filed by the parties in *RCA No. 141/2002* on 29th April, 2004, and accordingly *RCA No. 141/2002* was withdrawn as compromised *vide* order dated 30th April, 2004, after recording the joint statement of the parties in this regard.

6.21. Under the aforementioned Compromise, the respondent agreed to clear the entire arrears till 30th September, 1995, and get the perpetual Lease Deed restored from the DDA, at his own expense. Thereafter, the appellants were to bear all expenses for the conversion of the suit property from freehold to leasehold, and pay the entire balance consideration to the respondent, within three days of clearance of arrears by the respondent. Additionally, the respondent was to withdraw all suits in relation to the suit property, and not file any suit or proceeding in the future.

6.22. Suit bearing *CS No. 275/02/01*, that had been filed by the plaintiff/respondent against the appellants herein, seeking possession, perpetual injunction and recovery of money was also withdrawn as compromised by way of order dated 27th May, 2004. The civil suit bearing nos. *972/2002* as well as *708/2002,* between the parties to the present appeal, were also dismissed as withdrawn by orders dated 04th July, 2004 and 27th May, 2004, respectively.

6.23. As per the appellants, they had prepared drafts/pay orders, each for

Rs. 4,87,475/-, drawn on Union Bank of India in order to fulfil their obligations under the Compromise. However, since the respondent failed to perform his part of the Compromise, the pay orders/drafts had to be cancelled to save the amount from the 06 month expiration period of the pay orders. The money in the pay orders was refunded to the appellants.

6.24. Thereafter, the appellants on filed their respective written statements and counter-claims seeking specific performance of the ATS dated 29th September, 1995, and the Compromise dated 30th April, 2004. There is a further prayer seeking permanent injunction against the respondent restraining him from creating any third-party interest and/or, in any manner, interfering with the possession and management of the suit property.

6.25. On 09th October, 2009, the respondent unconditionally withdrew the three main suits for declaration against the appellants, and the main suits were dismissed as withdrawn, subject to costs of Rs. 500 in each suit. However, the appellants pursued their respective counter-claims, which were registered as separate suits, being *CS Nos. 212/14/2009, 213/14/2009* and *214/14/2009*.

6.26. The Trial Court *vide* order dated 16th February, 2012, re-framed the issues in the aforesaid counter-claims, which read as under:

> *"xxx xxx xxx*
>
> 1. *Whether the instant counter claim is barred by principle of res-judiceta? OPR*
>
> 2. *Whether the instant counter claim is barred u/s 38 & 41 of Specific Relief Act as the counter claimant has other efficacious remedy available to him? OPR*

3. *Whether the agreement dated 29.09.1995 was got signed from the respondent / plaintiff under undue influence? If so, to what effect? OPR*

4. *Whether the agreement dated 29.09.1995 has been validly rescinded / revoked / terminated vide notice dated 14.08.2002? OPR*

5. *Whether the counter claimant / defendant is entitled to a decree of specific performance of the contract dated 29.09.1995 and compromise deed dated 30.04.2004? OPCC.*

6. *Whether the counter claimant / defendant is entitled to a decree of permanent injunction as prayed for? OPCC*

7. *Relief.*

xxx xxx xxx"

6.27. The Trial Court *vide* order dated 16th July, 2012, consolidated the three counter-claims for the purpose of recording of evidence, and treated *Suit No. 124/09* as the main case, while the other two suits, *viz., Suit Nos. 125/09* and *126/09,* were treated as connected matters.

6.28. By way of order dated 20th December, 2012, the Trial Court recorded that the respondent does not wish to lead any evidence, and the right of the respondent to lead evidence was closed.

6.29. The Trial Court, *vide* the impugned judgement, dismissed the counter-claims of the appellants, rejecting the prayer of the appellants for specific performance of the ATS dated 29th September, 1995, and the Compromise dated 30th April, 2004. The Trial Court also dismissed the prayer of the appellants for permanent injunction against the plaintiff/respondent.

6.30. Thus, the present appeals have been filed by the appellants/counter claimants seeking to set aside the impugned judgement and decree.

SUBMISSIONS OF THE APPELLANTS:

7. Before this Court, the appellants have raised the following contentions seeking the setting aside of the impugned judgement:

7.1. It is the case of the appellants that the Trial Court has grossly erred in deciding issue no. 5 against the appellants. The performance of the contract has not been rendered impossible due to lack of permission from the government authority, i.e., DDA. Merely because the property was a leasehold property does not serve as an absolute bar for the relief of specific performance.

7.2. The appellants had drawn drafts/pay orders of Rs. 4,87,475/- each, in furtherance of the Compromise dated 30th April, 2004. However, the pay orders/drafts had to be cancelled as the respondent kept on procrastinating compliance with his part of promise under the Compromise. Furthermore, the appellants have always been, and continue to be, ready and willing to pay the aforesaid amount due as sale consideration, provided the respondent complies with his part of promise, as encapsulated in the terms of the ATS dated 29th September, 1995, and the Compromise dated 30th April, 2004.

7.3. The respondent had issued Notices dated 14th August, 2002 cancelling the ATS dated 29th September, 1995, executed in favour of each of the appellants. In the said notice, the respondent admits the receipt of consideration in respect of the documents dated 29th September, 1995, however, he states to have cancelled the said documents. A First Information Report **("F.I.R")** bearing No. *890/2006* was lodged at Police Station Sihani Gate, Ghaziabad, under Sections 420 and 477 of the Indian Penal Code, 1860, against the respondent, by the appellants. Furthermore, the respondent was arrested and remained in custody from 01st October, 2006, till sometime in December, 2006.

7.4. The Trial Court failed to appreciate that civil suits need to be decided on the basis of preponderance of probabilities, and once the Court has recorded that the respondent has failed to lead any evidence, it ought to have exercised its discretion based on sound judicial principles.

7.5. The Trial Court has failed to appreciate the terms of the Compromise between the parties, according to which, the respondent was first obligated to clear the arrears relating to the suit property and get the perpetual Lease Deed restored, subsequent to which the appellants were to make payment of the balance consideration to the respondent. The Trial Court had no authority to change the agreed sequence of obligations between the parties. Therefore, the impugned judgement is contrary to the terms of the ATS and/or the Compromise between the parties.

7.6. The Trial Court has erred in holding that the appellants' witness could not establish that he had made any payment to the authorities and that he had admitted the continuance of misuse of the property. The said observation is based on truncated reading of the witness testimony. Furthermore, much importance has been placed on the criminal complaint filed by the appellants being dismissed for non-prosecution in the year 2008. The appellants could not have perfected their title over the suit property in a criminal court and that the complaint was only dismissed on the grounds of non-prosecution and not on merits.

7.7. The Trial Court erred in placing reliance upon the Mutual Agreements dated 07th November, 1996, allegedly executed between the parties, whereby, each of the appellants were to pay cash amount of Rs. 10,835/- per month towards the consideration for the purchase of the suit property. Even otherwise, the terms of the aforementioned Mutual Agreements stood altered, varied, and suspended by the compromises arrived at between the parties before different courts.

7.8. The Trial Court has erroneously observed that the appellants have failed to establish breach of obligations on the part of the respondent and that they could not produce documentary evidence showing payments made to the respondent as per schedule. However, there was no question of payments by the appellants until the respondent cleared the arrears on the suit property and got the perpetual Lease Deed restored. Thus, the impugned judgement incorrectly holds that the appellants have failed to discharge the onus under issue no. 5.

7.9. The Trial Court has erred in observing that the appellants' witness tried to claim that he had attempted to deposit house tax and other amounts with MCD and DDA, but was unable to produce any documentary evidence. No such obligation was placed upon the appellants, therefore, no adverse inference can be drawn against the appellants. The terms of the Compromise clearly set out that the aforesaid obligations had been placed upon the respondent. Furthermore, a premium has been given to the wrongs of the respondent by rejecting the appellants' claim for specific performance on the grounds of non-production of documentary evidence with regard to the aforesaid payments.

7.10. Trial Court has erroneously observed that the appellants had made no attempt to deposit the money before the concerned Court where the Compromise has been arrived at. However, as per the terms of the Compromise, no such obligation has been placed upon the appellants. Furthermore, the appellants did not file execution proceedings in respect of the Compromise nor moved any application for contempt against the respondent, before the said Court because the said Court was not competent to grant a decree of specific performance and/or perfect the title of the applicants over the suit property.

7.11. The impugned judgement assumes the misuse of property from the fact that the appellants are carrying on business of steel fabrication and plastic cables on the suit property. However, the appellants' witness, in his cross-examination, had duly submitted that they have a licence from the MCD in the name of M/s. Prime Industries. However, the licence was neither ever called for during the cross-examination nor any notice was issued for its production. Therefore, any adverse inference drawn against the appellants, in this regard, is against the law.

7.12. The Trial Court erred in observing that the perpetual Lease Deed of the suit property was cancelled due to the acts of the appellants, and the conditional order passed by this Court in *CWP No. 843/1996*, was not complied by the appellants. The Trial Court failed to appreciate that various other portions of the suit property were in occupation of tenants, and nothing on record indicates that the misuse of the suit property is attributable to the appellants. Moreover, the respondent was obligated to get the perpetual Lease Deed restored, however, nothing has been placed on record by the respondent to state that any attempt was made on his behalf in this regard.

7.13. The Trial Court has erred to hold that no arguments were addressed by the counter claimants/appellants despite sufficient opportunities. The counter-claims were clubbed and listed before the Trial Court on 13th April, 2015, when an adjournment was sought on behalf of the respondent and the matters were adjourned to 16th May, 2015, for final arguments. However, the presiding officer was unavailable on the said date, and the matters were further adjourned to 05th August, 2015, when the counsels for the parties were unable to appear due to a strike by the lawyers. However, the Trial Court reserved the matters for judgement on the basis of material on record.

7.14. The appellants had filed their written submissions/synopsis, but from a bare perusal of the impugned judgement, it is clear that the Trial Court has failed to take the same into account. Therefore, the impugned judgement fails to take all the material on record into consideration.

7.15. The Trial Court has also erroneously held that the appellants stopped making payment without any notice to the respondent and thereby committed breach of the ATS dated 29th September, 1995. Additionally, the reliance placed by the Trial Court upon letters dated 29th January, 1996, 18th January, 2007, and 03rd February, 2009, along with the Inspection Report for the inspection carried out on 06th May, 2013, is not as per law, as the said documents had been filed by the respondent only with the written submissions, and were never entered as evidence. Even otherwise, the said

Inspection Report attributes the misuse of property to activities being conducted on the first floor of the suit property, which does not fall under the occupation of the appellants.

SUBMISSIONS OF THE RESPONDENT:

8. *Per contra,* the submissions put forth by the respondent are as follows:

8.1. The present RFAs are not maintainable as the supporting affidavit is not attested by an Oath Commissioner as required under the CPC.

8.2. The appellants have played a fraud on the Court by concealing the three Mutual Agreements dated 07th November, 1996, at the time of filing the counter-claims. As per the said three Mutual Agreements dated 07th November, 1996, a sum of Rs. 10,835/- per month was to be paid by the appellants to the respondent from 07th November, 1996, to 07th October, 2000, in cash, amounting to a total of Rs. 5,20,080/-. Through the said concealment, the appellants intended to circumvent the payment of the requisite Court Fee, causing pecuniary loss to the government exchequer. The aforementioned concealment continues in the present RFAs as well.

8.3. The perpetual Lease Deed issued by the DDA for the entire property was cancelled due to the misuse of the suit property by the appellants, and there continues a huge outstanding amount due from the appellants to the DDA in this regard. This factum has also been concealed by the appellants in the present RFAs. The counter claimants/appellants, in their cross-examination, admit to carrying on a business of steel fabrication in the name of M/s. Bright Steels. However, the licence from the MCD is in the name of

M/s. Prime Industries in favour of Sh. Krishan Gopal Aggarwal, i.e., one of the appellants, for the manufacturing of plastic cables.

8.4. The appellants have committed breach of the ATS dated 29th September, 1995, by stopping payments of monthly instalments in February, 1997. Until then, a payment of only Rs. 2,62,522/- was made by each appellant, out of Rs. 7,50,000/-, i.e., approximately 30% of the total sale consideration. Admittedly, the appellants never served any legal notice upon the respondent disclosing the reasons for stopping the payment of the instalments.

8.5. No sale deed has been executed in favour of the appellants, till date. The appellants cannot seek specific performance of the ATS dated 29th September, 1995, as the appellants themselves committed the breach of the aforementioned ATS in February, 1997, by stopping payment of monthly instalments.

8.6. It is submitted that the payments of 30% of the total sale consideration for the suit property stood forfeited by the respondent, on account of the breach of ATS dated 29th September, 1995, by the appellants. Therefore, the appellants are without any title or deed and thus, are unauthorised occupants of the suit property who continue to enjoy the possession of the property and earn *mesne* profits from it. The appellants are not making payments to the DDA and the MCD, while the total outstanding amount is to the tune of several lacs of rupees.

8.7. It is submitted that the Compromise dated 30th April, 2004, is vague, *void ab initio,* and illegal for non-fulfilment of Sections 10, 17, 24, 28, 32, 34 and 36 of the Indian Contract Act, 1872 (**"Contract Act"**). It is also in violation of the order dated 13th October, 2003, passed by this Court in *C.W.P No. 843/1996*, in relation to the suit property. Moreover, the aforementioned Compromise fails to implead the competent parties, *viz.,* the DDA, i.e., owner of the suit property.

8.8. The ATS, exhibited as *CCW-1/1* by the appellants in their counter-claims before the Trial Court has been tampered with, as admitted by the appellants' witness during his cross-examination on 27th September, 2012. The tampered ATS has lost its legal sanctity and proves dishonesty on the part of the appellants.

8.9. The appellants' witness has admitted in his cross-examination that no site plan was ever executed between the parties, due to there being no need for the same. However, the appellants have filed a purported site plan along with the counter-claims which does not bear any signatures and therefore has no legal sanctity and fails to satisfy the requirements prescribed under Order VII Rule 3 of the CPC, to identify the suit property.

8.10. Admittedly, the appellants were shown the perpetual Lease Deed executed by the DDA in favour of the respondent and his brother. Despite that, the appellants failed to implead DDA as the necessary party to conceal/hide the huge outstanding misuse charges accumulated over the suit property. The appellants have also opposed the respondent's application dated 15th October, 2013, under Order I Rule 9 of the CPC, seeking the impleadment of the DDA as necessary party before the Trial Court.

8.11. The appellants have made a false statement in the cross-examination dated 27th September, 2012, by stating that symbolic possession, along with the actual possession, of the suit property was given to them. However, in the same cross-examination, the appellants admit that there is a tenant, namely Smt. Prem Kanta Jain, in the suit property and that the appellants have not executed any tenancy agreement with Smt. Prem Kanta Jain. The judgement in Eviction Petition bearing No. *E-71/2009,* titled as *"Dalip Singh Versus Smt. Prem Kanta Jain and Others",* dated 18th December, 2014, read with order dated 22nd August, 2015, along with order dated 19th August, 2017, in the case, being *RCT No. 17/2016,* titled as *"Prem Kanta Jain Versus Dalip Singh & Ors."*, clearly show that the rear portion of the suit property has always been in possession of Smt. Prem Kanta Jain, i.e., the tenant of the respondent. Moreover, the respondent had executed a tenancy agreement with Smt. Prem Kanta Jain, back on 01st May, 1992, with respect to the rear portion of the suit property.

8.12. The respondent also submits that no F.I.R. bearing No. *890/2006* has been registered by the appellants against the respondent and they fail to produce any document to substantiate their allegation.

8.13. That Sh. Krishan Gopal Aggarwal, i.e., one of the appellants, has committed fraud upon the MCD as he had filed an application thereto seeking grant of licence in the name of M/s Prime Industries, which is a partnership firm, supported by an Undertaking dated 06th January, 1999, attested by the Oath Commissioner as well as by the Notary. He represented himself as a tenant, wherein, Sh. Kishan Gopal Aggarwal claims himself to be a partner in firm, in the area of 500 sq. feet, run by Mr. Hanwant Singh and Dalip Singh. However, the appellant has also annexed therewith a self-attested rent receipt as a tenant for an amount of Rs. 2,000/- per month for the period of 01st August, 1997, to 31st August, 1997, signed by Sh. Hanwant Singh. The appellant on one hand claims to be the owner of the suit property, but, on the other hand, admits himself as a tenant of the respondent and his brother.

8.14. The respondent has his office in the suit property, as is evident from the Local Commissioner Report dated 04th July, 1996, in *Suit No. 372/96* titled as *"Smt. Prem Kanta Jain Versus S. Dalip Singh"*. The appellants, along with some criminal elements, had stopped the entry of the respondent to his office, pursuant to which, the respondent had filed a Complaint Case bearing No. *128/1/14* against such persons. The appellants have taken law into their hands and have adopted all means to harass the respondent, who is a senior citizen.

8.15. The appellants have failed to point out any illegality in the impugned judgement. The counter-claims of the appellants have been dismissed due to the defaults on the part of the appellants. The appellants had cancelled the pay orders of Rs. 4,87,450/- each, for the balance sale consideration, at their own volition without any due permission of the Court. Furthermore, the amount in the pay orders by the appellants did not include the amount of Mutual Agreement dated 07th November, 1996, which totalled to Rs. 5,20,080/- for each appellant.

8.16. Even though the appellants now show their willingness to pay the balance consideration, at present, the price of the property has increased enormously, thus, there is no question of payment of balance amount in accordance with the ATS dated 29th September, 1995.

8.17. The appellants, in *Suit No. 53/2006,* filed by them seeking eviction of Smt. Prem Kanta Jain on *bona fide* requirement under Section 25B of the Delhi Rent Control Act, 1958 (**"Delhi Rent Control Act"**), fraudulently claim themselves as the owner of the suit property. Moreover, another fraudulent claim of ownership was made in the *Eviction Petition No. 57/2011* filed by the appellants against Smt. Prem Kanta Jain, claiming themselves, including Sh. Naresh Kumar Aggarwal, to be the owners of the suit property.

8.18. It is submitted that the respondent has never sold the suit property to the appellants and has never executed any sale deed in the said regard. The respondent, *vide* Public Notices dated 13th May, 2002, had revoked the GPA, SPA and Will of the suit property in the names of the appellants because they breached the obligations of the ATS dated 29th September, 1995, by stopping the payments of monthly instalments. The ATS clearly states that the appellants shall become the sole owner of the suit property only from the date of execution of the sale deed, which has not been executed till date.

8.19. Furthermore, the appellants are not parties to the Writ Petition, being *CWP No. 843/1996*, filed before this Court against the cancellation of the perpetual Lease Deed and the appellants cannot take advantage of the pleadings without making themselves co-petitioners. The appellants are silent on measures undertaken in compliance of the order dated 13th October, 2003, passed by this Court in the aforesaid writ petition. The appellants never stopped the misuse of the suit property due to which the respondent could not undertake compliance of the order dated 13th October, 2003, of this Court in the aforementioned writ petition. Thus, the perpetual Lease Deed, cancelled by the DDA, could not be restored by the respondent.

8.20. The appellants also failed to disclose that in the rejoinder filed by Sh. Naresh Kumar Aggarwal, i.e., the brother of the appellants, in the said writ petition, he has stated that the respondent herein has not sold or transferred any portion of the plot, i.e., the suit property, in violation of Clause II (4) of the perpetual Lease Deed dated 08th March, 1973.

8.21. The appellants in their cross-examination admit the outstanding electricity dues of Rs. 22,000/-, however, later they claim the said dues to be to the tune of Rs. 8,70,000/-. It is mysterious how the appellants got a new electricity connection without liquidating the outstanding dues.

8.22. The letter dated 24th July, 1996, by the respondent to the Deputy Assessor and Collector, House Tax Department, New Delhi, as referred to by the appellants, was only written by the respondent for the purpose of deposit of property tax of the suit property being used by the appellants. The appellants are in use of the property since year 1995 till date, and are silent on the quantum of property tax paid by them. Furthermore, there is no question of transfer of the suit property, as no sale deed has ever been executed owing to the breach of the ATS, on part of the appellants.

ANALYSIS AND FINDINGS:

9. I have heard learned counsels for the parties and perused the record.

10. At the outset, this Court notes that issue nos. 1, 3 and 4 have been

decided against the respondent herein. However, no appeal has been filed by the respondent and accordingly the findings on the said issues, have attained finality. Further, issue no. 2 was held to be infructuous in view of the finding of the Court on issue no. 5. Since there is no appeal by the respondent thereto, the finding as regard issue no. 2 has also attained finality.

11. Accordingly, only issue nos. 5 and 6 are subject matter of adjudication before this Court. Issue no. 5 pertains to the claim of the appellants as to whether they are entitled to a decree of Specific Performance of the ATS dated 29th September, 1995, and Compromise dated 30th April, 2004, read with the Compromise Application dated 29th April, 2004. Issue no. 6 pertains to the claim of the appellants herein as to whether they are entitled to a decree of permanent injunction against the respondent herein. Both the issues have been decided against the appellants, who are in appeal before this Court.

12. Since the Trial Court has decided issue no. 6 on the basis of findings on issue no. 5, and arguments before this Court have been advanced comprehensively on the said issues by both the parties, this Court would deal with both the issues together.

13. By way of the impugned judgement, the Trial Court has dismissed the counter-claims of the appellants seeking specific performance of the ATS dated 29th September, 1995, and Compromise dated 30th April, 2004, for the property admeasuring 870 sq. yds. bearing No. *A-13, Wazirpur Industrial Area, Delhi – 110052*, i.e., the suit property.

14. As noted hereinabove, by way of a perpetual Lease Deed dated 08th

March, 1973, DDA allotted a plot admeasuring 2300 sq. yds. bearing No. *A-13, Wazirpur Industrial Area, Delhi – 110052* to the plaintiff and his brother, Sh. Hanwant Singh. The entire property was divided into two equal shares by the respondent and his brother, and consequently, the plaintiff/respondent became entitled to 1150 sq. yds. of the entire property.

15. The plaintiff/respondent had let out the property to the father of the appellants on rent. After the death of the father of the appellants, the respondent intended to sell a portion measuring 280 sq. yds. of his share in the entire property to one Sh. Naresh Chand Aggarwal, who is the elder brother of the three appellants, by way of an ATS in the year 1989, along with other contemporaneous documents.

16. The appellants are three real brothers. The plaintiff had executed a separate set of documents being ATS, Will, irrevocable GPA, and SPA, all dated 29th September, 1995, in favour of each of the three brothers, whereby, the plaintiff/respondent intended to sell separate portions measuring 290 sq. yds., to each of the three brothers. Thus, the total area that the plaintiff intended to sell to the three appellants, by way of said set of documents, is 870 sq. yds. It is also to be noted that under the aforesaid set of documents, all the three appellants agreed to pay Rs. 7.5 Lacs each to the plaintiff/respondent.

17. The dispute between the parties purportedly arose when the respondent failed to clear the arrears of house tax and electricity dues with respect to the property, and failed to get the perpetual Lease Deed restored. On account of this failure, the appellants/counter claimants did not make

payment of the balance sale consideration.

18. Furthermore, it is to be noted that the perpetual Lease Deed in favour of the plaintiff was terminated by DDA by way of a letter dated 29th January, 1996, in terms of order dated 15th October, 1995, passed by the Lieutenant Governor of Delhi. The said order was challenged by the respondent herein, and Sh. Naresh Chand Aggarwal in a civil writ petition, being *CWP No. 843/1996,* titled as "*Dalip Singh & Anr Versus Govt. of NCT of Delhi*". It is to be noted that the appellants in the present case were not a party to the said writ petition.

19. The aforesaid writ petition was disposed of by order dated 13th October, 2003, wherein, this Court directed that subject to the respondent herein paying the requisite charges, the perpetual Lease Deed for the property in question shall be restored. Further, there was also direction that the misuse in the property shall also be stopped, and the plot shall be used only for the purpose as permitted in the master plan.

20. Further, the Court also directed that upon stoppage of the misuse of the property and payment of the requisite charges by the respondent herein, the lease of the respondent shall be restored, and the respondent's case would be considered for conversion from leasehold into freehold. However, the lease of the respondent for the premises in question is yet to be restored.

21. It is to be noted that on account of the disputes between the parties, the plaintiff/respondent and the appellants/counter claimants have filed multiple cases against one another. Out of these, it is important to take note of a suit being *CS No. 187/2000,* filed by the appellants herein against the

respondent herein for permanent injunction. The said suit was dismissed *vide* order dated 19th April, 2002.

22. The appellants preferred a Regular Civil Appeal bearing No. *141/2002*, titled as *"Shri Vijay Kumar Aggarwal & Others Versus S. Dalip Singh",* against the aforementioned order of dismissal. A compromise application under Order XXIII Rule 3 of the CPC was filed by the parties in *RCA No. 141/2002* on 29th April, 2004, and accordingly *RCA No. 141/2002* was withdrawn as compromised *vide* order dated 30th April, 2004.

23. Under the Compromise, the respondent agreed to clear the entire arrears till 30th September, 1995, and get the lease restored from the DDA, at his own expense. Thereafter, the appellants were to bear all expenses of the conversion of the suit property from leasehold to freehold, and pay the entire balance sale consideration to the respondent, within three days of clearance of arrears by the respondent.

24. Despite the Compromise between the parties, the plaintiff/respondent has contended that although he took steps for the restoration of the perpetual Lease Deed, the same was rejected on account of continued misuse of the property and non-payment of misuser charges.

25. It is an admitted position that the perpetual Lease Deed does not stand restored. Further, the respondent herein has filed a civil suit against DDA, being *CS SCJ No. 609/2017,* titled as *"Dalip Singh Versus DDA and Ors."*, and the same is *sub-judice*.

26. As per the case put forth by the appellants, under the terms of the said Compromise, the respondent was obligated to clear all arrears over the suit

property, and get the lease restored at his own expense, and only thereafter, the appellants were to make the balance payment to the respondent.

27. It is the case of the appellants that erroneous reliance has been placed upon letters dated 29th January, 1996, 18th January, 2007 and 03rd February, 2009, and the Inspection Report for the inspection carried out on 06th May, 2013, by the Trial Court to attribute the termination of lease upon the appellants. These documents were never placed on record during the proceedings, and were introduced by the plaintiff/respondent for the first time in his written synopsis, which had been filed after the judgement was reserved.

28. It is further the case of the appellants that the Trial Court has erred in placing reliance on the Mutual Agreements. The terms of the Mutual Agreements dated 07th November, 1996, between the parties, whereby, each of the appellants were to pay cash amounts of Rs. 10,835/- per month towards consideration for the purchase of the suit property, stand superseded by the compromises between the parties.

29. *Per contra*, it is the case of the respondent that he never sold the suit property to the appellants, and no sale deed has ever been executed in favour of appellants.

30. Furthermore, it is the case of the respondent that the perpetual Lease Deed was cancelled by DDA due to the misuse of the suit property by the appellants. The appellants, in their cross-examination, admit to carrying on business in the name of M/s. Bright Steels for steel fabrication. However, the licence from the MCD is in the name of M/s. Prime Industries favouring

Sh. Krishan Gopal Aggarwal, i.e., one of the appellants, for the manufacturing of plastic cables.

31. The fundamental question that arises before this Court in the present appeals is whether the Trial Court was correct in denying the relief of specific performance to the appellants/counter-claimants.

32. In this regard, reference may be made to Section 16 of the Specific Relief Act, 1963 **("SRA")**, which deals with specific performance of contracts. It is to be noted that Section 16 of the SRA was amended by the Specific Relief (Amendment Act), 2018.

33. In the judgement of ***Pydi Ramana Alias Ramulu Versus Davarasety Manmadha Rao, (2024) 7 SCC 515***, the Supreme Court has held that the said amendment is prospective in nature. In view thereof, the amendment shall not be applicable to the present appeal as the present appeal is of the year 2016, with transactions being prior to the amendment. The relevant excerpts from the judgement are as under:

> *"xxx xxx xxx*
>
> *11. At the outset,* ***it requires to be clarified and made clear that in the instant case the amendment brought to the Specific Relief Act by Act 18 of 2018 would be inapplicable. The amendment is prospective in nature and cannot be applied to those transactions which took place prior to amendment****. [Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355 : (2023) 1 SCC (Civ) 201]* ***In order to prove*** *[Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239]* ***that the plaintiff is entitled to the specific performance as per the law existing prior to amendment, the plaintiff has to establish****:*
>
> ***(a) That a valid agreement of sale was entered into by the defendant in his favour;***
>
> ***(b) That the defendant committed breach of the agreement; and***

(c) That he was always ready and willing to perform his part of the obligations in terms of the agreement.

xxx xxx xxx"

(Emphasis Supplied)

34. Since the transactions in question, that is the execution of the ATS and the Compromise between the parties, are of the years 1995 and 2004 respectively, the unamended Section 16 of the SRA will be applicable to the present disputes, which reads as under:

"xxx xxx xxx

16. Personal bars to relief.—*Specific performance of a contract cannot be enforced in favour of a person—*

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

xxx xxx xxx"

(Emphasis Supplied)

35. A reading of the aforesaid provision shows that as per Section 16(b) of the SRA, specific performance of a contract cannot be enforced in favour of a person who violates any essential term of the contract that on his part remains to be fulfilled, or wilfully acts at variance with, or in subversion of,

the relation intended to be established by the contract.

36. In the present case, it is evident from the terms of the ATS that the pending balance sale consideration of Rs. 6.5 Lacs, inclusive of interest, had to be paid by each of the appellants to the respondent in monthly instalments from 07th November, 1995, till 07th October, 2000. Further, the respondent was obligated to clear the entire arrears of house tax, electricity bill and arrears of whatever nature of DDA up to 30th September, 1995, by 31st March, 1998. The ATS further provided that in case of failure of the respondent to clear the dues by the prescribed time, the appellants would stop paying future instalments with effect from 07th April, 1998.

37. However, it is an admitted case that the appellants paid the last instalment in January, 1997, and stopped making further payments of the instalments. Thus, no instalments for balance sale consideration were paid in February, 1997, and thereafter. The appellants stopped the payment of instalments, despite the stipulation in the ATS that the respondent had time till 31st March, 1998, to make good the arrears.

38. It is to be noted that out of the three appellants, only one of the appellants, i.e., Sh. Vijay Kumar Aggarwal entered the witness box and deposed before the Trial Court. The said appellant duly admitted during the course of his examination that there was no authority in writing in his favour from his brothers, i.e., the other two appellants, to depose on their behalf. Thus, it is clear that no evidence was led on behalf of the other two appellants, except Sh. Vijay Kumar Aggarwal.

39. Sh. Vijay Kumar Aggarwal, as *CCW-1* before the Trial Court,

categorically deposed that the last payment of instalment as per the ATS was made in January, 1997, and thereafter he stopped making further payments. He further deposed that no legal notice intimating the respondent regarding stopping of the payment of instalments was issued to the respondent. The deposition of the said witness clearly brings forth that the appellants were unable to establish their willingness and readiness to make payment of amounts to the respondent pursuant to the ATS. The relevant extracts from the deposition of *CCW-1* on 27th September, 2012 and 01st November, 2012 respectively, are reproduced as under:

> *"xxx xxx xxx*
>
> *……**I made the last payment of installment on January 1997, thereafter I stopped payment of further installments. I stopped the payment due to clearance of necessary dues etc. Sh. Dalip Singh was to provide the clearance of dues on 30.9.1995. I had not issued any legal notice intimating Sh. Dalip Singh that me and my brothers have stopped the payment of installments in compliance with the agreement to sell**…….*
>
> *xxx xxx xxx*
>
> *………**Regarding deposit of house tax by Sh. Dalip Singh in compliance with the agreement to sell and the compromise dated 30.04.2004, I tried to contact MCD office to know the details of the amount of arrears to be deposited by Sh. Dalip Singh but I could not got the details of arrears of amount to be deposited by Sh. Dalip Singh. However, I deposited the amount in DDA office but I do not recollect that how much amount I deposited there. I have not filed any receipt also in the subject suits. As regards dues of DESU, Rs. 4000/- were deposited. There were no arrears. Again said, there were arrears of Rs. 22000/- approx**……*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

40. Thus, clearly it was the defendants/appellants who wilfully breached

the essential terms of the ATS, in the first instance, by intentionally refusing to pay the monthly instalment amounts, even before the time period for the plaintiff to make good the arrears could expire. In view of such conduct of the appellants, they cannot be held entitled to the relief of specific performance of the ATS in terms of Section 16(b) of the SRA.

41. In this regard, it is apposite to refer to the decision of this Court in the case of ***Pradeep Batra Versus Kuldip Singh Verma, 2025 SCC OnLine Del 9669***, wherein the Court held as under:

> *"xxx xxx xxx*
>
> ***80. Section 16(b) of the Act of 1963 stipulates that a specific performance of a contract cannot be enforced in favour of the person who violates any essential term or wilfully acts in variance.*** *Section 16(b) reads as under:*
>
> > *16.* ***Personal bars to relief.*** *—Specific performance of a contract cannot be enforced in favour of a person—*
> >
> > *……*
> >
> > ***(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or***
> >
> > *….."*
>
> ***81. The Plaintiff's endeavour to seek a reduction in the sale consideration of Rs. 12.40 crores bars him in law from seeking specific performance of the oral ATS dated 29.10.2023. Section 16(b) of the Act of 1963, stipulates that the performance can only be granted when the Plaintiff/purchaser has not violated the essential term of the agreement. This conduct of the Plaintiff disentitling him under Section 16(b) of the Act of 1963*** *is evident from the statements in the plaint, accompanying application and therefore, the suit is barred under Order VII Rule 11(d) of CPC.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

42. It would also be fruitful to refer to the judgment in the case of ***Sri Chhaya Dey & Anr. Versus K.I.C. Resources Ltd., 2003 SCC OnLine Cal 547***, wherein, the Calcutta High Court has held as under:

> *"xxx xxx xxx*
>
> *23. **It is settled law that specific performance of a contract cannot be enforced in favour of a person who violates any essential term of the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in sub-version of the relation intended to be established by the contract or who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Section 16(b) and (c) of the Specific Relief Act, 1963 can be referred to in this context.***
>
> *24. It is curious to note that in spite of the promise to pay Rs. 35 lakhs by the end of June, 1993 in terms of the agreement marked as Ext. 1 the plaintiff did not pay the sum on a plea that there was an order of status quo. R.W. 1 Pukhraj Baid one of the directors of the plaintiff company has stated in his evidence that they were ready to pay Rs. 35 lakhs, but on account of the order of status quo they did not pay the amount. As mentioned hereinabove, the plaintiff/respondent was quite aware of the said order of status quo when the agreement (Ext. 1) was executed and as such the plea taken on behalf of the plaintiff/respondent for non-payment of the said sum of Rs. 35 lakhs in terms of the agreement because of the order of status quo is untenable. That apart, the said order of status quo cannot prevent the plaintiff from making any such payment.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

43. Reference is also made to the decision in the case of ***All India Tea and Trading Company Limited Versus Loobah Company Limited, 2021 SCC OnLine Cal 2917***, wherein, the Calcutta High Court held that an order directing specific performance is premised on a clean slate, where the party seeking relief must establish on irrefutable facts, complete performance of

its part of the bargain. A grainy picture consisting of unresolved charges of non-performance does not commend to an order of specific performance. Relevant paragraphs of the said judgment read as under:

> *"xxx xxx xxx*
>
> ***11. Specific performance of contracts and enforcement of negative covenants are woven into the fabric of the Specific Relief Act and included in the amended provisions.*** *Although Section 10 has done away with the discretionary powers of a court in the matter of specific performance of a contract, the mandatory nature thereof is diluted by Sections 11(2), 14 and 16 of the Act. This indicates that specific performance in respect of contracts is not absolute, as explained by the Supreme Court in B. Santoshamma, wherein the exceptions to an absolute grant were discussed. Further, Section 42 of the Act which empowers the court to grant an injunction for performing a negative agreement is also subject to the proviso to Section 42 which casts an obligation on the plaintiff to perform the contract as far as it is binding on the plaintiff. The effect of the proviso was clearly brought out in Gujarat Bottling Co. Ltd. v. Coca Cola Co.; (1995) 5 SCC 545, where the Supreme Court held that the court is not bound to grant an injunction in every case and can refuse an injunction for enforcing a negative covenant on the existence of certain conditions. The conditions which would persuade a court to refuse performance of a negative covenant were also stated in Percept D' Mark (India) (P) Ltd. v. Zaheer Khan; (2006) 4 SCC 227.* ***The view of the Supreme Court in Gujarat Bottling was followed in a Single Bench decision of this Court in Farinni v. Dream Food Products; (2008) 2 CHN 689. Although Gujarat Bottling was decided before the amendment of 2018, the principles enunciated therein have now been incorporated in the proviso to Section 10 of the Act. Besides the situations where a contract cannot specifically be enforced (Section 14), Section 16 disentitles a person from claiming specific performance of a contract if that person becomes incapable of performing or violates any essential term of the contract or willfully acts at variance with the relation intended to be established by the contract (Section 16(b)). Section 16(c) further requires the person***

seeking specific performance to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Explanation (ii) to Section 16 has been amended to the effect that the plaintiff must aver performance of, or readiness and willingness to perform the contract according to its true construction.

12. The conclusion, as would be evident from a combined reading of the provisions, is that Specific Performance of a contract, even in the diminished landscape of Section 10 post-amendment, must segue into Sections 11, 14 and 16 of the Act, without discordance, for the 'shall be enforced' in Section 10 to be in harmonious sync with the import of the amendment.

13. The question whether the petitioner would be entitled to Specific Performance of the Agreement, including the negative covenant therein, would hence turn on the petitioner's obligations in respect of the Agreement.

i) Failure on the part of the petitioner to perform the contract and its part of the bargain:

14.** The Clauses in the Agreement dated 14th December, 2017 indicate the obligations of the parties in terms of their performance as well as continuing obligations in that regard. Clause 4 of the Agreement relates to the obligations on the part of the petitioner to make payment towards Provident Fund dues within specific time frames outlined under the said Clause.* ***The fact that the petitioner failed in its obligations of payment within 90 days i.e. 31st March, 2018 as stipulated under Clause 4.2 would appear from the petitioner's averments in the affidavit-in-reply which clearly shows that the petitioner made occasional payments towards Provident Fund dues but defaulted thereafter. The delayed payments made by the petitioner from Season 2018 to Season 2021 have been tabulated by the respondent in its affidavit-in-opposition and have not been refuted by the petitioner. The Supplementary Agreement entered into between the parties on 16th October, 2019 also makes it evident that such Agreement was necessary to extend the time for making payments as provided in the Agreement dated 14th December, 2017.

15. *The defaults on the part of the petitioner would also appear from the letters written to the petitioner by the Provident Fund Authorities whereby the parties were directed to appear before the Authorities on 20th September, 2021 and an order was passed by the PF Authorities on the same date. These documents form part of the supplementary affidavit of the petitioner.*

16. ***Under Clause 7 of the Agreement, the petitioner was also to make payment for the green leaves produced in the Tea Estate and sold by the respondent to the petitioner at the rates specified in Clause 7.1. The allegation that the petitioner has failed to make payment as provided under Clause 7 has not been controverted by the petitioner in evidence.*** *The dispute with regard to the segregation of fine count and coarse tea would appear from the method of calculation prescribed by the Tea Research Authority which forms part of the pleadings of both the parties. The alleged discrepancy in relation to the method, raised by the petitioner, is not acceptable since there is no deviation in the relevant part of the prescribed methodology.*

17. ***The dispute raised by the respondent of the petitioner failing to make payments for purchase of green leaves at the rates agreed by the parties would dilute the case for specific performance of the Agreement by reason of the fact that an order directing specific performance is premised on a clean slate where the party seeking relief must establish on irrefutable facts, complete performance of its part of the bargain. A grainy picture consisting of unresolved charges of non-performance does not commend to an order of specific performance. Section 10 read with Section 16 of the Specific Relief Act lends to this view as the onus of disproving the sequence of failure and non-performance rests on the person who seeks specific performance. The construction which emerges from these provisions is that a petitioner who seeks such relief must prove and aver that none of the personal bars to relief under Section 16 will operate against it for denying the relief sought for. The failure on the part of the petitioner to perform its part of the bargain would result in a bar to the relief claimed under sub-sections (b) and (c) of Section 16 which involve incapacity to perform or violation of an***

> ***<u>essential term of a contract as well as a failure to prove and aver readiness and willingness by the party who seeks specific performance of the contract.</u>***
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

44. Section 16(b) of the SRA also provides that no specific performance can be granted in favour of a person who wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract. Further, Section 16(c) of the SRA provides that no specific relief can be granted in favour of a party that is not ready and willing to perform the essential terms of the contract. Explanation (ii) to Section 16(c) of the SRA further clarifies that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

45. In the present case, admittedly, the appellants/purchasers were in knowledge of the existence and terms of the perpetual Lease Deed. The appellants were shown the perpetual Lease Deed before the execution of the set of documents in the year 1995.

46. This Court notes that as per the terms of the Compromise encapsulated in the application dated 29th April, 2004, the obligation was on the respondent to get the perpetual Lease Deed restored from DDA, at his own expense. This Court also notes that by way of order dated 13th October, 2003, in the writ petition being *CWP No. 843/1996*, the Court had directed the respondent herein to pay the misuser charges and stop the misuse of the property, in order to get the perpetual Lease Deed restored.

47. The said order duly notes that there was misuse of the property by way of a steel-rolling business being carried on at the property, in violation

of the original master plan, which did not allow such use of the property. The order dated 13th October, 2003 passed in the writ petition is reproduced as under:

2003:DHC:12695

Sr. No.	Date	Orders
		% 13.10.2003

Present : Mr. Suresh Gupta, Advocate for the petitioner.
Mr. Vibhu Shankar, Advocate for the respondent.

+ CW 843/1996

The petitioner has impugned the order dated 15.10.1995 communicated vide letter dated 29.01.1996 determining the lease of the petitioner in respect of plot No.A-13, Wazirpur Industrial Area.

The petitioner and his brother Mr. Hanwant Singh were granted lease of the plot in question by virtue of lease deed dated 08.03.1973. Show cause notices were issued to the perpetual lessees alleging that the petitioners were running the business of steel rolling mills while the user could only be in terms of the master plan which did not prescribe such activity to be carried on the plot. Further there was an allegation that Shri Hanwant Singh had sold out his 50% share of the property to one Smt. Ram Pyari. The lease was thus terminated on these two accounts. Learned counsel for the petitioners states that scheme of conversion into freehold has now been propounded by DDA in which power of attorney holders of industrial plots are being permitted to convert the plots into freehold. Learned counsel submits that there will be no sub-division as the power of attorney purchaser as well as petitioner No.1 will jointly apply for conversion into freehold of the plot in question and also pay the unearned increase and restoration charges. Learned counsel further submits that the plot shall be used only for the purpose permitted in the master plan.

In view of the aforesaid statement of learned counsel for the petitioners, it is apparent that the conversion into freehold is permissible in view of the new scheme of the DDA subject to payment of charges by the petitioners and the issue of sub-division would not survive once petitioner No.1 and power of attorney purchaser Smt. Ram Pyari will jointly apply for the conversion of the plot in their name without

SHRI SHYAM SALES 02-03

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		any sub-division. Further the misuser shall also be stopped by the petitioners.
		In view of the aforesaid, it is directed that subject to petitioners paying the aforesaid requisite charges, the lease of the petitioners shall be restored and the petitioners case shall be considered for conversion into freehold.
		The writ petition is disposed of in the aforesaid terms.
		October 13, 2003 SANJAY KISHAN KAUL, J mb

48. It is to be noted that the appellants' witness, i.e., *CCW-1*, who is the appellant in *RFA 255/2016*, in his cross-examination, admitted that the appellants were carrying on a business of steel fabrication at the suit property. The relevant portion from the cross-examination of the appellants' witness dated 01st November, 2012, is as follows:

> *"xxx xxx xxx*
>
> *It is correct that **we are carrying on business on the site in reference under the name and style of M/s Bright Steels. We are into steel fabrication**. It is correct that we also have a licence from MCD in the name of M/s Prime Industries favouring Sh. Krishan Gopal. This is a business of manufacturing plastic cables.*
>
> *xxx xxx xxx"*
>
> *(Emphasis supplied)*

49. Thus, the misuse of the property by way of running business with respect to steel fabrication has been admitted by the *CCW-1,* appellant in *RFA 255/2016*, in his cross-examination. In view thereof, the appellants admit to the misuse of the suit property. It is pertinent to note that as per terms of the compromise between the parties of the year 2004, as contained in application dated 29th April, 2004 in *RCA 141/2002*, the respondent herein

was to firstly get the lease restored from the DDA, before the liability of the appellants arose for payment of balance sale consideration. Clearly, till the time the misuse of the property was not stopped, the perpetual Lease Deed cannot be restored by the DDA and the terms of the Compromise cannot be given any effect. By continuing to misuse the property for running the business of steel fabrication, the appellants themselves wilfully acted at variance with, and in subversion of the relation intended to be established by the set of documents of the year 1995 and the Compromise, for the sale of the suit property.

50. It is pertinent to note that the appellant in *RFA 255/2016*, i.e., *CCW-1* categorically deposed that the appellants took no steps for getting the Compromise Settlement between the parties, implemented. This again points out to the unwillingness and non-readiness of the appellants to fulfil the ATS and the Compromise. The relevant deposition dated 01st November, 2012, in this regard, is extracted as below:

> *"xxx xxx xxx*
>
> ***Q. Did you serve any notice upon S Dalip Singh to specifically perform the agreement to sell and the consequent compromise?***
>
> ***A. No. We did not do so as he filed the present suit.***
>
> ***We did not file any application for execution in the suit in which the compromise as arrived at in the court of Sh. Daya Prakash, the then Ld. SCJ, Delhi.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

51. Thus, the appellants, by way of their conduct, i.e., continuing misuse of the suit property, have shown that they were not willing to fulfil the

essential terms of the Compromise, in their true construction. The conduct of the appellants does not inspire confidence in granting them the relief of specific performance.

52. In this regard, it shall be fruitful to refer to the decision in the case of ***Jamuni and Others Versus Bhagauti and Others, 2012 SCC OnLine All 175***, wherein, the Allahabad High Court held that the plaintiffs therein had acted in fraud of the agreement for sale, wilfully acted at variance with that, and in subversion of the relation intended to be established by the agreement/contract, by filing objections in proceedings for grant of *bhumidhari* rights to deny the title of the defendant therein. The relevant paragraphs of the said decision are as under:

> *"xxx xxx xxx*
>
> ***2.*** *This is defendants' second appeal arising out of a suit (O.S. No. 20 of 1969) for specific performance of an agreement for sale dated 14.02.1966 alleged to have been executed by defendant appellant No. 1, Smt. Jamuni in favour of plaintiffs respondents. The suit was dismissed by Munsif, Basti on 29.01.1972 with special cost of Rs. 500/- to be paid by the plaintiffs to the defendant No. 2 in addition to the normal cost of the suit.*
>
> ***3.*** *It was pleaded in the plaint that through the alleged agreement dated 14.2.1966, Smt. Jamuni agreed to sell all her property consisting of bhoomidhari and sirdari agricultural land as well as house for Rs. 3000/- in favour of plaintiffs out of which Rs. 1500/- was paid as earnest money. It was further pleaded that talks of agreement had started six months before. Defendant appellant No. 1 gifted her entire property through registered gift deed to her daughter defendant appellant No. 2 on 13.09.1968. Defendant No. 1, Smt. Jamuni died on 21.01.1969 just after filing of the suit and was substituted by the defendant No. 2 her daughter.*
>
> *xxx xxx xxx*

5. The trial court specifically mentioned that against the application which Smt. Jamuni had filed for acquiring bhoomidhari rights the plaintiffs filed objections stating therein that the land was given to her only by way of guzara (maintenance) and that she had no right to acquire bhoomidhari right therein. The proceedings for acquisition of bhoomidhari right took place in 1968. In objections plaintiffs nowhere stated that some agreement for sale had been executed in their favour by Smt. Jamuni. Plaintiff Bhagwati in his oral statement could not give any explanation that why he filed objections questioning the very right of Smt. Jamuni and why he did not say anything about the agreement in the said proceedings. He pleaded ignorance about the said proceedings. Trial court also held that alleged thumb mark of Smt. Jamuni on the agreement was not got examined by any expert. Trial court mentioned that even from the naked eye the undisputed thumb impression of Smt. Jamuni and thumb impression on the alleged agreement for sale were quite different and "it was conceded even by the plaintiffs' counsel that the two marks were not of one and the same thumb impression."

xxx xxx xxx

*13. **The suit was barred by Section 16(b) of Specific Relief Act, which is quoted below:***

> ***"16. Personal bars to relief.– Specific performance of a contract cannot be enforced in favour of a person-***
> ***(b) who has become incabale of performing, or violates any essential term of, the contract that on his part remains to be eprformed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or"***

14. The plaintiffs acted in fraud of the agreement for sale and wilfully acted at variance with that and in subversion of the relation intended to be established by the agreement/contract. By filing objections in proceedings for grant of bhumidhari sanad to Smt. Jamuni they denied title of Smt. Jamuni.

xxx xxx xxx"

(Emphasis Supplied)

53. At this stage, it would also be apposite to refer to the decision of the Supreme Court in the case of ***R. Kandasamy (Since Dead) and Others Versus T.R.K. Sarawathy and Another, (2025) 3 SCC 513**,* wherein, the Supreme Court held that the relief of specific performance is a discretionary and equitable relief, and the Court has to adjudge the willingness and readiness of the party from the attending circumstances, and take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit. Thus, the Supreme Court held as under:

> *"xxx xxx xxx*
>
> *15. A three-Judge Bench of this Court in Prakash Chandra v. Angadlal held, the ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief.*
>
> *16.* ***This Court in N.P. Thirugnanam v. R. Jagan Mohan Rao while reiterating that the remedy of specific performance is equitable in nature and that granting or refusing specific performance is within the discretion of the court, had the occasion to observe: (SCC pp. 117-18, para 5)***
>
>> *"5.* ***It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963 (for short 'the Act'). Under Section 20, the court is not bound to grant the relief just because there was a valid agreement of sale.*** *Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant.* ***The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant***

> ***<u>the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances.</u>*** *The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract.* ***<u>As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.</u>”*** *(emphasis supplied)*

xxx xxx xxx”

(Emphasis Supplied)

54. Reference is also made to the decision in the case of ***Aniglase Yohannan Versus Ramlatha and Others, (2005) 7 SCC 534***, wherein, the Supreme Court has held that the conduct of the plaintiff seeking relief for specific performance has to be blemishless. The relevant excerpt is as follows:

“xxx xxx xxx

> ***<u>12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief</u>****. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.*

xxx xxx xxx”

(Emphasis supplied)

55. Thus, keeping in mind the attending circumstances of the present

case, it is evident that the conduct of the appellants, particularly, with regard to continuing misuse of the property, is not blemishless, and therefore, the appellants are not entitled to the equitable relief of specific performance.

56. This Court further notes that the appellants have contended that they have always been, and are still ready and willing to perform/pay/fulfil the terms of the ATS and the Compromise between the parties. The appellants contend that they had prepared drafts/pay orders dated 26th June, 2004, 28th June, 2004, and 05th July, 2004, of Rs. 4,87,475/- each, drawn on Union Bank of India. However, as the respondent did not fulfil his part of the promise in due time, the drafts/pay orders had to be cancelled to save the amount from the 06 months expiration period of the pay orders.

57. In this regard, the question that arises before this Court is whether the appellants have been able to prove their readiness and willingness to perform the ATS and the Compromise.

58. Before delving into the factual context in the present matter, it would be apposite to refer to the decision of the Supreme Court in the case of ***Kamal Kumar Versus Premlata Joshi and Others, (2019) 3 SCC 704***, wherein, while discussing the scope of Section 16 of the SRA, the Court laid down the material questions to be dealt with for the grant of relief of specific performance, in the following manner:

> *"xxx xxx xxx*
>
> *7. **<u>It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are</u>**:*
>
> ***<u>7.1 First, whether there exists a valid and concluded contract</u>***

<u>between the parties for sale/purchase of the suit property</u>.

<u>7.2 Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.</u>

<u>7.3 Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;</u>

<u>7.4 Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;</u>

<u>7.5 Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.</u>

***8**. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. **<u>These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts</u>**.*

*9. In the case at hand, we find that **<u>the two courts below have gone into these questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready nor willing to perform his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land. It was also held that the plaintiff was not entitled to claim any relief of refund of earnest money because it was liable to be adjusted as agreed between them</u>**.*

xxx xxx xxx”

(Emphasis supplied)

59. The Supreme Court in the judgement of ***His Holiness Acharya***

Swami Ganesh Dassji Versus Sita Ram Thapar, (1996) 4 SCC 526*,* has drawn a distinction between 'readiness' and 'willingness'. Readiness has been defined as to include the financial capacity of the plaintiff to perform the contract, while willingness is determined from the conduct of the party. The relevant portion of the said judgment has been reproduced as under:

> *"xxx xxx xxx*
>
> ***2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised.*** *There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner.* ***The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract.***
>
> *xxx xxx xxx"*
>
> *(Emphasis supplied)*

60. Likewise, the Supreme Court in the judgement of ***Man Kaur (Dead) by LRs. Versus Hartar Singh Sangha, (2010) 10 SCC 512,*** held that to adjudge whether the plaintiff is ready and willing to perform his part of the contract, the amount of consideration which he has to pay to the defendant

must of necessity be proved to be available right from the date of the execution till date of the decree. The relevant portion of the said decision is reproduced as under:

> *"xxx xxx xxx*
>
> *13. In the first case, this Court held: (N.P. Thirugnanam case [(1995) 5 SCC 115 : AIR 1996 SC 116], SCC p. 118, para 5)*
>
> > *"5. … The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail.* ***To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract.*** *As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."*
>
> *xxx xxx xxx*
>
> *40. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in section 16 of the Act.* ***A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the***

plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of ₹10 lakhs and earnest money of ₹1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay ₹15 lakhs. In such a case there is a clear breach by defendant. But in that case, if plaintiff did not have the balance ₹9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not "ready and willing" to perform his obligations.

xxx xxx xxx"

(Emphasis supplied)

61. Thus, it is a settled principle of law that the party seeking specific performance has to prove its readiness and willingness to perform the contract in continuum, from the date of execution of the contract till the final date of disposal of the suit.

62. Merely stating that the party is ready and willing to perform the contract is not sufficient to establish the same. The averment has to be substantiated with proof and documents. A continuous financial capacity has to be shown from the date of execution of the contract, till the final date of disposal of the suit.

63. In the present case, the appellants have submitted that they had drawn three pay orders/bank drafts dated 26th June, 2004, 28th June, 2004, and 05th

July, 2004, of Rs. 4,87,475/- each, in furtherance of the balance sale consideration, due to be paid to the respondent. However, significantly, the said pay orders were not adduced as evidence by the appellants before the Trial Court. Therefore, as per the settled principles of law, this Court cannot consider them as they are not on the record of the Trial Court.

64. Even otherwise, if the pay orders/bank drafts were on record and were exhibited, they still could not have fructified the appellants' case of showing continuous financial capacity to perform the ATS and the Compromise as the said pay orders/bank drafts were, admittedly, cancelled by the appellants in 04 to 05 months of their execution. The appellants reasoned that the cancellation was done to save the amount as the pay orders/bank drafts were set to expire within 06 months of their issuance, and that the respondent had failed to comply with his part of promise in that period.

65. However, the appellants had to prove a continuous trail of financial capacity from the date of execution of the ATS, and a single deposit, at one point of time, cannot constitute to prove such requirement. Additionally, as per the appellants' own case, even though the amounts mentioned in the pay orders were refunded to the appellants, they made no attempts to execute other pay orders, or similar instruments, to prove their readiness to perform the ATS and the Compromise. Further, it is the admitted case of the appellants that they made no attempts to deposit the money before the Court where the Compromise was arrived at.

66. In this regard, the relevant extract from the deposition of Sh. Vijay Kumar Aggarwal, i.e., *CCW-1* on 01st November, 2011, is reproduced as

under:

> *"xxx xxx xxx*
>
> ***The pay orders referred in para (k) of my affidavit were tendered in court. Vol. They were handed over to Ld. Presiding Officer but I do not know whether they were taken on record or not. As far as I remember, we have tendered these pay orders alongwith the counter claim and not in terms of any order passed by the Ld. Judge. Again said, it was tendered before Sh. Rakesh Kapoor, the then Ld. Judge seized of the matters. The pay orders were got cancelled after 4 or 5 months and the amount was refunded to us by the bank. I made no attempt to deposit this money in the court of Sh. Daya Prakash, where the compromise was arrived at.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

67. Thus, the appellants have failed to prove their readiness, and present any credible proof of assured financial availability throughout the relevant period. The counter claimants/appellants have not produced any evidence with respect to their financial capacity to pay the balance sale consideration. No proof as to the bank account statements, income or Income Tax Returns have been placed before the Trial Court or this Court, to show continuous financial readiness of the appellants to perform their obligations.

68. In this regard, reference is made to the decision in the case of ***Ritu Saxena Versus J.S. Grover and Another, (2019) 9 SCC 132***, wherein the Supreme Court has held that mere statements citing financial capacity without proof are not sufficient to prove readiness on part of the plaintiff, in the following manner:

> *"xxx xxx xxx*
>
> *15. Coming to the facts of the present case, the sole document relied upon by the appellant to prove her readiness and willingness is the approval of loan on 30-7-2004 by ICICI. Such approval was subject to two conditions viz. furnishing of income tax documents of the*

appellant and the property documents. M/s ICICI has sent an email on 12-5-2005 to the husband of the appellant requiring an agreement to sell on a stamp paper of Rs 50 to be executed between the parties, as per the legal opinion sought from the empanelled lawyer, without which ICICI will not be able to disburse the loan. Admittedly, no agreement was executed on stamp paper, therefore, the appellant could not avail loan of Rs 50 lakhs from ICICI. Independent of such loan, there is mere statement that the appellant and her husband have income of Rs 80 lakhs per annum unsupported by any documentary evidence. ***Such statement will be in the nature of ipse dixit of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract.*** *Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract. Such is the finding recorded by both the courts below as well.*

xxx xxx xxx"

(Emphasis supplied)

69. In view of the detailed discussion hereinabove, this Court holds that the appellants have been unable to prove their readiness to perform their financial obligations under the ATS and the Compromise, and therefore, no relief of specific performance can be granted in favour of the appellants in terms of Section 16(c) of the SRA.

70. The contention of the appellants that since no issue had been framed with respect to willingness and readiness of the appellants to perform their part of the contract, and therefore, they had no obligation to prove the same, has to be rejected. In this regard, reliance is placed on the case of ***J.P.***

Builders and Another Versus A. Ramadas Rao and Another, (2011) 1 SCC 429, wherein, the Supreme Court has held that the plaintiff seeking grant of specific relief shall prove a continuous readiness and willingness to perform the contract on his part from the date of the contract, till the date of decree of the suit. Further, the Court held that even if the opposite party has not raised a plea, the plaintiff has to comply with the mandate of the statute to prove his readiness and willingness to perform the contract. The relevant excerpts from the said decision have been reproduced as under:

> *"xxx xxx xxx*
>
> *25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance.* ***It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.***
>
> *xxx xxx xxx*
>
> *27.* ***It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis supplied)*

71. As regards the contention of the appellants that pursuant to the ATS, symbolic and actual possession had been handed over to them, the same does not inspire any confidence. The appellant, Sh. Vijay Kumar Aggarwal,

while deposing before the Trial Court admitted that he had not mentioned in his affidavit of evidence that actual possession was given to him and his brothers. Further, the said witness also admitted that his father was a tenant in the specified portion of the property in question, before the appellants entered into ATS with the respondent for purchase of the property. Further, the said witness also clearly deposed that though there was a tenant in some portions of the property, they had not executed any agreement of tenancy with the said tenant.

72. Accordingly, it is apparent that the actual possession of the property remained with the respondent and that the appellants continued in the possession of the property, as they had taken possession of the same earlier after the death of their father, who was a tenant in the specified portions of the property. This is further buttressed by the testimony of *CCW-1* who deposed that no site plan was executed between the parties and there was no demarcation of the property for which the ATS was executed between the parties. Accordingly, no leverage can be claimed by the appellants on the basis of their assertion regarding possession of some portions of the suit property, as the said possession was on the basis of tenancy of their father. It is undisputed that the respondent had let out a portion of the suit property to father of the appellants on 26th December, 1980. Further, the father of the appellants expired on 31st May, 1985, while the ATS was entered into by the appellants subsequently on 29th September, 1995. The relevant portions of the deposition of Sh. Vijay Kumar Aggarwal, *CCW-1* on 27th September, 2012 and 01st November, 2012 respectively, are reproduced as under:

"xxx xxx xxx

*……**No site plan was executed between the parties as there was no need to execute the same. There was no demarcation of property for which the agreement to sell was executed between the parties.** No date is mentioned in the agreement on which the impugned agreement between the parties was executed however the agreement bear the stamp and signatures of Notary dated 29.9.1995. The agreement was signed by me and my brothers after reading the same. **Sh. Dalip Singh handed over symbolic possession as well as actual possession of the property for which the agreement to sell was executed between the parties. However, I have not mentioned that actual possession was given to me and my brothers in the affidavit of evidence.** No sale deed was executed by Sh. Dalip Singh in furtherance of the agreement to sell in favour of me or in favour of my brothers**. It is correct that in para 6 of the agreement, it is mentioned that symbolic possession of the suit property was given while today I have stated in my cross examination that symbolic possession coupled with actual possession was given.** However my agreement does not carry incorrect assertions since only due to typographical lapse the word 'actual' possession got omitted. It is correct that in the property in question, there is a tenant in the name of Smt. Premkanta Jain……..*

xxx xxx xxx

*The business carried on at the site in reference is our own business and we have not sublet or assigned the property in reference to anybody. **It is correct that my father late Sh. Prem Chand Aggarwal was a tenant in a specified portion of this property before we entered into the agreement to sell. Vol. He was a tenant in front portion.** At the time of agreement to sell / compromise, S. Dalip Singh did not have any office in the premises in reference.*

xxx xxx xxx"

(Emphasis Supplied)

73. As regards the Trial Court placing reliance on the letter dated 29th January, 1996, along with the Inspection Report for the inspection carried out on 06th May, 2013, this Court is of the view that the Trial Court has erred in placing reliance on the same. The said letter and report have not been proved, and were filed only with the written submissions before the

Trial Court.

74. Similarly, the impugned judgement has erred in considering the admission of signatures on the Mutual Agreements, as an admission of the contents of the document itself. In view of the said, the Trial Court has incorrectly placed reliance upon the terms of the said Mutual Agreements between the parties. Mere admission of signatures on the documents by *CCW-1* does not translate into the proof of contents contained in the said documents.

75. The plaintiff never led evidence before the Trial Court, and the Mutual Agreements were only placed before the Trial Court during the cross-examination of *CCW-1*. The witness recognised his and the other appellants' signatures, but did not confirm the existence or execution of the said documents. The Mutual Agreements were marked as exhibits, however the same does not absolve the respondent herein from the onus of proof, with respect to the said documents. It is only after proof of documents, that the documents could have been treated as substantive evidence, and could be relied upon by the Trial Court.

76. Thus, this Court in the case of ***Sudir Engineering Company Versus Nitco Roadways Ltd., 1995 SCC OnLine Del 251***, has held that mere marking of an exhibit does not dispense with the onus to prove such documents. The relevant excerpts from the said decision are as follows:

> *"xxx xxx xxx*
>
> *6. **Let me now look at the law. Any document filed by either party passes through three stages before it is held proved or disproved. These are:***
>
> ***First stage: when the documents are filed by either party in the***

<u>Court; these documents though on file, do not become part of the judicial record;</u>

<u>Second stage: when the documents are tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence;</u>

<u>Third stage: the documents which are held 'proved, not proved or disproved' when the Court is called upon to apply its judicial mind by reference to Section 3 of the Evidence Act. Usually this stage arrives at the final hearing of the suit or proceeding.</u>

xxx xxx xxx

8. I am firmly of the opinion ***<u>that mere admission of document in evidence does not amount to its proof.</u>***

xxx xxx xxx

9. The law laid down by the Supreme Court in Sait Taraji Khimchand v. Yelamarti Satyam (AIR 1971 SC 1865) is:

> ***'<u>The mere marking of an exhibit does not dispense with the proof of documents.</u>'***

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12. In Baldeo Sahai v. Ram Chander, AIR 1931 Lahore 546 it was said:

> *There are two stages relating to documents. One is the stage when all the documents on which the parties rely are filed by them in Court. The next stage is when the documents are proved and formally tendered in evidence. It is at this later stage that the Court has to decide whether they should be admitted or rejected. If they are admitted and proved then the seal of the Court is put on them giving certain details laid down by law, otherwise the documents are returned to the party who produced them with an endorsement thereon to that effect."*

A reading of the report shows that it was the practice of the Court to endorse the documents soon on their filing which practice was deprecated and hence stopped. ***<u>The word "proved" has been used by the Division Bench in the sense of proposed to be proved as is clear from its having been used along with the word "tendered" or "admitted" in evidence</u>*** *The word proved has been loosely used for* *describing the stage after filing of the documents, when the Court would decide only whether they should be admitted or rejected. The Division Bench cannot be read as holding that the document is not to be endorsed with an Exhibit number unless and until proved. As stated in para 6 hereinabove, the stages of tendering/admitting/rejecting in evidence and holding a document proved—are two distinct and different stages, not one. They are respectively the second and third stages.*

***13. Admission of a document in evidence is not to be confused with proof of a document*.**

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15. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was refering to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.

xxx xxx xxx"

(Emphasis Supplied)

77. Further, reference in this regard is also made to the decision of the Bombay High Court in the case of ***Mahalaxmi Shikshan Samiti, Goa and Others Versus Manikrao Krishnarao Dessai and Others, 2021 SCC OnLine Bom 13898,*** wherein, it was held as under:

"xxx xxx xxx

27. ***Mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law.*** *When a document is merely exhibited, while exhibiting the same, it does not finally decide the right of the party or form any opinion or express any opinion on the document.* ***The***

document will have to be proved qua its contents in terms of section 61 of the Indian Evidence Act as the said provision contemplate proof of contents of the documents, either by primary or secondary evidence. *In absence of such a burden being discharged while exhibiting the documents as Exhibit 76-C collectively,* ***the Appellate Court has clearly erred in accepting the documents qua its contents, particularly when, no evidence has been adduced on behalf of the plaintiff, throwing any light on its contents and this was the reason why the document came to be exhibited while P.W. 1 was being cross-examined.***

28. In light of the aforesaid settled position of law, the substantial question of law framed above, is answered in the affirmative by holding that the reliance by the Appellate Court on the documents marked as Exhibit 76-C collectively as erroneous, ***since the contents of the documents are not proved and they are exhibited in cross-examination of P.W. 1.***

xxx xxx xxx"

(Emphasis supplied)

78. Further, while holding that admission as to signature does not amount to admission as to execution of a document, the Supreme Court in the case of ***Veena Singh (Dead) Through Legal Representative Versus District Registrar/Additional Collector (F/R) and Another, (2022) 7 SCC 1***, has held as under:

"xxx xxx xxx

59. *Similarly, Ratanlal and Dhirajlal's treatise on the law of evidence states as follows [N. Vijayraghavan and Sharath Chandran, Ratanlal & Dhirajlal : The Law of Evidence (LexisNexis, 2021).] :*

"[s 67.3] Execution of Document — Meaning

* * *

Execution of a document is something different from mere signing of the document. The term execution is not defined …The ordinary meaning of executing a document is signing it as a consenting party thereto … Execution of the document means that the executant must have signed or put his thumb

mark/impression, only after the contents of the document have been fully stated and read by the executant before he put his signature thereon. Mere admission of the initial by the executant would not be tantamount to an admission of execution of the document."

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63. *In Sayyapparaju Surayya v. Koduri Kondamma [Sayyapparaju Surayya v. Koduri Kondamma, 1949 SCC OnLine Mad 227], a Division Bench of the Madras High Court, while construing the provisions of Sections 35(1)(a) and (b) of the Registration Act, observed : (SCC OnLine Mad)*

"The admission required therefore is admission of the execution of the document. … It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the papers on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, as in the present case or if a man signs a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission, it is a clear and unambiguous denial of the execution of the document. He must admit, in order to attract the provisions of Section 35(1) that he signed the document … The admission of execution therefore must amount to an admission that the person admitting entered into an obligation under the instrument; in other words, that he had executed the document, signed it as a sale deed, mortgage deed, or a lease deed, as the case may be."

64. *In Jogesh Prasad Singh v. Ramchandar Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31] ("Jogesh Prasad Singh"), a Division Bench of the Patna High Court noted that the meaning of the phrase "execution" of a document had been well settled by another Division Bench of the High Court in Ebadut Ali v. Mohd. Fareed [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56] ("Ebadut Ali"). The decision of the Division Bench in Ebadut Ali [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 :*

35 IC 56], which was cited with approval in Jogesh Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31], held : (Ebadut Ali case [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56], SCC OnLine Pat para 11)

> *"11. … In our view, execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. To be executed a document must be in existence; where there is no document in existence, there cannot be execution. … Where an executant clearly says that he signed on blank paper and that the document which he had authorised is not the document which he contemplated, the statement is a denial not an admission, of execution."*

65. *Adverting to the above decisions and to the views of the Calcutta [Mohima Chunder Dhur v. Jugul Kishore Bhuttacharji1881 SCC OnLine Cal 1 : ILR (1881) 7 Cal 736] , Orissa [Uma Devi v. Narayan Nayak, 1984 SCC OnLine Ori 94] and Assam High Court [Bhutkani Nath v. Kamaleswari Nath, 1971 SCC OnLine Gau 53 : AIR 1972 Assam & Nagaland 15] , the Single Judge of the Karnataka High Court in N.M. Ramachandraiah [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] emphasised that the execution of the document does not mean merely signing it, but signing it after having understood its contents in their entirety : (N.M. Ramachandraiah case [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] , SCC OnLine Kar para 15)*

> *"15. **Therefore, the law is well settled. Execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the document. Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of document fully. To be executed, a document must be in existence; where there is no document in existence there cannot be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document.** Registration does not dispense with the necessity of proof of execution when the same*

*is denied. **<u>Thus, execution of document is not mere signing of it.</u>**"*

(emphasis supplied)

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***67.** In Ghasita Ram Bajaj v. Raj Kamal Radio Electronic [Ghasita Ram Bajaj v. Raj Kamal Radio Electronic, 1973 SCC OnLine Del 109] , a Single Judge of the Delhi High Court, while differentiating between signatures on ordinary documents and documents stamped in accordance with the law relating to negotiation of instruments, observed that in the case of ordinary documents : (SCC OnLine Del para 8)*

> *"8. ... **<u>The meaning of execution of a document ordinarily implies that a person making his signature by way of execution knew or should have known the nature of the document which he was signing."</u>***

***68.** In Kamlabai v. Shantirai [Kamlabai v. Shantirai, 1980 SCC OnLine Bom 152] , a Division Bench of the Bombay High Court, in the context of Section 68 of the Evidence Act, held : (SCC OnLine Bom paras 30-31)*

> *"30. ... In Sarkar's Evidence Act, p. 639, the meaning and the proof of the word "execution" has been set out. It says "executed" means completed. "Execution" is the last act or series of acts which completes it. Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper. To be executed, a document must be in existence; where there is no document in existence, there can be no execution."*
>
> *31. It seems to us plain that a person cannot be said to execute a document where he does not do so with the intention of making it. This may appear to be simple, but it is clearly, in our opinion, full of meaning and import. The word "execution" in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and knowledge of bringing into existence a particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. **<u>Mere signing of a document</u>***

without the intention of bringing that document into existence, meaning thereby giving effect to it would not properly speaking attract the expression "execution"."

(emphasis supplied)

xxx xxx xxx

71. ***While interpreting the provisions of the Evidence Act, Kuttadan Velayudhan, In re [Kuttadan Velayudhan, In re, 2001 SCC OnLine Ker 14], a Division Bench of the Kerala High Court determined whether the admission of signature on a document was tantamount to admission of its execution.*** *After perusing the decisions of the Kerala High Court and other High Court across India, the Division Bench held : (Kuttadan Velayudhan, In re case [Kuttadan Velayudhan, In re, 2001 SCC OnLine Ker 14] , SCC OnLine Ker para 9)*

> *"9.* ***To sign means to affix the signature. But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature. It implies more than the clerical act of writing the name. The intention of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person's name and the intention in doing this to execute, authenticate or to sign as a witness. The execution of a deed or other instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to carry it into effect or to give it the forms required to render it valid. Thus, the signature is an acknowledgment that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the documents is prepared and the terms are known to the person signing. In that view of the matter, mere putting of signature cannot be said to be execution of the document."***

(emphasis supplied)

xxx xxx xxx

73. ***The "execution" of a document does not stand admitted merely because a person admits to having signed the document. Such an***

interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.

xxx xxx xxx"

(Emphasis Supplied)

79. The respondent herein had not led any evidence before the Trial Court for proving the Mutual Agreements. The Mutual Agreements were only produced for the first time during the cross-examination of *CCW-1*. The documents were exhibited and marked as *Ex. P-1/R2* to *Ex. P-1/R4*. The said witness, i.e., *CCW-1*, had identified his signature and those of his brothers, but did not confirm them. The witness never admitted the contents of the said documents.

80. It is a settled principle of law that merely acknowledging signatures on a document does not amount to proof of the contents of the document. Thus, in view of the law as discussed hereinabove, since the Mutual Agreements could not be proved as per law, the same ought not to have been read as evidence by the Trial Court.

CONCLUSION:

81. Thus, while there are some errors in the findings arrived at by the Trial Court, the errors do not displace the ultimate conclusion reached by the Trial Court, on the following grounds, which have been elucidated in detail in the preceding paragraphs:

a. Breach of the essential terms of the ATS by the appellants;
b. Breach of the Compromise by the appellants;
c. Non-readiness and unwillingness of the appellants to perform the ATS and the compromise.

82. In view of the detailed discussion hereinabove, issue no. 5, i.e., whether the appellants herein are entitled to a decree of specific performance of the ATS dated 29th September, 1995 and Compromise dated 30th April, 2004, has rightly been decided against the appellants herein.

83. Since the issue no. 5 has been decided against the appellants, they are also not entitled to a decree of permanent injunction, as prayed in their counter-claims. Accordingly, issue no. 6 also has rightly been decided against the appellants.

84. No merit is found in the present appeals. The same are accordingly dismissed.

MINI PUSHKARNA
(JUDGE)

JULY 15, 2026
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