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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **CS(OS) 1660/2006, I.A. 24801/2015, I.A. 25296/2015 and I.A. 44681/2024**

PANNA LAL OM PRAKASH AND CO. PVT. LTD
HAVING REGISTERED OFFICE AT :-
5/7, D.B. GUPTA, PAHARGANJ, NEW DELHI

....PLAINTIFF

(Through: Mr.Sudhir Nandrajog, Sr. Advocate with Mr. Siddhart Bambha and Ms.Ankita Singh, Advocates. Mr.Sanjeev Sindhwani, Sr. Advocate with Mr.Siddharth Aggarwal, Advocates for applicant- Sunil Kumar Singhal.)

Versus

1A. MS. SHOBHA AGGARWAL
W/O LATE AJEET PRASAD AGGARWAL
R/O J-126A, ADANI SAMSARA VILASA, SECTOR-53,
GURUGRAM, HARYANA – 122102

...DEFENDANT NO.1(A)

1B. MS. SHWETA AGGARWAL
D/O LATE AJEET PRASAD AGGARWAL
R/O A-2003, MAHINDRA LUMINARE,
NEAR IREO GRAND ARC, SECTOR-59, BEHRAMPUR,
GURUGRAM, HARYANA – 122101

.....DEFENDANT NO.1(B)

1C. MS. AKANSHA AGGARWAL
D/O LATE AJEET PRASAD AGGARWAL
R/O F-251, SARITA VIHAR, NEW DELHI — 110076



...DEFENDANT NO.1(C)

1D. MR. ABHINAV AGGARWAL
S/O LATE AJEET PRASAD AGGARWAL
R/O J-126A, ADANI SAMSARA VILASA, SECTOR-53,
GURUGRAM, HARYANA — 122102

...DEFENDANT NO.1(D)

2. MOHAN GUPTA
60-A/1, FRIENDS COLONY (EAST),
NEW DELHI

...DEFENDANT NO.2

(Through: Mr.Anand Yadav and Ms.Anita Tomar, Advocates for D-1.)

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Reserved on: 13.08.2025

Pronounced on: 15.09.2025

JUDGMENT

I.A. 24801/2015 (By defendant – Under Order XI Rule 21 read with Section 151 CPC 1908 for dismissal of suit for non-compliance of order dated 01.10.2011) & **I.A.44681/2024** (By plaintiff – Under Section 151 CPC 1908 seeking leave to file requisite documents as directed vide order dated 27.02.2024)

1. The application bearing I.A. 24801/2015 has been filed by the defendant no. 1 under Order XI Rule 21 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), seeking dismissal of the suit for want of prosecution, on the ground that the plaintiff has failed to comply with the directions issued by this Court *vide* order dated 01.10.2011.

2. Application bearing I.A. 44681/2024 has been filed by the plaintiff, seeking leave to file the requisite documents as directed *vide* order dated



27.02.2024, thereby praying for the delay in compliance of the said order to be condoned.

3. In order to determine the instant applications in this matter, it is appropriate to succinctly outline the facts pertinent to the instant suit.

Factual Matrix

4. The plaintiff has instituted this suit for specific performance of the agreement dated 01.09.2005, and in the alternative for damages, in respect of the property known as Jagan Nath Market, bearing Municipal No. 335-A, situated at Hari Nagar Ashram, Main Mathura Road, New Delhi, consisting of shops bearing private nos. 1 to 32 (“suit property”).

5. The case of the plaintiff is that it is a private limited company duly incorporated under the Companies Act, 1956. On 01.09.2005, defendant No. 1 executed an agreement to sell in favour of the plaintiff concerning the suit property, for total consideration of Rs. 2,75,00,000/- (Rupees Two Crores Seventy-Five Lakhs only). Pursuant to the same, a sum of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs only) was paid to defendant no. 1 by the plaintiff *vide* cheque No. 293868 dated 01.09.2005, drawn on Vaish Cooperative New Bank Ltd., Kamala Nagar, New Delhi, as part of the sale consideration. The said cheque was also encashed by defendant no. 1.

6. The balance sale consideration of Rs. 2,00,00,000/- was to be paid by the plaintiff to defendant no. 1, within 12 months, i.e., on or before 31.08.2006. It is further averred that defendant No. 1 undertook to obtain the permission(s) required under Section 8 of the Delhi Land (Restriction on Transfer) Act, 1972, to facilitate the execution and registration of the sale deed in favour of the plaintiff, with such obligation being incumbent upon the seller. To this end, the plaintiff signed an application in triplicate for



such permission and handed it over to defendant No. 1 in October 2005.

7. As the stipulated date for the performance of the impugned agreement approached, the plaintiff, *vide* letters dated 26.06.2006, 07.08.2006, and 21.08.2006, repeatedly called upon defendant no. 1 to obtain the mandatory permission(s) under the Delhi Lands (Restriction on Transfer) Act, 1972, supply title documents and tenant details, and be ready to execute the sale deed. The plaintiff had also consistently affirmed its readiness and willingness to pay the balance consideration by enclosing proof of funds through a fixed deposit of ten crore rupees for this purpose.

8. The defendant No. 1, however, by letter dated 21.07.2006, denied responsibility for obtaining the required permission and claimed that the application had already been given back to the plaintiff. The plaintiff, *vide* reply dated 27.07.2006, refuted this stand and pointed out that execution and registration of the sale deed could not take place without the “No Objection Certificate” (“NOC”) under the Act.

9. It is the case of the plaintiff that, despite repeated reminders and even after the submission of a fresh application in triplicate, the defendant No. 1 did not take steps to obtain the necessary permission or provide the documents sought.

10. It is further the case of the plaintiff that it became aware that defendant no. 1 was negotiating the sale of the suit property to defendant no. 2. Consequently, the plaintiff, acting with abundant caution, issued a letter dated 10.08.2006 to defendant no. 2, notifying him of the agreement to sell dated 01.09.2005, and cautioning against any transaction in violation thereof.

11. The defendant no. 1, *vide* letter dated 17.08.2006, for the first time,



claimed that the property was to be sold on an “as is where is” basis, and that one Mr. Kalka Prasad Aggarwal, a prominent lawyer, had undertaken to obtain necessary permissions. The defendant no.1 further asserted for the first time that the details of the tenants had already been shared with the plaintiff.

12. It has been strongly contended by the plaintiff that it has consistently acted in good faith and has been ready and willing to meet its obligations under the agreement. Despite these efforts and having tried to assist defendant no. 1, the defendant repeatedly refused to cooperate. The plaintiff was thus left with no choice but to institute the present suit for specific performance. The prayer made by the plaintiff in the suit is as follows:-

- A) *pass a decree of specific performance in favour of the plaintiff and against the defendant No.1 directing the said defendant to execute the sale deed in respect of property known as Jagan Nath Market, bearing Municipal No. 335-A, situated at Hari Nagar Ashram, Main Mathura Road, New Delhi consisting of shops bearing private No. 1 to 32 in favour of the plaintiff and get the same registered as per law.*
- B) *restrain the defendant No.1 from selling, transferring, alienating or creating third party rights in property known as Jagan Nath Market, bearing Municipal No. 335-A, situated at Hari Nagar Ashram, Main Mathura Road, New Delhi consisting of shops bearing private No. 1 to 32 in favour of any other pers other than the plaintiff.*
- C) *in the alternative pass a decree in the sum of Rs. Two Crores and Seventy Five Lakhs (Rs. 2,75,00,000/-) in favour of the plaintiff and against the defendant No.1 for refund of Rs. 75,00,000/- (Rupees Seventy Five Lakhs) and damages for Rs. 2,00,00,000/- (Rupees Two Crores) alongwith pendente lite and future interest from the date of filing of the suit till realisation.*
- D) *The costs of this suit may also be awarded in favour of the plaintiff and against the defendants.*
- E) *Such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed.*



13. An application being I.A. 12828/2010 under Order XI Rule 12 and 14 of CPC was preferred by the defendant no.1, to direct the plaintiff to discover on oath and produce documents specifically enumerated in paragraph 7 of its application. Para 7 of the application reads as under:-

"7. That it is very much expedient and in the interest of justice that the Plaintiff be directed to discover on oath and file the necessary documents detailed below or any other document concerning and relevant to the litigation:

- a) Original rent receipt dated 1.4.2005 in favour of M/s. Analco Impex Limited and Shri Sunil Kumar Singhal being receipt Nos. 1 & 2 which are ante-dated.*
- b) Discover all Companies, firms, partnerships or proprietorships in which Shri Sunil Kumar Singhal, Shri Cm Prakash Singhal, Shri Sanjay Singal, Shri Anirudh Singal and other family members have interest and file the documents showing as to who are the shareholder/partners of the said Companies/firms.*
- c) File the bank statement of account of all the family holding pertaining to the period April, 2005 to 31.3.2007 duly certified under the Bankers Books Evidence Act.*
- d) Balance sheets including their schedules and annexures of all the family holdings pertaining to the year 1.4.2005 to 31.3.2007.*
- e) Any other document relevant and document necessary in power and possession of the Plaintiffs."*

14. While allowing the above application, the concerned Joint Registrar, *vide* its order dated 01.10.2011, held that the relationship between the plaintiff and the shop tenants is a contested issue, especially in view of the allegations of backdated tenancy receipts intended to complete the sale agreement. It was further ruled that lifting the corporate veil is justified not only in cases of fraud, but also to fairly decide the case based on the discovery of relevant documents. The concerned Joint Registrar, therefore, allowed the application of the defendant for the discovery of those documents. Relevant extract of the order dated 01.10.2011 has been reproduced as under:-



“Be that as it may, as far as the present suit is concerned, considering the fact that the question as to the relation between the plaintiff and the tenants of the shops seems to be indispensable, in as much as it is being alleged by defendant no. 1 side that the tenancies were created with back dated receipts, only to secure completion of the agreement to sell dated 01.09.2005, and denied by the plaintiff. Since the plaintiff and the tenants of the shops are stated to be different ventures/business entities belonging to Shri Sunil Kumar Singhal and his family members/close relatives, their constitution at the time of execution of the agreement dated 01.09.2005, their shareholding pattern etc. have become relevant and disputed facts.

As regards the contention of lifting of corporate veil is concerned, I am not able to agree with the opposition of the plaintiff side on the ground that the same can be resorted to only in case of fraud. Besides, considering the very nature of the allegations of defendant no. 1, the same seems to be a real necessity for an effective and proper decision of the case. In addition, the very discovery or the production of the documents as is sought by defendant no. 1, can alone decide the propriety and veracity of the allegations.

The law cited by the plaintiff side does not advance its case.

Considering the relevant facts and assertions in totality, declining such relief on technical objections would a travesty of justice, in as much as the parties need to be given a fair opportunity to bring their complete case/defence.

In view of the above, I allow the IA, directing discovery and production of the documents as claimed by defendant no. 1 in Para 7 of the IA.”

15. Pursuant to the above, the plaintiff preferred a chamber appeal, being O.A. 148/2011, against the order dated 01.10.2011, which was later withdrawn as not pressed on 20.08.2015.

16. Consequently, the order of the concerned Joint Registrar attained finality, and the matter was listed for the recording of evidence on 09.12.2015.

17. However, as the plaintiff did not comply with the aforesaid order despite the withdrawal of the appeal, defendant no. 1 preferred the present I.A. No. 24801/2015 under Order XI Rule 21 of CPC, praying for dismissal of the suit for non-compliance.



18. The Court *vide* order dated 03.12.2015, while issuing notice to the plaintiff on the aforesaid application, also modified the earlier directions of order dated 1.10.2011, by limiting the scope of the documents sought. The relevant extract of the order dated 03.12.2015 reads as under:-

6. So far as document mentioned in para 7(a) is concerned, and which is an original rent receipt dated 01.04.2005 in the name of M/s Analco Impex Limited and Mr. Sunil Kumar Singhal, counsel for defendant no.1/applicant admits that the counterfoil of this very rent receipt, counter signed by both Mr. Sunil Kumar Singhal and Mr. Om Prakash Singhal on behalf of M/s Analco Impex Limited, is in power and possession of the defendant no. 1. This counterfoil of this rent receipt has been filed by defendant no. 1 in the present case, as stated by counsel for defendant.no.1/applicant. A document which is filed in a case is to prove the case of a person or to disprove the case of other side. Once with respect to original rent receipt in possession of the other party the defendant no. 1 has filed a counter foil, and which would contain the same facts as the original rent receipt, there is no requirement of directing the plaintiff to file the original rent receipt with respect to which counterfoil has been filed. In any case, counsel for defendant no.1/applicant admits that plaintiff has denied that it has in its possession the original rent receipt as stated in para 7 of I.A. No.12828/2010. Once a document is denied by a party to be in the possession of such a party, there cannot be a direction under Order 11 Rule 14 CPC to produce such a document.

7. So far as prayer 7(b) of the I.A. No.12828/2010 is concerned, the documents which are sought to be discovered are so wide that the same is clearly in the nature of fishing and roving inquiry. No doubt, the order dated 01.10.2011 has become final, however, documents which are sought to be discovered as per para 7(b) of I.A. No.12828/2010 have to be documents which have co-relation to the cause of action which is mentioned in the application I.A.No.12828/2010 and which is that the tenancies were created in furtherance of the Agreement to Sell. Therefore, at best documents of the persons/ entities in whose names tenancies exist viz M/s Analco Impex Limited and Mr. Sunil Kumar Singhal would be relevant and not documents pertaining to each and every other family member, as is contended on behalf of the defendant no. 1/applicant. Therefore, para 7(b) of I.A.No.12828/2010 has to be restricted to directing the plaintiff to discover documents with respect to two tenancies in the name of M/s Analco Impex Limited and Mr. Sunil Kumar Singhal, and that too for the period from 01.05.2005 as prayed, up to the date of Agreement to Sell i.e. 01.09.2005 (calendar month September, 2005) but not up to 31.03.2007, as is prayed on



behalf of the defendant no.1/applicant. The period of 1.5.2005 to September, 2005 is taken as the issue is with respect to existence of tenancies in furtherance of the Agreement to Sell which is September,2005 only and the relevant facts would only be as between the period from 01.04.2005 and the calendar month of September,2005.

8. So far as the documents mentioned in para 7(c) of the said IA. is concerned, once again, such a broad direction of production of documents as prayed would not be required in the context of issues/relevant matters in controversy in the present case and the discussion given above with respect to documents stated in para 7(b) of I.A. No.12828/2010 will apply mutatis mutandis with respect to para 7(c) of the I.A. No.12828/2010 and the plaintiff will be required to file bank statements only of M/s Analco Impex Limited and Sh. Sunil Kumar Singhal. Once again, the same logic will even apply with respect to documents as stated in para 7(d) of the said application and plaintiff will be required to file the balance sheet of M/s Analco Impex Limited for the financial year 1.4.2005 to 31.3.2006.

9. In view of the above, though notice is issued in this application, it is issued on limited aspects given hereinabove that the documents relevant to the creation of tenancies in the name of M/s Analco Impex Limited and Mr. Sunil Kumar Singhal, and that the general nature of prayers in para 7(b) to 7(d) have to be read in limited manner confined to cause of action as stated in IA.No.12828/2010.

19. It is to be seen, from the above order dated 03.12.2015, that the scope of the documents sought to be discovered and produced in paragraph 7 of application I.A. No. 12828/2010, was limited to the following extent:-

- a. Tenancy Documents with respect to two entities, i.e., M/s Analco Impex Limited and Mr. Sunil Kumar Singhal, and that too for the period from 01.05.2005 up to 01.09.2005;
- b. Bank statements of M/s Analco Impex Limited for the FY 01.04.2005 to 31.03.2006;
- c. Balance sheets of M/s Analco Impex Limited and Mr. Sunil Kumar Singhal for FY 01.04.2005 to 31.03.2006.



20. Subsequently, *vide* order dated 07.01.2020, the Court observed that an affidavit from the plaintiff-company is required in addition to the affidavit submitted by Mr. Sunil Kumar Singhal.

21. The Court found the existing affidavit of Mr. Sunil Kumar Singhal to be deficient, as no specific particulars have been averred concerning tenancy documents. Accordingly, the Court directed both the plaintiff-company and Mr. Sunil Kumar Singhal to submit their respective comprehensive affidavits in accordance with Order XI Rule 21 of CPC, within a period of one week. The Court further cautioned that failure to produce the requisite documents may result in an adverse inference against the plaintiff. The relevant portion of the said order reads as under:-

“6. Learned counsel for the applicant/defendant No. 1 states that the application was filed by the defendant No. 1 against plaintiff which is a company and thus, not only Sunil Kumar Singhal but the company was required to file an affidavit in response to the notice issued.

7. Learned counsel for the plaintiff fairly admits that there is no reply on behalf of the plaintiff company and that, even in the reply of Sunil Kumar Singhal, there is no specific averment that there was no document with the plaintiff with regard to the tenancy which was created from 1st July, 2005 which plea has been taken in the written statement in CS(OS) 1041/2007 by the plaintiff in the present suit, who is the defendant No. 1 in CS(OS) 1041/2007.

8. Reply affidavit filed by Sunil Kumar Singhal is sketchy. Detailed affidavit(s) in terms of Order XI Rule 21 CPC will be filed on behalf of the plaintiff/non-applicant in CS(OS) 1660/2006 and by Sunil Kumar Singhal, replying to the averments in the application for the reason, in case, the onus to prove a fact is on the plaintiff and he does not produce certain documents, an adverse inference can be ultimately drawn by the Court.

9. Learned counsel for the plaintiff/applicant seeks time to file reply affidavit to the application on behalf of the plaintiff-company in CS(OS) 1660/2006 and also by Sunil Kumar Singhal within one week. The affidavits be filed within one week. Response thereto within one week thereafter.”



22. Furthermore, *vide* order dated 07.02.2020, it is seen that the said compliance was not made, and that further directions were passed. The said order reads as under:-

- 1. Despite pass-over counsel for the plaintiff in CS(OS) 1660/2006 is not present.*
- 2. The affidavit of Sanjay Singhal filed pursuant to the order dated 7th January, 2020 is sketchy. The affidavit does not even disclose the name of shareholders, directors or the bank accounts and a simple denial has been issued in the form of an affidavit of Shri Sanjay Singhal.*
- 3. No affidavit has been filed by Sunil Kumar Singhal despite directions.*
- 4. Sanjay Singhal and Sunil Kumar Singhal will file affidavits in Form 16A Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure within three weeks. They will also file additional affidavits in terms of the format annexed as Annexure A to the present order within three weeks.*

23. It is observed that, as of 05.08.2025, compliance with the direction to file the said affidavits has not been made. The relevant portion of the said order is extracted as under:-

“1. Vide order dated 07.01.2020, which was reiterated on 07.02.2020, besides other compliances, the plaintiff was directed to file the affidavit of Sunil Kumar Singhal, which admittedly has not been done.

2. The Court, vide order dated 27.02.2024, has made the following observations:

“1. Learned Counsel for the Defendant has submitted that his IA.24801/2015 under Order XI Rule 21 CPC is pending disposal vide Orders dated 07.01.2020 and 07.02.2020 the plaintiff had been directed to file the affidavit of Mr. Sunil Kumar Singhal but what has been filed is vague and does not contain the details as has been directed. Despite Specific Performance directions vide Order dated 07.02.2020, the additional affidavit have not been filed.

2. One final opportunity is given to comply with the Order dated 07.01.2020 and 07.02.2020 within one week, failing which the Suit shall be dismissed. List before the learned Joint Registrar on 26.04.2024.”

3. It is thus seen that in the absence of complete compliance with the order dated 07.01.2020 and 07.02.2020, the suit will have to be dismissed.

4. Faced with the aforesaid difficulty, Mr. Sudhir Nandrajog, learned Senior Counsel, prays for a short indulgence to take instructions.



5. *At his request, list on 13.08.2025.*”

24. Pursuant to the observations made by this Court on 05.08.2025, Mr. Sudhir Nandrajog, learned Senior Counsel for the plaintiff, submitted that two separate affidavits have been filed by Mr. Sunil Kumar Singhal and Mr. Sanjay Kumar Singhal, both of whom were physically present in Court.

25. Mr. Sanjeev Sindhvani, learned Senior Counsel appearing for Mr. Sunil Kumar Singhal, affirmed that the affidavits were filed in compliance with the directions of the Court.

26. However, Mr. Nandrajog and Mr. Sindhvani pointed out that the Registry had returned both affidavits due to a delay in their filing. Accordingly, the Registry was directed to place both affidavits on the digital record of the Court forthwith.

Submissions

27. Mr. Anand Yadav, learned counsel for defendant No. 1 in CS(OS) 1660/2006, submits that the affidavits filed by Mr. Sunil Kumar Singhal and Mr. Sanjay Kumar Singhal ought not to be taken on record at this stage, given the ample indulgence extended by this Court on various instances to the plaintiff. It is further submitted that the conduct of the plaintiff, marked by a prolonged and unexplained delay, is contumacious and warrants the dismissal of the suit as it prejudices the right of the defendant to a fair and equitable trial. Consequently, defendant no.1 seeks dismissal of the suit for want of prosecution under Order XI Rule 21 of CPC.

28. Mr. Yadav further submits that a period of four weeks was stipulated in the order dated 01.10.2011 for compliance, which commenced on 02.10.2011 and expired on 29.10.2011, and yet, the plaintiff failed to adhere to the directions issued by the Joint Registrar. Instead of filing the requisite



affidavit and producing the documents, the plaintiff belatedly preferred a Chamber Appeal bearing O.A. No. 148/2011 before this Court.

29. Pursuant to the order dated 20.08.2015, the directions in the order of the concerned Joint Registrar dated 01.10.2011 became operative, which required the plaintiff to comply with the same, within four weeks therefrom.

30. However, despite the lapse of ample time since 20.08.2015, the plaintiff has neither filed an affidavit of discovery nor produced the documents as mandated.

31. Mr. Yadav contends that the failure of the plaintiff to file the requisite affidavit and documents seems to be a tactic to delay the proceedings. Without the documents mentioned in paragraph 7 of I.A. No. 12828/2010, the evidence stage cannot progress, which hinders defendant no. 1 from effectively conducting cross-examination of the witnesses of the plaintiff.

32. Mr. Sudhir Nandrajog, learned Senior Counsel for the plaintiff, vehemently denies the allegation that there was non-compliance with the order dated 01.10.2011 passed by the Joint Registrar. He submits that the plaintiff had, in fact, filed an affidavit of Mr. Sanjay Singhal, Director of the plaintiff company, on 01.12.2015 *vide* diary no. 628634/2015, much prior to the issuance of notice in the present application on 03.12.2015, and that an advance copy thereof had been supplied to the defendants.

33. Learned senior counsel further contends that the filing and service of the affidavit stands recorded by the concerned Joint Registrar in the order dated 09.12.2015, and hence, the plea of defendant no.1 alleging default is wholly misconceived and intended only to mislead the Court.

34. It is further urged by Mr. Nandrajog that in the said affidavit, the Director has categorically stated that he is not aware of any firms,



companies, or businesses incorporated by his relatives, nor has he ever been in possession of the documents or information pertaining thereto. He has clarified that apart from the records of M/s Analco Marketing Pvt. Ltd. and the plaintiff company, neither bank statements nor balance sheets of any other concern have ever been in his power or possession. Even as regards M/s Analco Marketing Pvt. Ltd., Mr. Nandrajog submits that such documents are neither relevant nor material to the decision of the present suit.

35. In this backdrop, it is argued that no adverse orders can be passed against the plaintiff for non-production of documents that are neither in its custody nor control, including the documents pertaining to M/s Analco Impex Pvt. Ltd.

36. Mr. Nandrajog also places reliance on the decision in *Sanjay Wamanrao Bodke v. Padmini Nandkumar Nair*¹, wherein it was held that an order under Order XI Rule 21 CPC, directing dismissal of the suit entails grave consequences and causes serious prejudice, and thus must be resorted to only as a measure of last resort in cases of willful default or deliberate disregard of a court order passed during the trial.

37. He submits that, in instances of delayed compliance, the Court may adopt a lenient approach to ensure substantial justice, provided the non-compliance is neither willful nor *mala fide*. It is contended that the delay in filing the requisite documents was not intentional but was occasioned by the considerable time required to trace old records.

38. Accordingly, by way of the instant application bearing I.A. No. 44681/2024, the plaintiff seeks leave to place on record the documents



required to be produced in compliance with the order dated 07.01.2020.

Analysis

39. I have heard learned counsel for the parties and have perused the record.

40. Before embarking upon the merits of the present set of applications, it is necessary to first examine the statutory framework and judicial principles that govern the exercise of jurisdiction under Order XI Rule 21 of CPC. For reference, Order XI Rule 21 of CPC is reproduced as under:-

“Order XI:- Discovery and Inspection”

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence; if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and [an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]

41. The aforesaid provision empowers the Court to dismiss a suit for non-prosecution where a plaintiff fails to comply with an order relating to the discovery or inspection of documents, or, in the case of the defendant, strike off his defence. As such, it is noticeable that the provision does not enlist any potential reasons for the failure to comply, and merely provides that on the simplicitor failure to comply with a direction of discovery or inspection, the plaintiff under the direction is liable to face the penultimate direction of

¹ 2014 SCC OnLine Bom 1262



dismissal. However, the application of judicial mind is a *sine qua non* while considering the reasons for failure to comply with the order.

42. Understandably, by virtue of the stern nature of the power, the exercise of this power requires the Court to tread with utmost caution and deliberate care. It is well-settled that a dismissal under this provision cannot be lightly or routinely imposed. Rather, it must be based on a clear finding of wilful or intentional withholding of documents or deliberate non-compliance with the directions of the Court. The precise effect of the failure contemplated in Order XI Rule 21 of CPC is contingent upon the facts and circumstances of the case.

43. In this regard, the Supreme Court in ***Babbar Sewing Machine Co. vs Trilok Nath Mahajan***,² while interpreting the ambit and exercise of powers under Order XI Rule 21 CPC, has observed that extreme delay in production of documents causes prejudice to the opposite party, and the same would be a fit case for exercise of the aforesaid power. The relevant portion of the said decision reads as under:-

“14.The power for dismissal of a suit or striking out of the defence under order XI, rule 21, should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party.”

44. The guiding principle, thus, is that the power under Order XI Rule 21 of CPC is drastic in nature, and should be invoked only in cases where the conduct of the plaintiff exhibits contumacious disregard of judicial orders or inordinate and unexplained delay that seriously prejudices the opposite party or obstructs the regular progress of the suit. Thus, the excessiveness of the

² 1979 SCR (1) 57



delay must be coupled with the satisfaction that the delay has resulted in prejudice to the opposite party. Furthermore, the Court must be satisfied that non-compliance is not due to inevitable circumstances or innocuous omission, but rather a deliberate or culpable default driven by *malafide*.

45. In the context of suits for specific performance, the threshold of compliance is particularly exacting. Unlike other civil remedies, the grant of specific performance is contingent, not merely upon the existence of a valid contract but upon the continuous demonstration of readiness and willingness by the plaintiff to perform its reciprocal obligations. This requirement, embodied in Section 16(c) of the Specific Relief Act, 1963, is a condition precedent to the maintainability of such a claim, and the absence of proper averment or proof in this regard is fatal to the suit.

46. The principle flows from the equitable nature of the remedy. Specific performance is not a matter of right but of judicial discretion, exercised only in favour of a party who has approached the Court with clean hands and shown consistent diligence. Where the conduct of the plaintiff discloses lethargy, delay, or incapacity to fulfil their part of the bargain, the Court will decline relief, since equity does not aid those who sleep on their rights.

47. Though specific performance was formerly understood as an equitable remedy, exercised at the discretion of the Court, and often contingent on clean hands, delay or lack of diligence on the part of the plaintiff, the 2018 amendment to the Specific Relief Act marks a significant shift. Under the amended law, specific performance is no longer merely discretionary. Section 10 now provides that the specific performance “shall” be enforced subject to the limited bars in Sections 11(2), 14, and 16.



48. Thus, a plaintiff cannot ordinarily be denied specific performance purely on grounds of delay or past lethargy, unless the case falls within one of those excluded categories.

49. The equitable maxims such as “clean hands” or “sleeping on one’s rights” remain relevant, but their impact is now more circumscribed. The plaintiff must still satisfy personal bars under Section 16, especially Section 16(c) of the Specific Relief Act, where the party seeking specific performance has to establish readiness and willingness to perform the essential terms.

50. The Supreme Court, in ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao & Ors***³ emphasized this principle, holding that the plaintiff must plead and establish continuous readiness and willingness, not only from the date of execution of the contract, but until the decree. Such readiness is to be adjudged not only on pleadings, but also from the overall conduct, the availability of consideration, and the surrounding circumstances. In other words, the Court must be reasonably assured that the plaintiff had both the intent and the financial ability to perform their obligations throughout. The relevant portion of the said decision reads as under:-

“5.....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 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

³ (1995) 5 SCC 115



consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith 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 always ready and willing to perform his part of the contract.”

51. Applying the above principles to the present case, it becomes evident that the plaintiff has failed to demonstrate such continuous readiness and willingness. The timeframe, when appreciated holistically in the light of the record, reflects a pattern of delay and inaction, which militates against the grant of this equitable relief. In such circumstances, the plaintiff cannot invoke the discretionary jurisdiction of this Court to compel specific performance.

52. The similar principle was again reiterated by the Supreme Court in **Vijay Kumar v. Om Parkash**⁴, wherein it was observed that the conduct of the parties has to be seen “*throughout*”. The relevant portion is culled out hereunder for reference:-

“6. In order to obtain a decree for specific performance, the Plaintiff has to prove his readiness and willingness to perform his part of the contract, and the readiness and willingness has to be shown throughout and has to be established by the Plaintiff....”

53. The Supreme Court reiterated this position in **C.S. Venkatesh v. A.S.C. Murthy**⁵, wherein it was observed that the expression “*ready and willing*” signifies that the plaintiff must be prepared to carry out those obligations under the contract which fall upon him, and to see them through

⁴ (2019) 17 SCC 429

⁵ (2020) 3 SCC 280



to their logical conclusion. The Court emphasized that continuous readiness and willingness on the part of the plaintiff is a condition precedent for the grant of specific performance, and failure either to plead or to prove the same is fatal to the claim. In adjudging such readiness and willingness, the Court must necessarily consider the conduct of the plaintiff, both prior to and subsequent to the institution of the suit, together with other attending circumstances. The Court is entitled to draw appropriate inferences from the totality of facts and circumstances to determine whether the plaintiff has discharged this obligation. The relevant portion of the said decision reads as under:-

16. The words "ready and willing" imply that the Plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of performance. 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 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 which he has to pay the Defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the Plaintiff was ready and was always ready to perform his contract.

54. The Supreme Court in ***Shenbagam v. K.K. Rathinavel***⁶ clarified that in suits for specific performance of agreements relating to immovable property, although time is generally not regarded as the essence of the contract, the plaintiff must nonetheless establish continuous readiness and willingness to perform his part, supported by conduct consistent with such assertion. It was further emphasized that while exercising discretion, Courts



must take into account the conduct of the parties, the escalation in the value of the property, and the potential for unjust enrichment, so as to ensure that the decree does not operate inequitably, particularly against a party who is not at fault. The relevant portion of the said decision reads as under:-

17.The precedents of this Court indicate that the plaintiff must establish that he was 'ready and willing' to perform the contract. In this regard, the conduct of the plaintiff must be consistent"

33.The respondent has failed to provide any documents or communication which would indicate that he called upon the appellants to perform their obligations or discharge the mortgage within the time period stipulated in the contract. Even after the expiry of the six months, the respondent did not reach out to the appellants. It is only in response to the appellants' legal notice that the respondent demanded performance of their obligations. Merely averring that he was waiting with the balance consideration and believed that the appellants would clear the encumbrance is insufficient to prove that the respondent-plaintiff was willing to perform his obligations under the contract.

41.True enough, generally speaking, time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault.

55. It can thus be fairly concluded that where the conduct of the plaintiff demonstrates prolonged neglect or intentional withholding of documents, thus causing inordinate delay, the suit becomes liable to be dismissed under this provision. The rationale is anchored in public policy and judicial prudence to prevent misuse of the judicial process and to ensure speedy justice.

56. The role of the Court is to balance the harshness of dismissal against the need for fair trial and expeditious adjudication. While the Court must

⁶ 2022 SCC OnLine SC 71



ensure that technical lapses do not become a weapon for oppression or injustice, it equally cannot countenance procedural defaults that impede the administration of justice. Each case must be assessed on its own facts, considering the nature and extent of delay, explanation offered, and overall conduct of the plaintiff.

57. The plaintiff, being the claimant, thus bears a duty to assist the Court by complying proactively with procedural mandates and to facilitate final adjudication.

58. Under the facts of the present case, it is well-established that the instant matter is a suit for specific performance. It is further evident from the record that the direction for discovery and production of documents was originally issued on 01.10.2011. The chamber appeal preferred against the said order was withdrawn by the plaintiff on 20.08.2015, and accordingly, the order dated 01.10.2011 thereby attained finality. The subsequent order dated 03.12.2015, passed in I.A. 24801/2015, only restricted the ambit of documents required to be produced. The obligation to comply, therefore, remained undisturbed and continued from the original direction of 01.10.2011.

59. Consequently, there has been a delay of more than twelve years in offering compliance, even if reckoned most favourably from 03.12.2015, the delay still spans close to nine years. Except for the time spent in the pursuit of the chamber appeal, there is no cogent explanation for the failure, and even that aspect ceases to hold relevance after 03.12.2015. Such prolonged and unexplained delay cannot be condoned, especially in a suit for specific performance against an immovable property, where the plaintiff is required to act with utmost diligence.



60. With respect to the contention of the plaintiff that the affidavit dated 01.12.2015 constituted sufficient compliance and that no adverse inference can be drawn for want of possession of the documents in question, this Court is not persuaded. The affidavit was filed only after a long delay and, in any event, contains little more than bare denials of knowledge or custody. It does not in any way answer the specific directions contained in the order of 01.10.2011. In fact, the observations recorded in the subsequent orders, categorically noting the conduct of the plaintiff and unjustifiable vagueness in the affidavits filed by them, make it amply clear that the plaintiff's explanation does not make out a case of *bona fide* delay.

61. It is not open to a party, once directions for discovery stand crystallised, to defeat the same by delaying compliance for years and then taking shelter under general denials, that too when the party under direction is the plaintiff, who is statutorily required to maintain a consistent conduct which is indicative of its readiness and willingness to perform its part. Equally, it is trite that such conduct must be demonstrable throughout the pendency of the suit and not just prior to its institution. A useful reference in this regard may be made to the proposition laid down in *C.S. Venkatesh*. Thus, the obligation upon the plaintiff was to place before the Court the documents that were in fact within the power and possession of the plaintiff and possession, or at the very least, to state its position candidly within a reasonable time. That exercise has not been undertaken. The belated plea of absence of custody, set up after years of resistance and protraction, cannot be now, as due compliance now. Thus, reliance on the decision in *Sanjay Wamanrao Bodke* by the plaintiff is misplaced and not applicable to the facts of the present case.



62. Pertinently, even while defending this application, the plaintiff has not been able to justify the delay on any reasonable ground whatsoever. No circumstance has been placed on record to suggest that the delay was not excessive or unexplained, or that it was occasioned on account of any factor beyond the control of the plaintiff. The only two aspects asserted by the plaintiff – *firstly*, the sufficiency of the affidavit filed earlier in 2015, and *secondly*, the time consumed in tracing the documents – are completely unacceptable in light of the record of the case. As noted already, the affidavit filed earlier was vague and not in accordance with the order passed by the Court. Despite facing a direction to file proper affidavits, the plaintiff's submission that the affidavit filed earlier was proper and in accordance with the order is not only contrary to the record but also undermines the judicial order passed by the Court directing the plaintiff to ensure proper compliance. Further, as regards traceability, the plaintiff has adopted an inherently contradictory approach to justify its stance. On one hand, Mr. Singhal has asserted that the documents in question were never in his possession, and on the other hand, he sought to justify the delay by contending that the delay was occasioned due to the time consumed in tracing the documents. Evidently, this position is both unacceptable and irreconcilable.

63. The Court finds that this is an extreme case warranting the strict application of Order XI Rule 21 CPC. The conduct of the plaintiff, as detailed above, clearly exhibits contumacy and a wilful attempt to disregard the directions of the Court. Having said so, this Court is also of the view that the unexplained delay and non-compliance have caused prejudice to the applicant/defendant inasmuch as the suit pertains to the specific performance



of a contract relating to an immovable property. Understandably, in addition to the deplorable conduct of the plaintiff, it cannot be ignored that the suit property ought to have undergone a significant price rise during the period of delay and without any fault in the conduct of the applicant/defendant during the period in question, it would be wholly unreasonable and inequitable to compel the applicant/defendant to face a decree at this stage and to confer upon the plaintiff a benefit of its own wrong. Law does not support such inequitable enrichment, that too of a party on the wrong side of law. Such conduct squarely falls within the category of cases that justify dismissal under the settled legal principles laid down by the Supreme Court in *Babbar Sewing Machine Company*.

64. In view of the foregoing discussion, I.A. 24801/2015, filed by the defendant under Order XI Rule 21 read with Section 151 of the Code of Civil Procedure, 1908, seeking dismissal of the suit for non-compliance with the order dated 01.10.2011, is allowed.

65. Consequently, I.A. 44681/2024, filed by the plaintiff under Section 151 CPC seeking leave to place on record the requisite documents in terms of the order dated 27.02.2024, stands rejected.

CS(OS) 1660/2006, I.A. 24801/2015, I.A. 25296/2015, and I.A. 44681/2024

1. As a result, in consequence of the order allowing I.A. 24801/2015, the civil suit, along with all pending applications, stands dismissed.

2. No order as to costs.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

SEPTEMBER 15, 2025/ aks