



2025:DHC:7479



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

+ **CS(OS) 109/2022, I.A. 4709/2023, I.A. 24809/2023, I.A. 42901/2024**

Date of Decision: **21.08.2025**

**IN THE MATTER OF:**

**SHRI SANJEEV KUMAR**

S/O LATE SHRI SHYAM PRAKASH

RIO KISHORE HOUSE, NEAR DAIZY BANK EST ATE,

NEAR JODHA NIWAS, LOWER ZAKHU, SHIMLA,

HIMACHAL PRADESH.

..... PLAINTIFF

Through: Mr. S.K. Bhaduri, Ms.Shreyangana  
Bag, Ms.Rimpy Rohilla and Ms.  
Neetu Gupta, Advocates.

Versus

**1. SHRI RAJIV MALHOTRA**

S/O LATE SHRI SHYAM PRAKASH

RIO HOUSE NO. 440, SECTOR-35A,

CHANDIGARH- 160022

.... DEFENDANT NO.1

**2. SMT.NEERADHAWAN**

WIFE OF SHRI VIKRAM DHAWAN

D/O LATE SHRI SHYAM PRAKASH

RIO HOUSE NO. 27/27, EAST PATEL NAGAR,

NEW DELHI-110008

...DEFENDANT NO.2

**3. SMT AARTI MALHOTRA**

W/O SHRI SUNIL MALHOTRA

D/O LATE SHRI ANAND PRAKASH

RIO S-490, GREATER KAILASH PART-1



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NEW DELHI -110048

.....DEFENDANT NO.3

**4. M/S NATRAJ COMMERCIAL COMPLEX PRIVATE LIMITED**

THROUGH ITS DIRECTOR MRRAJAN TEWARI  
TEWARI HOUSE, 11 B/8 PUSA ROAD  
NEW DELHI-110005

.....DEFENDANT NO.4

Through: Mr.Harkirat Singh, Advocate for D-2.  
Mr.Rahul Sharma, Mr.Rishab  
Kaushik, Mr.Mani Kant and  
Ms.Shikha Singh, Advocates for D-4.

AND

+ **CS(OS) 276/2024 and I.A. 7718/2024**

**NATRAJ COMMERCIAL COMPLEX PVT LTD THROUGH ITS DIRECTOR SH RAJAN TEWARI**

THROUGH ITS DIRECTOR SH. RAJAN TEWARI  
HAVING ITS REGISTERED OFFICE AT:  
11B/8, PUSA ROAD, NEW DELHI – 110005.

..... PLAINTIFF

Through: Mr.Rahul Sharma, Mr.Rishab  
Kaushik, Mr.Mani Kant and  
Ms.Shikha Singh, Advocates

**1. SANJEEV KUMAR**

S/O LT. SH. SHYAM PRAKASH  
R/O KISHORE HOUSE, NEAR DAIZY BANK ESTATE,  
NEAR JODHA NIWAS, ZAKU, SHIMLA,  
HIMACHAL PRADESH.

.....DEFENDANT NO.1

**2. SMT. NEERA DHAWAN**



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D/O LATE SH. SHYAM PRAKASH,  
W/O SH. VIKRAM DHAWAN,  
R/O HOUSE NO. 27/27, EAST PATEL NAGAR,  
NEW DELHI-110008.

.....DEFENDANT NO.2

Through: Mr. S.K. Bhaduri, Ms.Shreyangana  
Bag, Ms.Rimpy Rohilla and Ms.  
Neetu Gupta, Advocates for D-1.  
Mr.Harkirat Singh, Advocate for D-2.

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**JUDGEMENT**

**PURUSHAINDR KUMAR KAURAV, J. (ORAL)**

**I.A. 3028/2025 (by D-1 for dismissal of suit) in CS(OS) 276/2024**

1. The applicant in the instant application prays for the following relief:-

*“i) frame a preliminary issue regarding maintainability of the present Suit and decide the said preliminary issue in favour of Defendant No.1 in accordance with the submissions made in the present Application and dismiss the present Suit being not maintainable in the eyes of law, in the interest of justice.”*

2. Heard learned counsel appearing on behalf of the parties.

3. Learned counsel for the applicant submits that the instant suit is not properly valued and that the plaintiff has no case to seek the reliefs prayed in the captioned suit. He submits that on various grounds as have been enumerated in the application, the instant suit deserves to be rejected.

4. According to him, the application has consciously been filed under Section 151 of Code of Civil Procedure, 1908 (CPC), so that the Court may,



in exercise of its inherent powers, consider all the facts and circumstances relevant to the instant application and pass appropriate orders.

5. The aforesaid contentions are vehemently opposed by learned counsel for the plaintiff.

6. Learned counsel appearing for the plaintiff submits that applications seeking rejection of plaint may not be filed under Section 151 of the CPC in view of the express provision for the same under Order VII Rule 11. He further submits that allowing the present application would amount to expansion of the scope of the Court's power to reject the plaint, by taking into consideration, material, other than the averments in the plaint and the documents relied thereon. He contends that, therefore, the instant application is meritless and deserves to be dismissed.

7. I have considered the submissions made by learned counsel appearing on behalf of the parties and also perused the record.

8. The instant application for dismissal of the suit has been filed under Section 151 of the CPC, and the principal grounds urged herein, are (i) improper valuation of the suit and insufficiency of the Court Fees paid thereon. (ii) the suit being barred by limitation, and (iii) that the agreement which is sought to be specifically enforced being unregistered, cannot be specifically enforced.

9. The CPC contains express provisions for rejection of plaints, under Order VII Rule 11. It is settled law that the inherent powers of the Court cannot be exercised in respect matters for which express provision has been



made under the CPC. The grounds raised in the instant application by the defendant for dismissal of the suit are covered under Order VII Rule 11(b) and (d).

10. It is also settled law that the Court may appreciate applications filed under incorrect provisions, as having been filed under the correct applicable provision. Therefore, the present application is to be considered under Order VII Rule 11 of the CPC.

11. The scope of inquiry for rejection of the civil suit as envisaged under the provisions of Order VII Rule 11 of the CPC, has been well settled by the Supreme Court. Reference can be made to the decision in the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr Lrs & Ors.***<sup>1</sup> The relevant portion of the said decision is extracted below, for reference:

*“12.2. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

*12.3 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

*12.4 xxx*

*12.5 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

*12.6. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

*12.7 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction*

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<sup>1</sup> 2020 INSC 450



*with the documents relied upon, would the same result in a decree being passed.*

*12.8 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.”*

12. In light of the aforementioned conspectus of the applicable law, the present application is being considered. The facts of the case indicate that the suit has been instituted for specific performance of Agreement to Sell dated 25.04.2009 and Supplementary Agreements, the last of which is dated 04.04.2022 executed between the plaintiff, the late Mr. Shyam Prasad who was the father of defendants herein, and one Mrs. Arti Malhotra. Upon the death of Mr. Shyam Prasad on 03.04.2021, his share in the suit property devolved on one Mr. Rajiv Malhotra and the defendants herein, being his legal heirs. Subsequently, Sale Deeds seem to have been executed by Mrs. Arti Malhotra and Mr. Rajiv Malhotra, in respect of their respective shares in the suit property. The present suit is for specific performance of the said Agreement to Sell in respect of the shares of the defendants herein.

13. The principal contention of the defendants that the Court Fees for the present suit ought to have been paid on the total consideration for the sale of the suit property as recorded in the said Agreement to Sell appears to be unfounded.

14. Section 7(x) of the Court Fees Act, 1887 (CFA) governs the aspect of computation of Court Fees in suits for specific performance of contracts for sale of immovable properties. The said provision is extracted below for reference:



*“7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—*

...

....

*for specific performance.—(x) In suits for specific performance— (a) of a contract of sale—according to the amount of the consideration : (b) of a contract of mortgage—according to the amount agreed to be secured : (c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term : (d) of an award—according to the amount or value of the property in dispute :”*

15. A perusal of the said provision indicates that Court Fees in such suits are to be computed according to the amount of consideration. In the present suit, the said Agreement to Sell is sought to be enforced to the limited extent of the shares of the defendants herein. The plaintiff, therefore, claims that the Court Fees to be paid is to be computed on the amount of consideration due to the defendants in respect of their shares. The said argument advanced on behalf of the plaintiff appears to be correct.

16. Under Section 12(4) of the Specific Relief Act, 1963, (SRA) the Court has the power to direct specific performance of a part of a contract. The said provision is extracted below, for reference:

*“12.... (4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.”*

17. Considering Section 12(4) of the SRA and Section 7(x) of the CFA together, the logical conclusion that follows is that in a suit for specific



performance of contract, if the plaintiff has restricted his prayer to specific parts of the contract, Court Fees would be computed on the consideration to be paid in respect of such parts of the contract.

18. For the purpose of the present suit, the agreement is limited to the part relating to the extent of the shares of the defendants. Therefore, computation of Court Fees in the present suit is to be on the amount of consideration to be paid to the defendants under the Agreement to Sell. Reference can be made to the decision of the Allahabad High Court in *Smt. Saroj Gupta And Others vs IVth Additional Dist. Judge, Etah and others.*<sup>2</sup> The relevant portion of the said judgment is extracted below, for reference:

*“7. The valuation of the suit has to be made according to the amount of the consideration as mentioned in the agreement irrespective of the fact that any amount of sale consideration might have been paid to the vendor. This question has been considered by a Division Bench of this Court in S.P. Gupta v. Abdul Rahman, AIR 1958 All 851 : (1957 All LJ 889). It was held that for the purpose of the valuation of the suit the amount of sale consideration as disclosed in the agreement should be taken for the purpose of valuation of suit. The fact that such plaintiff claims to have already paid any amount towards the sale consideration shall not be taken into account for the purpose of valuing the suit because the words used in Clause (X) of Section 7 of the Court-tees Act means consideration payable in respect of the contract and not the amount of the consideration which according to the plaintiff is payable at the time the suit is decreed.*

*8. The reason was obvious that in suit for specific performance of contract of sale plaintiff may avoid payment of court-fee on the allegation that he has already paid substantial amount to the defendant prior to the filing of the suit. The words "amount of consideration" was interpreted as the amount which has been indicated as consideration in a contract of sale.*

*9. This decision is not applicable in a case where the plaintiff does not claim relief in respect of the entire property which is subject matter of*

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<sup>2</sup> 1993 SCC OnLine All 96



*the contract of sale. He has confined his relief to the portion of the property and accordingly he has valued the suit on the basis of valuation of such property.*

*10. It is a different matter which may be decided ultimately in the suit as to whether such relief can be granted when the contract is not divisible or other circumstances which does not justify granting relief of specific performance of contract for part of the property covered under the agreement. In that circumstance the court will have to consider whether there was an alteration of contract by mutual consent expressly or impliedly and whether relief can be granted in respect of part of the property which is the subject matter of the contract of sale. There is, however, no bar for a plaintiff confining his relief to a part of the property which is subject matter of specific performance and value such property.*

*11. The words "the amount of the consideration" used in clause (X) of Section 7 of the Court-fees Act contemplates the consideration of the property which is subject matter of sale under the agreement. The consideration is correlated with the property. The contract relates to property and the amount of the consideration relates for such property.*

*12. In case where the agreement of sale consists of various properties separately indicating value of each of the properties separately and the plaintiff chooses to file suit regarding some of the properties covered under the original agreement on the basis that there was subsequent arrangement between the parties, there is no bar valuing the suit on the basis of value of such part of the property under the agreement. It will be the amount of consideration for sale relating to the property mentioned in the agreement."*

19. The observations made in quoted portion of the said judgment align with the view taken by this Court.

20. The second ground on which dismissal of the suit is sought, is that the Agreement to Sell having been executed in 2009, the present suit is barred by the Limitation Act, 1963 (*Limitation Act*) having been filed beyond the limitation period.

21. Under Article 54 of the Schedule to the Limitation Act, suits for specific performance of contracts ought to be instituted within three years



from the date fixed for its performance or from the date when the plaintiff got notice of refusal of its performance.

22. A perusal of the plaint and the documents relied on, therein discloses that the Agreement to Sell dated 25.04.2009 was followed by Supplementary Agreements. The last of the said Supplementary Agreements, bearing the signature of late Mr. Shyam Prasad and Mrs. Arti Malhotra, is dated 13.11.2020, and the last date for payment of the consideration amount was extended to 04.04.2021 thereunder. Considering the same, *prima facie*, the limitation period does not seem to have expired prior to 23.02.2024, when the suit was instituted.

23. Furthermore, clearly, the question of limitation period under Article 54 of the Limitation Act is a mixed question of facts and law, which can be adjudicated only on the basis of evidence led by the parties. Therefore, the plaint cannot be rejected on the said ground, at such preliminary stage. The same may be raised by the defendants during the course of trial.

24. The objection to the maintainability of the suit on the ground that the Agreement to Sell is unregistered cannot be entertained at this stage, as there is no bar, in law, to the institution of suits for specific performance of unregistered agreements. Moreover, Section 49 of the Registration Act, 1908 clearly provides that such unregistered documents may be received as evidence in suits for specific performance of contracts. The said provision is extracted below, for reference:

*“49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of*



*the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*

*(a) affect any immovable property comprised therein, or*

*(b) confer any power to adopt, or*

*(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

*Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”*

25. Therefore, such objections may be raised by the defendants at the time of final adjudication of the suit.

26. The other objections raised on behalf of defendant no.1, that the suit is bad for non-joinder of necessary parties, and that the other parties to the Agreement to Sell could not have executed Sale Deeds in pursuance of the same, cannot be appreciated by the Court while deciding an application under Order VII Rule 11 of the CPC. Therefore, the instant suit cannot be dismissed at this stage on the said grounds. It is again reiterated that the defendants may raise the same, at the time of final adjudication of the suit.

27. Under the aforesaid circumstances, the Court is unable to accede to the request made by learned counsel for defendant no.1 in the present application.

28. Accordingly, the instant application stands dismissed.

29. However, all rights and contentions of the defendants are left open, to be adjudicated during the course of trial. The trial be conducted



expeditiously.

**I.A. 3029/2025 (by D-1 under Order XXXIX Rule 4 of CPC) in CS(OS) 276/2024**

1. The applicant in the instant application prays for the following relief:-  
  

*“(i) Vacate the interim order dated 08.04.2024 passed by this Hon'ble Court in the aforesaid Suit, in the interest of justice.”*
2. Heard learned counsel appearing on behalf of the parties.
3. Learned counsel for defendant no.1 contends that the operation of the stay is greatly prejudicing his rights as the rights to deprived to use the property.
4. He contends that that there has been a substantial increase in the value of the suit property subsequent to the purported execution of the agreement.
5. The facts of the case as have been disclosed hereinabove with respect to I.A. 3028/2025 would clearly indicate that a substantial portion of the consideration under the agreement to the tune of Rs.11.95 Crores out of Rs.15 Crores was received by the vendors therein, being the father of defendant nos.1 and 2, and Mrs. Arti Malhotra. Under these circumstances, at this point of time, vacation of stay would lead to multiplicity of litigation and it will further create hindrance in proper adjudication of the *lis*.
6. Under the aforesaid circumstances, the Court is not inclined to vacate the interim order dated 08.04.2024. The instant application is accordingly dismissed.



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**CS(OS) 109/2022**  
**CS(OS) 276/2024**

Let these matters be listed before the concerned Joint Registrar for taking up necessary further steps in accordance with extant rules on 16.09.2025.

**PURUSHAINDR KUMAR KAURAV, J**

**AUGUST 21, 2025**  
*Nc/ amg*