



2025:DHC:9912-DB



\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on: 08.10.2025*
Judgment pronounced on: 13.11.2025

+ RFA(COMM) 141/2024

HIMMAT SINGH & ANR.Appellants

Through: Mr. Irfan Ahmed, Advocate.

versus

ARUP SINHA ROYRespondent

Through: Mr. Manish Kohli, Advocate
with Respondent in person.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G E M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal under Section 96 and Order XLI of the Civil Procedure Code, 1908 read with Section 13 of the Commercial Courts Act, 2015, instituted by **Mr. Himmat Singh¹** and **Mr. Ashok Singh²**, assails the **Judgment and Decree dated 08.12.2023³** passed by the learned **District Judge (Commercial Court-03), South-East District, Saket Courts, New Delhi⁴**, in CS(COMM) 325/2021 titled “*Arup Sinha Roy v. Himmat Singh & Anr*”.

¹ Appellant No. 1/ Defendant No. 1

² Appellant No. 2/ Defendant No. 2

³ Impugned Judgement

⁴ Commercial Court



2. By the Impugned Judgment, the suit instituted by **Mr. Arup Sinha Roy**⁵ was decreed for a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) along with cost and interest @ 9% per annum from 15.12.2020 till realization, holding the Appellants jointly and severally liable.

BRIEF FACTS:

3. The necessary facts germane to the institution of the present Appeal are as follows:

- a. The Respondent, who was the Plaintiff before the learned Commercial Court, is engaged in the business of real estate consultancy and facilitation of construction and redevelopment projects in South Delhi.
- b. Appellant No. 1 and Respondent have been known to each other for decades, and it is stated that in or around March-April 2019, the parties met regarding the redevelopment of a **residential property bearing No. N-246, Greater Kailash, Part-I, New Delhi**⁶, admeasuring approximately 800 square yards.
- c. The Subject Property was jointly owned by the Appellants along with their sister, late Ms. Harveen Kaur, except for a portion of the second floor owned by one Mr. Ravi Srinivasan.
- d. Pursuant to discussions and negotiations between the parties, it is stated by the Respondent that the parties came to an understanding and agreement that the Respondent will identify and suggest names of certain suitable builders for the purpose of redevelopment of the Subject Property. In the event that the

⁵ Respondent/ Plaintiff

⁶ Subject Property



Appellants engage the builder introduced by the Respondent, the Respondent would be entitled to a commission fee of Rs. 15,00,000/-. In furtherance of the same, in case the Appellants decide to proceed with the builder introduced by the Respondent, the Appellants would not be entitled to deal with the said builder through any other agent or directly, by superceding the Respondent, and in case the same happens, the Appellants would be held in breach and the Respondent would be entitled to his commission-fee from the Appellants.

- e. In view thereof, the Respondent introduced several builders to the Appellants, including M/s Spectrum Infratech, M/s Aarcon Developers, and M/s Design Consortia, and convened various meetings between the parties from May to August 2019.
- f. Various email correspondences were exchanged between the parties herein, wherein Appellant No. 1 *vide* email dated 08.07.2019 addressed to Appellant No. 2 and Respondent, communicated the total cost estimate for the project, including the commission fee of the Respondent. Pursuant thereto, various communications took place between the parties.
- g. Thereafter, initial negotiations indicated a possibility of a collaboration with M/s Design Consortia, and resultantly, various communications, electronic as well as verbal, ensued between the Respondent and M/s Design Consortia. Communications also ensued between Appellant No. 2 and M/s Design Consortia regarding the Building Bye Laws in place. The Respondent, on 31.07.2019, had taken the Appellants to show a property at Maharani Bagh as well, which was developed by M/s Design Consortia.



- h. After these communications and negotiations, the Appellants later disengaged with the Respondent, stating that they were not inclined to proceed with M/s Design Consortia.
- i. In 2020, the Respondent discovered that the Appellants had engaged the same builder, M/s Design Consortia, for the redevelopment of the Subject Property.
- j. In view of the agreement and understanding arrived at between the parties, the Respondent claimed that such conduct amounted to bypassing him and depriving him of his rightful brokerage/ commission. Pursuant to the same, a legal notice dated 07.12.2020 demanding payment of Rs. 15,00,000/- was issued, to which the Appellants responded *vide* Reply letter dated 23.12.2020, denying all such claims.
- k. Consequently, on 27.08.2021, the Respondent instituted the Suit seeking a recovery of Rs. 15,00,000/- along with *pendente lite* interest.
- l. The learned Commercial Court *vide* Order dated 08.12.2022, upon completion of pleadings, framed issues, whereupon the parties led their evidence.
- m. *Vide* Impugned Judgment dated 08.12.2023, the learned Trial Court decreed the suit in favour of the Respondent and against the Appellants, awarding a sum of Rs. 15,00,000/-, along with costs and interest at the rate of 9% per annum from 15.12.2020 till realization, holding the Appellants jointly and severally liable.
- n. Aggrieved by the Impugned Judgment, the Appellants have preferred the present appeal, primarily challenging the findings of the learned Commercial Court on the ground that no



enforceable contract or concluded understanding ever existed between the parties, and that the Impugned Decree is contrary to law and evidence on record.

SUBMISSIONS BY THE APPELLANTS:

4. The learned Counsel for the Appellants would assail the Impugned Judgment primarily on the ground that the learned Commercial Court failed to appreciate that there was no concluded agreement or contract between the parties, either oral or written, which could give rise to any enforceable contractual obligation.

5. It would be contended by the Appellants that the entire correspondence between the parties was merely in the nature of preliminary discussions and negotiations, that there was no consensus *ad idem* as to essential terms, and that no document evidencing such understanding was ever placed on record.

6. The learned Counsel for the Appellants would further argue, while referring to the email communications dated 08.07.2019 and 22.07.2019, that they were erroneously construed by the learned Commercial Court as acknowledgments of liability. He would further submit that the email dated 08.07.2019 was nothing but a proposal or quotation forwarded by the Respondent, which was never accepted by the Appellants, and that the subsequent email dated 22.07.2019 was merely clarificatory in nature and formed part of ongoing negotiations rather than any concluded arrangement.

7. Learned Counsel for the Appellants would rely upon various Judgments, *for instance*, ***Smt. Sheela Gehlot v. Smt. Sonukochar &***



Ors. ⁷, *Mayawanti v. Kaushalya Devi*⁸, *PSA Mumbai Investments Pte. Ltd. v. Jawaharlal Nehru Port Trust*⁹, and *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*¹⁰, to fortify his submission that in the absence of a clear meeting of minds, no enforceable agreement can be said to exist. According to him, it has been held therein that where the terms between the parties remain uncertain and negotiations are still in progress, the Court cannot infer a binding contract.

8. The learned Counsel for the Appellants would further contend that, in the present case, the communications exchanged between the Appellants and the Respondent never went beyond a preliminary stage and did not crystallize into a concluded understanding. He would urge that the learned Commercial Court failed to appreciate this settled principle and erroneously construed incomplete negotiations as a concluded contract.

9. The learned Counsel for the Appellants would next contend that the Appellants had, at all material times, made it clear to the Respondent that they were not the sole owners of the Subject Property, and the Respondent was fully aware that no redevelopment could proceed without the consent of all co-owners, and that by concealing this fact, the Respondent was guilty of *suppressio veri et suggestio falsi* (suppression and concealment of material facts).

10. The learned Counsel for the Appellants would also contend that it was the responsibility of the Respondent to get on board with the other co-owners of the Subject Property for the redevelopment project,

⁷ 2005 SCC OnLine Del 935

⁸ 1990 SCC OnLine SC 197

⁹ (2018) 10 SCC 525

¹⁰ 1965 SCC OnLine SC 38



which was time and again communicated to the Respondent by the Appellants.

11. The learned Counsel for the Appellants would further submit that, despite such knowledge, the Respondent failed to implead all necessary and proper parties, including his alleged associate Mr. Puneet, in whose name the “project fee” was jointly quoted, and M/s Design Consortia, which was an integral participant in the transaction, and therefore, the suit was vitiated for non-joinder of necessary parties.

12. The learned Counsel for the Appellants would next rely upon the provisions of Section 92 of the **Indian Evidence Act, 1872**¹¹, to contend that once the Respondent sought to base his claim on written communications such as emails and WhatsApp messages, he could not lead oral evidence to supplement or vary their contents and the learned Commercial Court erred in relying on the Respondent’s oral assertions to infer the existence of a contract which was never expressed in writing or acknowledged contemporaneously by the Appellants.

13. The learned Counsel for the Appellants would further submit that, even assuming the Respondent had introduced M/s Design Consortia to the Appellants, such act alone would not entitle him to commission, and under settled principles of law, a broker becomes entitled to commission only when his efforts are the proximate and effective cause of a concluded transaction, and not merely by introducing the parties.

14. It would lastly be argued by the learned Counsel for the Appellants that the learned Commercial Court’s reliance on the

¹¹ IE Act



decision of the Bombay High Court in *Vasanji Moolji v. Karsondas Tejpal*¹², was wholly misplaced, since in that case the broker had been duly engaged and was later wrongfully prevented from completing his assignment, however, in the present case, no such engagement ever took place, and therefore, the said authority had no application.

SUBMISSIONS BY THE RESPONDENT:

15. *Per Contra*, the learned Counsel for the Respondent would submit that the learned Commercial Court had rightly decreed the suit after due appreciation of evidence and law. It would be contended by the learned Counsel for the Respondent that the Respondent had clearly established that he was engaged by the Appellants to identify and introduce a suitable builder for the redevelopment of the Subject Property, for which a commission of Rs. 15,00,000/- had been mutually agreed upon.

16. The learned Counsel would further contend that, pursuant to the said understanding, the Respondent had convened several meetings between the Appellants and various builders, including M/s Aarcon Developers, M/s Spectrum Infratech and M/s Design Consortia. It would be urged by the learned Counsel for the Respondent that M/s Design Consortia, one of the builders introduced by the Respondent, was ultimately engaged by the Appellants for the redevelopment of the Subject Property, thereby confirming that the Respondent had successfully performed his role as agreed.

17. The learned Counsel for the Respondent would contend that the email dated 08.07.2019, addressed by Appellant No. 1 to Appellant

¹² 1927 SCC OnLine Bom 7



No. 2 with the Respondent marked in copy, and the subsequent email dated 22.07.2019 from Appellant No. 2 to the Respondent, both expressly referring to the commission amount of Rs. 15,00,000/-, when read together with the oral testimony and surrounding circumstances, clearly corroborate the existence of an understanding between the parties.

18. It would further be submitted by the learned Counsel for the Respondent that the Appellants, in their own cross-examination, had admitted that the Respondent had introduced them to M/s Design Consortia and that the said builder was eventually entrusted with the redevelopment project. It would further be contended that, having availed the benefit of the Respondent's services, the Appellants could not later avoid payment of the agreed brokerage by merely disputing the formal existence of an agreement.

19. To support his contentions, the learned Counsel for the Respondent would rely upon the judgments of the Hon'ble Supreme Court in **Vasanji Moolji** (*supra*) as well as the judgment of this Court in **Ajay Kohli v. Ansal Properties and Industries Ltd**¹³.

ANALYSIS:

20. We have heard the learned Counsel appearing for the parties, carefully considered their respective submissions, and, with their able assistance, meticulously perused the entire record of the case.

21. The principal issue for consideration is whether the alleged agreement or understanding between the parties constituted a binding and enforceable contract, pursuant to which the Respondent, having

¹³ 2010 SCC OnLine Del 833



performed his obligations, became entitled to the claimed brokerage or commission.

22. At this stage, it would be apposite to reproduce the analysis and findings recorded by the learned Commercial Court, which are as follows:

- “17. My issue wise findings are as under:
Issue no. (1): Whether the suit is maintainable in the present form or not? OPD
Issue no (2): Whether the plaintiff is entitled to the suit amount? OPP
Issue no. (3). Whether the plaintiff has deliberately concealed the fact that he was all along aware that the defendants were only two of the three co-owners of the property bearing no. N 246, G.K.-I, New Delhi-48 apart from their sister Ms. Harveen Kaur except for a portion of the second floor? If so, its effect? OPD

The case of the plaintiff is that the plaintiff is in the business of real estate and in the month of March-April, 2019 approached the defendant nor-1 for rebuilding and reconstruction of defendant's house measuring around 800 sq. yards and in this regard suggested few builders for rebuilding/reconstruction including one Rajiv Chanana of M/s Arcon Developers, Kunal Oberoi of 7 M/s Spectrum Infratech as well as Rohit Garg of M/s Design Consortia. The plaintiff has also organized the meetings with the aforesaid builders including M/s Design Consortia. The plaintiff has also shown the construction done by Design Consortia of property at Maharani Bagh. The meetings have been organized with Design Consortia and defendants. Vide email dt. 08.07.2019 {Part of Ex.D-I(Colly)}, plaintiff apprised about the total cost of the project including his fees of Rs. 15 Lacs. The defendant Ashok Singh vide email dt. 22.07.2019 (Ex.PW1/1) reply/ recognized the email sent by the plaintiff dt. 08.07.2019 and also admitted his fee of around Rs. 15 Lacs for completion of the project and asked him for further meeting. There are further communication between the parties regarding the scope of construction, clearance from MCD etc. The Ex.PW1/11 (Colly) is the email admitted by DW2 in his cross-examination in which the plaintiff is talking about the project in question with Design Consortia. The role of plaintiff is only to organize the builder for construction of building for defendant and for that purpose, he is asking for the commission.

18. Though the defendant in their written statement denied of any meeting with the builder at the instance of the plaintiff, however, also admitted meeting with the builders but pleaded



meeting was informal and have no bearing whatsoever to the claim of the plaintiff. Now at this stage, it is pertinent to appreciate the cross-examination of DW1 Ashok Singh & DW2 Himmat Singh. DW1 in cross-examination stated that he knew the plaintiff since long and the plaintiff offered for redevelopment of property to his brother Himmat Singh. He stated that plaintiff probably had sent the email to with brother or to him regarding the rough estimate and some professional fee for him and his partner Puneet, and also stated that it is correct that the convened three meetings between the defendant and Rohit Garg of Design Consortia. He also admitted the email dt. 08.07.2019 sent by the plaintiff {Ex.D-1 (Colly)}. He also admitted the email dt. 22.07.2019 (Ex.PW1/1) in cross-examination sent by him to the plaintiff acknowledging his estimates and other suggestions including his fee of Rs. 15 Lacs. This email itself suggests that the plaintiff was doing the service for the fee of Rs. 15 Lacs and not probono. This email also falsifies the stand of DW1 who stated in cross-examination that there is no talk of commission with the plaintiff. The email dt. 29.07.2019 (Ex.PW1/2) is regarding the fact of sending of specifications by plaintiff to DW1 Ashok. DW1 also admitted the email Ex.PW1/3 to Ex.PW1/10 regarding clarifications and information of building laws etc. DW1 during cross-examination admitted Ex.PW1/3 which is regarding the names of 2-3 persons from whom the construction was done by Rohit of Design Consortia. From the testimony of DW1 and DW2, the case of plaintiff is confirmed regarding his engagement for providing the builder for construction of their property and demand of Rs. 15 Lacs as commission/ fees for arranging the builder and other allied activities with the Govt, department. The plaintiff, therefore able to prove that he is engaged for the services for providing builders for reconstruction of the building of defendants for consideration.

19. Ld. Counsel for defendant, during arguments as well as through the written submissions not denied that the plaintiff has not performed his work, however, the main plea is that at the instance of plaintiff only pre-negotiations were done and there was no concluded contract.

20. DW1 and DW2 categorically admitted that their property was redeveloped by Design Consortia. DW2 in cross-examination also stated that after August, 2019, whenever the plaintiff tried to contact the defendant, they informed him that they are not interested to build the property through Design Consortia. Therefore, it is clear that the defendant avoided the plaintiff for the purpose of rebuilding their property but the role of the plaintiff is to introduce the builder to the plaintiff for negotiation for consideration which is Rs. 15 Lacs in the present case. The plaintiff has performed his work. Admittedly, no written contract was signed between the plaintiff and the defendant for the scope of



work and the duties to be performed by the plaintiff but from the email communication, it is clear that the plaintiff introduced various builders including Design Consortia who has finally rebuilt the property of the defendants. There is nothing brought on record by defendants that they have any independent dealing with Design Consortia prior to him introducing by the plaintiff. Mere absence of written contract between plaintiff and defendants is inconsequential in present facts and circumstances.

21. The defendants also took the plea that they are the mere co-owners and the consent is also required from third co-owner i.e. their sister and also from one Ravi Srinivasan of second floor. However, from the pleadings and evidence on record, it cannot be inferred that it is the duty of plaintiff to seek consent of these persons for rebuilding of the property. The plaintiff's job is only to introduce the builders and to chalk out the formalities for rebuilding the property in question. Plaintiff is not obliged to create the consensus between the co-owners. Even otherwise, the consensus is explicit as the property is redeveloped and reconstructed through Design Consortia. The deal with the plaintiff even from the case of the defendant cannot be held to be cancelled due to the fact that plaintiff unable to create consensus between all the co-owners.

22. It is clear from cross-examination of DW2 that after August 2019, whenever the plaintiff tried to contact with the defendant they stated that they are not interested to deal with Design Consortia, however, they dealt with Design Consortia but without knowledge to the plaintiff after by-passing the plaintiff. The defendants also tried to raise the defence that the plaintiff was asking huge commission and the other for offering services for less fees. The defendants, however, unable to place any such document on record. This stand is taken by DW1 in cross-examination but not the part of the pleadings. It is only an afterthought. No documents placed on record to show payment of any commission to any other property dealer or commission agent.

23. It is also submitted during arguments that the commission of Rs. 15 Lacs is both for the plaintiff Arup Sinha and one Puneet. However, it is clarified by the plaintiff in cross-examination that Puneet was his associate who is helping in his business and the entire dealing with the defendants done by himself and he is the only person who is entitled for the commission. This fact is also cleared from the email Ex.PW1/1 admittedly written by defendant Ashok Singh to Arup Sinha. Even otherwise, the defendant cannot avoid the liability because Puneet is not a party. Furthermore, defendant's case is also that they stated after August 2019 that they are not interested to go ahead with the deal with the plaintiff.



24. On overall the appreciation of pleadings and evidence on record, the plaintiff able to show that his services engaged for identifying the builders for reconstruction/ redeveloping the property of the defendant but the defendant avoided his commission by-passing him and directly dealt with the builder Design Consortia for rebuilding/ reconstructing of their property.

25. The contention of defendant that plaintiff has only done the pre-negotiations and there is no conclusive contract, therefore not entitled for any commission do not appear convincing because the role of plaintiff is to introduce the builder and to facilitate negotiation between them. The plaintiff has done his role by introducing the builder, however, without any reason the defendant stopped interacting with the plaintiff and told him that they are not interested in the deal through Design Consortia but engaged Design Consortia by sidelining the plaintiff, therefore depriving him from the due commission/brokerage. In these circumstances, it cannot be inferred that the plaintiff is not entitled for the commission of Rs. 15 lacs as agreed between the parties which can be inferred from the email exchanged.

At this stage, it is. pertinent to refer to the case as. relied upon by the plaintiff i.e. *Vasanji Mooljj vs. Karsondas Tejpal*, AIR 11928 Bombay 270 which is held that:

“For all that the plaintiff was employed to do was to find a party who was willing to advance the money to the defendant. When once he had put it in defendant's power to obtain the loan, he had done all that his appointment necessitated, It was sought to be argued that unless the loan was actually procured by the plaintiffs intervention, he would not be entitled to any commission, but there is another answer to that argument, and that is, the circumstances of this case clearly go to show that the defendant in reality made it impossible for the plaintiff to earn his commission, by employing another broker and obtaining a loan from the same party which the plaintiff had already indicated.”

As per mandate of this judgment the broker is entitled for commission by bringing the borrower and the lender together.

There is nothing pointed out during evidence or arguments that the suit is not maintainable in the present form. The plaintiff as discussed is also not found obliged to take consent from other co-owners. Accordingly, the issue no. 1 to 3 are decided in favour of the plaintiff and against the defendants.

Issue No. (4): Whether the plaintiff is entitled to the pendente lite & future interest? OPP



26. The plaintiff claimed the relief of commission/ fees of Rs. 15,00,000/- + interest @ 18% p.a. from 15.12.2020 till the filing of the present suit Rs.1,35,000/-+ cost of legal notice of Rs. 2,25,000/- i.e. in total Rs.16,60,000/- There is no specific agreement regarding the interest documentary or oral. Therefore, the interest @ 18% p.a. appears excessive, however, the dispute is commercial in nature thus, plaintiff is entitled for the interest from the date i.e. 15.12.2020 till its realization. In present facts and circumstances, the interest @ 9% p.a. is sufficient and reasonable. Accordingly, plaintiff is entitled for interest @ 9% p.a. from 15.12.2020 till its realization.

RELIEF

27. In view of aforesaid discussions, the suit is decreed in favour of the plaintiff and against the defendant nos. 1 and 2 jointly and severally for a sum of Rs 15,00,000/- (Rupees Fifteen Lacs) along with interest @ 9% p.a. from 15.12.2020 till its realization. Cost of the suit be awarded to the plaintiff. Decree sheet be drawn accordingly.”

23. Upon a careful scrutiny of the Impugned Judgment, and in light of the documentary evidence and oral testimonies adduced by the parties before the learned Commercial Court, we find no infirmity or error in the findings recorded therein.

24. It is an admitted position that the Appellants and the Respondent were personally acquainted, and that the Respondent was engaged in real estate consultancy involving redevelopment projects in South Delhi.

25. The record shows that, between May and August 2019, several meetings took place between the Appellants and different builders, *namely*, M/s Aarcon Developers, M/s Spectrum Infratech, and M/s Design Consortia, facilitated by the Respondent. Both the Appellants, in their cross-examinations, have acknowledged attending meetings with M/s Design Consortia arranged by the Respondent and have further admitted that the said builder, M/s Design Consortia, eventually undertook the redevelopment of the Subject Property.



26. The email dated 08.07.2019, sent by Appellant No. 1 to Appellant No. 2 with a copy marked to the Respondent, refers to the total project cost of Rs. 7.5 crores, which expressly included a project fee of Rs. 15,00,000/-. Similarly, the email dated 22.07.2019, addressed by Appellant No. 2 to the Respondent, makes reference to the same amount as commission payable to the Respondent. In the said email, Appellant No. 2 reiterated the various components of the overall estimate, including finishing costs, architectural fees, and the Respondent's fee. A perusal of the contents of the said email makes it apparent that while there was an agreement on almost all the items enumerated therein, the only outstanding issue, as noted in that correspondence, pertained to the inclusion of the cost of the Generator and the stay arrangements for residents, for which a meeting was proposed to be held.

27. Further, the parties appeared to have continued to engage in talks and of particular note is the email dated 25.07.2019 wherein the Respondent herein addressed an email stating therein that he represented both M/s Design Consortia as well as the Appellants herein and to which the Appellants have responded with an affirmative "Thanks". The said email also reflects the position that the Respondent was corresponding with M/s Design Consortia on behalf of the Appellants and following up with them on aspects relating to the proposed construction with the concerned authorities.

28. We also take note of the fact that while some of the consultants that were introduced by the Respondent did not engage beyond what may perhaps be stated to be an introductory meeting, as regards M/s Design Consortia, there were multiple meetings and also discussions, relating to nitty gritty like authorisations for construction to be



carried out in a particular manner, meaning thereby that the engagement between M/s Design Consortia and the Appellants, ostensibly through the Respondent, had progressed beyond mere exchange of formalities or introductions. This is also reflected in the exchange of emails pertaining to the specifications in relation to the proposed redevelopment of the property.

29. The tone and tenor of the various email exchanges between the parties and the apparent lack of any denial in respect of the fee payable to the Respondent in these communications also lead us to this conclusion. The engagement of M/s Design Consortia through the Respondent also extends to the facilitation of a site visit for the purpose of appraising their work, which would lead us to believe that this was not a case where the Respondent had acted as a mere “introducer”. The site visit appears to be the culmination of various discussions/meetings held between the parties, leading to the Appellants desiring to take further steps to redevelop the Subject Property.

30. The length of time that transpired between these various events and the admitted engagement of M/s Design Consortia as the contractor, also lead us to believe that the active participation of the Respondent with the Appellants and M/s Design Consortia most likely led to the choice of M/s Design Consortia as the re-developer of the Subject Property. These contemporaneous documents, coupled with the admitted fact that the Respondent had facilitated negotiations between the Appellants and M/s Design Consortia, which ultimately executed the project, also assist us in reaching this conclusion.

31. It also remains undisputed that the Respondent’s efforts directly facilitated the engagement of M/s Design Consortia in the



redevelopment of the Subject Property. The Appellants have failed to produce any evidence to the contrary, and consequently, their contention that no concluded contract existed between the parties is devoid of merit and unsustainable. Furthermore, it is an admitted position that the transaction in question did not pertain to the sale or transfer of any movable or immovable property between the Appellants and the Respondent. Rather, it was a facilitative commercial arrangement wherein the Respondent acted as an intermediary to introduce and coordinate with prospective developers for the redevelopment of the Subject Property. Therefore, the Appellants' assertion that negotiations were ongoing between them and the Respondent regarding the latter's commission fee lacks substance and cannot be accepted, in view of the peculiar facts and circumstances reflected from the record.

32. The Respondent's entitlement to his professional fee, as reflected in the aforesaid emails, was clearly defined, mutually acknowledged, and acted upon by both sides. The record further reveals a continuous and consistent chain of correspondence and electronic communication between the parties from 08.07.2019 to early August 2019, evidencing their active and collaborative engagement on the modalities and finer aspects of the proposed redevelopment. During this period, the Appellants repeatedly acknowledged the Respondent's pivotal role in facilitating meetings with potential developers and sought his inputs and clarifications regarding critical project components such as layout specifications, finishing costs, and compliance with municipal norms and building regulations. The Respondent, in turn, provided detailed cost estimates, comprehensive specification lists, and introduced several prospective



developers, one of whom, M/s Design Consortia, was ultimately engaged for the redevelopment of the property.

33. Viewed cumulatively, this contemporaneous and consistent conduct of both parties indicate the presence of a clear consensus, *ad idem*, regarding the Respondent's professional engagement and his entitlement to remuneration upon successful facilitation of the project. The subsequent WhatsApp communication dated 27.05.2020, wherein Appellant No. 1 expressed intent to recommence discussions on the project, further reinforces the existence of an earlier concluded understanding and completely negates the suggestion that there was no binding or enforceable arrangement between the parties.

34. We find no substance in the reliance placed by the Appellants on **Smt. Sheela Gehlot** (*supra*). The said decision turned on a fact-situation where the parties were admittedly engaged only in preliminary negotiations and there was a total absence of consensus *ad idem* as to essential terms of the alleged agreement. The Court therein held that, where the stipulations and terms remain uncertain, no binding contract can be inferred.

35. The present case, however, stands on an entirely different footing. The existence of contemporaneous correspondence acknowledging professional remuneration distinguishes this case from instances of mere exploratory negotiation. Here, the essential "*understanding*" between the parties had materialized through contemporaneous emails acknowledging the Respondent's professional fee and through conduct demonstrating mutual assent. The Respondent not only introduced M/s Design Consortia, which ultimately executed the project, but also actively facilitated the initial negotiations. Hence, unlike **Smt. Sheela Gehlot** (*supra*), this is not a



case of incomplete negotiations but of a commercial arrangement that had travelled a fair distance, having been acted upon by both sides.

36. Similarly, **Mayawanti** (*supra*) is also distinguishable on facts from the present case since the parties therein were not *ad idem* with respect to the inclusion or the exclusion of the subject property therein for the purposes of sale, being the very subject matter of the alleged contract. However, in the present case, the parties herein have been in constant communication and have evidently been *ad idem* pertaining to the restricted role of the Respondent, and as stated herein above, the conduct and emails of the parties would also demonstrate that there existed acknowledgment and acceptance of even the commission to be provided to the Respondent.

37. Likewise, the reliance placed by the Appellants on the decisions in **PSA Mumbai Investments Pte. Ltd.** (*supra*) and **Bhagwandas Goverdhandas** (*supra*) is misplaced, as the said precedents are clearly distinguishable on facts as well as in law and have no application to the circumstances of the present case.

38. The record of the present case further reflects that the Appellants have not denied that M/s Design Consortia, the very builder introduced by the Respondent, was ultimately engaged to redevelop the Subject Property and that an agreement was subsequently executed between M/s Design Consortia and the Appellants. It is equally pertinent to note that no shred of evidence has been adduced by the Appellants to establish that they had any prior or independent dealings with M/s Design Consortia before the said builder was introduced to them by the Respondent.

39. In our considered view, even assuming *arguendo* that no concluded contract existed between the parties, the Appellants, having



availed themselves of the benefits arising from the Respondent's services, as clearly established by the evidence on record, cannot now be permitted to evade payment of the agreed amount on the pretext that no formal written agreement was executed. The learned Commercial Court, therefore, rightly held that the Respondent had duly fulfilled his obligations under the understanding between the parties and was consequently entitled to receive his commission.

40. We are fortified in our view by the principle enunciated by the Hon'ble Supreme Court in *Food Corporation of India v. Vikas Majdoor Kamdar Sahkari Mandli Ltd.*¹⁴, wherein the Apex Court delineated the contours of the doctrine of *quantum meruit* and its interplay with Section 70 of the **Indian Contract Act, 1872**¹⁵. The relevant excerpt from *Vikas Majdoor Kamdar* (*supra*) is reproduced herein as follows:

“19. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit. The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

20. If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation

¹⁴ (2007) 13 SCC 544

¹⁵ ICA



under Section 70. Payment under this section can also be claimed for work done beyond the terms of the contract, when the benefit of the work has been availed of by the defendant.

21. The term “extra” is generally used in relation to the works, which are not expressly or impliedly included in the original contract price, provided the work is within the framework of the original contract. The question whether a particular work is extra will depend upon the terms and conditions of the contract, and other documents connected therewith.”

41. Similarly, the Hon’ble Supreme Court in **Anita Rani v. Ashok Kumar**¹⁶, held as under:

“25. Once the plea of gratuitous payment falls to the ground, Section 70 of the Contract Act, 1872 will come into play. Section 70 reads as follows:

“70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

26. As held by this Court in **State of W.B. v. B.K. Mondal & Sons [State of W.B. v. B.K. Mondal & Sons, 1961 SCC OnLine SC 76 : AIR 1962 SC 779]**, Section 70 is based on the premise that something was done by one party for another and that the work so done voluntarily, was accepted by the other. Therefore, as a corollary, the plea that there was a subsisting contract in the nature of business transactions, is antithetic to the very essence of Section 70. This is why Section 70 forms part of Chapter V of the Contract Act, which is titled as “Of certain relations resembling those created by contract”.

27. As pointed out earlier, the respondents have admitted that the moneys as claimed by the appellant-plaintiff were either paid by the plaintiff or flown out of the plaintiff’s account into their own account. Therefore, the onus was actually on the respondents to prove either a discharge by way of settlement of accounts or the gratuitous nature of the payment. The respondents miserably failed to discharge the onus of proof so cast upon them. Hence, the plaintiff-appellant is entitled to a decree despite a few discrepancies in her evidence, especially when the discrepancies have no bearing

¹⁶ (2021) 20 SCC 257



upon the payment/flow of monies from the plaintiff to the defendants.”

42. In view of the above conspectus, even assuming that the engagement between the parties did not mature into a formal contract, the Respondent, having rendered services not intended to be gratuitous, and the Appellants having derived a clear and direct benefit therefrom, the Respondent would nonetheless be entitled to reasonable compensation under Section 70 of the IC Act. The law does not permit a party to unjustly enrich itself by retaining the benefit of another’s labour and services without making due recompense.

43. As regards the argument advanced by the Appellants that it was the duty of the Respondent to get on board the co-owners of the Subject Property, being Mr. Ravi Srinivasan and the Appellants' sister, a perusal of the email dated 05.06.2019 would show that the Appellants, more specifically Appellant No.2, had taken the responsibility to communicate with Mr. Ravi Srinivasan. Even otherwise, the learned Commercial Court, in this regard, has rightly held that the Respondent's job was only to introduce M/s Design Consortia to the Appellants and to chalk out the formalities for the redevelopment of the Subject Property. The Respondent was not obliged to create consensus between the co-owners.

44. This is also evident from the contents of the various communications, as there is absolutely no reference to the alleged obligation on the part of the Respondent to bring on board Mr. Ravi Srinivasan. The fairly copious and detailed communications exchanged by the parties, as on record, do not make even a whisper of such an obligation. Further, the consensus is evident and explicit from the conduct of the owners of the Subject Property since they have



mutually entered into an agreement with the builder to redevelop the Subject Property.

45. The plea regarding non-joinder of necessary parties, *namely*, the alleged associate Mr. Puneet and M/s Design Consortia, was also rightly rejected. Neither of those parties claimed any independent or conflicting right *vis-à-vis* the commission claimed by the Respondent. The controversy in the suit was purely between the Respondent and the Appellants concerning payment for services rendered. Hence, their non-impleadment did not affect the maintainability of the suit. The learned Commercial Court, therefore, committed no error in declining to non-suit the Respondent on this technical plea.

46. Similarly, there is no merit in the Appellants' contention regarding the applicability of Section 92 of the IE Act. The argument that the Respondent, having relied on written communications such as emails and WhatsApp messages, could not adduce oral evidence to supplement or explain their contents is misconceived.

47. As discussed earlier, the emails dated 08.07.2019 and 22.07.2019 are not mere negotiations but constitute a clear acknowledgment by the Appellants of the Respondent's agreed commission fee, role and responsibilities. The other correspondence further shows that the parties were engaged in implementing their understanding through meetings, discussions, and necessary approvals for the project. Hence, Section 92 of the IE Act has no application, as the oral testimony of the Respondent only corroborates the execution of email communications and the surrounding circumstances, without contradicting or varying the contents of the written communications.



2025:DHC:9912-DB



DECISION:

48. For the reasons recorded above, we find no ground to interfere with the Impugned Judgment dated 08.12.2023 passed by the learned Commercial Court. The Impugned Judgment is accordingly affirmed in its entirety, and the present Appeal, being devoid of merit, stands dismissed.

49. The present Appeal, along with pending application(s), if any, stands disposed of in the above terms.

50. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 13, 2025/sm/va/rn