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

% ***Reserved on: 04.02.2026***
Date of decision:25.03.2026

\+ RFA(OS) 4/2026 & CM APPL. 4597/2026, 4599/2026

PRADEEP BATRA .....Appellant

Through: Mr. Viraj Datar, Sr. Adv. with Mr.Samar Singh Kachwaha, Ms.Shivangi Nanda, Mr. Arsh Rampal and Mr. Srikant Singh, Advs.

versus

KULDIP SINGH VERMA .....Respondent

Through: Mr. Manish Kaushik, Mr. Vikas Ashwani, Mr. Mainak Sarkar and Ms.Aparna Kushwah, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal has been preferred under Section 96, read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908("CPC") read with Section 10 of the Delhi High Court (Original Side) Rules, 2018, against the Judgment dated 24.12.2025, passed by the learned Single Judge in CS (OS) 871/2024, whereby the plaint instituted by the Appellant seeking specific performance of the Agreement to Sell dated 29.10.2023was rejected under Order VII Rule 11 CPC.

2. Briefly stated, the facts of the case, as set out by the Appellant, are that the Appellant instituted a suit seeking a declaration that the Respondent's communication dated 16.03.2024, purporting to terminate the oral Agreement

to Sell dated 29.10.2023, is illegal, invalid and *non-est* in the eyes of law. The Appellant further sought a decree of specific performance of the said oral Agreement in respect of the property bearing Second Floor, B-1/17, Vasant Vihar, New Delhi, along with 50% front terrace rights and proportionate land rights, as well as consequential injunctive relief restraining the Defendant/Respondent from creating any third-party rights in respect of the Suit Property.

3. As per the plaint, the parties allegedly entered into an oral Agreement to Sell dated 29.10.2023 for a total consideration of Rs. 12.40 crores. The Appellant claims to have paid Rs. 51 lakhs as earnest money on the same date, which was duly acknowledged by the Respondent *vide* Receipt dated 29.10.2023. The Respondent had disclosed that the Suit Property was tenanted and undertook to secure vacant possession by 30.11.2023, with execution of the Sale Deed by 30.12.2023 and the balance consideration was payable at the time of execution of such Sale Deed and handing over of vacant possession. However, despite issuance of notices dated 30.10.2023 and 14.12.2023, by the Respondent to the tenants, the possession thereof was not secured within the stipulated time.

4. In pursuance thereof, upon repeated assurances being given by the Respondent, the Appellant granted extensions for securing such vacant possession from his tenants lastly up to 29.02.2024, with execution of Sale Deed to follow within a month thereafter. The Appellant asserts that such extension constituted a limited novation only with respect to time. The Appellant further claimed that throughout the aforesaid period, he remained ready and willing to perform his part of the Agreement to Sell, continued to

coordinate documentation through communications including a WhatsApp group created for the purpose of transaction, and never sought cancellation of such Agreement.

5. It is further the case of the Appellant that *vide* letter dated 16.03.2024, the Respondent terminated the Oral Agreement to Sell dated 29.10.2023 alleging delay and reluctance on the part of the Appellant and has refunded the earnest money amounting to Rs. 51 lakhs to the Appellant. The Appellant, by reply dated 08.04.2024, denied such termination, reiterated readiness and willingness, and called upon the Respondent to perform such Agreement to Sell dated 29.10.2023.

6. Subsequent thereto, apprehending creation of third-party rights, the Appellant issued public notices on 02.05.2024 and thereafter instituted the aforesaid suit seeking specific performance and injunction. Upon institution of the suit, the learned Single Judge, by order dated 29.10.2024, found that documentary proof evidencing readiness and willingness had not been placed on record. The Appellant filed additional documents, including communications from his banker reflecting his financial capacity and eligibility for sanction of a home loan. The matter was referred to mediation on 19.12.2024; however, the mediation failed owing to failure in reaching of consensus with respect to revised Sale Consideration for the sale of suit property.

7. Thereafter, the learned Single Judge *vide* Impugned Order dated 24.12.2025 rejected the Plaint under Order VII Rule 11 CPC, holding that the suit seeking specific performance of the alleged oral Agreement to Sell dated 29.10.2023 was liable to be rejected for absence of a cause of action and for

being barred under Sections 16(b) and 16(c) of the Specific Relief Act, 1963. The Court held that the Plaintiff had failed to *prima facie* demonstrate continuous readiness and willingness to perform the contract, as no material evidencing financial capacity to pay the agreed consideration of Rs. 12.40 crores was placed on record, and reliance on eligibility of a prospective housing loan which had not been sanctioned, was insufficient. The Court further found that the Plaintiff had sought to renegotiate the agreed consideration due to the tenant's occupation and had approached the Court belatedly after termination of the agreement, during which period property prices had escalated. In view thereof, the Court concluded that the Plaintiff was neither ready nor willing to perform the agreement and had invoked the process of the Court merely to cloud the Defendant's title, and consequently rejected the plaint.

8. Aggrieved by such rejection of the Plaint at the threshold, the Appellant has preferred the present Appeal.

9. The primary objection raised by the learned counsel for the Appellant is that the Appellant has shown his readiness and willingness throughout and the Respondent having *malafide* intentions, unilaterally terminated the Agreement to Sell dated 29.10.2023 alleging delay and non-compliance on the part of the Appellant. He further state that the Appellant continued to coordinate documentation through communications including a WhatsApp group created for the transaction.

10. We have heard the learned counsel for the parties and perused the record.

11. The principal question that arises for consideration before this Court is whether the plaint, read along with the documents relied upon by the Appellant, discloses a real and enforceable cause of action so as to warrant trial, or whether the same was rightly rejected at the threshold under Order VII Rule 11 CPC.

12. The scope and ambit of Order VII Rule 11 CPC is well settled. While exercising jurisdiction under the said provision, the Court is required to examine only the averments contained in the plaint along with the documents relied upon by the plaintiff. If upon a meaningful and not merely formal reading of the plaint thereof, it appears that the claim is vexatious, illusory or does not disclose a clear right to sue, the Court is duty bound to reject the plaint at the threshold.

13. The Supreme Court *in* ***T. Arivandandam vs. T.V. Satyapal and Ors.;*** **(1977) 4 SCC 467** has authoritatively held that where, by a meaningful not formal reading, the plaint does not disclose a clear right to sue and is manifestly vexatious and meritless or if the clever drafting created an illusion of a cause of action, the Court must nip it in the bud. The relevant paragraph reads as under:

> *"5. ...The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so*

that bogus litigation can be shot down at the earliest stage..”

14. Similarly, in ***I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Others;*****(1998) 2 SCC 70**, it was held that clever drafting creating an illusion of cause of action cannot be permitted to circumvent the mandate of Order VII Rule 11 CPC, as under:

> ***“16.*** *The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)”*

15. In the backdrop of the aforesaid principles, it becomes necessary to examine whether the plaint in the present case discloses the existence of a concluded and enforceable contract capable of being specifically enforced.

16. In the present case, it is evident from paragraph 1 of the plaint that the suit seeks specific performance of an alleged Oral Agreement to Sell dated 29.10.2023. Furthermore, the material placed on record does not disclose any concluded and enforceable written contract between the parties. It is well settled that while an oral agreement is not per se unenforceable in law, the burden to establish the existence of such an agreement must be discharged by clear, cogent and convincing evidence establishing the essential terms of the contract with certainty.

17. The Supreme Court has consistently held that in cases seeking specific performance of an oral agreement, the Court must be satisfied not only about the existence of the agreement but also about the definiteness of its terms, including the consideration, subject matter, timelines and reciprocal

obligations. It is equally settled that a decree for specific performance, being a serious and far-reaching relief affecting the proprietary rights, cannot rest upon vague and uncorroborated assertions of oral consensus. The relief of specific performance is a discretionary and equitable one. In ***Mayawanti v. Kaushalya Devi***, (1990) 3 SCC 1, it was held as under:

> *"8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation."*

18. The primary evidence relied upon by the Appellant is the document dated 29.10.2023, though stated to be executed on stamp paper and purportedly referred to as a "Sale Agreement" in the stamp receipt only, is, in its true legal character, nothing more than a unilateral acknowledgment alleged to have been issued by the Respondent. Significantly, the said document neither bears any express title identifying it as a "Sale Agreement" nor contains the signatures of the Appellant, thereby lacking the essential attributes of a concluded and enforceable bilateral contract. The said document further does not record mutual assent or embody the essential terms of a concluded contract.

19. Moreover, a unilateral acknowledgment cannot establish *consensus ad idem* nor can it be elevated to the status of a binding and enforceable Agreement to Sell; at best, it evidences receipt of a sum of Rs. 51 lakhs, as also admitted by the Appellant in paragraph 11 of the plaint.

20. It is further pertinent to note that no Agreement to Sell has been placed on record by the Appellant. Equally significant is the fact that the second set of material relied upon by the Appellant, namely, the WhatsApp communications exchanged between the parties during the relevant period, does not advance the Appellant's case. The relevant extract of the said chats reads as under:

> *"[13/11/23, 5:52:24â€¯PM] Kitty Pradeep: Good evening ji*
> *[13/11/23, 6:00:02â€¯PM] Kuldip Ji Pradeep Batra B1/17 Vasant Vihar: Good evening ji*
> *[13/11/23, 10:03:42â€¯PM] Tarun Nayar: Good evening everyone ðŸ™*
> ***[16/11/23, 11:26:02â€¯AM] Tarun Nayar: Morning Kuldip Ji / Ravi Ji can u please send the missing documents ASAP so that we can prepare the ATSâ€¦. thanks ðŸ™***
> *[17/11/23, 4:48:03â€¯PM] Tarun Nayar: Evening Kuldip Ji / Ravi Ji can u please send the missing documents â€¦â€¦â€¦ thanks ðŸ™ ðŸ™ ðŸ™"*
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> *(emphasis supplied)*

21. A perusal of the aforesaid WhatsApp chats makes it abundantly clear that the parties were still in process of negotiating and finalizing the terms of a prospective Agreement to Sell even till 16.11.2023. Moreover, the communications do not reveal that any prior oral Agreement to Sell had already been concluded, which was being reduced into writing. On the contrary, the chats reveal that the parties were still engaged in the process of preparing and formulating the Agreement to Sell itself.

22. The material relied upon by the Appellant, therefore, negates the existence of the alleged Agreement to Sell dated 29.10.2023 and indicates that the transaction had not progressed beyond negotiations. Furthermore, admittedly in the present case, the Appellant has even got his earnest money back. In such circumstances, granting specific performance would amount to the Court creating a contract for the parties, which is impermissible in law.

23. Even otherwise, the Appellant further failed to demonstrate, as found by the learned Single Judge, that he possessed the requisite financial wherewithal within the stipulated period to perform his part of the alleged contract.

24. Another aspect that merits consideration is that the commercial reality governing the transactions relating to immovable property in metropolitan cities such as Delhi, where the property values are subject to steady and significant escalation, is that time assumes critical importance in the performance of contractual obligations. The Supreme Court in case of ***K.S. Vidyanadam & Ors. v. Vairavan*, (1997) 3 SCC 1,** held as under:

> *"11. Shri Sivasubramaniam cited the decision of the Madras High Court in S.V. Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar [AIR 1952 Mad 389 : (1952) 1 MLJ 44] holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law.* ***We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation……"***
>
> *(emphasis supplied)*

25. In view of the foregoing, the cumulative effect of the aforesaid circumstances clearly establishes that the plaint does not disclose the existence of any concluded Agreement to Sell between the parties. The contemporaneous record relied upon by the Appellant itself contradicts the plea of a concluded agreement, and where the conduct suggests an attempt to prolong and negotiate rather than perform, the invocation of specific performance is wholly misconceived.

26. The institution of suit, in these circumstances, thus, appears to be an attempt to entangle the suit property in avoidable litigation and to cast a cloud over the Respondent's title. The inevitable effect of such proceedings is to impede the Respondent's lawful right to deal with and enjoy his rights in the property. The record further indicates that the Respondent is an elderly person, yet he has been constrained to defend the proceedings which, on the face of the plaint itself, disclose no subsisting and enforceable contractual obligation.

27. In view of the settled principles governing Order VII Rule 11 CPC, and bearing in mind that specific performance is a remedy available only to a party who approaches the Court with clean hands and demonstrable readiness and willingness, the plaint is such which ought to be rejected at the threshold.

28. We find ourselves in complete agreement with the findings returned by the learned Single Judge that the Appellant failed to *prima facie* establish readiness and willingness within the meaning of Sections 16(b) and 16(c) of the Specific Relief Act, 1963, and that the conduct of the Appellant, including

failure to prove a concluded Agreement to Sell, attempt to renegotiate the consideration and the belated institution of proceedings in a rising property market, clearly militates against the grant of any relief to him.

29. In view of the foregoing, the present appeal, along with pending application(s), if any, stands dismissed. There shall be no order as to costs.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MARCH 25, 2026/kp/tr