



2025:DHC:10918-DB



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

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*Judgment reserved on: 13.11.2025*

*Judgment pronounced on: 06.12.2025*

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RFA(OS) 26/2019

TARUN SAWHNEY

.....Appellant

Through: Mr. Saurabh Kirpal, Senior Advocate with Mr. Harpreet Singh and Mr. Rajesh Gupta, Advocates.

versus

UMA LALL (DECEASED) THR LRS & ORS

.....Respondents

Through: Mr. Arun Batta Abdul Vahid, Advocate for R-1(i), 1(ii), R-2 and R-4.

Mr. Amiet Andlay and Mr. Arun Kumar Sharma, Advocates for R-3.

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RFA(OS) 34/2019 and CM APPL. 16391/2019

UPMA KHANNA & ANR

.....Appellants

Through: Mr. Amiet Andlay and Mr. Arun Kumar Sharma, Advocates.

versus

TARUN SAWHNEY & ORS

.....Respondents

Through: Mr. Saurabh Kirpal, Senior Advocate with Mr. Harpreet Singh and Mr. Rajesh Gupta, Advocates for R-1.

Mr. Arun Batta Abdul Vahid, Advocate for R-2(a), 2(b), R-3 and R-4.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

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



## **J U D G M E N T**

### **ANIL KSHETARPAL, J.**

1. Through this judgment, two Regular First Appeals, one filed by the Plaintiff and second filed by the Defendants challenging the correctness of the judgment dated 05.02.2019 passed by the learned Single Judge, captioned ***Mr. Tarun Sawhney v. Smt. Uma Lall and Others*** [hereinafter referred to as ‘Impugned Judgment’] while deciding the suit for specific performance of two Agreements to Sell shall stand disposed of.

2. The learned Single Judge [hereinafter referred to as ‘the LSJ’] has granted a conditional decree for specific performance of two Agreements executed on 16.09.2009, while directing Mr. Tarun Sawhney, the Plaintiff, to pay the balance sale consideration along with interest @ 9% p.a. The Plaintiff, through RFA(OS) 26/2019 assails the correctness of the direction to pay interest @ 9% p.a. from 16.09.2010. On the other hand, Smt. Upma Khanna and Sh. Vinoo Bhagat, the Defendant Nos.3 and 5 through RFA(OS) 34/2019 dispute the correctness of the decree for specific performance granted by the LSJ.

3. For the sake of convenience, parties hereinafter shall be referred to in the accordance with their status before the LSJ.

### **FACTUAL MATRIX**

4. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.



5. The present appeals arise out of a dispute concerning property bearing Bungalow Plot No.32, Nizamuddin East, New Delhi [hereinafter referred to as 'the Suit Property']. Originally, leasehold rights of the Suit Property were granted in favour of Ms. Usha Bhagat, who was a spinster.

6. On 14.08.1969, she transferred half of the undivided share of the Suit Property in favour of her brother Sh. Vinoo Bhagat (Defendant No.5). This Transfer Deed was upheld by the Court, *vide* judgment and decree dated 19.02.2005. With respect to the remaining half Ms. Usha Bhagat allegedly executed a Will on 10.04.2003 in favour of Smt. Uma Lall and Smt. Urmilla Kapur, the Defendant Nos.1 and 2.

7. Thereafter, Ms. Usha Bhagat expired on 01.03.2006. Smt. Uma Lall and Smt. Urmilla Kapur, the Defendant Nos.1 and 2, instituted a Probate Case No. 564/2006 claiming half of the Suit Property as allegedly bequeathed onto them through the Will. On 24.10.2008 the Letter of Administration was issued in favour of all her siblings, i.e. Defendant Nos. 1 to 5. In other words, the Will was ignored and half of the Suit Property was inherited by heirs of Ms. Usha Bhagat (brother and sisters) on the basis of natural succession.

8. Thus, Sh. Vinoo Bhagat became owner of 60% (50%+10%) share in the Suit Property, whereas the remaining siblings of Ms. Usha Bhagat, namely, Smt. Uma Lall, Smt. Urmilla Kapur, Smt. Upma Khanna and Sh. Kapil Bhagat became owner to the extent of 10% each in the Suit Property.



9. Sh. Vinoo Bhagat filed an application for sanction of mutation to the extent of 50% of the Suit Property on 03.02.2009. Another application was submitted by all the five Defendants, on 27.03.2009, for sanctioning of mutation in their favour on the basis of letter of administration dated 24.10.2008, however, mutation was not sanctioned.

10. On 16.09.2009, two Agreements to Sell were executed between Mr. Tarun Sawhney (the Plaintiff) with the Defendants. Through, the first Agreement to Sell, Defendants 1–5 agreed to sell their collective half undivided share in the Suit Property for Rs.15.90 crores, against which the Plaintiff paid Rs.90 lakhs as earnest money and through the second agreement Sh. Vinoo Bhagat (Defendant No.5) agreed to sell the other half share in the Suit Property for Rs.12.90 Crore. There was a supplementary agreement executed on the same day between Sh. Vinoo Bhagat and the Plaintiff, acknowledging that the total sale consideration is Rs.15.90 Crore and not Rs.12.90 Crore, and Rs.10 lakhs was paid as earnest money. The relevant clauses of the Agreement to Sell read as under:-

*“.....5. Since the Vendors have requested the Vendee to pay all lawful charges for mutation and freehold conversion to the L&DO for and on behalf of the Vendors and the Vendee has agreed so to do, the entire amount which the Vendee thus pays to the L&DO including damages and/or interest and/or ground rent and/or any other charges on any account whatsoever relating to conversion of the said property to freehold shall, if the Vendee has paid the same, be deducted from the price in proportion to each Vendor's share therein and the balance remaining is hereafter referred to as ‘the balance price’.*

*6. Upon the Vendee's notifying the Vendors that he has paid lawful charges to the L&DO on their behalf for conversion of the said property to freehold, the amount thereof, and proof of payment, each Vendor shall furnish a bank guarantee to secure the Vendee his aforesaid payment upon terms and for a period*



*reflecting the terms of this Agreement: the total amount of all the said guarantees together will equal the aforesaid charges lawfully paid by the Vendee....*

*....12. The Vendors shall do all acts and execute all documents including applications, affidavits, power of attorney and others as may be requisite in the circumstances to enable the Vendee to get mutation and conversion to freehold of the said property effected; the documents will be furnished to the Vendee within 7 working days of request thereof; copies of the Vendors' application for mutation and all correspondence with the L&DO on the subject so far are annexed hereto as Annex 2. The Vendors shall can7 out further correspondence, if any, with the L&DO with the Vendee's concurrence....*

*...20. If this Agreement is not implemented within twelve calendar months from the date hereof this Agreement shall stand terminated and extinguished automatically without any further act of parties and the Vendors shall be at liberty to sell the said property to any other person after refund of earnest money, as also other lawful charges hereinabove mentioned if paid by the Vendee on behalf of the Vendor'; the intention of the parties"*

(Same clauses exist under clause number 9,10 and 17 of the second Agreement to Sell entered into between Defendant No. 5 and the Plaintiff.)

11. As it is evident, the Plaintiff took over the job of getting the property mutated in favour of the Defendants and applied for its conversion from leasehold to freehold. Furthermore, not in significantly, it was provided that the Agreement to Sell will come to an end on lapse of period of 12 months from the date of Agreement to Sell. In other words, the parties agreed that the maximum period of validity of the Agreement to Sell is 12 months and thereafter it ceases to exist.

12. The execution of the Agreement to Sell on payment of earnest money and supplementary agreement is not in dispute between the parties.



13. A fresh mutation application for half share of the Suit Property was initiated in the name of Defendant Nos. 1 and 2 on 19.04.2010. By virtue of this request and Defendant No. 5's application on 03.02.2009, mutation was granted in favour of the respective applicants on 27.07.2010, and shortly thereafter, the L&DO accepted the application filed for permission to convert the property into freehold, and by letter dated 15.09.2010, the Defendants were called upon to appear for execution of the conveyance deed on 27.09.2010.

14. On 04.09.2010, the Plaintiff sent a request to the Defendants to extend the time for completion of the deal. Smt. Uma Lall and Smt. Urmilla Kapur, the Defendant Nos.1 and 2 agreed to extend the time for a further period of three months from 13.09.2010. Another similar communication is stated to have been sent by Sh. Kapil Bhagat, the Defendant No.4 however, the document is not on the file. Whereas, Smt. Upma Khanna and Sh. Vinoo Bhagat, the Defendant Nos.3 and 5 *vide* communication dated 22.09.2010 refused to extend the period and refunded the amount of earnest money received by them.

15. On 01.10.2010, Plaintiff filed the suit for specific performance of the two Agreements to Sell, along with an application for grant of permanent and temporary injunction. Separate written statements were filed by the Defendant Nos.3 and 5, and by Defendant Nos.1, 2 and 4. Replication was also filed by the Plaintiff.

16. The Court, upon analysing the pleadings proceeded to identify the following issues: -

*1. Whether the plaint does not disclose any cause of action to file the present suit? (OPD).*



2. *Whether the Agreements to Sell dated 16.09.2009 does not stand terminated and extinguished? (OPP).*
3. *Whether the plaintiff had always been ready and willing to perform his part of the Agreements to Sell dated 16.09.2009? (OPP).*
4. *Whether the plaintiff is entitled to specific performance of the Agreements to Sell dated 16.09.2009? (OPP).*
5. *If specific performance of the Agreements to Sell dated 16.09.2009 is not granted to the plaintiff whether he is entitled to damages and if so, to what amount? (OPP).*
6. *Whether the plaintiff is entitled to the mandatory injunction sought by him? (OPP).*
7. *Whether the plaintiff is entitled to the permanent injunction sought by him? (OPP).*
8. *Whether the suit is barred by estoppel? (OPD).*
9. *Whether the defendants have committed breach of the Agreements to Sell dated 16.09.2009? (OPP).*
10. *Whether the suit is bad for misjoinder of causes of action? (OPD-1, 2 and 4).*
11. *Relief."*

17. After framing the issues, the parties were called upon to lead evidence. The Plaintiff examined the following witnesses:-

- (i) PW-1 Tarun Sawheny (Plaintiff)
- (ii) PW-2 Smt. Geeta Bhalla, Company Secretary in M/s. Triveni Engineering and Industries Ltd.
- (iii) PW-3 Mr. Anirudh Chaudhary, Vice President of Royal Bank of Scotland.

18. The Defendants examined the following witnesses:-

- (i) DW-1 Smt. Uma Lall
- (ii) DW-2 Sh. Vinoo Bhagat
- (iii) DW-3 Sh. Bhagwan, Legal Assistant, Times of India
- (iv) DW-4 Sh. Govind Singh, Executive in Cushman and Wakefield.



19. The LSJ has proceeded to decree the suit for specific performance of both Agreements, conditional on payment of interest @ 9% p.a. from 16.09.2010, while recording in substance the following findings:-

- (i) the Plaintiff was always ready and willing to perform his part of the contract and the defaults in performance of the agreement were on the part of the Defendants, particularly, delay by Defendant Nos. 3 and 5.
- (ii) the Defendants are guilty of delay and breach; they cannot rely on “efflux of time” to claim termination.
- (ii) clause 20 and 17, of the respective Agreements, does not lead to automatic termination of Agreement to Sell.
- (iii) there was no escalation in the market price of the property, hence specific performance was not refused on that ground
- (iv) the Defendant’s conduct was aimed at scuttling the execution of the sale deeds.

**CONTENTION FOR THE PLAINTIFF IN RFA(OS) 26/2019**

20. Learned counsel for the Plaintiff contends that although the LSJ decreed the suit for specific performance in favour of the Plaintiff, the direction requiring him to pay interest @ 9% per annum on the balance sale consideration from 16.09.2010 is contrary to the discussion contained in the judgment itself.

21. The Plaintiff contends that the findings throughout the Impugned Judgment recognises that the delay in execution of the sale deeds and completion of the transaction was caused by the





Defendants, and therefore the imposition of interest on the Plaintiff has no factual or legal basis.

22. Further it is contended that no issue was framed on the question of interest, and even no evidence was led by any of the Defendants to support the grant of interest. The Appellant states that despite this, the decree imposes an additional financial burden upon the plaintiff without any reasoning for the same.

23. Learned counsel for the Plaintiff submits that the Plaintiff was always ready and willing to complete the transaction whereas the Defendants were not cooperating, and thus imposition of such interest is unjust and amounts to penalty without justification. On these grounds, the appellant prays that the judgment and decree be modified to the extent of deleting the direction requiring payment of interest on the balance sale consideration, while leaving the decree for specific performance otherwise undisturbed.

#### **CONTENTION FOR THE DEFENDANTS IN RFA(OS) 26/2019**

24. Learned counsel for the Defendants contend that the Appellant/Plaintiff filed the suit for specific performance on 01.10.2010 even though his own obligations under the agreements remained unfulfilled.

25. Learned counsel for the Defendants submits that both Agreements stipulated a clear timeline of 12 months from execution for conclusion of the transaction, failing which the agreements would automatically stand terminated. The Defendants contend that, for the first six months, the Plaintiff took no steps for mutation, despite the



Respondents/Defendants having signed all documents required from their end and extending full cooperation.

26. It is further pointed out that when the contractual period was nearing expiry, the Plaintiff requested an extension of time by a letter dated 04.09.2010. Defendant Nos. 3 and 5 did not allow extension and they, prior to the other Defendants refunded the earnest money and communicated the termination by reply dated 22.09.2010. Even though the agreements otherwise lapsed by efflux of time, Defendant Nos. 1, 2 and 4, purely as a gesture of goodwill, agreed to extend the time by three months vide their reply dated 13.09.2010.

27. Despite this extension, the Plaintiff instituted the present suit before the expiry of the extended period. The Defendants contend that the Plaintiff failed to comply with his contractual obligations within the stipulated period. It is further contended that in the present agreement, time was of the essence and even thereafter, the Plaintiff did not conclude the transaction within the extended timeline, compelling the Defendant Nos.1,2 and 4 also to treat the agreement as terminated by forwarding refund of earnest money on 17.01.2011.

28. The Defendants jointly submit that the LSJ erred in granting relief in favour of the Appellant/Plaintiff despite the Plaintiff's own non-performance, and that the findings, particularly on Issue No. 10 and connected issues, are contrary to the contractual terms and evidence on record. They emphasise that the agreements stood terminated owing to non-performance by the Plaintiff and therefore the suit ought to have been dismissed.

**CONTENTIONS FOR THE APPELLANTS IN RFA(OS) 34/2019**

29. The Appellants herein were Defendant Nos. 3 and 5 before the LSJ. Learned counsel for the Appellants contends that the LSJ overlooked the true nature of the Agreements to Sell dated 16.09.2009. They submit that both the agreements through clauses 20 and 17 respectively consisted the termination clause, stating that if the sale was not completed within twelve months and if payments were not made as agreed, the agreement will automatically terminate.

30. It is further contended that instead of performing his own obligations, the plaintiff repeatedly tried to change the original agreements and insisted on signing a new document with different terms. Emails and letters placed on record, including the plaintiff's own communications, are relied upon to show that he abandoned the original agreements and never issued the notices required under the contract if he genuinely wanted performance.

31. The Appellants contend that many documents supporting their stand were either ignored or selectively read, while parts of the evidence that went against the plaintiff were not examined. According to the learned counsel for the Appellants, the Impugned Judgment relies on self-serving parts of the evidence while ignoring contradictions brought out during cross-examination and the fact that the plaintiff was unable to show financial capacity when required to deposit the balance consideration. The Appellants submit that these aspects should have led to the finding that the Plaintiff was never "ready and willing" throughout.



32. Further it has been contended that the Plaintiff interfered with the mutation process in a way that altered the ownership structure and affected their title. They allege that the entire problem arose because the plaintiff insisted on an incorrect mutation format which excluded some of the owners and jeopardised their rights. On this basis, the appellants submit that the plaintiff himself made the contract unworkable and, therefore, the decree of specific performance could not have been granted.

33. Lastly, the Appellants submit that once the agreements had come to an end by efflux of time and in terms of the automatic termination clause, the suit for specific performance itself was not maintainable. Therefore, through this Appeal the Appellants impugn the findings of the LSJ contending it to be against the evidence on record and contrary to settled principles governing specific performance.

### **ANALYSIS AND FINDINGS**

34. Heard learned counsel representing the parties at length and with their able assistance, perused the paperbook.

35. While deciding a suit for specific performance of an Agreement to Sell, the Plaintiff is required to prove that he was always “ready and willing” to perform his part of the agreement. As per Clauses 5, 6 and 12 of the first Agreement to Sell and as per Clauses 9 and 10 of the second Agreement to Sell, both dated 16.09.2009, the Plaintiff undertook to get the mutation sanctioned in favour of the Defendants and used his good offices to smoothly convert the property from leasehold to freehold.



36. It is evident from Clauses 20 and 17 of the respective Agreements to Sell that the outer limit for completion of the contract was 12 months and not thereafter. In other words, right from the date when the Agreement to Sell was entered into, both the parties were conscious of the fact that the transactions had to be completed within a period of 12 months, failing which the agreement would not be enforceable.

37. From a perusal of the record, it is evident that the Plaintiff did not take any steps for completing the mutation in favour of the Defendants for a period of nearly six months from the date of the Agreement to Sell. It is around April, 2010 when, for the first time, on behalf of the Plaintiff, some steps were taken in pursuance of the agreement by Sh. Lalit Sachdeva, who represented the Plaintiff.

38. It is evident that, rather than getting the mutation sanctioned in accordance with the applications submitted in February 2009 and March 2009, Sh. Lalit Sachdeva drove the parties in a different/wrong direction. A proposal was submitted by Sh. Lalit Sachdeva that mutation of the property be sanctioned in a different manner. It was proposed that the mutation with regard to 50% share of the property be sanctioned in favour of Sh. Vinoo Bhagat, whereas remaining 50% share be sanctioned in favour of two sisters, namely, Smt. Uma Lall and Smt. Urmilla Kapur, on the basis of the Will while ignoring the Letter of Administration issued by the competent Court on 24.10.2008. This court finds that this proposal was not only against the factual position but was also against the Agreements to Sell.



39. The Plaintiff, Sh. Tarun Sawhney knew that 60% of the property belongs to Sh. Vinoo Bhagat/Defendant No.5, whereas remaining 40% belongs to Smt. Uma Lall, Smt. Urmilla Kapur, Smt. Upma Khanna and Sh. Kapil Bhagat/Defendant Nos.1-4. The Plaintiff has produced a list of documents on his behalf on 01.10.2010. The documents from pages 94 to 127 have been collectively exhibited, as Ex.PW1/20. These documents are also marked as Ex.P17(colly.) which brings to the Court's notice various communications between Mr. Tarun Sawhney and Sh. Vinoo Bhagat.

40. A perusal of the record reveals that on 17.03.2010, Sh. Vinoo Bhagat/Defendant No.5 wrote an e-mail to Sh. Tarun Sawhney/Plaintiff explaining that the effort to get the 50% share in the Suit Property mutated in favour of two sisters as per the Will would be against the factual position while ignoring the Letter of Administration issued by the competent court. Sh. Vinoo Bhagat/Defendant No.5 has categorically stated that he is not prepared to accept this solution, as it would result in acting against the Agreements to Sell. He also expressed dismay over the fact that this step will take them backward by at least six months.

41. On 20.03.2010, Sh. Tarun Sawhney wrote that he will contact Sh. Vinoo Bhagat and fixed a meeting with him on 22.03.2010 at 07:00 PM to discuss the solution. It appears that some meeting did take place.

42. On 23.03.2010, Sh. Vinoo Bhagat once again sent an e-mail to the Plaintiff that the path adopted for getting the mutation sanctioned



in favour of sisters is not acceptable and he is disagreeing with such stipulated illegal and dishonest application. Certain other suggestions were also given. On 29.03.2010, Sh. Vinoo Bhagat sent another e-mail to the Plaintiff giving two options.

43. The record reveals that on 30.03.2010 and thereafter, there exists a series of e-mails sent by Sh. Vinoo Bhagat to the Plaintiff, however, there was no response from the side of the Plaintiff. The aforesaid documents also bring to the Court's notice that the Plaintiff sent an e-mail on 26.04.2010 to Smt. Urmilla Kapur and Smt. Uma Lall enclosing the latest draft of the agreement. He acknowledges that he is waiting for the comments of Sh. Vinoo Bhagat regarding the above agreement as shared with him on 23.04.2010, which was promptly replied to by Sh. Vinoo Bhagat on 27.04.2010. Furthermore, with regards to a new agreement, Defendant No.5 through his mail dated 10.05.2010 clearly stated that:

***“Your draft states that the Agreement to sell dated 16.9.2009 is being superseded altogether by the new Agreement to sell. This is not correct.”***

44. On 24.05.2010, a second new Agreement to Sell was proposed by the Plaintiff, which was also never signed. Thus, it is evident that a repetitive attempt was made by the Plaintiff to get the previous Agreement to Sell substituted. In substance, efforts were being made by the Plaintiff to get the mutation of the property sanctioned in favour of the following persons:-

- (i) 50% Sh. Vinoo Bhagat
- (ii) 50% Smt. Uma Lall and Smt. Urmilla Kapur.

45. Thereafter, seeing the Plaintiff's resistance to multiple requests



of the Defendants, they were forced to continue with the aforementioned new arrangement. As a protective measure, the Defendants, in the meantime, entered into a Memorandum of Family Settlement in June, 2010 exhibited as Ex.PW-1/8, reiterating their earlier family agreement that all five of them had inherited one-half of the suit property by intestate succession on the death of their unmarried eldest sister, and that her Will would not apply to it. It further acknowledged that even the fresh mutation application in the name of two sisters does not convey title and was only for expediting the sanction of the mutation.

46. Ex.PW1/20 which has also been marked as Ex.P17(colly.) reveals that Sh. Vinoo Bhagat/ Defendant No.5 through e-mails dated 03.07.2010, 06.07.2010, 08.07.2010, 09.07.2010 and 13.07.2010 repeatedly cautioned the Plaintiff in regards to his fresh mutation application arrangement, and even communicated his non-acceptance for using disclaimer deed of Smt. Upma Khanna to fulfil this new arrangement. The relevant portions of the said mails are reproduced below:

On 03.07.2010, the Defendant No.5 wrote the following to the Plaintiff:

***“The need for the disclaimer below has surfaced after almost a year. This kind of document is not acceptable. It can lead to endless legal complications for succeeding generations in our families if disputes break out amongst us.”***

On 06.07.2010, the Defendant No.5 wrote the following to the Plaintiff:

***“The sellers property rights cannot be subservient to the buyer’s financial arrangements. I am not willing to agree to any new agreement that purports to transfer my property rights or those of the other two siblings as belonging to the two sisters, nor am I prepared to play around with words in this behalf. An agreement to sell by only my two sisters should not even be suggested. I***





*would prefer to stay with the existing Agreements to sell. The first time you met me you said you could write out a cheque for the full price. Please do some financial jugglery at your end or try HFC for a home loan.”*

On 08.07.2010 the Defendant No.5 wrote the following to the Plaintiff:

*“The earlier draft of surrender clearly was to make her surrender her ownership rights in this property. The surrender of her right to mutation can also be misused later on in ways that no one can for see. It is unfair to make Mrs. Khanna give up anything connected with this property. Please ask the L&DO to do the mutation in a way by which no one gives up any rights whatsoever.”*

On 09.07.2010 the Defendant No.5 wrote the following to the Plaintiff:

*“Mrs. Khanna is signing the new document on the understanding that it is nothing more than what her no objection Affidavit, viz. the one-half of the property can be mutated in the names of the two sisters. If the new document is used to harm her substantive rights in the property then it will be a case of the fraudulent use of the document. Please avert disaster before it strikes.”*

On 13.07.2010 the Defendant No.5 wrote the following to the Plaintiff:

*“There was no response from you to my mail of 6 July, which I have copied below.*

*In all my years of law practice I have never heard of any concluded agreement being later affected by banking requirements of one side or the other. All that may be possible may be a supplementary agreement between all of us providing that the existing agreement continues to be operative notwithstanding mutation of one-half in the names of the two sisters as mutation does not affect title. Our family agreement has already been made. You may not be concerned with our family settlement, similarly we cannot be affected by your bank's views. Please do not ask for a new Agreement to sell.*

*The mutation and conversion were entrusted to you under the Agreements in good faith.*

*I have been perturbed by the document got signed by Mrs. Khanna for mutation; I cannot understand its need; it is legally quite irrelevant. During our discussion about it I was told the document would be signed on plain paper, but it was got signed on stamp paper yesterday. I sincerely hope that the document is not used to affect Mrs. Khanna's legal rights in the property. If her rights are affected then it will be additional ground for moving the High Court.*



*The time has come to put everything on record in writing. I trust you will be good enough to respond in writing so that there is no misunderstanding of any sort.*

*We can meet next week after I have studied your response to this, and the earlier mail.”*

47. In simple words, through all the above-mentioned communications, the Defendants continued to point out that the proposed method of proceeding to get the mutation sanctioned was not in accordance with the factual position and the judgments of the Courts. However, the Plaintiff continued to press his way of initiating the incorrect mutation proceedings.

48. Ultimately on 27.07.2010, the mutation of the property was sanctioned in favour of Sh. Vinoo Bhagat (50%), Smt. Uma Lall and Smt. Urmilla Kapur (50%), which was received in early August. Thereafter, through e-mail dated 05.08.2010, Sh. Vinoo Bhagat/Defendant No. 5 replied to the Plaintiff's e-mail dated 03.08.2010, and *vide* this reply, he showcased his discontentment with the mutation sanctioned and also communicated his non-acceptance to the same. He numerated the issues with the mutation so sanctioned, and wrote the following to the Plaintiff:

*“Dear Mr Sawhney;*

*The mutation letter reached me later yesterday.*

*The mutation latter is appalling and quite illegal. A few or the illegalities that appear at a first glance are -*

*1. Both our applications for mutation have been ignored/re-written contrary to court judgements.*

*2. The court judgement awarding me an undivided one-half has been altered to make it award me a rear one-half. It appears the words front/rear in the applications were got written for this purpose.*

*3. The Letters of Administration awarding me 120 sq. yds, out of the remaining one-half have been ignored (in an attempt to affect my entitlement under the Court order?).*

*4. The affidavits of the applicants and other heirs that the clause*



*in Usha Bhagat's will concerning the property was deemed have not been acted upon. Instead, the clause in will has been re-written to make the bequest of the entire property in three portions A, B and C to different persons as one of only the 'front one-half to the two applicants. This is ridiculous.*

*5. Mrs. Khanna's disclaiming her entitlement to mutation has been recorded in a manner suggesting that she has given up her rights in the property. This is shocking.*

*Further reflection may reveal more concerns. We can neither accept such a mutation nor any responsibility for its legal effect or consequences now or at any time in the future. You may consider the matter at your end also.*

*Regards,*

*Vinoo Bhagat”*

49. The Plaintiff, replied in negation to the above said reply. Rather he started claiming himself to be a ‘facilitator’ to the process. The relevant portion of his e-mail is reproduced below:

*“I have received your and was surprised to note your observation on the mutation letter. Let me clarify that I. have only worked as a facilitator, on your and your family's-request, in order to help the entire family and keeping the age of the sellers in mind. The actions taken by the L&DO or that are under process, are all based upon the documents filed by yourself and your family members, and I am sure that the Department must have examined these documents from all angles before taking a decision on the same.”*

50. It is pertinent to note that it is when the period for fulfilment of the agreement was about to get over, the Plaintiff started to allege delay on the part of Defendants. He even reached out to Smt. Urmilla Kapur through letter dated 04.09.2010, which has been exhibited as Ex.PW 1/12, also marked as Ex.P11, for getting the period for execution of the sale deed extended stating exclusion of the time spent in pursuing the defective earlier application.

51. Thereafter, on 10.09.2010, a few days before the agreements were to terminate automatically. The Plaintiff further wrote a letter to



all the Defendants requesting exclusion of time taken in earlier proceedings and requested them to grant extension. This letter has been exhibited as Ex.PW 1/14, also marked as Ex.P12 in the records. In the said letter, the Plaintiff asked for (i) a new agreement to sell with new terms, (ii) 9 months more time, (iii) payment by escrow account post-dated demand drafts, (iv) new documents.

52. It is pertinent to note that on 11.09.2010, Sh. Vinoo Bhagat clearly refuted the delay on the part of the Defendants. He on his and his sister, Smt. Upma Khanna's behalf, replied to the Plaintiff's request to exclude and extend the period. This letter has been Exhibited as Ex.PW1/15, and is also marked as Ex.P13 in the records.

The relevant portion of the same is reproduced below:

*"Dear Sir,*

*This letter on my own behalf and that of Mrs. Upma Khanna is in answer to yours dated 10 September 2010 concerning the Agreements to Sell the property BP 32 Nizamuddin East, New Delhi, both dated 16.9.2009.*

*The allegations and averments in your letter about delays, responsibility therefor, your need to exclude nine months from the period of the Agreements, new offers etc. are all fabricated after thoughts, as evident from the fact that they have been trotted out for the first time on 10 September 2010. They are not correct, not admitted and are refuted. It is unnecessary to answer each of them at this stage, as we are relying on the Agreements to sell which are clear and their terms and conditions including the self-operating provision governing their duration cannot be altered by your allegations, averments, offers and ultimatums.*

*Neither the Agreements nor the law enable you to issue ultimatums to the sellers to answer within 48-hours falling which they will be deemed to have admitted your false allegations, etc. We reserve our right to deal with your allegations, averments, offers and ultimatums more fully should the need arise.*

*Mrs. Upma Khanna and I have always been ready and willing to perform our parts under the said Agreements to Sell in accordance with their terms and conditions during the period of their validity as written in the said Agreements."*



53. On the other hand *vide* letter dated 13.09.2010, exhibited as Ex.PW1/13, also marked as Ex.P14, Smt. Uma Lall and Smt. Urmilla Kapur, the Defendant Nos.1 and 2 agreed to extend the time for a further period of three months from 13.09.2010. Another similar communication is stated to have been sent by Sh. Kapil Bhagat, the Defendant No.4 however, the document is not on record. The Plaintiff instituted the suit before the expiry of the extended period, on 01.10.2010.

54. As already noticed, Sh. Vinoo Bhagat and Smt. Upma Khanna through a letter dated on 22.09.2010, which is on record as Ex.PW1/16, also marked as Ex.P15, refused to extend the period and refunded the earnest money amount. Therefore, from the aforesaid transactions, since the date the agreement was entered into, it is evident that the Plaintiff in March 2010, attempted to get the mutation of ownership differently, which resulted in subversion of specific terms of the Agreements to Sell. Subsequently, since April 2010 it is the Plaintiff who is trying the Defendants to enter into a new agreement, and when the same was not being approved by the Defendants, he started stating delay on the part of the Defendants, whereas the record would reveal otherwise.

55. The communications aforementioned clearly establish the fact that the Defendants have always been “ready and willing” to perform their part. Moreover, the Defendants, in spite of communicating that they are not in agreement with the new arrangements, still supported the Plaintiff’s request, by signing documents as and when asked, just with an intent to conclude the transaction. In such circumstances, the



finding of the LSJ to the effect that the Plaintiff was always “ready and willing” to perform his part of contract is not sustainable.

56. This court finds that, at this juncture, examining the cross examination of the Plaintiff would be required. The Plaintiff appeared in evidence as PW-1. During his cross-examination, his explanation was sought with regard to steps taken by him to get the mutation sanctioned. It is evident that his answers were evasive and he avoided giving any direct answer. He failed to explain any step taken by him for initial period of six months i.e. September 2009 till March 2010. On being further questioned, he disclosed that the job of sanctioning of mutation was assigned to Sh. Lalit Sachdeva, his colleague who was requested to use his good offices to get the mutation sanctioned. He keeps on stating that his role was only that of a facilitator.

57. To demonstrate his evasive answers, the relevant part of his cross-examination reads as under:-

***“Q. If as per you this was not agreed upon, then why clause 20 and 17 of the first and second Agreement to Sell to the above effect was incorporated into Agreement to Sell.***

***A. In my opinion time was never of the essence of the Contract. Additionally, all my obligations as the buyer were completed in a few months.***

***Q. You have still not answered my previous question. Do you have to say anything more.***

***A. My answer is given above. I have nothing to say more.***

***It is incorrect to suggest that the time was of essence of the Contract?***

***Q. I put it to you that all the terms and conditions contained in the Agreement to Sell were binding on the parties. Is it correct.***

***A. Yes.***

***Q. After entering into Agreement to Sell on 16.9.2009 when did you first visit the office of the L&DO for the purpose of mutation of the property in question as per the terms of the Agreement to Sell.***



*A. I had engaged persons in my employment and requested them to facilitate the applications for mutation and subsequently for conversion. To the best of my knowledge, they made many visits. However, I do not have a date wise recollection of the innumerable visits made.*

*Q. Do you mean to say that you personally did not visit even once to the office of L&DO for the purpose of mutation and getting the property converted into freehold?*

*A. I did not personally visit as I have mentioned in the answer above. However, many visits were made on my behalf to the office of the L&DO.*

*Q. When was the first visit made to the office of the L&DO by your representative/s employed by you after entering into Agreement to Sell dated 16.9.2009 (Exhibit-PW-1/2 PW-1/3).*

*A. I cannot recollect the exact date and time of the first visit. To the best of my knowledge it was very quickly after signing of the Agreements to Sell.*

*Q. Can you tell me the name of the person/s whom you had employed to visit the office of the L&DO.*

*A. I had engaged my colleague Mr. Lalit Sachdeva to use his good offices and other consultants with him to perform these duties.*

*Q. Can you name the other consultants also as referred in your above answer?*

*A. I cannot remember the names.*

*Q. After entering into Agreement to Sell dated 16.9.2009 when did you for the first time ask your representatives about the status of mutation in the office of L&DO?*

*A. After the signing of the Agreement to Sell, I asked to be given feedback very regularly. Having said that the first feedback that I did receive was in the month of October, 2009. It is wrong to suggest that I did not receive the first feed back in the month of October, 2009.*

*Q. And the subsequent feed backs i.e. second, third and fourth feedback, after how many months?*

*A. I am afraid I do not have the dates marked in a diary. However, it was with some regularity as my commitment to complete the transaction was absolute.*

*Q. What do you mean by regularly whether it was weekly, fortnightly, monthly or quarterly etc.?*

*A. There was no definite time allotted or dates given but it was regularly monitored by me.*

*Q. In first six months after execution of Agreement to Sell approximately how many times you had taken the feedback from your representative regarding the status of mutation of the suit property?*



*A. I do not have a number to offer but it was happening regularly.*

*Q. Can you not give even approximate number of times you received the feedback in first six months after entering into Agreement to Sell?*

*A. No because I would only be hazarding a guess.*

*Q. Between the date of Agreement to Sell till March, 2010 what was the feedback given by your representatives regarding the mutation application (Exhibit-PW-1/6) pending with L&DO.*

*A. Initially I was told that the documents which have been submitted with the application were incomplete. A original plaint filed by Mr. Venu Bhagat was missing. Subsequently, during my facilitation I was made aware that there were conflicting documents that had been relied upon by the Bhagat family to process the application for mutation. I brought this to the notice of Mr. Venu Bhagat, a Supreme Court lawyer and the remaining members of the Bhagat family who owned an interest in the said property.*

*Q. Initially, you mean to say first or second briefing by your representatives after visit to the office of L&DO*

*A. I cannot be sure of which briefing but it was not to the best of my recollection the first briefing.*

*Q. Whether it was second or third briefing?*

*A. I am unsure.*

*Q. Please specify when did you first come to know from your representative that the (exhibit PW-1/6) is defective. application*

*A. I cannot remember the exact date but it was towards the end of quarter-1 calendar year 2010.*

*Q. Is it correct that Exhibit-P-1/6 (mutation application) was filed by the Defendants on 27th March, 2009 i.e. prior to execution of Agreement to Sell (Exhibit PW-1/2 & PW-1/3)*

*A. I do not remember the exact date but it was prior to execution of the Agreement to Sell.*

*Q. Kindly see Exhibit PW-1/6. Can you tell what is the date of submission document with the L&DO? of the aforesaid*

*A. I cannot see the date in the said exhibit.*

*Q. Kindly see last four lines of para 13 of your affidavit wherein it is stated that application (Exhibit PW-1/6) was filed in February, 2009. Is your said statement correct?*

*A. Yes.*

*Q. Is it correct that as per your own statement on the date of Agreement to Sell 9-10 months had already elapsed from the date the said application (Exhibit PW-1/6) was submitted mutation? to L&DO for*

*A. According to my statement seven months had elapsed.*

*Q. So when your representative first visited the office of L&DO regarding mutation after entering into Agreement to Sell more*





*than seven months had already elapsed since the application for mutation was filed with L&DO in February, 2009.*

*A. Yes.*

*Q. So in the very first visit of your representative to the office of the L&DO he was told that this application was defective? Is it correct.*

*A. I have already answered the question.*

*Q. I put it to you that you are deliberately avoiding the answer to above question because your representative visited the office of L&DO for the first time in the month of April, 2010?*

*A. I am not avoiding the question and the allegation is false.”*

58. The Plaintiff has not examined Sh. Lalit Sachdeva (his colleague/ in house counsel) who was allegedly assigned the task of getting the mutation sanctioned by the Plaintiff. Thus, the Plaintiff withheld best evidence from the Court. In other words, the Plaintiff from the very beginning knew the importance of Clauses 7 and 20 of the Agreement to Sell. However, as per his own admission he did not take steps to get the mutation sanctioned for an initial period of six months. Thereafter, his representative rather than getting the mutation sanctioned on the basis of judgments of the Courts drove the Defendants in a wrong direction.

59. It has come on record that the Plaintiff owns and manages an industrial group, which is also in Real Estate. He is Chairman-cum-Managing Director of Triveni Engineering and Industries Ltd. Ltd. In addition to this, he holds the position of Director in Triveni Turbine Ltd., GE Travels Ltd., Triveni Entertainment Ltd. and is also a Partner in Acquire Ventures LLP and other such businesses.

60. In the present case, the Plaintiff is not proved to be “ready and willing” to perform his part of contract because he neither took steps for a period of first six months to get the mutation sanctioned nor



made any attempts to get mutation sanctioned in accordance with the judgments of the Courts determining the share of the parties, which was also reflected in the two Agreements to Sell. Thus, it is safe to assume that the intention of the Plaintiff was not *bona-fide*.

61. The LSJ has also erred in observing that the Defendants had committed default. In both the Agreements to Sell, the Defendants had specifically recited that the job of getting the mutation sanctioned and getting the property converted from leasehold to freehold shall be exclusively that of the Plaintiff. Thereafter, it was for the Plaintiff to take steps for getting the mutation sanctioned expeditiously.

62. It is pertinent to note that despite the fact that the Plaintiff or his representative requested the Defendants to apply afresh for getting the mutation sanctioned of 50% share in the Suit Property in favour of Sh. Vinoo Bhagat and the remaining 50% of the share in the Suit Property in favour of Smt. Urmilla Kapur and Smt. Uma Lall, the Defendants cooperated and sent the documents, although these were against the record of the case and judgments passed by the Courts.

63. The record of the case reveals that for a complete period of 12 months beginning from the date of Agreement to Sell, the Defendants never delayed in signing the documents. Rather, the correspondence exchanged during the period April 2010 to September 2010, including the letters mentioned above, shows that the Defendants were cooperating and furnishing whatever was required from them.

64. However, the Plaintiff or his representative, especially Sh. Lalit Sachdeva proceeded to get an incorrect mutation sanctioned, despite



repeated warnings from Sh. Vinoo Bhagat/Defendant No.5. Therefore, LSJ has erred in observing delay on the part of the Defendants, whereas it is the Plaintiff who caused delay in completion of the transaction. Thus, it justifies the Defendants refusing to extend the period after the lapse of the initial period of 12 months.

65. Additionally, the application for conversion of the property from leasehold to freehold was also submitted on 28.06.2010, which was accepted on 15.9.2010 calling upon the Defendants to attend the office on 27.09.2010 and later on 10.11.2010. The LSJ has observed that on account of defendants' failure to attend the office of L&DO, the conversion application was rejected on 23.04.2012, which has been exhibited as Ex.DW/W-1/A. This court deems it appropriate to observe that LSJ erred in not going behind the reason as to why the Defendants did not turn up.

66. The conversion of the Suit Property from leasehold to freehold had to occur in accordance with mutation sanctioned, which reflects 50% share in Suit Property in favour of Sh. Vinoo Bhagat, and remaining 50% share in favour of two sisters, namely Smt. Uma Lall and Smt. Urmilla Kapur. This position is contrary to the actual position, which is 60% share in the Suit Property being with Sh. Vinoo Bhagat, and remaining 40% share with other four siblings having 10% share each. Therefore, *vide* mutation memorandum, share of Smt. Upma Khanna and Sh. Kapil Bhagat has totally been excluded, and share of Sh. Vinoo Bhagat has been reduced from 60% to 50%. Hence the Defendants could not be accused of refusing to cooperate from getting such conversion sanctioned, because that



would have resulted in depriving two co-owners of their share and reduction of the share of the third co-owner because on conversion from leasehold to freehold. Had the Defendant cooperated with the Plaintiff for converting the property as proposed, the conveyance deed/allotment would have reflected 50% share of Sh. Vinoo Bhagat and 50% share of Smt. Uma Lall and Smt. Urmilla Kapur, hence, the original agreements executed in 2009 could not have been enforced, because agreements reflected 60% share of Sh. Vinoo Bhagat whereas 10% each of Smt. Uma Lall, Smt. Urmilla Kapur, Smt. Upma Khanna, and Sh. Kapil Bhagat.

67. Moreover, the LSJ has also erred in observing that the Agreement to Sell remained enforceable even after a lapse of 12 months, particularly, in view of the categorise and clear language of Clauses 7 and 20 of the Agreement to Sell. It is apparent that the parties had agreed that the outer limit for execution of the Sale Deed was 12 months from the Agreement to Sell and not thereafter.

68. This court deems it appropriate to observe that the parties are entitled to decide the terms of agreement, and the LSJ has erred by overlooking the specific language of the termination clause explicitly mentioned in these agreements *vide* Clauses 20 and 17.

69. The LSJ has erred in observing that there is no automatic termination clause in the Agreements to Sell involved in the present case. It is apposite to note that such Clauses in the Agreement to Sell are not proved to be contrary to the provisions of the Indian Contract Act, 1872. Hence, these clauses are required to be given full meaning and effect particularly when the parties consciously entered into such



contract.

70. Furthermore, the LSJ's observation that there is no escalation in the market price of the Suit Property since the date of agreement, which dates back to the year 2009 seems unreal, especially when the property pertains to the Capital City of Delhi, where the prices of the immovable property increases by leaps and bounds.

71. It is pertinent to note that such clauses, not only prevent exploitation of sellers but also protects their title as owner of the property and sellers not be left at the mercy of the buyer, who can keep on delaying the fulfilment of their part of agreement for years.

72. At this juncture, it is apposite to reiterate the significance of termination clauses in any contractual agreements. The legislative intent behind recognising and enforcing termination clauses in contracts is to uphold commercial certainty and protect parties from indefinite or open-ended contractual obligations. The law does not compel performance of an agreement where the parties themselves have consciously incorporated a time-bound exit mechanism. A termination clause reflects the autonomy of contracting parties to predetermine the circumstances in which the contract would cease without further litigation.

### **CONCLUSION:**

73. To conclude, termination clauses serve two purposes, firstly; they push both the sides to finish their commitments on time and secondly; stop a defaulting party from keeping the other side tied to the contract while doing nothing themselves. Thus, when the parties



have contractually agreed that the agreement shall stand automatically extinguished upon the occurrence of a specified contingency or lapse of time, the function of the Court is not to rewrite the bargain, but to give effect to the parties' intention as recorded in the contract.

74. This court finds that the findings of fact by the LSJ with regard to the failure of the Defendants to prove explanation is not relevant because the Plaintiff is not proved to be "ready and willing" to perform his part of the agreement. In fact, it is the Plaintiff, who has committed default in performing his part of the contract.

75. Furthermore, for an initial period of six months, the Plaintiff did not take steps to get the mutation sanctioned, whereas thereafter he drove the Defendants in a totally wrong direction. In these circumstances, the Plaintiff cannot be allowed to capitalize on his own defaults. Consequently, the Impugned Judgment is set-aside and RFA(OS) No.34/2019 filed by the Defendant Nos. 3 and 5 is allowed.

76. The Appeal i.e. RFA(OS) 26/2019 filed by the Plaintiff against direction to pay interest @ 9% p.a. is rendered infructuous, because he is held not entitled to a decree for specific performance of the Agreement to Sell.

77. Furthermore, as per Clause 14 of the Agreement to Sell, the amount of earnest money shall stand forfeited in favour of the Defendants, because it is the Vendee/the Plaintiff who is proved to have committed default in performing his obligations.

78. In view of the aforesaid, RFA(OS) No.34/2019 filed by the Defendant Nos. 3 & 5 is allowed, whereas RFA(OS) 26/2019 filed by



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the Plaintiff stands dismissed. Resultantly, CS(OS) 2051/2010 shall stand dismissed. The pending application is also disposed of accordingly.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**DECEMBER 06, 2025/sp/dev**