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

% ***Judgment reserved on: 09.09.2025***
Judgment pronounced on:28.10.2025

\+ RFA(OS) 13/2025 and CM APPL. 13604/2025

AJAY NARAIN .....Appellant

Through: Mr. Abhimanyu Walia, Mr. Aryan Malik, Mr. Kamakshraj Singh, Mr. Adit S. Pujari, Ms. Vanya Chhabra and Mr. Bhavesh Seth, Advs.

versus

AARTI SINGH & ORS. .....Respondents

Through: Mr. Jai Sahai Endlaw and Ms. Sagarika Kaul, Advs. for R-1.
Mr. Bharat Arora, Mr. Gourav Arora and Ms. Himangi Arora, Advs. for R-2.

\+ RFA(OS) 14/2025, CM APPL. 13640/2025 and CM APPL. 48088/2025

AJAY NARAIN .....Appellant

Through: Mr. Abhimanyu Walia, Mr. Aryan Malik, Mr. Kamakshraj Singh, Mr. Adit S. Pujari, Ms. Vanya Chhabra and Mr. Bhavesh Seth, Advs.

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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 the present Appeals filed under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] read with Section 10 of the Delhi High Court Act, 1966, the Appellant assails the correctness of the judgment dated 02.12.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge.

2. Having regard to the fact that the two suits emanate from identical issues and in view of the consent expressed by learned counsel for the parties, the Appeals have been heard together and are being disposed of by this common judgment.

BRIEF FACTUAL MATRIX:

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

4. The Appellant was the owner of property bearing No.110, Jor Bagh, New Delhi, comprising the First and Second Floors [hereinafter referred to as the 'Suit Property']. He entered into an Agreement to Sell dated 11.12.1996 [hereinafter referred to as 'ATS-1'] and a Supplementary Agreement to Sell dated 07.10.1997 [hereinafter collectively referred to as 'S.ATS-1'], in respect of the First Floor of the Suit Property, with Ms. Aarti Singh [hereinafter referred to as

'Respondent No.1']. The Respondent No.1 subsequently entered into possession of the First and Second Floors of the Suit Property.

5. Thereafter, she married Sh. Kanwar Raj Singh [hereinafter referred to as 'Respondent No.2']. The relevant clauses of ATS-1 are extracted hereinunder:

> *"iii) The party of the first part has agreed to sell the* ***1st floor*** *of property No. 110, Jor Bagh, New Delhi and the party of the second part has agreed to purchase the said property for a sale consideration of Rs. 40 lakhs (Rupees forty lakhs only).*
>
> *iv) That the party of the second part has paid a sum of Rs. 5,00,000/- lakhs (Rupees five lakhs only).*
>
> *v) That the party of the 1st part do hereby acknowledge and confirms the receipt of Rs. 5,00,000/- (Rupees five lakhs only) for which a separate receipt has been executed.*
>
> *Details of payment made are given under:*
>
> | ***Cheque No.*** | ***Date*** | ***Amount*** |
> |---|---|---|
> | *279562* | *9/12/96* | *Rs. 2,50,000/-* |
> | *279582* | *9/12/96* | *Rs. 2,50,000/-* |
> | *243065* | *9/12/96* | *Rs. 3,00,000/-"* |

The relevant clauses of S.ATS-1 are extracted hereinunder:

> *"1. That the sale consideration is agreed at Rs. 40,00,000 (Rupees Forty Lakhs) already paid and being paid by the Vendee to the Vendor as under:-*
>
> *(a) Rs. 8,00,000/- (Rupees Eight Lakhs) has been paid by the Vendee to the Vendor as under:-*
>
> *(i) By cheque No. 243065 dated 09.12.1996 on Central Bank of India, Jor Bagh, New Delhi for Rs. 3,00,000/-*
>
> *(ii) By cheque No. 279562 dated 09.12.1996 on Central Bank of India, Jor Bagh, New Delhi for Rs. 2,50,000/-.*
>
> *(iii) By cheque No. 279582 dated 09.12.1996 on Central Bank of India, Jor Bagh, New Delhi for Rs. 2,50,000/-.*
>
> *Receipt of which the Vendor hereby admit and acknowledge.*
>
> .....

(b) Rs. 32,00,000/- (Rupees Thirty Two Lakhs) at the time of execution hereof by Cheque No. 279584 dated 07.10.1997 on Central Bank of India, Jor Bagh, New Delhi.

No further payment of whatsoever nature is to be paid by the Vendee to the Vendor.

Any conversion charges from lease hold to free hold shall be proportionality borne by the Vendee.

.....

4. That the Vendoor has handed over symbolic possession of the said flat/unit at the time of execution hereof, in part performance of the contract as contemplated under Section 53A of the Transfer of Property Act and authorized the Vendee to utilize the said unit in any manner it likes whether to keep it, construct the first floor of the servant quarter and exploit the same or re-construct the entire first floor and finish it and/or assign or nominate the rights in this Agreement.

5.That the Vendor shall have the lease hold rights converted into free hold and the charges for the same will be proportionate borne by the Vendee. Thereafter on the request of the Vendee, the Vendor shall apply for requisite permission, sanction and clearance within 30 days of the conversion from lease hold to free hold and complete the transaction by way of execution and registration of the Deed of Sale, failing which the Vendee shall have the right to specific performance of the contract."

6. A separate Agreement to Sell, on the same date (i.e., dated 11.12.1996) [hereinafter referred to as 'ATS-2'], and a Supplementary Agreement to Sell dated 30.12.1997 [hereinafter referred to as 'S.ATS-2'], were executed by the Appellant in favour of Respondent No.2, in respect of the Second Floor of the Suit Property, as the earlier documents were stated to be untraceable. The relevant clauses of ATS-2 are extracted hereinbelow:

*"iii) The party of the first part has agreed to sell the **2nd floor** of property No. 110, Jor Bagh, New Delhi and the party of the second part has agreed to purchase the said property for a sale consideration of Rs. 20 lakhs (Rupees twenty lakhs only).*

iv) That the party of the second part has paid a sum of Rs. 5,00,000/- lakhs (Rupees five lakhs only).

v) That the party of the 1st part do hereby acknowledge and confirms the receipt of Rs. 5,00,000/- (Rupees five lakhs only) for which a separate receipt has been executed.

Details of payment made are given under:

Cheque/DD No.	***Date***	***Amount***
NIE 038899	*9/12/96*	*Rs. 5,00,000/-*

The relevant clauses of S.ATS-2 are extracted hereinunder:

> ***AND WHEREAS*** *the parties had further agreed that the balance sale consideration of Rs. 15 lacs shall be paid by the* ***SECOND PARTY*** *on or before 31st December 1997 and simultaneously the* ***FIRST PARTY*** *shall execute sale deed/ conveyance deed/set of documents to effectively and effectually convey the said property in favour of the* ***FIRST PARTY****;*
>
> ……
>
> *AND WHEREAS parties to this agreement have now agreed to execute supplementary Agreement to Sell whereby they wish to extend the period of completion of the sale transaction by three months i.e., up till 31st March 1998."*
>
> ……
>
> ***NOW THIS AGREEMENT WITNESSESTH AS UNDER:***
>
> 1. *....That the* ***SECOND PARTY****, as mentioned above, had paid and the* ***FIRST PARTY*** *had received the part consideration amount of Rs. 5,00,000/- (Rupees Five lacs only) vide account payee Cheque, detailed in the earlier Agreement to Sell and Purchase. The balance sale consideration amount of Rs. 15,00,000/- (Rupees Fifteen lacs only) shall be paid by the* ***SECOND PARTY*** *to the* ***FIRST PARTY*** *on or before 31st March 1998."*

7. Subsequently, another Agreement to Sell dated 30.03.1998 [hereinafter referred to as 'ATS-3'] was executed by the Appellant in favour of Respondent No.2 on receipt of a cheque of Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards full and final settlement of the consideration amount. The relevant clauses of ATS-3 are extracted hereinunder:

> *"**The first party had agreed to sell the entire second floor of the property in question with proportionate lease hold rights alongwith full terrace and roof rights (for short the 'said property') to the***

second party, for a total consideration amount of Rs. 20,00,000/- (Rupees Twenty lacs only). The second party has already paid a sum of Rs. 5,00,000/- Rupees Five lacs only)*, vide Pay Order no. NIE 038899 DATED 9.12.96 issued by ANZ Grindlays Bank, Connought Place, New Delhi, as part consideration against the sale of said property, to* ***the second property, the receipt and encashment whereof the first party hereby acknowledges****."*

NOW THIS AGREEMENT TO SELL WITNESSETH AS UNDER

1. ***That the Second Party has paid and the First Party has received the balance consideration amount of Rs. 15,00,000/- (Rupees Fifteen lacs only) vide cheque no. 732252 dated 27.3.98****……."*

(Emphasis Supplied)

8. On the basis of the aforesaid clauses of S.ATS-1, the Respondent No.1, on 07.10.1997, issued a further cheque amounting to Rs. 32,00,000/- (Rupees Thirty-Two Lakhs only) in favour of the Appellant.

9. Thereafter, the suit [CS(OS) 1336/1998] is filed by the Appellant seeking, *inter alia*, a declaration that the General Power of Attorney [hereinafter referred to as 'GPA'], Special Powers of Attorney [hereinafter referred to as 'SPA'], Wills, Agreement to sell and any other related instruments executed in favour of the Respondents were operative only until 31.12.1999 and stood extinguished thereafter. The relief prayed by him is reproduced below:

"In the premises it is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a) pass a decree of declaration declaring that the General Power of Attorneys dated 06.12.1996, 07.10.1997 and 30.03.1998 in favour of Smt Aarti Singh [Defendant No. 1], the General Power of Attorney dated 06.12.1996 and Special Power of Attorneys [4 in number] all dated 30.03.1997 in favour of Sh. Kanwar Raj Singh [Defendant No. 2], ***the General Power of Attorney dated 07.10.1997 in favour of Sh. Kanwar Raj Singh [Defendant No. 2] and Smt Deepa Partap Dass [Defendant No.3], Agreements to Sell dated 6.12.1996, 07.10.1997 and 30.03.1998 in favour of Smt Aarti Singh [DefendantNo.1] and Sh. Kanwar Raj Singh [Defendant No.2] and any other related documents***

in respect of property bearing No.110, Jor Bagh, New Delhi would not come into operation till 31.12.1999; and only in the event if the plaintiff does not return the due amounts;

b) pass a decree of declaration declaring the blank signed papers and IOs given by the plaintiff to the defendants declaring them to be null and void ab-initio;

c) pass a decree of permanent injunction restraining the Defendants from acting upon or using the General Power of Attorneys dated 06.12.1996, 07.10.1997 and 30.03.1998 in favour of Smt Aarti Singh [Defendant No. 1], the General Power of Attorney dated 06.12.1996 and Special Power of Attorneys [4 in number] all dated 30.03.1997 in favour of Sh. Kanwar Raj Singh [Defendant No. 2], the General Power of Attorney dated 07.10.1997 in favour of Sh. Kanwar Raj Singh [Defendant No.2] and Smt Deepa Partap Dass [Defendant No.3], Agreements to Sell dated 6.12.1996, 07.10.1997 and 30.03.1998 in favour of Smt Aarti Singh [Defendant No.1] and Sh. Kanwar Raj Singh [Defendant No.2] and any other related documents in respect of property bearing No.110, Jor Bagh, New Delhi;

d) pass a decree of permanent injunction against the Defendants restraining them, their servants, assigns or anybody claiming under them from alienating,

disposing off or creating any third party right, title or interest in the property bearing No.110, Jor Bagh, New Delhi; and

e) pass such other/further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

10. The transactional chronology, as emerging from ATS-1, S.ATS-1, ATS-2, S.ATS-2 and ATS-3 respectively with respect to the Suit Property, is delineated in the following manner:

DATE	TRANSACTIONS MODE	PARTICULARS	AMOUNT
09.12.1996	Cheque *[Cheque No. 279562, 279582, 243065]*	With respect to ATS-1 *r/w* S.ATS-1	8,00,000/-
09/11.12.1996	Demand Draft *[No. 038899]*	ATS-2	5,00,000/-
07.10.1997	Cheque *[Cheque No. 279584]*	With respect to S.ATS-1	32,00,000/-

27/30.03.1998	Cheque *[Cheque No. 732252]*	With respect to ATS-3	15,00,000/-
	TOTAL: 60,00,000/- (Rupees Sixty Lakhs only)		

11. The issues framed by this Court in the lead suit and the cross suit, respectively, are read hereunder:

> *"**Issues in CS (OS)l336/1998:***
>
> *1. Were the agreements to sell, General Powers of Attorney, Special Powers of Attorney, Receipts. Wills, Declaration-cum-Undertaking and the affidavits were executed by the plaintiffs by way of security for a loan as alleged by the plaintiffs? If so to what effect?*
>
> *2. Has the plaintiffs returned a sum of Rs.45 lakhs to defendant on 30.04.1998? If so to what effect?*
>
> *3. Whether the suit is correctly valued for the purpose of court fee and jurisdiction?*
>
> *4. Relief, (if any).*
>
> ***Issues in CS No.2273/2000:***
>
> *"1. Is there an agreement to sell in respect of the suit property in favour of the plaintiffs?*
>
> *2. Are the plaintiffs entitled to a decree of specific performance?*
>
> *3. Has the defendant returned a sum of Rs.45 lakhs and, therefore, has no obligation under the alleged agreement to sell?"*

12. Additionally, on 15.09.2011, this Court also framed an issue with respect to the transaction made by the Respondent No.2 in CS(OS) No. 2273/2000 filed by the Respondents in the amended plaint. The said framed issues reproduced as follows:

> *"Whether the transaction in favour of plaintiff No. 2 is hit by Section 31 of the Foreign Exchange Regulation Act, 1973? OPP"*

13. After appreciating the evidence led by the parties, this Court decreed CS(OS) No. 2273/2000 in favour of the Respondents with respect to the specific performance of the Agreement(s) to Sell and

Supplementary Agreement(s) to Sell and did not grant the relief of declaration or injunction as sought in CS (OS) 1336/1998 by the Appellant.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

14. Learned counsel for the Appellant has made the following submissions:

i. The entire set of transactions between the parties was, in essence, a loan arrangement and not a sale transaction. The Appellant and the Respondents have been in long-standing fiduciary and family-like relations, under which the Respondents initially advanced a cash loan of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only). Subsequently, in order to expand his business, the Appellant availed further friendly loans from the Respondents aggregating to Rs.60,00,000/- (Rupees Sixty Lakhs only), out of which a sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) has already been repaid, which repayment stands duly acknowledged by the Respondents. It is further submitted that all instruments executed between the parties were only intended as security for the said loan transactions and were never intended to operate as conveyance so as to transfer any right, title, or interest in the Suit Property. In fact, a sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) has already been repaid by the Appellant to the Respondents.

ii. A bare perusal of the Agreement(s) to Sell and/or the Supplementary Agreement(s) to Sell clearly stipulates that the Appellant was required to effect conversion of the property from

leasehold to freehold and thereafter obtain all requisite permissions, sanctions, and clearances within thirty days of such conversion, so as to enable the execution and registration of the sale deed for completion of the transaction. However, the admitted position is that no such conversion has been carried out. Furthermore, there is nothing on record to demonstrate that the Respondents made any effort or initiated any step to approach the Appellant for facilitating such conversion or ensuring compliance with the said stipulations. Subsequently, the Appellant by way of Revocation Deeds dated 23.06.1998, formally revoked the GPA, SPA and other related documents that had been executed between them. In this regard, the Appellant relied upon ***Suraj Lamp & Industries (P) Ltd. v. State of Haryana***[1], wherein it has been held that to circumvent DDA's requirement of permission and payment of unearned increase, a practice developed whereby, in addition to an agreement to sell and a will, the vendor executed an *irrevocable general power of attorney* in favour of the purchaser. Such General Power of Attorney expressly authorized the purchaser to manage, deal with and dispose of the property independently, without reference to the vendor.

iii. The execution of the GPA and the SPA was only to secure repayment of loan. The said instruments, though allegedly executed by the Appellant, have never been acted upon by the Respondents, inasmuch as they have neither sought a declaration as to their validity nor chosen to rely upon or perform acts in accordance with their contents. Instead, the Respondents have sought to shift the entire burden of securing conversion of the Suit Property from leasehold to

[1](2009) 7 SCC 363.

freehold upon the Appellant, despite the said instruments themselves conferring authority to effect such conversion. By declining to exercise the very powers conferred under the said GPA and SPA, the Respondents have demonstrated that they were neither ready nor willing to act in terms of the documents propounded by them. It is pertinently contended that Respondent No.2 had admittedly purchased two floors of the Suit Property and in such circumstances, it is highly improbable that he would not have immediately applied for conversion and thereafter secured registration of the sale deed to perfect his title. These circumstances clearly establish that the parties were *ad idem* that the aforesaid security documentation was never intended to convey any right, title, or interest in the Suit Property.

iv. The Respondents tried to evade the statutory requirements of Income Tax Clearance under Section 269UC of The Income-tax Act, 1961 [hereinafter referred to as "ITA"]. Hence, agreements and supplementary agreements have become redundant and unenforceable and no reliance can now be placed upon it. In this regard, the Respondents claim that they purchased two separate floors, First Floor for Rs. 40 lakh and Second Floor for Rs. 20 lakhs. The claimed bifurcation of the transaction is bad in law. The Supreme Court in ***Appropriate Authority & CIT v. Varshaben Bharat Bhai Shah***[2] held that Section 269UC of the ITA imposed restrictions on transfer of immovable property.

v. The Appellant further contends that the Second Floor did not exist during the period 1997–98 and what was described as the

[2](2001) 4 SCC 1.

"Second Floor" was merely a *barsati*, being an ancillary structure appurtenant to the First Floor, incapable of independent alienation. It is thus submitted that any purported ATS-1 and S.ATS-1 in respect of such non-existent or non-transferable property is *void ab initio*, being hit by the provisions of Section 23 of the Indian Contract Act, 1872 [hereinafter referred to as "ICA"] and Section 6 of the Transfer of Property Act, 1882 [hereinafter referred to as "TPA"].

vi. It is further pertinently contended that Respondent No.2 had acquired citizenship of the United States in 1993 without disclosing this material fact to the Appellant, his landlord, despite continuing in occupation of the property as a tenant from 1991 to 1996. Reliance is placed upon the provisions of the Foreigners Act, 1946 [hereinafter referred to as "Foreigners Act"] and the Registration of Foreigners Rules, 1939 [hereinafter referred to as "Foreigners Rules"], which impose a statutory obligation on every foreign national residing in India to register with the Foreigners Regional Registration Office and to update particulars upon any change in nationality, ordinarily within fourteen days. *Arguendo*, the cumulative operation of all relevant statutory frameworks, namely, the Foreigners Act, the Foreigners Rules, the Foreign Exchange Regulation Act, 1973 [hereinafter referred to as "FERA"] and the Reserve Bank of India [hereinafter referred to as "RBI"] Notification dated 26.05.1993 (*Notification No. F.E.R.A. 152/93-RB*) [hereinafter referred to as "RBI Notification"], leads to the inescapable conclusion that the impugned transaction stands vitiated, being void and tainted with illegality at its very inception, and is consequently incapable of judicial enforcement. For this, reliance was placed upon ***Asha John Divianathan v. Vikram***

Malhotra[3], wherein it has been held that it is a settled principle that when a statute attaches a penalty, the act becomes prohibited and any contract in contravention thereof is void, even if not expressly declared so. Section 31 of the FERA, when read with Sections 47, 50 and 63, though framed in terms of "previous permission," is in substance prohibitory in nature. The requirement of prior permission is therefore mandatory, being grounded in statutory prohibition and public policy. Further, it was held that under Section 31 of the FERA, obtaining previous general or special permission of the RBI is mandatory and any sale or transfer of property in India by a foreigner without such permission is unenforceable in law.

vii. In continuation of the arguments, reliance was also placed upon ***N.P. Thirugnanamv. R. Jagan Mohan Rao (Dr.)***[4] and ***Kamal Kumar v. Premlata Joshi***[5], wherein it has been held that relief of specific performance is discretionary and can be granted only if the plaintiff satisfies Section 16(c) of the Specific Relief Act, 1963 [hereinafter referred to as "SRA"] by pleading and proving **continuous readiness and willingness** to perform his part of the contract. Such readiness must be shown from the date of agreement till the decree, demonstrated through conduct, availability of consideration and surrounding circumstances. Failure to aver or prove the same is fatal to the claim. Likewise, since the relief of specific performance being equitable, the Court must examine whether a valid contract exists, whether the plaintiff has been and continues to be ready and willing to perform his part, and whether such performance accords with the contractual terms.

[3] (2021) 19 SCC 629.
[4] (1995) 5 SCC 115.
[5] (2019) 3 SCC 704.

The plaintiff must properly plead and prove continuous readiness and willingness as mandated under Sections 16(c) and 23 of the SRA.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

15. *Per contra*, learned counsel for the Respondents have submitted as follows:

i. The core contention squarely revolves around the Appellant having sold the First and Second Floors of the Suit Property to Respondent No.1 and Respondent No.2 respectively, through properly executed and registered instruments and receiving the entire sale consideration. The transaction, in its true character, was a Sale and not a loan arrangement, as alleged. No written acknowledgment or contemporaneous record exists suggesting that the parties ever treated the transaction as a loan. The GPA, SPA and Will(s) were duly registered before the competent Sub-Registrar, during which no objection was raised by the Appellant regarding the nature or contents of these documents. The subsequent plea that the transaction was one of loan is a clear afterthought, intended to evade the legal consequences of the executed sale. It is further contended that the execution of S.ATS-2, whereby the payment of Rs. 15 lakhs was deferred to 31.03.1998, reinforces that the transaction was one of sale, as there would have been no occasion to execute such an agreement in a mere loan arrangement. In view of Sections 91 and 92 of the Indian Evidence Act [hereinafter referred to as "IEA"], the written instruments constitute the best evidence of the transaction and no oral or contrary evidence can be adduced to vary their terms. The documents, taken together, unambiguously establish that the

transaction was *in lieu* of sale consideration. Furthermore, if the Appellant truly believed the transaction was a loan, he could have repaid the amount through banking channels and demanded return of the original title documents, which he admittedly failed to do, thereby rendering his present plea wholly untenable.

ii. It is further contended, on the aspect of evidence, that the non-examination of material witnesses who were cited to corroborate the alleged repayment of Rs. 45 lakhs attracts an adverse inference under Section 114(g) of the IEA against the Appellant. The said witnesses, being close relatives of the Appellant, namely his uncle and brother-in-law, were clearly within his power and control, yet, he deliberately chose not to examine them. Notably, the Appellant himself had included their names in his list of witnesses, specifically stating that they were being summoned to "prove the factum of repayment of Rs. 45 lakhs by the Appellant to Respondents". However, during cross-examination, he admitted that he never intended to examine them. In this regard, Order dated 18.05.2007, wherein the Appellant initially elected to examine the said witnesses, and Order dated 07.09.2007, whereby he subsequently dropped them have been relied upon. The deliberate withholding of these material witnesses, who alone could have supported his version, clearly warrants an adverse inference against the Appellant.

iii. It is further submitted on behalf of the Respondents that, insofar as the monetary transactions between the parties are concerned, the Appellant duly received a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) from Respondent No.1 as advance consideration towards the

sale of the First Floor of the Suit Property and a further sum of Rs.5,00,000/- (Rupees Five Lakhs only) from Respondent No.2 as advance consideration towards the sale of the Second Floor. It is contended that these receipts were in addition to the ATS-1 executed by the Appellant in favour of Respondent No.1 for the First Floor and the General Power of Attorney executed in favour of Respondent No.2. Subsequently, an ATS-2 was executed to rectify the error in the earlier agreement of December 1996 and to record the receipt of an additional sum of Rs.32,00,000/- (Rupees Thirty-Two Lakhs only) paid by Respondent No.1 as the balance sale consideration for the First Floor. The said agreement was accompanied by a Will, executed to bequeath the First Floor in favour of Respondent No.1, as the earlier Will had inadvertently not been executed in December 1996. Likewise, the General Power of Attorney pertaining to the Second Floor was executed on 07.10.1997 merely to rectify a misdescription contained in the earlier Power of Attorney dated 06.12.1996.

iv. It is further submitted on behalf of the Respondents that on 30.12.1997, the Appellant executed a S.ATS-2 in respect of the Second Floor of the Suit Property, extending the time for completion of the sale till 31.03.1998. The documents executed on 30.03.1998 in relation to the said floor were duly registered, and the sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) paid by Respondent No.2 constituted the final instalment of the agreed sale consideration. The execution of the said documents clearly demonstrates that the transaction was an outright sale and not a loan arrangement, as every document executed by the Appellant was intended to convey title in the property to Respondents Nos.1 and 2. The Respondents, at no

point, executed any document acknowledging receipt of Rs. 45,00,000/- (Rupees Forty-Five Lakhs only) as repayment, nor was there ever any demand raised for a balance sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only), thereby negating the Appellant's plea of the transaction being in the nature of a loan. It is further contended that the Appellant, having divested himself of ownership, cannot lawfully revoke the Power of Attorney or execute a Will in respect of the Suit Property, as he ceased to have any right, title, or interest therein. Accordingly, any claim now made by the Appellant asserting ownership over the said property is false, misconceived, and a misrepresentation of facts.

v. The Appellant upon the Appellant's own testimony during cross-examination, categorically admitted that upon entering the drawing room, he did not inform Respondent No.1 about having handed over any money to Respondent No.2, as there was no discussion on that aspect. The Appellant further conceded that it was never his case in the pleadings that the alleged payment to Respondent No.2 was made in the presence of Sh. Manmohan Kapoor or Sh. Vikram Seth. This admission clearly undermines the veracity of the Appellant's claim regarding the alleged payment and supports the Respondent's contention that the documents relied upon are fabricated and devoid of evidentiary value.

vi. It is further submitted on behalf of the Respondents that the Appellant alleges that he visited Respondents on 30.04.1998 along with Sh. Manmohan Kapoor and Sh. Vikram Seth and purportedly returned a sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) to

the Respondents. However, the Appellant has failed to prove this alleged repayment in any manner. At the outset, it is submitted that no such sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) was ever returned to the Respondents on the said date, and the receipts relied upon by the Appellant are forged and fabricated. It is also reiterated that the Respondents never issued any acknowledgment or receipt for the alleged amount. The Appellant, having already realized the full sale consideration, had no occasion or justification to return the said sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) and there is no rationale for returning the money in cash, particularly when it was originally received through cheque. Furthermore, even on a hypothetical basis, there was no occasion for the Appellant to execute four separate Special Powers of Attorney to deal with local and municipal authorities, as such documentation arises only in the context of a sale transaction and not in a loan arrangement. Therefore, this demonstrates that the Appellant's plea of repayment is entirely unsustainable and cannot be relied upon.

vii. The Respondents relied upon ***Govindbhai Chhotabhai Patel and Others v. Patel Ramanbhai Mathurbhai***[6], wherein it was held that where the Trial Court fails to return a finding on the issue of forgery despite the issue having been framed, the Appellate Court is well within its jurisdiction to examine the evidence on record and decide the said issue. In the present case, since the Appellant has relied upon forged documents, purporting to show an alleged acknowledgment of receipt of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) by the Respondent, the matter squarely falls within the ambit of such determination.

[6](2020) 16 SCC 255.

viii. It is importantly submitted on behalf of the Respondents that the transaction in respect of the Second Floor, along with terrace and roof rights, cannot be challenged under Section 31 of the FERA. Respondent No.2 had duly made all payments through Non-Resident Ordinary Account ('NRO') and Non-Resident External Account ('NRE') accounts, *via* proper banking channels, as mandated by the relevant RBI notifications. These payments were recorded and acknowledged in the Letter/Approval dated 14.12.1998, issued by the RBI. The Appellant's reliance solely on an RBI notification requiring him to inform the RBI upon acquisition of immovable property is misplaced. As per the said notification, the acquirer was required to file a declaration with the RBI within 90 days of acquisition or final payment of purchase consideration, accompanied by a certified copy of the conveyance deed and a certificate from the bank in India indicating payment particulars. The declaration was duly filed and accepted by the RBI and the matter has thus attained finality. The Appellant cannot now agitate the same, as the RBI is the final authority on FERA compliances and no grievance can arise on this account. Even assuming the *arguendo* that the filing requirement had procedural significance, it did not imply that any prior approval was required from the RBI. The requirement of approval applied only to properties outside the scope of general permission, where a separate IPI-1 declaration would be necessary. In the present case, all permissions, as contemplated under Section 31(1) read with Section 31(2) of the FERA, were fully complied with. Accordingly, the Appellant's claims in this regard are wholly unsustainable.

ix. It is further submitted on behalf of the Respondents that the total sale consideration of Rs.60,00,000/- (Rupees Sixty Lakhs only) for the First Floor and Second Floor, including terrace and roof rights, was not only duly received by the Appellant, but was also manifestly inadequate as the market value of the property was significantly higher at the relevant time. The Appellant, having received the full sale consideration and executed all necessary documents transferring title, possession, and rights in favour of Respondents, cannot now claim any deficiency, loan, or repayment, nor challenge the legality or validity of the transaction. The executed agreements, coupled with registration, supplementary agreements, and powers of attorney, unequivocally demonstrate that the transaction was a *bona fide* sale at consideration received, and any alleged under-valuation does not affect the legal validity or enforcement of the sale.

x. *Arguendo* to the Appellant's contentions and reliance upon the judgment in ***Asha John*** *(supra)*, it is submitted that the said decision is clearly distinguishable on facts as well as in law, as it neither pertained to nor considered the applicability of the RBI Notification, which specifically governs transactions involving foreign citizens of Indian origin. The judgment in ***Asha John*** (*supra*) dealt with foreign nationals of foreign origin, who were mandatorily required to obtain prior permission from the Reserve Bank of India under Section 31 of the FERA. In contradistinction, the present case concerns a foreign citizen of Indian origin, who is expressly covered under the general permission granted *vide* RBI Notification, wherein only post-acquisition intimation to the RBI is required and no prior approval is mandated. Moreover, in *Asha John*, the executor of the documents

was not a person of Indian origin, whereas Respondent No.2 herein is admittedly a person of Indian origin. Further, the documents in ***Asha John*** *(supra)* were executed in 1977/1980, when prior permission of the RBI was mandatory for acquisition of immovable property. In contrast, by virtue of the notification dated 26.05.1993 granting general permission, Respondent No.2 was not required to obtain any prior permission or approval from the Reserve Bank of India.

xi. The Respondents relied upon the judgment of the Supreme Court in ***Sangita Sinha v. Bhawana Bhardwaj***[7], wherein it was held that since the seller had cancelled the Agreement to Sell by letter dated 07.02.2008 prior to the institution of the suit, the said cancellation constituted a jurisdictional fact. Unless such cancellation was specifically challenged and declared invalid, no subsisting agreement existed to support a decree for specific performance. Consequently, in the absence of a prayer for declaratory relief challenging the cancellation, the suit for specific performance was not maintainable.

xii. Lastly, the Respondents contended and relied upon ***Dhanrajamal Gobindram v. Shamji Kalidas & Co.***[8]**,** wherein it was held that by virtue of the restrictions under Section 5 of the FERA relating to payments and acquisition of property outside India, such contracts were not rendered *void* merely because prior permission of the Reserve Bank was required. Under Section 21(2) and (3) of the FERA, it is implied that acts requiring such permission shall not be done unless permission is granted, and enforcement of any decree

[7]2025 SCC OnLine SC 723.
[8]1961 SCC OnLine SC 28.

arising therefrom is subject to Reserve Bank's sanction. Hence, the absence of prior permission does not invalidate the contract itself, it only restricts its performance or enforcement without due authorization under FERA. The Respondents further relied upon ***LIC v. Escorts Ltd.***[9], wherein it was held that the expression *"general or special permission of the Reserve Bank of India"* under Section 29(1) of the FERA is not qualified by the words *"previous"* or *"prior"*, and no such implication can be read into the provision. The legislative scheme demonstrates that wherever Parliament intended prior permission, it has expressly used such qualifying terms. The omission thereof in Section 29(1) indicates a deliberate intent to confer discretion and flexibility upon the Reserve Bank to grant permission either prior or subsequent to the transaction. Consequently, transactions entered into without obtaining prior permission of the RBI are not *void ab initio*, provided that the requisite permission is obtained at any stage, including *ex post facto*, in consonance with the object and purpose of conserving and regulating foreign exchange under the FERA.

FINDINGS & ANALYSIS:

16. This Court has heard the learned counsel for the parties at length and, with their able assistance, has carefully considered the submissions advanced and perused the documents placed on record in support thereof.

17. At the outset, the learned counsel for the Respondents raised a preliminary objection concerning the validity of the sale transactions executed through the Agreements to Sell(s)/Supplementary

[9](1986) 1 SCC 264.

Agreements to Sell(s) and/or General Powers of Attorney(s). In this context, it becomes apposite to examine the issues addressed in the judgments relied upon by the learned counsel for the Appellant.

Transfer Documents:

18. On the materials on record it is found that the Appellant received an amount of Rs.8,00,000/- (Rupees Eight Lakhs only) from Respondent No.1 as advance for the First Floor, Rs.5,00,000/- (Rupees Five Lakhs only) from Respondent No.2 as advance for the Second Floor and subsequently an additional sum of Rs.32,00,000/- (Rupees Thirty-Two Lakhs only) and final instalment of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as recorded in the S.ATS-1 and S.ATS-2 and upon receipt of ATS-3. The Supplementary Agreement(s) to Sell, the General Powers of Attorney, the Special Powers of Attorney and the Will(s) were executed and registered before the competent authority without any contemporaneous objection by the Appellant. A conjoint reading of the relevant clauses of the ATS-1, S.ATS-1, ATS-2, and S.ATS-2, makes it evident that the documents are substantive in demonstrating that the transaction was intended as a sale of the Suit Property and not as a loan arrangement. The consideration of the aforesaid issue leads to four distinct findings, detailed hereinbelow:

i. *First*, the agreement expressly records the consideration as the "sale price," which is the hallmark of a contract of sale under Section 54 of the TPA.

ii. *Secondly*, there is no clause imposing an obligation on the vendor to repay the amount, nor is there any stipulation of interest or instalments, which would ordinarily indicate a loan transaction.

iii. *Thirdly*, the agreement contains a clear undertaking by the vendor to execute a formal sale deed in favour of the purchaser upon completion of the requisite formalities, which reflects the parties' unequivocal intention to transfer ownership rights in the property.

iv. *Fourthly*, the recitals also contemplate delivery of possession to the purchaser, an act consistent only with a transaction of sale. These substantive clauses, taken cumulatively, exclude the possibility of the arrangement being a mere financial advance or loan and affirm that the document embodies an Agreement to Sell(s) the Suit Property.

Return of an amount of Rs. 45 Lakh:

19. Upon perusal of the cross-examination of the Appellant dated 09.05.2007 and 10.07.2007 in CS(OS) No. 1336/1998, it emerges that, when questioned regarding the intimation given to the Bank about the execution of documents in favour of Respondent No.1, the responses indicate that transactions through cheques were being made between the parties. This circumstance casts serious doubt on the Appellant's plea that the alleged repayment of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) was made in cash, particularly when the original payments were admittedly received through cheques. A plain reading of the testimony further reveals that it would be irrational to assume that the Appellant would hand over such a substantial sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs only) in cash to Respondent

No.2 without any corresponding disclosure to or acknowledgment of Respondent No.1. When further questioned as to the mode of payment of interest and its nexus with the alleged repayment of Rs.45,00,000/- (Rupees Forty-Five Lakhs only), the Appellant deposed as follows:

> *"Because of the nature of relationship between me and defendants 1 & 2 and the assurances that they had given that those documents were only till their money was returned, no need was considered to write to the bank about these documents."*
>
> *……*
>
> *Interest, if paid, must have been paid by cheque but I do not recollect when it was paid as it would have been paid periodically every three months or so.*
>
> *……*
>
> *Before 30.04.1998, me or my wife had not specifically told either Mr. Manmohan Kapoor or Mr. Vikram Seth about the transactions with defendant No. I and 2. They might be aware of this transaction from the casual talks. While taking Mr. Manmohan Kapoor and Mr. Vikram Seth to the upper floor I had told them that I was going to return the money to the defendants 1 & 2 and they said since they were there, they would come with me to meet defendants 1 & 2.* ***They were not aware as to how much money and that too whether in cash or by cheque*** *I* ***was going to return. I had handed over the money to defendant no. 2. Defendant no. 1 was not present at that point of time when I handed over money to defendant no. 2.*** *When I handed over the money I asked defendant no. 2 to give me a receipt for that amount signed by both defendants no. 1 & 2 and defendant no. 2 told me that he would provide me receipt by next day but I insisted to give me receipt on*
>
> *that occasion itself* ***since the defendants had their office on the second floor and thereafter, after handing over the money in the bed room we came out and sat for a few minutes in the drawing room and then me, Manmohan Kapoor and Vikram Seth came down stairs and after around twenty minutes or so defendant no. 2 called me and handed over me the receipt in the stairs case****. That receipt is Ex.PW-114. Document Ex.PW-115 was also handed over along with document Ex.PW-114.* ***Signatures appearing at point Q-1 and Q-2 on exhibits PW-114*** *&* ***5 respectively were not put in my presence. When*** *I* ***handed over money to defendant no. 2, defendant no. 1 was present in the drawing room and Manmohan Kapoor and Vikram Seth were there in the drawing room.*** ***After I came to the drawing room I did not speak to***

defendant no. 1 that I had handed over money to defendant no. 2 as there was no discussion on that point. It was not my case when filed that when I handed over the money to defendant no. 2 it was in the presence of Mr. Manmohan Kapoor and Mr. Vikram Seth. I had never intended to examine Mr. Manmohan Kapoor and Mr. Vikram Seth in proof of the fact of handing over the money to defendants."

(Emphasis Supplied)

20. This Court also relies upon the Respondent's abbreviation that the Appellant specifically listed certain relatives (his uncle and brother-in-law) as witnesses "to prove the factum of making the repayment of Rs.45,00,000/- (Rupees Forty-Five Lakhs only)", but subsequently did not examine them. These witnesses were plainly within the Appellant's control, their non-examination attracts the adverse inference under Section 114(g) of the IEA. Moreover, when the question was posed regarding tendering the balance amount to the Respondents, the Appellant failed to offer a satisfactory explanation, as he purportedly showed Rs.45,00,000/- (Rupees Forty-Five Lakhs only) as cash in hand in his income tax return, which was not properly substantiated. Thus, this Court comes to a conclusion that the Appellant's case that Rs.45,00,000/- (Rupees Forty-Five Lakhs only) was returned on 30.04.1998 is unsupported by reliable contemporaneous proof.

21. The Respondents positively deny issuance of any receipt or acknowledgement and assert that the receipts relied upon by the Appellant are forged. The Appellant's own admissions in cross-examination that he did not state the alleged payment was made in the presence of the purported witnesses and that he did not inform

Respondent No.1 about such payment, further undermine the credibility of the alleged repayment.

22. Additionally, the receipt allegedly issued by the Respondent No.1, which has been relied upon by the Appellant, was sent to the Central Forensic Science Laboratory ('CFSL') for opinion after comparing the questioned signatures of the Respondent No.1 with her signatures on the alleged receipt dated 30.04.1998. It was concluded that the signatures on the receipt and the standard signatures are beyond the range of natural variation and hence, the questioned signatures are forged.

23. Elaborate report was submitted by the Principal Scientific Officer (Document-cum-Assistant Chemical Examiner to the Government of India-CFSL-CBI-New Delhi). Moreover, photocopies of enlarged photographs of the signatures are also attached with the report. It is evident that the opinion of the expert appears to be correct. Furthermore, the Appellant has not produced any evidence to rebut the same, nor has the Appellant examined any other fingerprint or handwriting expert to substantiate his plea.

24. This Court is placing reliance upon ***Suraj Lamp*** *(supra),* wherein it has been held that an ATS, Power of Attorney and Will executed in accordance with Section 53A of the TPA would remain valid. Thus, the possession of the Respondents is thus entitled to protection, particularly where the documents establish that the Plaintiff had received the entire sale consideration.

Specific Performance: 'Readiness and Willingness'

25. This Court is placing reliance upon ***Sangita Sinha v. Bhawana Bhardwaj***[10], wherein it has been held that the Court must examine the existence of a valid contract, the plaintiff's readiness and willingness, actual performance, and the balance of equities before granting such relief. The relevant paras are reproduced hereinbelow:

> *"16. It is settled law that under the Act, 1963, prior to the 2018 Amendment, specific performance was a discretionary and equitable relief. In Kamal Kumar v. Premlata Joshi, (2019) 3 SCC 704, which has been followed in P. Daivasigamani v. S. Sambandan, (2022) 14 SCC 793, this Court framed material questions which require consideration prior to grant of relief of specific performance. The relevant portion of the judgment in Kamal Kumar (supra) is reproduced hereinbelow:*
>
> > *7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:*
> >
> > *7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.*
> >
> > *7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.*
> >
> > *7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;*
> >
> > *7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;*
> >
> > *7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.*
> >
> > *8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. These requirements have*

[10] 2025 SCC OnLine SC 723.

> *to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts."*

26. Consequently, we now proceed to consider the issue framed pertaining to the transaction executed by Respondent No.2 in CS (OS) No. 2273/2000, as raised by the Respondents in the amended plaint.

27. This Court is placing reliance upon the RBI Notification, in relation to Section 31(1) of the FERA which reflects that the intimation to the RBI is required. The RBI Notification is reproduced hereinbelow:

> "*In pursuance of Sub-section (1) of Section 31 of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and in supersession of As notification No. FERA 100/92-RB dated 8th January 1992, the Reserve Bank is pleased to grant general permission to foreign citizen of Indian origin, to acquire by way of purchase or inheritance and depose of by way of sale any immovable property, not being agricultural land/farm house/plantation property, situate in India, and to acquire by way of gift and dispose of by way of sale or gift any residential property situate India subject to the following conditions:*
>
> > *1.(a) In the case of purchase the entire consideration is paid out of foreign exchange brought into India through normal banking channel or out of the funds held in Non-Residential External (NRE) Rupee or Foreign Currency Non-Residential (FCNR) account maintained by the purchaser in India. Purchase of residential property is, however, permissible only for bona fide residential purpose of the purchaser, and it shall not be let out except where it is not immediately required for that purpose.*
> >
> > *(b) <u>Any person, seeking repatriation of permissible portion of sale proceeds of any such immovable property, may may apply to the Chief General Manager, Exchange Control Department, Foreign Investment Division (III), Reserve Bank of India, Central Office, Mumbai in the form specified, at the earliest</u>."*
>
> (Emphasis Supplied)

28. It is evident that the transactions executed by Respondent No.2, a foreign citizen of Indian origin, fall squarely within the scope of the general permission granted under the RBI Notification. The Respondents have demonstrated that the purchase consideration for the Second Floor, together with roof and terrace rights, was remitted through NRO and NRE accounts in accordance with the procedural requirements prescribed by the RBI. Further, the Declaration (IPI7) dated 18.08.1998 submitted by Respondent No.2 was duly accepted and acknowledged by the RBI *vide* its letter dated 14.12.1998. In consequence, the transaction is fully compliant with the statutory provisions under FERA and the procedural mandates stipulated by the RBI Notification.

CONCLUSION:

29. In view of the foregoing analysis and reasoning, this Court finds no reason to interfere with the Impugned Judgment passed by the learned Single Judge.

30. The present Appeal is accordingly dismissed. All pending applications stand closed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 28, 2025/*jai/rgk*