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

% ***Date of decision: 02nd September, 2026***

\# **CNR No. DLHC010303082026**

\+ **RFA 661/2026, CM APPL. 44184/2026**

SH AMIT SURI (SINCE DECEASED)
Through LRs

1. **SMT. VINAMRATA SURI**
W/o Late Sh. Amit Suri
R/o H.No.WZ-215/1, 2nd Floor,
Gali No.2, Virender Nagar, New Delhi.

2. **MASTER GAURANG SURI (THROUGH MOTHER)**
R/o H.No.WZ-215/1, 2nd Floor,
Gali No.2, Virender Nagar, New Delhi.

3. **MASTER HARDIK SURI (THROUGH MOTHER)**
R/o H.No.WZ-215/1, 2nd Floor,
Gali No.2, Virender Nagar, New Delhi. .....Appellants

Through: Ms. Anjali Chauhan, Mr. Rishabh Mishra, Ms. Sapna Rai, and Mr. Shourya Singh, Advocates.

versus

SMT. PRABHA RANI
W/o Sh. Jatinder Kumar,
R/o Flat No.100, Pocket-13,
C4B, Janakpuri, New Delhi-110058. .....Respondent

Through: Mr. Sachin Bansal, Ms. Arti Sharma, Ms. Richa Gupta, Mr. Gaurav Chauhan, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with **Order XLI Rule 1** and Section 151 CPC has been filed against the Judgment and Decree dated 16.03.2026, *whereby the Suit of the Plaintiff for Recovery of Rs.12 lakhs was decreed along with* pendent lite *and future interest @ 6% per annum.*

2. The ***case of the Plaintiff*** is that the Plaintiff on her retirement, had vacated the Government accommodation and was looking for a suitable accommodation for purchase. The Defendant lured her to purchase the property bearing No. C-2C/158, DDA MIG Flat, Janak Puri, New Delhi (*hereinafter referred to as "suit property"),* for a sale consideration of Rs. 1,04,00,000/-. The Plaintiff on 27.10.2016 gave a token amount of Rs. 51,000/-; on 03.11.2016 she paid Rs. 1,50,000/- and on 06.11.2016 another amount of Rs. 2,99,000/- was paid. The Plaintiff thereafter, paid Rs. 5 lakhs through cheque dated 03.11.2016.

3. The Agreement to Sell was executed on 19.11.2016 for purchase of the suit property. The payments made by the Plaintiff were recorded in the Agreement to Sell. The Receipt was duly issued by the Defendant, in respect of the money received by him. Thereafter, the Plaintiff again paid Rs. 2 lakhs through cheque dated 05.02.2017. *In this way, a total sum of Rs. 12 lakhs towards sale consideration was paid to the Defendant, leaving a balance of Rs. 92 lakhs which was payable on or before 25.03.2017.*

4. The Plaintiff made full arrangements for funds and had sufficient balance in her Bank account. She also got a loan in the sum of Rs. 30 lakhs, approved from the Canara Bank.

5. The Defendant at the time of executing the Agreement to Sell, had assured that he was the absolute owner of the suit property and he had a marketable **title**, though to his knowledge, it was an incorrect statement. It was deliberately *concealed by him that his brother, Anish Suri was also the co-owner of the suit property*, which got revealed to the Plaintiff later somewhere in the **middle** of March, 2017, when Sh. Anish Suri met the Plaintiff and informed her that he is the co-owner of the property in question.

6. He also raised an objection before the Sub-Registrar, Janakpuri, Delhi through written intimation dated 07.03.2017, stating himself to be the co-owner of the suit property. He stated therein that the property originally belonged to his mother and after her demise, he along with the Defendant became the co-owners of the property. Therefore, he requested the Sub-Registrar not to register the sale of the Suit property. Anish Suri had also stated that he would be filing appropriate proceedings/Suit in regard to the Suit property.

7. He also issued a Legal Notice dated 05.11.2016 to the Defendant through his counsel, wherein these facts were also mentioned.

8. Since there was a dispute on the property title and the Defendant had already received a Notice from his brother Anish Suri, he was under an obligation to disclose these facts at the time of acceptance of further payments from the Plaintiff, which he deliberately failed to disclose. Therefore, the Defendant concealed material and vital facts and also did not take any steps to clear the dispute over the property.

9. Despite various meetings and requests, the Defendant did not bother to clear his title, nor did he provide any assurance/indemnification, from which it became evident that the actions of the Defendant had been aimed at causing loss to the Plaintiff. A Complaint dated 19.03.2017 was made to the SHO, P.S. Janakpuri, and the Legal Notice dated 19.03.2017 was issued by the Plaintiff, to the Defendant. A false and frivolous Reply was sent by the Defendant to the Plaintiff.

10. The Plaintiff claimed that she had entered into the transaction on the assurance that the property had a clear title. However, the Defendant failed to disclose the cloud over the title; hence, the Plaintiff claimed her right to seek refund of Rs. 12 lakhs along with interest.

11. She thus, filed the Suit for Recovery of Rs. 12 lakhs along with interest @ 24% per annum.

12. The Defendant in **the Written Statement** admitted that the Agreement to Sell dated 19.11.2016 was entered into between the Plaintiff and the Defendant and Rs. 12 lakhs were paid to the Defendant as the earnest money and the balance of Rs. 92 lakhs was agreed to be paid on or before 25.03.2017. he claimed that the parties had to appear before the office of the Sub-Registrar on 25.03.2017, for the registration of the Sale Deed on payment of Rs. 92 lakhs to the Defendant.

13. The Defendant claimed that the Plaintiff **failed to make payment of the balance amount** till the due date, i.e., 25.03.2017. As 25.03.2017 and 26.03.2017 were holidays, the Defendant along with all the documents in original of the suit property kept waiting in the office of the Sub-Registrar from 10:00 A.M. to 05:00 P.M. and also deposited a fee of Rs. 200/-, as per requirement. However, the Plaintiff failed to turn up in the office of the Sub-Registrar on 27.03.2017, despite repeated calls by the Defendant.

14. The Defendant further asserted that the Plaintiff raised untenable questions regarding his title in the suit property, in her Legal Notice dated 19.03.2017. It was asserted that the Defendant had already supplied the requisite documents relating to the suit property and the title to the Plaintiff for the purpose of sanction of a Home Loan to the Plaintiff. This fact had been admitted by the Plaintiff in her cross-examination, in which she said that "*I had checked some documents before entering into Agreement to sell and purchase. I had not seen deeply any document but I had seen the sale documents wherein Sh. Amit Suri was reflected as the owner".*

15. She had further admitted applying for a loan from Canara Bank on the basis of these property documents, which had admittedly been supplied by the Defendant for the purpose of obtaining the loan from Canara Bank. There are specific admissions by the Plaintiff that on the basis of these property documents, a loan was sanctioned in her favour, by Canara Bank.

16. The Defendant claimed that there was a good and clear marketable title, free from all encumbrances, of the Defendant over the suit property, which also got established from the testimony of *PW5 Gautam Bhatt* from Canara Bank, who deposed that before sanctioning the loan, he had taken legal opinion from the Panel lawyer, to verify the title and the customer profile, and also the documents were sent to the Sub-Registrar's office and that the loan was sanctioned, only after verification of the documents.

17. The Defendant further asserted that in the Reply dated 24.03.2017, the Defendant had reiterated about the clear title in the suit property, despite which the Plaintiff failed to come to the office of the Sub-Registrar, for registration of the Sale Deed. The Plaintiff in connivance with her brother Anish Suri, got an FIR No. 330/2017, P.S. Janakpuri, registered against the Defendant, on the false allegations. The Cancellation Report had been submitted by the Investigating Officer as the allegations were found to be false.

18. It was claimed that it was the Plaintiff who failed to adhere to the terms of the Agreement to Sell dated 19.11.2016 and failed to make the balance payment of Rs. 92 lakhs, on the scheduled date. Consequently, the Defendant had forfeited the sum of Rs. 12 lakhs, as per the terms of the Agreement to Sell.

19. The Defendant further asserted that the earnest money received by him from the Plaintiff, was further paid to Mr. Himanshu Jain for purchase of a residential property, but because of the breach of the Contract by the Plaintiff, he was unable to execute the Agreement with Himanshu Jain, who in turn forfeited the earnest amount of the Defendant. This was duly communicated by Himanshu Jain to the wife of the Defendant, *vide* Notice dated 18.12.2017.

20. This fact was well within the knowledge of the Plaintiff, as is evident from a suggestion to DW1 that the said amount paid to Himanshu Jain by the husband of the Plaintiff had been forfeited by Himanshu Jain. It was, therefore, asserted that the Suit of the Plaintiff was without merit and was liable to be dismissed.

21. The **Plaintiff in the Replication** reiterated her assertions as made in the Plaint and denied the allegations made in the Written Statement.

22. The **Issues** were framed on 25.05.2019, as under:

> *(i) Whether plaintiff has performed her part of contract in terms of agreement to sell and receipts Annexure A1 and A2 respectively? OPP*
>
> *(ii) Whether if the issue No.1 is answered in affirmative, plaintiff is entitled to recovery of an amount of Rs.12 lacs along with 12% interest from the date of filing of the suit till realization? OPP*

(iii) Whether the defendant has performed his part of contract, therefore, is entitled for the forfeiture of the earnest money? OPD

(iv) Whether the suit is barred by limitation? OPD

(v) Relief.

23. The **Plaintiff in support of her case, appeared as PW1** and tendered her Affidavit of evidence as Ex.PW1/A. She proved the Agreement to Sell, Statement of Account of Canara Bank as well as SBI Bank, the loan Sanction Order, the Legal Notices and the Reply which are Ex.PW1/1 to Ex.PW1/16.

24. **PW2 ASI Ashok Kumar, PS Punjabi Bagh,** produced the record of FIR No.330/17 as Ex.PW2/A.

25. **PW3 Sh. Vinod Kumar from Canara Bank** proved the Statement of Account w.e.f. 01.03.2016 to 30.04.2017, as Ex.PW3/A.

26. **PW4 Sh. Ashok Kumar from SBI Bank**, proved the Statement of Account w.e.f. 01.03.2016 to 30.04.2017 Ex.PW4/A.

27. **PW5 ASI Ashok Kumar** was already examined as PW2.

28. **PW6 Sh. Pawan Kumar from the office of Sub Registrar, Janakpuri,** produced the documents which included objections by Anish Suri dated 07.03.2017 Ex.PW1/7 and also the copy of Legal Notice dated 05.11.2016 Ex.PW1/6 issued by Anish Suri to the Plaintiff.

29. **PW7 Sh. Gautam Bhatt from Canara Bank,** produced the record pertaining to Loan Sanction Memorandum dated 24.03.2017 Ex.PW1/5. He also produced the record that though loan was sanctioned, it was not disbursed.

30. **The Defendant examined DW-1 Smt. Vinamrata Suri,** who produced the copy of the Sale Deed, certified copy of the Order dated 12.10.2018, Notice dated 24.03.2017 and 27.11.2018 which were Mark A to Mark E and Ex.PW1/3 to DW1/9.

31. **DW2 SI Jarnail Singh** produced the record i.e. Cancellation Report in respect of FIR No.330/17 PS Janakpuri which was not available since the same had already been filed in the Court.

32. **DW3 Sh. Anuj Kumar Ahlmad in the Court of JMFC**, produced the original record in respect of FIR No.330/17, certified copy of which is Ex.DW3/1.

33. The learned District Judge on **appreciation of the evidence observed that the Suit was filed within limitation**.

34. It was further held that admittedly Agreement to Sell Ex.PW1/1 was executed between the parties and Rs.12 lacs had been paid as Bayana, while balance sa,le consideration of Rs.92 lacs was to be paid on or before 25.03.2017 which was agreed to be paid at the time of the execution of the sale deeed.

35. It was observed that the Plaintiff had proved that she had sufficient money in her accounts to pay the Sale consideration. She had even got the Loan of rs.30 lacs sanctioned from the Canara Bank.

36. It was held that it had emerged from the evidence that Anish Suri, brother of the Defendant had met the Plaintiff and informed her being the co-owner of the suit property, a fact which had not been disclosed by the Defendant at the time of entering into the Agreement to Sell.

37. The Plaintiff was justified in raising an alarm when she came to know about the objection filed by Anish Suri with the office of Sub-Registrar, Janakpuri. The Legal Notice was accordingly, sent by her. She even got the FIR No.330/17 Ex.PW5/A (also Ex.PW1/13) registered, though a Cancellation Report was subsequently filed in the FIR.

38. Therefore, it was held that the Plaintiff was justified in repudiating the Agreement to Sell.

39. The defence of the Defendant was that on account of failure of the Plaintiff to perform the Agreement to Sell, one Himanshu Jain had forfeited the earnest amount paid by the Defendant for purchase of another property. However, it was noted that the Legal Notice allegedly sent by Himanshu Jain and the Reply given by the Defendant to Himanshu Jain, was not produced. There was no evidence to show that due to non-performance of the Agreement to Sell by the Plaintiff, Defendant suffered any losses.

40. Hence, it was held that the Plaintiff was entitled to refund of Rs.12 lacs along with interest and **the Suit was decreed accordingly, vide Judgment dated 16.03.2026.**

41. *Aggrieved by the Judgment and Decree, the Defendant/Appellant has preferred the present Appeal.*

42. The **grounds of challenge** are that it has not been appreciated that the Appellant had conducted verification through DORIS records of Sub Registrar, Jankapuri which reflected that the sale of the suit property was not prohibited nor was it in the list of disputed property. Despite the absence of any legal embargo on the transfer of property, it has been erroneously held that Defendant is liable to refund the earnest money.

43. The Plaintiff instead of honouring her contractual commitment, had sought to resile from the Agreement on the pretext of the objections raised by Sh. Anish Suri, who had long before relinquished his share in the suit property, vide Relinquishment Deed dated 11.09.1995 for which he had received due consideration.

44. The Plaintiff had relied upon communication dated 07.03.2017 addressed by Sh. Anish Suri to the office of Sub-Registrar, seeking to prevent registration of Sale Deed as he asserted his right, interest in the Suit property being the part owner thereof. However, such c*ommunication neither created any encumbrance nor had any binding effect* on his Title in the suit property, which fact is also sought to be corroborated by the presence of the Appellant at the office of the Sub-Registrar on 27.03.2017 and the payment of Rs.200/- towards the requisite fee.

45. It was further stated that prior to issuance of the said communication, Anish Suri had independently approached and informed the Plaintiff that there was an alleged dispute in respect of the suit property and advised her not to proceed with the sale. However, during the subsequent discussions and meetings between Plaintiff and Late Sh. Amit Suri, the Plaintiff was duly informed that though some communication had been made by Anish Suri, but they were wholly baseless, legally untenable and devoid of any legal basis, in view of the earlier Relinquishment Deed and Settlement documents executed in the year 1995.

46. Despite *being aware of the factual and legal position*, the Plaintiff consciously continued with the transaction and proceeded further to complete the loan processing and verification formalities in the Bank. She also neither terminated the Agreement immediately or demanded cancellation at the relevant stage; instead she continued with the transaction which itself demonstrates that she accepted and well understood the legal position of the suit property.

47. The Appellant further asserted that on exchange of Legal Notice between the Plaintiff and the Defendant, an intimation through Legal Notice 22.11.2018, was also sent to Anish Suri wherein all the allegations made by him, were denied. The Defendant claimed that frivolous allegations of ownership in the property were made by Anish Suri, only to mislead in regard to the clear title in the suit property.

48. The Plaintiff not only sent a Legal Notice raising objections in regard to the title of the suit property, but simultaneously got an FIR registered against the Defendant on the same time, without granting reasonable opportunity to the Defendant to respond to the allegations raised in the Notice. Her conduct reflects a pre-determined *malafide* intention an absence of bona fide readiness and willingness to perform her part of the Agreement to Sell.

49. The Plaintiff had undertaken due diligence in respect of the suit property and was fully aware of the title documents. An email dated 04.04.2016 had been addressed by the Appellant to the concerned Authorities of Canara Bank, seeking clarifications in regard to the documentation required and legal verification procedures for sanction of home loan.

50. It was claimed that Plaintiff was fully aware and had satisfied herself in regard to the title of the property; her subsequent plea of alleged title dispute is wholly untenable and an afterthought, to evade the contractual obligation. Though the Plaintiff has proved the inflow of funds during the relevant period, but her subsequent conduct in withdrawal from the obligation under Agreement to Sell and issuance of false Legal Notices, raises a serious doubt about the genuineness of her alleged readiness and willingness.

51. The subsequent bona fide purchaser of the suit property independently conducted the due diligence and comprehensive verification of the entire chain of Title documents independently, including about the previous ownership and transfer documents and upon being fully satisfied about the property being free from any encumbrance and the documents being genuine, proceeded with the sale transaction. This subsequent conduct further establishes the genuineness and legality of the Title of the Defendant and completely demolishes the alleged defect in his Title, as claimed by the Plaintiff.

52. The Defendant had all throughout performed his part of Agreement to Sell and had even visited the office of Sub Registrar on 27.03.2017 with all the documents for execution of the Sale Deed. Despite his bona fide intention to complete the transaction, the Plaintiff has retracted without any reason.

53. The Defendant claimed that he had made an arrangement to purchase an alternate residential property and had paid Rs.12 lacs to Shri Himanshu Jain as the earnest money, but his sale transaction failed on account of the Plaintiff withdrawing from the Agreement to Sell and unilaterally repudiate the Contract and thereafter, filed the Suit for Recovery of Rs.12 lacs.

54. It is asserted that the findings of the learned Trial Court recording that the Plaintiff did not pay the sale consideration within the stipulated time, yet justified the repudiation of the Agreement to Sell by her. This has resulted in grave miscarriage to the Appellant, who got seriously ill due to mental stress and eventually expired, leaving behind his wife and minor children who have been compelled to contest the present proceedings.

55. A prayer is, therefore, made that the impugned Judgment be set aside.

Submissions heard and record perused.

56. It is an admitted fact that the Plaintiff and deceased Defendant entered into an Agreement to Sell dated 19.11.2016 Ex.PW1/1 against which the Plaintiff paid Rs.12 lacs towards the part sale consideration, which was agreed to be of Rs.1,04,00,000/-. It was further not disputed that the balance Rs.92 lacs was to be paid on or before 25.03.2017, on which date the Sale Deed was to be executed.

57. The Plaintiff claimed that she had a bona fide intention of honouring the Agreement to Sell by 25.03.2017. She organized funds to pay the sale consideration. She proved the Statement of Account of Canara Bank for the period 01.03.2016 to 30.04.2017 Ex.PW3/A according to which she had Rs.61,31,691/- in her account on 27.03.2017. Further, the Plaintiff proved her Statement of Account of State Bank of India for the period 01.03.2016 to 30.04.2017 Ex.PW4/A, according to which she had Rs.36,22,906/- in her account on 25.03.2017.

58. Additionally, the Plaintiff deposed that she had got a loan of Rs.30 lacs sanctioned from Canara Bank. To prove this fact, she examined PW7 Sh. Gautam Bhatt, Manager, Canara Bank, who proved the Sanction Memorandum of the Loan of Rs.30 lacs in favour of the Plaintiff, which is Ex.PW1/5.

59. The testimony of the Plaintiff coupled with that of the PW3 to PW5, fully established that the Plaintiff had the requisite funds available to her on 25.03.2017, the date on which the Agreement to Sell was to be concluded. Her bona fides of honouring the Agreement to Sell were thus, established from her financial status as well as her conduct in getting the loan sanctioned for Rs.30 lacs.

60. The difficulty arose when according to the Plaintiff, Anish Suri, brother of the Defendant, approached her and asserted that he was the co-owner of the suit property and that the Defendant could not sell the property alone. So much so, he wrote a Letter dated 07.03.2017 Ex.PW1/7 to the Sub-Registrar, Janakpuri stating that the property belonged to their mother Smt. Saroj Suri and after her demise, he also had a share in the suit property, since the mother had died intestate. However, his brother Amit Suri (Defendant) obtained a Conveyance Deed based on forged and fabricated documents, which fact was revealed from the DDA file, which Anish Suri had obtained through RTI.

61. He had issued a Legal Notice dated 05.11.2016 to his brother Amit Suri/Defendant requesting him not to create third party rights in the suit property, to which no reply was ever received. It was further stated in the letter that he had come to know from Smt. Prabha Rani, Plaintiff that she was purchasing the suit property. He advised her not to do so, as she was being wrongly advised by the property dealers, who had a self-vested interest to purchase the property. He thus, requested the Sub Registrar to stop the registration of the suit property and stated that he had already issued necessary instruction to his Advocate for preparing an appropriate Suit, to be filed in the competent Court.

62. The oral testimony of the Plaintiff that Anish Suri, elder brother of the Defendant, met her and informed her about the cloud over the title, is fully corroborated by the averments made by Anish Suri in his Letter dated 07.03.2017 written to the Sub Registrar.

63. The Plaintiff thus, being put to a warning that there may be a title dispute, gave a Legal Notice dated 19.03.2017 Ex.PW1/9 to the Defendant raising queries about the title of the Suit property. A Reply dated 24.03.2017 was given by the Defendant, asserting his lawful ownership in the suit property. A Rejoinder Reply dated 28.03.2017 Mark A was sent by the Defendant to the Plaintiff, though it was not exhibited, but it was a document filed by the Defendant and could be read against him. The perusal of this rejoinder dated 28.03.2017 reflects that no such assurance had been provided to the Plaintiff, in addressing her concern in regard to the title of the suit property.

64. The Plaintiff, having been put on caution about there being a cloud on the title of suit property and may get stuck in a bad sale transaction, not only made a Complaint dated 19.03.2017 to the SHO, but also got the FIR No.330/17 Ex.PW5/A (Ex.PW1/13), registered against the Defendant. There may have subsequently been a Cancellation Report filed in this FIR, but the level of anxiety of the Plaintiff is evident from the fact that she did not only follow the civil remedy by giving the Legal Notice, but even resorted to criminal action, by way of registration of the FIR.

65. It is not seriously disputed by the Defendant that the brother Anish Suri had met the Plaintiff in November, 2016 and thereafter, written the Letter to the Sub Registrar on 07.03.2017, making a claim of being a co-owner in the suit property, but according to the Defendant it was a false claim made by Anish Suri.

66. He had explained that on 11.09.1995, a Relinquishment Deed was executed by Anish Suri relinquishing his 1/3rd share in the suit property in favour of the mother Late Smt. Saroj Suri and the Defendant. It was also stated that a sum of Rs.1 lac was paid, vide Pay Order on 04.09.1995 pursuant to *a Family Arrangement in regard to him relinquishing his share in the suit property*. Further, payments of Rs.1 lac and Rs.50,000/- through two cheques were made on 11.09.1995 thereby extinguishing all his rights and interest in the Suit property.

67. On the same day Anish Suri executed GPA/Agreement to Sell/NOC/Indemnity Bond and Declaration on 11.09.1995 in favour of Smt. Saroj Suri and the Defendant, affirming that he had no future claims in the Suit property. Smt. Saroj Suri also executed a Will dated 21.03.1997 bequeathing her share in the suit property, in favour of the Defendant.

68. It was thus, explained that the brother had taken his share and executed Agreement to Sell etc. dated 11.09.1995, in favour of the Defendant and their mother and that he had no right or title in the Suit property.

69. Anish Suri may have settled his disputes or relinquished his share in the suit property, but the fact remains that he did stake a claim in the suit property in 2016-17, which made the Plaintiff worried about the performance of the Agreement to Sell dated 19.11.2016. The Defendant may have asserted that the claims of Anish Suri, his brother, were false, but for a third person who intends to buy the property, it was enough deterrent, as no person who is intending to buy a property from his hard-earned money, would ever want to get into a deal which can lead to future legal complications. The intervention of Shri Anish Suri was enough to put the Plaintiff to caution and in the circumstances, it cannot be said that her concerns were unfounded or that she purposely and without any reason, retracted from execution of the Sale Deed.

70. The Defendant had vehemently contended that all the property documents had been shown to the Plaintiff at the time of entering into the Agreement to Sell and had been made available to her, which were submitted by her with Canara Bank for the sanction of a Home Loan. Not only this, the officials of Canara Bank had conducted complete due diligence and verified the documents before admittedly sanctioning the loan of Rs.30 lacs. Therefore, the assertion of the Plaintiff that she had not seen the property documents which were in the name of the Defendant, is completely fallacious and an afterthought, to wriggle out of her obligation under the Agreement to Sell.

71. Though it has emerged from the cross-examination of the Plaintiff that she had seen the documents and also submitted them to Canara Bank and had tried to wriggle out by claiming that she had not seen the property documents, but the fact remains that even though the documents existed, there was still a claim being staked by the brother, whether genuine or not. There was no assurance that he would not initiate any legal proceedings as had been stated by him categorically in his letter dated 07.03.2017, addressed to the Sub-Registrar. Not only this, the concerns of the Plaintiff were genuine as Anish Suri had in fact, met her personally to convey that there was a cloud on the title.

72. It is well known that a brother who had been a co-owner in the property at some point of time, may initiate litigation challenging the ownership of the other brother. Once such litigation commences, it may take some time to get concluded, during which period the endeavour of the Plaintiff to acquire a home for herself, would be put to jeopardy. The uncertainty of litigation is enough deterrent for the Plaintiff to withdraw from the Agreement to Sell.

73. In these circumstances, the learned District Judge has rightly noted that the conduct of the Plaintiff in arranging the funds to honour the Agreement to Sell, reflected her bona fides in executing the Agreement to Sell and that she was prevented by the subsequent events of the intervention by the brother of the Defendant. The withdrawal from the Agreement to Sell was not intentional or without any reasonable basis. In the given circumstances, she had reason to resile and therefore, was entitled to seek refund of Rs.12 lacs that had been paid by her under the Agreement to Sell.

74. The Defendant had sought to show that he had suffered huge loss, since he had entered into an Agreement with Himanshu Jain to purchase a residential premises for himself and had paid Rs.12 lacs as an earnest money, which transaction failed on account of retraction by the Plaintiff.

75. However, it has been rightly noted by the learned District Judge that no documentary evidence had been produced by the Defendant to prove that he had entered into such transaction. So much so, even Himanshu Jain, who could have corroborated the defence of the Defendant, had not been examined. The defence taken by the Defendant was, therefore, rightly rejected by the learned District Judge.

76. The Suit of the Plaintiff has been rightly decreed. **There is no merit in the present Appeal, which is hereby, dismissed.** The pending Applications are accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 02, 2026
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