2026:DHC:2962

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

% ***Reserved on: 13th January, 2026***
Pronounced on: 09th April, 2026

\+ **RFA 636/2024, CM APPL. 55728/2024 (Stay)**

RAM NIWAS
S / o Late Sh. Rattan Lal
R/ o VPO Badusarai, New Delhi.

.....Appellant

Through: Mr. G.S. Sharma and Mr. V.K. Sharma, Advocates

versus

M/S PIENNE INDUSTRIAL CONSULANTS PVT. LTD.
226, 2nd Floor, Vardhman Plus Citi Mall,
LSC, Sector-23, Dwarka,
New Delhi-110075

.....Respondent

Through: Mr. Abhilash Vashisht and Mr. Neeraj, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 & 2 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC')* has been filed on behalf of the Appellant/Defendant, to challenge the Judgment and Decree dated 08.04.2024, whereby the Suit of the Plaintiff/Respondent for Specific Performance has been decreed and the

Appellant/Defendant has been directed to execute the Sale Deed in favour of the Plaintiff/Respondent and also restrain from creating third party interest in the Suit Property.

2. The Plaintiff/Respondent- M/s Pienne Industrial Consultants Pvt. Ltd. filed a *Suit for Specific Performance and Permanent Injunction.*

3. The ***facts in brief*** are that Plaintiff entered into an Agreement to Sell dated 19.09.2012 in respect of 1/4th share of Defendant- Ram Niwas in the land admeasuring *14 Bigha 19 Biswas comprised in Mustatil No. 8, Killa No. 20 West (4-13), Mustatil No. 11, Killa No. 1 (1-12), Mustatil No. 12, Killa No. 25 (3-04), Mustatil No. 19, Killa No. 5 (1-16), Mustatil No. 20, Killa No. 1 (0-11), Mustatil No. 21, Killa No. 4 East (1-04), 5 (1-19),* situated in the Revenue Estate of Village Badu Sarai, Tehsil Najafgarh, (Palam), District South West, New Delhi *(hereinafter referred to as the "Suit Property").*

4. The Plaintiff had explained that the lands of Village Badu Sarai had been a subject matter of consolidation proceedings during which, *vide* Resolution Number 62 dated 31.01.2015 changes were carried out in the land holdings of the Defendant and as such, in place of land bearing *Khasra Nos. 9/15 (0-06), 16 (0-11) and 8/20 (0-07) and land bearing Khasra No.*

20/(0-09), 21/4 (0-04) and 21/5 (0-11) were added into the *khata* of the Defendant.

5. Because of the aforesaid changes, the current holding of the Defendant in the Suit Property in the year 2012, is in the land admeasuring *14 Bigha 19 Biswas comprised in Mustatil No. 8, Killa No. 20 West (4-13), Mustatil No. 11, Killa No. 1 (1-12), Mustatil No. 12, Killa No. 25 (3-04), Mustatil No. 19, Killa No. 5 (1-16), Mustatil No. 20, Killa No. 1 (0-11), Mustatil No. 21, Killa No. 4 East (1-04), 5 (1-19)*, situated in the *Revenue Estate of Village Badu Sarai, Tehsil Najafgarh, (Palam), District South West, New Delhi, (hereinafter referred to as suit property)*.

6. The Plaintiff/Respondent entered into the Agreement to Sell dated 25.07.2012, to purchase the 1/4th undivided share of Defendant/Appellant-Ram Niwas, for a total sale consideration of Rs.77,86,500/-

7. The Plaintiff paid Rs.7.75 lakhs as part sale consideration, out of which a sum of Rs.1 lakh was paid in cash, while the remaining sum of Rs.6.75 lakhs was paid through cheque bearing no. 047337 dated 25.07.2012 drawn on ICICI Bank, Kailash Colony, New Delhi. The payment was duly acknowledged by the Appellant/Defendant by way of a separate receipt. The remaining amount of Rs.70,11,500/-, out of the total sale consideration was

to be paid to the Defendant on 19.09.2012 out of which Rs.69,25,000/- was paid *vide* cheque bearing no. 047354 dated 19.09.2012 and the balance of Rs.86,500/- was paid in cash.

8. The Defendant executed a fresh Agreement to Sell dated 19.09.2012 recording the full payment of sale consideration. He also executed SPA in favor of Vidhu Sharma, i.e., the signatory of plaint, GPA dated 19.09.2012 in favor of Vidhu Sharma, Indemnity Bond, Affidavit and a Will in favor of Sh. Prem Raj Sharma, who was one of the Directors of the Plaintiff Company. All these documents were duly notarized.

9. It was claimed that neither the Agreement to Sell dated 25.07.2012 nor the Agreement to Sell dated 19.09.2012, prescribed any specific time limit for execution of the Sale Deed. The consolidation proceedings in the Village were completed in the month of February 2015, and the Revenue authorities had started issuing NOC / Permission for sale. Thereafter, the Defendant stated that he would execute the Sale Deed in the month of April 2015 and in the meanwhile, NOC/permission for sale could be obtained.

10. It was further claimed that Sh. Vidhu Sharma, signatory of the plaint, received a Notice dated 13.04.2015 on behalf of the Defendant

through his Advocate, wherein it was stated that SPA dated 19.09.2012 had been cancelled by the Defendant. The Plaintiff tried to contact the Defendant, who stated that he would execute the Sale Deed only if the Plaintiff agreed to pay the additional money, as there was manifold increase in the price of the land. The Defendant also threatened to create third party rights in the Suit Property. Aggrieved, *Plaintiff filed Suit for Specific Performance and Permanent Injunction against the Defendant Ram Niwas.*

11. The **Defendant/Appellant in the Written Statement** claimed that the Plaintiff has not approached the Court with clean hands and has suppressed material facts. A fraud has been played against the Defendant by preparing the documents with lesser amount than the agreed amount, between the parties. Therefore, the Defendant has cancelled the SPA in favor of Plaintiff Company, on coming to know this fact.

12. The Plaintiff has ongoing dispute against many villagers, namely, Rajesh s/o Mehar Singh, Ashok s/o Hari Ram, Deen Dayal s/o Hari Ram, Om Prakash s/o Hari Ram, Nand Kishore s/o Hari Ram, Rajesh s/o Hari Ram and Rajendra s/o Sher Singh, all residents of Village Badusarai, P.S. Chhawla, Delhi.

13. Furthermore, the documents on which the Plaintiff had has placed reliance are not registered and therefore, do not give rise to any cause of action against the Defendant. Moreover, the consolidated proceedings have not been completed in the village and number of litigations are pending before higher authority. The Suit is not maintainable as it has not been disclosed in what capacity Vidhu Sharma, has been authorized to file the Suit.

14. It is denied that the Defendant ever approached the Plaintiff; rather it was Jai Singh, broker of the Company who had approached the Defendant in respect of sale and purchase of land of the Defendant.

15. It was agreed between Defendant and Jai Singh that $1/4^{th}$ share of the Defendant would be sold for a total consideration of Rs.3,20,00,000/-. When the Defendant noticed the less consideration amount, he immediately cancelled the SPA in favor of Vidhu Sharma, the Notice of which was sent to the Plaintiff.

16. It was further submitted that no *Shizra* Plan showing the portion of the Defendant, had been supplied to the Defendant. He was under an impression that the total sale consideration was Rs.3,20,00,000/- and had also insisted on getting the Agreement to Sell registered. The alleged

consideration of Rs.77, 86,500/-, is contrary to the oral agreement that had taken place between the parties.

17. Furthermore, several objections were pending in the Court of Deputy Commissioner and other authorities. It was claimed that Plaintiff wanted to grab the property of the Defendant, through SPA, to get the land of the Defendant transferred to the Plaintiff Company.

18. It is further submitted that *Prem Raj Sharma and Vidhu Sharma are father and son* and they have colluded to cheat the Defendant. He claimed that he was willing to return the amount received from the Plaintiff Company without interest. He was also ready to get his share transferred in the name of the Plaintiff, provided the balance sale consideration of Rs.2,42,13,500/- was paid to the Defendant.

19. ***The issues on the pleadings*** were framed by the learned District Judge on 21.02.2019 as under:

> *"(i) Whether plaintiff is entitled to decree directing defendant to perform his part of agreement to sell dated 19.09.2012 by executing registered sale deed in respect of his 1/4th share in the land in favour of plaintiff and/or its nominee? (OPP)*

(ii) Whether plaintiff, in the alternative, is entitled to decree directing defendant to refund Rs.77,86,500/- along with interest @ 24% per annum w.e.f. 19.09.2012 till the date of actual payment? (OPP)

(iii) Whether fraud has been played by the plaintiff upon defendant by preparing documents mentioning lesser amount? (OPD)

(iv) Whether plaintiff's suit is not maintainable as consolidation proceedings in Village Badu Sarai have not been completed? (OPD)

(v) Relief."

20. The Plaintiff in support of his evidence examined **PW1 Prem Raj Sharma**, who tendered his evidence by way of Affidavit Ex. PW1/A and proved the documents in support of his case.

21. **PW2 S.K. Srivastava,** proved Legal Notice dated 13.04.2015 Ex.PW1/17 issued for cancellation of SPA dated 19.09.2012 executed in favour of Vidhu Sharma.

22. **PW3 T. Minz, Office Kanungo,** SDM Office Najafgarh, Delhi, proved the summoned record, i.e., Resolution No. 62 dated 31.01.2015 of Consolidation Officer of Village Badu Sarai Ex. PW3/A.

23. **PW4 Leela Dhar Sharma, Patwari**, proved the Revenue Records in respect of the Suit Property.

24. **PW5 Ashok Pandey, Relationship Manager, ICICI Bank,** proved the certified copies of the bank statement of the Plaintiff Company as Ex. PW5/1.

25. **PW6 Vidhu Sharma** deposed about the facts of this case.

26. **The Defendant in support of his case examined himself as DW1** and proved the requisite documents in support of his defence.

27. **DW2 Ram Khiladi,** corroborated the testimony of DW1 by way of his Affidavit of evidence Ex.DW2/A.

28. The **learned District Judge** considered the rival evidence proved by both the parties and held that the Defendant had validly entered into the Agreement to Sell in respect of the Suit Property and that the entire sale consideration already stood paid. Consequently, the Suit of the Plaintiff was decreed, and Defendant/Appellant was directed to execute the Sale Deed in favour of the Plaintiff and was restrained from creating third party rights in the Suit Property till the transfer of the land.

29. **Aggrieved by the said judgement, the present Appeal under Section 96 read with Order XLI Rule 1 and 2 CPC has been filed.**

30. ***The main grounds of challenge*** are that the Plaintiff was not a competent witness to prove the disputed documents. Furthermore, these were not registered documents, which could create any right in favour of the Plaintiff. Moreover, these documents were disputed and had not been proved by examining any attesting witness, which has caused miscarriage of justice.

31. The Appellant has relied upon *Suraj Lamps v. State of Haryana* 183 (2011) DLT 1 (SC), wherein it is asserted that any transaction in respect of immovable property which is for more than Rs.100/-, can be affected only through on registered document. The documents Ex.PW1/1 to Ex. PW1/17 clearly reflects the bad intention of the Plaintiff as he got prepared two sets of documents, one in favour of Plaintiff and other in favour of his son, i.e., SPA holder.

32. It was asserted that there was a fraud not only played by the Plaintiff against the Defendant, but there is no explanation as to why he got a registered SPA prepared in the name of his son. The intention of the Plaintiff was that as soon as the consolidation proceedings are cleared/completed, then his son would transfer the property in the name of the Plaintiff by executing the Sale Deed. The SPA had, therefore, been rightly cancelled by the Defendant to meet the ends of justice.

33. The testimony of PW1 Sh. Ram Niwas has been clear and was overlooked wherein, he has admitted that prior to ·the filing of suit in consolidation proceedings, was not completed. The consolidation proceedings had not been completed. The stand of the Defendant in the Suit was that it was pre-mature as the consolidation proceedings, were still pending. It has not been considered that the Plaintiff was dishonest person who had litigation with other residents, as mentioned in the Written Statement. Furthermore, the testimony of the Defendant in this regard had not been challenged by the Plaintiff's examination and should not have been ignored by the learned Trial Court.

34. The PW1 had deposed in his cross-examination that he was authorized by the Company to enter into the Agreement with the Defendant for purchase of land. He further admitted that Mr. Vidhu Sharma was not authorized to enter into the Agreement with the Defendant. It is contended that when Vidhu Sharma was not the authorized or competent person, then how did he come into the picture and succeed in getting registered SPA in his favour. The testimony of PW1 should have been rejected as being unreliable.

35. Furthermore, the Plaintiff is not concerned with village Badu Sarai, then how did he meet the Defendant. It was through some middlemen who had come between the Company and the farmers including the Defendant. The question also rises about who the attesting witnesses are and why he has not been examined by the Plaintiff. It is thus, claimed that various issues have been raised to question the judgement and decree judgement dated 08.04.2026. Hence, a prayer is made that the judgement, be set aside.

36. Written Submissions have been filed on behalf of the Appellant on similar lines as the contentions raised in the in the Appeal.

37. The Respondent in his Written Submissions, has reiterated the entire pleadings and the findings on the issues and has submitted that the Suit has been rightly decided in favour of the Plaintiff.

38. There is no merit in the Appeal, which is liable to be dismissed.

Submissions heard and the record perused.

39. The first plea taken by the Appellant/Defendant, to challenge the Judgment is that ***there was a fraud played*** by the Plaintiff upon the Defendant, by preparing documents mentioning lesser amount. The Defendant had taken a plea in the Written Statement, that Mr. Jai Singh, broker of the Company, had approached the Defendant for purchase of the

land and he had agreed to sell his 1/4th share for a total consideration of Rs.3,20,00,000/-. When he came to know that the documents mentioned lesser sale consideration, he got cancelled the Special Power of Attorney executed in favour of the Plaintiff Company.

40. The *plea of fraud taken* by the Defendant/Appellant, was that the sale consideration was much less sale consideration than the agreed amount, got mentioned in the Agreement to Sell and, therefore, a fraud was committed upon him.

41. The learned Trial Court rightly noted that the Defendant had taken a plea of *non est factum,* which basically means "it is not my deed" *a* legal ingredient of which have been explained in various judicial authorities.

42. In the case of *Foster vs. Mackinnon* (I.L.R.) 4 C.P. 704, the Defendant claimed to have been induced to endorse a bill of exchange on a false representation that it was a guarantee similar to the one he had signed on a previous occasion. It was observed that the Defendant neither intended to sign that contract or any other contract. He never intended to put his name on the instrument, then or thereafter. *He was deceived, not merely as to the legal effect, but also to the 'actual contents' of the instrument.*

43. This Judgment was referred to with approval in the case of <u>*Ningawwa vs. Byrappa*</u>, (1968) 2 SCR 797 wherein it was held that a contract or a transaction induced or tainted by fraud, is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter, which they may enforce against the party defrauded. *It was held that such transaction was only voidable but the position was held to be different if the fraud and misrepresentation related to the character of the document*.

44. In the case of <u>*Saunders vs. Agnlia Building Society*</u>, *(1971) A.C. 1004,* it was observed that the plea of *non est factum* could not be available to anyone who signed without taking a trouble to find out at least the general effect of the document nor it could be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing.

45. In the case of <u>*Bismillah vs. Janeshwaar Prasad and Ors.*</u>, *(1990) 1 SCC 207* the Plaintiff had claimed that she was a Pardanashin lady and on the representation of the Defendant/Respondent, had appointed them as

agent to manage the estate under a written document, which was drafted in Hindi, a language she did not know. Subsequently, she discovered that it contained an authorised clause empowering sale of properties. Taking advantage of this clause, the said agents had executed fraudulent and elusive sale of the Property. The **Supreme Court** considered a distinction between the fraudulent misrepresentation as to the character of the document and a fraudulent misrepresentation as to the contents thereof. It was held that the defence of *non est factum* was available only when there is a mistake as to the very nature or character of the transaction and not to a clause mentioned in the document.

46. It was explained in the case of *Bismillah* (supra) that the common law defence of *non est factum* to actions on specialities in its origin, was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, who could say that it was not his deed at all. In the modern application, this doctrine can be extended to cases other than those of illiteracy and to other contracts in writing and distinction needs to be drawn *between fraudulent misrepresentation as to the character of the document and fraudulent*

misrepresentation as to the contents thereby. **The defence is available only if the mistake was as to the very nature or character of the transaction.**

47. The proposition of law had been summed up by Lord Pearson, in the case of *Bismillah* (supra), which are as under:-

> *"In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or the other document to be signed. By "sufficiently understanding" I mean understanding at least the point of detecting a fundamental difference between the actual document and the document as the signed had believed it to be."*

48. The law as crystalised in the case of *Ramathal vs. K. Rajamano*, 2023 SCC Online SC 1022, is that the legal position would be different if *there is a fraudulent misrepresentation not merely as to the contents of the document as to its character*. There is a clear distinction between the fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. While the fraudulent misrepresentation as to the character makes the transaction void, in the latter case, it is merely voidable.

49. In the light of the aforesaid proposition of law, the facts of the present case, may be considered. The Defendant had taken a plea that on

account of his illiteracy and inability to understand the language of English, he was fraudulently made to sign the documents. The Defendant examined himself as DW-1 and also examined DW-2 Mr. Ram Khilari, in his support. The Defendant/Appellant in his Affidavit merely replicated the averments made in the Written Statement. In his cross-examination as DW-1, he deposed that he had not entered into any Agreement to Sell with the Plaintiff Company. However, when confronted with the Agreement to Sell dated 25.06.2012, 19.12.2012 Receipt dated 26.07.2012, Special Power of Attorney, General Power of Attorney and Will dated 19.12.2012, he admitted his signatures and thumb impressions on all of these documents, wherein the sale consideration was mentioned as 77,86,500/-. It is pertinent to note that in the second Agreement to Sell dated 19.09.2012, admittedly executed between the parties, not only was the total sale consideration as Rs.77,86,500/- was mentioned but the details of the payments that were made to the Defendant, was specifically mentioned.

50. The learned District Judge rightly observed that it is only a bald assertions that he did not understand the nature of the document as there was nothing to show that he was even unable to understand the figures mentioned in the documents. Pertinently, there was no denial that he had

received the a total sum of Rs.77,86,500/-, pursuant to the Agreement to Sell dated 19.09.2012, Ex.PW-1/8.

51. Interestingly, while he claimed that he was not aware of the figure mentioned in the Agreement to Sell, he remained absolutely silent till the Plaintiff started asking him for execution of the Sale Deed in the year 2015. This in fact, triggered the Defendant, to send a Legal Notice dated 13.04.2015 i.e. after almost three years of execution of Agreement to Sell to only to cancel the Special Power of Attorney, issued in the name of Mr. Vidhu Sharma.

52. Pertinently, as has been rightly observed by the learned District Judge, this Notice did not even whisper that the sale consideration had not been rightly reflected in the Agreement to Sell, while cancelling the SPA. Had there been actually a fraud committed in mentioning of the sale consideration, there was nothing which prevented the Appellant, from rescinding this Agreement in the three long years, after the execution of the Agreement to Sell; rather it is emerged from the cross-examination of the Appellant that in this time, the price of the land had increased manifold in the three years and that is the *mala fide* reason for **rescinding** from the

Agreement to Sell and refusal to execute the Agreement to Sell dated 19.09.2012, Ex.PW-1/8.

53. The Appellant had also tried to avoid the Agreement to Sell, on the grounds that it could not have been executed in the year 2012, as the consolidation proceedings had been not been completed. The learned District Judge has rightly observed that it is on this account, that the date of execution of the Sale Deed, was not mentioned in the Agreement to Sell. It has emerged from the testimony of PW-3, Office Kanoongo and Patwari and PW-4 that the consolidation proceedings stand completed in the year 2016. It is only then that the Plaintiff had rightly started insisting on the execution of the Agreement to Sell.

54. The learned District Judge has rightly, rejected the plea of the Defendant and decreed the Suit in favour of the Plaintiff.

55. **There is no merit in the present Appeal, which is hereby dismissed.** The pending Applications are also, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 09, 2026
N/RS