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

% ***Reserved on: 26th February, 2026***
***Pronounced on: 13th May, 2026***

\+ **RFA 94/2024, CM APPL. 7128/2024, CM APPL. 50997/2024**

**PARAMJIT SINGH KHURANA**
S/o S. Balinder Singh Khurana
R/o C-52, Naraina Vihar,
New Delhi-110028.

....Appellant

Through: Mr. Sanjay S. Chhabra and Mr. Himanshu Sharma, Advocates

Versus

1. **DAVINDER SINGH**
S/o S. Santokh Singh
R/o C-130, Mansarovar Garden,
New Delhi-110015.

2. **PARAMJIT KAUR**
W/o Late Sh. Paramjit Singh
R/o C-130, Mansarovar Garden,
New Delhi-110015.

3. **HARMEET SINGH**
S/o Late Sh. Paramjit Singh
R/o 19, Stockwell Drive,
Mangots field, Bristol,
BS 16 IDW, England, U.K.

4. **PREET KAUR**
D/o Late Sh. Paramjit Singh,
R/o C-130, Mansarovar Garden,
New Delhi-110015.

5. **GURPREET KAUR**

D/o Late Sh. Paramjit Singh
W/o S. Dalpreet Singh
R/o NA-52, Gali No.5,
Vishnu Garden, New Delhi.

.....Respondents

Through: Mr. Rajiv Bahl, Advocate for R-1
Mr. Bhagat Singh, Advocate for Respondent no 2 to 5

**CORAM:**
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

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

**NEENA BANSAL KRISHNA, J.**

1. The present Regular First Appeal under Section 96 read with Order XLI CPC has been filed *against the Judgment dated 20.12.2023*, whereby the Suit of the Plaintiff for Specific Performance of Agreement to Sell dated 24.08.2004, Possession, Damages and Permanent Injunction, **has been dismissed under Order XII Rule 6 CPC.**

2. The ***facts in brief*** are that the Plaintiff/Appellant had entered into an Agreement to Sell dated 24.08.2004 with Defendant No. 1, Sh. Davinder Singh, Predecessor-in-Interest of Defendant No. 2 to 5 in respect of the entire Basement, Ground Floor and First Floor excluding the Second Floor of property bearing No. A-91/1, Naraina Industrial Area, Phase I, New Delhi admeasuring 400 sq. yds (*hereinafter referred to as "Suit Property"*) for a total sale consideration of Rs. 95 lakhs. At the time of execution of the Agreement, a sum of Rs. 25 lakhs was paid as earnest money to Defendant No.1 and the balance sale consideration of Rs.70 lakhs was to be paid on or before 31.01.2005.

3. As per the Agreement and mutual understanding, Defendant No.1 had agreed to hand over the vacant and peaceful possession of the entire First Floor to the Plaintiff, in *lieu* of having received Rs.25 lakhs as earnest money.

4. However, to the shock and surprise of the Plaintiff, after signing of the Agreement, the Defendant No.1 started demanding another Rs.10 lakhs for handing over possession of the First Floor. The Plaintiff was, thus, compelled to further pay additional Rs.10 lakhs on the same day. This additional demand/payment was also incorporated in the right side margin of the original Agreement. This fact was confirmed by the Plaintiff, by signing on the Agreement to Sell.

5. At the same time, *possession of the entire First Floor was handed over to the Plaintiff who kept certain articles like furniture, stationary and other things inside the First Floor.* The original Agreement was stated to not be in possession of the Plaintiff as it was seized by the Police *vide* Seizure Memo dated 26.08.2005 in FIR No.229/2005 under Section 420/467/468/471/120B IPC P.S. Naraina and is still in the custody of the Investigating Agency. However, the photocopies of the original documents, were placed on record.

6. The Plaintiff further asserted that as per Clause I of the Agreement to Sell, Defendant No.1 and the Predecessor-in-Interest of Defendant No.2 to 5, agreed to get the mutation of the property effected in their name prior to the execution of the sale deed in favour of the Plaintiff, at the expense of Defendants, after which the Plaintiff was to pay the balance sale consideration. The date of execution of the Sale Deed was fixed as 31.01.2005.

7. The Plaintiff submitted that the Agreement could not be implemented up to 31.01.2005, because the seller could not get the property mutated in their name and the date for execution of the Agreement to Sell was further extended up to 28.02.2005, on the request of the Defendants.

8. However, despite the lapse of this period, the sellers could not get the property mutated in their name and requested for further extension which was consented to, up to 31.03.2005, by the Plaintiff. These extensions were endorsed on the original Agreement to Sell and were duly signed by Defendant No.1 for himself and on behalf of co-owner Paramjit Singh; the endorsement was also signed by the Plaintiff.

9. The Plaintiff claimed that *he was always ready and willing to get the execution of the Sale Deed in his name, on all the aforesaid dates*. However, when by 31.03.2005 the vendors could not get the mutation of the Suit property in their name in DDA, the Plaintiff approached the Defendants either to get an extension or to execute the Sale Deed of the Suit property, after getting the property mutated. However, Defendant No.1 and the other sellers neither executed any Sale Deed thereafter, nor did they seek further extension, which reflected their *malafide* intention.

10. The Plaintiff apprehending *mala fides* on the part of the Defendants, made a Complaint dated 01.04.2005 at Police Station Naraina, on 02.04.2005.

11. The Defendants, in furtherance of their foul play and *malafide* intention, instead of getting the property mutated in their name, **filed a Suit for Damages of Rs.10 lakhs against the Plaintiff on 05.04.2005,** wherein it was revealed to the Plaintiff/Appellant that the Defendant had allegedly given a Demand Notice dated 01.04.2005, even though no such Notice was

served upon the Plaintiff. It was also revealed that the Defendants deposited money for the purpose of stamp papers in the Treasury on 02.04.2005, i.e. on Saturday and the Stamp Papers were collected from the Treasury on 04.04.2005 i.e. on Monday. *The Suit was subsequently filed on 05.04.2005.* All these facts reflected the *malafide* intention of the Defendants.

12. **The Suit for Damages filed by the Defendant was dismissed in default twice and heavy costs were imposed upon the Defendants.**

13. In the meantime, the Defendants also filed another ***Suit No.106/2005 on 11.04.2005 for Permanent Injunction***. After getting the knowledge of the aforesaid Suits and coming to know about the misrepresentation on the part of the Defendants, the Plaintiff made a Complaint dated 11.05.2005 at Police Station Naraina. He later filed his detailed Written Statement, in both the Suits.

14. The Plaintiff further stated that the Suit for Permanent Injunction accompanied with an Application under Order XXXIX Rule 1 and 2 CPC, was dismissed by the Civil Judge, *vide* a detailed Order, wherein it was observed that the Defendant were not entitled to discretionary relief as they could not get the mutation of the Suit Property effected in their names, prior to entering into the transaction for sale of the Suit Property.

15. **A Misc. Appeal** was filed by the Defendants before the Court of Senior Civil Judge, Delhi, but no Interim relief was granted in the said Appeal.

16. The Plaintiff thereafter, enquired about the status of the mutation proceedings in DDA, from where he came to know that the Defendants were relying upon a *Will of their father dated 12.04.2000.* Subsequently, when the Defendants applied for mutation in DDA, Surinder Kaur, their real *Bhabhi*,

widow of their brother, raised objections thereto and claimed that the Will dated 12.04.2000, on the basis of which mutation was sought by the Defendants, was a forged and fabricated document. She also disclosed that her father-in-law Santokh Singh, had executed a registered Will dated 26.09.1998. However, on account of the objections raised by Smt. Surinder Kaur, the Suit Property could not be mutated.

17. Upon learning of the aforesaid facts, the Plaintiff also intimated DDA about the existence of the Agreement to Sell executed in his favour, on the basis of the Will dated 12.04.2000.

18. In the meanwhile, the **Defendants filed a Probate Case No.119/2005** in the Court of the District Judge, Delhi wherein Notice was issued to the relatives of the Defendants for 05.08.2005. Upon learning about the pendency of the said Petition, the Plaintiff, filed an Application seeking Stay of the proceedings on 13.10.2005 and also applied for impleadment in the Probate proceedings.

19. After hearing the Plaintiff, the *learned District Judge restrained the Defendants from alienating, parting with possession of, or creating any third party interest, or disposing of the property in question.*

20. In the meantime, FIR No.229/2005, P.S. Naraina, was registered by EOW, Crime Branch, in which the original Will was handed over to the I.O of EOW, while a photocopy thereof was retained on record. The I.O thereafter, moved *an Application before DDA for stopping the mutation of the property* in favour of the Defendants, on the ground that they were relying upon a forged and fabricated Will. During this period, the original Agreement to Sell was also seized by the I.O in FIR No.229/2005.

21. The Will was thereafter, analysed by an Expert and it was found that the same did not bear the signatures of the Executant, and was a forged and fabricated document. Subsequently, another ***FIR No.701/2005 was registered at Police Station Kirti Nagar on the Complaint of the nephew of Defendant No.1.*** Disputes thus, arose between the parties and Defendant No.1 was arrested and sent to Jail on 08.09.2006. However, he was subsequently released *vide* Order dated 25.09.2006, subject to the condition of depositing Rs.35 lakhs before the Court.

22. Thereafter, several Complaints were made at Police Station Naraina, though no action was taken by the Police. The dispute between the parties further escalated as the Defendants tried to restrain the Plaintiff from entering the First Floor of the Suit Property. Consequently, proceedings under Section 145 Cr.P.C were initiated before SDM, Kapashera. Written Statement was filed and the parties were called to the Police Station. On the Report of Police Station Naraina of apprehension of breach of peace, the proceedings under Section *145 Cr.P.C were initiated* and the property was directed to be attached under Section 146 Cr.P.C by the SDM, Kapashera, *vide* Order dated 01.12.2005. ***Accordingly, the property was sealed/seized by the Police of P.S. Naraina and is lying sealed till date.***

23. The Defendants approached the Sessions Court by filing a *Revision Petition, which was dismissed*.

24. Thereafter, the Plaintiff filed an Application under *Section 146 Cr.P.C to the SDM, for de-sealing of the entire First Floor.* However, the Defendants, filed a Petition in this Court and the proceedings before the SDM were stayed and no further action has been taken.

25. In the meanwhile, the Plaintiff came to know that Defendant No.1 had amicably settled the dispute with his *Bhabhi*, Smt. Surinder Kaur and other family members, who had filed objections in the Probate Case. An MOU was prepared in writing. The *criminal cases registered against the Defendant on the Complaint of nephew, were quashed by the Court and the objections filed by the nephew, Smt. Surinder Kaur as well as other family members, were withdrawn. Consequently, there remained no objection to the mutation of the property in the name of family members of the Defendant.*

26. The Plaintiff came to know about all these proceedings when the DDA File was summoned in the Court of the learned ADJ on 10.10.2007, in the Suit for Damages. He became aware about the Settlement of the Defendant with the family members. Prior thereto, the Defendants had realized that they had no evidence in support of their claim and apprehending the dismissal of the Suit for damages, informed the Plaintiff three days prior to the date fixed i.e. 10.10.2007 for evidence, that the matter had been amicably settled.

27. Since the Plaintiff was interested in amicable settlement of the matter, negotiations started between the parties and Defendant No.1 proposed that his *Bhabhi*, Smt. Surinder Kaur, who has already compromised the matter and signed the MOU, was interested in the quashing of FIR. It was also disclosed by Defendant No.1 that his other family members had already executed Relinquishment Deeds in his favour as they had no objection to mutation being effected in favour of the Defendants.

28. Defendant No.1 also suggested that the Plaintiff should withdraw his objections from DDA, but Plaintiff responded that he would co-operate with

the Defendants in every manner, if a separate Compromise Deed is executed to this effect and is duly signed by both the parties, subject to the Defendant making a Statement before this Court regarding execution of the Sale Deed immediately, subject to payment of balance amount of Rs.60 lakhs, after mutation was effected in their favour. However, on 10.10.2007, the Plaintiff waited in the Court of the learned ADJ till 02:00 P.M., but neither the Defendants nor their Advocates appeared.

29. It is asserted that the Defendants have always been hostile and non-cooperative and have acted with *malafide* intentions, by adopting different tactics to delay the matter and let the limitation period expire for filing the Suit for Specific Performance of Agreement to Sell dated 24.08.2004, wherein the period for execution of the Sale Deed had been extended up to 31.03.2005.

30. A Legal Notice dated 22.10.2007 was served upon the Defendants, to which they gave a Reply dated 30.10.2007.

31. The Plaintiff further asserted that on account of non-delivery of possession of the entire Suit property up to 31.03.2005, the Plaintiff suffered losses to the tune of Rs.2 lakhs per month, for which he is entitled to damages/*mesne* profits.

32. The Plaintiff thus, filed the present **Suit for Specific Performance** of Agreement to Sell dated 24.08.2004, **damages and *mesne* profits** @ Rs.2 lakhs per month and **Permanent Injunction** restraining the Defendants from creating third party rights in the Suit property.

33. ***Defendant No.1 in his Written Statement,*** claimed that the Suit of the Plaintiff, was liable to be rejected under Order VII Rule 11 CPC on account of improper valuation of the relief claimed by the Plaintiff. The appropriate

Court Fee had not been paid and no relief of Possession was sought, despite being out of possession. It was claimed that the Plaintiff had not approached the Court with *clean hands* and had *concealed material facts* from the Court.

34. The Suit was also asserted to be not maintainable under the Specific Relief Act, as the Plaintiff did not have possession of any part of the Suit Property and the Agreement to Sell dated 24.08.2004 had subsequently been fraudulently varied and materially altered by the Plaintiff, without the consent of the Defendants. It was further asserted that the term of the Agreement had already expired and the Defendants had already terminated the Agreement. It was thus, claimed that the Agreement to Sell was no longer valid in the eyes of law and the Plaintiff had no right to file the Suit for Specific Performance on the said Agreement to Sell.

35. The Defendants further asserted that the Plaintiff had *never shown readiness and willingness to perform his part of the Contract and had never offered the balance payment to Defendant No.1*. It was for the first time, after more than 2½ years of termination of Agreement to Sell dated 24.08.2004, that the Plaintiff served the Legal Notice dated 22.10.2007 upon the Defendants, which was duly replied.

36. It was claimed that the Plaintiff had fraudulently misrepresented that he had paid Rs.10 lakhs for possession of the First Floor of the Suit Property, which was completely false. Neither was the amount paid nor was the possession of the First Floor ever handed to him. It was stated that the essential terms of the Contract had been violated by the Plaintiff, while the Defendant has performed his part of the Agreement.

37. The Defendant further claimed that the Plaintiff had acted fraudulently in getting the Agreement to Sell executed and had wilfully

acted contrary to the understanding and intent of the parties. It was asserted that the transaction was sham and the Agreement to Sell was fictitious. Huge losses had been suffered on account of the illegal acts of the Plaintiff and the Defendants continued to suffer since the Suit Property was lying sealed and the tools and equipment worth lakhs of Rupees belonging to the Defendants, had been reduced to garbage.

38. The Defendant further asserted that the Plaintiff had similarly purchased several other properties fraudulently and was owner of many more properties, as detailed in the Written Statement. According to the Defendant, the Plaintiff was well versed in property transactions and documentation and had drafted the Agreement to Sell in a manner different from what had been agreed between the parties and induced the Defendant to sign the same. It was thus, asserted that the Agreement to Sell was vitiated by fraud and was unenforceable in law.

39. The Plaintiff was never in possession of the First Floor of the Suit Property. According to the Defendant, the Plaintiff had initially made false Complaints to the Police and when no action was taken thereon, he filed a Complaint before the Vigilance Department, Delhi Police with regard to possession of the First Floor of the Suit Property.

40. The *Vigilance Team* thereafter, inspected the Suit Property and recorded the statement of several persons including the neighbours. Thereafter, detailed Investigation Report dated 25.05.2005 was submitted, *wherein it was found that the claim of the Plaintiff was false and he was not in possession of the Suit property.*

41. **On merits,** it was explained that Defendant No.1, his brother, who was Predecessor-in-Interest of Defendant No.2 to 5, and their father, Shri

Santokh Singh were three partners of M/s Asian Printing Machinery *vide* a Perpetual Lease Deed. A Lease Deed dated 29.04.1973 was executed by DDA in respect of the Suit Property in the name of the Firm, M/s Asian Printing Machinery. Shri Santokh Singh expired on 08.12.2000 and he bequeathed his share in the Firm equally to the answering Defendants and his brother Late Shri Paramjit Singh, who thereby, became owners of the leasehold rights of the aforesaid property.

42. In the year 2004, the Defendant was in need of money and, therefore, decided to sell the Suit Property. *The Agreement to Sell dated 24.08.2004 was thus, executed between the Defendants and the Plaintiff*, but the Defendant later found that it was drafted in a crafty manner, to which objections were raised by the Defendant, *including to the clause regarding handing over of possession of the First Floor of the Suit premises*.

43. It was further claimed that the Plaintiff had offered to make payment of an additional amount of Rs.10 lakhs over and above the advance amount of Rs.25 lakhs already paid. The Defendant, however, told the Plaintiff that the possession of the First Floor would be given only after receiving Rs.10 lakhs. He also stated that a fresh Agreement would be executed. The Plaintiff, however assured him that no separate Agreement was required and that the original Agreement to Sell dated 24.08.2004 could itself be amended. Accordingly, the sentence "*after taking a sum of Rs.10 lakhs only*" was inserted in the Agreement to Sell.

44. The Defendant, without sensing the fraud, signed the said insertion in the Agreement to Sell, believing that possession of the First Floor would be handed over to the Plaintiff only upon payment of Rs.10 lakhs, in addition to

Rs.25 lakhs. The Plaintiff, however, never made payment of Rs.10 lakhs and, therefore, possession of the First Floor was never handed over to him.

45. The Defendant further claimed that the fraud was also evident from the Agreement to Sell dated 24.08.2004 itself, wherein the total sale consideration was mentioned as Rs.95 lakhs, out of which the Plaintiff had paid Rs.25 lakhs as earnest money to Defendant No.1. The balance sale consideration of Rs.70 lakhs was payable, on or before December, 2004.

46. It was further asserted that the recital in the Agreement to Sell regarding the balance sale consideration clearly showed that no payment of Rs.10 lakhs had been made to the Defendant, since in that eventuality, the balance sale consideration would have been reflected as Rs.60 lakhs and not Rs.70 lakhs.

47. The Defendant, being in need of money, conceded to the request of the Plaintiff for extension of time. However, the Plaintiff failed to make payment of the balance amount of Rs.70 lakhs. Left with no option, the Defendant *vide* Notice dated 01.04.2005, terminated the Agreement to Sell dated 24.08.2004 and called upon the Plaintiff to pay Rs.10 lakhs towards the damages/losses. The Termination Letter was duly served through registered post and UPC.

48. The Plaintiff, immediately after getting the knowledge about the Termination Letter dated 01.04.2005, made a false Complaint in his own writing, at P.S. Naraina alleging that the Defendant was trying to cheat him of Rs.25 lakhs with *malafide* intention. Even in the said Complaint, the Plaintiff stated that he had paid Rs.25 lakhs and nowhere claimed that he had made payment of Rs.35 lakhs. Subsequently, he changed his stand and claimed that he has paid Rs.35 lakhs, which is patently incorrect.

49. The Plaintiff also chose not to reply to the Termination Letter dated 01.04.2005, because he knew that after termination of the Agreement to Sell, he had no right in the Suit Property, since he had failed to perform his part of the Contract. The Plaintiff thereafter, filed a Complaint before the Vigilance Department of Police, which conducted an investigation and found that the Plaintiff was not in possession of the First Floor.

50. The Plaintiff, in order to grab the Suit Property without paying the sale consideration, created hindrances in the way of the Defendants and started harassing them by making false Complaints. Furthermore, the insertion of the Mutation Clause was also *malafide*, as it is a well known fact that mutation of a property is not possible within a short period of three months.

51. The Plaintiff also initiated proceedings before the SDM, who erroneously sealed the property which continued to remain in the exclusive possession of the Defendant. *The proceedings before the SDM were subsequently quashed by this Court, vide Order dated 28.04.2008.* The Defendant suffered huge losses on account of the illegal acts of the Plaintiff.

52. The *Defendant also filed a Suit for Injunction* against the Plaintiff, though the Application for Interim Injunction was unfortunately dismissed. Thereafter, an Appeal was filed which is pending adjudication.

53. The Defendant has also filed a *Suit for damages against the Plaintiff.*

54. The Plaintiff, for the first time in October, 2007 sent a Notice dated 22.10.2007 to the Defendant, which was duly replied to by the Defendant. It was thus, submitted that the Suit of the Plaintiff was liable to be dismissed.

55. The ***Defendant No. 2 to 5 in their Written Statement,*** took similar defence as Defendant No.1 and claimed that the Plaintiff had acted

fraudulently in getting the Agreement to Sell executed and in varying its terms. It was asserted that the Plaintiff had altered the Agreement to Sell without the consent of the father of the answering Defendants. All the averments made in the Plaint were denied and it was prayed that the Suit be dismissed.

56. While the Suit was pending at the stage of Plaintiff's evidence, an ***Application under Order VII Rule 11 CPC was filed by Defendant No.1*** on 28.01.2017. It was asserted that since the Agreement to Sell stood terminated, the Suit of the Plaintiff was not maintainable and bad in law since no declaration for challenging the cancellation/termination of the Agreement to Sell, had been sought in the Plaint despite sufficient Notice. Reliance was placed on *I.S. Sikander (Dead) by Lrs and Ors. vs. K. Subramani & Ors*. (2013) 15 SCC 27.

57. It was further claimed that the Plaintiff had sufficient Notice of the Termination Letter, as the same had been filed by Defendant No.1 in the Suit for Permanent Injunction, wherein the Defendant herein, had categorically pleaded termination of the Agreement to Sell dated 24.08.2004, *vide* Notice dated 01.04.2005.

58. The Defendant also relied upon the proceedings before the SDM dated 07.12.2005, wherein it was again recorded that the Agreement to Sell stood terminated on 01.04.2005. A prayer was, therefore, made that the Suit be rejected.

59. ***Defendant No.2 and 3 supported the Application under Order VII Rule 11 CPC*** and further urged that powers under Order XII Rule 6 CPC be exercised by taking cognizance of the admissions made by the Plaintiff

before the SDM as well as in other litigations, and prayed that the Suit be dismissed.

60. The Defendant No.2 and 3 further relied upon *Dharampal Satyapal Ltd. vs. Sanmati Trading and Investment Ltd. and Anr*. 239 (2017) DLT 350, wherein *I.S. Sikander (Dead) by LRs. & Ors*. (supra) had been followed.

61. ***No formal Reply was filed by the Plaintiff***, though written submissions came to be filed on his behalf. It was claimed that since the issues had already been framed and none had been treated as a preliminary issue, the matter ought to be tried on merits. It was further submitted that the Judgment of *I.S. Sikander (Dead) by LRs. & Ors.* (supra), was distinguishable, on facts.

62. The learned District Judge considered the rival contentions of the parties and though the Application under Order VII Rule 11 CPC was dismissed, ***the Suit of the Plaintiff was dismissed under Order XII Rule 6 CPC.***

63. Aggrieved by the dismissal of the Suit, the Plaintiff has filed the present Regular First Appeal under Section 96 read with Order XLI CPC.

64. The ***grounds of challenge*** are that the impugned Judgment suffers from illegality, perversity and is not tenable in law being based upon conjectures and surmises.

65. It is a settled principle that a Judgment on admission under Order XII Rule 6 CPC can only be passed where the admission is clear, unambiguous and unconditional. The alleged statement relied upon by the learned Trial Court, being part of collateral proceedings and not proved in accordance with law, could not be treated as a binding admission. The same, at best,

raised a triable issue requiring evidence and could not have formed the basis for non-suiting the Plaintiff at the threshold.

66. The learned Trial Court has *suo motu* invoked the provisions of Order XII Rule 6 CPC and dismissed the Suit. It has relied upon an unsworn, unattested and unauthenticated statement of the Appellant, alleged to have been given to the Police authorities in DD No.23A, under Sections 107/150 Cr.P.C. The said alleged statement is yet to be tested during trial and proved in accordance with law. It could not have been construed as an unequivocal and unambiguous admission of the Appellant. The statement has been erroneously relied upon by the learned District Judge in conjunction with the decision of the Apex Court in *I.S. Sikander* (supra), to dismiss the Suit of the Appellant.

67. The learned Trial Court overlooked ***one of the issues framed by it on 20.03.2013, which reads as under:***

> *"5. Whether the Agreement to Sell dated 24th August, 2004 was cancelled or terminated on 1st April, 2005? OPD"*

68. The reliance placed by the learned Trial Court on ***I.S. Sikander* (supra)** is fundamentally misplaced. In the said case, the termination of the Agreement was not a disputed question requiring a trial, and the property had already been transferred in favour of a third party. In contrast, in the present case, the very factum and validity of termination are seriously disputed and is a subject matter of framed issues. Therefore, the ratio of the said judgment is inapplicable, to the facts of the present case.

69. The learned Trial Court despite observing that a conclusive finding regarding termination of the Agreement to Sell cannot be arrived at, held that since the termination of the Agreement to Sell dated 24.08.2004 *vide*

Legal Notice dated 01.04.2005 had not been challenged by the Plaintiff, and the Suit was liable to be dismissed.

70. It is submitted that the High Court of Punjab and Haryana in the case of *Gurbachan Singh v. Bodh Raj & Anr.,* RSA No. 7605/2018, observed that the judgment of *I.S. Sikander* (supra) decided on its peculiar facts and the observations made therein that a Suit for Specific Performance without seeking declaration in regard to termination of Agreement to Sell was not maintainable, did not lay down the *ratio decidendi;* each case has to be considered on its own merits and a relief for Specific Performance cannot be granted, unless the relief of Declaration with regard to subsequent Sale Deed, has been sought in the Suit.

71. The Division Bench of this Court in *Kushal Infraproject Industries India Ltd. v. Dalel Singh & Anr.* 2019 (176) DRJ 111, considered a similar plea raised by the Defendant relying upon the judgment of *I.S. Sikander* (supra). It was held that the process of adjudication would involve an adjudication of the legality and validity of the Notices issued by the Defendants. The Notices including the termination Notices, are premised on the allegation that the Plaintiff has breached the Agreement. If it is found that the Plaintiff has breached the Agreement, then the Notices would be held to be valid and legal and no decree for Specific Performance would be liable to be granted. However, if it is held that the Defendants were in breach, the termination would be bad in law; the forfeiture would not be valid and the decree of Specific Performance would then be considered, depending upon the evidence adduced and other factors. *The validity of the termination is closely intertwined with the determination of breach. Under such circumstances, the illegality or validity of termination would be an*

*inherent aspect to be considered in granting relief of Specific Performance.* The said issues are inalienable i.e. Agreement-breach-termination-Suit for Specific Performance, and each of them is intricately linked to the other.

72. Further reliance is placed on *Prof. Mahabir Educational cultural & Welfare Society v. Girdhari Lal Dhara*; RFA 371/2019, *Radhey Sham v. Varsha Yadav*; RFA 734/2016, *Gurbachan Singh (Now Deceased) through his Legal Heir and Others v. Bodh Raj and Another*; RSA No.7605/2018. Further, the High Court of Punjab and Haryana in *Brahm Dutt v. Sarabjit Singh*; RSA No.2943/2017, had observed that there cannot be unilateral cancellation of Agreement to Sell, by one party. Such cancellation cannot be raised as a defence in a Suit for Specific Performance. It was held that such a plea of cancellation/termination raised by the Defendant, can just be ignored by the Court and the Plaintiff need not challenge such an alleged cancellation. It was held that if such unilateral cancellation of non-determinable Agreement is permitted as a defence, then virtually every Suit for Specific Performance, can be frustrated by the Defendant.

73. It is submitted that no objection was raised by the Respondent in the Written Statement regarding the maintainability of the Suit and no relief was sought for declaring the alleged termination of Agreement to Sell, as bad in law.

74. It has been overlooked that issues had been framed on 20.03.2013, wherein one issue was regarding the termination of the Agreement to Sell. The learned District Judge, therefore, could not jump to the conclusion that there was an alleged termination of the Agreement to Sell, which ought to have been challenged by the Appellant. The impugned Order has resulted in an anomaly wherein the Appellant after prosecuting the Suit for the last 17

years, is left remediless and his claim for **damages, compensation, refund of earnest money** also stands negated/dismissed, causing immense hardship to the Appellant.

75. Hence, a prayer is made that the impugned judgment be set aside and the Suit be remanded back to be tried on merits.

76. **Written Submissions have been filed on behalf of the Appellant**, on similar lines.

77. The ***Respondents No. 2 to 5 in their Written Submissions*** have stated that Agreement to Sell is determinable in nature. **Clause 2 of the Agreement to Sell dated 24.08.2004** provided that it shall automatically come to an end, if it is not performed by the agreed date, i.e., 31.03.2005. Therefore, the Agreement to Sell automatically stood determined on 31.03.2005 itself. *Moreover, on the very next date of its automatic determination, i.e., 01.04.2005, the Agreement to Sell was expressly terminated by issuing a termination Notice. The Agreement to Sell was, therefore, non-existent.*

78. The Appellant was well aware of the termination of the Agreement to Sell. Even a Notice dated 01.04.2005 was duly served upon the Appellant, which had repeatedly been admitted to have been received by the Appellant. The termination of Agreement to Sell was expressly pleaded in judicial proceedings and subsequent correspondence.

79. Despite being aware of the termination of the Agreement to Sell, the Appellant had chosen not to challenge the impugned termination, despite it being a *sine qua non*. The existence and subsistence of an Agreement to Sell, was a condition precedent for seeking Specific Performance of an Agreement to Sell. In the absence of any relief of declaration *qua*

termination, Suit for Specific Performance is not maintainable in the eyes of law. Reliance is placed on *I.S. Sikandder v. K. Subramani & Ors.* 2013 (15) SCC 27, *Sangita Sinha v. Shawana Bhardwaj*, AIR 2025 SC 1806.

80. It is further contended that the decision of *Annamalai v. Vasanthi* 2025 INSC 1267 relied upon by the Appellant, is not applicable to the facts in the present case. In the said case, there was no plea of maintainability of the Suit taken in the Written Statement, no issues were ever framed, and no arguments were addressed before the learned Trial Court. The issue of maintainability was raised for the first time, before the Supreme Court.

81. Furthermore, there was no Clause in the Agreement to Sell which empowered the vendor to terminate the Agreement to Sell and it could not have been so terminated.

82. While in the present case, there was a specific objection taken in the Written Statement in express words; the issues have been framed specifically in this regard and the Agreement to Sell itself expired with the efflux of time. There was no extension post 31.03.2005 and it stood determined and was also specifically terminated *vide* Notice dated 01.04.2005.

83. The judgment of *Annamalai* (supra) and *Sangita Sinha* (supra), reiterated the decision in *I.S. Sikander* (supra), clarifying that a relief of declaration was mandatory.

84. In response to the contention of the Appellant that the learned District Judge, despite having dismissed the Application under Order VII Rule 11 CPC, had *suo motu* exercised jurisdiction under Order XII Rule 6 CPC without affording an opportunity to the Appellant, the Respondents submitted that Written Submissions had been filed by the Appellant before

the learned District Judge, which confirmed that he had participated in the proceedings and had also advanced arguments under Order XII Rule 6 CPC. It was thus, submitted that there was no question of any opportunity not having been afforded to him.

85. The Order XII Rule 6 CPC itself mandates and empowers the Court to *suo moto* invoke the jurisdiction for passing a judgment on admissions in *Rajiv Ghosh v. Satya Narayan*, 2025 SCC Online SC 751, Supreme Court looking into object behind legislative amendment in Order XII Rule 6 CPC, held that the judgment on admissions can be s*uo moto* passed by the Courts.

86. In *Ashwin Lal v. Aruna Lal*, 2010: DHC: 6051, it was held that the scope and ambit of Order XII Rule 6 CPC was wide and can be entertained even after framing of issues and at any stage of the Suit.

87. Furthermore, in *Vijaya Mayne v. Satya Bhushan*, 2007 (142) DLT 483 (DB), it was reiterated that the scope of Order XII Rule 6 CPC is very wide.

88. It is submitted that there is no merit in the present Appeal and the same is liable to be dismissed.

**Submissions heard and record perused.**

89. Essentially, the controversy in the present Appeal is whether the Suit for Specific Performance could have been dismissed under Order XII Rule 6 CPC, ***on the ground that the Plaintiff had not sought a declaration challenging the termination Notice dated 01.04.2005, when the validity and legal effect of such termination itself was a disputed issue between the parties.***

90. The Plaintiff/Appellant had instituted the Suit in December 2007/ January 2008 seeking Specific Performance of the Agreement to Sell dated 24.08.2004, in respect of the Suit Property, along with consequential reliefs

of possession, damages and Permanent Injunction. As per the Agreement to Sell, the total sale consideration payable was Rs.95 lakhs, out of which, Rs.25 lakhs was admittedly paid at the time of entering into the Agreement. The date for execution of the Sale Deed, initially fixed as 31.01.2005, was subsequently extended up to 31.03.2005.

91. The case set up by the Plaintiff/Appellant was that the parties had agreed that possession of the First Floor of the Suit Property would be handed over to him. According to the Plaintiff, the Defendants thereafter demanded an additional amount of Rs.10 lakhs for handing over possession, which was paid by him and an endorsement to this effect was recorded on the original Agreement to Sell. It was further asserted that he had always been ready and willing to perform his obligations under the Agreement.

92. The Defendants/Respondents contested the Suit and asserted that the Agreement to Sell dated 24.08.2004 had been fraudulently varied and materially altered without their consent. It was denied that possession of any portion of the Suit Property had ever been handed over to the Plaintiff. The Defendants further claimed that the Plaintiff had failed to perform his obligations under the Agreement and had never tendered the balance sale consideration. It was further claimed that the Plaintiff had never shown his readiness and willingness to perform his part of the contract, and he never offered the balance amount in 2.5 years since the termination of the Agreement to Sell, even the Legal Notice dated 22.10.2007, was sent for the first time after a long delay of 2.5 years.

93. The principal defence raised by the Defendants/Respondents was that the ***Agreement to Sell had expired by efflux of time on 31.03.2005 and, in***

***any event, stood specifically terminated vide Legal Notice dated 01.04.2005, which was duly served upon the Plaintiff/Appellant***.

94. The Defendants/Respondents further relied upon the alleged knowledge of the Plaintiff/Appellant regarding termination of the Agreement to Sell, as reflected in DD No.23A dated 23.07.2005 under Sections 107/150 Cr.P.C., the Report dated 25.05.2005 of DCP/Vigilance, as well as in subsequent litigations *inter se* the parties, i.e., the Suit for Permanent Injunction, Specific Performance and damages, wherein there was a mention of Notice of termination.

95. The only contention at this stage was that since the Agreement to Sell stood terminated w.e.f. 01.04.2005, no Agreement to Sell survived thereafter and, consequently, the Suit for Specific Performance, in the absence of any declaratory relief challenging such termination, was not maintainable.

96. It is not in dispute that the Plaintiff/Appellant had knowledge of the termination of the Agreement to Sell *vide* Notice dated 01.04.2005, and the said fact came to be reflected in several subsequent proceedings *inter se* the parties. The real question, however, is: *whether such unilateral termination of the Agreement to Sell by the Defendants/Respondents was, by itself, sufficient to render the Agreement to Sell extinct and incapable of enforcement.*

97. It is significant to note that **the Suit was filed way back in the year 2007** and, after completion of pleadings, the learned Trial Court framed issues on 20.03.2013. The issues framed included, *inter alia*, the following:

> *"1. Whether the Plaintiff is entitled to a decree of specific performance as prayed for? OPP*

*2. Whether the Plaintiff is entitled to a decree of possession as prayed for? OPP*
*3. Whether the Plaintiff is entitled to a decree of damages of Rs.2 Lakhs per month from the date of filing of the suit till possession of the suit property is handed over? OPP*
*4. Whether the Plaintiff is entitled to a decree of permanent injunction whereby restraining the Defendants from creating third party interest in the suit property? OPP*
*5.* ***Whether the Agreement to Sell dated 24th August, 2004 was cancelled or terminated on 1st April, 2005? OPD***
*6. Whether there was no cause of action to file the present suit against Defendant Nos.* 2, 4 *and* 5? *OPD*
*7. Whether the Plaintiff was always ready and willing to perform his part of the obligations under the Agreement to Sell dated 24th August, 2004? OPP*
*8. Relief."*

98. The aforesaid issues clearly demonstrate that the questions regarding the validity of termination of the Agreement to Sell and the readiness and willingness of the Plaintiff/Appellant were treated by the learned Trial Court, as disputed questions requiring adjudication upon evidence. The parties had already proceeded to trial and the matter was at the stage of evidence.

99. It was at this advanced stage of the proceedings that Defendant No.1 moved an Application under Order VII Rule 11 CPC contending that the Suit was not maintainable in the absence of a declaratory relief challenging the termination of the Agreement to Sell, while placing reliance on the judgment of the Supreme Court in *I.S. Sikander* (supra).

***I. Whether the Agreement to Sell was terminated by the Notice dated 01.04.2005:***

100. The ***first aspect*** which emerges is that the termination of the Agreement to Sell dated 24.08.2004 was a unilateral act on the part of the Defendants/Respondents. It is a subject matter of evidence whether there existed valid grounds for termination and whether the Notice dated 01.04.2005 constituted a lawful and effective termination of the Agreement to Sell. These were issues which necessarily required adjudication upon appreciation of evidence and could not have been determined summarily at the threshold.

101. In a Suit for Specific Performance, the Court is required to examine, *inter alia*, the enforceability of the Agreement to Sell, the *readiness and willingness* of the Plaintiff to perform and honor his obligations thereunder, and the question as to which of the parties had committed default/breach in performing their respective obligations. Not only this, the Court is also required to consider whether *time was intended to be of the essence* of the Agreement and whether the Agreement to Sell had, in fact, stood terminated merely by efflux of time w.e.f. 31.03.2005.

102. These questions are intrinsically interconnected and ordinarily cannot be determined without a full-fledged trial. It has been consistently held in a catena of judgments that the terms of the Agreement and the intention of the parties are required to be examined to ascertain *whether time was intended to be of the essence in the Agreement to Sell*.

103. It is a settled principle that, traditionally, in contracts relating to sale of immovable property, time is ordinarily not regarded as being of the essence unless such intention is evident from the terms of the contract and

the surrounding circumstances. The Constitution Bench of the Supreme Court in *Chand Rani v. Kamal Rani*, (1993) 1 SCC 519 observed that:

> *"…it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time from the following conditions: (1) the express terms of the contract; (2) the nature of the property; and (3) the surrounding circumstances, for example, the object of making the contract."*

104. In *K.S. Vidyanadam v. Vairavan*, (1997) 3 SCC 1, the Supreme Court observed that while Courts in India had earlier consistently held that time is not of the essence in Agreements relating to immovable properties, the Court cannot remain oblivious to the reality of constant rise in urban property prices. It was thus, observed that the rigour of the traditional rule requires to be relaxed, if not modified, particularly in cases concerning urban immovable properties.

105. The aforesaid principle was further elaborated in *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18, wherein the Supreme Court, while referring to *Chand Rani*, reiterated that ordinarily time is not treated as the essence in contracts relating to immovable property. Earlier rule proceeded on the assumption that property values were stable and that delay in performance would not materially prejudice the vendor. However, in view of galloping inflation and steep increase in prices of immovable

properties, the time period prescribed by the parties for performance cannot be treated as insignificant. Thus, it was cautioned that where the parties have prescribed a time period for payment or completion, the same cannot be ignored, and Courts must apply greater scrutiny while examining the readiness and willingness of the purchaser.

106. In *Ferrodous Estates (P) Ltd. v. P. Gopirathnam*, 2020 SCC OnLine SC 825, the Supreme Court, after referring to the aforesaid principles, reiterated that while exercising discretion in suits for Specific Performance, the Court must keep in mind the time period prescribed by the parties for taking steps or completing the transaction, and such time stipulations cannot be ignored altogether.

107. Thus, though time may not automatically be treated as the essence in every Agreement to Sell relating to immovable property, the stipulated time-lines, conduct of the parties, delay, readiness and willingness, and surrounding circumstances are relevant factors which must be examined.

108. In other words, the mere expiry of the stipulated period or issuance of a termination notice does not automatically render an Agreement to Sell non-existent. The Court is required to examine all relevant circumstances before determining whether the contract stood validly terminated and whether the discretionary relief of Specific Performance ought to be granted.

109. It is equally well settled that the power under Order XII Rule 6 CPC, though wide, can be exercised only where the admission is clear, unequivocal and unconditional. Where the very validity of termination of the contract, the readiness and willingness of the parties, and the subsistence of contractual obligations are themselves disputed questions requiring

evidence, the Court cannot non-suit a party by treating contested assertions as conclusive admissions.

110. In the present case, the learned District Judge fell in error in presuming that the Agreement to Sell stood conclusively terminated either by efflux of time on 31.03.2005 or by issuance of the Notice dated 01.04.2005, despite the fact that the legality and validity of such termination were disputed issues, pending adjudication.

***II. Whether the Declaration for challenging the Termination Notice is Mandatory in a Suit for Specific Performance:***

111. The ***second aspect*** which requires consideration is whether, in the absence of a declaratory relief challenging the termination Notice dated 01.04.2005, the Suit for Specific Performance was not maintainable, as contended on behalf of the Respondents.

112. In support of the aforesaid contention, reliance has been placed by the Respondents on the decision of the Supreme Court in *I.S. Sikander* (supra).

113. In *I.S. Sikander* (supra), the Agreement to Sell dated 25.12.1983 was entered into between the parties, under which part-consideration was paid and time to get the Sale Deed executed was specified as five months, after obtaining necessary permission from the Competent Authority, such as Urban Land Ceiling Authority and Income-Tax Department. It was further agreed that if there was any delay in obtaining necessary permission from the above authorities and the payment of layout charges, the time of due performance of Agreement to Sell shall be extended by two months. The Sellers had given Legal Notice dated 06.03.1985 calling upon the Buyer to pay balance sale consideration and to get the sale deed executed. While the

date for execution of Sale Deed was extended once, despite which the buyer failed to comply with the terms of the Agreement to Sell. *In the meanwhile, the property was sold to the third party and sale deed executed in his favour.*

114. In the aforesaid factual background, the Supreme Court held that once the Agreement to Sell stood terminated and the Plaintiff had failed to seek any declaration challenging such termination, a Suit for Specific Performance founded upon a non-existent Agreement could not be maintained. It was observed that despite due notice and repeated extension of time granted by the Sellers, the Buyers had failed to demonstrate readiness and willingness to perform their obligations under the Agreement to Sell, which ultimately led to the valid termination thereof. Consequently, the Supreme Court held that in the absence of a specific prayer assailing the termination, the relief of specific performance was wholly unsustainable. The Apex Court observed as under:

> *"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985.*
>
> *37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.*

> *38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of non-existing agreement of sale is wholly unsustainable in law.*"

115. The Supreme Court in the case of *A. Kanthamani vs. Nasreen Ahmed*, (2017) 4 SCC 654, while considering the decision in *I. S. Sikandar* (*supra*), clarified that the said decision turned on its own facts and could not be construed as laying down an inflexible rule regarding maintainability of every Suit for Specific Performance where the Agreement to Sell is alleged to have been terminated. In this regard, it was observed as under:

> "*30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/ and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.*
>
> *30.4.* ***Fourth, the decision relied on by the learned counsel for the appellant in I.S. Sikandar turns on the facts involved therein and is thus distinguishable.*****"**

116. Thereafter, the Apex Court in the case of *R. Kandasamy (since dead) and Others vs. T.R.K. Sarawathy and Another*, (2025) 3 SCC 513, while

considering both *I.S. Sikander* (supra) and *A. Kanthamani* (supra), explained that where an Agreement to Sell is alleged to have been terminated, the subsistence and enforceability of such Agreement constitutes a foundational jurisdictional fact for grant of the relief of Specific Performance. It was observed that ordinarily, where the vendor has unilaterally cancelled the Agreement, the purchaser ought to seek a declaration that such termination is bad and not binding. *However, the Supreme Court simultaneously clarified that merely because no specific issue regarding maintainability had been framed by the Trial Court, the higher Court is not precluded from examining whether the foundational facts necessary for grant of relief existed, provided no new pleadings or evidence are required. At the same time, it was reiterated that the question whether the Suit is maintainable in the absence of declaratory relief would necessarily depend upon the facts of each case and the nature of dispute regarding termination.*

117. The aforesaid Judgments were again considered by the Supreme Court in the case of *Annamalai vs. Vasanthi and Others*, SLP (C) Nos. 26848-26849/2018 decided on 29.10.2025, wherein it was observed that a declaratory relief would be required when a doubt or a cloud is cast upon the right of the Plaintiff and the grant of consequential relief to the Plaintiff is dependent upon removal of such doubt or cloud. However, whether such doubt or cloud exists would depend on the facts of each case. It was further observed that where the Agreement does not give any party a right to terminate the contract unilaterally, or where such right has been waived, a unilateral termination may itself amount to breach of the contract. In such a situation, the aggrieved party may continue to treat the Agreement as

subsisting and maintain a Suit for Specific Performance without necessarily seeking a declaration that the termination is invalid.

118. A similar view was taken by this Court in *Kushal Infraproject Industries India Ltd. v. Dalel Singh & Anr.*, 2019 (176) DRJ 111, wherein it was observed that the issues relating to the Agreement, breach, termination and the Suit for Specific Performance are intricately linked and that the legality or validity of the termination is inbuilt in the relief of Specific Performance itself. Consequently, it was held that the Suit could not be held to be not maintainable at the threshold merely because a separate declaratory relief challenging the termination had not been sought.

119. *Thus, the requirement of seeking a declaratory relief challenging termination cannot be applied as an inflexible rule divorced from the factual matrix of each case.* Where the validity of termination itself is seriously disputed and forms part of the issues requiring adjudication, the Plaintiff cannot be non-suited at the threshold merely for want of a formal declaratory relief.

120. Reliance was also placed by the Respondents on *Sangita Sinha v. Bhawana Bhardwaj & Ors.*, 2025 INSC 450, wherein the Supreme Court held that where an Agreement to Sell had already been cancelled prior to institution of the Suit and the purchaser had neither sought a declaratory relief challenging such cancellation nor demonstrated continuous readiness and willingness, the Suit for Specific Performance was not maintainable. In the said case, the purchaser had admittedly received the cancellation letter and had also encashed the demand drafts returned by the seller, which was treated by the Supreme Court as acceptance of repudiation and indicative of lack of willingness to perform the contract.

121. The facts of the present case, however, stand on a different footing. Here, the Plaintiff/Appellant has neither accepted refund of the consideration amount nor acted in a manner amounting to acceptance of repudiation of the Agreement to Sell. On the contrary, the Plaintiff/Appellant has consistently disputed the legality and validity of the alleged termination and has continuously asserted his rights under the Agreement to Sell through various proceedings. Therefore, the ratio in *Sangita Sinha* (supra) is distinguishable, since in the present case, the validity of termination itself remains a disputed question requiring adjudication, upon evidence.

122. In the present case as soon as, the time fixed under the Agreement expired, on the very next day Sellers gave a Notice of Termination of Agreement dated 01.04.2005 purporting to terminate the Agreement to Sell, alleging that the Plaintiff/Appellant had failed to pay the balance sale consideration and had also failed to pay the alleged additional amount of Rs.10 lakhs.

123. The Plaintiff/Appellant, however, has categorically denied having committed any breach of the Agreement and has consistently maintained that he was always ready and willing to perform his obligations thereunder.

124. In this regard, it is also significant to note *that specific issues had already been framed by the learned Trial Court on 20.03.2013 with respect to the alleged termination/cancellation of the Agreement to Sell and the readiness and willingness of the Plaintiff/Appellant to perform his obligations thereunder*. The question of *Readiness and Willingness* and validity of the alleged termination, are seriously disputed questions which necessarily require adjudication upon evidence. ***The matter had progressed***

***to the stage of evidence, the learned District Judge could not have proceeded on the assumption that the termination stood conclusively established.***

125. If upon appreciation of evidence, it is found that the Plaintiff had committed breach of the Agreement and that the Notice of Termination is held to be valid, then automatically the relief of Specific Performance would necessarily be denied to him. Conversely, if it is established that the Defendants/Respondents were not justified in terminating the Agreement and that the Plaintiff/Appellant was ready and willing to perform his obligations, the Plaintiff/Appellant would be entitled to consideration of his claim for Specific Performance on merits. These disputed questions necessarily required adjudication upon evidence and could not have been conclusively determined in proceedings under Order XII Rule 6 CPC.

126. Therefore, as explained in the cases of *A. Kanthamani* (supra) and *R. Kandasamy* (supra), the Suit cannot be dismissed at the outset, merely because the declaratory relief was not sought.

127. The reliance placed by the learned District Judge on *I.S. Sikander* (supra) was misplaced, inasmuch as the facts of the present case are materially distinguishable. In the present case, the validity of termination itself is disputed and forms the subject matter of framed issues requiring adjudication upon evidence. *The said decision, therefore, could not have been applied mechanically to non-suit the Plaintiff/Appellant.*

128. The learned District Judge further overlooked that apart from the relief of Specific Performance, the Plaintiff/Appellant had also sought consequential reliefs including possession, damages and Permanent Injunction. The Plaintiff/Appellant could not have been completely non-

suited in a Suit filed in the year December 2007 / January 2008, at the time when evidence was being led by the parties, *without adjudication of the disputed questions* arising between the parties.

**Conclusion:**

129. The impugned judgment under Order XII Rule 6 CPC *dated 20.12.2023* is, accordingly, set aside and the matter is remanded to the learned Trial Court for continuation of the trial from the stage at which the Suit was dismissed.

130. The parties are directed to appear before the learned District Judge, Patiala House Courts, New Delhi on 28.05.2026.

131. The pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)**
**JUDGE**

**MAY 13, 2026**
*va/N*