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

Date of decision: 10th September, 2026
Uploaded on: 10th September, 2026

\# **CNR NO. DLHC010164742026**

\+ **RFA(COMM) 248/2026 & CM APPL. NO. 58346/2026**

RITU GOEL AND ANR. .....APPELLANTS

Through: Mr. Vasu Bhushan, Mr. Gautam Sharma and Mr. Parmeet Gupta, Advocates.
Ms. Manasi Bhushan, Adv. for Applicant in CM APPL. NO. 58346/2026.

versus

KAMLESH AND ORS. .....RESPONDENTS

Through: Mr. Keshav Sehgal, Mr. Mayank Maini, Mr. Shivam Verma and Ms. Nidhi Tyagi, Advocates for R-1 and 2.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGEMENT

Prathiba M. Singh, J.

1. The present appeal has been filed by the Appellants under Section 13 of the Commercial Courts Act, 2015, *inter alia,* challenging the impugned judgment and decree dated 3rd February, 2026 *(hereinafter, 'the impugned judgment)* passed by the Id. District Judge (Commercial Court)-02, North-West District, Rohini Courts in ***CS(Comm) 195/2024.***

2. *Vide* the impugned judgement, a decree has been passed against the Appellants for a sum of Rs. 1,22,00,000/- along with interest at the rate of 12% per annum, in the following terms:

> *"26. (i) In view of the above, since the plaintiffs have confined their claim to the amount of Rs.1,22,00,000/-, a decree in the aforesaid sum along with interest @ 12% per annum from the date of filing of the suit till recovery till recovery is passed in favour of plaintiffs and against the defendants.*
> *(ii) Plaintiffs are entitled to costs of the suit. Plaintiffs are further entitled to counsel's fee which is quantified as Rs.1,00,000/-."*

FACTUAL BACKGROUND:

3. The background of the case is that the Plaintiffs before the ld. Trial Court – Mrs. Kamlesh and Mr. Ved Prakash instituted a commercial suit for recovery of a sum of Rs.1,55,67,200/- along with interest, against the following Defendants:

- Mr. Kamal Goel
- Ms. Ritu Goel (Wife of Mr. Kamal Goel)
- Mr. Sanchit Goel (Nephew of Mr. Kamal Goel)

4. The Plaintiffs, who are husband and wife, were jointly running a shop by the name Arya Tailoring Material at D-12/178, Ground Floor, Sector-7, Rohini, Delhi-110085. Defendant No.1 was running a shop by the name 'Pick and Play' in the same vicinity at D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085.

5. Defendant Nos. 2 and 3, being the wife and nephew of Defendant No.1 were also involved in the day-to-day business at the Defendants' shop. According to the plaint, Defendants No. 1 & 2 had represented themselves to be the absolute owners of D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085.

6. During this time, it is alleged that the Defendants had managed to win

the trust of the Plaintiffs and they had developed a close knit relationship, due to which the Plaintiffs shared with the Defendants, the information about owning another property in the same vicinity, *i.e.* D-12/1, Sector-7, Rohini, Delhi-110085.

7. It is the case of the Plaintiffs that from time to time, different proposals were received by them from the Defendants. Initially, the proposals were for conduct of some overseas business in Dubai or investing in property in Dubai and thereafter, for being partners in the Defendants' business. On the basis of prime location of their shop, *i.e.* D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085, the Defendants also proposed to sell the said property to the Plaintiffs.

8. During these discussions, the Plaintiffs are stated to have initially paid to the Defendants an amount of Rs.2,50,000/- in March, 2022 and thereafter, a security agreement was entered into, dated 1st April, 2022, for a tenure of 2 years, with respect to the property being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085.

9. Thereafter, the proposal was for selling a property belonging to the Plaintiffs, namely, D-12/1, Sector-7, Rohini, Delhi-110085 and upon this deal being agreed to, various amounts are stated to have been paid by the Plaintiffs to the Defendants towards such transaction.

10. After receiving an initial amount of Rs. 40 lakhs, this transaction which was meant for D-12/1, Sector-7, Rohini, Delhi-110085 was thereafter re-negotiated for sale of the Defendants' shop being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 itself. In view of the close proximity of the Defendants' shop and the Plaintiffs' shop, the Plaintiffs are stated to have decided to pay further amounts to the Defendants to purchase the Defendants'

shop.

11. Accordingly, till May, 2022, the Plaintiffs had paid a sum of Rs.69,75,000/- to the Defendants. Despite the said amounts being paid, according to the Plaintiffs, the Defendants procrastinated for the execution of the documents *i.e.,* the agreement to sell, etc. and a receipt-cum-agreement to sell was finally signed on 13th August, 2022, by which time, the Plaintiffs had paid a sum of Rs.83,00,000/- to the Defendants.

12. The Plaintiffs then suspected that though the said documents were signed by Defendant No. 2- Mrs. Ritu Goel, the actual ownership of the property was of Defendant No. 1- Mr. Kamal Goel, the husband. Thereafter, further negotiations are stated to have taken place between the parties and at that stage, it was revealed that the Defendants' shop being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 was mortgaged with Tata Capital Financial Services Ltd. and the original documents of the said property would be available only when the loan amount was cleared.

13. According to the Plaintiffs, this was a complete misrepresentation by the Defendants who had never informed them that there was any loan against the said property. The Plaintiffs then insisted on signing of the agreement to sell on the condition that the amounts paid further by the Plaintiffs would be used to clear the bank's EMIs.

14. The total consideration agreed was to the tune of Rs.1.4 crores. The Defendants at that stage are stated to have assured the Plaintiffs that they would clear the bank loan by 20th March, 2023.

15. In view of the fact that a substantial sum had already been invested, further amounts were paid by the Plaintiffs and the total amount paid was to the tune of Rs.93,87,000/- by March, 2023. Upon the clearing of loan, the

ownership documents were to be executed.

16. However, the Defendants continued to postpone execution of the documents and in order to safeguard the earlier amount of more than Rs. 93 lakhs which was already paid, and to get the property being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 transferred in their name, further amounts were given by the Plaintiffs to the Defendants totalling to Rs.1,41,52,000/-.

17. In June, 2023, a SARFAESI notice was received in respect of the property being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 from Tata Capital Financial Services Ltd. and at that stage, four post-dated cheques were issued by the Defendants in favour of the Plaintiffs, the details of which are as under:

S. No.	*CHEQUE NO.*	*CHEQUE AMOUNT*	*ISSUED FROM BANK ACCOUNT OF*	*DATED*
1.	*000020*	*20,00,000/-*	*MR. KAMAL GOEL (DEFENDANT NO.1)*	*05.07.2023*
2.	*005416*	*44,00,000/-*	*MR. KAMAL GOEL AND MRS. RITU GOEL (DEFENDANT NO. 1 & 2)*	*05.08.2023*
3.	*000021*	*20,00,000/-*	*MR. KAMAL GOEL (DEFENDANT NO.1)*	*05.09.2023*
4.	*000022*	*20,00,000/-*	*MR. KAMAL GOEL (DEFENDANT NO.1)*	*05.10.2023*

18. The Plaintiffs at that stage had possession of the shop. However, on 18th December, 2023, the concerned bank took possession of the shop from the Plaintiffs. Subsequent to that, the post-dated cheques were also presented to the bank which were however dishonored due to the accounts being blocked.

19. In view of this, the Plaintiffs had lost possession of the property being

D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 and had also lost any security which they had in respect of the amount which was paid to the Defendants. A suit for recovery being ***C.S. (Comm.) 195/2024*** was then filed by the Plaintiffs before the ld. Trial Court seeking recovery in the following terms:

> *"a) Pass a decree for recovery of Rs.1,55,67,200/- (Rupees One Crore Fifty-Five Lacs Sixty Seven Thousand and Two Hundred Only) in favour of the Plaintiffs and against the Defendants along with pendent lite and future interest @ 12% per annum towards outstanding till its realization in the interest of justice.*
> *b) Award the costs of the proceedings and litigation expenses in favour of the plaintiffs;*
> *c) Pass further orders and give directions which this Hon'ble court thinks fit and proper in the facts and circumstances of the case."*

20. Before the ld. Trial Court, the suit was listed on 30th March, 2024, when summon was issued to the Defendants and thereafter, on 10th May, 2024, the Defendants were duly represented before the ld. Trial Court by a Counsel – Mr. Sanjay Kumar.

21. Thereafter, on 27th May, 2024, none appeared for the Defendants and finally on 9th August, 2024, the Defendants were proceeded *ex parte* when despite repeated passover, none appeared for the Defendants.

22. The Plaintiffs then filed the evidence of their witness PW-1- Ved Prakash and the matter proceeded for *ex parte* evidence.

23. Finally, on 30th August, 2025, the following order was passed by the ld. Trial Court:

> *"30.08.2025*
> *Present: Sh. Mayank Maini, Ld. counsel for plaintiff.*

Defendant already ex parte.
The written arguments filed by plaintiff are already on record.
Today, I have heard, Ld. Counsel for plaintiff for some time.
The present case has been predicated on 'Security Agreement' and 'Agreement to Sell' in respect of the suit property. ***The entire transactions were towards purchasing the suit property by plaintiff. During the course of the commercial dealings between the parties, the money seems to have flowed from plaintiff to the defendants at several intervals of time. It is apparent that finally the facts culminated into issuance of four cheques by defendants No.1 & 2 towards discharge of their liability in respect of the commercial transactions.***
The present suit may be considered towards recovery of the aforesaid cheque amounts. *Ld. Counsel for plaintiff wants to obtain fresh instructions in this regard.*
List for arguments now on 06.09.2025 at 12.30 P.M."

24. Thereafter, on 20th September, 2025, the Counsel for Plaintiffs made a submission before the ld. Trial Court, stating that the Plaintiffs wish to confine the suit amount to Rs. 1,22,00,000/-, i.e. the cumulative amount of the four cheques issued to them by the Defendants. The said order dated 20th September, 2025 reads as under:

"Ld. Counsel for plaintiffs on instructions submits that plaintiff No.1 through plaintiff No.2 (SPA of plaintiff No. 1) wishes to confine the suit amount to Rs. 1,22,00,000/- (Rupees one crore twenty two lacs only), which is the cumultive amount of four cheques involved in the matter.
Separately, statement of plaintiff No.2 (SPA of plaintiff No.1) has been recorded in this respect.
List for further consideration now on 18.10.2025.

25. As can be seen from the above order passed by the ld. Trial Court, the

recovery suit was to be considered for recovery of the amount for which the post-dated cheques were issued by the Defendants *i.e.,* Rs. 1.22 crores only.

26. In light of the proceedings before the ld. Trial Court, on 3rd February, 2026, at the final stage, the recovery suit was decreed in favor of the Plaintiffs and costs was also awarded in the following terms:

> *"25. From the unrebutted testimony of PW1 in the matter and the documents proved by it on record, I am satisfied that the plaintiffs have been able to make out a good case for passing of decree in their favour. As regards the quantum of interest, the transaction between the parties being commercial in nature, I am of the considered opinion that interest @ 12% per annum would meet the ends of justice.*
>
> *26. (i) In view of the above, since the plaintiffs have confined their claim to the amount of Rs. 1,22,00,000/-, a decree in the aforesaid sum along with interest @ 12% per annum from the date of filing of the suit till recovery till recovery is passed in favour of plaintiffs and against the defendants.*
>
> *(ii) Plaintiffs are entitled to costs of the suit. Plaintiffs are further entitled to counsel's fee which is quantified as Rs. 1,00,000/-.*
>
> *27. Decree Sheet be drawn accordingly, subject to payment of requisite court fees, if any."*

27. Pursuant to the impugned judgment dated 3rd February, 2026 passed by the ld. Trial Court, the present appeal came to be filed by Mrs. Ritu Goel & Mr. Sanchit Goel, i.e. Defendant No. 2&3 before the ld. Trial Court, seeking the following relief:

> *"In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:*
>
> *a. Admit and allow the present appeal;*

> b. *Set aside the impugned ex-parte judgment and decree dated 03.02.2026 passed by the Ld. District Judge (Commercial Court)-02, North-West District, Rohini Courts, New Delhi in Civil Suit (Comm.) No.195/2024;*
> c. *Remand the matter back to the Ld. Trial Court for a fresh trial on merits after affording the Appellants an opportunity to file their written statement and lead evidence;*
> d. *Stay the operation and execution of the impugned ex-parte judgment and decree dated 03.02.2026 during the pendency of the present appeal;*
> e. *Award the costs of the present appeal in favour of the Appellants and against the Respondents; and/or*
> f. *Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."*

28. Before this Court, when the matter was listed on 30th April, 2026, the main argument raised on behalf of the Appellants was that Mrs. Ritu Goel and the nephew – Mr. Sanchit Goel were not duly served in the matter before the ld. Trial Court and hence, no decree could have been passed against them in their absence.

29. On 19th May, 2026, the Trial Court Record had been requisitioned and the matter was heard on 20th July, 2026.

30. Thereafter, on 21st July, 2026, the arguments were concluded before this Court, however, the parties requested the Court to appoint a Mediator to explore the possibility of settlement for one last time. Accordingly, the following order was passed on 21st July, 2026:

> *"2. Arguments heard.*
> *3. At this stage, ld. Counsel for the parties submits that a Mediator may be appointed.*
> *4. Accordingly, list before the Delhi High Court Mediation*

and Conciliation Centre on 27th July, 2026 at 3:00 P.M.
5. List before the Court for orders on 10th September, 2026.
6. A copy of this order be communicated to the Secretary, Delhi High Court Mediation and Conciliation Centre by the Registry."

31. The Court was subsequently informed that mediation attempts have failed between the parties and accordingly, orders may be pronounced on merits.

ANALYSIS & CONCLUSIONS:

32. A perusal of the memo of parties in the present appeal would show that the appeal has been preferred only by Mrs. Ritu Goel and Mr. Sanchit Goel i.e. Defendant No. 2&3 before the ld. Trial Court. However, Defendant No. 1 before the ld. Trial Court, i.e. Mr. Kamal Goel, the husband of Mrs. Ritu Goel has been impleaded as a proforma party.

33. It is, thus, a matter of fact that Mr. Kamal Goel has not filed an appeal against the impugned judgment dated 3rd February 2026. Thus, the said judgment and decree passed against Mr. Kamal Goel stands confirmed.

34. Insofar as the service of Mrs. Ritu Goel and Mr. Sanchit Goel before the Trial Court is concerned, a perusal of the Trial Court Record would reveal that Defendant No.3 – Mr. Sanchit Goel had executed a *vakalatnama* in favor of one Adv. Arpit Mehta and thus, it cannot be said that he was not served.

35. The same is the position insofar as Defendant No.2- Mrs. Ritu Goel is concerned, who had executed a *vakalatnama* in favor of one Mr. Gautam Sharma and Mr. Parmeet Gupta. The *vakalatnamas* executed by both the Appellants before the ld. Trial Court are extracted hereunder:

- *Vakalatnama* executed by Sanchit Goel:

₹5
HCT OF DELHI COURT FEE
05-SEP-2024

FIR No. ________ C.No CS(COMM)-195/2024
U/S ____________
P.S. ____________
Distt. NORTH WEST

IN THE COURT OF Sh. VINOD YADAV LD. DISTRICT JUDGE, COMMERCIAL COURT, NORTH WEST, ROHINI COURT
Suit/Appeal No. CS (COMM) -195/2024 JURISDICTON of 20
In re :-

KAMLESH Plaintiff / Apptt/Petitioner/Complainant

VERSUS

KAMAL GOEL & ORS. - NO-3 Defendant/Respondent/Accused

KNOW ALL to whom these present shall come that I / We SANCHIT GOEL

The above named DEFENDANT NO-3 do hereby appoint
ADV. ARPIT MEHTA,
D/2625/2019,
CH NO- 248, WESTERN
WING, TIS HAZARI COURTS,
DELHI, MOB NO- 9899694727, 9990233392
(herein after called the advocate/s)to be my/ourAdvocate in the above-noted case authorise him :-

To act, appear and plead in the above-noted case in this court or in any other Court in which the same may be tried or heard and also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To sign file, verify and present pleadings, appeals cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents to admit and/or deny the documents of opposite party

To withdrsw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings

The deposit, draw and receive money, cheques, cash and grant receipts hereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the power and-authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the powerof attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/ourown acts, as if done by me/us to all .ntents and purpose.

And I/We undertake that I/We or my/our duly authorised agent would appear in court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree not to hold the advocate of his substitute responsible for the result of the said case The adjournment costs whenever ordered by the court shall be of the Advocate which he shall receive and retain for himself.

And I/We undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court I/We hereby agree that once the fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHERE OF I/We do hereuntoset my/our hand to these presents the contents of which have been understood by me/us on this 05 day Of September 2024 Accepted subject to the terms of the fees.

Advocate D/2625/2019 | Client | Client

I Identify The Signature/Thumb Impression Of Below Mentioned Person, Signed In My Presence. The Client.

- *Vakalatnama* executed by Ritu Goel:

₹2
GOVT OF NCT OF DELHI COURT FEE

2795230
ADVOCATES' WELFARE FUND STAMP
₹25

VAKALATNAMA

IN THE COURT OF SH. VINDOD YADAV, LD. DISTRICT JUDGE (COMMERCIAL COURT), NORTH WEST, ROHINI COURT
CIV SUIT (Comm.) 195/ 2024

IN THE MATTER: -

SMT. KAMLESH & ANR ...... PETITIONER

VERSUS

SH. KAMAL GOEL & ORS .... DEFENDANTS

KNOW ALL to whom present that I, RITU GOEL W/o Kamal Goel R/O H. N. 19/56, Sector 7, Rohini - 110085. The above-named Defendant no. 2 do hereby appoint:

Legal Vedanta Law Firm
Gautam Sharma & Parmeet Gupta
Chamber No. 126 Lawyer's Block, Rohini Court
MOB: (91-9582293830) EMAIL. legalvedanta@gmail.com

(herein after called the advocate/s) to be my/our Advocate in the above noted case authorize him: -

1. To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/us.
2. To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.
3. To file and take back documents, to admit and/or deny the documents of opposite party.
4. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
5. To take execution proceedings.
6. To deposit, draw and receive monthly cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
7. To appoint and instruct any other Legal Practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.
8. And I/We the undersigned do hereby agree to rectify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.
9. And I/We undertake that I/We or my/our duly authorized agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.
10. And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case.
11. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.
12. And I/We the undersigned to hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I//we hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this day of ___________, 2026 Accepted subject to the terms of the fees.

D/6801/2017 D/7713/2023
Advocate Client Client

36. Further, in order dated 10th May, 2024, passed by the ld. Trial Court, it is also clearly recorded that a complete set of paper book was supplied to the ld. Counsel appearing for Defendants.

37. Thus, both Mrs. Ritu Goel and Mr. Sanchit Goel were duly served in the recovery suit and the stand of the Appellants that they were not served in the suit is a completely incorrect and a false stand taken in the present appeal. Hence, the same cannot be sustained by this Court.

38. Moreover, a perusal of all the documents filed on record by the Plaintiffs would show that the Appellants have played an important role in the whole transaction. Initially, the security agreement dated 1st April, 2022 was signed by Mr. Kamal Goel, the husband of Mrs. Ritu Goel. However, the receipt of a sum of Rs.83 lakhs has been signed by Mrs. Ritu Goel clearly stating *"Ritu wife of Kamal Goel"*. The same agreement-cum-receipt of advance money received is again executed in the name of Mr. Kamal Goel.

39. The possession notice of Tata Capital Financial Services Ltd. clearly states that demand notices for recovery of Rs.81,96,842/- were issued to the borrower and co-borrower/guarantor, namely:

- Mr. Kamal Goel
- Mrs. Ritu Goel
- Pick N Play through Mr. Kamal Goel
- M/s R.G. Interior Designs through its proprietor Mrs. Ritu Goel

40. The post-dated cheques which were eventually dishonored were signed in favor of Mrs. Kamlesh and Mr. Ved Prakash by both Mr. Kamal Goel & Mrs. Ritu Goel.

41. A legal notice was also issued on behalf of the Plaintiffs on 6th January,

2024 to all three Defendants. The said legal notice, despite being served, was not replied to by the Defendants.

42. In the SARFAESI proceedings, the possession of the property being D-12/158, Ground Floor, Sector-7, Rohini, Delhi-110085 was taken by the financial institution.

43. Before the ld. Trial Court, the Plaintiffs led the evidence of PW-1- Mr. Ved Prakash, husband of Mrs. Kamlesh, who proved all the documents on record. The documents on record reveal clearly that a substantial sum of money was paid by the Plaintiffs to the Defendants.

44. The record reveals that the Defendants received money from the Plaintiffs under various pretexts. All the Defendants have acted in coordinate and close association with each other. They are part of the same family and have in effect duped the Plaintiffs. The issuance of the post-dated cheques and the various other documents on record show that though the nature of transactions varied from time to time, the payment of amounts cannot be disputed. Upon payment of money, receipt is issued by Ritu Goel.

45. In fact, the post-dated cheques having been issued by the Defendants and then being dishonored clearly establish the fact that the Defendants had a liability to discharge towards the Plaintiffs with respect to the money they had received and therefore, sought to repay the same to the Plaintiffs by means of post-dated cheques.

46. The Defendants have also chosen not to file a written statement, not to cross-examine witness or dispute any of the documents which are on record before the ld. Trial Court.

47. One of the submissions made by the ld. Counsel for the Appellants before this Court was that the amount which was claimed to have been paid

by the Plaintiffs to Defendants is stated to have been paid in cash and therefore, in terms of the decision of Supreme Court in '***The Correspondence RBANMS Educational Institution v. B. Gunashekar & Another [2025 INSC 490]'*** , the matter ought to be sent to the Income Tax Authority for verifying whether there's a violation of Section 269ST of the Income Tax Act, 1961 (IT Act).

48. While this argument may result in the concerned authority taking action against the Plaintiffs, the same would not in any manner lead to rejection of the relief in favor of the Plaintiffs, inasmuch as the receipt of the amount is acknowledged and duly reaffirmed by the issuance of the post-dated cheques.

49. Under these circumstances, the Defendants having failed to even put up any defense, the Plaintiffs' case goes completely unrebutted.

50. Moreover, the Plaintiffs also have restricted their claim for a sum of Rs.1.22 crores, which is the value of the post-dated cheques which were issued to them.

51. The ld. Trial Court has also accepted the said voluntary restriction of the prayer and has decreed the suit for a sum of Rs.1.22 crores, along with certain costs and interest. Hence, the Court does not deem it appropriate to interfere with the decision of the ld. Trial Court in this appeal.

52. Under these circumstances, the impugned judgment dated 3rd February, 2026 does not deserve to be interfered with.

53. In addition, however, a copy of the present judgment be sent to the Income Tax Department for appropriate action in accordance with the judgment of Supreme Court in ***the Correspondence RBANMS Educational Institution (supra)***.

54. The appeal is, accordingly, dismissed with no orders as to costs.

CM APPL. NO. 58346/2026 (u/O XXIII Rule 1 CPC)

55. This is an application filed by Appellant No.1- Ritu Goel, under Order XXIII Rule 1 CPC, seeking withdrawal of the present appeal.

56. The present appeal arises out of a judgment and decree passed by the ld. Trial Court dated 3rd February, 2026.

57. This appeal was listed before the Court on 21st July 2026, on which date, both, the ld. Counsels for the Appellants and the contesting Respondents were heard on merits and the matter was reserved for orders to be pronounced on 10th September, 2026.

58. This course of action was adopted, as on the date when the final arguments were heard, there appeared to be a chance of the matter being amicably settled between the parties. Accordingly, the parties were referred to mediation and ld. Counsels were orally requested by the Court to mention by 20th August, 2026 if any settlement has taken place or not.

59. However, prior to 20th August, 2026 itself, ld. Counsel for the Respondents had mentioned that the settlement has not come through. Thus, the orders were to be pronounced by this Court on 10th September 2026.

60. In the meantime, there has been a change of Counsel on behalf of the Appellant No.1 and the present application dated 29th August, 2026 has been moved only on behalf of Appellant No.1- Ritu Goel. The prayer in this application is under:

> *"A) Pass an order permitting the Appellant to withdraw the accompanying appeal, being RFA (Comm.) No. 248/2026 with liberty to file fresh;*
> *B) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in favour of the Appellants and against the Respondent."*

61. On 3rd September, 2026, when the application was listed, ld. Counsel for the Appellant No.1 made a fervent plea that she be permitted to withdraw the appeal with liberty to pursue the application filed by them under Order IX Rule 13 CPC, which has already been filed before the appropriate Court. However, the Court was not inclined to grant such liberty.

62. Accordingly, the prayer was made for unconditional withdrawal of the appeal.

63. The ground on which the ld. Counsel for the Appellant No. 1 seeks permission to withdraw the appeal is that the application under Order IX Rule 13 CPC is meritorious, as the Appellant No.1 was never served in the suit and an *ex parte* decree has been passed against the Appellant No.1.

64. Considering the facts and record of this case, this court has come to the conclusion that both the Appellants were duly served in the suit. In fact, they had executed *vakalatnamas* in favour of ld. Counsels. The said *vakalatnamas* have also been extracted above. Thus, the entire plea of the Appellants is itself false.

65. On 3rd September, 2026, when the present application was argued, ld. Counsel for Appellant No. 1 had relied upon certain decisions to argue that whenever an *ex parte* decree is passed against a Defendant, the Defendant has the option of either filing an Order IX Rule 13 CPC application or an appeal. The judgments relied upon by ld. Counsel for Appellant No. 1/Applicant are as under:

1. Hulas Rai Baij Nath v. Firm K.B. Bass & Co.
   [Civil Appeal No. 897 of 1964]
2. Anil Kumar Singh v. Vijay Pal Singh & Ors.
   [(2017) 11 S.C.R. 74]

3. The Koushik Mutually Aided Cooperative Housing Society v. Ameena Begum & Anr.
   [S.L.P. (C) No. 5489 of 2021]

66. There can be no doubt about the proposition that the Defendant has the option of availing of both remedies in law. However, the issue in the present case is that on the date when the appeal was heard, the Appellants did not submit that they wish to pursue the application under Order IX Rule 13 CPC. Moreover, the entire appeal was argued on merits.

67. The law on this issue is laid down by the Supreme Court in ***Arthanareswarar Temple v. R. Sathyamoorthy, (1999) 3 SCC 115,*** wherein the Supreme Court has examined the remedy provided under Order XXIII Rule 1, CPC, and has held as under:

> ***"14.*** *It is true that in a large number of cases decided by the High Courts, it was held while dealing with applications under Order 23 Rule 1 CPC, that if an appeal was preferred by an unsuccessful plaintiff against the judgment of the trial court dismissing the suit and if the appellant-plaintiff wanted to withdraw not only the appeal but also the suit unconditionally, then such a permission so far as the withdrawal of the suit was concerned, can be granted if there was no question of any adjudication on merits in favour of the defendants by the trial being nullified by such withdrawal.* ***<u>On the other hand, if any such findings by the trial court in favour of the defendant would get nullified, such permission for withdrawal of the suit should not be granted.</u>*** *(See Thakur Singh v. A. Achuta Rao [(1977) 2 APLJ 111: (1978) 2 Andh WR 139] ; Kedar Nath v. Chandra Kiran [AIR 1962 All 263] ; Vidhydhar Dube v. Har Charan [AIR 1971 All 41 : 1970 All LJ 732]; Charles Samuel v. Board of Trustees [(1978) 1 MLJ 243]; Lala Chatram v. Krishnammal [(1984) 1 MLJ 28] ; Jubedan Begum v. Sekhawat Ali Khan [AIR 1984 P&H 221]; Ram Dhan v. Jagat Prasad Sethi [AIR 1982 Raj 235].) In the present case, the learned Judge felt*

that no such finding in favour of the Commissioner was being nullified by the withdrawal of the OP at the stage of revision and therefore the withdrawal of the OP was permissible."

68. The said position has been further strengthened by the Supreme Court in ***K.S. Bhoopathy v. Kokila, (2000) 5 SCC 458,*** wherein it has been held as under:

> ***"13.*** *The provision in Order XXIII Rule 1 CPC is an exception to the common law principle of non-suit. Therefore on principle an application by a plaintiff under sub-rule (3) cannot be treated on a par with an application by him in exercise of the absolute liberty given to him under sub-rule (1). In the former it is actually a prayer for concession from the court after satisfying the court regarding existence of the circumstances justifying the grant of such concession. No doubt, the grant of leave envisaged in sub-rule (3) of Rule 1 is at the discretion of the court but such discretion is to be exercised by the court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of sub-rule (3) in which two alternatives are provided; first where the court is satisfied that a suit must fail by reason of some formal defect, and the other where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim. Clause (b) of sub-rule (3) contains the mandate to the court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. This becomes all the more important in a case where the application under Order XXIII Rule 1 is filed by the plaintiff at the stage of appeal.*

Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the court or courts below. ***Grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or even a third party. The appellate/second appellate court should apply its mind to the case with a view to ensure strict compliance with the conditions prescribed in Order XXIII Rule 1(3) CPC for exercise of the discretionary power in permitting the withdrawal of the suit with leave to file a fresh suit on the same cause of action. Yet another reason in support of this view is that withdrawal of a suit at the appellate/second appellate stage results in wastage of public time of courts which is of considerable importance in the present time in view of large accumulation of cases in lower courts and inordinate delay in disposal of the cases."***

69. A perusal of the application filed by the Applicant under Order XXIII Rule 1 CPC reveals that the Applicant had filed an application under Order IX, Rule 13 CPC being ***Misc. DJ 693/26*** before the ld. Trial Court on 25th May, 2026 and the same was last listed before the concerned Court on 1st August, 2026, when a reply to the said application has also been filed.

70. Considering that the said application was filed in May, 2026 and the present Appeal was filed in April, 2026, the Appellant No. 1/Applicant ought to have disclosed the same to the Court when the appeal was heard.

71. Be that as it may, the entire appeal having been heard on merits and the matter having been reserved for orders as also bearing in mind the conduct of the Appellants and Respondent No.3, who is the husband of Appellant No.1 and uncle of Appellant No.2, this Court is not inclined to allow the present

application.

72. The Court also notes that the appearance of one Mr. Parmeet Gupta is marked as Proxy Counsel for the Applicant in order dated 1st August, 2026 passed in ***Misc. DJ 693/26.*** The said Counsel is the same advocate in whose name the *vakalatnama* was executed on behalf of the Appellant No. 1- Ritu Goel before the ld. Trial Court in the recovery suit. In fact, the said application ***Misc. DJ 693/26*** has also been filed by the same firm and Counsels, as mentioned in the *vakalatnama* executed on behalf of the Appellant No. 1- Ritu Goel before the ld. Trial Court in the recovery suit. Hence, Appellant No.1/Applicant can in no way dispute the *vakalatnama* executed by them before the ld. Trial Court, given that the same Counsels have continued to appear for the Applicant in all the proceedings thereafter.

73. Thus, this application is nothing but a *malafide* attempt on behalf of the Appellants to set at naught a decree which has been passed in favour of the Respondents.

74. Allowing the application at this stage would also lead to considerable wastage of judicial resources. *i.e.* the Respondents/Plaintiffs would be again forced to contest the application. Thus, having considered the merits of the matter as well, this Court is not inclined to allow the present application.

75. Accordingly, the application is dismissed with Rs.10,000/- as costs to be paid by Appellant No.1 to Respondents Nos.1&2 within two weeks.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

SEPTEMBER 10, 2026/*Rahul/ss*