

**A.F.R.**

Judgment reserved on: 28.03.2026

Judgment delivered on: 06.05.2026

Neutral Citation No. - 2026:AHC:103559

**Court No. - 53**

**Case :-** FIRST APPEAL No. - 485 of 2025

**Appellant :-** Mimansa Nangia And 2 Others

**Respondent :-** Shivani Hospital Private Ltd.

**Counsel for Appellant :-** Mohammad Ali Ausaf, Rahul Sahai

**Counsel for Respondent :-** Sheshadri Trivedi, Devansh Misra,  
Vishnu Bihari Tewari

**Hon'ble Sandeep Jain,J.**

1. The instant appeal has been filed by the defendants under Section 96 CPC against the impugned judgment and decree dated 21.3.2025 passed by the Court of Civil Judge(Senior Division)/FTC, Kanpur Nagar in O.S. no. 50 of 2017 Shivani Hospital Private Ltd. vs. Mimansa Nangia and others, whereby the plaintiffs suit for the relief of specific performance of registered agreement to sell dated 22.10.2012 has been decreed.

**Plaint case**

2. The plaintiff Shivani Hospital Private Limited filed O.S. No. 50 of 2017 against defendant no.1 Mimansa Nangia, defendant no. 2 Shailja Nangia @ Shalu and defendant no.3 Smt. Shivani @ Shibbu Begum Shahnaz Faisal with the averments that their father Dharam Prakash Nangia was the owner in possession of plot no. A-10,Block C,Sarvodaya Nagar, Kakadev, Kanpur Nagar admeasuring 1,352 yd<sup>2</sup>= 1130.41 square metre, the boundaries of which have been mentioned at the end of the plaint, which is hereinafter referred to as the 'disputed property'.

3. It was averred that the defendant's father Dharam Prakash Nangia voluntarily and with free will executed an agreement to sell regarding the disputed property on 22.10.2012 in favour of the plaintiff ,which was registered in Book no.1, Zild no. 7095, at pages 1- 84, serial no. 8557 on 7.11.2012 in the office of sub-registrar, Zone – 4, Kanpur Nagar. It was further averred that since Dharam Prakash Nangia was in need of money,the disputed property was agreed to be sold for a consideration of ₹ 5.25 crores, which was according to its market value. It was further agreed that Dharam Prakash Nangia would get the disputed property freehold and then the sale deed would be executed in favour of the plaintiff. It was also agreed that at the time of execution of the agreement to sell, a part consideration of ₹ 2

crores will be paid by the plaintiff to Dharam Prakash Nangia. It was further averred that in accordance with the above terms and conditions of the sale, an amount of ₹ 2 crores was paid at the time of execution of agreement to sell on 22.10.2012 through cheques, the details of which were mentioned in the plaint. It was agreed that the remaining consideration of ₹ 3.25 crores would be paid at the time of execution of the sale deed in favour of the plaintiff.

4. It was further averred that besides the above amount of ₹ 2 crores which was paid by the plaintiff to Dharam Prakash Nangia at the time of execution of the agreement to sell, Dharam Prakash Nangia also demanded from the plaintiff an amount of ₹ 41 lakh towards expenses for getting the disputed property freehold, which was paid by plaintiff by cheque no. 68, 69, 96 and 102 issued on 14.3.2014, 14.3.2014, 28.11.2014, 05.2.2015, which were of ₹ 7 lakhs, 8 lakhs, 20 lakhs and 6 lakhs respectively. In this manner the plaintiff paid an amount of ₹ 2.41 crores to Dharam Prakash Nangia and only an amount of ₹ 2.84 crores remained to be paid towards consideration of the disputed property.

5. It was further averred that as per the terms and conditions of the agreement to sell dated 22.10.2012, Dharam Prakash Nangia was to get the disputed property freehold at his expenses and thereafter, was required to give its information to the plaintiff. It was also agreed between the parties, that by the month of December, 2014 the disputed property will be converted to freehold and by then, the sale deed would be executed by Dharam Prakash Nangia in favour of the plaintiff. It was also agreed that Dharam Prakash Nangia will inform the date in writing to the plaintiff on which he was going to execute the sale deed of the disputed property in favour of the plaintiff and on that date, the plaintiff will remain present in the office of concerned sub- registrar Kanpur Nagar with the balance consideration for getting the sale deed executed in its favour. It was also agreed that if Dharam Prakash Nangia failed to execute the sale deed of the disputed property in favour of the plaintiff within the prescribed time limit after completing the necessary formalities, then in that situation, the plaintiff will be entitled to get the sale deed executed through court, in which the legal heirs will have no right to object.

6. It was further averred that when Dharam Prakash Nangia failed to get the disputed property freehold within the prescribed period, then he requested the plaintiff to give some more time for getting the disputed property freehold, which was accepted by the plaintiff and consequently, an agreement before notary was executed between the plaintiff and Dharam Prakash Nangia on 21.12.2014, by which the time limit for getting the property freehold was extended and it was agreed that after getting the disputed property freehold, Dharam

Prakash Nangia will inform the plaintiff legally and after getting the information, the plaintiff within a further period of one month will get the sale deed executed in its favour after paying the balance sale consideration and will also get it registered from the office of sub-registrar Kanpur Nagar.

7. It was further averred that Dharam Prakash Nangia failed to get the disputed property freehold because he died suddenly on 04.7.2015 leaving behind the defendants, who are his daughters/legal heirs, who are bound by the above registered agreement to sell dated 22.10.2012, which was executed by their father and are liable to execute the sale deed of the disputed property in favour of the plaintiff.

8. It was further averred that a legal notice was sent by Shri Devendra Dwivedi Advocate on 20.8.2015 to the plaintiff on incorrect facts on behalf of defendants no.1 and 2, which was replied by the plaintiff by notice dated 12.9.2015, which was again replied by Shri Devendra Dwivedi Advocate on 17.9.2015. The defendants alleged that since the defendant no. 3 has embraced Islam religion, she has lost her right in the disputed property.

9. It was further averred that the plaintiff replied to the erroneous notice sent on behalf of the defendants. The plaintiff through notice dated 24.10.2015 again requested the defendants to remain present in the office of sub-registrar for executing the sale deed in its favour after receiving the balance consideration but on the date fixed 3.11.2015 the defendants failed to remain present in the office of sub-registrar, zone no. 4 for executing the sale deed in favour of the plaintiff. The plaintiff again gave legal notice on 30.11.2015 to the defendants to remain present on 5.12.2015 in the office of sub-registrar zone no. 4 Kanpur Nagar for executing the sale deed by receiving the balance sale consideration but the defendants deliberately failed to appear on that date also. The plaintiff has averred that its officials remained present in the above office the whole day, with the balance sale consideration but the defendants failed to appear. Again, the plaintiff by legal notice dated 23.12.2015 requested the defendants to remain present on 5.1.2016 in the office of sub-registrar zone no. 4, Kanpur Nagar for executing the sale deed of the disputed property in favour of the plaintiff after receiving the balance consideration but even on that date, the defendants failed to appear whereas, the plaintiff remained present in that office till 5:30 PM.

10. The plaintiff has specifically averred that it remained always ready and willing and was still ready and willing to get the sale deed executed in its favour after paying the balance sale consideration to the defendants, in accordance with the terms and conditions of the

registered agreement to sell dated 22.10.2012 but the intention of the defendants has turned malafide, who are not ready and willing to execute the sale deed in favour of the plaintiff and the defendants have also filed O.S. no. 50 of 2016 Mimansa Nangia @ Surbhi Nangia vs. Shivani Hospital on false and incorrect allegations, hence the plaintiff was compelled to file the suit.

11. In the above backdrop, the plaintiff prayed for the following reliefs:-

*(A) A decree of specific performance of registered agreement to sell dated 22.10.2012 be passed in favour of the plaintiff against the defendants, directing the defendants to execute the sale deed of the disputed property within a time limit fixed by the court after receiving the balance sale consideration from the plaintiff and also to get it registered and also to deliver the physical and vacant possession of the disputed property to the plaintiff and if the defendants failed to do so, then the plaintiff be permitted to get it executed through the Court after depositing the balance sale consideration in the court .*

*(B)The costs of the suit be also awarded to the plaintiff against the defendants.*

*(C)Any other relief which the Court deems appropriate be also awarded to the plaintiff against the defendants.*

### **Written statement of defendant no.1**

12. It was averred by the defendant that she is the legal guardian of disabled defendant no. 2. She accepted that her father has died. She also accepted that she has filed O.S. no. 50 of 2016 against the plaintiff. The defendant has denied the plaint averments and has averred that the plaintiff has got no cause of action to file the instant suit. She admitted that her father Dharam Prakash Nangia has died on 4.7.2015 but disclosed that, prior to his death he executed a registered Will dated 03.10.2011 according to which defendant no.1 is the owner of 50%,defendant no. 2 is the owner of 20% and defendant no. 3 is the owner of 30% of the entire movable and immovable property of their father. It was also averred that the defendant no. 3 against the wishes of her father,renounced Hinduism and has embraced Islam during the lifetime of her father and has also accordingly, changed her name from Shivani @ Shibbu Nangia to Shahnaz Faisal and has also solemnised marriage with Faisal Junaid. It was further averred that even if any agreement has been executed by her father in favour of the plaintiff, even then she is unable to comply with it because O.S. no. 400 of 2016 Shivani Nangia @ Shahnaz Faisal vs. Mimansa Nangia @ Surabhi and others is pending in the Court of Civil Judge(Senior Division) Kanpur Nagar.

### **Written statement of defendant no. 2**

13. She averred that defendant no.1 has been appointed as her guardian ad litem on 02.8.2022, by the court. She has repeated the averments made by defendant no.1 in her written statement.

### **Written statement of defendant no. 3**

14. The defendant has averred that the disputed agreement to sell dated 22.10.2012 was not executed by her father Dharam Prakash Nangia with his free will, who has died on 4.7.2015. She has denied the plaint averments and has averred that no cause of action has arisen to the plaintiff to file the instant suit.

15. It was further averred that the house of plaintiff Dr. Shiva Kant Mishra and the disputed house are adjacent to each other. Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra were the family doctor of the father and mother of the answering defendant late Dharam Prakash Nangia and Smt.Meena Nangia, who remained under the treatment of doctor Shiva Kant Misra. Smt.Meena Nangia died due to heart attack on 12.12.2012. It was further averred that there was a relationship of doctor and patient between the plaintiff and her parents.

16. It was further averred that when the said agreement was executed on 22.10.2012, the market value of the disputed property was not less than ₹ 10 crores. The plaintiff was neither in need of a domestic residential plot nor there was any company resolution to this effect, hence the agreement to sell dated 22.10.2012 is null and void. It was further averred that Dr. Shiva Kant Mishra and his wife Neelam Mishra were in dominating condition being doctors of her parents, who used to frequently visit in their last days and in such circumstances, Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra exercised their under influence over her parents and got executed the said agreement for sale for a mere amount of ₹ 5.25 crores.

17. It was further averred that the plaintiff and its directors were never having the financial capacity to purchase the disputed property since the cheque amounting to ₹ 38 lakhs was dishonoured due to insufficient funds which shows the financial incapacity of the plaintiff. It was further submitted that on 5.1.2016 the plaintiffs were not having sufficient funds which is exhibited from the balance sheet of the plaintiff. It was submitted that the disputed agreement is a result of undue influence of the plaintiff and his wife, as such it is

unenforceable.

18. It was further averred that the defendant has solemnised marriage with Faisal Junaid on 27.11.1993, who is a Muslim. It was further averred that the defendant no. 2 is handicapped and of unsound mind since her birth, as such she has to look after her, till her whole life and in these circumstances, if the suit of the plaintiff is decreed and the disputed property is sold to the plaintiff, then there is no place where the defendant can reside with defendant no. 2 and their whole lives will be ruined. It was further averred that at the time of death of her father Dharam Prakash Nangia, the defendant no.1 was residing with him, who has usurped all his money and immovable properties including the advance money paid by the plaintiff to Dharam Prakash Nangia and she's filing the suit for recovery of money for her share in the amount of sale consideration, which was obtained by her father and which has been usurped by the defendant no.1.

19. It was further averred that at present there is no place where the answering defendant could shift with defendant no. 2 for whole life and she is not in a financial condition to arrange for any other alternative accommodation for her and her ailing handicapped, unsound sister. The defendants no. 2 and 3 will suffer great hardship if the disputed property is sold to the plaintiff, in compliance of the said agreement. It was averred that the defendant is ready to return the money with bank interest to the plaintiff and this direction can only be against defendant no.1 because she has withdrawn the whole amount.

20. It was further averred that the suit is time barred because the plaintiff fraudulently created a notarial agreement dated 21.12.2014 by forging signatures of Dharam Prakash Nangia on it. In view of this, the plaintiff is not entitled to any equitable relief of specific performance. The plaintiff's suit be dismissed with costs.

### **Replica of the plaintiff**

21. The plaintiff has reiterated the plaint averments. The plaintiff has accepted that the house of Dr. Shivakant Mishra is adjoining to the disputed house and it was also accepted that Dr. Neelam Mishra is the wife of Dr. Shiva Kant Mishra, who is also a doctor. It was denied that the plaintiff and Dr. Neelam Mishra were the family doctors of the parents of the defendants. It was further averred that at the time of execution of agreement to sell, the circle rate of the disputed property was only ₹ 2,800/- per square metre whereas, the transaction was done at the rate of ₹ 3,800/- per square metre. It was reiterated that the transaction was made higher than the prevailing market rate. It was denied that the market value of the disputed property was at that

time ₹ 10 crore. Since defendant no. 3 has changed her religion, she has got no right in the disputed property. Further, defendant no. 3 is not entitled to any money from the plaintiff. It was denied that the plaintiff no. 2 was handicapped and mentally retarded since birth. It was further averred that defendant no. 3 is residing with her husband in house no. 88/103, Imam building, flat no. 3, 4th floor, Prem Nagar, Kanpur.

22. It was further averred that the cheque of ₹ 38 lakhs which was alleged to have been dishonoured due to insufficient funds in the bank account of the plaintiff was later on encashed on 17.12.2012, which was proved from the bank statement submitted by the plaintiff for the financial year 2012 – 2013. It was further averred that the defendant no. 3 was also bound by the terms and conditions of the agreement to sell, executed by her father in favour of the plaintiff

#### **Issues framed**

23. The following issues were framed by the trial court :-

*(i) Whether the defendants executed a registered agreement to sell dated 22.10.2012 in favour of the plaintiff regarding the disputed property described at the end of the plaint?*

*(ii) Whether plaintiff is ready and willing to get the sale deed executed in his favour?*

*(iii) Whether the suit is insufficiently valued?*

*(iv) Whether the court fees paid is insufficient?*

*(v) Whether plaintiff is entitled to any relief?*

*(vi) Whether plaintiffs suit is time barred?*

*(vii) Whether the evidence of PW-2 Ramakant Mishra is admissible? If so, its effect?*

*(viii) Whether the defendant's father late Dharam Prakash Nangia was entitled to execute the agreement to sell dated 22.10.2012 ?*

#### **Documentary evidence of the parties**

24. The plaintiff has filed the original agreement to sell dated 22.10.2012, copies of statement of his bank accounts, legal notices issued through advocate, the reply of notices sent to defendants, the resolution of the plaintiff company, original Notarial agreement dated 21.12.2014, certified copy of list of circle rate prevailing in the year 2012, memorandum of article and association of the plaintiff company, the report of the hand writing expert, the information obtained under the RTI Act, etc.

25. The defendants have filed certified copy of the balance sheet of the plaintiff for the financial year 2011 – 12, 2012 – 13, 2013 – 14,

2014 – 15, 2015 – 16 and 2021 –22, the original valuation report dated 24.1.2023, the certified copy of the statement of account No. 696710110000131 of Dharam Prakash Nangia from 03.11.2012 – 01.8.2015 of Bank of India Branch Guru Tegh Bahadur Marg, Kanpur, photocopy of the statement of defendant no.1 's bank account, bank statement of other accounts of defendants, certified copy of the lease deed dated 24.1.1964, 23.4.1966, 30.8.1978, certified copy of the plaint and W.S. in O.S. no. 50 of 2016, the copy of application dated 19.11.2013 given to Kanpur Development Authority for freehold purposes, etc.

### **Oral evidence of the parties**

26. The plaintiff has examined Dr.Shiva Kant Mishra as PW-1, Ramakant Mishra as PW-2, Sanjiv Kumar Tiwari as PW-3 and Ravi Krishna Nigam @ R. Krishna as PW-4.

27. The defendants have examined Mimansa Nangia as DW-1, Shahnaz Faisal as DW-2, Ravindra Tripathi as DW-3, Rohit Handa as DW-4, Mohd. Minaz Jaffery as DW-5 and Pankaj Agarwal as DW-6.

### **Plaintiffs oral evidence**

28. Dr. Shiva Kant Mishra PW-1 in his examination-in-chief has reiterated the plaint averments. In cross-examination he deposed that Shivani hospital was established in the year 1995, which is only having one account in Bank of Baroda, Kabadi market, Kanpur. The plaintiff company does not possess any immovable property. He accepted that the disputed property is adjoining to his house. He also accepted that the disputed property is leasehold, and the responsibility was on the seller to get it freehold. He further disclosed that the accounts of the plaintiff are audited. He further deposed that the company had agreed to purchase the disputed property keeping in view its financial capacity. He admitted that the plaintiff company has obtained an advance of ₹ 1.67 crores against property. He further deposed that the plaintiff company was having sufficient funds when it gave notice to the defendants for getting the sale deed executed in its favour. He denied the suggestion that paper no. 130-C was a forged and fabricated document.

29. He further deposed that as per the terms of the agreement, the seller was required to get the property freehold from the KDA and then inform the plaintiff company. He further deposed that since till December 2014 the seller failed to get the property freehold, hence on the request of the seller Dharam Prakash Nangia, a notary agreement was executed between the parties for extension of time. He denied the suggestion that the seller Dharam Prakash Nangia was misled into

entering an agreement with the plaintiff.

30. He further deposed that he was not aware if after the death of Dharam Prakash Nangia, the disputed property was converted into freehold or not. He disclosed that after the death of Dharam Prakash Nangia he was ready to purchase the disputed property even without getting it freehold. He admitted that he never informed the defendants in writing that the plaintiff company was willing to purchase the disputed property without getting it freehold. He reiterated that between October 2015 and January 2016 he remained present in the sub-registrar office many times, after informing the defendants, to get the sale deed of the disputed property executed after paying the balance consideration. He disclosed that he and Sanjiv Kumar Tiwari went on behalf of the plaintiff company to the sub-registrar office. He disclosed that he was not aware that defendant no. 2 was mentally retarded.

31. He further deposed that in October 2015 he went to the sub-registrar office with a cheque book, without any cash. At that time, the plaintiff company was having sufficient funds in its bank account, some amount was in fixed deposit and some was in the current account. He again went to the sub-registrar office on 5.12.2015 and 5.1.2016, on those occasion also, he was having his cheque book, but no cash. On those occasion also, the plaintiff company was having sufficient amount in its fixed deposit and current account. He denied the suggestion that he and his wife used to treat the parents of the defendants and there was a relationship of doctor and patient between them. He also denied the suggestion that the alleged agreement to sell was executed under undue influence by Dharam Prakash Nangia. He reiterated that defendant no. 3 was residing in her husband's house.

32. Ramakant Mishra PW-2 deposed in his examination-in-chief that as an advocate he was involved in the affairs of the plaintiff company, in getting the agreement to sell prepared and executed and doing other tasks on behalf of it. He deposed that he prepared the draft agreement to sell dated 22.10.2012 which was read to the parties and after obtaining their consent, it was finalised. He further deposed that the agreement was signed in his chamber by all the parties and witnesses and thereafter, it was presented to the sub-registrar for registration, the agreement was obtained on 7.11.2012 after registration. He further deposed that on 21.12.2014 a notarised memorandum was executed between the authorised signatory of the plaintiff and Dharam Prakash Nangia, which was also prepared in his chamber. He also deposed that the notice dated 28.8.2015 which was issued by Devendra Dwivedi to the plaintiff, was also replied by him after obtaining instructions from the plaintiff, which was again replied by Devendra Dwivedi on 17.9.2015, which was addressed to

him in the capacity of plaintiffs advocate. He further deposed that on 24.10.2015, 30.11.2015 and 23.12.2015 he gave legal notices on behalf of the plaintiff to the defendants for their failure in not executing the sale deed in plaintiffs favour, a copy of these notices has been filed by the plaintiff in the suit. He further deposed that the plaintiff made all efforts to get the sale deed of the disputed property executed in its favour, but the defendants failed to do so.

33. PW-2 in cross-examination deposed that he was not a mediator in the deal. The draft agreement was prepared by Naveen Mishra. The agreement was signed in his presence. At the time of agreement ₹ 2 crores was paid and ₹ 41 lakhs was also paid through cheques from time to time for getting the property freehold to Dharam Prakash Nangia. On 3.11.2015, 5.12.2015 and 5.1.2016 he along with Dr. Shivakant Mishra were present with draft sale deed, along with cheques, but the defendants failed to appear in the sub-registrar office, whereas, they were aware that they have to remain present on that date. He further deposed that Dr. Shivakant Mishra remained present on the above dates along with him from morning to evening in the sub-registrar office. A certificate of attendance was also obtained from the sub-registrar office, which has been filed on record. He deposed that the draft sale deed was prepared without stamps because the stamps were to be purchased when the parties arrived for getting the sale deed executed. He further deposed that the plaintiff company was having an amount of ₹ 3.25 crores in its account and the defendants were to be paid through cheques which were to be drawn on the bank account of the plaintiff. He further deposed that in the agreement to sell Sanjiv Tiwari and the brother-in-law of Dharam Prakash Nangia were witnesses. He denied the suggestion that in collusion with the plaintiff he got the agreement executed from Dharam Prakash Nangia. He further disclosed that the unregistered memorandum was got prepared by Dharam Prakash Nangia. He further disclosed that at the time of filing of the suit he had once been filed his vakalatnama on behalf of the plaintiff because at that time he was not aware that he was also be required to give his evidence as a witness in this case, but now he has withdrawn his vakalatnama, and the plaintiff is being represented by another advocate. He is not now appearing for the plaintiff, as an advocate.

34. Sanjiv Kumar Tiwari PW-3 deposed in his examination-in-chief that he is an advocate by profession and is also a witness of the agreement to sell dated 22.10.2012, and is acquainted with the facts of the case. He deposed that the above agreement was signed by the parties in his presence and thereafter, was presented for registration. He further deposed that after the death of the seller, when his legal heirs failed to execute the sale deed inspite of the request of the buyer, then after informing the defendants and fixing a definite date for their appearance before the sub-registrar, he remained present in

the sub-registrar office on 5.1.2016 and he also got his attendance marked by receiving acknowledgement, which has been filed by the plaintiff on record.

35. PW-3 in cross-examination deposed that he was present when the draft of the agreement was being prepared. After reading the agreement, it was 1st of all signed by Dharam Prakash Nangia, thereafter it was signed by Dr. S.K. Mishra, he signed as the 2nd witness, the document was signed in the chamber of Rama Kant Mishra and only cheques were given. In the registrar office, the 1st thumb impression affixed was of Dharam Prakash Nangia. He knows Shivakant Mishra, who is the director of plaintiff company since the year 2009.

36. Ravi Krishna Nigam @ R.Krishna PW-4 the handwriting expert ,in his examination-in-chief has deposed that after comparing the admitted signatures of Dharam Prakash Nangia on the registered agreement to sell dated 22.10.2012, he is of the opinion that the unregistered agreement dated 21.12.2014 paper no. 130-C, was also signed by Dharam Prakash Nangia.

#### **Defendants oral evidence**

37. Mimansa Nangia DW-1 in her examination-in-chief reiterated the averments of her written statement. She admitted that a registered agreement to sell was executed by her father Dharam Prakash Nangia regarding the disputed property in favour of the plaintiff, and the sale deed was to be executed after receiving the balance consideration by her father. She also admitted that her father tried his best to comply with the terms of the agreement but due to her father's untimely death, the disputed property could not be converted into freehold. She further deposed that on the basis of a Will executed by her father, she is the 50% owner and her sister defendant no. 2 is the 20% owner of the entire movable and immovable property of their father.

38. She further deposed that when the plaintiff failed to comply with the terms of the agreement by paying the balance consideration then she got issued a legal notice through her advocate on 28.8.2015 by registered post to the plaintiff to remain present in the office of sub-registrar for getting the agreement cancelled by receiving back the earnest money. She further deposed that the above notice was served on the plaintiff but inspite of this, the plaintiff failed to remain present on the date and time fixed in the office of sub-registrar, zone no. 4, Kanpur Nagar who neither got the agreement cancelled nor received the earnest money, but on the contrary, submitted reply of her legal notice, through its advocate. She further deposed that since within the agreed duration the plaintiff failed to pay the balance

consideration, hence the plaintiff has got no right to get the agreement specifically enforced and for this reason, the plaintiff's suit is liable to be dismissed. The plaintiff has filed the suit on incorrect facts. She further deposed that she along with her sister/defendant no. 2 never refused to get the sale deed executed in favour of the plaintiff but on the contrary, she gave a legal notice dated 28.8.2015 in which it was mentioned that since the sale deed was not executed till December 2014 hence, it was apparent that the plaintiff was not ready and willing to get the sale deed executed in its favour. She further deposed that in reply to her notice dated 28.8.2015, the plaintiff simply told her that it is ready to get the sale deed executed by paying the balance consideration of ₹ 3.25 crores but no date was fixed on which the sale deed was supposed to be got executed, which shows that the plaintiff was not ready and willing to get the sale deed executed in its favour after the death of Dharam Prakash Nangia, from his legal heirs. She further deposed that the plaintiff has not given any details in order to prove that it was having sufficient money to pay the defendants, in order to get the sale deed executed.

39. DW-1 in cross-examination deposed that she became aware of the agreement dated 22.10.2012 after the death of her father when she received summons of this case. Her father was not having any other immovable property except the disputed property. She admitted that she has filed suit for the cancellation of the agreement to sell which is pending in the court. She admitted that her father had received the earnest money of the disputed agreement to sell, through cheques, at the time of its execution. She admitted that after the death of her father she gave no notice to the plaintiff. She disclosed that in the suit filed by her 50 of 2016, she and her sister Shalu are the plaintiffs and the defendant is the plaintiff of this suit. She admitted that in suit no. 50 of 2016 her sister Shivani @ Shibbu is not a party. She admitted that the differences between her and her sister Shivani arose after the death of their father.

40. She further disclosed that she was not having any knowledge whether any amount has been deposited with the KDA for getting the property converted to freehold. She also failed to disclose whether in the month of December 2014 her father received any permission regarding the disputed property being converted into freehold. She admitted that the disputed property is still undivided. She failed to disclose that on 11.9.2015 whether she marked her attendance in the office of the sub-registrar along with the bank drafts for returning the earnest money to the plaintiff and whether she filed the above documents in this suit. She failed to disclose whether any suit for the cancellation of the agreement to sell has been filed by her or not. She also failed to disclose whether in the month of September 2015 she was having sufficient funds to return the earnest money to the

plaintiff. She also failed to disclose whether on 5.1.2016 she was present at the office of sub-registrar zone – 4 or not. She also failed to disclose whether she ever remained present in the office of sub-registrar on the date fixed by the plaintiff, for executing the sale deed. She denied the suggestion that the plaintiff was always ready and willing to get the sale deed executed in its favour. She also denied the suggestion that the plaintiff remained present with the balance sale consideration for getting the sale deed executed in its favour on the date fixed, which was also in her notice and also marked its attendance before the sub-registrar. She also denied the suggestion that she did not give the information that the disputed property has been converted into freehold to the plaintiff. She also denied the suggestion that the cause of action has arisen to the plaintiff for specifically enforcing the agreement.

41. Shahnaz Faisal @ Shivani Nangia @ Shibbu DW-2 in examination-in-chief reiterated her averments of the written statement. She deposed that her father Dharam Prakash Nangia did not execute the alleged agreement to sell dated 22.10.2012 voluntarily of his free will, which was executed under undue influence of Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra, and due to this reason, in grief, after about one month on 12.12.2012 her mother Meena Nangia died.

42. She further deposed that her sister Shailja Nangia is about 50 years old, who is from birth mentally retarded, deaf and dumb, who behaves like a child, who is unmarried and has no chance of ever getting married in future. She is 48 years old. She deposed that she was told by her father Dharam Prakash Nangia that a cheque of ₹ 38 lakhs given by the director of plaintiff Dr. Shivakant Mishra bounced due to insufficient funds. Her father between the year 2014 and 2015 informed her many times that the plaintiff was unable to fulfil the terms of the agreement because it could not arrange the requisite funds for getting the sale deed executed in its favour hence, Dr. Shivakant Mishra was making false assurances and was getting the matter stalled again and again, on which, her father gave him time upto July 2015, failing which to get the agreement cancelled after returning the earnest money with interest, but unfortunately, her father died on 4.7.2015. She further deposed that on 1.9.2023 and 18.9.2023 she obtained the balance sheet of the plaintiff for the year 2012 – 2016, from which it was proved that the plaintiff was not having sufficient funds to fulfil the terms of the agreement. Besides this, from neither the statement of the current account nor the balance sheet, it was proved that the plaintiff was having sufficient funds, hence the plaintiff has got no cause of action to file the suit for the relief of specific performance.

43. She further deposed that her younger sister Km. Mimansa Nangia @ Surabhi was aged about 40 years, was a fraudulent woman, who has usurped the amount existing in the bank accounts of her father at the time of his death, without giving any share to her, who has usurped the entire property of their father. She also disclosed that the above sister has misappropriated the whole amount of ₹ 2 crores, which was given by the plaintiff to her father by getting it transferred to her account, which is proved from the statement of the bank account of her father and the statement of bank accounts of her sister Mimansa Nangia in State Bank of India and Axis Bank. She further deposed that if the Court orders the return of earnest money to the plaintiff, then only the defendant no.1 Mimansa Nangia is liable to return that amount because she alone has usurped it fraudulently and malafidely by getting it transferred to her bank account. She further deposed that since defendant no.1 was having malafide intention as such, she was not entitled to be appointed as guardian of defendant no. 2.

44. She further deposed that since she is married, she also resides with her husband in her flat in Premnagar, Kanpur but she is also in possession of the disputed property being its co-owner. She further deposed that at the time of the alleged execution of the agreement on 22.10.2012, the official valuation of the property was ₹ 10.91 crores whereas, it was agreed to be sold for a paltry consideration of ₹ 5.25 crores. She further deposed that on 11.12.2012 cheque no. 6 drawn on Bank of Baroda, Branch Kabadi market Kanpur of ₹ 38 lakhs was dishonoured due to insufficient balance in the bank account of the plaintiff, which itself disentitles the plaintiff to get the agreement specifically enforced.

45. She further deposed that her father Dharam Prakash Nangia was not in any need of money so as to sell the disputed property situated in prime location, more so, for inadequate consideration. She further deposed that amount of ₹ 2 crores received by her father as earnest money was never spent by him during his lifetime which proves that he was not in any need of money so as to sell the disputed property. She further deposed that since agreement to sell had become time barred hence on 21.12.2014 a fraudulent document was prepared by forging the signature of her father, on the basis of which the instant suit was not maintainable, because it is an unregistered document. The above document has neither been signed by the notary nor it is entered in the register of notary. It was further deposed that Dr. Shivakant Mishra is a director of the company, who has not been authorised on behalf of the company hence, he could not have executed the above document. She further deposed that since the disputed property was not converted to freehold, hence in the absence of such permission, the sale deed could not have been executed in

favour of the plaintiff. The document dated 21.12.2014 has not been signed by any witness, which is a forged and fabricated document. The plaintiff was not having sufficient funds on 3.11.2015, 5.12.2015 and 5.1.2016. She further deposed that she never received any notice from the plaintiff to remain present before the sub-registrar on the above dates and further, on the above dates, the plaintiff was not having the remaining consideration of ₹ 2.84 crores with it, which was proved from the statement of bank account and balance-sheet of the plaintiff.

46. It was further deposed that as per the agreement to sell dated 22.10.2012 the suit for the specific performance of contract could have been filed within 3 years of the above agreement, hence the suit filed by the plaintiff was time barred. It was further deposed that if the plaintiff's suit was decreed then the defendant Shailja@ Shalu has no place to reside. She is not willing to sell the disputed property and the disputed property has not yet been divided. The plaintiff is a company, which has no requirement of residential property, no resolution of the company in this regard is on record. The plaintiff has not approached the court with clean hands and as such, is not entitled to any relief from the Court.

47. DW-2 deposed in cross-examination that her father got injured due to fall, his hip bone was fractured, who was treated at the house and cared by her and relatives. When her father died, he was having about ₹ 4 – 5 crores, including ₹ 2 crores, which was given as advance by the plaintiff to him. She deposed that her father informed her about the dishonoured cheque of ₹ 38 lakhs on the same evening but 2 – 3 days thereafter, she was informed by her parents that the above amount has been credited to their account. She accepted that the cheque was subsequently honoured. She also accepted that the agreement was registered and her father went along with her maternal uncle. She admitted that she has no knowledge about any notice or letter sent by her father for cancelling the agreement with the plaintiff due to plaintiff's inability to pay consideration. She accepted that in the registered Will executed by her father, the share of all the daughters have been specified. She further deposed that the whole amount received by her father as advance, was deposited by him in his bank account, which was never spent by him in his lifetime. She further deposed that the amount of ₹ 2 crores received by her father was transferred by defendant no.1 in her bank account, 20 days after the death of her father, but this amount belonged to all the sisters, being the legal heirs.

48. She further deposed that she was not aware whether the disputed property was freehold or leasehold, an amount of ₹ 2 crores was paid by the doctor Saheb to her father. She was told by her government

approved valuer that at the time of the execution of agreement, the property was valued at about ₹ 11 crore. She has filed the report of the valuer on record. She admitted that the agreement was executed by her father before the registrar but she clarified that it was due to her father's simplicity and in discharge of the previous obligations towards doctor Saheb. She accepted that her father neither gave any legal notice to the plaintiff regarding undue influence nor lodged any report with the police. She further deposed that the sale deed was to be executed till the year 2014 after receiving the full consideration. She further deposed that she never received any notice sent by the plaintiff for appearing before the sub-registrar for executing the sale deed.

49. She further admitted that there was a clause in the agreement dated 22.10.2012 which prohibited the legal heirs of the parties from questioning the quantum of consideration of the transaction. She accepted that the last time her father had received in the month of February 2015 an amount of ₹ 6 lakhs through cheque, which was honoured. She accepted that her father always told her orally that the plaintiff was not complying with the terms of the agreement but no complaint was ever made during his lifetime to any competent official regarding the alleged agreement. She further disclosed that the plaintiff was told to get the sale deed executed by paying the balance consideration till July 2015 failing which, the plaintiff was required to cancel the agreement after receiving back the consideration paid by it earlier, otherwise the defendants shall approach the Court for cancellation of the agreement. She accepted that no written notice was ever given to the plaintiff or the doctor Saheb but he was told orally that the sale deed be got executed after paying the full consideration. She further disclosed that doctor Saheb demanded ₹ 7 – 8 crores for cancelling the agreement. She admitted that when her relations with her sister Mimansa were cordial, then no notice was ever given to the plaintiff. She failed to disclose when her sister Mimansa gave a legal notice to the plaintiff for getting the agreement cancelled after returning the earnest money.

50. She denied the suggestion that her father requested for extension of time after December 2014 to get the plot freehold and in pursuance of that, an unregistered memorandum was executed between the parties. She admitted that she has not filed any evidence on record to prove the steps undertaken by her father to get the property converted to freehold. She also admitted that talks were going on between the plaintiff and her father between the year 2014 – 2015 that if the plaintiff paid the full consideration till July 2015 then in the next 2 – 4 days, they would complete the formalities. She further deposed that her father orally informed the plaintiff that the property has been converted to freehold. She denied the suggestion that she was bound

to obey the agreement executed by her father in favour of the plaintiff because, according to her, the terms of the agreement were not complied by doctor Saheb and further, the agreement was the result of undue influence.

51. Ravindra Tripathi DW-3 the handwriting expert, in his examination-in-chief has deposed that after comparing the admitted signatures of Dharam Prakash Nangia on registered agreement to sell dated 22.10.2012, he is of the opinion that the unregistered agreement dated 21.12.2014 has not been signed by Dharam Prakash Nangia.

52. Rohit Handa DW-4 deposed in his examination-in-chief that he is the son of maternal uncle of defendant no. 3 Smt. Shahnaz Faisal @ Shivani Nangia @ Shibbu. He deposed that Dharam Prakash Nangia and his wife were in the influence of Dr. Shivakant Mishra and his wife Neelam Mishra. Dharam Prakash Nangia and his wife told him that a cheque issued by the plaintiff for ₹ 38 lakhs was dishonoured due to sufficient balance. He was also told by Dharam Prakash Nangia in December 2014 that he wants to cancel the agreement because the plaintiff did not have sufficient funds to fulfil the terms of the agreement because Dr. Shivakant Mishra was telling repeated lies and was stalling, who was only given time upto 31.7.2015, failing which, the advance was to be returned with interest. He further deposed that Dharam Prakash Nangia had kept the advance in a bank deposit, from which even a rupee was not spent by him but unfortunately Dharam Prakash Nangia died on 4.7.2015. He further deposed that due to the agreement dated 22.10.2012 Meena Nangia was upset and very sad, who died in grief on 12.12.2012. He also deposed that he saw the fraudulent time extension document prepared by notary, which was not at all signed by Dharam Prakash Nangia. He further deposed that since Dharam Prakash Nangia was having handsome income, he was having no need to sell the disputed house. Since defendant no. 2 is deaf and dumb, hence Dharam Prakash Nangia wanted her to remain in the disputed house throughout her life, along with her sisters.

53. He further deposed that the agreement of the disputed house was executed under undue influence of Dr. Shivakant Mishra because the house was valued not less than ₹ 10 crores. He further deposed that there was a relationship of doctor and patient between Dr. Shivakant Mishra and Dharam Prakash Nangia and his wife. He further deposed that Dharam Prakash Nangia and his wife never wanted to sell the disputed property along with defendant no. 3. Dr. Shivakant Mishra resided in a big bungalow, hence he was having no requirement of the disputed property, who was also not having sufficient funds because the cheque issued by him had bounced.

54. DW-4 deposed in cross-examination that Meena Nangia died on 12.12.2012 due to heart attack. Dharam Prakash Nangia executed a registered Will bequeathing his property to his daughters'. Dr. Shivakant Mishra used to treat and prescribe medicines to Dharam Prakash Nangia. Dharam Prakash Nangia was treated in Excel hospital, Chunniganj, Kanpur Nagar. He was not aware that Dr. Shivakant Mishra is a surgeon. After seeing the agreement to sell, he disclosed that as a witness it has been signed by his uncle Somnath Handa. He admitted that his uncle never remained patient of Dr. Shivakant Mishra, who was not having any undue influence on his uncle, who signed willingly on the above document. He further deposed that he was told by Dharam Prakash Nangia that a cheque of ₹ 38 lakhs has been dishonoured due to insufficient funds in the bank account of doctor Saheb, due to which the agreement has ended. He disclosed that subsequently he was informed by Dharam Prakash Nangia that he has received the amount of ₹ 38 lakhs towards the dishonoured cheque, in his bank account.

55. He further deposed that the disputed property is not freehold. Dharam Prakash Nangia did not submit any application for converting it to freehold, but orally told doctor Saheb that he has completed all the formalities and if full consideration was paid, then in 2 – 4 days he will get the property converted to freehold. He was not having any personal information regarding the financial capacity of the plaintiff company. He denied the suggestion that he was not having any personal information regarding the dispute between the parties.

56. Mohd.Minaz Jaffrey DW-5 deposed in his examination-in-chief that he is an approved valuer and project consultant and possesses B-Tech, M-Tech and PhD degrees. On the request of Smt. Shahnaz Faisal he has assessed the market value of the disputed property on 24.1.2023. On the basis of rates prevailing in the year 2012 – 13, the market value of the disputed house in the year 2012 and 2013 was about ₹ 10.91 crores whereas, in the year 2023 the disputed house is valued at ₹ 16,52,75,000/-. He further deposed that he has prepared the valuation report as per the prevalent rules.

57. DW-5 in cross-examination disclosed that he inspected the disputed property on 10.1.2023 and thereafter submitted his report on 24.1.2023 to the defendant no. 3. He further disclosed that he has not inspected the property from inside. He further admitted that he has valued the property on the basis of his experience. He disclosed that he has valued the disputed house at the rate of ₹ 72,000/- yd<sup>2</sup> whereas, the prevalent circle rate was between ₹ 30,000 to 26,000 m<sup>2</sup> at that time. He denied the suggestion that he has given his report in order to give pecuniary benefit to the defendant no. 3.

58. Pankaj Agarwal DW-6, the public notary, in examination-in-chief deposed that he was working since the year 2005 as notary. He produced his original register before the Court. On seeing paper no.130-C he deposed that it has neither been signed by him nor his seal has been affixed on it. In the red ink whatever has been written on that document, has also not been written by him. He disclosed that on 22.12.2014 the name of any party mentioned in paper no. 130-C, is not entered in his register. In cross-examination by plaintiff he denied the suggestion that proper entries are not made in his register promptly.

### **Reasoning of the trial court**

#### **Issue No. 6:-**

59. The trial court opined that the registered agreement to sell was executed on 22.10.2012, according to which, the sale deed was to be executed till the month of December 2014, after getting the property converted to freehold and after giving its intimation to the buyer. The trial court opined that the parties had agreed to get the sale deed executed till 31.12.2014 and hence the suit filed within 3 years of this date, as per Article 54 of the Limitation Act 1963, was within the prescribed period of limitation. The trial court opined that the suit filed by the plaintiff on 17.1.2017 was within the prescribed period of limitation.

60. The trial court further opined that to prove execution of time extension document paper no. 130-C between the parties, handwriting experts were examined by both the parties, who have given contradictory evidence, hence the trial court discarded their evidence. The trial court considered that no attesting witness of this document has been examined and the evidence of public notary PW-6 Pankaj Agarwal was credible, came to the conclusion that the alleged document dated 21.12.2014(paper no. 130-C) was not executed between the parties. But the trial court concluded that even if the plaintiff failed to prove the execution of document 130-C even then, the plaintiff 's suit was not barred by limitation, since it was filed within 3 years from 31.12.2014. In view of the above reasoning, this issue was decided in favour of the plaintiff and against the defendants.

#### **Issue No. 7:-**

61. This issue related to the admissibility of evidence of PW-2 Ramakant Mishra which was raised by the defendant no. 3 on the ground that the witness is also an advocate of the plaintiff, hence he

cannot give his evidence as a witness. The trial court opined that since 19.11.2018 the proceedings of the suit on behalf of the plaintiff were conducted by another advocate Vivek Nigam and further, PW-2 had withdrawn his vakalatnama, hence the evidence given by him was admissible. In view of the above reasoning, this issue was decided in favour of the plaintiff and against the defendant.

Issue No.1,2 & 8 :-

62. The trial court has believed the evidence of PW-3 Sanjiv Kumar Tiwari, who is the attesting witness of the agreement to sell and has concluded that the agreement to sell was executed between the parties on 22.10.2012, which was registered in the office of sub-registrar on 7.11.2012.

63. The trial court also opined that there was no documentary evidence to prove that there was a relationship of doctor and patient between Dr. Shivakant Mishra and Dharam Prakash Nangia and the agreement to sell was executed under undue influence by Dharam Prakash Nangia in favour of the plaintiff.

64. The trial court also opined that the valuation report of the disputed property which was prepared and proved by DW-5 Mohd.Minaz Jaffrey lacked credibility. The trial court opined that according to the prevailing circle rate of ₹ 30,000/- per square metre of the disputed property in the year 2012, the property was only valued at ₹ 3,39,12,300/- whereas in the agreement to sell dated 20.10.2012 the consideration was fixed at ₹ 5.25 crores, which shows that the property was sold in excess of the circle rate, which proved that the consideration of the transaction was sufficient.

65. The trial court also opined that the plaintiff cannot be denied the relief of specific performance only on account of phenomenal increase in price during the pendency of litigation and subsequent rise in prices, will not be treated as a hardship entailing refusal of the decree for specific performance. The trial court opined that the defendants failed to prove that the disputed property was valued at about ₹ 10 crores and the agreement was executed for insufficient consideration.

66. The trial court also opined that Dharam Prakash Nangia was entitled to execute an agreement to sell in favour of the plaintiff, since the sale was only to be effected after the disputed property was converted from leasehold to freehold.

67. The trial court after perusing the file of the disputed property maintained by the Kanpur Development Authority, noticed that the

application for converting the property from leasehold to freehold was only moved by Dharam Prakash Nangia on 21.8.2014, whereas, as per the terms of the agreement dated 22.10.2012 the time limit for executing the sale deed was till the month of December 2014. The trial court opined that the onus was on Dharam Prakash Nangia to get the disputed property converted from leasehold to freehold, but only on 30.5.2015 the file was forwarded for granting permission by the competent authority, but before the permission could be granted, on 4.7.2015 Dharam Prakash Nangia died. The trial court has recorded a specific finding that in the lifetime of Dharam Prakash Nangia till 4.7.2015, the disputed property could not be converted into freehold whereas it was the duty of the seller to inform the plaintiff regarding the permission granted to it for converting the property from leasehold to freehold, but this information was never given by the seller to the buyer. The trial court opined that the above information was not given within the prescribed time limit to the plaintiff, which prima-facie casts aspersion on the conduct of the defendants.

68. The trial court also noticed that after the death of Dharam Prakash Nangia, the defendants being his legal heirs, on the basis of the registered Will, moved an mutation application before the Kanpur Development Authority which was allowed on 11.9.2015. It was also noticed by the trial court that prior to the mutation in favour of the defendants, on 28.8.2015 defendants no.1 and 2 gave a legal notice to the plaintiff for cancellation of the disputed agreement to sell, which showed that the defendants were not intending to comply with the terms of the agreement and were having malafide intention, which also showed their improper conduct. The trial court concluded that the plaintiff was always ready and willing to perform the terms of the agreement, who was also having the requisite financial capacity at all the relevant times.

69. The trial court also considered that a cheque of ₹ 38 lakhs issued by plaintiff was dishonoured, but subsequently it was honoured, which was proved from the evidence of DW-2. The trial court also noted that neither any proceedings for cancellation of agreement was initiated by Dharam Prakash Nangia during his lifetime nor any notice was given by him to the plaintiff for not having the financial capacity to fulfil the terms of the agreement. The trial court opined that the above evidence proved that Dharam Prakash Nangia never intended to cancel the agreement. The trial court also opined that after the execution of the agreement on 22.10.2012, in the year 2014 and 2015 through cheques an amount of ₹ 41 lakhs was paid by plaintiff to Dharam Prakash Nangia, which also proved the readiness and willingness of the plaintiff to fulfil the terms of the agreement.

70. The trial court also considered the statement of bank accounts of

the plaintiff, balance sheets of the plaintiff submitted by the defendant and after perusing the above evidence, the trial court opined that the plaintiff was having sufficient funds in its bank account, mutual fund, fixed deposits, etc. to pay the balance sale consideration to the defendants. The trial court opined that the plaintiff was having sufficient financial capacity at all times.

71. In view of the above reasoning, issue no.1,2 and 8 were decided in favour of the plaintiff, against the defendants.

Issue No. 3 and 4:-

72. These issues relate to valuation of the suit and the court fees paid on it. Both these issues were decided by the trial court on 5.9.2022 in favour of the plaintiff, against the defendants.

Issue No. 5:-

73. In view of the above reasoning, the trial court was of the opinion that the plaintiff always remained ready and willing to fulfil the terms of the agreement dated 22.10.2012 by getting the sale deed executed in its favour, hence the plaintiff's suit was decreed. The plaintiff was directed to pay the balance consideration of ₹ 2.84 crores to the defendants within a period of 2 months for getting the sale deed executed in its favour, failing which the plaintiff was given the right to get it executed through the Court. Aggrieved against which, the defendants have filed the instant appeal under Section 96 CPC.

**Submissions of the learned counsel of the parties**

74. Shri Rahul Sahai learned senior counsel for the defendant appellants submitted that the suit for specific performance can only be decreed if the plaintiff avers and proves his continuous readiness and willingness that is from the date of the agreement till the filing of the suit and even thereafter. He further submitted that readiness pertains to the financial capacity to perform the contract at the relevant time and willingness relates to the conduct of the plaintiff throughout the currency of the agreement and even during the litigation arising therefrom. He submitted that it is imperative upon the plaintiff to prove his continuous readiness and willingness even in the absence of any plea by the opposite party as the mandate of Section 16(c) of the Specific Relief Act casts an obligation upon the plaintiff as it is he who has come before the Court to seek relief. The plaintiff must also come before the Court with clean hands as the relief of specific performance is a relief rooted in equity and law.

75. He further submitted that the relief of specific performance would

not be granted to a plaintiff who has acted fraudulently. He further submitted that there was a relationship of doctor and patient between the director of the plaintiff hospital Dr. Shivakant Mishra and Dharam Prakash Nangia and taking advantage of this relationship, exerting undue influence on Dharam Prakash Nangia, the plaintiff managed to get the agreement of the disputed property executed in its favour, for inadequate consideration, since the property was at that time valued at about ₹ 11 crores, but the plaintiff managed to get it at only ₹ 5.25 crores, which itself proves that the transaction was not fair.

76. He further submitted that the payment of the consideration was made by cheques by the plaintiff, one of which amounting to ₹ 38 lakhs was dishonoured due to insufficient funds in the bank account of the plaintiff, which itself proves the financial incapacity of the plaintiff. It was further submitted that the plaintiff never proved its financial capacity by submitting statement of the bank account and the balance sheet, and the balance sheet was filed by the defendants, which was construed incorrectly by the trial court. He submitted that according to the balance sheet the plaintiff was not having sufficient funds to pay the consideration from the date of the agreement till the filing of the suit, hence the readiness on the part of the plaintiff was not proved but the trial Court has held otherwise.

77. He further submitted that the plaintiff fraudulently prepared a notarised affidavit on 21.12.2014 which is paper no. 130-C, to extend the time within which the agreement was to be performed, which was found to be a forged and fabricated document. Learned counsel submitted that this fraudulent conduct of the plaintiff disentitles it from getting the relief of specific performance.

78. He further submitted that plaintiff was not ready and willing to get the sale deed executed in terms of the agreement to sell dated 22.10.2012 since he never followed up or made up any query regarding the execution of a freehold deed either during the lifetime of Dharam Prakash Nangia or any time shortly thereafter. Only after the defendants issued a notice dated 20.8.2015 the plaintiff woke up and then allegedly issued certain notices calling upon the defendants to execute the sale deed in favour of the plaintiff. He further submitted that there is no proof of payment of ₹ 41 lakhs towards freehold which was alleged to be paid by the plaintiff to Dharam Prakash Nangia.

79. It was further submitted that the plaintiff never turned up at the office of the sub-registrar as claimed in the notices dated 3.11.2015, 5.12.2015 and 5.1.2016, whereas his presence was mandatory for getting the sale deed executed in its favour, keeping in view provisions of Section 32A of the Registration Act, 1908. With these

submissions it was prayed that the appeal be allowed and plaintiff's suit be dismissed.

80. In support of his contention, he has relied upon the following case law:-

- (i) *Pydi Ramana vs. Davarasety Manmadha Rao* (2024)7 SCC 515.
- (ii) *Shenbagam and others vs. KK Rathinavel* 2022(157)RD374(SC) (by 3 Judges)
- (iii) *Basant Ram (D) thr Lr's and ors. vs. Sukhbir Singh and ors.* CA 4667 of 2025(SC)
- (iv) *Subhash Aggarwal vs. Mahender Pal Chhabra and ors.* 2026 INSC 11
- (v) *Darshan Singh(D) by Lrs & ors. vs. Brijbhushan Chaudhary(D) by Lrs.* (2024)3 SCC 489
- (vi) *Muddam Raju Yadav vs. B. Raja Shanker (D) through Lrs. and ors.* 2026 INSC 214
- (vii) *Mst. Jamuni and others vs. Bhagwati and others* 2012(116)RD 53(All)
- (viii) *Singaravelu Kounder vs. Sulaiman and others* MANU/KE/0131/2007(Kerala)
- (ix) *S.P. Chengalvaraya Naidu(dead) by Lrs. vs. Jagannath(dead) by Lrs. and others* AIR 1994 SC 853
- (x) *U.N. Krishnamurthy(dead) through Lrs. vs. A.M. Krishnamurthy* 2023 (158) RD 150(SC)
- (xi) *N.P. Thirugnanam(D) by Lrs. vs. Dr. R. Jagan Mohan Rao and ors.* JT 1995(5)SC 553

81. Per contra, Shri Manish Goyal learned senior counsel for the plaintiff respondent submitted that as per the registered agreement to sell dated 22.10.2012, the vendor Dharam Prakash Nangia was to take permission to convert the lease hold property to freehold from the Kanpur Development Authority and then inform the plaintiff that he has obtained the permission, and then the sale deed was to be executed upto 31.12.2014, after receiving the balance sale consideration, but Dharam Prakash Nangia never took any steps upto 31.12.2014 to get the property converted into freehold. He further submitted that neither the vendor obtained the permission to convert the property into freehold nor communicated this to the plaintiff, hence there was no readiness and willingness on the part of the vendor.

82. He further submitted that property was never valued at ₹ 11 crores, hence there was no question of undervaluation. According to the circle rate, the property was only valued at about ₹ 3.75 crores, but the plaintiff agreed to purchase it for consideration of ₹ 5.25 crores, out of which ₹ 2 crores was paid at the time of the execution of the agreement of sale, and even thereafter, on the demand of the vendor to meet out the expenses of converting the property from

leasehold to freehold, an amount of ₹ 41 lakhs was given to the vendor Dharam Prakash Nangia, which was proved by the plaintiff from the bank statement as well as the oral testimony of the witnesses.

83. It was further submitted that the witnesses of the defendants have admitted the execution of the agreement to sell and even the, notice given by the defendants for terminating the agreement to sell in the year 2015, also proves that the agreement was duly executed between the parties. He further submitted that there is no evidence on record to prove that there was a relationship of doctor and patient between Dr. Shivakant Mishra and Dharam Prakash Nangia and the transaction was the result of undue influence exerted by Dr. Shivakant Mishra on Dharam Prakash Nangia.

84. He further submitted that it is true that a cheque of ₹ 38 lakhs issued by the plaintiff towards consideration of the agreement was dishonoured but he submitted that soon thereafter, the cheque was honoured. He further submitted that on the demand of Dharam Prakash Nangia a further sum of ₹ 41 lakhs was paid for getting the property freehold.

85. He further submitted that the trial court has not concluded that the notary agreement dated 21.12.2014 was fraudulently prepared by the plaintiff in order to extend the time. The trial court has simply concluded that the plaintiff has failed to prove it in accordance with law which does not imply that the document is forged and fabricated. He further submitted that after the demise of Dharam Prakash Nangia, the plaintiff gave legal notices to the defendants to execute the sale deed in its favour by receiving the balance sale consideration, but the defendants failed to pay heed to it, who never appeared before the sub-registrar on the date fixed, whereas the plaintiff remained present with cheque book, which is proved from the documentary evidence on record. He submitted that the plaintiff was always willing to get the sale deed executed in its favour but it was the defendants who committed default, who neither obtained the permission to get the disputed property converted from leasehold to freehold nor communicated this information to the plaintiff, hence the defendants cannot allege that they were ready and willing to perform their part of the agreement.

86. It was further submitted that the plaintiff was having sufficient funds to pay the balance consideration to the defendants in bank account and fixed deposits, investment in mutual funds, etc. from the time of execution of the agreement till the filing of the suit. He further submitted that on 29.5.2025 the plaintiff has deposited the balance sale consideration of ₹ 2.84 crores in the trial court and the

tender receipt has been filed before this Court, as such, the plaintiff has proved his readiness and willingness to fulfil the terms of the agreement.

87. Learned counsel further submitted that the agreement contemplated that the vendor Dharam Prakash Nangia will obtain the freehold provision and thereafter, execute the sale deed in favour of the plaintiff after receiving the balance sale consideration, but the vendor never in his life time obtained the above permission and communicated it to the plaintiff. The vendor died on 4.7.2015 and thereafter, his legal heirs/defendants gave legal notice to the plaintiff terminating the agreement on the ground that the plaintiff was not ready and willing to fulfil the terms of the agreement which was false, because neither the vendor Dharam Prakash Nangia nor his legal heirs/defendants intimated the plaintiff that they have obtained the freehold permission from the Kanpur Development Authority(KDA). He submitted that the plaintiff always remained ready and willing to fulfil the terms of the agreement to get the sale deed executed in its favour by paying the balance sale consideration which is proved from the oral and documentary evidence on record, hence the trial court has not committed any illegality in decreeing the plaintiff 's suit for the relief of specific performance of agreement dated 22.10.2012.

88. It was further submitted that although the presence of plaintiff in the office of sub-registrar was not necessary but the director of the plaintiff Dr. Shivakant Mishra remained present on 5.1.2016. It was further submitted that no fraud has been committed by the plaintiff as such, the provisions of Section 16(b) of the Specific Relief Act are not attracted in the facts of the present case. With these submissions, it was prayed that the appeal is meritless and be dismissed. In support of his contention, learned counsel has relied upon the following case law:-

- (i) *Nathu Lal vs. Phool Chand* (1969) 3 SCC 120
- (ii) *Faquir Chand and another vs. Sudesh Kumari* (2006) 12 SCC 146
- (iii) *P. Daivasigamani vs. S. Sambandan* (2022) 14 SCC 793
- (iv) *Krishan Gopal vs. Gurmeet Kaur (Dead) thr. Lrs. & ors.* 2025 SCC OnLine SC 1438
- (v) *Aloka Bose vs. Parmatma Devi and others* (2009) 2 SCC 582
- (vi) *Ramesh Chandra Agrawal (dead) through Lr's and ors. vs. Bitta Devi alias Bitto* 2015 SCC OnLine All 9255
- (vii) *Sudha Gupta vs. Delhi Land and Finance Ltd.* (2019) 14 SCC 266
- (viii) *Rattan Singh and others vs. Nirmal Gill and others* (2021) 15 SCC 300
- (ix) *Sellappa Chetty & ors. vs. Marappa Goundar & ors.* 1963 SCC OnLine Mad 175
- (x) *Asset Reconstruction Company (India) Ltd. vs. S.P. Velayutham & ors.*

**Questions for Determination in this Appeal**

89. The following questions arises for determination in this appeal:-

*(A) Whether the plaintiff was always ready and willing to fulfil the terms of the registered agreement to sell dated 22.10.2012 ?*

*(B) Whether the defendants or their predecessor Dharam Prakash Nangia failed to comply with the terms of the registered agreement to sell dated 22.10.2012 ?*

*(C) Whether the registered agreement to sell was executed for inadequate consideration under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra by Dharam Prakash Nangia ?*

*(D) Whether the plaintiff was having the financial capacity at the relevant time to pay the balance sale consideration of ₹ 2.84 crores to the defendants ?*

*(E) Whether the plaintiff has committed any fraudulent act which disentitles him from claiming the relief of specific performance of the registered agreement to sell dated 22.10.2012 in terms of the provisions of Section 16 (b) of the Specific Relief Act, 1963?*

*(F) Whether the presence of the representative of the plaintiff was mandatory for getting the sale deed executed and registered in its favour keeping in view the provisions of Section 32A of the Registration Act, 1908?*

**Analysis of case law submitted by the parties**

90. The Apex Court in the case of ***Nathu Lal*** (supra) while considering whether the vendor Nathulal had fulfilled his obligations under the contract, held as under:-

*“12. In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account. The argument raised by Mr Shroff that Nathulal was bound to perform the two conditions only after the amount of Rs 21,000 was paid is plainly contrary to the terms of the agreement. By virtue of Section 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. If, therefore, under the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.*

*13. In view of the arrangement made by Phoolchand it was clear that he had at all relevant times made necessary arrangements for paying the amount due, but so long as Nathulal did not carry out his part of the contract, Phoolchand could not be called upon to pay the balance of the*

*price. It must, therefore, be held that Phoolchand was at all relevant times willing to carry out his part of the contract.”*

91. The Apex Court in the case of ***Faquir Chand*** (supra) was considering the issue of readiness and willingness mentioned in Section 16(c) of the Specific Relief Act 1963. It was held as under:-

*“3. The learned counsel for the appellant at the time of hearing, placed reliance on Section 16 of the Specific Relief Act. In order to appreciate the rival submissions, Section 16(c) needs to be quoted along with explanation. The same reads as follows:*

*“16. Personal bars to relief.—\*\*\**

*(a)-(b)\*\*\**

*(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

*Explanation.—For the purposes of clause (c),—*

*(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*

*(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”*

*4. The language under Section 16(c) of the Act, in our view, does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been ready and willing to perform his part of the contract. Therefore, the compliance with the readiness and willingness has to be in spirit and substance and not in letter and form. The continuous readiness and willingness could very well be seen in the instant case from the conduct of the plaintiff as a whole. The first agreement was entered into between the parties on 17-6-1985 and the last date to execute the sale deed was 14-11-1985. The second agreement was executed on 9-4-1987 and the last date to execute the sale deed was 13-6-1987. Again, the time was extended at the instance of the defendant up to 30-10-1987. Since the sale deed was not executed, the respondent herein was compelled to file the suit on 26-11-1987. Thereafter, the appellant herein issued a notice to the plaintiff, the respondent herein, on 7-1-1988 and at Exhibit P-5. It is also not in dispute that the respondent herein has deposited the entire sale consideration into the Court on 18-5-1999. He was also present in the Registrar's office for registration of the document. However, the appellant-defendant was not present at the Registrar's office.*

*A careful perusal of the pleadings, the evidence and the documents filed in this case would only go to show that the respondent-plaintiff was ever ready and willing to perform his part of the obligation under the agreement. The decree passed by the High Court confirming the decree of the lower courts does not suffer from any infirmities. We, therefore, have no hesitation to dismiss the appeal.”*

92. The Apex Court in the case of ***P.Daivasigamani*** (supra) was considering whether delay in filing the suit, which was filed within the period of limitation, can be a ground to refuse relief of specific performance to vendee. It was held as under :-

*“15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.*

*16. As regards the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In *Mademsetty Satyanarayana v. G. Yelloji Rao* [1964 SCC OnLine SC 33 : AIR 1965 SC 1405] it has been observed as under : (AIR p. 1409, para 7)*

*“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems—English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”*

17. The aforesaid ratio has also been followed recently by this Court in *R. Lakshmikantham v. Devaraji* [(2019) 8 SCC 62] . We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.

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20. From the bare reading of the aforestated provisions, it clearly emerges that the specific performance of the contract, may in the discretion of the court, be enforced, when the act agreed to be done, was such that compensation in money for its non-performance would not afford adequate relief, and that the breach of a contract to transfer immovable property could not be adequately relieved by compensation in money. It also emerges that specific performance of a contract could not be enforced in favour of a person, **who failed to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract, which were to be performed by him.** It could also not be enforced in favour of a person who failed to aver in the plaint the performance of, or readiness and willingness to perform the contract according to its true construction.

21. Readiness and willingness are not one, but two separate elements. **Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract.** Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances [ See para 2 in *Ganesh Dassji v. Sita Ram Thapar*, (1996) 4 SCC 526] . Continuous readiness and willingness on the part of the plaintiff purchaser **from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance** [ See para 5 in *N.P. Thirugnanam v. R. Jagan Mohan Rao*, (1995) 5 SCC 115. Also see *Ardeshir Mama v. Flora Sassoon*, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 : AIR 1928 PC 208] .

22. The expression “readiness and willingness” used in Section 16(c) of the said Act, has been interpreted in a catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of specific performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in *Syed Dastagir v. T.R. Gopalakrishna Setty* [ (1999) 6 SCC 337] , a three-Judge Bench of this Court, construing a plea of “readiness and willingness to perform” in view of the requirement of Section 16(c) and its Explanation, observed as under : (SCC p. 341, para 9)

“9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the **plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract.** So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form. **So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded.**”

23. It was further observed therein that : (Syed Dastagir case [Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337] , SCC p. 342, para 11)

“11. ... It is significant that this Explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words “it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court”. (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance

*or readiness and willingness to perform his part of the contract.”*

24. *In Sukhbir Singh v. Brij Pal Singh [(1997) 2 SCC 200] this Court had laid down that law is not in doubt and it is not a condition that the respondents (plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in A. Kanthamani v. Nasreen Ahmed [(2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] , in C.S. Venkatesh v. A.S.C. Murthy [(2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90] , etc.*

25. *Section 20 of the Specific Relief Act (pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (pre-amendment) and factors to be considered, this Court in Kamal Kumar v. Premlata Joshi [2019] 3 SCC 704 : (2019) 2 SCC (Civ) 405] has also referred to Sections 16(c), 22, 23 and 24 of the Specific Relief Act and Forms 47/48 of Appendix A to C of the Civil Procedure Code, 1908, to summarise : (SCC pp. 705-706, paras 7-8)*

*“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:*

*7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.*

*7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.*

*7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract.*

*7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff.*

*7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so,*

on what grounds.

8. *In our opinion, the aforementioned questions are part of the statutory requirements [see Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendix A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”*

26. *Sub-section (2) to Section 20 of the Specific Relief Act (pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant seller which he did not foresee, hardship to the plaintiff purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant seller.*

27. *The court should examine whether the plaintiff purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was in conformity with the terms of the contract. The status of the parties, and whether the plaintiff purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects an attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration [ See K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1] . Incapacity of the defendant seller and whether the plaintiff purchaser is operating in property trade, or as a financier or middleman and the defendant seller is a typical property owner, may also affect the exercise of discretion.*

28. *In cases where the defendant seller claims that he was gullible and nescient, who got caught by entering into the agreement to sell, facts like whether **the sale consideration is lower than the market price and the terms and conditions settled are unfavourable, should be given due weightage.** Sometimes the defendant seller, post the agreement to sell, in consultation with elders or family members, wishes to back out because the decision to sell was a folly, unwise, or a result of trickery. In such cases, the conduct of the defendant seller would be of consequence. **The defendant seller would be well advised to immediately and without delay***

**write to the plaintiff purchaser reneging the agreement to sell and enclose a cheque for the amount received. His offer to pay or payment of interest or damages would be an added factor as the intending purchaser would then be entitled to look for another property.**

29. Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied, without being unfair and inequitable to the defendant seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. The purpose of sale can vary from the need for liquid cash to be invested to earn interest, medical, educational, child's marriage or purchasing another property. To save capital gains, the seller has to purchase another immovable property, unless the proceeds are exempt.

30. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant seller's purpose [ See paras 25, 36 & 37 in *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104.] . Therefore, the offer of the plaintiff purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the plaintiff purchaser to the defendant seller may become a relevant fact that merits due consideration.

31. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.

32. Having said that, let us examine the facts of this case. As discussed earlier, the respondent-plaintiff had not only averred in the plaint about his issuing notices within the period of six months of the agreement in question, calling upon the appellant-defendant to perform his part of the contract and conclude the sale transaction, also showing his readiness and willingness to perform his part of the contract, but the respondent had also proved the same by stepping into the witness box.

33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in *Ritu Saxena v. J.S. Grover*

*[(2019) 9 SCC 132 : (2019) 4 SCC (Civ) 302] , in Abdullakoya Haji v. Rubis Tharayil [(2019) 17 SCC 216 : (2020) 3 SCC (Civ) 399] , and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in Syed Dastagir [Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337] , the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.”*

*(emphasis supplied)*

93. The Apex Court in the case of **Krishan Gopal** (supra) has held as under:-

*“13. Well settled is the legal proposition that, to prove his readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch a concluded scheme of finance. [See Nathulal v. Phoolchand(1969) 3 SCC 120; and Sukhbir Singh v. Brij Pal Singh(1997) 2 SCC 200]. It is equally well settled that readiness and willingness is to be inferred from the conduct of the parties. [See His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar(1996) 4 SCC 526; and Bibi Jaibunisha v. Jagdish Pandit (1997) 4 SCC 481].*

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*18. It appears that the balance sale consideration of Rs. 9,00,000/- was deposited before the Executing Court by the plaintiffs in February, 2012. However, we are informed that there has been an astronomical rise in the prices of lands in the vicinity of the suit land. Even if that be so, mere escalation of land prices would not be a reason, by itself, to deny the equitable relief of specific performance once sufficient grounds are made out for granting such relief [See Kanshi Ram v. Om Prakash Jawal(1996) 4 SCC 593 and Gobind Ram v. Gian Chand (2000) 7 SCC 548].”*

94. The Apex Court in the case of **Aloka Bose** (supra) has held that the agreement of sale signed only by the vendor was valid and enforceable by the purchaser.

95. The Apex Court in the case of **Rattan Singh** (supra) has held that signature of the vendee is not mandatory in a sale deed.

96. The Apex Court in the case of ***Asset Reconstruction Company (India) Ltd.*** (supra) was considering the applicability of the Registration Act, 1908 keeping in view the amendments made by the States in it. It was held as under :-

*“13. Before we look at the relevant provisions of the Registration Act, 1908, it is necessary to note that “Registration of deeds and documents” falls in Entry 6 of List III (Concurrent List) of the Seventh Schedule to the Constitution. Therefore, the Registration Act, 1908, which is a Central Act, can be seen as something which provides only a template upon which the States are entitled to make amendments. This is why amendments by States galore in the Registration Act, 1908. Therefore, any interpretation of the provisions of the Act, should be in consonance with the scheme of the Act as applicable to the State involved in the litigation. For instance, registration of certain documents may be optional in some States but mandatory in some other States. Therefore, the interpretation made by this Court, of a provision as amended in its application to a particular State, cannot be applied blindly while interpreting the same provision as applicable to another State. Keeping this aspect in mind, let us now peep into the statutory provisions.”*

97. The Apex Court in the case of ***Pydi Ramana*** (supra) and ***Shenbagam*** (supra) in the facts and circumstances of the case, keeping in view the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree, held that the remedy provided must not cause injustice to a party, specifically when they are not at fault. In these cases, the conduct of the plaintiff was found blemished, who was not found willing to perform the contract, hence the remedy of specific performance of the contract was not granted.

98. The Apex Court in the case of ***Basant Ram*** (supra) has held that mere presence at the office of the sub-registrar, unaccompanied by any evidence of financial preparedness – such as a demand draft or other supporting documentation – cannot suffice. It is not enough to merely state that one is ready and willing to perform his part, but he needs to substantially show that genuine efforts were made in that regard and should have supporting documents such as a demand draft prepared. In the facts of the case, it was held that plaintiffs were not always ready and willing to perform their part of the agreement, which was not supported by their conduct.

99. The Apex Court in the case of ***Subhash Aggarwal*** (supra), held that there is no straitjacket formula with regard to readiness and willingness, the same has to be construed with respect to the facts and circumstances of each case. In this case the plaintiff failed to prove

that he had the necessary financial wherewithal to make the balance payment of ₹ 5.21 crores on the due date, who also did not even visit the office of the sub-registrar. The defendants also failed to fulfil their contractual obligations, particularly with respect to obtaining mutation and securing conversion of the suit property from leasehold to freehold. In these circumstances, it was held that specific performance was not an equitable relief after passage of more than 17 years since the execution of agreement.

100. The Apex Court in the case of *Darshan Singh* (supra) has held that the relief of specific performance is discretionary and equitable. In this case considering the plaintiffs conduct of making false and/or incorrect statements in the plaint, which were very material, the plaintiffs were held disentitled to the relief of specific performance.

101. The Apex Court in the case of *Muddam Raju Yadav* (supra) has held that in a suit for specific performance, the conduct of the parties is significant as it assists the court in evaluating the evidence to find out the bona fides of the parties at the time of execution of the agreement. Even a slight doubt in the mind of the Court that the plaintiff was not acting bonafidely and that the material facts, having bearing on the agreement, have been withheld in the agreement itself and from the Court also, the discretionary relief has to be denied. It was held that the plaintiffs approaching the Court with unclean hands cannot be granted relief of specific performance.

102. The Apex Court in the case of *S.P. Chengalvaraya Naidu* (supra) has held that a litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. It was reiterated that a judgment or a decree obtained by playing fraud on the Court is a nullity and nonest in the eyes of law, which can be challenged in any Court even in collateral proceedings.

103. The Apex Court in the case of *U.N. Krishnamurthy* (supra) where the plaintiffs balance-sheet did not have sufficient funds to discharge his part of contract at the relevant time, who subsequently deposited the balance sale consideration after a lapse of 7 years, in these circumstances, it was held that the plaintiff has failed to prove his readiness to perform his part of the contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. It was further held that where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money. Plaintiff has to prove that he has the money or has alternatively made

necessary arrangements to get the money.

104. The Apex Court in the case of *N.P. Thirugnanam* (supra) has held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.

### **Findings of this Court**

#### **Execution of the agreement to sell dated 22.10.2012**

105. It is the case of the plaintiff that its director Dr. Shivakant Mishra and Dharam Prakash Nangia were neighbours, who were having friendly relations, who entered into an agreement to sell on 22.10.2012 for selling the disputed house of Dharam Prakash Nangia for a consideration of ₹ 5.25 crores to the plaintiff. It is evident from the written statement of the defendants that there is no specific denial of the execution of the above agreement to sell by their father Dharam Prakash Nangia.

106. The defendant no.1 Mimansa Nangia, who also examined herself as DW-1 admitted in her examination-in-chief that a registered agreement to sell was executed by her father Dharam Prakash Nangia regarding the disputed property in favour of the plaintiff, and the sale deed was to be executed after receiving the balance consideration by her father. She also admitted that her father tried his best to comply with the terms of the agreement but due to her father's untimely death, the disputed property could not be converted into freehold. In the cross-examination she admitted that her father had received the earnest money of the disputed agreement to sell, through cheques, at the time of its execution.

107. Shahnaz Faisal @ Shivani Nangia @ Shibbu DW-2 also stated in her examination-in-chief that her sister Mimansa Nangia has misappropriated the whole amount of ₹ 2 crores, which was given by the plaintiff to her father by getting it transferred to her account, which is proved from the statement of the bank account of her father and the statement of bank accounts of her sister Mimansa Nangia in State Bank of India and Axis Bank.

108. The above unequivocal admission of the daughters DW-1 & DW- 2 of deceased Dharam Prakash Nangia, prove beyond doubt, the execution of the agreement to sell dated 22.10.2012 by their father Dharam Prakash Nangia in favour of the plaintiff. It also proves that an earnest money of ₹ 2 crores was paid by the plaintiff at the time of the above execution of the agreement to Dharam Prakash Nangia through cheques and after the death of Dharam Prakash Nangia, that amount has been usurped by the defendant no.1 Mimansa Nangia. The execution of the agreement was also proved by Sanjiv Kumar Tiwari PW-3.

#### Terms of the agreement

109. The original agreement to sell dated 22.10.2012 has been proved by the plaintiff in the trial court by examining Dr. Shivakant Mishra (director of the plaintiff) as PW-1 and Sanjiv Kumar Tiwari (attesting witness) as PW-3. It is apparent from the agreement that the disputed property, which is a residential house of Dharam Prakash Nangia, was agreed to be sold for a consideration of ₹ 5.25 crores to the plaintiff Shivani Hospital Private Ltd. On behalf of the plaintiff, it's director Dr. Shivakant Mishra and the defendants predecessor/father Dharam Prakash Nangia, signed the agreement.

110. It was mentioned in the agreement that the disputed property was not yet freehold. An earnest money of ₹ 2 crores was received from the plaintiff by Dharam Prakash Nangia, through cheques, the details of which were mentioned in the agreement and has also been mentioned in the plaint. It was further agreed that the remaining consideration of ₹ 3.25 crores shall be paid by the plaintiff at the time of registration of sale deed before the sub-registrar Kanpur Nagar and the plaintiff shall also bear the expenses of this transaction of getting the sale deed registered.

111. It was also agreed that Dharam Prakash Nangia will get the property converted into freehold at his expenses, shall give its written information to the buyer, but this was to be done in every circumstance till the month of December 2014 and thereafter, execute the sale deed in favour of the buyer, for which the seller will fix a date and time and intimate it in writing to the buyer, so that he may

remain present before the sub-registrar Kanpur for getting the sale deed executed in its favour. It was also agreed that if the seller within the prescribed time limit fails to execute the sale deed in favour of the buyer or fails to complete all the aforementioned formalities, in that condition, the buyer will have a right to get the sale deed executed through Court. It was further agreed that the terms of the agreement shall be binding on the legal heirs of the buyer and seller, who shall not be entitled to raise any objection regarding the consideration.

(A) Whether the plaintiff was always ready and willing to fulfil the terms of the registered agreement to sell dated 22.10.2012 ?

(B) Whether the defendants or their predecessor Dharam Prakash Nangia failed to comply with the terms of the registered agreement to sell dated 22.10.2012 ?

112. It is apparent from the pleadings of the plaintiff and the defendant no.1, the evidence of PW-1 Shivakant Mishra and DW-1 Mimansa Nangia and the perusal of the agreement to sell, that the disputed property was required to be converted from lease hold to freehold by the seller Dharam Prakash Nangia till the month of December 2014 and then was required to give its written intimation to the plaintiff but Dharam Prakash Nangia in his lifetime failed to complete that formality. The above permission to get the property converted into freehold was to be obtained from the Kanpur Development Authority(KDA). Dharam Prakash Nangia's daughter Mimansa Nangia DW-1 has accepted in her examination-in-chief that her father failed to obtain the above permission in his lifetime, who died on 4.7.2015.

113. DW-1 in cross-examination disclosed that she was not having any knowledge whether any amount has been deposited with the KDA for getting the property converted to freehold. She also failed to disclose whether in the month of December 2014 her father received any permission regarding the disputed property being converted into freehold.

114. During trial, the trial court summoned the relevant file from the office of the KDA, to ascertain what steps were taken by Dharam Prakash Nangia to get the disputed property converted into freehold, then it was disclosed that the application was moved by Dharam Prakash Nangia before the KDA only on 21.8.2014, whereas, the agreement was executed on 22.10.2012, and as per the terms of the agreement, the sale deed was to be executed after obtaining permission till the month of December 2014. It is apparent that the above application was moved only four months prior to the deadline of December 2014 by Dharam Prakash Nangia on 21.8.2014. It was also disclosed from the perusal of the above file that on 30.5.2015 the file was forwarded to the competent authority for granting of freehold

permission, which was not granted till the death of Dharam Prakash Nangia on 4.7.2015.

115. It is thus evident that Dharam Prakash Nangia in his lifetime failed to obtain the freehold permission from the KDA till the month of December 2014 and even till his death on 4.7.2015, the permission was not obtained, which is also accepted by his daughter Mimansa Nangia DW-1 in her examination-in-chief. It is also evident that getting the property converted to freehold was a condition precedent for getting the sale deed executed in favour of the plaintiff, but this condition was never fulfilled by Dharam Prakash Nangia in his lifetime. No documentary evidence is on record which proves that any notice was given by the defendants or their father Dharam Prakash Nangia to the plaintiff that they have obtained the freehold permission from the KDA hence, the plaintiff should get the sale deed executed in its favour by paying the balance sale consideration.

116. On the contrary, the defendant no.1 and 2 gave legal notice through their Advocate Dr. Devendra Dwivedi on 28.8.2015 to the plaintiff to appear before the office of sub-registrar on 11.9.2015 for cancellation of the agreement to sell and receiving back the earnest money of ₹ 2 crores, which was paid earlier by the plaintiff to Dharam Prakash Nangia. The plaintiff replied to the above legal notice, requesting them to fix a date for execution of the sale deed and asserting that the balance consideration will be paid at the time of the execution of sale deed.

117. It is further apparent that the plaintiffs sent a notice to all the legal heirs of the deceased Dharam Prakash Nangia on 24.10.2015 to remain present before the office of concerned sub-registrar Kanpur Nagar on 3.11.2015, again on 30.11.2015 to remain present on 5.12.2015 and again on 23.12.2015 to remain present on 5.1.2016, for execution of the sale deed and for receiving the balance sale consideration of ₹ 2.84 crores, but the defendants failed to remain present. The plaintiffs director Dr. Shivakant Mishra PW-1 along with Sanjiv Kumar Tiwari PW-3 remained present in the office of the concerned sub-registrar on 5.1.2016, but the defendants failed to appear on any of the above dates.

118. Dr. Shivakant Mishra PW-1 deposed that between October 2015 and January 2016 he remained present in the sub-registrar office many times, after informing the defendants, to get the sale deed of the disputed property executed after paying the balance consideration. He disclosed that he and Sanjiv Kumar Tiwari went on behalf of the plaintiff company to the sub-registrar office. He further deposed that in October 2015 he went to the sub-registrar office with a cheque book, without any cash. At that time, the plaintiff company was

having sufficient funds in its bank account, some amount was in fixed deposit and some was in the current account. He again went to the sub-registrar office on 5.12.2015 and 5.1.2016, on those occasion also, he was having his cheque book, but no cash. On those occasion also, the plaintiff company was having sufficient amount in its fixed deposit and current account.

119. Ramakant Mishra PW-2 in cross-examination deposed that on 3.11.2015, 5.12.2015 and 5.1.2016 he along with Dr. Shivakant Mishra were present with draft sale deed, along with cheques, but the defendants failed to appear in the sub-registrar office, whereas, they were aware that they have to remain present on that date. He further deposed that Dr. Shivakant Mishra remained present on the above dates along with him from morning to evening in the sub-registrar office. A certificate of attendance was also obtained from the sub-registrar office, which has been filed on record. He deposed that the draft sale deed was prepared without stamps because the stamps were to be purchased when the parties arrived for getting the sale deed executed. He further deposed that the plaintiff company was having an amount of ₹ 3.25 crores in its account and the defendants were to be paid through cheques which were to be drawn on the bank account of the plaintiff.

120. It is also evident that after the execution of the agreement to sell on 22.10.2012, an additional amount of ₹ 41 lakhs was paid by the plaintiff to Dharam Prakash Nangia on 14.3.2014(₹ 15 lakhs), 28.11.2014(₹ 20 lakhs) and 5.2.2015(₹ 6 lakhs), through four cheques, which is also proved from the bank statement of the plaintiff and certificate issued by the bank regarding debit/credit of cheque.

121. It is also apparent that the consideration of ₹ 2 crores for the agreement to sell dated 22.10.2012 was paid by the plaintiff to Dharam Prakash Nangia through following cheques:-

- (i)cheque No. 3 dated 2.11.2012 for ₹ 40 lakhs*
- (ii)cheque No. 4 dated 2.11.2012 for ₹ 40 lakhs*
- (iii)cheque No. 5 dated 3.11.2012 for ₹ 40 lakhs*
- (iv)cheque No. 6 dated 3.12.2012 for ₹ 38 lakhs*
- (v)cheque No. 599847 dated 22.10.12 for ₹ 42 lakhs*

122. From the bank statement of the plaintiff it is evident that the above cheques have been debited from its bank account on 5.11.2012, 7.11.2012, 12.11.2012, 17.12.2012 and 3.11.2012 respectively. It is also evident that earlier cheque No. 6 for ₹ 38 lakhs was dishonoured due to insufficient balance on 11.12.2012 but subsequently on 17.12.2012 it was honoured, which has also been accepted by Shahnaz Faisal DW-2, the daughter of Dharam Prakash Nangia, who

deposed in cross-examination that her father informed her about the dishonoured cheque of ₹ 38 lakhs on the same evening but 2 – 3 days thereafter, she was informed by her parents that the above amount has been credited to their account. She accepted that the cheque was subsequently honoured.

123. Rohit Handa DW-4 also deposed that he was told by Dharam Prakash Nangia that a cheque of ₹ 38 lakhs has been dishonoured due to insufficient funds in the bank account of doctor Saheb, due to which the agreement has ended. He disclosed that subsequently, he was informed by Dharam Prakash Nangia that he has received the amount of ₹ 38 lakhs towards the dishonoured cheque, in his bank account.

124. It is evident that neither any legal notice for the above dishonoured cheque of ₹ 38 lakhs has been given by Dharam Prakash Nangia to the plaintiff nor any proceeding for cancellation of agreement to sell has been initiated by him, which itself proves that, Dharam Prakash Nangia has duly received the entire earnest money of ₹ 2 crores, including the above amount of ₹ 38 lakhs, which is also proved from the evidence of DW-1, DW-2 and DW-4.

125. From the above evidence on record it is evident that the plaintiff was always willing to get the sale deed executed in its favour by paying the balance sale consideration, but Dharam Prakash Nangia till his death on 4.7.2015 and after his death, his daughter's, being his legal heirs, neither obtained the permission from the KDA for getting the property converted into free hold nor intimated in writing to the plaintiff, that they have obtained such permission and now the plaintiff should pay the balance sale consideration and get the sale deed executed in its favour. It is apparent that Dharam Prakash Nangia and after his death, his daughter's, have failed to comply with the terms of the agreement dated 22.10.2012.

*(C) Whether the registered agreement to sell was executed for inadequate consideration under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra by Dharam Prakash Nangia ?*

126. It is the case of the defendant no.3 Shahnaz Faisal that the registered agreement to sell dated 22.10.2012 was executed under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra, since there was a relationship of doctor and patient between them and Dharam Prakash Nangia and his wife Meena Nangia.

127. Rohit Handa DW-4 deposed in cross-examination that Meena Nangia died on 12.12.2012 due to heart attack. Dr. Shivakant Mishra used to treat and prescribe medicines to Dharam Prakash Nangia.

Dharam Prakash Nangia was treated in Excel hospital, Chunniganj, Kanpur Nagar. He was not aware that Dr. Shivakant Mishra is a surgeon. After seeing the agreement to sell, he disclosed that as a witness it has been signed by his uncle Somnath Handa. He admitted that his uncle never remained patient of Dr. Shivakant Mishra, who was not having any undue influence on his uncle, who signed willingly on the above document.

128. It is evident that there is no documentary evidence to prove the relationship of doctor and patient between Dr. Shivakant Mishra/Neelam Mishra and Dharam Prakash Nangia/Meena Nangia. It is apparent that Dr. Shivakant Mishra and Dharam Prakash Nangia were neighbours hence they were having friendly relations but there was no professional relationship of doctor and patient between them.

129. It is also evident that Dr. Shivakant Mishra was a surgeon, whereas Meena Nangia died due to heart attack and Dharam Prakash Nangia was treated in Excel Hospital, Kanpur Nagar. It is also evident that the agreement was witnessed by Somnath Handa, the uncle of DW-4, who has admitted that his uncle never remained patient of Dr. Shivakant Mishra, who was not having any undue influence on his uncle, who had willingly signed the agreement. In view of the above evidence on record, it was not proved that Dr. Shivakant Mishra and his wife Neelam Mishra were having any undue influence on Dharam Prakash Nangia.

130. It has been further submitted by defendant no. 3 Shahnaz Faisal that on 22.10.2012, as per the report of the Government valuer Mohd.Minaz Jaffrey DW-5 the disputed property was valued at ₹ 10.91 crores, but it was only agreed to be sold for a consideration of ₹ 5.25 crores by her father Dharam Prakash Nangia to the plaintiff, this fact also ipso facto proves that her father was under undue influence of Dr. Shivakant Mishra.

131. Mohd.Minaz Jaffrey DW-5 deposed in his examination-in-chief that he is an approved valuer and project consultant. On the request of Smt.Shahnaz Faisal he has assessed the market value of the disputed property on 24.1.2023. On the basis of rates prevailing in the year 2012 – 13, the market value of the disputed house in the year 2012 and 2013 was about ₹ 10.91 crores whereas, in the year 2023 the disputed house is valued at ₹ 16,52,75,000/-.

132. DW-5 in cross-examination disclosed that he inspected the disputed property on 10.1.2023 and thereafter submitted his report on 24.1.2023 to the defendant no. 3. He further disclosed that he has not inspected the property from inside. He further admitted that he has valued the property on the basis of his experience. He disclosed that he has valued the disputed house at the rate of ₹ 72,000/- yd<sup>2</sup>

whereas, the prevalent circle rate was between ₹ 30,000 to 26,000 m<sup>2</sup> at that time .He denied the suggestion that he has given his report in order to give pecuniary benefit to the defendant no. 3.

133. From the above evidence of DW-5 it is apparent that in the year 2012-13 the prevalent circle rate of the property was between ₹ 30,000 to 26,000 per square metre but he has valued the disputed house at the rate of ₹ 72,000 per square yard, which is far in excess of the circle rate, which is fixed by the District Magistrate under Stamp Act. It is also evident that without inspecting the disputed house from inside, without appreciating the quality of construction of the house and without observing the quality of materials used in its construction, he has prepared the valuation report. In view of the above facts, the valuation report disclosing the market value of the property in the year 2012-13 to be about ₹ 10.91 crores is not at all credible, which has rightly been discarded by the trial court also. On the basis of this valuation report, it cannot be inferred that the disputed property was valued at ₹ 10.91 crores in the year 2012-13 when the agreement was executed by Dharam Prakash Nangia in favour of the plaintiff.

134. It is further apparent that the area of the disputed property was 1352 square yards= 1130.41 m<sup>2</sup> and if the circle rate of land in the year 2012 – 13 is taken at ₹ 30,000 per square metre, then the valuation of the land comes to about ₹ 3.40 crores, but the whole property has been agreed to be sold for a consideration of ₹ 5.25 crores, which cannot in any manner be termed as inadequate. Hence, even on the basis of consideration of the agreement, it cannot be held that the disputed property was sold below its market valuation, and the agreement was executed under undue influence.

*(D) Whether the plaintiff was having the financial capacity at the relevant time to pay the balance sale consideration of ₹ 2.84 crores to the defendants ?*

135. It is apparent from the case law submitted by the parties that where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money. Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract.

136. It is further apparent that it is not the condition that the plaintiff

should have ready cash with him. It is sufficient for the plaintiff to establish that he had the capacity to pay the sale consideration. It is further not necessary that he should always carry the money with him from the date of the suit till the date of the decree.

137. The plaintiff has filed the statement of his bank account. The defendants have also filed the balance sheet of the plaintiff. From the statement of the plaintiff's bank account in Bank of Baroda, it is evident that it is a current account, in which only the amount which is necessary for running day-to-day affairs is maintained by the plaintiff, because no interest is earned on the money deposited in this account. It is also prudent on the part of the plaintiff not to deposit large amount in this account since it will not bear any interest.

138. But it is evident that whenever a large payment was required to be made by the plaintiff, then funds were transferred to this account, which proves the financial capacity of the plaintiff. It is evident that on 22.10.2012 there was a balance of ₹ 39,59,167.47 in this account. On 01.11.12 an amount of ₹ 1.25 crores was transferred to this account and the balance became ₹ 1,70,59,167.47 and thereafter, again on 5.12.2012 an amount of ₹ 25,84,729.90 was transferred to this account and the balance became ₹ 34,29,403.37, to honour the cheques issued by the plaintiff to Dharam Prakash Nangia. It is evident that from time to time, money was transferred to this account from other accounts of plaintiff, for making payments and honouring its commitments.

139. From the balance sheet of the plaintiff, the following information was revealed:-

| <b>Financial Year ending</b> | <b>Total Assets of the plaintiff in Rs.</b> | <b>Reserves &amp; Surplus of the plaintiff in Rs.</b> | <b>Cash &amp; Cash Equivalents of the plaintiff in Rs.</b> |
|------------------------------|---|---|--|
| 31/03/12                     | 18982573.06                                 | 8707702.06  | 1126801.02   |
| 31/03/13                     | 36877678.94                                 | 9131989.94  | 3410918.09   |
| 31/03/14                     | 37216831.08                                 | 10135091.08   | 2336290.77   |
| 31/03/15                     | 40317289.8                                  | 11825465.22   | 3311305.13   |
| 31/03/16                     | 53331672.83                                 | 21502380.25   | 21124132.46  |

140. From the above balance sheet of the plaintiff, it is apparent that in the financial year 2012 – 13, 2013 – 14, 2014 – 15 and 2015 – 16 the plaintiff's balance sheet was strong and was having assets in excess of ₹ 3.5 crores, whereas, the plaintiff was only required to pay the balance consideration of ₹ 2.84 crores to the defendants. On

31.3.2016 the plaintiff was having assets of ₹ 5.33 crores , which itself proves that the plaintiff was having sufficient financial capacity to pay the balance sale consideration to the defendants .The plaintiff has in fact deposited the amount of ₹ 2.84 crores with the trial court on 29.5.2025, which is proved from the tender receipt filed by it in this appeal. Hence, the plaintiff has nothing to pay to the defendants, as such, the financial capacity of the plaintiff cannot be doubted.

*(E)Whether the plaintiff has committed any fraudulent act which disentitles him from claiming the relief of specific performance of the registered agreement to sell dated 22.10.2012 in terms of the provisions of Section 16 (b) of the Specific Relief Act, 1963?*

141. The plaintiff claimed that since the duration mentioned in the agreement dated 22.10.2012 was expiring on 31.12.2014 hence Dharam Prakash Nangia approached Dr. Shivakant Mishra for extension of time for obtaining the freehold permission from KDA, which was agreed to and hence a notarised agreement dated 21.12.2014(paper no.130-C), was executed between the parties, the execution of which was not found proved by the trial court. Since the plaintiff failed to prove the above document, it was alleged by the defendants that the plaintiff has fraudulently fabricated the above document, which disentitles it from claiming the relief of specific performance of the agreement to sell.

142. From the perusal of the above document it is evident, that it was executed between the plaintiff and Dharam Prakash Nangia on 21.12.2014, which was a notarised agreement executed on a non-judicial stamp paper of ₹ 10. This agreement mentions that Dharam Prakash Nangia has not yet obtained the freehold permission hence he demanded some more time for obtaining that permission, which was agreed to by the plaintiff. It was agreed that after getting the property freehold and duly informing the buyer, thereafter, the sale deed would be executed within one month after paying balance consideration of ₹ 3.25 crores. It was reiterated that the liability to get the property freehold will be on the seller. In this manner, this time extension agreement was executed between Dharam Prakash Nangia and plaintiff, which was signed on behalf of the plaintiff by Dr. Shivakant Mishra.

143. It is apparent that the execution of the above agreement was denied by the defendants. The handwriting expert of the plaintiff Ravi Krishna Nigam @ R.Krishna PW-4 and handwriting expert of the defendants Ravindra Tripathi DW-3 examined the above document and gave contradictory opinion, regarding its execution by Dharam Prakash Nangia.

144. Pankaj Agarwal DW-6, the public notary, in examination-in-chief produced his original register before the Court. On seeing paper no.130-C he deposed that it has neither been signed by him nor his seal has been affixed on it. In the red ink whatever has been written on that document, has also not been written by him. He disclosed that on 22.12.2014 the name of any party mentioned in paper no. 130-C, is not entered in his register. In cross-examination by plaintiff he denied the suggestion that proper entries are not made in his register promptly.

145. It is apparent that the above document bears three round impressions, one rectangular impression of the rubber seal and signatures of the notary dated 22.12.2014, who has not been cross-examined as to how the above seals came to be affixed on the above document. He was not asked how some other person would have affixed the above seals on the document. The burden was upon the notary to prove how the above seals came into possession of an unauthorised person, so as to use them. It is apparent that the notary has not been cross-examined on this point whether he has lodged an FIR regarding the theft/loss of the above seals with the police. It is apparent that the cross-examination of DW-6 by the learned counsel of the plaintiff was not up to the mark.

146. The trial court considered the above evidence and opined that since the document was not signed by any witness, hence the execution of the above document between the plaintiff and Dharam Prakash Nangia was not proved, since it was also not found recorded in the register of the notary. The trial court has not opined that the plaintiff has fraudulently prepared the above document to claim extension of time because the trial court was of the opinion that even in the absence of the above document, the suit filed by the plaintiff was within the prescribed period of limitation of 3 years from 31.12.2014, which also could not be disputed by the learned counsel for the defendant appellants. Hence, merely because the plaintiff failed to prove the above document, it cannot be inferred that the plaintiff has fraudulently fabricated that document in order to extend the period of limitation.

147. It is apparent that the document was advantageous to only Dharam Prakash Nangia because he had to obtain freehold permission upto 31.12. 2014 and by executing the above document he was going to be benefited. No advantage has been derived by the plaintiff on the basis of that document, hence, the contention of the learned counsel of the appellant that on the basis of this forged and fabricated document, the plaintiff is not entitled to the relief of specific performance, is liable to be rejected. Accordingly, it is held that the plaintiff 's conduct does not disentitle him from getting the relief of

specific performance of the agreement to sell dated 22.10.2012 and the provisions of Section 16(b) of the Specific Relief Act, 1963 are not attracted to the facts and circumstances of this case.

(F) Whether the presence of the representative of the plaintiff was mandatory for getting the sale deed executed and registered in its favour keeping in view the provisions of Section 32A of the Registration Act, 1908 ?

148. It was submitted by the learned counsel for the defendant appellants that since the plaintiff is a company, it was mandatory for its authorised representative to remain present in the concerned sub-registrar office, on the dates on which the plaintiff issued legal notice to the defendants to remain present in the sub-registrar office for getting the sale deed executed and registered in its favour. He submitted that on 3.11.2015, 5.12.2015 and 5.1.2016, the authorised representative of the plaintiff was not present in the office of the sub-registrar which shows that the plaintiff was not ready and willing to get the sale deed executed in its favour.

149. It was further submitted that in terms of Section 32 A of the Registration Act, 1908 it was mandatory for both the buyer and seller to remain present at the time of execution and registration of the document, hence the absence of the representative of the plaintiff was fatal because it proved that the plaintiff was not ready and willing to get the sale deed executed in its favour. He submitted that in these circumstances the decree of specific performance cannot be granted in favour of the plaintiff.

150. Per contra, learned Senior Counsel for the plaintiff respondent submitted that Section 32 A of the Registration Act, as applicable in the State of Uttar Pradesh, is different from the Central Act. It was submitted that under the provisions of the UP Act, it was not mandatory for the buyer to remain present at the time of execution and registration of the sale deed, which was also held by the Apex Court in *Aloka Bose* (supra) and *Rattan Singh* (supra). He further submitted that on all the relevant dates Dr. Shivakant Mishra and his representative Sanjiv Kumar Tiwari were present in the office of sub-registrar.

151. For appreciating the above controversy it is necessary to peruse Section 32A of the Registration Act, as applicable under the Central Act and the State Act.

152. Section 32A(Central Act) reads as under:-

32A. Compulsory affixing of photograph, etc. – Every person presenting

*any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:*

*Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.*

153. Section 32A, as prevailing in the State of Uttar Pradesh, reads as under:-

*32A. Giving of true copies of documents prescribed for registration – Notwithstanding anything contained in this Act every document or any translation of documents referred to in section 19 presented for registration shall be accompanied by such number of true copies thereof, as may be prescribed by rules under section 69.*

*(2) The copy shall –*

*(a) be neat and legible, prepared on paper of such specification as may be notified by the State government from time to time;*

*(b) contain a declaration that the same is a true copy of the document to be registered in such manner as may be prescribed by rules under section 69;*

*(c) be compared and verified by such official as may be directed by the registering officer.*

154. The Apex Court in the case of ***Asset Reconstruction Company (India) Ltd.*** (supra) has held that the provisions of the Registration Act are to be interpreted keeping in view the State amendments introduced in the Act from time to time. It is apparent that there is a vast difference between Section 32 A of the Registration Act as prevailing in the State of Uttar Pradesh and as prevalent in the Central Act. Under the Central Act, at the time of presentation of sale deed for registration, the presence of both the buyer and seller is mandatory for affixing their photograph and finger print on it, but in the Act prevailing in the State, it is not mandatory. However under Section 32, such document is to be presented by a person executing it or by the representative or assign of such a person or by the agent of such a person, duly authorised by power-of-attorney executed and authenticated in the manner specified. Further, under Section 23, such document (except Will) can be presented for registration within 4 months from the date of its execution. It is apparent that it is not mandatory to present the document for registration soon after its execution, because it can be presented for registration within 4 months of its execution.

155. The Apex Court in the case of ***Aloka Bose*** (supra) has held that the agreement of sale signed only by the vendor was valid and enforceable by the purchaser. Similarly, in the case of ***Rattan Singh***

(supra) it was held that signature of the vendee is not mandatory in a sale deed. It is evident that as per the provisions of Section 32A of the Registration Act, as prevailing in the State of Uttar Pradesh, the presence of vendee was not mandatory at the time of registration of sale deed. The Apex Court in the above referred cases has also held that the signature of the vendee is not mandatory on the sale deed.

156. However, it is pertinent to mention here that as per the evidence of Dr. Shivakant Mishra PW-1 and Sanjiv Kumar Tiwari PW-3, they remained present on behalf of the plaintiff company, for getting the sale deed executed and registered in favour of the plaintiff, whereas the defendants failed to remain present in the office of the concerned sub-registrar. The plaintiff has also filed the documentary evidence of the presence of his representative in the office of the sub-registrar on 5.1.2016. In view of these facts, it cannot be said that the plaintiff was not ready and willing to get the sale deed executed in his favour.

#### **Conclusion of this Court**

157. From the aforesaid analysis, it is evident that the plaintiff always remained ready and willing to get the sale deed executed in its favour by paying the balance sale consideration but it was Dharam Prakash Nangia and his heirs/defendants who defaulted in complying with the terms of the registered agreement to sell dated 22.10.2012. It is also proved that the plaintiff was always having the financial capacity to pay balance sale consideration of ₹ 2.84 crores to the defendants, who in fact has already deposited the above amount with the trial court on 29.5.2025, after passing of the decree of specific performance in its favour on 21.3.2025, hence nothing remains to be paid by the plaintiff to the defendants. It is also proved that the disputed property was not sold for inadequate consideration by Dharam Prakash Nangia.

158. It is also apparent that the last date fixed for the execution of sale deed by the defendants in favour of the plaintiff was 5.1.2016, but the defendants failed to appear on that date before the concerned sub-registrar for executing the sale deed and receiving the balance sale consideration, hence as per Article 54 of the Limitation Act 1963, 5.1.2016 will be treated as the date fixed for the due performance of the agreement, when it was refused by the defendants. In view of this, the filing of the suit for the relief of specific performance by the plaintiff on 10.1.2017 cannot be held to be belated.

159. The trial court has duly considered all the above aspects in accordance with law. There is no perversity in the impugned judgment of the trial court warranting interference from this Court in exercise of its appellate jurisdiction. Accordingly, the appeal has no

merit and is liable to be dismissed with costs.

**160. For the aforesaid reasons, the instant appeal is dismissed with costs, throughout.** Consequently, the impugned judgment and decree of the trial court dated 21.3.2025 is affirmed.

161. The defendants are directed to execute the sale deed of the disputed property within a period of one month in favour of the plaintiff, by receiving the balance sale consideration of ₹ 2.84 crores from the trial court, failing which, the plaintiff will be at liberty to get it executed from the Court, in accordance with law.

**Order Date:- 06.05.2026**

Jitendra/Himanshu/Mayank

**(Sandeep Jain, J.)**