



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

% **Pronounced on: 6<sup>th</sup> September, 2023**

+ CS(OS) 475/2004 & CRL.M.A. 7125/2012 & I.A. 15641/2010 & I.A. 8319/2012 & I.A. 11016/2012 & I.A. 19951/2012 & I.A. 19952/2012 & I.A. 12878/2013

SANGHI BROS (INDORE) PVT. LTD. .... Plaintiffs

Through: Mr. Arvind Varma, Sr. Advocate with Mr. A. S. Mathur, Mr. Prabal Mehrotra, Mr. Shubhankar, Mr. Umang Kataria, Ms. Mahima Singh and Ms. Smridhi Sharma, Advocates with and Mr. H. Joshi, AR for plaintiff no. 1 and 2 (i)-(iii) Mr. Sankalp Goswami, Advocate for plaintiff no. 2(iv) (Through VC)

versus

KAMLENDRA SINGH .... Defendant

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Vijay K. Singh and Ms. Ashita Chhibber, Advocates  
Mr. Akhil Sibal, Sr. Advocate with Ms. Fareha Ahmad Khan, Advocate for non-applicant in I.A 8319/2012

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

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

**CHANDRA DHARI SINGH, J.**

1. The instant Civil Suit has been filed on behalf of the plaintiffs seeking the following reliefs:-

*“A) pass a decree for specific performance against the Defendant and in favour of the plaintiffs and to direct the*



*Defendant to transfer/ assign / sell to the Plaintiffs the property (including land; admeasuring about 1200 square yards and structures thereon) bearing No. A-9/29 Vasant Vihar, New Delhi; and*

*B) If this Hon'ble Court were pleased not to grant a decree for specific performance pass a decree for payment of money in favour of the Plaintiffs and against the Defendants in the sum of Rs 20,79,049/- alongwith interest @ 18% p.a. from the date of the suit and till the date of actual realization of the same; and*

*C) pass a decree for permanent injunction in favour of the Plaintiffs and against the Defendant, his servants, agents, heirs, successors and others claiming under or through him, permanently restraining the Defendant from transferring/ assigning/ selling or otherwise disposing of his right, title, and interest in the said property bearing No. A-9/29 Vasant Vihar, New Delhi to any other person(s).*

*D) pass a decree for permanent injunction in favour of the Plaintiffs and against the Defendant, his servants, agents, heirs, successors and others claiming under or through him, permanently restraining the Defendant from transferring/ assigning/ selling or otherwise disposing of his right, title, and interest under or relatable to the Will and Testament dated 5-11-1984 of the late Shri Surendra Sinh ji of Alirajpur to any other person(s) and*

*E) pass such further or other orders as are deemed just, fit and necessary in the circumstances of the case.”*

2. The plaintiff No. 1 is a company registered under the Companies Act, 1956. The present Suit is being instituted on behalf of the plaintiff Company through the Managing Director of plaintiff No. 1, i.e., plaintiff No. 2.

3. The defendant is the younger brother of Late Shri Surendra Sinh ji. Late Shri Surendra Sinh ji possessed various properties including land and structure at property bearing No. A-9/29, Vasant Vihar, New Delhi



(hereinafter “Suit Property”). The said Suit Property is, *inter alia*, the subject matter of the present Suit.

4. The said Suit Property admeasuring about 1200 square yards, was the owned by Late Shri Surendra Sinh ji, who had executed a Will dated 5<sup>th</sup> November 1984 (hereinafter “Will of 1984”). Under the said Will, the defendant *inter alia* bequeathed the said property subject to the condition that if the property was let out, the rental income was to be distributed in accordance with the provisions of the said Will and if the property was sold by the defendant, the net sale proceeds were to be apportioned in the ratio, to the persons specified therein.

5. During the pendency of the present Suit, the said Will, was sub-judice before the High Court of Madhya Pradesh, as there was a conflict *inter alia* with regard to the validity of the said Will with another Will dated 28<sup>th</sup> March 1996, produced by one Mrs. Jyoti Rathore (hereinafter “Will of 1996”). As regards the Suit Property, the keys of the said property were in the custody of the Registrar of the High Court of Madhya Pradesh.

6. The defendant and the plaintiff No. 1 through plaintiff No. 2 executed an Agreement dated 2<sup>nd</sup> December 1998, in the form of a Memorandum of Understanding (hereinafter “MOU/Agreement”), wherein, the defendant had agreed, *inter alia*, that he shall assign and/or sell and/or dispose of all his interest in the Suit Property, including the rights, hereditaments, entitlements and claims comprised therein, to which he is entitled as the major beneficiary as per the Will of 1984. The parties had agreed that the plaintiffs shall pay to the defendant a sum of Rs 2.50 Crore as a consideration for the said assignment/transfer/disposal.



7. In the said MOU dated 2<sup>nd</sup> December 1998, the following was agreed upon by the parties:

- a. The parties had agreed, *inter alia*, that the plaintiffs shall at the request of the defendant agree to pay for and incur expenses to protect, preserve, maintain and repair and renovate the said property from time to time and all such expenses paid/incurred on account of the Suit Property would be treated as consideration paid towards the compliance of the said Agreement.
- b. The parties had also agreed, *inter alia*, that the defendant has requested the plaintiffs to incur expenses or advance loan, for protecting, preserving, repairing, renovating and maintaining the Suit Property, if and when necessary. It was also specifically agreed, *inter alia*, that the plaintiffs may, on their own, incur all necessary expenses which the defendant agrees to have been paid or incurred at his request.
- c. The parties had also agreed that the plaintiffs shall organize and help the defendant in pursuing the aforesaid Probate Cases before the High Court of Madhya Pradesh. The parties further agreed *inter alia* that the plaintiffs shall advance loan to the defendant to meet the legal expenses which shall be treated as consideration paid towards the said Agreement.
- d. It was also agreed *inter alia* that by way of the Special Power of Attorney dated 2<sup>nd</sup> December 1998, and General Power of Attorney dated 2<sup>nd</sup> December 1998 (hereinafter “Powers of Attorney”), executed in favour of the plaintiff No. 2 (who was



the executant of the said Agreement) by the defendant, had authorized and empowered the plaintiff No. 2 to perform the obligations mentioned in the MOU with regard to the said property, for and on behalf of the defendant.

- e. It was also mentioned that the defendant, on 2<sup>nd</sup> December 1998, executed a Will , thereby, mandating his executors to abide by the above said Agreement in favour of the plaintiff No. 1.
- f. It was also agreed between the parties that as and when the plaintiffs require the defendant to execute a deed of assignment/transfer/sale of the Suit Property, the defendant would execute the same and consequently receive the full consideration as per the Agreement.
- g. It was further agreed *inter alia*, that the plaintiffs shall charge and debit all the expenses incurred on behalf of the defendant or on account of the Suit Property by way of payment of taxes, security, maintenances, repairs, legal costs and other expenses etc. to the account of the defendant and he shall acknowledge the same as payment/expenses incurred on his behalf.
- h. It was also agreed between the parties *inter alia*, that in the event the Probate Case is decided against the defendant, he would be at liberty to realize all the loans and the amounts paid to him, and/ or incurred on his account, by recovery from the properties reserved or earmarked by the defendant for such propose.



- i. It was further agreed between the parties that the defendant shall not sell, mortgage, gift or transfer, or otherwise dispose of, or encumber the Suit Property. It was agreed between the parties that in the event of any party avoiding the obligations prescribed under the Agreement, the other party shall have the right to enforce his rights by way of filing a suit under the Act, 1963 (hereinafter “the Act).
  - j. It was also agreed between the parties that the said Agreement will remain valid until the same was revoked by both the parties or at the instance of either of the party by giving three months’ notice period, provided, that the parties shall review the Agreement every year.
8. In pursuance of the said MOU, the defendant had executed the Powers of Attorney mentioned hereinabove, in favour of the plaintiff No. 2. The plaintiff No. 2, acting for the plaintiff No. 1 and under the above said Powers of Attorney, had, *inter alia*, pursued and defended various litigations pending in various courts for the defendant.
9. The High Court of Madhya Pradesh *vide* order dated 21<sup>st</sup> March 2003, appointed a receiver/commissioner to take over the possession of the Suit Property. Pursuant to which the plaintiffs had withdrawn the security guard/s employed by them at the said property for the purpose of maintenance and up keeping.
10. The Court had further directed the receiver/commissioner to visit the said property at Delhi, and explore the possibility of letting out the said property, *inter alia*, in order to pay off the property tax dues etc. The said



receiver/commissioner had visited the said premises and also advertised for the letting out of the said Property.

11. In the Probate case pending before the High Court of Madhya Pradesh, a show cause notice was issued to the plaintiffs, to which they filed their reply and in response to the said reply of the plaintiffs, the defendant had *inter alia*, admitted the execution of the MOU, the Powers of Attorney and the Will of 1984. The defendant had averred that he rescinded the MOU and further communicated the same to plaintiff No. 2 in May 2003. It was further stated by the defendant that he had also revoked the above said Powers of Attorney.

12. During the course of pendency of the instant Suit, it has been further brought to the notice of this Court that the High Court of Madhya Pradesh *vide* judgment dated 7<sup>th</sup> May 2010, has decided the issue of probate in the favour of the defendant herein, thereby, upholding the validity of Will of 1984. Hence, the defendant is the owner of the Suit Property.

### **SUBMISSIONS**

*(On behalf of the plaintiff)*

13. Learned senior counsel Mr. Arvind Varma, appearing on behalf of the plaintiffs submitted that it was defendant who approached the plaintiff No. 2 for execution of the MOU regarding the Suit Property.

14. It is submitted that the defendant even brought Mr. Arshad Rashid (PW – 3) to induce the plaintiff No. 2, for entering into an agreement to help the defendant, by way of incurring expenses for the security and maintenance of the Suit Property and that the same would be adjusted in the total consideration of Rs. 2.50 crores, during the final disposal of the said property i.e., after the grant of probate.



15. It is submitted that the cause of action for filing the present suit arose in favour of the plaintiffs on or about 15<sup>th</sup> April 2004. On the said date, the High Court of Madhya Pradesh issued a show cause notice to the plaintiff and in response to the said notice, the plaintiff filed its reply. The defendant in his reply to the response of the plaintiff had *inter alia* stated that he had rescinded the MOU and cancelled the Powers of Attorney executed in favour of the plaintiff.

16. It is submitted that the alleged rescission has never been communicated to the plaintiffs by the defendant. The plaintiff was executing all its obligations w.r.t to the Agreement.

17. It is contended that even if there was such a rescission, the same would itself give rise to a fresh cause of action in favour of the plaintiff for instituting a fresh suit for specific performance against the defendant.

It is further submitted that the defendant had dishonestly sought to revoke the MOU and Powers of Attorney.

18. It is submitted that the plaintiffs never consented to the revocation of the MOU and the Powers of Attorney. There would be no cause of action in favour of the plaintiffs, if the defendant had not made a statement in his reply before the High Court of Madhya Pradesh, of having allegedly revoked the MOU.

19. It is submitted that there is no necessity for the plaintiffs to challenge the revocation of the said MOU and the Powers of Attorney, since as on the date of the instant Suit, there is no communication regarding the revocation or cancellation of the MOU and Powers of Attorney. It is further submitted that even after the suit was filed, there has never been any valid revocation or cancellation of the MOU and Powers of Attorney.





20. It is submitted that as per the Clause 20 of the MOU, the defendant has wrongly interpreted the term ‘reviewed’ as ‘renewed’. The said Clause has been reproduced herein:

*“20. That the Agreement shall remain valid until it is cancelled by the parties or at the instance of either party giving three months’ notice, provided however that the parties shall review the Agreement after every year.”*

The two words are not synonymous and impart a completely different meaning. Hence, the Agreement was to be reviewed by the parties every year, did not amount to renewal of the same.

21. It is submitted that the plaintiffs have always kept the defendant updated with regard to the proceedings in the probate matter before the High Court of Madhya Pradesh. The plaintiffs had always discussed the matter with the defendant and had ‘reviewed’ the MOU on numerous occasions every year.

22. Learned senior counsel for the plaintiffs further submitted that they were never in the possession of the Suit Property. However, in furtherance of the conditions of the MOU, the plaintiffs had deployed security guards for securing the said property and hence, in this way the plaintiffs had spent considerable amount.

23. It is submitted that the defendant had requested the plaintiffs that since he is not able to upkeep the property due to his old age, the plaintiffs may do so on behalf of the defendant. It was only at the request of the defendant that the plaintiff entered into the MOU.



24. It is further submitted that the defendant had signed the said MOU without any coercion and it was a voluntarily signed the said MOU without any coercion on behalf of the plaintiffs.

25. It is submitted that all the contentions made by the defendant are fanciful stories which are subsequent thoughts and have been made on behalf of the defendant with the *mala fide* intention for not executing the MOU.

26. It is further submitted that the defendant has always been ready and willing to perform his part of the contract as per the MOU, however, it was only around March 2004, when the defendant filed his reply before the High Court of Madhya Pradesh and expressed its unwillingness in performing his obligations in accordance with the MOU.

27. It is submitted that the defendant has given no reasons whatsoever for the alleged misrepresentation and what was the alleged inducement on behalf of the plaintiff. Further, the defendant has failed to produce any material on record as to what was the alleged mischief on behalf of the plaintiffs which led the defendant to revoke the MOU.

28. It is submitted in regard to Clause 16 of the MOU, that the same may be read in original for its interpretation in true spirit and the context in which it has been written. It is further submitted that the provisions of Sections 31 and 32 of the Indian Contract Act, 1872, have no bearing on in the present Suit.

29. It is submitted that the MOU in the present suit is not affected by Sections 31 and 32 of the Indian Contract Act, 1872. It is submitted that law cannot enforce a contingent contract thereby, the said MOU is not void, and it confers right and title in favour of the plaintiffs.



30. It is further submitted that even a contingent contract can be subsequently enforced and there is no bar in law regarding the same. In the present facts, the MOU is not a contingent contract and even if it was assumed for the sake of arguments, that the contract in question was contingent, the defendant having admitted that the contract is contingent. must act on his own admission and at the very least, be restrained from alienating or otherwise creating any third party interests in the said property.

31. It is submitted that the plaintiffs have always been willing to bear all the liabilities of the Suit Property in respect of the said premises, be it in the nature of property taxes or any other expenses.

32. It is submitted that the various expenses which have been incurred by the plaintiffs in pursuance of their obligations under the MOU, has been reproduced in the Schedule A, which is annexed with the plaint and the same amounts to a total sum of Rs. 20,79,049/-. The said amount includes expenses under the head of maintenance, legal, consultancy fees, miscellaneous expenses etc.

33. It is submitted that the plaintiffs have been willing to undertake their obligations under the MOU and have always fulfilled all the duties and obligations under the said MOU, in order to effectuate the terms of the Agreement.

34. The plaintiffs, in pursuance of the MOU and the Powers of Attorney, incurred huge costs both on the litigations, and on the upkeep, and maintenance of the Suit Property. The plaintiffs had done inter alia the following acts in pursuance of the said MOU:

- a) The plaintiffs have diligently made all the necessary arrangements to pursue the defendant's Probate Case



throughout the proceedings before the Madhya Pradesh High Court at least till 21<sup>st</sup> February 2003, at which time the defendant had engaged legal representation himself. The plaintiffs had made all the necessary arrangements for the defendant to be represented in various litigations.

- b) The plaintiffs had till the first week of March 2003, also made arrangements for the security of the Suit Property, *inter alia*, by arranging security through a security agency. The guards were also provided with mobile phones and the cost of the same was borne by the plaintiffs.
- c) The plaintiffs had also provided a supervisor for the security guards who would look after the upkeep and maintenance of the Suit Property. All the above said expenses were incurred by the plaintiffs.
- d) The plaintiffs paid a sum of Rs 10,000/-, per month to the defendant in the form of monthly allowance and as part payment of the consideration under the MOU. The said payments were made regularly since December 1998, till March 2001, amounting to Rs. 2,80,000/-.
- e) The plaintiffs also paid the defendant a sum of Rs 15,000/- per month as consultancy fees as provided in Clause 4 of the MOU. Such payments were made for the months of December 1998, till August 2000, amounting to Rs. 2,70,000/.
- f) The plaintiffs had made arrangements for representation on behalf of the defendant before the Municipal Corporation of Delhi (hereinafter “MCD”) in or about March 2001, and also in



March 2002, *inter alia*, to the effect that the said property being in the control of the Madhya Pradesh High Court, and that any action that was being sought to be taken ought to be done only after obtaining the permission of the Madhya Pradesh High Court.

- g) The details of the various expenses paid and/or incurred by the plaintiffs in connection with the above arrangements are detailed in Schedule A annexed with the present plaint. The plaintiffs have paid and/or incurred expenses/costs etc. to the tune of nearly Rs. 20,79,049/- in pursuance of the MOU till 31<sup>st</sup> March 2004.

35. It is further submitted that the said Property is still a leasehold property and the plaintiffs are willing to undertake all steps and expenses in order to convert the same to a freehold property if the same is necessary for execution of the terms of the Agreement.

36. It is submitted that that the factual background and circumstances as narrated in the plaint demonstrates that the defendant has now sought to renege on his obligations under the said MOU and hence, the plaintiffs are entitled both in law and in equity to seek specific performance of the contract under the same.

37. It is submitted that the cause of action arose around 15<sup>th</sup> April 2004, when the defendant filed his reply in response to the plaintiffs' show-cause notice before the Madhya Pradesh High Court and which put the plaintiffs on notice that the performance of the obligations on part of the defendant has been being refused. Hence, the present suit is within time and filed in



the proper jurisdiction as also because the Suit Property is located in New Delhi.

38. It is submitted that, in view of the arguments advanced by the plaintiffs, the plaintiff is entitled to the reliefs sought in the plaint and the instant Suit deserves decreed in favour of the plaintiffs.

*(On behalf of the defendant)*

39. *Per contra*, learned senior counsel appearing on behalf of the defendant vehemently opposed the averments made by the learned senior counsel for the plaintiffs and submitted that the present Suit has been filed with the sole objective of harassing the defendants and to coerce them which they are not legally entitled to. The present Suit is nothing but an abuse of the process of law.

40. It is submitted that the defendant is the owner only to the extent of 55% of the share in the Suit Property as per the Will of 1984, and that the MOU and Powers of Attorney were executed on account of misrepresentation and inducement by the plaintiff.

41. It is submitted that the defendant had acquaintance with the plaintiff No. 2, who was the managing director of the plaintiff No. 1 Company. The plaintiff No. 1 had misrepresented certain facts with regard to the alleged threat to the Suit Property.

42. It is submitted that the plaintiffs induced the defendant to enter into the Agreement since the defendant is an old person and not in a position to look after the said Property. Therefore, in order to protect the said property, the defendant should enter into some arrangement with the plaintiffs as the plaintiffs have good connections in Delhi. Hence, the plaintiffs coerced the defendant to sign the MOU in regard to the said property.



43. It is submitted that due to the misrepresentation and inducement of the plaintiffs, the defendant had also executed General Power of Attorney and Special Power of Attorney dated 2<sup>nd</sup> December 1998 in favour of the plaintiff No. 2. However, upon being aware of the mischief of the plaintiff, the defendant decided to revoke and cancel the MOU, General Power of Attorney and Special Power of Attorney.

44. It is further submitted that the defendant signed the MOU at a time when the plaintiffs had an opportunity to prevail upon the will of the defendant. The defendant was in litigation for grant of a probate which had put him under great mental pressure and the plaintiffs took advantage of the said situation, and obtained the signature of the defendant under duress.

45. It is submitted that the MOU which was signed by the defendant was done in haste and the same is reflected from the fact that the MOU was never executed on any stamp paper.

46. It is further submitted that in terms of the MOU, the plaintiffs had agreed to protect, preserve, maintain, repair and renovate the said property from time to time. However, the plaintiffs failed miserably to abide by the terms and conditions enumerated in the said MOU. The plaintiffs violated the covenants of the MOU from the very outset and kept the defendant unaware about the developments in respect of the Suit Property.

47. It is submitted that the plaintiffs had agreed to pay the municipal taxes, electricity dues and other expenses in terms of the MOU. However, the plaintiffs committed breach by allowing the property to deteriorate with mala fide intentions, thereby, causing depreciation in the value of the Suit Property.



48. It is also submitted that the plaintiffs even failed to pay municipal taxes to the MCD and due to the said default on part of the plaintiffs to pay the municipal taxes, the MCD issued a notice for attachment of the said Property.

49. It is further submitted that the defendant had already communicated to the plaintiffs, way back in back in May 2003, that he had revoked the Powers of Attorney and the MOU.

50. It is submitted that the defendant in its reply which was filed before the Madhya Pradesh High Court had averred that the said documents stands cancelled and withdrawn. However, the plaintiffs are threatening the defendant to act and further create a third party interest in respect of the Suit Property on the basis of the said documents.

51. It is submitted that the defendant never received a sum of Rs. 2,80,000/- as part payment of the consideration under the said MOU, as alleged by the plaintiffs. It is also submitted that the defendant only received a sum of Rs. 2,70,000/- from the plaintiffs. It is further submitted that the defendant had returned the said sum of Rs. 2,70,000/- by way of demand draft bearing No. 533247 dated 22<sup>nd</sup> June 2004, to the plaintiffs. However, the same was returned by the plaintiffs to the defendant. It is submitted that the defendant is still willing to refund the said amount of Rs. 2,70,000/-.

52. It is submitted that to avoid any technicalities, the defendant revoked and cancelled the Powers of Attorney vide a registered deed of revocation of General Power of Attorney and Special Power of Attorney dated 26<sup>th</sup> April 2004.

53. It is submitted that the revocation of Powers of Attorney is duly registered before the Sub-Registrar, Delhi and the defendant also published





a public notice, thereto, in the English Daily 'The Hindu' on 1<sup>st</sup> July 2004. Furthermore, the defendant had also sent a legal notice to the plaintiffs reiterating that the said documents stands revoked.

54. It is submitted that as per the Clause 16 of the MOU, the said agreement is valid only if it is reviewed every year. However, the MOU was never reviewed after its execution, by the parties. Therefore, the MOU is deemed to have become invalid in terms of Clause 16 and parties thereto, are discharged from performing their obligations under the said MOU.

55. It is further submitted that the said MOU being void and revoked by the defendant, therefore, reliance cannot be placed on the same. The defendant does not have any transferable title with regard to the execution of the MOU. The said MOU, therefore, is a contingent contract under Sections 31 and 32 of the Indian Contract Act, 1872.

56. It is submitted that a contingent contract refers to the concept to do or not to do something if some event, collateral to such contract does or does not happen, cannot be enforced by the law. Therefore, the MOU being void, does not confer any right and title in favour of the plaintiffs in respect of the said property.

57. It is further submitted that the plaintiffs have themselves failed to abide by their obligations of maintaining and up keeping the suit property as provided under the contract which is evident from its deteriorated condition. Moreover, the plaintiffs failed to make the payment of the dues and taxes leading to further litigation before the MCD.

58. It is further submitted that the plaintiffs never pursued or defended litigations on behalf of the defendant and neither does the plaintiffs possess any right to defend the interest of the defendant in a Court of law. Since, the



defendant himself had to defend his own interest, he incurred the legal expenses in defending and pursuing the cases before various Courts.

59. It is submitted that the plaintiffs having no right or interest in the said property are not entitled to the relief as sought by them. It is denied that the plaintiffs have incurred any expenses in pursuance to the said MOU. It is also denied that the plaintiffs are entitled for any interest amount as alleged.

60. It is submitted that there haven't been any transactions between the parties as the agreement was null and void. Furthermore, it is denied that any cause of action arose in favour of the plaintiffs around 15<sup>th</sup> April 2004, and in pursuance of the said averment, there is no cause of action accrues in favour of the plaintiffs to file instant Suit.

61. In view of the submissions made in the foregoing paragraphs, learned senior counsel for the defendant prays that the Suit being devoid of any merit is liable to be dismissed.

### **ISSUES**

62. In the light of the aforesaid rival pleadings, following issues were framed by the learned predecessor bench of this Court (check) on 3<sup>rd</sup> September 2007. Further, vide an order dated 1<sup>st</sup> December 2012, the Division bench of this Court in FAO (OS) 175/2004, modified the issue No. 6 to the extent that 'GPA' word was included in it and the modified issue is also mentioned herein. The issues framed along-with the findings against each of them for the reasons to follow are reproduced below.

1. Whether the Plaintiff is entitled to specific performance of documents executed in his favour in respect of Property No. A-9/29, Vasant Vihar, New Delhi? OPP



2. If the Plaintiff is not entitled for specific performance, whether the Plaintiff is entitled for a money decree for recovery of Rs. 20,79,049/-? OPP
3. Whether the Plaintiff is entitled for interest? If so, on what amount, at what rate and for what period? OPP
4. Whether the Plaintiff is ready and willing to perform his part of the agreement? OPP
5. Whether the Plaintiff is entitled for a decree of permanent injunction as claimed by the Plaintiff? OPP
6. Whether the MOU, GPA and SPA dated 2<sup>nd</sup> December 1998 were revoked by the Defendants? If so, to what effect? OPD
7. Relief?

### **ANALYSIS AND FINDINGS**

63. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter and judicial pronouncements relied upon by the parties

64. At this stage, it is necessary for this Court to understand the scope and powers of a Court in a suit for specific performance of a contract. In ***Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512***, the following was observed by the Hon'ble Supreme Court:

*“28. It is thus clear that for a plaintiff to seek specific performance of a contract of sale relating to immovable property, and for a court to grant such specific performance, it is not necessary that the contract should contain a specific provision that in the event of breach, the aggrieved party will be entitled to specific performance. The Act makes it clear that if the legal requirements for seeking specific enforcement of a*



*contract are made out, specific performance could be enforced as provided in the Act even in the absence of a specific term for specific performance in the contract. It is evident from Section 23 of the Act that even where the agreement of sale contains only a provision for payment of damages or liquidated damages in case of breach and does not contain any provision for specific performance, the party in breach cannot contend that in view of specific provision for payment of damages, and in the absence of a provision for specific performance, the court cannot grant specific performance. But where the provision naming an amount to be paid in case of breach is intended to give to the party in default an option to pay money in lieu of specific performance, then specific performance may not be permissible.*

29. We may attempt to clarify the position by the following illustrations (not exhaustive):

(A). *The agreement of sale provides that in the event of breach by the vendor, the purchaser shall be entitled to an amount equivalent to the earnest money as damages. The agreement is silent as to specific performance. In such a case, the agreement indicates that the sum was named only for the purpose of securing performance of the contract. Even if there is no provision in the contract for specific performance, the court can direct specific performance by the vendor, if breach is established. But the court has the option, as per Section 21 of the Act, to award damages, if it comes to the conclusion that it is not a fit case for granting specific performance.*

(B). *The agreement provides that in the event of the vendor failing to execute a sale deed, the purchaser will not be entitled for specific performance but will only be entitled for return of the earnest money and/or payment of a sum named as liquidated damages. As the intention of the parties to bar specific performance of the contract and provide only for damages in the event of breach, is clearly expressed, the court may not grant specific performance, but can award liquidated damages and refund of earnest money.*



*(C). The agreement of sale provides that in the event of breach by either party the purchaser will be entitled to specific performance, but the party in breach will have the option, instead of performing the contract, to pay a named amount as liquidated damages to the aggrieved party and on such payment, the aggrieved party shall not be entitled to specific performance. In such a case, the purchaser will not be entitled to specific performance, as the terms of the contract give the party in default an option of paying money in lieu of specific performance.”*

65. It is evident from the reading of the aforementioned judgement passed by the Hon’ble Supreme Court that the law relating to specific performance as engrafted in the Act is an extremely important facet of civil law. The Act inter alia covers most aspects pertaining to the performance of contracts including the relief of injunction. Specific performance is an equitable relief granted by the Court to enforce contractual obligations between the parties. It is a remedy in performance as opposed to a claim seeking merely damages for the breach of a contract where pecuniary compensation is granted as relief for the failure to carry out the terms of the contract.

66. It may be apposite to note the undisputed facts of the case. By way of the present suit, the plaintiffs seek inter alia specific performance against the defendant and a direction from this Court to the defendant to transfer/assign/sell to the plaintiffs, the Suit Property i.e., the land admeasuring about 1200 square yards and structures thereto, bearing No. A-9/29, Vasant Vihar, New Delhi. Further, the plaintiffs have also made an alternative prayer seeking money amounting to Rs. 20,79,049/-, as a way of compensation.



67. It is the admitted case of the parties herein, that Late Shri Maharaja Surendra Sinh ji (the deceased older brother of the defendant) executed his last Will and testament dated 5<sup>th</sup> November 1984, which is marked as Exhibit P-7, wherein subject to certain bequests, the entire Suit Property was bequeathed in its entirety to the defendant. The said will was under challenge before the High Court of Madhya Pradesh in Probate Case bearing No. CS (OS) No. 1 of 1998. The said case was further adjudicated in the favour of the defendant vide judgment dated 7<sup>th</sup> May 2010.

68. In the interregnum of the said Probate Case, the plaintiffs and the defendant entered into an MOU which is marked as Exhibit P-1, where under the plaintiffs agreed to pay the expenses for protecting, preserving and maintaining the Suit Property. Pursuant to which, the defendant was unable to repay the expenses incurred by the plaintiffs towards protecting, preserving and maintaining the said Property, and it was agreed that the defendant shall assign and/or sell and/or dispose of all his interest in the Suit Property to which the defendant is entitled as the major beneficiary as per the Will of 1984, in favour of the plaintiff No. 1.

69. Along with the said MOU, the defendant also executed a General Power of Attorney dated 2<sup>nd</sup> December 1998, which is marked as Exhibit P-2 and a Special Power of Attorney dated 2<sup>nd</sup> December 1998, which is marked as Exhibit P-3, in favour of the plaintiff No. 2. It is also noted that the Powers of Attorney in favour of plaintiff No. 2 were, however, neither registered nor stamped.

70. It has been contended before this Court by the defendant that the said Powers of Attorney and MOU have been terminated in May 2003, and the



same was informed by the defendant to the High Court of Madhya Pradesh in the above said Probate Case.

71. This Court's attention is drawn to the fact that the cause of action for the present suit arose only when the revocation of the MOU came to the knowledge of the plaintiffs and hence, the present suit was filed. Further, the defendant executed a deed of revocation of MOU and the Powers of Attorney on 28<sup>th</sup> June 2004, and the said revocation has not been challenged before this Court.

72. On the basis of the pleadings and evidences on record, the issues framed will now be discussed.

#### **ISSUE NO. 1 & 4**

**Issue No. 1 - Whether the Plaintiff is entitled to specific performance of documents executed in his favour in respect of Property No. A-9/29, Vasant Vihar, New Delhi? OPP**

**Issue No. 4 - Whether the Plaintiff is ready and willing to perform his part of the agreement? OPP**

73. The above said issues will be discussed together since both relate to the plaintiffs' entitlement in seeking performance on the part of the defendant and willingness of the plaintiffs w.r.t the performance on their part. Evidently, both the issues will determine the plaintiffs' locus and right to seek the reliefs.

74. Before delving into the discussion on the issues mentioned hereinabove, it is important to first comment on the objection raised by the defendant that the MOU executed by him in favour of the plaintiffs' is not a valid contract. This contention of the defendant is not accepted by this Court



because it is explicit from the terms and conditions of the said Agreement that the parties were expressly intending to form a legally binding relationship, thereby, obligating themselves to perform their part of the contract. There is a clear intent on the part of the parties which is not in violation of the essentials mentioned under Section 10 of the Indian Contract Act, 1872.

75. Furthermore, the defendant has objected to the contention of the plaintiffs that the entire portion of the Suit Property is the subject matter of the instant Suit. The defendant has stated in his written statement that he is the owner to only 55% share of the property and not an absolute owner. The said contention of the defendant cannot be accepted as it is evident from the bare reading of the Will of 1984, that the defendant is the owner to the Suit Property and it is only the schedule of sale proceeds or the rental incomes out of the Suit Property that has been divided among various people is to be apportioned.

76. The next fundamental objection raised by the defendant is that the documents executed by him in favour of the plaintiffs are not valid due to the same being unstamped and unregistered. In this context, the Hon'ble Supreme Court in the matter of *S. Kaladevi v. V.R. Somasundaram*, (2010) 5 SCC 401, and *R. Hemalatha v. Kashthuri*, 2023 SCC OnLine SC 381, has clarified the dispute by stating that an unregistered agreement to sell can be admitted as an evidence in a suit for specific performance. Therefore, applying the principle of equity, the instant Agreement is also taken as a valid instrument executed between the parties.

77. Moreover, upon reading the terms and conditions of the Agreement, the intention of the parties is clear that the Agreement belongs to the sale of





the Suit Property. The execution of the same has not been denied by the defendant, though the defendant has pleaded coercion by the plaintiffs, to execute the MOU.

78. Now, adverting to the issues, the plaintiffs are seeking specific performance by pleading that they had performed and have also been ready, and willing to perform the essential terms of the MOU which are to be performed by them continuously from the duration of the date of the MOU till the date of institution of the present Suit.

79. In this regard, the legal position under Section 16 (c) of the Act is clear and explicit. Section 16 of the Act provides that specific performance of a contract cannot be enforced in favour of a person who would not be entitled to recover a compensation for its breach. According to Section 16(c), “readiness and willingness” on the part of the plaintiff is a condition precedent for obtaining relief of grant of specific performance. It also provides that a court may not grant the relief of specific performance to a plaintiff who has failed to aver and prove that he has performed or has always been ready and willing to perform his part of the agreement.

80. To adjudicate upon the issues mentioned hereinabove i.e., whether the plaintiffs are entitled for the relief of specific performance, this Court deems it fit to discuss the same by discussing the following:

- a. Plaintiffs’ readiness and willingness.
- b. Defendant’s readiness and willingness.
- c. Creation of third party interests.
- d. Any other factors, if any.

81. The abovementioned points of discussion are deliberated herein below.



### **Plaintiffs' readiness and willingness**

82. The plaintiff since the signing of the MOU, was ready and willing to perform the terms and conditions as stipulated therein. The conduct of the plaintiff makes it categorically clear that the plaintiff had complied with the terms of the MOU and never breached any of his obligations. On a bare perusal of the Complaint and evidence on record it becomes clear that the plaintiff has always been ready and willing to perform his part of the contract. In this regard, plaintiff No. 2 (PW-1) categorically deposed in its evidence and the same is also evident from the examination of the defendant.

83. It is prevalent from the undisputed facts that the MOU and Power of Attorneys were duly signed by the defendant. A bare perusal of the said documents reveals that the parties entered into a valid agreement that stipulated terms and conditions, thereby, agreeing to perform certain duties, as agreed upon.

84. It remains trite that the relief of specific performance is not a remedy of common law but is essentially in equity. Therefore, as per the Act, even while providing for various factors and parameters for the specific performance of the contract, it also provides for scenarios where the contracts are not specifically enforceable.

85. On a bare reading of the scheme enumerated in the provision of Section 16 of the Act, and going through the intent of the enactment, it is evident that no such bars as prescribed as per the provision apply to the instant suit. At this juncture, it is only pertinent to discuss the scope of the provision as to when a party to a particular contract becomes entitled to



enforce the contract before a court of law thereby seeking specific performance.

86. The Hon'ble Supreme Court in ***Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355***, has recently reiterated the scope and principles that a Court needs to follow while deciding upon an issue of entitlement in the suit for specific performance. It was held by the Hon'ble Supreme Court that the relief of specific performance of a contract can only be granted when the party claiming such relief shows its readiness and willingness to perform its obligations under the contract.

87. Therefore, this Court is of the view that to decide the entitlement of the plaintiffs, it is simultaneously necessary to decide the readiness and willingness of the plaintiffs.

88. This Court for the purpose of ascertaining readiness and willingness referred to Section 10 of the Specific Relief Act, 1963 which states as follows:

*“The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.”*

89. Section 16 (c) of the Specific Relief Act, 1963 states that,

*“Specific performance of a contract cannot be enforced in favour of a person-  
(c) [who fails to 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.”*



90. According to Webster's III New International Dictionary, 'being ready' means, "*prepared for something about to be done or experienced.... equipped or supplied with what is needed for some action or event.....prepared in mind or disposition so as to be willing and not reluctant: not hesitant: inclined, disposed.*" 'Willing' means, "*to be inclined or favourable disposed in mind*".

91. It has been mandated in ***C.L. Jain v Gopi Chand***, AIR 1990 Del 280, that readiness and willingness to perform a contract has to be a "continuous readiness and willingness" to perform the contract on his part from the date of the contract to the time of the hearing..

92. In the matter of ***Gomathinayagam Pillai v. Palaniswami Nadar***, (1967) 1 SCR 227, it has been held by the Hon'ble Supreme Court that in a specific performance suit, the plaintiff is required to establish that he has been willing to perform the conditions obligated upon him under the contract since the date of entering into the contract till the date of instituting the suit. The same principle has also been recapitulated by the Hon'ble Court in the judgment of ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao & Ors.***, (1995) 5 SCC 115. The Hon'ble Supreme Court in the said judgment has held that in order to appreciate the plaintiff's readiness and willingness in performing his part of obligations and duties with regard to the contractual conditions, the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. The relevant paragraph is reproduced below:

*"5. The 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 the contract.”*

93. Furthermore, in ***Anglilase Yohannan v. Ramlatha, (2005) 7 SCC 534***, it has been held by the Hon’ble Supreme Court that relief in the nature of specific performance of the contract must be warranted to the plaintiff if the same is evident from the conduct of the plaintiff. In addition, it is also the conduct of the defendant that has to be considered. The grant of relief must not only be based upon the scrutiny of the plaint, written statement, or the examination in chief. The said principle of ‘Unblemished Conduct’ was also upheld in ***Umabai v. Nilkanth Dhondiba Chavan, 2019 SCC OnLine SC 203***.

94. Adverting to the instant suit, this Court has referred to the following documents and witnesses to decide the plaintiff’s readiness and willingness. The same has been reproduced below:

- a. Mr. Sharad Sanghi (PW1) - The plaintiff No.2 (before substitution)



in the present Plaintiff. He is a signatory to the Agreement dated 2<sup>nd</sup> December 1998, and the attorney holder for the General Power of Attorney and Special Power of Attorney dated 2<sup>nd</sup> December 1998. He has been deposed about the facts as pleaded in the Plaintiff. Further, PW1- was also cross-examined in respect of the balance sheet of plaintiff No. 1, in reference to the amounts paid and expenses incurred by plaintiffs in compliance with the MOU and where it is shown in the balance sheet.

- b. Mr. M.K. Pandit (PW2) – He was an accountant with the plaintiff No. 1 Company and has deposed regarding the financial expenditure/payments done in pursuance to the Agreement dated 2<sup>nd</sup> December 1998.
- c. Statement of expenses incurred by the plaintiffs on behalf of the defendant (EX PW 2/1 to PW 530).
- d. Letter dated 27<sup>th</sup> April 1999, addressed by M/s Dadachandji Co. to the plaintiffs – Regarding the development of Transfer Petition before Hon’ble Supreme Court (DW-1/P1).
- e. Letter dated 20<sup>th</sup> July 2001 written by defendant to Mr. B.R. Nima, Chief Accountant of plaintiff no. 1 (DW-1/P4) - For stopping the payment till reconciliation of accounts.
- f. Letter dated 2<sup>nd</sup> September 2001 written by defendant to Mr. M.K Pandit, Accounts manager of plaintiff No. 1 (DW-1/P5) – Regarding the statement of expenses.
- g. Letter dated 3<sup>rd</sup> November 2001 written by Mr. Raveesh Bafna, a functionary of the plaintiff to the defendant (DW-1/P6) – Regarding the development of Probate matter.



- h. Letter dated 11<sup>th</sup> March 2003 written by Mr. Raveesh Bafna, General manager to the defendant (DW-1/P14) – Regarding the withdrawal of security due to appointment of receiver.
- i. Reply dated 17<sup>th</sup> February 2004 (DW-1/P16), reply by filed by plaintiff no. 2 before the Madhya Pradesh High Court on the show cause notice – Regarding the issue of Chowkidar named Ashok.
- j. Cross-examination dated 18<sup>th</sup> November 2017, of DW-1.

95. This Court is of the view that the plaintiffs have, to some extent, shown their readiness and willingness to perform their duty and obligations in accordance with the terms enumerated in the MOU. Following acts of the plaintiffs embark upon the willingness to perform:

- k. The plaintiffs had till the first week of March 2003, made arrangements for the security by appointing of three security guard of the Suit Property.
- l. The plaintiffs also paid the defendant a sum of Rs 15,000/- per month as consultancy fees for the duration of December 1998 till May 2000, amounting to Rs. 2,70,000/.
- m. The plaintiffs paid a sum of Rs 10,000/- per month to the defendant in the form of monthly allowance and as part payment of the consideration under the MOU. The said payments were made since December 1998, till March 2001.
- n. The plaintiffs have incurred the expenses on account of litigation charges.

96. This Court while perusing the records of the Suit as mentioned hereinabove is of the view that acts done on behalf of the plaintiffs in pursuance to the MOU, is sufficient to prove the readiness and willingness



on its part. The cross-examination and documents exhibited before this Court can be considered to be the acts of plaintiffs to perform their part in pursuance of the MOU.

**Defendant's readiness and willingness & Creation of third party interests.**

97. At this stage, it is relevant to consider the developments that have been made during the pendency of this Suit. It is observed that vide several interim orders dated 31<sup>st</sup> January 2005, 22<sup>nd</sup> January 2008, and 27<sup>th</sup> April 2015, this Court had directed the defendant not to create any third-party interest in the Suit Property by granting a stay.

98. The said stay was made absolute vide order dated 22<sup>nd</sup> January 2008 by the predecessor Bench of this Court. But the defendant in gross violation of this Court's order has already sold the property to one Mr. RC Agarwal for a sum of Rs. 4.50 Crores, who is also a respondent in an interim application bearing I.A No. 820/2015 pending before this Court.

99. It has further come to light that the possession of the Suit Property has been taken by Mr. R.C Agarwal on 4<sup>th</sup> February 2011. Further, a Sale Deed dated 5<sup>th</sup> April 2010, was also executed by the defendant in favour of Mr. R.C Agarwal. The defendant has received the full and final sale consideration of the said original Sale Deed which has been placed in the custody of this Court vide the order dated 30<sup>th</sup> August 2012.

100. In view of the above-mentioned judgments, it is apparent that the view taken by the Court is applicable to the instant Suit. The MOU in the instant Suit was executed in the year 1998. Since then, almost 25 years have elapsed. The performance of the contract would involve considerable hardship on the parties. The same is being said considering that a third-party





interest has been created to such an extent that the revocation of that contract would lead to an increase in hardships warranting unjustified litigations.

101. Even otherwise, according to the provisions of Section 12 of the Act, the general rule is that the Court should not direct specific performance of a part of the contract when the contract becomes either ‘wholly or partly incapable of performance’. The specific performance of the part of a contract can be directed only where the part which is left unperformed bears a small portion to the whole in value. In the present case, the part which is to be left unperformed bears substantial part the whole house, therefore, under the circumstances of the instant case, this Court do not consider it appropriate to pass the decree as prayed, thereby, directing the performance of the MOU.

102. In view of the above discussion of facts and circumstances even if it is accepted that the plaintiffs had been ready and willing to perform their part of the contract, in view of the fact that a long time has elapsed, the portion of the property against which specific performance has been sought, cannot be granted. The law in this regard is settled. The readiness and willingness of both the parties to the Contract has to be continuous and there cannot be any gap in the said conduct, on behalf of either of both the parties. In the instant Suit, it is evident from the conduct of the defendant that there is no continuity in his readiness and willingness which is also supported by the developments that have occurred in regard to the Suit Property.

103. Although, the plaintiffs’ conduct has been unblemished all along the way but the same cannot be said for the defendant. The conduct of the plaintiff since his statement made before the Madhya Pradesh High Court



has been evidently showing his unacceptance towards the performance of his part of the obligations under the MOU. Further, the defendant executed the revocation of Power of Attorney deed dated 28<sup>th</sup> April 2004, thereby revoking the Special Power of Attorney and General Power of Attorney. Moreover, the defendant also published a public notice thereto, in the English Daily 'The Hindu' on 1<sup>st</sup> July 2004, in pursuance to the said revocation and also sent legal notice to the plaintiffs reiterating that the said documents stand revoked.

104. It is also apparent from the conduct of the defendant that even after the stay on the Suit Property was made absolute, the defendant still in blatant violation of this Court had created third party interests.

**Any other factors, if any**

105. It is a settled law that the specific performance is not granted by the Courts due to the various hardships which may be caused to the opposite party in case the specific performance is granted.

106. Furthermore, in the cases concerning immovable property irrespective of the fact whether time is of the essence or not as per the terms of the contract, the Court may infer that it is to be performed in a reasonable time. Time is not an essence of the Contract, in case of immovable property evolved in times when the prices and values were stable and inflation was unknown, however, in the present days where the prices of the property increases in a multi-fold manner, this factor plays an important role.

107. The Hon'ble Supreme Court in the judgment of *Nanjappan v. Ramasamy*, (2015) 14 SCC 341 citing the case of *Saradamani Kandappan v. S. Rajalakshmi*, [(2011) 12 SCC 18], has observed that though the decree for specific performance is discretionary, yet the court is



not bound to grant such a relief merely because it is lawful to do so. The jurisdiction of decreeing specific performance is the discretion of the Court and it depends upon facts and circumstances of each case. The Court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen as well. Furthermore, the Hon'ble Supreme Court held that the Court has to see the totality of the circumstances, conduct of the parties and their respective interests under the contract while granting/refusing such relief. The relevant paragraphs of *Nanjappan (Supra)* has been reproduced herein:

*“11. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.”*

*12. In Sardar Singh v. Krishna Devi [(1994) 4 SCC 18] , this Court observed that as the court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief.*

*13. The first sale agreement was executed on 30-9-1987 about twenty-seven years ago. The property is situated in Coimbatore City and over these years, value of property in Coimbatore City would have considerably increased. In Saradamani*



*Kandappan v. S. Rajalakshmi [(2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104] , this Court has held that the value of the property escalates in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, the first agreement was executed on 30-9-1987 i.e. twenty-seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondent-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his family members.”*

108. In light of the aforementioned, the Courts have consistently held that equity needs to be balanced to exercise the discretion of granting specific performance. The Court has to look into the probable consequences of granting such specific performance.

109. In the present scenario, as observed above, the Suit Property has already been sold to a third party i.e. Sh. R.C Agarwal on 5<sup>th</sup> April 2010. Moreover, the present valuation of the property has steeply increased to Rs. 60 crores. The said increase in the value of the Suit Property as mentioned in the cross examination of PW-1, is a drastic increase in comparison to the value ascertained by the parties in dispute before this Court i.e. Rs. 2.5 Crore. This Court cannot grant the specific performance by payment of Rs. 2.50 Crores by plaintiff to the defendant since the price of the property has increased substantially.

110. This Court is of the view that apart from the ground of equity, the steep increase in the price of the property in dispute is a contributing factor for not granting specific performance. The property price in the year of institution of suit i.e. 2004 has substantially increased to Rs. 60 crores.



111. In view of the material which has been placed on record, it is indicated that a third-party interest has been created in the property against which the plaintiff is seeking specific performance. Such a circumstance makes it inequitable to grant and enforce the specific performance decree. The said observation is made to balance the interests of justice and equity for the parties involved. Hence, the decree for specific performance is not to be granted.

112. This Court is further of the view, that there will be undue hardship caused to the defendant as well as to the third party who purchased the property in dispute, in case the plaintiff is granted specific performance. Taking into consideration the facts of the case, this Court is of the view that the plaintiff may have been entitled to the relief as claimed for specific performance in the year 2004. However, presently, the plaintiff cannot be granted the relief of specific performance by this Court due to the defendant's conduct of not adhering to the terms of the MOU entered into between him and the plaintiffs, creation of third- party interests and the other factors involved, as discussed hereinabove.

113. In view of the above, it is therefore held that the plaintiffs are not entitled for the decree of specific performance of contract.

114. Thus, issue nos. 1 and 4 are accordingly decided.

### **ISSUE NO. 2 & 3**

**Issue No. 2 - If the Plaintiff is not entitled for specific performance, whether the Plaintiff is entitled for a money decree for recovery of Rs. 20,79,049/-? OPP**

**Issue No. 3 - Whether the Plaintiff is entitled for interest? If so, on what amount, at what rate and for what period? OPP**



115. The aforesaid issues shall be dealt together by this Court since, both the issues relate to whether the plaintiffs are entitled to the money decree in terms of compensation or not and in the event the plaintiffs are held to be entitled, then, this Court shall delve into the aspect of the amount of interest that will accrue, the rate at and the duration for which such interest has to be paid by the defendant.

116. As per the facts of the case, the plaintiffs have, in the alternative sought a prayer (B) for being compensated for all the expenses incurred plaintiffs amounting to Rs 20,79,049/- along with the interest at the rate of 18 % p.a., in case, the Court adjudicates that a specific performance decree cannot be granted to the plaintiffs. The prayer has been reproduced as below:

*“b) If this Hon'ble Court were pleased not to grant a decree for specific performance pass a decree for payment of money in favour of the Plaintiffs and against the Defendants in the sum of Rs 20,79,049/alongwith interest @ 18% p.a. from the date of the suit and till the date of actual realization of the same; and”*

117. The aforesaid issues have been sub- divided in the following sub-issues:

*(i) Whether the compensation can be granted in lieu of specific performance by this court?*

*(ii) If such compensation can be granted, what will be the quantum of compensation payable by the defendant to the plaintiffs?*

118. Adverting to the sub-issue (i) - *whether the compensation can be granted in lieu of specific performance by this Court?*

119. At the outset, it is pertinent to deal with the issue of prospective applicability of 2018 amendment of the Act. Recently, in ***Katta Sujatha***



***Reddy v. Siddamsetty Infra projects (P) Ltd., 2022 SCC OnLine SC 1079***, the Hon’ble Supreme Court has held that the 2018 amendment to the Act is prospective in nature and hence, the same cannot be applied to those transactions that took place prior to its coming into force. It was further held that the amendment is not merely a procedural enactment; rather it is substantive in nature, and therefore, would not have any retrospective applicability. Since the instant Suit involves issues with regard to the transactions that took place in the year between the year 1998 to 2004, hence the 2018 amendment of the Act is not applicable to the instant suit.

120. Section 20 of the Act provides that to grant the decree of specific performance is discretionary upon the Court. Such discretion has to be exercised by the Court in accordance with the peculiar facts of the case and judicial principles. The un-amended provision of Section 20 of the Act has been reiterated below for reference as follows:

*“20. Discretion as to decreeing specific performance.—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.*

*(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—*

*(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*

*(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*



*(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.*

*Explanation I.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).*

*Explanation II.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

*(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.*

*(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.”*

121. The Hon’ble Supreme Court has enunciated the principle governing the Section 20 of the Act in the judgment of **Jayakantham v. Abaykumar, (2017) 5 SCC 178**, and the relevant provision has been reproduced as hereunder;

*“7. While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is “sound and reasonable”, to be “guided by judicial principles”. The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of*





*appellate courts. Sub-section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. Sub-section (2) of Section 20 is in the following terms:*

*“20. (2) The following are cases in which the court may properly exercise discretion not to decree specific performance—*

- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*
- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;*
- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.”*

*8. However, Explanation 1 stipulates that the mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, will not constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Moreover, Explanation 2 requires that the issue as to whether the performance of a contract involves hardship on the defendant has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.*

*9. The precedent on the subject is elucidated below:*

*9.1. In Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son [Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's*



*Son, 1987 Supp SCC 340 : AIR 1987 SC 2328] , this Court held that : (SCC p. 345, para 14)*

*“14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.”*

**9.2.** *A similar view was adopted by this Court in Sardar Singh v. Krishna Devi [Sardar Singh v. Krishna Devi, (1994) 4 SCC 18] : (SCC p. 26, para 14)*

*“14. ... Section 20(1) of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive. The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract.”*

**9.3.** *Reiterating the position in K. Narendra v. Riviera Apartments (P) Ltd. [K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77] , this Court held thus : (SCC p. 91, para 29)*

*“29. ... Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such*



*hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognised in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* [*Lourdu Mari David v. Louis Chinnaya Arogiaswamy*, (1996) 5 SCC 589] by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.”*

**9.4.** *These principles were followed by this Court in *A.C. Arulappan v. Ahalya Naik* [*A.C. Arulappan v. Ahalya Naik*, (2001) 6 SCC 600] , with the following observations : (SCC pp. 604 & 606, paras 7 & 15)*

*“7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also,*



*specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.*

\*\*\*

*15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. ...”*

**9.5.** *A Bench of three Judges of this Court considered the position in *Nirmala Anand v. Advent Corpn. (P) Ltd.* [*Nirmala Anand v. Advent Corpn. (P) Ltd.*, (2002) 8 SCC 146], and held thus : (SCC p. 150, para 6)*

*“6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As*



*a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”*

122. In the light of the aforementioned judgment and the provision mentioned above, it is a settled law that the grant of the remedy of specific performance is a discretionary one. The party claiming such specific relief may be entitled to such specific performance but the Court has the discretion not to grant such specific relief. Such discretion, though, must be exercised by the Court with cogent reasoning and not arbitrarily. Since, the Court has to look into not only the facts as on the date of the institution of suit but also the conduct and rights of the parties, The Court has to award such relief which balances the rights of various parties.

123. Section 21 of the Act enunciates the scenario when the Court can award compensation. Under Section 21(3) of the Act, it is stated that in the event, where the Court adjudicates that specific relief cannot be granted to the party claiming such relief, due to a breach of the contract by the other party, the Court may grant a compensation as it deems fit. As per Section 21 (5) of the Act, in a suit for specific performance, the plaintiff cannot be awarded compensation unless the plaintiff claims the same. The plaintiff can



claim such compensation at any stage of the proceeding and the Court shall then allow such compensation to him. The relevant provisions have been reiterated below for reference:

*“21. Power to award compensation in certain cases*

*(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.*

*(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.*

*(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).*

*(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.*

*Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.”*

124. The principle governing Section 21 of the Act has been reiterated by the Hon’ble Supreme Court in the judgment of ***Shamsu Suhara Beevi v. G. Alex***, (2004) 8 SCC 569, and the relevant observations are as follows:



*“10. Sub-sections (4) and (5) of Section 21 seem to resolve certain divergence of opinion in the High Courts on some aspects of jurisdiction to the award of compensation. The Law Commission in its Ninth Law Commission Report dated 19-7-1958 (pp. 18 and 19) observed that there had been a difference of judicial opinion as to whether the court has the power to award compensation in a suit for specific performance, where the plaintiff has not specifically prayed for it in the plaint. The Lahore High Court has taken the view in Arya Pradeshak Pritinidhi Sabha v. Lahori Mal [ILR (1924) 5 Lah 509 : AIR 1924 Lah 713] that the Court has the power to award damages whether in substitution for or in addition to specific performance even though the plaintiff has not specifically claimed it in the plaint. The Madras High Court took a contrary view in Somasundaram Chettiar v. Chidambaram Chettiar [AIR 1951 Mad 282 : (1950) 2 MLJ 509] and held that the court cannot award damages in addition to specific performance in the absence of a specific claim for damages and a proper pleading stating why the relief of specific performance would be insufficient to satisfy the justice of the case and the amount which should be awarded. The Law Commission recommended that the view expressed by the High Court of Madras appeared to be based on the principle that there should be a proper pleading in every case. While it is proper that the court should have full discretion to award damages in any case it thinks fit, one cannot, on the other hand, overlook the question of unfairness and hardship to the defendant, if a decree is passed against him, without a proper pleading. The Commission accordingly recommended that in no case should compensation be decreed unless it is claimed by a proper pleading. However, it should be open to the plaintiff to have an amendment, at any stage of the proceeding, in order to introduce a prayer for compensation, whether in lieu of or in addition to specific performance. The legislature accepted the suggestions made by the Law Commission of India and accepted the view expressed by the High Court of Madras to the effect that the court cannot award compensation in addition to specific performance in the absence of a specific claim for*



*damages and a proper pleading stating why the relief of specific performance would be insufficient to satisfy the justice of the case and the plaintiff would not be entitled to compensation.”*

125. As per the Section 20 and Section 21 of the Act, this Court is vested with the discretion to award compensation to the party aggrieved in lieu of the specific performance. The above said principle has also been enunciated in a catena of judgments which have been discussed herein below.

126. Further, this Court has recently reiterated the principle in the judgment of ***Universal Petro-Chemicals Ltd. v. B.P. PLC, (2022) 6 SCC 157***, and the same has been reproduced below:

*“29. The scope of Sections 21(4) and (5) was examined by this Court in Shamsu Suhara Beevi v. G. Alex [Shamsu Suhara Beevi v. G. Alex, (2004) 8 SCC 569] . This Court referred to the Law Commission of India's recommendation that in no case the compensation should be decreed, unless it is claimed by a proper pleading. However, the Law Commission was of the opinion that it should be open to the plaintiff to seek an amendment to the plaint, at any stage of the proceedings in order to introduce a prayer for compensation, whether in lieu or in addition to specific performance. In the said case no claim for compensation for breach of agreement of sale was claimed either in addition to or in substitution of the performance of the agreement. Admittedly, there was no amendment to the plaint asking for compensation either in addition or in substitution of the performance of an agreement of sale. In such background, this Court held as follows : (SCC p. 576, para 11*

*“11. ... In our view, the High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or by amending the same at any later stage of the proceedings to include the*





*relief of compensation in addition to the relief of specific performance. Grant of such a relief is in the teeth of express provisions of the statute to the contrary is not permissible. On equitable considerations court cannot ignore or overlook the provisions of the statute. Equity must yield to law.”*

**30.** *On a careful consideration of the judgments of this Court relied upon by the learned Senior Counsel for the appellant and the learned counsel for the respondents, we are of the view that the appellant is not entitled to claim damages for the period between 24-8-2005 and 31-12-2009.*

**31.** *The learned Single Judge expressly mentioned in his judgment that the appellant did not claim any relief for damages. Even in the appeal filed by the appellant, no relief for damages was claimed by the appellants. In fact, it was a specific submission on behalf of the appellant before the Division Bench that no relief in the nature of damages and/or compensation could be granted. It was submitted that it was difficult to quantify such damages/compensation as neither the anticipated loss of business nor could estimated value of the goodwill be prospectively assessed. It might be true that the appellant was interested in the relief of specific performance of the collaboration agreement when he filed the special leave petition in 2008 as the collaboration agreement subsisted till 31-12-2009. However, even thereafter no steps were taken by the appellant to specifically plead the relief of damages or compensation.*

127. Furthermore, the Hon’ble Supreme Court in the judgment of ***Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647***, which was further relied by Hon’ble Court in ***Urmila Devi v. Mandir Shree Chamunda Devi, (2018) 2 SCC 284***, has dealt with the aspect of compensation to be granted in cases where the relief of specific performance is not allowed. The relevant paragraphs of the above said judgment are as follows:



*“16. So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under Section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case Section 73 of the Contract Act is invoked. This amendment is under the discipline of Rule 17 Order 6, CPC. The fact that sub-section (4), in turn, invokes Section 73 of the Indian Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction.*

*17. The provisions of Section 21 seem to resolve certain divergencies of judicial opinion in the High Courts on some aspects of the jurisdiction to award of compensation. Sub-section (5) seeks to set at rest the divergence of judicial opinion between High Courts whether a specific claim in the plaint is necessary to grant the compensation. In England Lord Cairn's (Chancery Amendment) Act, 1858 sought to confer jurisdiction upon the Equity Courts to award damages in substitution or in addition to specific performance. This became necessary in view of the earlier dichotomy in the jurisdiction between common law and Equity Courts in the matter of choice of the nature of remedies for breach. In common law the remedy for breach of a contract was damages. The Equity Court innovated the remedy of specific performance because the remedy of damages was found to be an inadequate remedy. Lord Cairn's Act, 1858 conferred jurisdiction upon the Equity Courts to award damages also so that both the reliefs could be administered by one court. Section 2 of the Act provided:*

*“2. ... in all cases in which the Court of Chancery has jurisdiction to entertain an application for specific performance of any covenant, contract or agreement it*



*shall be lawful for the same Court if it shall think fit to award damages to the party injured either in addition to or in substitution for such specific performance and such damages may be assessed as the Court shall direct.”*

**18.** *This is the historical background to the provisions of Section 21 of the Specific Relief Act, 1963 and its predecessor in Section 19 of the 1877 Act.*

**19.** *In Mohamad Abdul Jabbar v. Lalmia [AIR 1947 Nag 254 : 1947 NLJ 253 : ILR 1947 Nag 328] specific performance of an agreement of sale dated January 16, 1934, was sought by the institution of a suit on January 15, 1937. During the pendency of the suit, on April 20, 1937, the provincial government started land acquisition proceedings respecting the subject matter of the suit and the same was acquired. The High Court upheld the dismissal of the suit for specific performance and referred an amendment for award of damages. On the obvious impermissibility of specific performance the Nagpur High Court said: (AIR p. 256, para 14)*

*“We accordingly conclude that specific performance is now impossible and we cannot decree it for ‘equity like nature does nothing in vain’. We cannot hold the plaintiffs-appellants entitled to the compensation money into which the property was converted because they had no right nor interest in that property....”*

**20.** *Refusing the amendment for the relief for payment of money the High Court held: (AIR p. 256, para 14)*

*“We would not allow amendment also because on the facts found by the trial court (with which we see no reason, whatever, to differ) we would have refused specific performance, and the claim for damages on this account would also have been negated because damages could have been awarded only if specific performance could rightly have been claimed. The appeal, therefore, fails and is dismissed with costs.”*

**21.** *Support for these conclusions was sought from the oft-quoted, but perhaps a little misunderstood, case of Ardeshir H. Mama v. Flora Sassoon [AIR 1928 PC 208 : 55 IA 360 : 52*



*Bom 597] . The passage in Sassoon case [ Id. p. 217] relied upon by the Nagpur High Court is this: (AIR p. 256, para 10)*

*“In a series of decisions it was consistently held that just as its power to give damages additional was to be exercised in a suit in which the Court had granted specific performance, so the power to give damages as an alternative to specific performance did not extend to a case in which the plaintiff had debarred himself from claiming that form of relief, nor to a case in which that relief had become impossible.*

*The case of Sassoon [AIR 1928 PC 208 : 55 IA 360 : 52 Bom 597] fell within the first category of cases described above under the alternative relief of damages. This case falls within the second part where the relief of specific performance has become impossible.”*

*(emphasis supplied)*

*22. The second part of the observation of the Nagpur High Court, with great respect to the learned Judges proceeds on a fallacy resulting from the non-perception of the specific departure in the Indian law. In Lord Cairn's Act, 1858 damages could not be awarded when the contract had, for whatever reason, become incapable of specific performance. But under the Indian law the explanation makes a specific departure and the jurisdiction to award damages remains unaffected by the fact that without any fault of the plaintiff, the contract becomes incapable of specific performance. Indeed, Sassoon case [AIR 1928 PC 208 : 55 IA 360 : 52 Bom 597] is not susceptible of the import attributed to it by the Nagpur High Court. Sassoon case [AIR 1928 PC 208 : 55 IA 360 : 52 Bom 597] itself indicated the departure made in Indian law by the Explanation in Section 19 of the 1877 Act, which is the same as the Explanation to Section 21 of the 1963 Act. The Judicial Committee, no doubt, said that Section 19 of the 1877 Act “embodies the same principle as Lord Cairn's Act and does not any more than did the English statute enable the court in a specific performance suit to award ‘compensation for its breach’ where at the hearing the plaintiff debarred himself by his own action from asking for a specific decree”.*



*But what was overlooked was this observation of Lord Blanesburgh: (AIR p. 218)*

*“except as the case provided for in the Explanation — as to which there is introduced an express divergence from Lord Cairn's Act, as expanded in England....”*

*(emphasis supplied)*

*27. The measure of the compensation is by the standards of Section 73 of the Indian Contract Act. Here again the English rule in Bain v. Fothergill [(1874) LR 7 HL 158 : 31 LT 387] that the purchaser, on breach of the contract, cannot recover for the loss of his bargain is not applicable. In Pollock & Mulla on Contract (10th edn.) the law on the matter is set out thus: (p. 663)*

*“Where, therefore, a purchaser of land claims damages for the loss of his bargain, the question to be decided is whether the damages alleged to have been caused to him ‘naturally arose in the usual course of things from such breach’; and in an ordinary case it would be difficult to hold otherwise.”*

*28. Learned authors adopt the following observations of Farran C.J. in Nagardas v. Ahmedkhan [(1895) 21 Bom 175] :*

*“The legislature has not prescribed a different measure of damages in the case of contracts dealing with land from that laid down in the case of contracts relating to commodities.”*

*29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.”*

128. In the present Suit, the plaintiffs have prayed for grant of compensation in lieu of specific performance. As mentioned hereinabove,



this Court has not granted the relief of specific performance to the plaintiffs, therefore, it is held that in terms of Section 20 and 21 of the Act and the judgements relied upon, the plaintiffs is entitled for the grant of compensation.

129. As discussed in the above issue nos. 1 and 4, the petitioner is not entitled to the relief of specific performance. However, in view of Section 21 of the Act, which states that the plaintiffs can alternatively pray for the compensation in lieu of the specific performance, this Court is of the view that the plaintiffs can claim such compensation and the said claim is, hereby, allowed.

130. Accordingly, it is decided that the petitioner is entitled for the compensation in lieu of the specific performance.

### **QUANTUM OF COMPENSATION**

131. Now adverting to the sub-issue (ii) - *If such compensation can be granted, what will be the quantum of compensation payable by the defendant to the plaintiffs?*

132. Another aspect which needs to be considered by this Court is the quantum of the compensation to be granted to the plaintiffs. As per Section 21 of the Act, for determination of the quantum of compensation, the Court shall adhere to Section 73 of the Indian Contract Act, 1872. The relevant part of Section 21 of the Act has been reiterated below for reference:

*“(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).”*



133. Under Section 73 of the Indian Contract Act, 1872, the damages are calculated on the basis of the remoteness and hence, the same will be granted to the extent of such damages which have been suffered by the plaintiff.

134. The above said principle has been discussed by the Hon'ble Supreme Court in the judgment of ***Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647***, the relevant of the same are paragraphs are as follows:

*27. The measure of the compensation is by the standards of Section 73 of the Indian Contract Act. Here again the English rule in Bain v. Fothergill [(1874) LR 7 HL 158 : 31 LT 387] that the purchaser, on breach of the contract, cannot recover for the loss of his bargain is not applicable. In Pollock & Mulla on Contract (10th edn.) the law on the matter is set out thus: (p. 663)*

*“Where, therefore, a purchaser of land claims damages for the loss of his bargain, the question to be decided is whether the damages alleged to have been caused to him ‘naturally arose in the usual course of things from such breach’; and in an ordinary case it would be difficult to hold otherwise.”*

*28. Learned authors adopt the following observations of Farran C.J. in Nagardas v. Ahmedkhan [(1895) 21 Bom 175] :*

*“The legislature has not prescribed a different measure of damages in the case of contracts dealing with land from that laid down in the case of contracts relating to commodities.”*

135. In view of the aforementioned judgment, it is a well- settled principle that the Court shall award only such damages which has been suffered by the party. The burden of proof in regard to the same, shall lie on the party which is claiming such damages.



136. This Court is of the view that the plaintiffs are entitled to the relief of compensation as prayed in prayer (ii) and therefore, the plaintiffs' damages have to be ascertained by following the principles enumerated under Section 73 of the Indian Contract Act, 1872.

**PRINCIPLE REGARDING BURDEN OF PROOF FOR CLAIM OF DAMAGES**

137. This Court, for deciding the quantum of compensation, shall now deal with the aspect of burden of proof which the plaintiffs must discharge for being entitled to the compensation sought in the plaint.

138. Section 102 of the Indian Evidence Act, 1872, has been reiterated below for the reference of this Court:

*“102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”*

139. In light of the aforementioned provision, w.r.t. the burden of proof, it is enunciated that the said burden lies on the person who will suffer the consequences, in the event it is found that there is no evidence at all.

140. The principle of *onus probandi* is followed in deciding the burden of proof of the evidences. The general principle behind the said principle is that a party, who alleges the affirmative of any proposition, shall prove it. The onus of proof lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant. The burden of proof in civil cases is of preponderance of events, unlike the criminal cases, wherein, the burden of proof is based on the principle of proving beyond a reasonable doubt.





141. The Hon'ble Supreme Court has dealt with the aforesaid principle in detail in the judgment of ***Mahesh Dattatray Thirthkar v. State of Maharashtra, (2009) 11 SCC 141***, and has held as follows:

*“46. Coming to the findings of the High Court regarding the inconsistency and infirmity in the testimony of the witnesses produced by the appellant for examination, it is emphasised that the burden of proof in civil cases is that of “balance of probability” and not that of “beyond reasonable doubt”. Thus minor inconsistencies in evidence are not relevant in civil cases in considering the question of discharge of this burden. This principle has been reiterated by this Court in a number of decisions, namely, Sarjudas v. State of Gujarat [(1999) 8 SCC 508 : 1999 SCC (Cri) 1501 : AIR 2000 SC 403] and State of Rajasthan v. Netrapal [(2007) 4 SCC 45 : (2007) 2 SCC (Cri) 187].*

*47. Further, all inconsistencies in evidence cannot impeach the credit of the witness and hence reliability of its testimony. It has been held by this Court in Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] that only contradictory statements would so affect the witnesses' credit. We are of the opinion that the inconsistencies pointed out by the High Court in the evidence adduced by the appellant are only minor inconsistencies and do not warrant non-reliance on the same.”*

142. Furthermore, the principle of burden of proof in a civil case has also been enunciated in the case of ***Narayan Govind Gavate v. State of Maharashtra, (1977) 1 SCC 133***, wherein the Hon'ble Court held as provided hereunder;

*“16. In Phipson on Evidence (11<sup>th</sup> Edn.) (at p. 40, para 92), we find the principles stated in a manner which sheds considerable light on the meanings of the relevant provisions of our Evidence Act:*

*“As applied to judicial proceedings the phrase ‘burden of proof’ has two distinct and frequently confused meanings:*



*(1) the burden of proof as a matter of law and pleading — the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond a reasonable doubt; and (2) the burden of proof in the sense of adducing evidence.”*

*It is then explained:*

*“The burden of proof, in this sense, rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. ‘It is an ancient rule founded on considerations of good sense, and it should not be departed from without strong reasons.’ It is fixed at the beginning of the trial by the state of the pleadings, and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleadings place it, and never shifting in any circumstances whatever. If, when all the evidence, by whomsoever introduced, is in, the party who has this burden has not discharged it, the decision must be against him.”*

*17. The application of rules relating to burden of proof in various types of cases is thus elaborated and illustrated in Phipson by reference to decided cases (see p. 40, para 93):*

*“In deciding which party asserts the affirmative, regard must of course be had to the substance of the issue and not merely to its grammatical form, which later the pleader can frequently vary at will, moreover a negative allegation must not be confounded with the mere traverse of an affirmative one. The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him; e.g. in an action against a tenant for not repairing according to covenant, or against a horse-dealer that a horse sold with a warranty is unsound, proof of these allegations is on the plaintiff, so in actions of malicious prosecution, it is upon him to show not only that the defendant prosecuted him unsuccessfully, but also the absence of reasonable and probable cause; while in actions for false imprisonment, proof of the existence of reasonable cause is upon the defendant, since*



*arrest, unlike prosecution, is prima facie a tort and demands justification. In bailment cases, the bailee must prove that the goods were lost without his fault. Under the Courts (Emergency Powers) Act, 1939, the burden of proving that the defendant was unable immediately to satisfy the judgment and that that inability arose from circumstances attributable to the war rested on the defendant. But it would seem that in an election petition alleging breaches of rules made under the Representation of the People Act, 1949, the court will look at the evidence as a whole, and that even if breaches are proved by the petitioner, the burden of showing that the election was conducted substantially in accordance with the law does not rest upon the respondent. Where a corporation does an act under statutory powers which do not prescribe the method, and that act invades the rights of others, the burden is on the corporation to show that there was no other practical way of carrying out the power which would not have that effect.”*

**18.** *Turning now to the provisions of our own Evidence Act, we find the general or stable burden of proving a case stated in Section 101 as follows:*

*“101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

*When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”*

*The principle is stated in Section 102 from the point of view of what has been sometimes called the burden of leading or introducing evidence which is placed on the party initiating a proceeding. It says:*

*“102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”*

*In practice, this lesser burden is discharged by merely showing that there is evidence in the case which supports the case set-up by the party which comes to court first,*



*irrespective of the side which has led that evidence. An outright dismissal in limine of a suit or proceeding for want of evidence is thus often avoided. But, the burden of establishing or general burden of proof is heavier. Sometimes, evidence coming from the side of the respondents, in the form of either their admissions or conduct or failure to controvert, may strengthen or tend to support a petitioner's or plaintiff's case so much that the heavier burden of proving or establishing a case, as distinguished from the mere duty of introducing or showing the existence of some evidence on record stated in Section 102 is itself discharged. Sufficiency of evidence to discharge the onus probandi is not, apart from instances of blatant perversity in assessing evidence, examined by this Court as a rule in appeals by special leave granted under Article 136 of the Constitution. It has been held that the question whether an onus probandi has been discharged is one of fact (see AIR 1930 PC 91 [Wali Mohd v. Mohd Baksh, 57 IA 86] ). It is generally so.*

**19.** *“Proof”, which is the effect of evidence led, is defined by the provisions of Section 3 of the Evidence Act. The effect of evidence has to be distinguished from the duty or burden of showing to the court what conclusions it should reach. This duty is called the “onus probandi”, which is placed upon one of the parties, in accordance with appropriate provisions of law applicable to various situations; but, the effect of the evidence led is a matter of inference or a conclusion to be arrived at by the Court.*

**20.** *The total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by Sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by other provisions such as Sections 103 and 106 of the Evidence Act. Section 103 enacts:*

*“103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”*



*And, Section 106 lays down:*

*“106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”*

*21. In judging whether a general or a particular or special onus has been discharged, the court will not only consider the direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at all which raise either a presumption of law or of fact. Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to “fill a gap” in evidence.”*

143. The principle governing the evidences in civil cases is that there should be preponderance of the events which should be proved unlike in criminal matters, where the evidences have to be proved beyond a reasonable doubt. Moreover, the burden of proof is on the party which will suffer if such evidence is not proved.

144. Applying the said legal position regarding the burden of proof in civil suits to the facts of the instant Suit, the burden of proof lies on the plaintiffs since it is the plaintiffs who will fail in seeking the relief, if the evidences are not proved in their favour.

145. The plaintiffs have to prove preponderance of the events that they are entitled to the compensation as sought, by showing that the expenses which are being claimed were duly incurred by the plaintiffs. The Annexure – A (Ex PW1/D-B) appended with the plaint enunciates the various expenses incurred by the plaintiffs in pursuance of complying with the obligation under the MOU and the same has been reproduced below:



**SANGHI BROTHERS ( INDORE ) PVT.LTD.**  
 Expenses Incurred on behalf of Mr. Kamendra Singh , Alirajpur  
 As on 31/03/2004

<b>A</b>	<b><u>SANGHI BROS ( INDORE ) PVT.LTD.</u></b>		
	Dec 98 to March 99 ( 15000/-*4)	60000	
	Apr99 to March 00 ( 15000/-*12)	180000	
	Apr 00 to May 00 ( 15000/-*2)	30000	
			270000
<b>B</b>	<b><u>SANGHI BROS ( INDORE ) PVT.LTD.</u></b>		
	Amount paid upto March 01		
	Dec 98 to March 01 @ Rs.10000/- PM		280000
<b>C</b>	<b><u>VASANT VIHAR EXPENSES</u></b>		
	Expenses on Security & Other expenses 4 persons Dec 98 to Apr.03		339200
<b>D</b>	<b><u>LEGAL EXPENSES</u></b>		
	Consultancy fees paid to J.W.Mahajan	25000	
	T.N.Unni Fees	25000	
	Fees paid to J.B.Dadachanji & Co.	52155	
	Legal fees paid to Mr.A.M.Singhvi	107668	
	Fees paid to Mr.Vijay Asudani	25000	
	Mr.T.N.Unni for fees	150000	
	Other Legal Expenses :-		
	Amit Kumar Chhabra	5000	
	Anup Goel	6626	
	S.S.Gokhale	5000	
	Lekhraj Mehta	7519	
		24145	408968
<b>E</b>	<b><u>TELEPHONE &amp; MOBILE EXPENSES</u></b>		381293
<b>F</b>	<b><u>TRAVELLING EXPENSES MR.T.R.UNNI</u></b>		6418
<b>G</b>	<b><u>SUPERVISOR WAGES OF MR.TIKKU(Apr.99 to Mar 04)</u></b>		270000
<b>H</b>	<b><u>TRAVELLING EXPENSES ( Directors)</u></b>		65524
<b>I</b>	<b><u>OTHER EXPENSES</u></b>		57646
	<b>Total Rs.</b>		<b>2079049</b>

146. This Court has taken into account all the documents for deciding the quantum of compensation which the plaintiffs are entitled to. While taking into consideration the said documents, this Court has allowed the plaintiffs' expenses which they have been able to prove. This Court has also considered the defendant's admitted liability to the tune of Rs. 2,70,000/, legal expenses borne by the plaintiffs towards the litigation against the Suit Property, expenses towards the security of the said property, expenses towards maintenance of up keeping the Suit Property including other various miscellaneous expenses.

147. As per the documents placed on record by the plaintiffs which they have not been able to prove, the liability incurred therein, has not been



considered by this Court since there are not adequate evidences placed on record in this regard. Such expenses include the travel expenses by the Manager, the head of 'Other Expenses' of the Schedule- A, the documents produced w.r.t. the telephones expenses, and the expenses of Mr. Rakesh Tiku. The plaintiffs have been unable to prove that such expenses were incurred on behest of fulfilling the obligations under the MOU.

148. At this juncture, it pertinent to mention that in view of the material which has been placed on record, it is indicated that a third-party interest has been created in the Suit Property against which the specific performance has been sought. Such a circumstance makes it inequitable to enforce the decree of specific performance and for the above reasons a decree for the payment of compensation in lieu of the specific performance would meet the ends of justice.

149. In view of the aforesaid, this Court deems it appropriate, in light of the prayer 'B', documents, expenses, terms of the MOU and most importantly the interest of justice, to grant a sum of Rs. 15,00,000/-, as lump-sum compensation in lieu of the claim sought for specific performance.

150. Accordingly, issue no. 2 and 3 are decided.

### **ISSUE NO. 5 & 6**

**Issue No. 5 - Whether the Plaintiff is entitled for a decree of permanent injunction as claimed by the Plaintiff? OPP**

**Issue No. 6 - Whether the MOU, GPA and SPA dated 2<sup>nd</sup> December 1998 were revoked by the Defendants? If so, to what effect? OPD**

151. Since, it has been adjudicated by this Court that plaintiffs are not entitled to the decree for specific performance due to the considerable and



substantial developments. Therefore, the Suit of the plaintiffs is decreed in part, by way of granting compensation as prayed in the alternative. Hence, the issue nos. 5 & 6 are deemed to be infructuous and not adjudicated upon.

### **Issue No. 7 – Relief**

152. From the perusal of facts, precedents and the application of law, this Court has reached to the conclusion that:

- a. The present Suit was filed on 4<sup>th</sup> May 2004, when the plaintiffs came to the knowledge of the refusal on the part of the defendant, before the Madhya Pradesh High Court, wherein, for the first time the defendant had stated about the rescission of the MOU i.e., in April 2004. In view of the same, I do not find any merit in the averments made on behalf of the defendant that the instant Suit is barred by the limitation. Hence, it is held that the present suit was filed within the limitation period prescribed under the Limitation Act, 1963.
- b. It is also held that the plaintiffs are not entitled for grant of decree for specific performance. In lieu of the claim of specific performance, the plaintiffs are, hereby, held to be entitled to the compensation as a part decree in terms of “prayer B” wherein the defendant is directed to pay a sum of Rs. 15,00,000/- to the plaintiff No. 1.
- c. The instant suit for specific performance with respect to the Memorandum of Understanding dated 2<sup>nd</sup> December 1998, is partly decreed in favour of the plaintiffs by grant of compensation.
- d. The above said amount shall be payable within 6 weeks from





the date of receipt of the copy of this judgment. Upon the failure of the respondent in payment within the said period, the amount payable shall carry interest @ 12 % p.a., till such payment or realization.

e. The costs shall be borne by the parties as incurred throughout.

153. Accordingly, the Suit is partly decreed and hence, stands disposed of. Pending applications, if any, stand dismissed.

154. The registry is directed to prepare the decree sheet accordingly.

155. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**SEPTEMBER 6, 2023**  
**gs/ryp/db**