

**IN THE COURT OF SH. RAVINDER SINGH-I, DISTRICT JUDGE-03,
EAST, KARKARDOOMA COURT, DELHI**

Suit No.: 364/2021

- (1) **Gurdeep Singh** S/o Sardar Bhagat Singh
(2) **Namrata Arora**, W/o Sh. Gurdeep Singh

Both R/o WA-43, 2nd Floor, WA Block, Shakarpur,
Delhi-110092

.....Plaintiffs

Versus

- (1) **Raju Sindhi** W/o Sh. Girish Malhotra
(2) **Girish Malhotra** S/o Sh. Murari Lal Malhotra

Both R/o 119/2, Gali No. 15, Shastri Nagar,
Sarojini Park, East Delhi-110031

.....Defendants

Date of filing of the suit : 28.08.2021
Final Arguments heard on : 23.03.2026
Date of Judgment : 24.03.2026

JUDGMENT

1. This suit for recovery of Rs. 10,00,000/-along with pendente lite and future interest @ 24% p.a has been filed by the plaintiff-1 and his wife/plaintiff-2 against the defendant-1 and her husband/defendant-2.

2. The facts relevant for the disposal of this suit are as under:

(a). Plaintiffs stated that in July, 2020 defendant-1 contacted plaintiff-1 through her husband/defendant-2 who was well acquainted with plaintiff-1

from his school days, claiming herself to be an authorized agent of LIC. Both the defendants claimed that defendant-1 was having good relations with LIC higher officials- who have expertise in making healthy and profitable investments and offered good return upon investment.

(b). Plaintiffs further stated that on continuous persuasion of defendants, plaintiff-1 transferred Rs. 5 lakhs through RTGS in the account of defendant-1 on 22.07.2020 and further, they both i.e plaintiff-1 & 2 transferred Rs. 2,00,000/- and Rs. 3,00,000/- from their respective accounts through RTGS in the account of defendant-1 on 27.07.2020 and in this manner, plaintiffs transferred a total sum of Rs. 10 lakhs in the account of defendant-1 on the assurance of defendants that they would get at least quarterly interest @ 20% per quarter.

(c). Plaintiffs further stated that in the month of November, 2020 plaintiff-1 contacted defendants and asked about the status of return of their investment, to which defendants replied and started making lame excuses and asked them to wait till Dec 2020.

(d). Plaintiffs further stated that defendants did not return their hard earned money/amounts despite their repeated demands and requests, which tantamount to cheating and misappropriation of their amount, which attract penal provision as well. However, finding no other alternative they sent a legal notice on 06.01.2021 but despite service of legal notice defendants neither made any compliance nor replied the same, hence, they filed the present suit for recovery of Rs. 10 lakhs along with pendente lite and future interest @ 24% p.a, till the realization of the amount.

3. Both defendants contested the suit by filing their joint written

statement stating therein that:

(a) the suit is bad against defendant-2 for misjoinder of parties as no amount has been deposited in the account of defendant-2 and further plaintiffs have failed to plead any specific role of defendant-2 in the alleged transaction, as such there is no cause of action against him. Further, defendants stated that plaintiffs (being directors) are doing the business of stock trading, gold trading and bullion market trading under the name and style of M/s NSK Stocks & Commodities Pvt. Ltd. and M/s GNSK Hotels & Resorts Pvt. Ltd. whereas defendant-2 has been doing a business of property dealing for the last 6-7 years.

(b) defendants further stated that plaintiff-1 is known to defendant-2 since July, 2020 as they both met in Geeta Colony, where plaintiff-1 told him that he is engaged in the business of stock trading, gold trading & cash for gold business etc. Defendants further stated that in March, 2020 Government declared complete lock down in the entire country which continued till August, 2020 and during said period, all the commercial activities were completely closed. Defendant-2 suffered financial constraints and in order to run their livelihood and to clear all their debts, defendant-1 sold their ancestral family gold (total weight 20 tolas/200 grams) to the plaintiffs on 22.07.2020. So the alleged payment of Rs. 10 lakh has been transferred by the plaintiff-1 & 2 into the bank account of defendant-1 in lieu of payment towards "cash for gold". They further stated that plaintiffs have not transferred any amount for LIC Investment as for any investment in LIC, the payments are directly credited into the LIC account by the customer himself. On merits, the defendants denied all other allegations and accordingly, they

prayed for dismissal of the suit.

4. Plaintiffs filed replication wherein they stated that the defendant-2 played an active role in inducing plaintiff-1 for the investment and he also provided the mobile number of his wife/defendant-1, who called him many times for assuring good return on the investment. They denied that plaintiff-1 told defendant-2 that he is engaged in stock trading , gold trading & cash for gold business.

5. From the pleadings of the parties, the following issues were framed by my Ld. Predecessor vide order dated 26.09.2023:-

- I) Whether the plaintiff is entitled for recovery of Rs. 10 lacs against the defendant, as prayed for?OPP*
- II) Whether the plaintiff is entitled for interest, as prayed for? OPP*
- III) Whether the suit of the plaintiff is not maintainable for misjoinder of parties?OPD*
- IV) Whether the suit of plaintiff is not maintainable due to no cause of action?OPD*
- V) Relief.*

6. In order to prove their case, the plaintiffs examined the only witness i.e plaintiff-1 as PW1.

7. PW1 led his evidence on affidavit which he tendered as Ex.PW1/A. He generally deposed on the similar lines as that of the plaint and also relied upon the documents i.e computer generated copy of statement of account of plaintiff -1 as Mark-A; computer generated copy of statement of account of plaintiff-1 as Mark-B ; legal notice as Ex.PW1/3; original receipts of the speed post as Ex.PW1/4 & Ex.PW1/5; internet copy of tracking report of speed post as Ex.PW1/6 & Ex.PW1/7; whatsapp chat alongwith recording &

transcript as Ex.PW1/8 (colly.); original CD as Ex.PW1/9; and certificate u/s 65-B of Indian Evidence Act is Ex.PW1/10A.

During his cross examination, PW1 deposed that he is a Graduate and his wife i.e. plaintiff-2 is M.A./B.Ed. and is a teacher in St. Mary's Sr. Secondary School, Mayur Vihar, Delhi. He knew defendant-2 casually since 1990. Defendant-2 was having a shop in front of his classmate's house, at Geeta Colony, Delhi. Prior to 2021, he tried to start a business of manufacturing gold but somehow it could not be started. He was also a director in a private limited company namely N.S.K. Stocks and Commodities Pvt. Ltd. The company used to run its business of share trading and commodities. His wife was the second Director in the said company. He and his wife were also Directors in GNSK Hotels and Resorts Pvt. Ltd. however, the said company was never operated by them. He has never met defendant-1 personally. However, he received a call from her on 14.07.2020 and she claimed herself as a LIC agent. She told him about the LIC Investment Plans but she did not tell him that she was the wife of defendant- 2. He had never asked for any brochure of LIC plan from defendant-1 inspite of her callings on 14.07.2020, 17.07.2020 and 19.07.2020. He has filed ITR for the period of financial year 2020-2021 and 2021-22 and he has mentioned the said fact that he had paid a sum of Rs.10 lacs to defendant-1 for trading or investment in share market. He admitted that whenever someone purchased or invested in any insurance policy or health plan or LIC policy, the payment directly credits into the name of the insurance company of which the product is related. He admitted that he recorded the phone calls of defendant no.1 in his mobile handset. He could

bring the said mobile phone. He voluntarily claimed/testified that the data stored in his laptop in the year 2022. He admitted that he has not filed any scientific proof showing the sound of defendant no.1 in Ex.PW1/9 .

8. In order to establish their defence, defendants examined themselves as the only witnesses i.e. defendant-2 as DW1 and defendant-1 as DW2.

9. DW1 led his evidence on an affidavit which he tendered as Ex. DW1/A. He relied upon documents i.e. list of companies showing plaintiffs as directors Mark DW1/B; and visiting card of plaintiff-1 as Mark DW1/A.

During his cross examination, DW1 deposed that he knew plaintiff-1 since 2020. He does not know plaintiff-2. He was doing property dealing business at Geeta Colony. His wife was a LIC Agent in July, 2020. He does not remember the mobile number of his wife which she was using in July, 2020 and at that time neither he nor his wife were using whatsapp application. He admitted that on 13.07.2020, he sent a whatsapp message to plaintiff-1 while giving his second mobile number i.e. 8447926375. He further deposed that on the very first meeting, he had told Gurdeep Singh that he wanted to sell his gold articles to him. He admitted that all the banks were open during the lockdown i.e. March to August, 2020. He had not shown the gold articles to Gurdeep Singh. No gold was shown either from the whatsapp chat or from video calling to Gurdeep Singh. He never talked about the valuation and weight/quality of gold articles. The rate of gold at that time was Rs. 52,000/- to Rs. 53,000/- per tola. He had sold his gold to Gurdeep Singh at the rate of Rs. 52,000/- per tola. He had not filed any document or proof on record to show that he was having gold articles at that time. He could not say whether he had any document to show that he was

having gold articles at that time. The weight of gold articles was conducted at the house of plaintiff-1 in July, or August, 2020. Gold items consisting of two sets, one chain, ginnies and one ring were sold to plaintiff-1 in July, 2020. He could not tell what was the exact measurement of each gold article. He had not taken any certificate of purity and weight of gold articles from anyone. Some of the gold articles were given in his wedding to his wife and some of the articles were purchased by him and his wife. He had purchased one or two articles, however, he could not remember the exact articles which he had purchased. He did not remember the exact month, time, place and money from whether he purchased the aforesaid gold articles since a long time has been left. He got married in the year 2015. He was having a debt of Rs. 10 lakhs approximately towards Mr. Hemant Vohra. He had not mentioned the name of Mr. Hemant Vohra in his written statement as well as in his affidavit. Mr. Hemant Vohra gave the said amount in cash to him without any interest. He has a document to show that he was under the debt from Mr. Hemant Vohra and he had paid the said debt to Mr. Hemant Vohra. He admitted that he had not filed any document on record which shows that he had paid the said debt to Hemant Vohra. He had paid the said amount in July, 2020 to Hemant Vohra through account transfer of his wife. He did not remember as to whether he had mentioned about the debt from Hemant Vohra in his affidavit and written statement. Neither he nor his wife are an income tax payee. He had told the fact of the sale of gold articles to his parents. No written receipt or any document was executed for the purpose of the sale of gold articles. He had first delivered the gold articles to the plaintiff-1 and thereafter, plaintiff-1 transferred the amount of Rs. 5 lakhs in

the bank account of his wife. Thereafter, the remaining balance amount was transferred by plaintiff-1 into the bank account of his wife after 2-3 days. He had not received any legal notice prior to filing suit. He had not filed any police complaint against plaintiffs that he had sold gold articles to plaintiff-1 and received the amount of Rs. 10 lakhs even then plaintiffs demanded Rs. 10 lakhs from him. He also deposed that except him and his wife, there is no witness for the sale transaction of gold articles and he is having no proof/document of ownership and sale transaction of gold articles. He also admitted that his correct address is mentioned on the legal notice dated 06.01.2021 Ex. PW1/3. He also admitted that his name was correctly mentioned on Ex. PW1/3. He also admitted that his name appears on Ex. PW1/6. He further deposed that at the time of transaction, plaintiff-1 used to run the business of gold jewellery and stock trading company under the name and style of M/s NSK.

10. DW2 led her evidence on an affidavit, which she tendered as Ex. DW2/A. She relied upon documents i.e. list of companies showing plaintiffs as directors Mark DW1/B; and visiting card of plaintiff-1 as Mark DW1/A.

During her cross examination, DW2 deposed that in March, 2020 she was working as LIC Agent and her husband was working as Property Dealer. She joined as an Agent of LIC in June 2020. She met plaintiff no.1 for the first time at his residence at Shakarpur for sale of her gold articles in August, 2020. Her husband has been acquainted with plaintiff no.1 since 2020. Her husband talked with the plaintiff no.1 for the sale of gold. She could not tell by which mode her husband had talked with plaintiff no.1 for sale of gold. The weight of the gold was around 20 tolas. Plaintiff no.1 had himself

weighed the gold at his home on a weighing machine. The gold articles consist of two gold sets, one gold bangle set, one gold chain, gold ginnis and the rest of the articles she did not remember. Again said, there might be two gold chains. She has never verified and certified the purity of gold. She did not know the weight of each gold article however, the total weight was 20 tolas. She was not having the original invoice of gold articles. She had purchased some of the gold articles with her husband. She does not remember exactly which articles were purchased by her. She might be having an invoice of the gold purchased by her in her possession. She has not filed any such invoice on record. Her husband had a discussion with regard to the rate of the gold with plaintiff-1. She does not know what was the market rate of gold in the year 2020. The said gold articles consisted of 22 ct. gold. Her husband and she went for the first time at the house of the plaintiff no.1 and they showed and sold the gold to plaintiff no.1. No cash transaction was held at that time. She had given her account number to plaintiff no.1 for the payment for receiving the gold amount. She and her husband had not sent any whatsapp message containing the photograph of gold articles for its sale to the plaintiff no.1. She had not received any amount from the plaintiff in her bank account prior to sale/handing over the gold to plaintiff no.1. She voluntarily claimed that the payment was received after sale and handing over the gold. She does remember whether any receipt was executed for the sale of gold. She received Rs. 10 lacs from plaintiff- 1 in her bank account in three transactions, out of which she received Rs. 5 lakhs on 22nd. She admitted that she had not filed any document which shows that they were under liability to pay any debt to a

third person. She does not have any other witness except her husband to show that she had sold gold to plaintiff-1. She admitted that she does not have any proof or document to show that she had sold the gold to plaintiff-1. She admitted that she does not have any proof or document that she was the owner of gold articles as mentioned in her cross examination.

11. I have heard the arguments of Sh. Durgesh Pal- Ld. Counsel for the plaintiffs and Sh. Prateek Mehta Ld. Counsel for the defendants and have perused the material placed on record.

12. The facts which are admitted and not in dispute are that

- (a) Plaintiff-1 and defendant-2 were acquainted with each other.
- (b) Plaintiffs are the directors of M/s NSK Stock & Commodities Pvt. Ltd. and M/s GNSK Hotels & Resorts Pvt. Ltd.
- (c) Defendant-1 was a LIC agent in the year 2020.
- (d) Defendant- 2 is a property dealer by profession.
- (e) plaintiff-1 transferred Rs. 5 lakhs through RTGS in the account of defendant-1 on 22.07.2020.
- (f) plaintiff-1 and plaintiff-2 transferred Rs. 2,00,000/- and Rs. 3,00,000/- respectively from their respective accounts through RTGS into the bank account of defendant-1 on 27.07.2020

13. My issue-wise findings are as follows:

14. For the sake of convenience, issue no. III & IV are taken prior to issue nos. I & II.

ISSUE No. III

Whether the suit of the plaintiff is not maintainable for misjoinder of parties?OPD

15. Ld. Counsel for the defendants argued that plaintiffs claimed that defendant-1 represented herself as a LIC Authorized agent and on the persuasion of defendants, they deposited Rs. 10 lakhs in the account of defendant-1 only. So, the suit is bad for the misjoinder of the defendant-2 as a party in this case as such this suit is liable to be dismissed.

16. On the other hand, Ld. Counsel for the plaintiffs argued that defendant-1 contacted plaintiff-1 through her husband/defendant-2 who was well acquainted with plaintiff-1 from his school days, so on persuasion of him and defendant-1, plaintiffs transferred Rs.10,00,000/- in the account of defendant-1 so defendant-2 is also a necessary and proper party in the case.

17. In NAZRA KHATOON Vs. MOHD. ZAFAR & ORS. in CM(M) 2179/2025, Hon'ble High Court of Delhi held as under:-

4. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. Merely the fact that a person is likely to secure a right/interest in the suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit. Two tests are to be satisfied for determining the question as to who is the necessary party and these tests are – (a) there must a right to some relief against such party in respect of the controversies involved in the proceedings and (b) no effective decree can be passed in the absence of such party. Proper party is one whose presence is necessary for effective and complete adjudication of all the questions involved in the suit.

18. It is not in dispute that the defendant-1 was a LIC Authorized Agent in 2020. It is also not in dispute that plaintiff-1 transferred Rs. 7 lakhs (Rs. 5,00,000/- & Rs. 2,00,000) whereas plaintiff-2 transferred Rs. 3 lakhs through RTGS in the account of defendant-1. It is pertinent to note that PW1 testified that he never met defendant-1 personally and he received her call on 14.07.2020 claiming herself to be a LIC Agent and told him about the LIC investment plan. PW1 further testified that defendant-1 did not tell him that she was the wife of defendant-2. According to PW1, defendant-1 had called him thrice i.e. 14.07.2020, 17.07.2020 and 19.07.2020. Further, it is admitted fact that no payment has been transferred in the account of defendant-2. In view of above, defendant -2 is not a necessary or a proper party.

19. However, as regards to the suit being bad for the misjoinder of defendant-2 as party is concerned, it is clear that defendants- 2 is not the necessary party to the suit and as per Order-I, Rule 9 CPC, no suit shall be defeated by the reason of misjoinder or non joinder of the parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it as such, the suit of the plaintiffs cannot be defeated by the reason of misjoinder of defendant-2 in the suit.

20. Hence, the aforesaid issue is decided as such.

Issue No.IV

Whether the suit of the plaintiff is not maintainable due to no cause of action?OPD

21. The onus to prove this issue is upon the defendants. However, neither

they led any evidence on this issue nor advanced any arguments on the same. Hence, this issue is decided against the defendants. This issue is disposed of as such.

Issue No. I

Whether the plaintiff is entitled for recovery of Rs. 10 lacs against the defendant, as prayed for?OPP

22. The onus to prove this issue is upon the plaintiff. It is well settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. Being a civil suit, this suit is to be decided on the basis of preponderance of probabilities. In *Vishnu Dutt Sharma Vs. Daya Sapra*, reported in (2009) 13 SCC 729, the Hon'ble Supreme Court has observed as under:

" 8. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceedings at the same time. Both the proceedings, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis a vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit 'preponderance of probability' would serve the purpose for obtaining a decree".

23. In *Raj Kumar Singh & Anr. Vs. Jagjit Chawla*, 183 (2011) DLT 418, the Hon'ble High Court of Delhi has observed as under:

"A civil case is decided on the balance of probabilities. The balance of probabilities in the present case shows that the Power of Attorney Ex. PW3/1 and the Will Ex. P1 were duly executed by the deceased Sh. Sohan Singh. The Power of Attorney is after all a registered Power

of Attorney, and more importantly, the original title documents of the subject property are in the possession of the respondent No. 1 and which would not have been, if there was not to be any transfer of title in the suit property. Merely because two views are possible, this court would not interfere with one possible and plausible view which is taken by the court below, unless such view causes grave injustice. In my opinion, in fact, grave injustice will be caused not to the objectors/appellants but to the respondent No. 1 her father in law Sh. Sewa Singh, if the impugned judgment is set aside.'

24. It is pertinent that in terms of section 101 of the Indian Evidence Act, the burden of proving a fact is always lying upon the person who asserts the facts. Until such burden is discharged, the other party is not required to be called upon to prove his case. Section 101 of the Evidence Act, 1872 is reproduced as under:

" 101. Burden of proof

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."

25. The court has to examine as to whether the person upon whom the burden lies has been liable to discharge his burden. Until he arrives at such a conclusion he cannot proceed on the basis of the weakness of the other party. It is also a settled proposition of law that the plaintiff has to prove its case. In *Addagada Raghavamma and Anr Vs. Addagada Chenchamma and Anr 1964 AIR 136*, the Hon'ble Supreme Court has held that,

"There is an essential distinction between burden of Proof and onus of proof, burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts."

26. According to PW1, in July 2020, defendant-1 contacted him claiming

herself to be a LIC agent and she told him that she has good relations with higher LIC agents who have expertise in making healthy and profitable investments and offered good return, so on continuous persuasion and offering lucrative schemes, he agreed to invest a sum of Rs. 7 lakhs from his account and Rs. 3 Lakhs from his wife's/plaintiff-2's account and thereby they transferred a sum of Rs. 10 lakhs in the account of defendant-1. In November, 2020 he contacted defendants and asked for some return from their investment to which defendants replied by making lame excuses in order to buy time to return the said amount with profits but in spite of their demand, they have not transferred any amount in their bank, so finding no other alternative they served a legal demand notice Ex. DW1/P-5 to which defendants gave a false reply Ex. DW1/P-6.

27. According to defendants, they claimed that in March, 2020 the Government declared complete lock down in the entire country which continued till August, 2020 and during said period, all the commercial activities were completely closed. Defendant-2 suffered financial constraint and in order to run their livelihood and to clear all their debts, defendant-1 sold their ancestral family gold (total weight 20 tolas/200 grams) to the plaintiffs, so the alleged payment of Rs. 10 lakh was transferred in the bank account of defendant-1 by the plaintiff-1 & 2. So the said amount of Rs. 10 lakhs was in lieu of payment towards "cash for gold".

28. It is clear from the pleadings of parties that an amount of Rs. 10 lakhs has been transferred by plaintiffs in the account of defendant-1, who claimed that she has sold the gold to the plaintiffs who in lieu of said selling of gold transferred Rs. 10 lakhs in her account, so now the onus is upon the

defendants to prove that defendant-1 sold the gold to the plaintiffs and in lieu of that they transferred Rs. 10 lakhs in her account.

29. DW1 deposed that on the very first day of the meeting, he had told Gurdeep Singh that he wanted to sell his gold articles to him. However, he has not shown the gold articles to Gurdeep Singh either on whatsapp or through video calling. He never talked about valuation and weight/quality of gold articles. He has sold his gold to Gurdeep Singh @ Rs. 52,000/- per tola. He admitted that he had not filed any document to show that he was having gold articles at that time. He claimed that weight of gold articles were conducted at the house of plaintiff-1 in July, or August, 2020, but he could not tell the exact measurement of gold articles. He has not taken any certificate of purity/weight of gold articles and he did not remember the exact date when the gold was weighed. Gold items consisting of two sets, one chain, ginnies, one ring, were sold to plaintiff-1 in July, 2020. Some of the gold articles were given in his wedding to his wife and some of the articles were purchased by him and his wife but he does not remember the exact date, time, place and money from when he purchased the aforesaid gold articles. No written receipt or any document was executed for the purpose of sale of gold articles. He first delivered gold articles to plaintiff-1 and thereafter, plaintiff- 1 transferred Rs. 5 lakhs into the account of his wife and the remaining balance amount was transferred by the plaintiff-1 into the account of his wife after 2-3 days. There is no witness available for the gold transaction except him and his wife.

30. DW-2 testified that she met plaintiff-1 first time at his residence for the sale of her Gold Articles in August, 2020. Her husband talked with

plaintiff-1 about the sale of gold articles. Plaintiff-1 himself weighed the gold at his home at the weighing machine. The gold articles consist of two gold sets, one gold bangle set, one gold chain, gold ginni and the rest of the article she does not remember. There might be two gold chains. She does not know the weight of each gold article however, total weight was 20 tolas. She also admitted that she also does not have any proof of documents that she was the owner of gold articles. She is not having the original invoice of gold articles. She had purchased some of the gold articles with her husband. However, she does not remember which articles were purchased by her. She might be having an invoice of gold articles in her possession, but she has not filed the same on record. She and her husband had never sent any whatsapp message containing the photograph of gold articles for its sale to plaintiff-1. She admitted that she does not have any proof or document to show that she has sold the gold to plaintiff-1. She also testified that the payment was received after sale and handing over of the gold.

31. From the testimonies of DW1 & DW2, it is clear that they have not shown gold articles to the plaintiffs either physically or through video call before its alleged sale. Admittedly, they have not filed any document regarding gold which they allegedly sold to the plaintiffs. It is also pertinent to note that both DW1 and DW2 claimed that they both purchased some of the articles of gold together but they have not given the description of the gold articles which they have purchased together. Even, they have not disclosed the date, month and year and place from where they have purchased the said gold articles. DW2 claimed that she might be having an invoice of gold article which she and her husband purchased together, but

admittedly, no invoice of the said gold articles is placed on record by her, the reason best known to her. According to DW1 & DW2 the gold was weighed by the plaintiff-1 in his house on weighing machine but they have not disclosed the exact weight of the gold at the time of its alleged weighing. Further, DW2 claimed that gold was sold in August 2020 and payment was received after sale of gold, which is not true as she received the amount of Rs. 10,00,000/- in her bank account on three installments of Rs. 5,00,000/- (on 22.07.2020) and Rs. 2,00,000/- and Rs. 3,00,000/- (on 27.07.2020). Further, the testimony of DW1 and DW2 are not consistent about the gold articles which they have allegedly sold to the plaintiffs.

32. It is admitted that DW2 was working as LIC Agent in 2020. Her husband/DW1 was known to the PW1. The meeting of PW1 and DW1 is also not in dispute.

33. In view of aforesaid discussion, I find that the plaintiffs have been able to establish their case on preponderance of probabilities that they have transferred the amount of Rs. 10,00,000/- in the account of defendant-1 on account of investment and for good returns and not for sale of gold articles/cash for gold.

34. According to plaintiffs, when defendant-1 and her husband have not returned the amount, they served the legal notice Ex. PW1/3 upon them and thereby calling to pay the amount of Rs. 10 lakhs with interest but defendant-1 and her husband have neither replied nor paid the amount.

35. In view of aforesaid discussion, I am of the considered opinion that the plaintiffs are entitled for recovery of Rs. 10,00,000/- from defendant-1 only.

This issue is decided accordingly.

Issue No. II.

Whether the plaintiff is entitled for interest, as prayed for?OPP

36. The onus to prove this issue is upon the plaintiffs. Plaintiffs have prayed for recovery of the suit amount alongwith pendente lite and future interest @ 24% p.a. Now, it is to be seen whether the plaintiffs are entitled for such interest or not?.

37. Hon'ble High Court of Delhi in Ramesh Chander vs. Shiva Promoters Ltd., RFA No. 211/2017 dated 21.08.2018 has relied upon South Eastern Coalfields Ltd. Vs. State of M.P. and ors., (2003) 8 SCC 648 held that interest is payable in equity in certain circumstances. South Eastern Coalfields Ltd. (supra) reads as under:-

“21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement. Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.”

38. The plaintiffs in their suit claimed a sum of Rs.10,00,000/- against the defendants. It has already been held that the plaintiffs are entitled to an amount of Rs. 10,00,000/- against defendant-1. No question has been put to the PW1 during his cross examination regarding rate and period of interest. It is a settled law that the award of interest on the principal amount is vested with the court as a discretionary power. However, it has to be applied upon application of judicial mind and the rate at which it has to be applied has to be considered in light of facts and circumstances of each case.

39. It is pertinent to note that plaintiffs vide legal notice Ex. PW1/3 asked the defendants to repay the suit amount along with the interest. Since it has been held that plaintiff is entitled for recovery of Rs. 10,00,000/- from the defendant-1 who has kept the said amount in her account and has not returned/repaid and thereby defendant-1 deprived the plaintiffs to use their own money, to which they are legally entitled. So they must ordinarily be compensated by the interest for such deprivation. Hence, the plaintiffs are entitled to interest and therefore, an interest @ 8% p.a awarded to plaintiff from the date of filing of the suit till its realization. Accordingly, the aforesaid issue is decided in favour of the plaintiffs and against the defendant-1.

Issue No. V/ Relief.

40. In view of the above discussion, the suit of the plaintiffs is decreed in favour of the plaintiffs and against the defendant-1 for an amount of Rs. 10,00,000/- along with interest @ 8% per annum from the date of filing of the suit till its actual realization. Plaintiffs are also entitled for the costs of the suit.

41. Decree sheet be prepared accordingly.

42. File be consigned to Record Room after necessary compliance.

**Announced in the open Court
on 24th Day of March, 2026**

**(Ravinder Singh-I)
District Judge-03, East,
Karkardooma Courts, Delhi**