

**IN THE COURT OF MS. GOMATI MANOCHA,
DISTRICT JUDGE-2, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI**

**CS No. 498/2016
CNR No. DLNE01-003567-2016**

Pramod Kumar Singh
S/o Sh. Chob Singh
R/o B-3/190, Yamuna Vihar,
Delhi.

.....Plaintiff

Versus

Parveen Jain
S/o Sh. Ajeet Prashad Jain
R/o B-1/52, Yamuna Vihar,
Delhi.

Also at:-
B-1/314, Yamuna Vihar,
Delhi.

..... Defendant

Date of Institution	: 20.04.2012
Date of Reserving Judgment	: 08.04.2026
Date of Judgment	: 09.04.2026

AND

**CS/Counter Claim No. 212/2018
CNR No. DLNE01-003326-2018**

Parveen Jain
S/o Sh. Ajeet Prashad Jain
R/o B-1/52, Yamuna Vihar,
Delhi.

.....Counter claimant

Versus

Pramod Kumar Singh
S/o Sh. Chob Singh
R/o B-3/190, Yamuna Vihar,
Delhi.

.....Defendant

Date of Institution : 02.08.2018
Date of Reserving Judgment : 08.04.2026
Date of Judgment : 09.04.2026

JUDGMENT

1. Vide this common judgment, I shall dispose of two cases bearing CS No. 498/2016 and counter claim bearing CS Number 212/2018. The plaintiff has filed the main suit bearing CS No. 498/2016 seeking the relief of specific performance of a contract/agreement dated 20.06.2011 in respect of flat situated on the second floor of the property bearing no. 52, Block-B1, ad-measuring 70 sq. mtr, fitted lift alongwith one car parking on the ground floor alongwith the whole structure constructed thereon and right to access through a common staircase alongwith facilities like sewer line, separate water line, electricity meter, right to access the water tank and install antenna on the roof of the property, as per the layout plan of Yamuna Vihar, Ghonda Residential Scheme, Illaqa Shahdara, Delhi-110053. The plaintiff has also sought the peaceful possession of the suit property alongwith cost of the suit.

The defendant has filed the counter claim seeking a decree for a sum of Rs. 14,00,000/- as damages alongwith pendente lite and future interest @ 24 % per annum.

2. Plaint

It is stated by the plaintiff that he had entered into an agreement to sell with the defendant on 20.06.2011 with respect to a flat situated on the second floor of the property bearing Plot No. 52, Block B-1, ad-measuring 70 sq. mtrs, fitted lift alongwith one car parking on the ground floor alongwith the whole of the structure constructed thereon, with all the right to access alongwith the common staircase and services like sewer line, separate water line, electricity meter, right to access the water tank and right to install the antenna on the roof of the property situated in the layout plan of Yamuna Vihar, Ghonda Residential Scheme, Illaqa Shahdara, Delhi-110005 (as shown in the site plan annexed with the plaint).

It is stated that the original agreement to sell is in possession of the defendant. At the time of execution of the agreement to sell, the plaintiff had paid Rs. 5,00,000/- out of the total sale consideration of Rs. 52,60,000/- and a receipt to that effect was issued by the defendant.

Subsequently thereto, plaintiff paid Rs. 5,00,000/- on 17.07.2011 and Rs. 5,00,000/- on 18.08.2011 and Rs. 5,00,000/- on 29.09.2011 in cash. The said amounts were duly received and acknowledged by the defendant on the second page of the agreement to sell.

The plaintiff has been paying the remaining amount through cheques to the defendant from time to time, as per the oral commitment and agreement between the parties. The details of statement of account is as under:-

Sr. No.	Date	Cheque	Drawn on	Amount
1.	17.06.2011	761059	Axis Bank	1,00,000/-
2.	22.06.2011	760492	-do-	1,00,000/-
3.	19.07.2011	760496	-do-	1,00,000/-
4.	11.08.2011	790462	-do-	1,50,000/-
5.	12.09.2011	790463	-do-	1,50,000/-
6.	04.10.2011	760494	-do-	1,50,000/-
7.	14.11.2011	790471	-do-	1,50,000/-
Total				Rs. 9,00,000/-

The plaintiff thus, paid a sum of Rs. 29,00,000/- to the defendant till 14.11.2011. The defendant failed to complete the construction of the suit property within the specified time.

Then on 19.11.2011, the plaintiff enquired about the work which was not completed during the stipulated period. The defendant informed that due to financial constraints, the construction work could not be completed. The same would be completed by March 2012 and thereafter, the sale deed would be executed in favour of the plaintiff.

The defendant demanded some payment from the plaintiff and the plaintiff handed over a post dated cheque bearing no. 812310 drawn on Axis Bank, Vasant Kunj Branch, Delhi amounting to Rs. 1,00,000/- and the same was duly encashed on 21.12.2011.

On 01.02.2012, when the plaintiff visited the house of the defendant and enquired about the status of the suit property. The defendant refused to sell the property to the plaintiff on the terms settled earlier and demanded a sum of Rs. 10,00,000/- (10 lakhs) extra failing which the plaintiff stated that he would sell the property to a third person.

The plaintiff then filed a suit for permanent injunction before the Court of Senior Civil Judge, North-East, Karkardooma Courts, Delhi bearing suit no. 36/2012 titled as Pramod Kumar Singh Vs. Praveen Jain. On 08.02.2012, the Court ordered the parties to maintain status quo which order was confirmed in appeal and the parties were directed to maintain status quo till 28.04.2012.

Thereafter, the plaintiff sent a legal notice to the defendant asking him to execute the sale deed in respect of the suit property in favour of the plaintiff after completing the entire construction work as per the agreement dated 20.06.2011.

It is stated that the plaintiff has always been ready and willing to perform his part of the contract and has always been ready and willing to purchase the suit property by paying the balance sale consideration of Rs. 22,60,000/-. In these circumstances, the plaintiff has filed the present suit.

3. Written statement

The defendant filed his written statement in which apart from denying the contentions of the plaintiff, he has stated that he is the owner of the property bearing no. B-1/52, Yamuna Vihar, Delhi-110053 which was constructed in 1984 and in the month of August 2010, the defendant planned to re-construct his house. The defendant planned to construct a car parking with four floors/storeys on the property and got the plan sanctioned from MCD.

The defendant arranged the funds. The plaintiff agreed to purchase the second floor without roof rights from the defendant for a sale consideration of Rs. 52,60,000/- and agreed to make payment as per the following schedule:-

- (i) Rs. 5,00,000/- at the time of Bayana agreement i.e. 20.06.2011.
- (ii) Rs. 5,00,000/- on 16.07.2011.
- (iii) Rs. 5,00,000/- on 16.08.2011.
- (iv) Rs. 5,00,000/- on 16.09.2011.
- (v) balance amount on or before 20.11.2011 at the time of registration of sale documents.

Since the beginning, the plaintiff did not fulfill his commitment as per the schedule, and paid the following amounts:-

Sr. No.	Date	Cheque	Amount
1.	20.06.2011	Cash	5,00,000/-
2.	17.06.2011	761059	1,00,000/-
3.	22.06.2011	760492	1,00,000/-
4.	19.07.2011	760496	1,00,000/-

5.	11.08.2011	790462	1,50,000/-,
6.	12.09.2011	790463	1,50,000/-,
7.	04.10.2011	760494	1,50,000/-
8.	14.11.2011	790471	1,50,000/-
9.	21.12.2011	812310	1,00,000/-

In this manner, the plaintiff paid only Rs. 15,00,000/- (15 lakhs only).

Due to lack of funds, the defendant faced hardship and could not complete the construction. He repeatedly requested the plaintiff to pay the sale consideration amount.

It is stated that the agreement between the parties was frustrated as the plaintiff did not abide by the schedule of payment. Due to non-payment of the consideration amount by the plaintiff, the defendant got into depression and when the plaintiff filed the suit against the defendant for permanent injunction, the defendant fell ill and suffered acute heart problem. On 28.03.2012, the defendant was admitted to Delhi Heart and Lung Institute where he got treatment for 9 days and was discharged on 05.04.2012 with a medical advice to implant the CRT device in his body. Now, the defendant is undergoing treatment at AIIMS, Delhi. The defendant also suffered mental harassment and agony for which he has quantified the damages to the tune of Rs. 5 lakhs. It is stated that the doctor has advised defendant to get CRT device implant in his body and the cost of the CRT device is about Rs. 9 lakhs.

Due to the failure of the plaintiff to perform the contract, the defendant has forfeited the amount of Rs. 15 lakhs of earnest money paid by the plaintiff by giving him a legal notice. The defendant has claimed damages to the tune of Rs. 14 lakhs alongwith interest.

The defendant has specifically denied having received Rs. 5 lakhs on 28.08.2011 and Rs. 5 lakhs on 29.09.2011 in cash. He has also denied

that the above amounts were duly received by him vide an endorsement on the second page of the agreement to sell.

The defendant has stated that the plaintiff is in possession of the original agreement to sell and that he be asked to file the same on record.

The defendant has submitted that only a sum of Rs. 15 lakhs including the earnest money of Rs. 5 lakhs was paid by the plaintiff. It is specifically denied that the plaintiff had paid a sum of Rs. 29 lakhs till 14.11.2011.

It is also denied that the defendant had failed to complete the construction of the suit property within the specified time or that he assured the plaintiff that the same would be completed by the end of March 2012. It is also denied that the plaintiff issued a post dated cheque bearing no. 812310 drawn on Axis Bank, Vasant Kunj Branch, amounting to Rs. 1 lac.

The defendant has stated that he has forfeited the earnest money of Rs. 15 lakhs on account of breach of contract and has sought damages to the tune of Rs. 14 lakhs from the plaintiff on account of mental harassment, agony as well as heart disease suffered by him.

The defendant has sought the dismissal of the suit of the plaintiff and prayed for decreeing the counter claim in his favour.

4. Replication as well as reply to the counter-claim

Replication to the written statement of defendant was filed by the plaintiff which is essentially a reiteration of the averments made in the plaint and denial of the contentions in the written statement. As regards the counter-claim, the plaintiff has stated that no mental harassment or agony was caused to the defendant/counter claimant by any act of the plaintiff. It is alleged that the defendant has failed to perform his part of the contract

and there has been no fault of the plaintiff in abiding with the terms and conditions of the agreement and thus, there was no occasion for forfeiting the earnest amount paid by the plaintiff. It is further averred that the defendant is not entitled to the damages of Rs. 14 lakhs. It is also submitted that as and when payment of Rs. 5 lakhs each was paid in cash to the defendant, he used to endorse the same upon the original of the agreement. It is reiterated that the plaintiff is not in possession of the original agreement to sell. It is submitted that the plaintiff has always been ready and willing to make the payment of the balance amount to the defendant but the defendant has failed to complete the construction in time. It is denied that the counter claimant is undergoing treatment or has been suggested to have the implant of CRT device in his body. It is prayed that the suit of the plaintiff be decreed and the counter claim be dismissed with cost.

5. Reply/written statement to the counter-claim

The counter claimant has denied the averments made in the reply to the counter-claim.

6. Issues

On the basis of pleadings, the following issues were framed:-

(i) Whether the plaintiff has made payment of Rs. 30 lacs as claimed by him or Rs. 15 lacs as claimed by the defendant under the agreement dated 20.06.2011 executed between them?OPP

(ii) Whether the aforesaid agreement got frustrated on account of any default by the plaintiff? OPD

(iii) Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 20.06.2011? OPP

(iv) Whether the defendant is entitled to amount of Rs. 14 lacs as claimed in the counter claim? OPD

(v) Relief.

7. Plaintiff' evidence

Plaintiff led his piece of evidence.

PW1: Plaintiff was examined as PW1. He reiterated the facts as are mentioned by him in his plaint. He tendered his evidence by way of affidavit which is Ex.PW1/A and relied upon the following documents:-

Ex.PW1/1 is the site plan.

Ex.PW1/2 is the copy of suit for permanent injunction filed by the plaintiff against the defendant restraining the defendant from creating any third party interest in respect of the suit property.

Ex.PW1/3 is the copy of application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure seeking ad-interim ex-parte injunction against the defendant restraining him from creating any third party interest.

Ex.PW1/4 is the copy of written statement filed in that case.

Ex.PW1/5 is the copy of reply to the application under Order XXXIX Rule 1 & 2 CPC.

Ex.PW1/6 is copy of application under Order VII Rule 11 of the Code of Civil Procedure.

Ex.PW1/7 is the reply to the application under Order VII Rule 11 of the Code of Civil Procedure.

Ex.PW1/8 is the copy of legal notice.

Ex.PW1/9 is the postal receipt.

Ex.PW1/DA is the copy of agreement to sell.

Mark A2 is the bank account statement of the plaintiff showing

withdrawal of money.

In his cross-examination, the plaintiff stated that the original of Mark A1 is with the defendant. He never remained in possession of Mark A1. He had seen it at the time of signing the same. No separate receipt was issued by the defendant on receipt of Rs. 5 lakhs but the defendant made endorsement on the overleaf of the agreement to sell. He admitted that Ex.P1 is the receipt issued by defendant on receipt of earnest money at the time of execution of agreement to sell. Apart from Rs. 5 lakhs, he stated to have paid Rs. 15,00,000/- in cash to the defendant. The defendant did not issue any separate receipt to him but he made endorsement on the overleaf that on 17.07.2011 a sum of Rs. 5,00,000/- had been paid to him. He voluntarily stated that out of the total consideration amount, the defendant was not ready to accept Rs. 52.60 lakhs in white. The defendant intended to accept Rs.30-35 lakhs in white. In this respect, no written document was prepared. On 17.07.2011, the defendant was in possession of the original agreement. No copy of the original agreement with endorsement of the defendant in respect of receipt of amount as mentioned on overleaf of the agreement was provided to him on 17.07.2011 by the defendant. Whenever, he made payment to the defendant in cash, he saw the defendant making endorsement on the overleaf of first page of agreement regarding receipt of payment. He did not demand the copy of endorsement made by defendant in respect of receipt of earnest money. He was not given any separate receipt against the payment of sum of Rs. 5 lakhs given to the defendant on 18.08.2011. He voluntarily stated that the defendant made an endorsement in this regard on the overleaf. He did not demand the copy of endorsement made by the defendant in this regard. He stated the same with regard to the payment made on 29.09.2011. He denied the

suggestion that he manipulated the agreement to sell Mark A1 and filed the copy of the same in the Court. The agreement is Ex.PW1/DA. He admitted that it was agreed that he would make part payment of total consideration amount firstly at the time of agreement to the tune of Rs. 5 lakhs, then Rs. 5 lakhs on 16.07.2011, thereafter a payment of Rs. 5 lakhs each on 16.08.2011 and on 16.09.2011 and the balance amount was to be paid by 20.11.2011. He had paid a sum of Rs. 5 lakhs on 16.07.2011. He voluntarily stated that the defendant had issued a receipt of the said amount on 17.07.2011. He denied the suggestion that he has paid a total sum of Rs. 15 lakhs to the defendant till now. He denied the suggestion that since he has not made any payment to the defendant as agreed on 16.07.2011, 16.08.2011 and 16.09.2011 hence, the transaction of sale of property was not completed. He denied the suggestion that he has not made full and final payment to the defendant till 20.11.2011. He stated that no separate receipt was issued by the defendant on receipt of payment as mentioned on the overleaf of Ex.PW1/DA. He did not issue any notice to the defendant to complete the construction work within the agreed period. He voluntarily stated that in the month of November 2011, the defendant has asked for some more time to complete the construction till March 2012 but he did not complete the construction till that time. The defendant verbally also asked for some more time. Apart from agreement Ex.PW1/DA, no other agreement was made between him and the defendant. He denied the suggestion that endorsement on the overleaf of Ex.PW1/DA is forged and fabricated. He stated that the original agreement to sell is with the defendant. He denied the suggestion that he had given a sum of Rs. 15 lakhs to the defendant and when he mentioned about having given Rs. 29 lakhs, in the suit for permanent injunction, the defendant fell sick. He stated that when he had approached the defendant on 01.02.2012

for executing the sale deed in his favour, the defendant used filthy language and threatened him to sell the property, which compelled him to file the suit for permanent injunction against the defendant. He admitted that the cheque of Rs. 1 lakh was encashed on 21.12.2011. He admitted that he had received notice dated 30.05.2012 Ex.D1 from the defendant.

PW2: Sh. Devender Chopra was examined as PW2. PW2 tendered his evidence by way of affidavit which is Ex.PW2/A and relied upon the following documents namely his election I-Card Ex.PW2/1, document already Ex.PW1/DA and document Ex.PW1/2 which bears his signature at point B.

In his examination-in-chief, he has stated that he was the attesting witness to the agreement to sell and his signature is at point B of the agreement to sell. He stated that at the time of entering into the agreement, it was agreed between the parties that the original agreement to sell would be kept in the possession of the seller i.e. the defendant till the date of finalization of the deal and whatever payment would be made in cash by the plaintiff, it would be reduced into writing by the defendant in his own handwriting. He stated that he knows that the plaintiff had made a payment of Rs. 20 lakhs in cash apart from cheque payment to the defendant. He stated that the payment receipt also bears his signature at point B. He deposed that the defendant failed to complete the construction of the flat under agreement to sell and requested for extension of time. He stated that there has been no default on the part of the plaintiff and he has always been ready and willing to make the payment of the balance sale consideration but the defendant has failed to fulfill his part of the agreement.

In his cross-examination, he stated that deal in the present case was

struck through him. He knows the plaintiff for the last 10 years and knows the defendant for the last 20 years. The terms and conditions of the deal were settled in his presence at the house of the defendant on 20.06.2011. The meeting took place on the said date at about 10-11 am. He admitted that it is not mentioned in the agreement Ex.PW1/BA that the seller would retain the original agreement. He admitted that generally purchaser retains the original agreement. He stated that after execution of agreement Ex.PW1/DA, he had met both the parties after about one month when the purchaser had made further part payment of sum of Rs. 5 lakhs to the seller. The receipt/separate acknowledgment of the said payment was not issued by the seller. He voluntarily stated that the endorsement in this respect was made on the overleaf of agreement Ex.PW1/DA. On the same day, he had demanded receipt from the defendant, but he did not issue any receipt. He did not protest because the defendant is his neighbour and the payment was made in good faith. Similarly, he had met both the parties further after one month and the plaintiff made part payment of Rs. 5 lakhs in cash to the defendant but no receipt or acknowledgment in this respect was issued by the defendant. Though, they had demanded the same. They met again after one month and paid a sum of Rs. 5 lakhs as further payment to the defendant. Then, on demand, the defendant handed over the photocopy of the agreement to them. He met both the parties on a number of occasions and persuaded the defendant to complete the transaction, but the defendant was not ready.

PW3: Sh. Sunil Manchanda, Judicial Assistant, Record Room Civil, Karkardooma Courts, Delhi was examined as PW3. He brought the summoned record of CS No. 36/2012 titled as Pramod Kumar Singh Vs. Parveen Jain vide Goshwara No. 128/12 decided by Sh. Kuldeep Narain,

~~the then~~ Ld. CCJ on 21.04.2012. He proved the certified copy of plaint and affidavit already Ex.PW1/2, certified copy of application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure already Ex.PW1/3, certified copy of written statement already Ex.PW1/4, certified copy of the reply to the application of defendant already Ex.PW1/5, certified copy of the application under Order VII Rule 11 of the Code of Civil Procedure already Ex.PW1/6, certified copy of the reply to the said application already Ex.PW1/7, certified copy of the order dated 08.02.2012, 21.04.2012 which are Ex.PW3/1 and Ex.PW3/2.

He was not cross-examined by the counsel for the defendant.

PW4: Sh. Ravi Kumar, Tax Assistant was examined as PW4. He brought the summoned record regarding ITR of assessment year 2012-2013 and financial year 2011-12 filed by Pramod Kumar Singh, PAN No. ALEPS6355D. These are Ex.PW4/1 (colly).

Thereafter, PE was closed.

8. Defendant's evidence

After closing of plaintiff's evidence, defendant evidence was led.

DW1: Defendant has got himself examined as DW1. He reiterated the same facts as were mentioned by him in his written statement. He tendered his evidence by way of affidavit Ex.DW1/A and relied upon the following documents i.e. copy of legal notice dated 30.05.2012 Ex.DW1/1, Discharge summary dated 05.04.2012 issued by Delhi Heart and Lung Institute, copy of medications Ex.DW1/2, ultrasound report and copy of ECG Ex.DW1/3, Lab investigation report Ex.DW1/4 (colly), Echo cardiography & colour doppler report dated 30.03.2012 Ex.DW1/5 (colly),

original gas receipt dated 27.10.2012 from Gopal Indane Cons. No. 15758 Ex.DW1/6, copy of rent agreement Ex.DW1/7, copy of domestic gas card Ex.DW1/8 (colly), copy of delivery gas voucher Ex.DW1/9.

In his examination-in-chief, he deposed that he has already forfeited the amount of Rs. 15 lakhs of earnest money by giving legal notice, for non-performance of the agreement by the plaintiff. He stated that he is entitled to get damages of a sum of Rs. 14 lakhs for irresponsible illegal act of the plaintiff. He stated that the plaintiff is in possession of the original agreement to sell and that he should file the same. He further stated that due to irresponsible and illegal act of the plaintiff, he suffered mental harassment, agony and heart disease. He is under treatment and his doctor has suggested him to implant CRT device, the cost of which is about Rs. 9 lakhs.

In his cross-examination, he stated that the plaintiff had made a payment of Rs. 15 lakhs to him. The remaining payment of Rs. 37,60,000/- was to be made by the plaintiff till 20.11.2011. He admitted that he has received a sum of Rs. 1 lakh from the plaintiff even after 20.11.2011, on 21.12.2011. He denied the suggestion that he had orally extended the time of performance of agreement dated 20.06.2011 till March 2012 and therefore, he had accepted the payment of Rs. 1 lakh from the plaintiff, even on 21.12.2011. He stated that he has not lodged any complaint regarding fabrication of the agreement to sell dated 20.06.2011 to any authority or police officials till date. He stated that the construction on the suit property was not completed till 20.11.2011. He had not given any written letter or notice to the plaintiff to make the remaining payment to him. He denied the suggestion that the plaintiff is ready and willing to pay the balance sale consideration to him or to execute the sale documents in his favour. He denied the suggestion that the plaintiff had served legal

notice upon him. He stated that he has not received any legal notice. He admitted that till 30.03.2012, the construction work of the suit property was not complete. He denied the suggestion that he is not entitled to claim the amount of Rs. 14 lakhs from the plaintiff. He denied the suggestion that he was sick for the last about 10-15 years and voluntarily stated that he fell sick only after non-compliance of the terms and conditions of the agreement by the plaintiff. He denied the suggestion that he has suffered medical problem due to his family problems and that his sickness has no connection to the breach of agreement. He denied the suggestion that his wife had left him alone in the year 2013-14 and he was already having family dispute with her wife due to which his medical condition had deteriorated. He denied the suggestion that he does not need CRT device. He admitted that no CRT device has been implanted in his body till date.

DW2: Sh. Naresh Kumar, Post Man from Shahdara Post Office, Delhi was examined as DW2. He stated that the summoned record is not available as the same has been weeded out. A report of the Sub Post Master, District Karkardooma Courts is Ex.DW2/A.

DW3: Sh. Anand Prakash Gaur was examined as DW3. He tendered his evidence by way of affidavit Ex.DW3/A.

In his cross-examination, he stated that he does not have a copy of the rent agreement which was executed by him in favour of Smt. Vibha Jain. The agreement was not registered. The rent was fixed at Rs. 6,500/- per month. He denied the suggestion that the defendant was never his tenant and therefore, he could not file any document on record.

DW4: Sh. Ajay Kumar, Manager, Gopal Indane Gas Agency was examined

as DW4. He produced the summoned record i.e. complete file regarding gas connection in the name of Smt. Vibha Jain W/o Sh. Parveen Jain, CA No. 15758, Sr. No. 2166 dated 12.01.2011. The attested copy of the complete file is Ex.DW4/A (colly).

In his cross-examination, DW4 stated that he has not brought any authority letter to depose on behalf of Gopal Indane Gas Agency. He admitted that there is cutting in the address mentioned in the Election I card of Smt. Vibha Jain. He had not brought documents related to delivery of the gas at the address B-1/314, B-1 Block, Yamuna Vihar, Delhi. He admitted that no documents of gas delivery are available in the office record as per his knowledge. He denied the suggestion that no delivery of gas cylinder ever took place at the aforesaid address.

DW5: Ms. Ronika Bharara, Company Secretary, Delhi Heart & Lung Institute, Panchkuian Road, New Delhi was examined as DW5. He deposed that she has been authorized by the Executive Director of Delhi Heart & Lung Institute vide authority letter Ex.DW5/A to depose before the Court. He brought the retention policy alongwith management discarding order and the newspaper advertisement confirming the discarding order, which are Ex.DW5/B (colly). He has stated that weeding order was passed by Ms. Neelam Sethi, Director Medical Services in DHLI. The order mentioning the period in question is mentioned in Ex.DW5/B (colly). He stated that there is no other record like weeding out summary report or special note regarding weeding out.

DW6: Dr. K.K. Sethi was examined as DW6. He proved the discharge summary of the defendant Ex.DW1/2. He stated that Dr. T.C. Singh had issued the said discharge summary who was employed in the hospital and

still works in the hospital. He proved the medical reports of the defendant , which are Ex.DW1/4 (colly). He advised Sh. Praveen Jain for CRT device when he was discharged from the hospital on 05.04.2012. The CRT device function is for improving the performance/efficiency of the heart in certain patients who have reduced efficiency because of some abnormality in ECG. The cost/expenses for implantation of CRT device was about Rs. 5 lakhs approximately at the time when the patient was discharged from the hospital. Currently, there is advanced model CRT-D which costs approximately between 7 to 9 lakhs. He deposed that Smt. Nidhi Dave, Dr. Rashmi Sood, Dr. Rinu Goel and Dr. Vandana Kaalra and Dr. TC. Singh were employed in the hospital under his supervision.

In his cross-examination, he stated that the illness with which the patient was admitted is gradually progressive disease which becomes severely symptomatic at some point in its natural history. The trajectory of worsening of this disease resulting in symptoms is variable from patient to patient, in some it worsened rapidly in others it could be relatively at less rapid pace. He deposed that as per the report since last one and half month, the patient was suffering from progressive difficulty in breathing which became class-iv (breathlessness at rest) before hospital admission. He could not tell whether the defendant was suffering from this disease since last more than one year as the case history was recorded as told by the concerned patient. He admitted that no record was available as of now in his hospital with regard to document Ex.DW1/2 and Ex.DW1/4 (colly). He voluntarily stated as per NABH requirement, they are supposed to keep the record for a period of 5 years which they do diligently. He admitted that he has not brought any document related to his authorization to depose before the Court. He did not know whether Mr. Praveen Kumar Jain was further admitted in the hospital for the purpose of installation of CRT device after

the discharge from the hospital on 05.04.2012.

9. Arguments

I have heard the arguments advanced on behalf of parties and perused the case file carefully.

10. Reasons and analysis/finding

After recording the gist of evidence led by both the parties, let me record the findings on each issue.

Issue no. 1:

(i) Whether the plaintiff has made payment of Rs. 30 lacs as claimed by him or Rs. 15 lacs as claimed by the defendant under the agreement dated 20.06.2011 executed between them?OPP

The onus to prove this issue was on the plaintiff. The plaintiff has stated that he had made various payments to the defendant. A sum of Rs. 5 lakhs was paid by him as an earnest money on 20.06.2011 i.e. at the time of the execution of agreement to sell. He has stated that he had made payment of cash of Rs. 5 lakhs each on 17.07.2011, 18.08.2011 and 29.09.2011 and other payments by way of cheque on 17.06.2011, 22.06.2011 and 19.07.2011 for a sum of Rs. 1 lakh each and payments by way of cheque on 11.08.2011, 12.09.2011, 04.10.2011, 14.11.2011 of Rs. 1.50 lakhs each and the last payment on 21.12.2011 of a sum of Rs. 1 lakh.

The defendant admitted execution of the agreement to sell, dated 20.06.2011. He has admitted the aforesaid payments other than the cash payments of Rs. 5 lakhs each on 17.07.2011, 18.08.2011 and 29.09.2011. The plaintiff has deposed that when the above payments in cash were made by him to the defendant, the defendant did not issue any receipt thereof. However, the defendant had made an endorsement on the overleaf of the

agreement to sell. The plaintiff has stated that the original agreement to sell was in the possession of the defendant.

The defendant has stated that the original agreement to sell is in the possession of the plaintiff. He denied the cash payments of Rs. 5 lakhs each on 17.07.2011, 18.08.2011 and 29.09.2011. When agreement Ex.PW1/DA was shown to the defendant to identify his signature, he deposed that the document does not bear his signature at point Y. However, he stated that he has not lodged any complaint regarding fabrication of agreement to sell, dated 20.06.2011, to any authority or police officials till date. He denied the suggestion that he did not lodge any such complaint because the document bears his handwriting and actual signature. He also denied the suggestion that the document Ex.PW1/DA bears his handwriting and signature. He also denied the suggestion that the agreement dated 20.06.2011 i.e. Ex.PW1/DA is the correct agreement and the copy of agreement dated 20.06.2011 filed by him on record is not the correct photocopy. He denied the suggestion that documents marked as Mark D1 and Mark D2 in his affidavit are forged and fabricated documents.

In this case, the plaintiff has placed on record the photocopy of the agreement to sell. He has stated that the original of the same is with the defendant. To show the payment of Rs. 15 lakhs, he has stated that endorsement regarding the payment was made by the defendant on the overleaf of the agreement to sell. He has further stated that out of the total consideration amount, the defendant was not ready to accept Rs. 52.60 lakhs in white. The defendant intended to accept Rs. 30 lakhs - 35 lakhs in white. He has placed on record the copy of the said endorsements. The defendant on the other hand, has denied his handwriting and signature on the said endorsements.

In this case, the plaintiff has relied upon certain endorsements. However, the defendant has specifically denied the same to be in his handwriting or signature. He has not led any evidence to prove the same to be forged. Also, a cursory look at the signatures on the endorsement shows that the same match with the signatures on the agreement to sell and the execution of the agreement to sell has been admitted by the defendant. In his cross-examination, when the defendant was shown the document Ex.PW1/DA, he admitted that it was the agreement which was executed between him and the plaintiff on 20.06.2011. However, he stated that the agreement only in three pages was executed and the remaining two pages were not executed by him. However, the signatures on the endorsement as well as signatures on the agreement are similar. He has also not explained as to how endorsements regarding receipt of Rs. 15 lakhs came to be made on the copy of agreement filed by the plaintiff. The plaintiff has alleged that the same were in handwriting of the defendant. The defendant could have easily disproved it by giving a sample of his handwriting and getting it compared. However, no such thing was done by the defendant. Also, when huge money is involved and the signatures of a person are forged by someone, it is only natural and reasonable to get a police complaint registered. However, no such thing was done by the defendant.

In these circumstances, the act of simplicitor denying these endorsements by the defendant seems to be an evasive stand taken by him. Also, PW2 who was the attesting witness of the agreement to sell, dated 20.06.2011 has corroborated the testimony of PW1. He has deposed that at the time of entering into the agreement, it was agreed between the parties that the original agreement to sell would be kept in the possession of the seller i.e. the defendant till the date of the finalization of the deal and whatever payment would be made in cash by the plaintiff would be

reduced into writing by the defendant in his own handwriting. He stated that he knows this fact that the plaintiff has made payment of Rs. 20 lakhs in cash apart from the cheque payments to the defendant. He stated that after execution of the agreement Ex.PW1/DA, he had met both the parties together after about one month when the purchaser had made further part payment of Rs. 5 lakhs to the seller. The receipt/separate acknowledgment of the said payment was not issued by the seller and endorsement in respect thereof was made on overleaf of agreement Ex.PW1/DA. He demanded receipt from the defendant but the same was not issued. Thereafter, he met both the parties together after further one month and on that day, plaintiff made further part payment of Rs. 5 lakhs in cash to the defendant but no receipt was issued. They met again after one month and paid a sum of Rs. 5 lakhs as further payment to the defendant. Then, on demand, the defendant handed over the photocopy of agreement to them. Thus, the testimony of PW2 also corroborates the testimony of PW1.

Further, as per the agreement to sell Ex.PW1/DA, a sum of Rs. 5 lakhs was paid as an earnest money on 20.06.2011. Thereafter, part payment was to be paid by the second party to the first party as per details contained in para 5 of the agreement to sell.

(i) Rs. 5 lakhs was to be paid on 16.07.2011.

(ii) Rs. 5 lacs was to be paid on 16.08.2011.

(iii) Rs. 5 lacs was to be paid on 16.09.2011.

The plea taken by the plaintiff that he had made three cash payments of Rs. 5 lacs each on 17.07.2011, 18.08.2011 and 29.09.2011 are comparable to or are relatable to with the dates of payment as enlisted in the agreement to sell. If the plea taken by the defendant that he has not received these cash payments is accepted as correct then it is not understandable as to why he did not protest regarding non-payment of

these amounts which were required to be paid as per the schedule of payment contained in the agreement. Also, no notice was issued by the defendant in this regard till 30.05.2012. Further, if the plea of the defendant is accepted as correct, it is not understandable as to why the defendant after default of cash payment of Rs. 5 lacs by the plaintiff, accepted the cheque payments of Rs. 1 lakh each on 22.06.2011 and 19.07.2011 and the cheque payment of Rs. 1.5 lakhs on 11.08.2011. Thereafter, as the second payment of Rs. 5 lakhs in cash had to be made on 16.08.2011, in case, the said payment was not made by the plaintiff then it is not comprehensible as to why the defendant accepted the cheque payment of Rs. 1.5 lakhs on 12.09.2011 from the plaintiff. Similarly, if there was a default of cash payment of Rs. 5 lakhs by the plaintiff on 16.09.2011/29.09.2011, then why did the defendant accept two cheque payments of Rs. 1.5 lakhs each on 14.10.2011 and 14.11.2011 and a cheque payment of Rs. 1 lakh on 21.12.2011. There is no mention that those payments were accepted under protest or any such protest was documented. This conduct of the defendant also shows that he had received three cash payments of Rs. 5 lakhs each on 17.07.2011, 18.08.2011 and 29.09.2011.

In this case, though the defendant has clearly denied having received these payments, however, his conduct speaks for itself and the same is contrary to the stand taken by him and only fortifies the averments made by the plaintiff.

In these circumstances, this issue is decided in favour of the plaintiff and against the defendant.

Issue no. 3

(iii) Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 20.06.2011? OPP

The onus to prove this issue was on the plaintiff. The plaintiff has relied upon an unregistered agreement to sell dated 20.06.2011. In a suit for specific performance, an unregistered agreement to sell can be relied upon. An agreement to sell does not create or transfer ownership rights. It only creates a contractual right and therefore, does not require compulsory registration. It is trite that an unregistered document effecting immovable property can be received as evidence in a suit for specific performance (proviso to section 49 of the Registration Act).

However, in this case, the original agreement to sell has not been filed by the plaintiff. He has stated that the original agreement to sell is in possession of the defendant. The defendant has, however, denied the same.

Section 61 to 65 of the Evidence Act, 1872, establish that documents must generally be proven by primary evidence i.e. by production of the original document. Secondary evidence (copies, oral evidence, etc.) is admissible only in exceptional circumstances as enlisted in section 65 of the Evidence Act such as, when the original document is lost, destroyed or held by the opponent. This is based upon the rule of best evidence i.e. secondary evidence is permitted if the original is unavailable or its absence is properly accounted for.

In the present case, the plaintiff has placed on record a photocopy of the original agreement to sell dated 20.06.2011. He has stated that the original thereof is in possession of the defendant. The same has been denied by the defendant. However, when the document Ex.PW1/DA was shown to the defendant from the court record, he admitted that it was the agreement which was executed by him with the plaintiff on 20.06.2011. He stated that only three pages thereof were executed by him and the remaining two pages were not executed by him. However, the remaining two pages are only as regards endorsement of payment of Rs. 15 lakhs.

Thus, when the execution of agreement to sell has been admitted by the defendant, the same need not be proved and can be relied upon. Further, the plaintiff has also examined the attesting witnesses of the agreement dated 20.11.2011 as PW2 who has stated that the agreement Ex.PW1/DA was prepared at the office of an advocate at Yamuna Vihar, Delhi. The signatures of the parties were obtained on the agreement after about one hour of the preparation of the same. This witness has also identified his signature as attesting witness on the agreement to sell. Thus, the execution of agreement Ex.PW1/DA is duly proved.

As per the said agreement, a sum of Rs. 5 lakhs was paid as earnest money on 20.06.2011. The balance amount of Rs. 47,60,000/- was to be paid by the plaintiff to the defendant on or before 20.11.2011 i.e. at the time of presentation and registration of the sale documents in favour of the plaintiff. Thus, the due date for performance of agreement was 20.11.2011. The plaintiff has proved various payments to the defendant i.e. Rs.5 lakhs in cash as earnest money at the time of execution of agreement to sell on 20.06.2011, Rs. 5 lakhs in cash each on 17.07.2011, 18.08.2011 and 29.09.2011. He has also made various cheque payments on 17.06.2011, 22.06.2011, 19.07.2011, 11.08.2011, 12.09.2011, 04.10.2011 and 14.11.2011 as well as payment on 21.12.2011. Thus, a total amount of Rs. 30 lakhs is stated to have been paid by the plaintiff. On the other hand, the defendant has admitted the payment of earnest money as well as various cheques payments, in all of a sum of Rs. 15 lakhs. He has denied the cash payment of Rs. 15 lakhs. The plaintiff has alleged that the defendant failed to complete the construction of the suit property within the specified time. On 19.11.2011, when he enquired about the work which was not completed during the stipulated time, the defendant allegedly told him that due to financial crisis, the work could not be completed and that the same

would be completed by the end of March 2012 and that thereafter, the sale deed would be executed in favour of the plaintiff. The defendant also demanded some payment from the plaintiff and relying upon the assurance of the defendant, the plaintiff handed over a post dated cheque bearing no. 812310 drawn on Axis Bank, Vasant Kunj Branch, Delhi amounting to Rs. 1 lakh to the defendant. The said cheque was duly encashed by the defendant on 21.12.2011. However, on 01.02.2012, when the plaintiff visited the house of the defendant, the defendant refused to sell the property to the plaintiff and allegedly demanded an extra payment of Rs. 10 lakhs. Immediately, thereafter, the plaintiff filed a suit for permanent injunction on 02.02.2012. The plaintiff also allegedly issued legal notice to the defendant on 17.03.2012.

In his cross-examination, he has stated that he paid a sum of Rs. 29 lakhs to the defendant till 20.11.2011, the remaining amount was not paid because the construction of building was not complete. He stated that in the month of November 2011, the defendant asked for some more time to complete the construction i.e. till March 2012. He also submitted that the cheque of Rs. 1 lakh was encashed by the defendant on 21.12.2011.

On the other hand, the defendant has denied the suggestion that he had failed to construct the suit property in time and was not willing to perform his part of the obligation. However, in his cross-examination, he admitted that the construction of the suit property was not complete till 20.11.2011. He further deposed that he had not given any notice to the plaintiff to make the remaining payment to him. He denied the suggestion that the construction of the suit property was not complete till 20.11.2011 and therefore, the agreement dated 20.11.2011 was orally extended till March 2012. He admitted that till 30.03.2012, the complete construction work of the suit property was not complete. The defendant has admitted

that he received an amount of Rs. 1 lakh from the plaintiff even after 20.11.2011 i.e. on 21.12.2011.

To decide whether the plaintiff is entitled to the relief of specific performance of agreement dated 20.06.2011, it is necessary to determine whether time was of the essence of contract and as to when the contract was breached and by whom?

In Chand Rani v. Kamal Rani, reported in (1993) 1 SCC 519, it was held that *“in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are:*

- 1. from the express terms of the contract;*
- 2. from the nature of the property; and*
- 3. from the surrounding circumstances, for example: the object of making the contract.”*

The Hon’ble Supreme Court re-affirmed the principles for deeming whether time is of the essence of contract in ***Welspun Specialty Solutions Ltd. v. ONGC, reported in (2022) 2 SCC 382***, in which it was held *that the determination must be made by reading and analysing the contract in its entirety, taking into account the surrounding circumstances. An explicit clause stating that time is of the essence is not, by itself, sufficient. The Court further observed that any provision allowing extensions under a contract effectively negates such a clause, thereby indicating that time is not of the essence.*

In this case, the performance of contract was to be made till 20.11.2011. However, after the due date of the performance, the encashment of cheque of Rs. 1 lakh by the defendant on 21.12.2011 repudiates any claim the time was of the essence of contract. The plaintiff

has stated that he made payment of Rs. 29 lakhs till 20.11.2011 and on the assurance of the defendant that the construction shall be completed by March 2012, he further issued a post dated cheque of Rs. 1 lakh in favour of the defendant.

Now, if the defendant considered the agreement to have been breached/frustrated on 20.11.2011 on non-payment of total consideration amount by the plaintiff then where was the occasion for him to get the cheque of an amount of Rs. 1 lakh encashed on 21.12.2011. This conduct of the defendant shows that time was not of the essence of contract and the contract continued to subsist even after 20.11.2011.

It has been admitted by the defendant that the construction of the property was not even complete by 30.03.2012 thus, this clearly shows that there has been lapse on the part of the defendant as the property in question was not ready to be sold by the due date of performance i.e. 20.11.2011.

In this case, the performance of the purchaser's/plaintiff's obligation to pay the remaining sale consideration was also dependent upon the fulfillment of the seller's obligation to get the property constructed. As per the record, the plaintiff had paid a total sum of Rs. 29 lakhs uptill 20.11.2011. Had the contract got breached due to lapse on the part of the plaintiff then the defendant should have immediately issued a legal notice to the plaintiff seeking repudiation of the contract and forfeiture of the earnest money. Here, in fact, the defendant got the cheque encashed on 21.12.2011 and did not pursue any legal remedy from 20.11.2011 till issuance of legal notice on 30.05.2012. On the other hand, even after the encashment of the cheque of Rs. 1 lakh by the defendant on 21.12.2011, when the defendant did not fulfill his part of the obligation and allegedly refused to sell the property to the plaintiff, the plaintiff filed a suit seeking

permanent injunction on 02.02.2012 stating that he has paid a sum of Rs. 29 lakhs to the defendant till 14.11.2011 and that the defendant has refused to sell the property to the plaintiff. He also sought a relief of permanent injunction restraining the defendant from selling the suit property to any other person. Pursuant to the filing of the said suit on 02.02.2012, the parties were directed to maintain status quo regarding the suit property till 15.03.2012. Thereafter, on 21.04.2012, the said suit was dismissed in view of section 41 (h) of the Specific Relief Act. The present suit has been filed on 20.04.2012. Also, a legal notice was allegedly sent by the plaintiff to the defendant on 15.03.2012 having postal receipt dated 17.03.2012. As per the said legal notice, the plaintiff called upon the defendant to get the construction of the property duly completed as per agreement prior to 30.03.2012 and to be present on 30.03.2012 before the office of Sub Registrar, North-East District, Delhi for execution of sale deed failing which it was stated that the plaintiff shall take appropriate legal action before the Court of law. The said legal notice was issued at the address of the suit property. The defendant has stated that he had not received the said legal notice as he was residing in a tenanted premises at the relevant time. This particular fact is of no consequence as the filing of the suit for permanent injunction precedes the alleged issuance of legal notice. Also, the written statement in the said case was filed on 05.03.2012 i.e. before issuance of legal notice. Thus, the defendant had been clearly put to notice of the averments made by the plaintiff regarding the breach of contract by the defendant.

Readiness and willingness to perform the terms of the contract.

In a suit for specific performance, the plaintiff must aver and prove his readiness and willingness to perform his part of the contract. This includes the financial capacity of the plaintiff as well as his conduct

showing his intention to perform his part of the contract.

As per section 16 (c) of the Specific Relief Act, the plaintiff must aver and prove that he has performed or has always been and is willing to perform his part of the contract. Compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form (*Syed Dastagir Vs. T.R. Gopalakrishna Setty (1999) 6 SCC 337*).

In *Aniglase Yohanna Vs. Ramatha AIR 2005 SUPREME COURT 3503*, this Court held:-

“11. *Lord Campbell in Cork v. Ambergate etc. and Railway Co., (1851) 117 ER 1229* observed that *in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it, had it not been renounced by the defendant.*

12. *The basis principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”*

As per the deposition of the parties, there were reciprocal promises between the plaintiff and the defendant. The obligations of the parties were mutual and dependent. The plaintiff had to pay certain sums of money and the defendant had to complete the construction till 20.11.2011 and as per the alleged extension of time, the construction had to be completed till March 2012.

The plaintiff has stated that he has always been ready and willing to perform his part of the contract. Further, he has deposed that he paid a sum of Rs. 29 lakhs till 14.11.2011 and a cheque of Rs. 1 lakh was also encashed by the defendant after the due date of performance i.e. 21.12.2011. He has stated that on 01.02.2012, the defendant refused to perform the contract.

As per the defendant, till 30.03.2012, the construction of the suit property was not complete. Till that time, he also did not issue any legal notice to the plaintiff demanding payment. The alleged legal notice was issued by the defendant to the plaintiff only on 30.05.2012. This clearly shows that it was the defendant who had not fulfilled his obligation towards the contract. In these circumstances, the question of paying the balance sale consideration by the plaintiff did not arise.

The plaintiff has stated that he had the financial capacity to honour the agreement. PW4 has filed the ITR of the plaintiff for assessment year 2011-12 and 2012-13 which are Ex.PW4/1 (colly). As per the ITR of the assessment year 2012-13, the plaintiff had Rs. 19,499/- cash in cash, Rs. 27,304/- balance with banks and Rs. 30 lakhs as deposits/loans/advances. Thus, as per the ITR, the plaintiff had the financial strength or capacity to purchase the property in question. He had already paid sum of Rs. 30 lakhs and only a sum of Rs. 22,60,000/- had to be paid.

Further, as per section 16 (3) of the Specific Relief Act, there has to be a continuous readiness and willingness on the part of the plaintiff to perform his part of the contract. As can be seen from the conduct of the plaintiff, he paid a substantial sum of money till 14.11.2011 and thereafter, on assurance of the defendant, he also issued a post dated cheque in favour of the defendant which was encashed on 21.12.2011. It is stated that the defendant had assured the plaintiff that the construction shall be complete

by March 2012. However, on 01.02.2012 when defendant refused to sell the property, the plaintiff filed the suit for permanent injunction on 02.02.2012. The Court directed the parties to maintain status quo on 08.02.2012 and the said suit was finally dismissed on 21.04.2012. In the meantime, the plaintiff had also allegedly issued a legal notice to the defendant on 15.03.2012 and the present suit was filed on 20.04.2012. Thus, the plaintiff has been continuously seeking the enforcement of the contract. On the other hand, as per the defendant himself, the construction of the suit property was not complete till 30.03.2012. The Court had directed the parties to maintain status quo on 08.02.2012. Therefore, the work of construction, if any stopped w.e.f. 08.02.2012. The said date is much later than the date of performance of agreement i.e. 20.11.2011. Thus, the conduct of the parties clearly shows that the plaintiff has always been ready and willing to perform his part of the contract and the breach of contract has been on the part of the defendant.

Issue no. 2 & 4

(ii) Whether the aforesaid agreement got frustrated on account of any default of the plaintiff? OPD

(iv) Whether the defendant is entitled to amount of Rs. 14 lacs as claimed in the counter claim? OPD

The onus to prove these issues was on the defendant.

The defendant has alleged that due to non-payment of money as per the schedule by the plaintiff, he could not complete the construction of the demised premises. However, as discussed above, the defendant has not been able to prove the same. On the other hand, the plaintiff has proved that there was breach of contract by the defendant.

The defendant has stated that he got into depression when the plaintiff filed a suit for permanent injunction instead of making payment.

He suffered acute heart problem and on 28.03.2012, he was admitted to Delhi Heart and Lung Institute where he got treatment for 9 days and got discharged on 05.04.2012 with the medical advice to get the CRT device implanted in his body. It is stated that he is still undergoing treatment at AIIMS Hospital. It is stated that due to irresponsible act of the plaintiff, the defendant suffered mental harassment, agony and heart disease for which he has sought compensation of Rs. 5 lakhs and to get the CRT device implanted, he has sought an amount of Rs. 9 lakhs i.e. the cost of the CRT device. The defendant has thus, claimed damages to the tune of Rs. 14 lakhs. He has also forfeited the advance money paid by the plaintiff.

The plaintiff has stated that he had paid a total sum of Rs. 30 lakhs to the defendant. The defendant has stated that he had received only Rs. 15 lakhs. However, this issue has already been decided by the finding of the Court on issue no. 1. Thus, the defendant has in fact, forfeited a sum of Rs. 30 lakhs given by the plaintiff and has sought an additional claim of Rs. 14 lakhs as damages. To substantiate his claim for damages which has been sought by way of a counter claim, the defendant has examined himself. He has deposed that due to conduct of the plaintiff, he suffered acute heart disease.

In his cross-examination, he has denied the suggestion that he was sick for the last about 10-15 years. He voluntarily stated that he fell sick only after non-compliance of the terms and conditions of the agreement dated 20.06.2011. He denied the suggestion that he suffered medical problem due to his family problem and that his sickness had no connection with the agreement. He denied the suggestion that his wife left him alone in the year 2013-14 and he was already having family dispute with her due to which his medical condition had deteriorated. In his cross-examination recorded on 04.10.2019, he admitted that no CRT device has been

implanted in his body till date. He has relied upon certain medical documents filed by him which are Ex.DW1/2, as per which he was admitted to Delhi Heart and Lung Institute on 28.03.2012 and discharged on 05.04.2012. He has failed to prove as to how he has quantified the damages to the tune of Rs. 5 lakhs. He has not appended any medical bills in this regard. Also, as already admitted by the defendant the said CRT device has not been got implanted by him thus, he is not entitled to claim the additional compensation of Rs. 9 lakhs on account of the same.

As per the law of damages, the act of the plaintiff/non- counter claimant must be the proximate cause of loss suffered by the defendant/counter claimant. The loss must be direct, natural and foreseeable, consequence of the act of the person from whom the damages are claimed.

In the classic case of *Hadley & Anor v Baxendale & Ors* [1854] [EWHC J70](#), it was held that “*where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the*

party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case, and of this advantage it would be very unjust to deprive them.”

Thus, damages for breach of contract are limited to those arising naturally (in the usual course of things) or those in the reasonable contemplation of both parties at the time of contracting. A person is liable only if his act is proximate cause and not remote cause of the loss.

However, in the instant case, as already discussed, the breach of contract is not even attributable to the plaintiff. The terms of the contract have been breached by the defendant himself. Even presuming that the breach was committed by the plaintiff, his act could not be regarded as the proximate cause of the worsening of the health condition of the defendant. Hence, it does not lie in the mouth of the defendant, to claim damages. These issues are accordingly, decided against the defendant.

11. Relief

In this case, the defendant has allegedly forfeited a sum of Rs. 30 lakhs paid by the plaintiff. As per his own deposition, he has forfeited Rs. 15 lakhs paid by the plaintiff. As per the agreement, dated 20.06.2011 in case of breach of contract by the plaintiff, the earnest money of Rs. 5 lakhs only could be forfeited. However, in the instant case, the entire advance money has been forfeited by the defendant.

The law in this regard is very clear as contained in ***Maula Bux Vs. Union of India, reported in (1969) 2 SCC 554*** wherein it was held that

forfeiture of earnest money is not deemed as penal and that section 74 of the Indian Contract Act, 1872 Act will apply only where the forfeiture is in the nature of penalty. Forfeiture of a reasonable amount paid as earnest money does not amount to imposing a penalty. But if forfeiture is of the nature of the penalty, section 74 applies.

Similarly, in ***Satish Batra v. Sudhir Rawal***, reported in (2013) 1 SCC 345, this Court emphatically held that *it is only the "earnest money", paid as a pledge for the due performance of the contract, that can be forfeited by the seller on account of the buyer's default. In the same vein, earnest money can also be doubled and paid back to the buyer if the contract falls through due to the seller's default. An amount which is in nature of an "advance" or serves as part-payment of the purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. The Court further held that despite the existence of an outright forfeiture clause, it shall not apply if the amount stipulated in the contract is found to be only in the nature of part-payment of the purchase price. Consequently, the forfeiture of "advance money" as part of earnest money can only be justified if the terms of the contract are clear and explicit to that effect.*

Furthermore, the seller can forfeit the earnest money only if the breach is attributable to the purchaser which is not the situation in the present case. Therefore, the defendant could not have forfeited Rs. 30 lakhs paid by the plaintiff.

It has been argued that the refund of advance money cannot be claimed by the plaintiff as per section 22 (2) of the Specific Relief Act, 1963 as no prayer to that effect has been made by the plaintiff.

In the instant case, no such prayer was required to be made as the plaintiff has sought specific performance of the contract seeking direction to the defendant to execute the sale deed in respect of the flat situated on

the second floor of the property bearing Plot No. 52, Block B-1, ad-measuring 70 sq. mtrs., fitted lift alongwith one car parking on the ground floor alongwith whole of the structure constructed whatsoever thereon, with all accessible rights and obligation to the common staircase/services like sewer line, separate water line, electricity meter, right to access the water tank and antenna installed on the roof situated at layout plan of Yamuna Vihar, Ghonda Residential Scheme, Illaqa Shahdara, Delhi-110053 (specifically shown in the site plan annexed with the plaint), as per agreement dated 20.06.2011.

Since, the plaintiff has proved his case, the suit of the plaintiff is hereby decreed and the defendant is directed to execute the sale deed in respect of the suit property as mentioned above and to hand over peaceful possession of duly constructed suit property as mentioned above to the plaintiff within 60 days from the date of this judgment on the payment of the balance sale consideration of Rs. 22,60,000/- by the plaintiff at the time of the execution of the sale deed.

In case, the defendant fails to execute the sale deed within the stipulated time, the plaintiff shall be entitled to get the sale deed executed through the Court.

The sale deed shall be presented for registration before the concerned Sub Registrar and the necessary stamp duty and registration charges shall be borne by the plaintiff.

The defendant shall also hand over the peaceful possession of the suit property at the time of the execution of the sale deed. The plaintiff shall also be entitled to the cost of the suit.

12. The counter claim filed by the defendant is hereby dismissed.

13. Decree sheet be prepared accordingly.

14. File be consigned to the Record Room.

(Gomati Manocha)
District Judge-02 (North East District)
Karkardooma Courts, Delhi.

Dictated and announced in open court
today i.e. 09th April, 2026