

IN THE COURT OF DISTRICT JUDGE
(COMMERCIAL COURT)-02, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI

CS (COMM.) No. 17/2025
CNR NO.: DLSW01-000192-2025

IN THE MATTER OF: -

Sh. Jai Prakash Sharma
S/o Sh. Krishan Dutt,
R/o H. No. 62, Taj Pur Khurd,
South-West District,
Delhi - 110071.

. Plaintiff

Versus

1. Sh. Vipin Sharma
S/o Sh. Harpal Sharma
R/o Kertu, Tehsil Unn,
District Shamli, Uttar Pradesh.

2. Sh. Ankit Rathi
S/o Sh. Balkar Singh
R/o Village Kamal Pur,
PS Jhijhana, Tehsil Unn,
District Shamli, Uttar Pradesh.

. Defendants

SUIT FOR RECOVERY OF RS. 14,62,000/-
(RUPEES FOURTEEN LAKHS SIXTY-TWO THOUSAND
ONLY) ALONG WITH INTEREST

Date of Institution	:	16.01.2025
Date of reserving Judgment	:	02.07.2026
Date of pronouncement of Judgment	:	17.07.2026

JUDGMENT :-

1. Vide this judgment, I shall decide the present suit filed by the plaintiff for recovery of Rs. 14,62,000/- along with *pendente-lite* and future interest @ 24% per annum against the above named defendants.

BRIEF CASE OF THE PARTIES

2. The case of the plaintiff as culled out from the plaint, in nutshell, is that the plaintiff had been running a general store at J-45, Defence Enclave, Main Goyla-Tajpur Road, Delhi for his livelihood. The defendant no. 2, who was getting training from the SIS Security Guard on the ground near the shop of the plaintiff, used to visit the shop of the plaintiff and developed friendly relations with the plaintiff. The defendant no.2 in a very planned manner started alluring the plaintiff for purchasing a big truck to get huge earnings from the said truck. In the last week of July 2021, the defendant no. 2 introduced the defendant no. 1 as his fast friend to the plaintiff and arranged a meeting with him at the shop of the plaintiff. In the said meeting, the defendant no. 1 represented himself as registered owner of Truck-Troller bearing Registration No. HR-45C-0090 which he was planning to sell. The defendant no. 2 also represented that he was short of funds and convinced the plaintiff to purchase the said Truck-Troller from the defendant no. 1 by enticing the plaintiff that he had contact with many companies and would get connected the said vehicle with one of those companies

from where the plaintiff would be fetching monthly income to the tune of Rs. 2.50 lakhs to Rs. 3 lakhs. After long discussion and negotiations, the sale consideration of the vehicle was fixed at Rs. 27,30,000/-. It was also informed by the defendant no. 1 that balance loan amount of Rs. 11,90,000/- was pending on the said vehicle, though later on it was found that loan amount of approx. Rs. 16,00,000/- was pending on the said vehicle. The defendant no. 1 assured the plaintiff that if the entire amount of Rs. 27,30,000/- was paid to him, he would obtain NOC from the bank and transfer the vehicle in favour of the plaintiff and in alternate the plaintiff could pay Rs.15,40,000/- to him and thereafter kept on paying the installments directly to the bank and after clearance of the loan amount, he would transfer the vehicle in favour of the plaintiff. In this regard, a copy of agreement was produced by the defendant no. 2 wherein the plaintiff and the defendant no. 2 were shown as purchasers and the defendant no. 1 was shown as seller of the vehicle. The plaintiff objected to the said agreement stating that the agreement should be in his exclusive name as he was paying the entire sale consideration amount, however the defendant no. 2 assured the plaintiff that the agreement was merely a formality and that he would manage the entire work relating to transfer of the vehicle. The defendant no. 2 asked the plaintiff to deposit some amount from his account in the account of the defendant no. 1 and some amount from the account of his wife Smt. Manisha in his account.

3. It is further case of the plaintiff that believing the

defendants, he transferred a total sum of Rs. 13,50,000/- in the account of the defendants as per details given in para no. 8 of the plaint. It is stated that part payment of Rs. 5,00,000/- was made by wife of the plaintiff to the defendant no. 2 on different dates and later on the defendant no. 2 used to pay the said amount to the defendant no. 1. After receiving the total payment of Rs. 13,50,000/-, an agreement was signed and executed between the parties and the defendant no. 1 handed over the physical possession of the vehicle to the plaintiff. After getting the truck, the plaintiff was working on the truck, however the plaintiff noticed a great change in the behaviour of the defendant no. 2 who started visiting the residence of the plaintiff under influence of liquor in the absence of the plaintiff and when the plaintiff objected to the same, he threatened to kill the plaintiff. On 07.02.2022, the defendant no. 2 came to the plaintiff's house after having alcohol and attacked the plaintiff with a sharp object due to which the plaintiff suffered injuries. After a few days later, the defendant no. 2 suggested the plaintiff in a threatening tone to go back to his home and assured the plaintiff that he would keep transferring Rs. 1,00,000/- per month in the plaintiff's account. However, the defendant no. 2 never transferred Rs. 1,00,000/- in the account of the plaintiff and whenever the plaintiff asked the defendant no. 2 about his monthly income, initially the defendant no. 2 kept on avoiding the same on one pretext or the other, but when the plaintiff pressed hard for the same, the defendant no. 2 clearly refused to give any money or earnings to the plaintiff and stated that he would neither let the vehicle

transferred in the name of the plaintiff nor give any money to the plaintiff and threatened to kill the plaintiff if he would ask for the same.

4. It is stated that the defendants in active collusion and connivance with each other had cheated the plaintiff in a well-planned conspiracy as no sale transaction ever took place and they had just cheated the money from the plaintiff and his wife. The plaintiff requested the defendants to repay the amount of Rs. 13,50,000/- with interest but till date the defendants have neither returned the hard-earned money of the plaintiff nor gave the Truck-Troller to the plaintiff. The plaintiff also got served a legal notice dated 22.08.2024 upon the defendants calling upon them to pay a sum of Rs 13,50,000/- along with interest @ 24% per annum from 10.12.2021, but despite service of the notice, the defendants failed to comply the said legal notice. Hence, the present suit.
5. The plaintiff by way of present suit is seeking recovery of Rs. 14,62,000/-, which amount includes principal amount of Rs. 8,50,000/- and interest thereon of Rs. 6,12,000/- @ 24% per annum from 10.12.2021 to 09.12.2024 i.e. for 36 months. The plaintiff has also prayed for *pendente-lite* and future interest on the decretal amount @ 24% per annum till its realization.
6. On being served with the summons of the suit, the defendant no. 1 has contested the suit by filing written statement contending that the suit is barred by limitation and

that the plaintiff has not approached the Court with clean hands and has concealed the material facts from the Court. It is stated that the plaintiff and the defendant no. 2 entered into an agreement dated 15.10.2021 with the defendant no. 1 for purchasing the Truck-Troller bearing Registration No. HR-45C-0090. The deal was cracked at Rs.27,30,000/- and there was balance loan amount with respect to the said Truck-Troller of Rs. 11,90,000/- and not of Rs. 16,00,000/-. As per the terms and conditions of the Agreement, out of the total consideration amount of Rs. 27,30,000/-, Rs.15,00,000/- was to be paid to the defendant no. 1 by the plaintiff and the defendant no. 2 and rest amount was to be paid jointly by the plaintiff and the defendant no. 2 to the bank in 35 installments of Rs.47,903/- each. As agreed, the plaintiff paid Rs. 10,00,000/- to the defendant no. 1 till the date of agreement and the remaining amount of Rs.5,00,000/- had to be on 15.10.2021. It was also agreed vide Clause 1 and 3 of the Agreement that if the plaintiff and the defendant no. 2 would not pay Rs.5,00,000/- on agreed date or/and if they would not pay 2 installments consecutively, then the defendant no. 1 would have the right to take his vehicle back and also to forfeit the amount of Rs. 10,00,000/-which was paid by the plaintiff and defendant no.2 at the time of execution of the said agreement. It is stated that the plaintiff and the defendant no. 2 did not pay any single penny to the defendant no. 1 on 15.10.2021, so the defendant no. 1 got the right to get his vehicle back as well as to forfeit the amount of Rs. 10,00,000/-. It is further stated that the defendant no. 1 handed over the possession of the vehicle to the plaintiff and the

defendant no. 2 on 19.09.2021 and Clause (2) and (4) of the Agreement provides that from the date of 19.09.2021, the plaintiff and the defendant no. 2 shall bear all the amount of challans, losses, profits and shall be responsible for any accident and every other incident happening with respect to the said vehicle.

7. It is further stated by the defendant no. 1 that when the remaining amount of Rs.5,00,000/- had not been paid by the plaintiff and the defendant no.2 on 15-10-2021, he called the plaintiff and defendant no. 2 many times telephonically but they did not respond. On 27.04.2023, on receipt of an information, the defendant no. 1 found the said vehicle parked in a bad condition in District M. Nagar, Uttar Pradesh and later on he came to know that the plaintiff and the defendant no. 2 sold the vehicle to one Akram without any authorization vide an Agreement dated 26.05.2023. It is further stated that the defendant no. 1 also came to know that during possession of the vehicle, the plaintiff and the defendant no. 2 had violated the traffic rules many times due to which the defendant no. 1 had to pay a large fine amount of the challans as detailed in para (F) of the Additional Submissions made by the defendant no. 1 in the Written Statement, which were required to be paid by the plaintiff and the defendant no. 2 as per the terms and conditions of the Agreement. The defendant no. 1 is still not allowed to run the truck as the validity of the documents which are required to run the truck has been blocked due to traffic violations and as such the defendant no. 1 has suffered huge loss on account of

illegal acts of the plaintiff and the defendant no. 2, who in active collusion with each other have willfully breached the terms and conditions of the Agreement dated 24.09.2021.

8. The defendant no. 1 has denied to have received Rs. 13,50,000/- from the plaintiff as alleged in the plaint. It is stated that the plaintiff transferred a total sum of Rs. 10,50,000/- only in the account of the defendant no. 1 in the manner as detailed in para 8 of the Preliminary submissions and objections of the Written Statement. It is further stated that the defendant no. 1 has not received the amount of Rs. 3,00,000/- allegedly routed through defendant no. 2 and he has no knowledge about the transactions between the plaintiff and the defendant no. 2. The defendant no. 2 was the necessary party to the Agreement and jointly liable to pay the agreed amount to the defendant no. 1 but the defendant no. 2 never paid a single penny to the defendant no. 1 and it was the plaintiff who only paid Rs. 10,50,000/- to the defendant no. 1 and except this amount of Rs. 10,50,000/-, no other amount was received by the defendant no. 1. The other contents of the plaint are stated to be wrong and denied and the defendant no. 1 has prayed for dismissal of the suit.

9. The defendant no. 2 has filed separate Written Statement stating therein that the plaintiff had agreed to purchase the truck-trolley from the defendant no.1 at the amount of Rs.27,30,000/- and as agreed Rs.15,30,000/- was to be paid to the defendant no. 1 and rest was to be paid to the Bank in 35 installments of Rs.47,903/- each. An agreement was executed

between the plaintiff, defendant No. 2 and defendant no.1, however the defendant no.2 had already informed the plaintiff that he is not in good financial condition to purchase the truck and then plaintiff ensured the defendant no.2 that he would pay the whole amount and asked defendant no. 2 just to present at the time of execution of agreement. It is further stated that pursuant to the Agreement, Rs.10,00,000/- was paid to the defendant no. 1 on the date of agreement and Rs.5,00,000/- was to be paid on 15-10-2021 as agreed by the purchasers, but on the said date the plaintiff had not paid a single penny to defendant no. 1, therefore as per Clause (1) and (3), the defendant no. 1 got his right to get his vehicle back as well as right to forfeit the amount of Rs.10,00,000/- which was paid by the plaintiff at the time of making the agreement. It is further stated that as per the agreement, the defendant no. 1 had handed over the vehicle to the plaintiff on 19-09-2021 and from the said date, the plaintiff was required to bear all the amount of challans, losses, profits and was responsible for any accident happened with respect to the said vehicle. It is denied that the defendant no. 1 or the defendant no. 2 ever asked the plaintiff to deposit some account from the account of his wife Smt. Manisha in the account of defendant no.2. It is stated that the plaintiff sent an amount of Rs. 3,00,000/- to the account of defendant no. 2, but took back the money in cash. The defendant no. 2 never gave the said money to the defendant no. 1. It is denied that the plaintiff paid Rs. 13,50,000/- to the defendant no. 1. It is stated that the plaintiff paid only Rs.10,50,000/- to the defendant no. 1 and the agreement which

was executed and attested on 24.09.2021 also discloses that the defendant received Rs. 10,00,000/- from the plaintiff. It is further stated that there is contradiction in the amount claimed by the plaintiff as the plaintiff has filed by the present suit for recovery of Rs. 13,50,000/-, whereas the plaintiff in para no. 19 of the plaint has shown principal amount of Rs. 8,50,000/-. The other contents of the plaint are stated to be wrong and denied and the defendant no. 2 has prayed for dismissal of the suit.

10. The plaintiff has filed the replication to the written statements filed by the defendants separately wherein averments made in the plaint have been reiterated and reaffirmed and those made in the written statements have been controverted.

ISSUES:

11. From the pleadings of the parties, following issues were framed for adjudication, vide order dated 16.01.2026 :-

- (1) *Whether the plaintiff is entitled to recovery of Rs. 14,62,000/- from the defendants? OPP.*
- (2) *Whether the plaintiff is entitled for interest? If so, at what rate and for which period ? OPP.*
- (3) *Relief.*

EVIDENCE LED BY THE PARTIES

12. In support of his case, the plaintiff has examined 04 witness including himself as PW-1.

13. **PW-1 (the plaintiff)** filed his evidence by way of affidavit Ex.PW1/A wherein he has deposed in terms of the averments made in the plaint. During his deposition, he also relied upon and exhibited the following documents:-

Sr. No.	Details of documents	Exhibit
1.	Copy of Affidavit and GPA dated 24.09.2021 mentioned as Ex. PW1/1 in the affidavit	Mark A
2.	Copy of registration certificate of vehicle mentioned as Ex.PW1/2 in the affidavit	Mark B
3.	Copy of Account statement mentioned as Ex.PW1/3 in the affidavit	Mark C
4.	Copy of insurance policy mentioned as Ex.PW1/4 in the affidavit	Mark D
5.	Copy of Bill/receipt dated 09.06.2022 mentioned as Ex.PW1/5 in the affidavit	Mark E
6.	Copy of bank statement showing Transaction of bill payment mentioned as Ex.PW1/6 in the affidavit	Mark F
7.	Copy of complaint dated 18.12.2022 mentioned as Ex.PW1/7 in the affidavit	Mark G
8.	Copy of complaint dated 02.06.2024 mentioned as Ex.PW1/8 in the affidavit	Mark H
9.	Copy of complaint to SHO and DCP dated 22.08.2024 mentioned as Ex.PW1/9 in the affidavit	Mark I
10.	Copy of Postal receipt dated	Mark J

Sr. No.	Details of documents	Exhibit
	22.08.2024 mentioned as Ex.PW1/10 in the affidavit	
11.	Copy of Aadhar card of plaintiff mentioned as Ex.PW1/11 in the affidavit	Mark K
12.	Non Starter Report	Ex. PW1/12

14. The other witnesses examined by the plaintiff, namely, **PW-2 Sh. Krishan Dutt Sharam (*father of the plaintiff*)**, **PW-3 Sh. Sukhbir Singh** and **PW-4 Sh. Suresh Kumar** also filed their evidence by way of affidavit Ex. PW2/A, Ex. PW3/A and Ex. PW4/A respectively wherein they have deposed on the similar lines regarding meetings and discussions took place between the plaintiff and the defendants for sale/purchase of the vehicle in question and the payments made by the plaintiff to the defendants towards sale consideration of the said vehicle.

15. On the other hand, the defendant no. 1 has examined himself as DW-1 and filed his evidence by way of Ex.DW1/A in terms of the averments made in the written statement filed by him. He has relied upon the following documents : -

Sr. No.	Details of documents	Exhibit
1.	Copy of Various Challans mentioned as Ex.DW1/1	Mark DW1/A
2.	Computer Generated details of Challans	Ex.DW1/2 (Colly)

Sr. No.	Details of documents	Exhibit
3.	Copy of Registration Certificate of the vehicle bearing no. HR45C0090 mentioned as Ex.DW1/3 in the affidavit	Mark DW1/B
4.	Copy of his Aadhar Card mentioned as Ex. DW1/4 in the affidavit	Mark DW1/C
5.	Copy of Agreement dated 26.05.2023 mentioned as Ex. DW1/5 in the affidavit	Mark DW1/D (Colly)
6.	Additional Affidavit mentioned as Ex.DW1/6 in the affidavit	Mark DW1/E (Colly)
7.	Copy of various EMI's paid by him mentioned as Ex.DW1/7 in the affidavit	Mark DW1/F (Colly)
8.	Copy of NOC of the Insurance Company mentioned as Ex.DW1/8 in the affidavit	Mark DW1/G (Colly)

16. The defendant no. 2 Sh. Ankit Rathi has also examined himself as D2W1 and filed his evidence by way of Ex.DW2/A in terms of the averments made in the written statement filed by him.

17. I have heard the Ld. Counsel for the parties and perused the record. I have also gone through the written arguments filed by the parties.

18. On the basis of material available on record and the

evidence led by the parties, my issue-wise findings are as under:-

Issue No.1

***Whether the plaintiff is entitled to recovery of
Rs. 14,62,000/- from the defendants?***

19. The onus to prove this issue was placed upon the plaintiff.
20. From the pleadings of the parties, it is not in dispute that an Agreement dated 24.09.2021 was entered into between the parties regarding sale/purchase of the vehicle in question i.e. Truck-Troller bearing Registration No. HR-45C-0090 owned by the defendant no. 1. The defendant no. 1 though in his Written Statement has mentioned the date of agreement as 15.10.2021 at some places but the same appears to be a typographical error in view of the admitted position that the agreement was executed and signed by the parties on 24.09.2021. Copy of the Agreement dated 24.09.2021 in the form of affidavits of the parties and the GPA has been placed on record by the plaintiff as Mark A, which has been duly admitted by the defendants in their respective affidavit of admission/denial of documents filed by the plaintiff. It is also not in dispute that the sale consideration of the truck in question was fixed at Rs. 27,30,000/- which amount also included a loan liability existing on the said truck and the sale consideration amount of Rs. 27,30,000/- was to be paid by the purchasers in part to the defendant no. 1 and the remaining amount was to be paid

directly to the bank/financier of the vehicle in installments. It is also an undisputed fact that possession of the truck was handed over by the defendant no. 1 to the plaintiff pursuant to receipt of part sale consideration amount.

21. However, bone of contention between the parties is with regard to quantum of amount paid by the plaintiff to the defendant no. 1 as part sale consideration amount and forfeiture of amount so paid by the plaintiff to the defendant no. 1. As per the plaintiff, he paid a total sum of Rs. 13,50,000/- to the defendant no. 1 as part sale consideration amount of the truck, while the defendant no. 1 has claimed to have received only Rs. 10,50,000/- from the plaintiff. The defendant no. 1 has further claimed that the plaintiff failed to pay the remaining part sale consideration amount of Rs. 5,00,000/- to him on agreed date i.e. 15.10.2021 and also failed to pay monthly installments to the bank towards remaining sale consideration amount. So, on account of breach of terms and conditions of the Agreement by the plaintiff, the defendant no. 1 got right to forfeit the amount paid by the plaintiff and also to take the possession of the vehicle back from the plaintiff in terms of Clause 1 & 3 of the Agreement, which fact has been refuted by the plaintiff in the replication.

22. Perusal of the affidavits of the parties which form part of the Agreement Mark A shows that plaintiff Jai Prakash Sharma and defendant no. 2 Ankit Rathi jointly purchased the Truck-Troller bearing Registration No. HR-45C-0090 from defendant no. 1 Vipin Sharma for an amount of Rs. 27,30,000/-, out of

which Rs. 10,00,000/- had already been received by the defendant no. 1 as part sale consideration amount of the truck and the remaining amount of Rs. 5,00,000/- was agreed to be paid by the plaintiff and the defendant no. 2 to the defendant no. 1 on 15.10.2021. They also agreed to pay balance loan amount on the truck directly to the bank in 35 installments of Rs. 47,903/- each. Clause 1 & 3 of the Agreement further stipulates that if the plaintiff and the defendant no. 2 failed to pay amount of Rs. 5,00,000/- to the defendant no. 1 on 15.10.2021 or they failed to pay 02 consecutive installments to the bank, the defendant no. 1 would have right to take back possession of the vehicle and to forfeit the amount paid by the purchasers.

23. It may be noted here that although the Agreement 'Mark A' records the name of the defendant no. 2 as co-purchaser/joint purchaser of the truck along with the plaintiff and their joint liability to make the payments towards sale consideration amount of the truck, which is also the case of the defendant no. 1 in his Written Statement, but the case of the plaintiff throughout in the plaint as well as in the replication has been that he was the primary purchaser of the truck and he alone paid the part sale consideration amount to the defendant no. 1 and the defendant no. 2 did not contribute anything in payment of part sale consideration amount to the defendant no. 1. It is further case of the plaintiff that he raised objection to the addition of name of the defendant no. 2 as co-purchaser/ joint purchaser of the truck in the Agreement, but he was assured by

both the defendants that the Agreement was merely a formality for bank/operational convenience and would not affect his position as the real and primary purchaser of the truck; and on such assurance he signed the Agreement in good faith and also made substantial payment to the defendant no. 1 as part sale consideration amount.

24. During his cross-examination also, PW-1 (the plaintiff) stated that the defendant no.1 in the meeting had told him that the big truck and trolley was owned by him (defendant no. 1) and offered the same for sale to him (the plaintiff). He further stated that the defendant no. 2 had also shown him the said big truck and trolley and the registration number of the same was HR45C0090. He categorically stated that he had purchased the said big truck for an amount of Rs.27,30,000/- from defendant no.1 and that defendant no.2 Ankit Rathi had not contributed anything. PW-1 (the plaintiff) was not suggested at all that the defendant no. 2 was joint purchaser along with him and equally liable for payment of sale consideration amount to the defendant no. 1 as recorded in the Agreement Mark A.

25. The defendant no. 1 in his Written Statement though has claimed that the plaintiff and the defendant no. 2 jointly purchased the truck from him and the defendant no. 2 was jointly liable to pay the agreed amount to him and rest of the amount to the bank in installments, but he admitted that whatever amount was received by him towards the sale consideration of the truck, the same was paid by the plaintiff only and the defendant no. 2 did not pay any single penny to

him.

26. The defendant no. 2 in his entire Written Statement has supported the case of the defendant no. 1, though he denied to be joint owner of the vehicle along with the plaintiff and his jointly liability for payment of part sale consideration amount to the defendant no. 1 and rest to the bank in installments as claimed by the defendant no. 1 in his Written Statement. He contended that he was not in a good financial condition to purchase the truck from the defendant no. 1 and that is why it was the plaintiff who agreed to purchase the truck from the defendant no. 1 and ensured to make the entire payment. It is further contended by the defendant no. 2 that he signed the Agreement Mark A simply because he was present at the time of its execution.

27. The defendant no. 2 when appeared in the witness box as D2W1, he has categorically admitted in his cross-examination that the plaintiff had purchased the trolla for an amount of Rs. 27,30,000/- from defendant no. 1. He also admitted that he had signed the Agreement between the plaintiff and the defendant no. 1 as a witness.

28. It is, thus, apparent that the plaintiff alone agreed to purchase the truck from the defendant no. 1 and solely made the part sale consideration amount to the defendant no. 1. So, it can be safely inferred that actual transaction of sale/purchase of the truck had taken place between the plaintiff and the defendant no. 1 and it was the plaintiff who was the real purchaser of the

truck, irrespective of the fact that the Agreement Mark A records the name of the defendant no. 2 as co-purchaser/joint purchaser of the truck along with the plaintiff and his joint liability to comply the terms and conditions of the Agreement including the payment of sale consideration amount of the truck.

29. Further, it is also admitted position that some payments were made by the plaintiff to the defendant no. 1 after execution of the Agreement dated 24.09.2021 Mark A, which were duly accepted by the defendant no. 1 without any objection. Such acceptance of payments by the defendant no. 1 subsequent to execution of the Agreement Mark A exclusively from the plaintiff without any objection amounts to voluntarily surrender of his claim of joint liability of the defendant no. 2 for payment of sale consideration amount of the truck as also recorded in Agreement Mark A.

30. Now, coming to the dispute between the parties regarding quantum of part sale consideration amount made by the plaintiff to the defendant no. 1.

31. As per the case of the plaintiff, he made a total payment of Rs. 13,50,000/- to the defendant no. 1 on different dates towards part sale consideration amount of the truck, out of which Rs. 8,50,000/- was transferred to the account of the defendant no. 1 from his personal account and remaining amount of Rs. 5,00,000/- was transferred from the account of his wife, namely, Smt. Manisha. The plaintiff has also claimed

that out of Rs. 5,00,000/- paid by his wife, Rs. 2,00,000/- was directly paid to the defendant no. 1 on 30.09.2021 and the rest amount of Rs. 3,00,000/- was paid by his wife in installments on 01.11.2021 and 02.11.2021 to the defendant no. 2 who later on paid the said amounts to the defendant no. 1 and such payment arrangement was done on the asking of the defendants.

32. During his cross-examination as well, PW-1 (the plaintiff) has stated that he has paid Rs.13,50,000/- to the defendant no.1 i.e. Rs.8.5 lakhs from his account to the account of defendant no.1 and Rs. 5 lakhs from the Bank account of his wife to the Bank account of defendant no.2 which the defendant no.2 has paid to defendant no.1. He further stated that he had got transferred Rs.5 lacs from his wife's Bank account because he was running short of funds.

33. The defendant no. 1 in the Written Statement has admitted to have received Rs. 10,50,000/- from the plaintiff including Rs. 2,00,000/- from the account of the plaintiff's wife, however he has denied to have received amount of Rs. 3,00,000/- which as per the claim of the plaintiff had been routed through defendant no. 2 from his wife's account.

34. During cross-examination of DW1 (the defendant no. 1), he was suggested that the plaintiff has paid Rs. 13,50,000/- which he denied. He volunteered that he has received only Rs.10 lacs. He further denied the suggestion that the plaintiff has paid Rs.8 lacs through Banking Transaction and Rs.5,50,000/- by way of cash. He voluntarily stated that he has

not received a single penny by way of cash and received Rs.10 lacs through Banking transaction. This voluntarily statement of the defendant no. 1 is contrary to his own case in the Written Statement wherein in para 8, he admitted to have received Rs. 5,00,000/- in cash from the plaintiff on 28.08.2021.

35. The defendant no. 2 in his Written Statement though has admitted to have received Rs. 3,00,000/- sent by the plaintiff but contended that the plaintiff took back the said amount in cash and he never paid the said amount of Rs. 3,00,000/- to the defendant no. 1.

36. In his cross-examination, D2W1 (the defendant no. 2) has admitted that a payment of Rs.1 lac was received by him on 01.11.2021 through cheque from the account of wife of plaintiff and Rs.50,000/- through UPI on 01.11.2021. He volunteered that he had returned the said amount of Rs.1.5 lacs to the plaintiff. He stated that he had not taken any receipt of acknowledgment of returning the amount of Rs.1.5 lacs to the plaintiff. He further admitted that he had received a payment of Rs.1 lac through cheque from the a/c of wife of plaintiff on 02.11.2021. He denied the suggestion that he had received Rs.50,000/- through UPI from the wife of plaintiff. He voluntarily stated that he did not remember exactly whether he had received Rs.50,000/- through UPI.

37. From the aforesaid cross-examination of the D2W1 (the defendant no. 2), it is apparent that the defendant no. 2 had received Rs. 2.5 lakhs from the account of wife of the plaintiff,

though he feigned ignorance regarding receipt of another Rs. 50,000/- from the account of the wife of the plaintiff. The defendant no. 2 could not prove that he gave the said money back to the plaintiff in cash in the absence of any acknowledgment of receipt of money on the part of the plaintiff. On the other hand, the plaintiff though has examined his father PW-2 Sh. Krishan Dutt Sharam and his family friends, namely, PW-3 Sh. Sukhbir Singh and PW-4 Sh. Suresh Kumar who have deposed on the similar lines in their respective chief examination filed by way of affidavit that they had witnessed the discussions relating to the payments made by the plaintiff to the defendants including payment made to the defendant no. 2 through the account of plaintiff's wife. However, testimonies of these witnesses is of no help to the case of the plaintiff regarding payment made to the defendant no. 1 routed through defendant no. 2 in the absence of any documentary evidence in this regard. Thus, the plaintiff has also not been able to prove that the amount so paid to the defendant no. 2 from his wife's account was paid by the defendant no. 2 to the defendant no. 1.

38. Be that as it may. Fact of the matter remains that the defendant no. 1 has admitted to have received Rs. 10,50,000/- from the plaintiff, out of which amount of Rs. 8,50,000/- was paid by the plaintiff from his personal account and Rs. 2,00,000/- was paid through the account of plaintiff's wife.

39. This Court is not required to go into the controversy as to whether or not the amount of Rs. 3,00,000/- was paid by the plaintiff to the defendant no. 1 from his wife's account through

the defendant no. 2 in view of the fact that the plaintiff by way of present suit is only seeking the amount exclusively paid by him to the defendant no. 1 i.e. Rs. 8,50,000/- from his personal account along with interest and has foregone the amount of Rs. 5,00,000/- paid from his wife's account to the defendant no. 1 including disputed amount of Rs. 3,00,000/-.

40. In this regard, both the defendants have taken an objection in their respective Written Statement that there is ambiguity/contradiction in the suit amount as the plaintiff has filed the present suit for recovery of Rs. 13,50,000/-, but para 19 of the plaint shows principal amount of Rs. 8,50,000/- and as such the plaintiff himself is confused about the suit amount.

41. The plaintiff has clarified in the replication that he contributed a total sum of Rs. 13,50,000/- towards purchase of Truck-Trolley out of which Rs. 8,50,000/- was paid directly from his account to the defendant no. 1 and the balance amount of Rs. 5,00,000/- was remitted from the account of his wife, however owing to matrimonial disputes and strained relations with his wife, she is not co-operating with him and is unwilling to support his case that amount of Rs. 5,00,000/- was remitted from her account. In these circumstances, the plaintiff has confined his claim to the portion fully substantiated from his own bank record and has restricted the recovery to Rs. 8,50,000/- being the sum indisputably paid from his account.

42. As such, if the plaintiff has restricted his claim to

recovery of only Rs. 8,50,000/- out of total amount of Rs. 13,50,000/- and has foregone the amount paid by his wife to the defendant no. 1, it cannot be said that there is ambiguity or contradiction in the suit amount claimed by the plaintiff.

43. Now, coming to the main controversy between the parties regarding forfeiture of amount paid by the plaintiff to defendant no. 1 as part sale consideration amount of the truck and it has to be seen as to whether the defendant no. 1 was well within his right to forfeit the said amount?

44. As per the Agreement Mark A and also claimed by the defendant no. 1, out of total sale consideration amount of Rs. 27,30,000/-, the plaintiff was required to pay Rs. 15,00,000/- to him by 15.10.2021. The defendant no. 1 had already received Rs. 10,00,000/- and remaining amount of Rs. 5,00,000/- was required to be paid by the plaintiff to the defendant no. 1 and rest of the sale consideration amount directly to the bank in 35 installments of Rs. 47,903/-. The defendant no. 1 has claimed that the plaintiff failed to make the remaining payment of Rs. 5,00,000/- to him on agreed date i.e. 15.10.2021 and also failed to make two consecutive installments to the Bank in terms of Clause 1 and 3 of the Agreement Mark A. It is, therefore, contended by the defendant no. 1 that on account of breach of the said terms and conditions of the Agreement Mark A by the plaintiff, he became entitled to take the possession of the vehicle back and forfeit the amount so paid by the plaintiff and hence he is not liable to refund the said amount to the plaintiff.

45. Indisputably, the plaintiff made a payment of Rs. 10,50,000/- to the defendant no. 1 as part sale consideration amount of the truck. As per the payment details shown by the plaintiff in the plaint, the plaintiff made the said payment of Rs. 10,50,000/- to the defendant no. 1 in the following manner :-

- Rs. 50,000/- on 04.08.2021 through online transfer
- Rs. 5,00,000/- on 28.08.2021 in cash
- Rs. 2,00,000/- on 30.09.2021 through cheque
-
- Rs. 2,00,000/- on 30.09.2021 through cheque of plaintiff's wife
- Rs. 75,000/- on 09.12.2021 through NEFT
- Rs. 25,000/- on 09.12.2021 through UPI

46. The defendant no. 1 in the Written Statement has admitted receipt of Rs. 10,50,000/- in the manner as shown by the plaintiff in the plaint.

47. From the aforesaid payment details, it is evident that the plaintiff did not make the payment of Rs. 5,00,000/- to the defendant on 15.10.2021 in terms of Clause 1 of the Agreement Mark A. However, it is also a matter of fact that some payments were made by the plaintiff after the agreed date of 15.10.2021 i.e. Payment of Rs. 75,000/- through NEFT and Rs. 25,000/- through UPI on 09.12.2021. The payments so made by the plaintiff after the stipulated date were duly acknowledged and

accepted by the defendant no. 1 without raising any objection to the same. It is also admitted position that at the time of making the payments on 09.12.2021 subsequent to the agreed date, the plaintiff was in possession of the truck pursuant to the Agreement Mark A entered into between the parties.

48. So, evidently the defendant no. 1 not only accepted the payments made by the plaintiff as part sale consideration amount but also allowed the plaintiff to remain in possession of the truck after the stipulated date of 15.10.2021. Such subsequent conduct of the defendant no. 1 clearly goes to show waiver of original timeline for making the payment by the plaintiff as stipulated in the Agreement Mark A. The defendant no. 1 apparently had extended the timeline by allowing the plaintiff to make the payment and to remain in possession of the vehicle after agreed date of 15.10.2021 and kept the Agreement alive. In law, as per settled principles under the Indian Contract Act, waiver and variation of contract by the conduct of a party override the original strict terms of the agreement. Therefore, once the defendant no. 1 had accepted the payments from the plaintiff and also allowed the plaintiff to remain in possession of the vehicle after the stipulated date, he cannot be allowed to rely on the said stipulation regarding the timeline by which the plaintiff was required to make the remaining payment of Rs. 5,00,000/- and cannot claim forfeiture of amount already paid by the plaintiff. Hence, the claim of defendant no. 1 of forfeiture of amount on the ground of non payment of the remaining amount by the plaintiff to him

on agreed date of 15.10.2021 is not sustainable.

49. As regards the claim of defendant no. 1 of forfeiture of amount on the ground of non payment of monthly installments by the plaintiff to the bank, the plaintiff has admitted in the replication to have made only two installments and claimed that thereafter dispute arose between the parties. However, it is settled law under Section 74 of the Indian Contract Act, 1872 that a stipulation allowing forfeiture of amount for non payment of installments is penal in nature and cannot be enforced to make unjust enrichment. Forfeiture is not automatic and the law requires that only reasonable compensation for proven loss is permissible and can be awarded. In the present case, the defendant no. 1 has neither pleaded nor proved any actual loss suffered by him on account of delay in payment of installments made by the plaintiff to the bank. Hence, the forfeiture of amount by the defendant no. 1 on the ground of default committed by the plaintiff in payment of installments to the bank is contrary to the law and is not permissible.

50. It is, thus, evident that forfeiture of amount by the defendant no. 1 was wrong and illegal. It is also a matter of fact that vehicle in question has been repossessed by the defendant no. 1, which he had handed over to the plaintiff after receipt of part sale consideration of amount. However, there is dispute between the parties as regards the date when defendant no. 1 repossessed the vehicle.

51. It may be noted that there is contradiction in the version

of the plaintiff regarding the date when he got the possession of the vehicle. As per the averments made in the plaint, the plaintiff was handed over the physical possession of the vehicle after making payment of Rs. 13,50,000/- to the defendant no. 1. As per the payment details as shown in the plaint, the last payment was made by the plaintiff to the defendant no. 1 on 09.12.2021. It implies that the plaintiff got the possession of the vehicle after 09.12.2021. However, during cross-examination, PW-1 (the plaintiff) stated that the truck remained in his possession from August 2021 to April 2022. He further stated that the truck was purchased in August 2021. While the Agreement Mark A records that the plaintiff received the possession of the truck on 19.09.2021 which is also the case of the defendants in their respective Written Statement.

52. These contradictions as noted above in the version of the plaintiff do not make much difference as the fact of the matter remains that the defendant no. 1 had handed over the possession of the vehicle to the plaintiff pursuant to receipt of part sale consideration amount which fact is also find mentioned in Agreement Mark A which records receipt of initial payment of Rs. 10,00,000/- by the defendant no. 1 and receipt of possession of the truck by the plaintiff on 19.09.2021.

53. Now, as per the case of the plaintiff, after taking the possession of the vehicle, he started running the truck in Karnal where he shifted in January 2022 from his original place on the asking of the defendant no. 2, but after few months of the receipt of possession of the truck, the defendant no. 2 started

quarreling with him and also attacked him on 07.02.2022 due to which he sustained injuries. The defendant no. 2 also used to threaten the plaintiff to kill him and due to such behaviour and threats of the defendant no. 2, the plaintiff came back to his home in Tajpur, Delhi in April 2022 and he was assured by the defendants that a monthly rent of Rs. 1,00,000/- generated from the truck would be transferred in his account. The plaintiff has claimed that the defendants never gave monthly income to him as assured by them nor delivered the possession of the truck back to him despite his repeated requests and that is why he asked the defendants to refund the amount of Rs. 13,50,000/- paid by him to the defendant no. 1, which the defendants failed to refund.

54. Though in the plaint, the plaintiff has not specifically mentioned as to when possession of the truck was taken back by the defendants from him, but the averments made in the plaint as noted above suggest that the plaintiff handed over the possession of the vehicle back to the defendant no. 1 in April 2022 when he returned to his home in Tajpur, Delhi.

55. During his cross-examination, PW-1 (the plaintiff) has categorically stated that the truck remained in possession from August 2021 to April 2022. He further categorically stated that both the defendants took the possession of the truck in April 2022 and thereafter they are running the said truck.

56. On the other hand, the defendant no. 1 in his Written Statement has contended that he received a call of a person on

27.04.2023 who informed him about parking of his truck in Village Bhora Kalan, Police Station Shahpur, District M, Nagar, UP and after reaching at the location, he found the vehicle parked in a bad condition and that the same was sold by the plaintiff and the defendant no. 2 without any authorization. He repeatedly tried to contact the plaintiff and the defendant no. 2 but they did not respond and after such incident, he took the possession of the same. So, the defendant no. 1 has claimed to have repossessed the vehicle on 27.04.2023.

57. DW-1 (the defendant no. 1) during his cross-examination was suggested that the plaintiff has surrendered the truck to him and defendant no.2 in March 2022 i.e. after 3-4 months of getting the possession of the vehicle from him, which he denied. He stated that he did not know if there was any quarrel and fighting between the defendant no.2 and plaintiff. He denied the suggestion that due to said fighting in which defendant no.2 had badly beaten the plaintiff, the plaintiff had surrendered the vehicle to him and defendant no.2. He stated that he had picked up the said vehicle from abandoned place in March 2023. However, this statement of DW-1 (the defendant no. 1) is contradictory to his version made in the Written Statement wherein he has claimed to have repossessed the vehicle on 27.04.2023 from the abandoned place.

58. Apart from himself, the defendant no. 1 has not examined any independent witness to corroborate and substantiate his claim made in the Written Statement that he was informed by unnamed person on 27.04.2023 about the location and condition

of the vehicle nor the defendant no. 1 has placed on record any complaint made by him against the plaintiff for abandoning and selling the vehicle without any authorization or any other evidence that he had repossessed the vehicle from the alleged abandoned place in Village Bohra Kalan, District M. Nagar, UP. In the absence of any concrete and clinching evidence, this claim of the defendant no. 1 has remained unsubstantiated and cannot be accepted.

59. It may also be noted that during his cross-examination, PW-1 (the plaintiff) has categorically stated that he had remained in possession of the vehicle till April 2022. The Ld. Counsel for the defendant no. 1 has not at all put any suggestion to PW-1 that he had remained in possession of the vehicle after April 2022 and had later on abandoned the vehicle which was repossessed by the defendant no. 1 from Village Bohra Kalan, District M. Nagar, UP or that the said vehicle was sold by him without any authorization from the defendant no. 1.

60. The defendant no. 1 though has placed on record photocopy of a Receipt/Memorandum dated 26.05.2023 Mark DW1/D (Colly) to show that the vehicle was sold by the defendant no. 2 to one Akram for an amount of Rs. 3,40,000/-. However, original of the same has not been produced by the defendant no. 1.

61. D2W1 (the defendant no. 2) who was one of the signatories and shown as seller of the vehicle in the said Receipt/Memorandum dated 26.05.2023 Mark DW1/D

categorically stated in his cross-examination that he has not sold the vehicle. He was shown the receipt/memorandum Mark DW1/D and he denied his signature at point A and also the execution of the said document.

62. The defendant no. 1 has not led any contrary evidence to prove the said Receipt/Memorandum Mark DW1/D on record as per law. In the absence thereof and in view of fact that one of the signatories of the said document categorically denied to have signed the said document, the said Receipt/Memorandum dated 26.05.2023 Mark DW1/D has remained unproved on record.

63. Even otherwise, the alleged Agreement Mark DW1/D was shown to have been executed between the defendant no. 2 and one Akram on 26.05.2023 and name of the plaintiff is not find mentioned therein and hence the plaintiff cannot be said to have sold the vehicle in question. The defendant no. 1 has not been able to show any collusion between the plaintiff and the defendant no. 2 in allegedly selling the vehicle which the defendant no. 1 could not prove. Further, the alleged Agreement Mark DW1/D was executed subsequent to repossession of the vehicle by the defendant no. 1 even if the version of the defendant no. 1 is taken to be true that he repossessed the vehicle on 27.04.2023. In these facts, the plaintiff cannot be held responsible for alleged sale of the vehicle when he was no more in possession of the vehicle.

64. In view of the above, on the preponderance of the

probabilities, the plaintiff has been able to show that possession of the vehicle was taken back by the defendant no. 1 from him in April 2022 and, thereafter, he did not remain in possession of the Truck-trolla.

65. The defendant no. 1 has also claimed that during the possession of the vehicle by the plaintiff, the plaintiff had violated traffic rules many times and for such violation on the part of the plaintiff, he had to pay large fine amount of the challans, which were actually required to be paid by the plaintiff in terms of Clause 2 of the Agreement Mark A.

66. In this regard, the defendant no. 1 has placed on record the photocopy of challans/receipts Mark DW1/A (Colly) purported to have been issued by the Transport Department in his name. Again the defendant no. 1 has not produced the certified copy or original of the same nor summoned any witness from the Transport Department to prove the same on record as per law. Hence, these challans/receipts Mark DW1/A (Colly) cannot be relied upon.

67. Furthermore, except one receipt dated 01.02.2025 of Rs. 16,500/- in respect of challan dated 08.03.2022, all the remaining challans/receipts i.e. receipt dated 12.04.2023 of Rs. 28,500/-, challan dated 24.02.2023 of Rs. 90,500/-, receipt dated 01.02.2025 of Rs. 79,860/- and application for release of vehicle against Challan dated 28.01.2025 of Rs. 96,360/- are for the period subsequent to the period when the vehicle was in possession of the plaintiff i.e. upto April 2022.

68. So far as the receipt dated dated 01.02.2025 of Rs. 16,500/- in respect of challan dated 08.03.2022 is concerned, the defendant no. 1 has neither proved the same in accordance with law nor the challan has been produced against which the said receipt has been issued.

69. The aforesaid challans and receipts are electronic generated documents and the defendant no. 1 has not filed affidavit under Order XI Rule 6 (3) CPC, as applicable to the Commercial Courts Act, 2015 nor certificate under Section 63 BSA in support thereof. Hence, these challans/receipts Mark DW1/A (colly) cannot be said to have been duly proved.

70. In view of the aforesaid discussions, the plaintiff has successfully proved that in part performance of the Agreement dated 24.09.2021 Mark A, he made a substantial payment of Rs. 10,50,000/- to the defendant no. 1 as part sale consideration amount of the truck out of total payment of Rs. 15,00,000/- payable to the defendant no. 1, which fact otherwise is not in dispute. It is also established on record that pursuant to the part performance of the Agreement Mark A by the plaintiff, physical possession of the truck was handed over by the defendant no. 1 to the plaintiff, however the defendant no. 1 despite having received the substantial part sale consideration amount did not perform his part of contract by taking steps to get the ownership of the truck transferred in favour of the plaintiff. Rather, he wrongfully forfeited the amount paid by the plaintiff and also repossessed the vehicle. By doing so, the defendant no. 1 cannot be allowed to make unjust enrichment at

the cost of the plaintiff and hence is liable to refund the amount paid by the plaintiff to him.

71. It may be noted that the plaintiff though has claimed the amount from both the defendants jointly and severally stating that both the defendants in connivance with each other cheated him and grabbed money from him. However, during cross-examination, PW-1 (the plaintiff) has categorically stated that he had purchased the truck from defendant no. 1 and the sale consideration was also paid to him, therefore he has not claimed any relief from defendant no. 2. In view of the same, the defendant no. 2 cannot be held liable for refund of the money to the plaintiff.

72. Though the defendant no. 1 has admitted to have received Rs. 10,50,000/- from the plaintiff, but it is a matter of record that the plaintiff has restricted his claim and is seeking recovery of Rs. 8,50,000/- as principal amount which amount was paid by him alone to the defendant no. 1 and has foregone the amount of Rs. 5,00,000/- paid by his wife to the defendant no. 1. Therefore, the plaintiff is held entitled to recover the amount of Rs. 8,50,000/- from the defendant no. 1.

73. This issue is accordingly decided in favour of the plaintiff and against the defendant no. 1.

Issue No.2

***Whether the plaintiff is entitled for interest? If so,
at what rate and for which period ?***

74. The onus to prove this issue was on the plaintiff.
75. Since it has come on record that the defendant no. 1 has wrongly retained the money paid by the plaintiff as well as the possession of the truck, he is liable to pay interest on the principal amount of Rs. 8,50,000/- to the plaintiff. The plaintiff has claimed interest @ 24% per annum from 10.12.2021 to 09.12.2024 which, as per the plaintiff, came to Rs. 6,12,000/-. However, the interest so claimed by the plaintiff is on the higher side in the absence of any stipulation in this regard in the Agreement Mark A. Keeping in view the commercial transactions between the parties, ends of justice would be met if the plaintiff is awarded interest @ 12% per annum on the principal amount of Rs. 8,50,000/- from 10.12.2021 till the date of filing of the suit. The plaintiff is also entitled to *pendente-lite* lite and future interest @ 9% per annum on the said decretal amount from the date of filing of the suit till its realization.
76. This issue is accordingly decided in favour of the plaintiff and against the defendant no. 1.

RELIEF

77. As a sequel to my findings under Issue No. 1 & 2, the suit filed by the plaintiff is decreed in his favour and against the defendant no. 1 for a sum of Rs. 8,50,000/- along with interest @ 12% per annum from 10.12.2021 till filing of the suit. The plaintiff is also entitled to *pendente-lite* lite and future interest @ 9% per annum on the decretal amount from the date of filing of the suit till its realization. Cost of the suit is also awarded to

the plaintiff.

78. Decree sheet be prepared accordingly.

79. File be consigned to Record Room, after due compliance.

**Announced in the open Court
on 17th July, 2026**

**(Balwant Rai Bansal)
District Judge (Commercial Court)-02
South-West District, Dwarka Courts,
New Delhi**