



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 12th February, 2026

Pronounced on: 17th April, 2026

+ RFA 396/2024, CM APPL. 35245/2024

1. **AKHILESH GUPTA**

S/o Sh. Ram Kishan
R/o 3418, Gali Bajrang Bali,
Bazar Sita Ram, Delhi.

2. **SMT. VIJAY GUPTA**

W/o Sh. Ram Kishan
R/o 3418, Gali Bajrang Bali,
Bazar Sita Ram, Delhi.

.....Appellants

Through: Mr. Yugansh Mittal, Advocate.

versus

1. **RAJWANS VADEHRA**

S/o Late Sh. Kewal Vadehra
R/o 91, Engineers Enclave,
Pitampura, Delhi.

.....Respondent

Through: Mr. Sidharth Chaudhary & Mr. Rinku
Yadav, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 of CPC has been preferred by the *Appellants i.e., Akhilesh Gupta and Smt. Vijay Gupta* against Judgment and Decree dated 15.05.2024 passed by learned DJ-07, Delhi,



whereby the Suit of the Plaintiff / Respondent has been decreed and the Sale Deed dated 07.10.2016, has been declared as null and void.

2. Plaintiff / Respondent had filed Suit **bearing No. CS DJ 621274/2016** for *Declaration, Recovery of Possession and Permanent Injunction*.

3. ***The facts in brief***, as stated in the Plaint, are that Plaintiff / Respondent was the registered owner of the Suit Property, i.e. one shop on Ground Floor, *bearing Municipal No.3451, Ward No.9, Gali Bajrang Bali, Chawri Bazar, Hauz Qazi, Delhi-11000, (hereinafter referred to as the 'Suit Property')*. He agreed to sell the Property to the Defendants / Appellants for a total Sale Consideration of Rs.7,25,000/-. Defendants tendered two cheques for a total amount of Rs.7,25,000/-, (one cheque for Rs.4,00,000/- and other for Rs.3,25,000/-) at the time of Registration of Sale Deed, in their favour.

4. Since the Defendants and Plaintiffs were known to each other for more than 25 years, being neighbours, the Sale Deed was drawn by the Plaintiff and the payment of consideration amount of the Suit Property by the Defendants, was duly recorded. However, at the time of Registration of Sale Deed, Defendants expressed their inability to deliver the cheques but requested him to get the Sale Deed registered in their favour.

5. The Defendants assured that even though the cheques were not received, they would in due course of time, hand over the cheques to the Plaintiff. The Defendants further assured that after receiving the Registered Sale Deed from the Office of Sub-Registrar, they would hand over the original Sale Deed to the Plaintiff and shall take it back only after making payment of the consideration amount.



6. Since the parties were maintaining cordial relationship since long, the Plaintiff had no reason to apprehend any mischief from the Defendants. Accordingly, the Sale Deed was registered in the Office of Sub-Registrar on 07.10.2016, even though the cheques for the consideration amount were not received by the Plaintiff. Therefore, the Plaintiff did not hand over the possession of the Suit Property and retained the same with him, till the consideration amount was paid to him.

7. The Defendants / Appellants received the registered Sale Deed from the Office of Sub-Registrar; however, they failed to deliver the cheques towards the consideration amount. Therefore, they handed over the original Registered Sale Deed to the Plaintiff with the assurance that they would soon hand over the cheques towards the sale consideration amount and take back the Registered Sale Deed. However, despite their assurances, the Defendants failed to deliver the cheques to the Plaintiff.

8. To the utter shock and dismay of the Plaintiff, he received the communication dated 14.12.2016 from the Defendants, wherein they alleged that the Plaintiff had not encashed the two cheques of Rs.4,00,000/- and Rs.3,25,000/- respectively, which had allegedly been given to him as the sale consideration for the sale of Suit Property.

9. The Plaintiff immediately contacted the Defendants and enquired as to when they had delivered the two cheques to the Plaintiff and if they had delivered the cheques, why did not they take back the Sale Deed from the Plaintiff, but the Defendants gave an evasive reply.

10. On 22.12.2016, the Plaintiff visited the Suit Property, but was shocked to see that the Defendants had forcibly taken the possession of the Suit Property and had put their own locks on the shutter, by removing the



locks of the Plaintiff. The Plaintiff immediately made a Complaint dated 22.12.2016 to P.S. Hauz Qazi, but the Police refused to intervene in the matter.

11. The Plaintiff claimed that the sale of the Suit Property had never been crystallised under the Sale Deed dated 07.10.2016, as it was without any consideration.

12. Hence, the Plaintiff filed the Suit for declaring him as the owner of the Suit Property and to declare the Sale Deed dated 07.10.2016 as null and void. He also sought Recovery of Possession and Permanent Injunction for restraining the Defendants from creating third party rights.

13. The Defendants in their Written Statement took a preliminary objection that the present Suit was counterblast to the Defendants refusal to be a witness for the Plaintiff in the Suit bearing No. **CM(M) No.1020/2016** titled as '*Harish Kumar vs. Rajwans Wadhera*', which is pending in this Court. This Suit was filed against the illegal and unauthorised construction in *Property No.3451, Gali Bajrang Bali, Chawri Bazar, Delhi*. The upper portions of the Property in question had been booked by MCD, on the Complaint of Shri Harish Kumar. The Plaintiff was insisting that the Defendants must support him in order to demolish the aforesaid case and on their refusal, the Plaintiff seemed to have woven a web to implicate the Defendants in the false and frivolous litigation.

14. It was claimed that the Plaintiff had no *locus standi* to file the Suit, after having sold the Suit Property to the Defendants against valuable consideration.

15. On merits, it was admitted that the Plaintiff was the erstwhile owner of the Suit Property, but it was claimed that he had sold the Suit Property to



the Defendants *vide* Registered Sale deed dated 07.10.2016, for which two cheques of Rs.7,25,000/- had been duly tendered as sale consideration.

16. The Plaintiff had delivered the vacant physical possession of the Suit Property at the time of execution of the Sale Deed and since then Defendants are in possession of the Suit Property.

17. It is claimed that the two cheques totalling to Rs.7,25,000/- had been handed over to the Plaintiff prior to the execution of the Sale Deed, which was acknowledged by the Plaintiff before the Sub-Register. Despite the receipt of the cheques, the Plaintiff did not present the same for encashment, for the reasons best known to him. It was only when going through the Bank Statement that the Defendants realised that the two cheques given by him to the Plaintiff had not been presented for encashment, he immediately called upon the Plaintiff and gave a written reminder dated 14.12.2016 to the Plaintiff, intimating him to encash the cheques given by them, in view of the Sale of Suit Property.

18. It was admitted that the parties were known to each other for the last 25 years being the neighbours, but the other averments made in the Plaint were denied. It was submitted that Defendants are the owners of the Suit Property by virtue of the Sale Deed dated 07.10.2016 and the Suit of the Plaintiff was liable to be dismissed.

19. The Plaintiff in the Replication reaffirmed the assertions, as made in the Plaint and denied the allegations made in the Written Statement.

20. The Issues on the pleadings were framed on 24.07.2017 as under:

“(1) Whether the suit of the plaintiff is not maintainable in view of the preliminary objection no.2 of the written statement? OPD.



(2)Whether the plaintiff has not properly valued the suit for the purpose of court fees and jurisdiction? OPD

(3)Whether the plaintiff is entitled for the decree of declaration, as prayed for? OPP

(4)Whether the plaintiff is entitled for the decree of possession, as prayed for? OPP

(5)Whether the plaintiff is entitled for the decree of permanent injunction, as prayed for? OPP.”

21. The Plaintiff examined himself as **PW-1** and tendered his evidence by way of Affidavit **Ex. PW-1/A** and proved the documents **Ex.PW-1/1 to 4**.

22. Defendants examined Defendant No.1 Sh. Akhilesh Gupta, as **DW-1** and supported the defence as taken in the Written Statement.

23. **Learned District Judge** held that the Suit was maintainable and that the Suit had been valued properly for the purpose of Court Fee, which was duly annexed with the Plaint. The two issues in regard to Court Fees and maintainability, were decided against the Appellants / Defendants.

24. It was held that the reminder Letter of the Defendants dated 14.12.2016 reflected that he took a step in the right direction to remind the Plaintiff to get the cheques encashed, were allegedly given to him. Though the Plaintiff asserted that he had not received any cheques, the factum of delivery of cheques had not been proved by the Defendants, though it was mentioned in the same deed. Even if it was presumed that the cheques were given by the Defendants to the Plaintiff, Plaintiff's stand was confirmed that the cheques were not encashed and that the original Sale Deed was in possession of the Plaintiff.



25. The Defendants had taken a plea that original Sale Deed was misplaced by Amit Gupta, brother of Defendant No.1, but this was not proved, as Amit Gupta had not been examined. It was thus observed that, the fact that the original Sale Deed was in the possession of the Plaintiff, further corroborated his stand that the Sale Consideration had not been paid. Thus, it was held that that as per **Section 25 of Indian Contract Act, 1872 any Agreement without consideration, is void.** The Sale Deed dated 07.10.2016 was declared null and void.

26. *The Suit of Plaintiff for Possession and Injunction was also decreed in favour of the plaintiff.*

27. **Aggrieved by the said Judgement, present Appeal has been filed by the Appellants / Defendants.**

28. **The grounds of challenge** are that Sale Deed dated 07.10.2016 Ex.PW-1/2 in respect of the Suit Property, was duly registered. Learned District Judge has declared the Sale Deed to be null and void, on the sole ground that the sale consideration had not been paid by the Appellants, which is contrary to **Sections 91 and 92 Indian Evidence Act, 1872.** The recitals in the written document takes precedence over any oral contrary covenants, that may be pleaded by the Respondent.

29. In fact, it was admitted that the two cheques given to the Respondent had not been encashed, but the Appellants claimed that immediately upon discovering from their bank passbook, that the cheques had not been encashed, they sent a Letter dated 14.12.2016 Ex. DW-1/3 requesting the Respondent to encash the two cheques. Though this Notice was duly served, but the Plaintiff failed to give any reply.



30. It is asserted that the Sale Deed dated 07.10.2016 was duly registered in the Office of Sub-Register, in respect of the Suit Property, which is an admitted fact by the Plaintiff / Respondent himself.

31. The Defendants have further claimed that even if in *arguendo*, the Plaintiff / Respondent's claim is accepted and believed, it is contrary to the observations made by the Apex Court in the case of **Dahiben vs. Arvinbhai Kalyanji Bhanusali, (2020) 16 SCC 366**, wherein similar facts were considered and it was held that, non-payment of the entire sale consideration, even if accepted to be not paid, cannot be a ground for cancellation of the Sale Deed. The appropriate remedy in law for the Plaintiff would be for recovery of balance consideration and not for cancellation of the registered Sale Deed.

32. Furthermore, not only was the Sale Deed registered, but even the vacant possession of the Suit Property was delivered to the Defendants, as was mentioned in the Sale Deed. The Plaintiff had raised a false and frivolous plea.

33. The Defendants, on the very first day of appearance in the Court, had offered to give fresh cheques without prejudice to his right, but the same was denied by the Plaintiff. The cheques had not been deposited *malafidely*, in the Bank by the Respondent / Plaintiff in order to raise a false, baseless, frivolous and contrary to law plea.

34. Reference was made to **Kalu Ram vs. Sita Ram, 1980 RLR (Note) 44**, wherein this Court had observed that where the Defendant does not refute the charges and remains silent by ignoring to Reply the Notice, the silence reflects that he had nothing to deny and was a fit case for raising an adverse presumption.



35. The Plaintiff herein, despite having been served with the Legal Notice, failed to give any reply.

36. A reference is also made to **MP Mathur vs. DTC, AIR 2007 SC 414**, wherein the Apex Court had held that the remedy under Section 34 of Specific Relief Act was discretionary. The Court, while exercising such discretion must consider the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, conduct of the parties and effect of the Court granting the Decree. The Court has to look at the contract and ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality, the Court shall not exercise discretion in favour of the Plaintiff.

37. It is thus, asserted that the impugned Judgement and Decree dated 15.05.2024 passed by the learned District Judge, is liable to be set aside.

38. ***The Respondent/Plaintiff in his Written Submissions*** reiterated that no sale consideration was paid and that the Sale Deed has been rightly cancelled by learned District Judge.

39. A prayer was made that the Appeal may be dismissed.

Submissions heard and record perused.

40. It is an admitted case of the parties that the Plaintiff, who was the owner of the Suit Property, executed a Registered Sale Deed in favour of the Defendants / Appellants. It is not in dispute that in the Sale Deed itself, it was mentioned that the sale consideration had been paid by the Appellants through two cheques of Rs.4,00,000/- bearing cheque No. 159787, dated 06.10.2016 drawn on Yes Bank, Chawri Bazar, Delhi and Rs.3,25,000/- bearing cheque No. 113409 dated 6.10.2016 drawn on Central Bank of



India, Chandni Chowk, Delhi and the vacant possession of the Suit Premises has been handed over to the Defendants.

41. The sole ground, on which the Respondent sought the cancellation of the Sale Deed, was that though there was a mention of two cheques in the Sale Deed, but they were never paid to the Respondent.

42. The case of the Appellants, on the other hand was that the Cheques for sale consideration were duly handed over at the time of registration of Sale Deed, but on checking their Passbook, when they found that the two cheques had not been encashed, they wrote a Letter dated 14.12.2016 to the Plaintiff, who despite service of the Legal Notice failed to give any response.

43. Therefore, it is not in dispute that sale consideration of Rs.7,25,000/-, which had been tendered by way of two cheques, had not been encashed and the Plaintiff did not receive the sale consideration.

44. **The sole question for determination is, whether non-payment / non-receipt of sale consideration is a circumstance which can lead to avoidance / cancellation of the Sale Deed.**

45. This controversy is well settled by the Judgement of the Apex Court in the case of **Dahiben v. Arvinbhai Kalyanji Bhanusali, (2020) 16 SCC 366**, wherein similar facts, as in hand, came up for consideration. A reference was made to **Section 54 of the Transfer of Property Act, 1882**, which provided that sale is a transfer of ownership in exchange of a price paid or promised or part-paid and part-promised. It was held that this definition of sale indicates that there must be transfer of ownership from one person to another that is transfer of all rights and interest in the Property, which were possessed by the transferor to the transferee. The transferor



cannot retain any right, title or interest in the Property or else it would not be a sale.

46. In **Vidyadhar vs. Manikrao and Anr., (1999) 3 SCC 573**, the Apex Court held that the words “*price paid or promised or part-paid and part-promised*” in S.54 TPA indicates that actual payment of whole of the price at the time of execution of Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed and thereafter registered, the sale would be complete and the title would pass on to the transferee under the transaction. Non-payment of part of sale price would not affect the validity of the sale.

47. It is therefore, abundantly clear when there is a deficit or non-payment of sale consideration, the appropriate remedy with the Plaintiff was to seek recovery of the sale consideration and not seek avoidance of the Sale Deed.

48. In this context, it may also be relevant to refer to the covenants in the Sale Deed, wherein it was recorded that the sale consideration was tendered through two cheques and the possession was handed over to the Defendants by the Plaintiffs.

49. **Sections 91 and 92 of Indian Evidence Act, 1872** clearly provide that when there are written covenants in a document, any oral evidence to the contrary, is inadmissible.

50. Learned District Judge had made a reference to *Section 25 of Indian Contract Act, 1872* to observe that it was an Agreement without the consideration and was therefore, void. This is an erroneous finding, since it was not an Agreement without consideration. In fact, the parties had agreed to the sale consideration of Rs.7,25,000/-, which according to the



Defendants had been tendered, but according to the Plaintiff no sale consideration was paid.

51. In the circumstances, it cannot be said that it was an Agreement without any consideration or void under Section 25 of Indian Contract Act, 1872.

52. The other contention raised by the Plaintiff in support of their case that no cheques were handed over, was that because no sale consideration was paid, the original Sale Deed was not handed over by the Defendants to the Plaintiff. However, it has already been held that the sale consideration had not been realised by the Plaintiff.

53. Therefore, whether the Sale Deed was lost or kept in possession by the Plaintiff is of little consequence in the light of the Judgement of the Apex Court in case of **Dahiben v. Arvinbhai Kalyanji Bhanusali, (2020) 16 SCC 366** that the mere non-payment of sale consideration cannot be a ground for cancellation of Sale Deed.

54. **In view of the aforesaid, impugned Judgement and Decree dated 15.05.2024 passed by learned District Judge, cancelling the Sale Deed dated 07.10.2016 and Decree of Possession, is hereby set aside and the Suit of the Plaintiff stands dismissed.**

55. However, considering that the sale consideration of Rs.7,25,000/- has not been received by the Plaintiff till date, and the Sale Deed is of 07.10.2016 and the Suit has been filed on 23.12.2016, *it is directed that the Defendants / Appellants shall pay / deposit the amount of Rs.7,25,000/- along with interest @ 12% per annum from the date of Sale Deed, till the amount is fully paid to the Plaintiff.*



56. Appeal is allowed and all pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 17, 2026/R