2026:DHC:5731

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

% ***Reserved on:29th April, 2026***
Pronounced on: 17th July,2026

\+ **RFA214/2025, CM APPL. 13040/2025, CM APPL. 13042/2025, CM APPL. 13044/2025**

SUMITRA
W/o Late Sh. Parshuram
R/o 10, J-Extn., Laxmi Nagar,
Delhi-110092. .....Appellant

Through: Mr. Anshuman Upadhyay and Ms. Shubhangi Shashwat, Advocates.

versus

RAJESH KUMAR
S/o Late Sh. Jagan Singh
R/o N-91, Narain Nagar,
Laxmi Nagar, Delhi-110092.
.....Respondent

Through: Mr. Arun Sharma and Mr. Bhanu Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')* has been filed on behalf of *the Defendant/Appellant* against the Judgment and Decree dated 30.11.2024, passed by the learned District Judge, New Delhi, whereby the Suit of the Plaintiff/Respondent for *Specific Performance and Permanent Injunction was* ***dismissed,*** *but the Defendant/Appellant was directed to*

refund a sum of Rs.17,00,000/- to the Plaintiff/Respondent, along with pendente lite and future interest @ 8% per annum.

2. The Plaintiff/Respondent, Rajesh had filed a Civil Suit bearing CS No. 3136/2016 seeking a decree of *Specific Performance of Agreement to Sell* dated 23.09.2011/07.08.2013 ***and Permanent Injunction*** in respect of property bearing No. 10-J Extension, Laxmi Nagar, Delhi-110092, measuring 100 sq. yards with roof rights from ground floor *(hereinafter referred to as the "Suit Property"),* of which the Defendant/Appellant was admittedly the owner.

3. The ***facts in brief,*** as stated in the Plaint, are that the Defendant, Sumitra intended to sell the Suit Property, and the Plaintiff came in contact with her through one property dealer, Sh. Radha Ballabh. An *Agreement to Sell and Purchase dated 23.09.2011* was duly executed between the parties, for a total sale consideration of Rs.61,00,000/-.

4. In pursuance of the said Agreement, the Plaintiff paid an initial sum of Rs. 2,00,000/- as earnest money, and thereafter, paid further sums of Rs. 4,00,000/-, Rs. 6,00,000/-, Rs. 7,00,000/-, Rs. 5,00,000/- and Rs. 3,00,000/- towards the sale consideration, all of which were duly received and acknowledged by the Defendant.

5. Subsequently, the Plaintiff became suspicious about the title of the Defendant and asked her to produce the original title documents of the suit property. Instead of showing the documents, she threatened the Plaintiff to forget the advance amount already paid, and served a Legal Notice dated 21.07.2012 upon him. The Plaintiff duly replied to the said Notice through his Counsel *vide* Reply dated 25.07.2012, asserting that in the event the Defendant failed to perform her obligations under the Agreement, and he

would seek registration of the suit property through the competent Court of law.

6. In view of the said differences, the Agreement dated 23.09.2011 was reconsidered by the parties and, in order to bury the past grievances, a fresh Agreement to Sell and Purchase was executed on 07.08.2013. Under the said Agreement, the total sale consideration was revised to Rs. 79,00,000/- in respect of the same suit property. In the said Agreement, the Defendant acknowledged receipt of Rs. 17,00,000/- from the Plaintiff as advance/earnest money, and the balance sale consideration of Rs. 62,00,000/- was agreed to be paid on or before 05.09.2013, at the time of execution of the title documents before the Office of the Sub-Registrar.

7. During the negotiations leading to the fresh Agreement, a sum of Rs. 10,00,000/- out of the amount already paid had been adjusted towards the expenses said to have been incurred by the Defendant, for sanction of the site plan and other miscellaneous works relating to sanitation, drainage and plumbing, which, according to the Plaintiff, was mutually acknowledged.

8. According to the terms of the Agreement dated 07.08.2013 it was stipulated that in the event the *second party*/Plaintiff failed to pay the balance sale consideration by the last date fixed, the *first party*/Defendant would have full right to *forfeit the advance money*. Correspondingly, in the event the *first party*/Defendant failed to comply with the terms and conditions of the Agreement, she would be liable to pay double the advance amount to the *second party*/Plaintiff.

9. It is the case of the Plaintiff that he had, at all times, been ready and willing to perform his part of the Agreement dated 07.08.2013. However, the Defendant failed to furnish the necessary title documents and thereafter,

raised an additional demand of Rs. 3,00,000/-, over and above the agreed sale consideration.

10. On 05.09.2013, being the date fixed for execution of the Sale Deed, the Plaintiff claims he appeared before the Office of the Sub-Registrar with the balance sale consideration of Rs. 62,00,000/- in cash, along with the amount required for purchase of stamp papers, but the Defendant failed to appear.

11. The Plaintiff thereafter, served a Legal Notice dated 26.09.2013 upon the Defendant calling upon her to perform her part of the Agreement. Despite repeated requests, the Defendant avoided execution of the Sale Deed; on the contrary, she intended to dispose of the suit property to a third party for a higher consideration, and thus, threatened to create third-party interest therein.

12. Since the Defendant persisted in her refusal to execute the Sale Deed, the Plaintiff lodged Police Complaints and thereafter, filed a Complaint Case along with an Application under Section 156(3) of the Code of Criminal Procedure, 1973, pursuant to which ***FIR No. 426/2014***was registered against the Defendant at P.S. Shakarpur.

13. The Plaintiff/Respondent thus, instituted the *Suit seeking a Decree of Specific Performance of the Agreement to Sell dated 07.08.2013, and a Decree of Permanent Injunction restraining the Defendant from alienating, transferring or creating any third-party interest in the suit property*.

14. The Defendant, in her ***Written Statement***, took *the preliminary objections* that the Suit was frivolous and had been instituted without any cause of action; and that the Plaintiff had concocted a false story only to create an artificial cause of action. He also stated that the Agreement to Sell

was neither registered nor duly stamped, and therefore, no relief could be granted to the Plaintiff, on the basis of such inadmissible document.

15. It was stated that the Plaintiff was not entitled to the relief of Specific Performance,as he had not done any substantial act in terms of Section 20(3) of the Specific Relief Act, 1963, having failed to pay the entire sale consideration before execution of the Sale Deed.

16. The Defendant further took the objection that the ***Suit was barred by limitation.*** It was asserted that the first Agreement had been executed in September, 2011 and since the Plaintiff failed to pay the balance sale consideration, another supplementary Agreement was executed on 07.08.2013. According to the *Defendant, both the Agreements were required to be read together and the Suit filed on 09.08.2016 was beyond the prescribed period of limitation.*

17. An objection was also taken that the Suit had been *undervalued for the purposes of court fee and jurisdiction*, inasmuch as the Plaintiff had sought possession of the suit property, whose market value, according to the Defendant, was more than Rs.1,20,00,000/-, though the Suit had been valued at Rs.79,00,000/-.

18. ***On merits***, the Defendant admitted that she was the owner of the suit property, but denied the manner in which the transaction had been stated by the Plaintiff.

19. It was asserted that in September, 2011, when the Plaintiff had agreed to purchase the Suit Property for Rs. 61,00,000/-, he had represented that he would pay the entire sale consideration by March, 2012. Being an *old, illiterate and poor widow*, the Defendant had signed the pre-formatted and

incomplete documents in good faith, without understanding their contents, as the documents were prepared in English.

20. It was further asserted that in December, 2011, the Plaintiff along with Sh. Radha Ballabh took the Defendant to the office of the MCD on the pretext of obtaining some clearance and got certain papers signed from her, the contents whereof she could not understand being illiterate. It was only in March, 2012, when the Defendant received a letter from the MCD office and had it read to her by her relatives, that she came to know that the Plaintiff had obtained her signatures and submitted the papers with the MCD, for approval of the map/construction plan in respect of the suit property. It was then revealed that the Plaintiff was in fact a property dealer, who intended to raise construction of builder flats on the suit property and to sell them to third parties, for profit.

21. Since the Plaintiff failed to pay the balance sale consideration by March, 2012, he persuaded the Defendant to continue the transaction by enhancing the sale consideration to Rs. 64,00,000/-, payable on or before 03.05.2012. Accordingly, an *Ikrarnama* **dated 23.04.2012** was accordingly prepared recording the revised terms; however, the Plaintiff neither signed the same nor paid the agreed amount. Having failed to perform his obligations despite repeated opportunities, the Defendant issued a Legal Notice dated 21.07.2012, informing the Plaintiff that she was no longer willing to proceed with the transaction.

22. Thereafter, the Plaintiff lodged complaints before the police authorities, pursuant to which the Defendant was repeatedly required to visit Police Station Shakarpur and was subjected to harassment.

23. The Defendant categorically denied that the Plaintiff had paid Rs. 27,00,000/- towards part sale consideration under the Agreement dated 23.09.2011 or that she had acknowledged receipt thereof. She also denied having withheld the title documents, asserting that the original title documents had been shown to the Plaintiff at the very inception of the negotiations and photocopies thereof had also been furnished to him, contending that no prudent purchaser would have entered into the transaction or paid any advance, without first satisfying himself about the title of the Defendant.

24. As regards the *Agreement dated 07.08.2013*, it was asserted that the Plaintiff approached the Defendant with a fresh offer of Rs. 79,00,000/-. Though the Defendant was reluctant considering that the Plaintiff had failed to honour his promises for nearly two years, she was persuaded to give him one more opportunity on his representation that he already had purchasers to invest in the suit property,within a month. It was however, categorically denied that a sum of Rs. 10,00,000/- had been adjusted towards expenses for sanction of site plan, sanitation, drainage, plumbing or other miscellaneous works.

25. It was claimed that time was the essence of the contract and that the Defendant was under no obligation to visit the office of the Sub-Registrar or to execute the Sale Deed, without first receiving the entire balance sale consideration. Since the Plaintiff again failed to pay the balance sale consideration under the Agreement dated 07.08.2013, *the said Agreement stood terminated by efflux of time and by the conduct of the Plaintiff, and the earnest money stood forfeited in terms thereof.*

26. The Defendant denied the Plaintiff's assertion that she had failed to attend the office of the Sub-Registrar on 05.09.2013. It was asserted that the Defendant had reached the office of the Sub-Registrar at Geeta Colony on the appointed date and time and had contacted the Plaintiff, but it was the Plaintiff who failed to appear or to pay the balance sale consideration. Thereafter, the Defendant visited Police Station Shakarpur and the office of the Deputy Commissioner of Police, East Delhi, and submitted a written intimation recording her presence at the Sub-Registrar's office and the Plaintiff's failure to complete the transaction.

27. The Defendant thus, claimed that she was entitled to forfeit the amount paid by the Plaintiff under the Agreement and was also entitled to compensation for the losses and mental agony caused to her by the acts of the Plaintiff.*The Defendant/Appellant accordingly prayed for dismissal of the Suit.*

28. The Plaintiff filed his ***Replication***, wherein he reiterated the averments made in the Plaint and denied the assertions contained in the Written Statement. It was asserted that the Plaintiff had always been ready and willing to perform his part of the Agreement and had marked his presence at the office of the Sub-Registrar on 05.09.2013, whereas the Defendant had failed to appear or to reply to the Legal Notice dated 26.09.2013.

29. The following ***Issues*** were framed, *vide* Order dated 13.05.2018:

> *"1. Whether the plaintiff is entitled to the relief of specific performance as prayed? OPP*
> *2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP*

3. Whether the present suit is barred by law of limitation? OPD
4. Whether the present suit has not been valued properly for the purpose of court fees? OPD
5. Relief."

30. In support of his case, the Plaintiff examined himself as PW-1 and tendered his evidence by way of affidavit Ex.PW1/A, wherein he reiterated the averments made in the Plaint.

31. He proved the copy of Agreement to Sell dated 23.09.2011 as Ex.PW1/1; copy of Agreement to Sell dated 07.08.2013 as Ex.PW1/2; copy of police complaint dated 24.07.2013 as Ex.PW1/3(OSR); copy of receipt dated 05.09.2013 as Ex.PW1/4(OSR); copy of FIR dated 25.02.2014 as Ex.PW1/5(OSR); copy of Legal Notice dated 21.07.2012 as Ex.PW1/6; copy of Reply dated 25.07.2012 as Ex.PW1/7; and copy of Legal Notice dated 26.09.2013 as Ex.PW1/8.

32. ***PW-2, Sh. Syed Shoaib*** deposed tendered his evidence by way of affidavit **Ex.PW-2/A**, wherein he deposed that he was a friend of the Plaintiff and that, in his presence, the Plaintiff had received a sum of Rs.40,00,000/- from one Sh. Vipin Chauhan for the purpose of purchasing a property. He was duly cross-examined on behalf of the Defendant.

33. In defence, ***the Defendant examined herself as DW-1*** and tendered her evidence by way of affidavit Ex.DW1/A, on the lines of the case set up in the Written Statement. She relied upon MCD Letter dated 12.03.2012 as Ex.DW1/1; Agreement/*Ikrarnama* dated 23.04.2012 as Ex.DW1/2; Notice dated 16.01.2013 as Ex.DW1/3; and various Complaints, Letters, Notices

and Representations addressed to the police and other authorities, exhibited as Ex. DW-1/4 to Ex. DW-1/15.

34. ***DW-2, Ct. Swadesh Kumar,*** a summoned witness from P.S. Laxmi Nagar, produced Book No.454 containing FIR Nos.401/2014 to 450/2014 of P.S. Shakarpur. He identified FIR No.426/2014, which had already been exhibited as Ex.PW1/5.

35. ***DW-3, Sh. Rajeev Gairola*** a relative of the Defendant, tendered his evidence by way of affidavit **Ex.DW-1/A**. He deposed that he had accompanied the Defendant in matters relating to the transaction and that the Plaintiff had repeatedly failed to pay the balance sale consideration under the successive arrangements between the parties.

36. ***DW-4, Sh. Parvesh Khatri*** from the Office of the Sub-Registrar-VIII, Geeta Colony, produced the certified copy of the Sale Deed executed in favour of the Defendant, which was exhibited as Ex.DW4/A (OSR). He was duly cross-examined on behalf of the Plaintiff.

37. The ***learned District Judge***, upon considering the rival contentions of the parties, held that the Agreement to Sell dated 07.08.2013 constituted a novation of the earlier Agreement executed in September, 2011 and, therefore, the period of limitation was to be computed from the date fixed for performance under the subsequent Agreement, namely 05.09.2013. However, the Plaintiff had failed to establish his *continuous readiness and willingness to perform his part of the contract.* It was observed that no documentary evidence had been produced to establish the availability of the balance sale consideration of Rs.62,00,000/-, nor had the Plaintiff complied with the Order directing him to furnish an FDR towards the balance

consideration amount. Mere presence before the office of the Sub-Registrar on 05.09.2013,*was insufficient to establish readiness and willingness.*

38. Accordingly, the learned District Judge held that ***the Plaintiff was not entitled to the discretionary relief of Specific Performance under Section 16(c) of the Specific Relief Act, 1963. Consequently, the relief of Permanent Injunction was also declined. The Suit of the Plaintiff, was dismissed.***

39. However, noticing that receipt of Rs.17,00,000/- under the Agreement dated 07.08.2013 was admitted, the learned Trial Court in order to *work out the equities* between the parties, directed the Defendant to refund Rs.17,00,000/- to the Plaintiff, along with *pendente lite* and future interest @ 8% per annum, even though no relief for refund of money, was sought by the plaintiff.

40. Aggrieved by the impugned Judgment and Decree dated 30.11.2024, the ***Defendant/Appellant has preferred the present Regular First Appeal.***

41. The Plaintiff had instituted the Suit seeking Specific Performance and Permanent Injunction, which was contested by the Defendant. Though both the substantive reliefs were declined, the Defendant was nevertheless directed to refund Rs.17,00,000/- along with interest. The present Appeal assails the said direction as well as the finding returned on limitation.

42. **The *First challenge is*** with respect to thegrant of refund of Rs.17,00,000/- to the Plaintiff/Respondent along with *pendente lite* and future interest @ 8% per annum, despite having declined the relief of Specific Performance.

43. It is contended that the learned Trial Court, had categorically held that the Plaintiff had failed to establish *his continuous readiness and willingness*

to perform his obligations under the Agreement to Sell dated 07.08.2013 and was, therefore, disentitled to the discretionary relief of Specific Performance. The Ld. Trial Court fell into manifest error in directing refund of the earnest money.

44. It is submitted that the Agreement itself expressly provided for forfeiture of the earnest money in the event of default on the part of the purchaser. Therefore, the direction for refund, is contrary to the contractual terms, as well as the findings recorded by the learned Trial Court.

45. It is further contended that the learned Trial Court could not have granted the relief of refund *in the absence of any specific prayer in the Plaint seeking such relief or any amendment incorporating an alternative claim for refund of the earnest money*. Such a relief is contrary to the scheme of Sections 21(5) and 22(2) of the Specific Relief Act, 1963, which contemplates that compensation or refund of earnest money can be granted only where specifically claimed in the plaint or incorporated by way of amendment. Reliance has been placed on the decision of the Supreme Court in *Desh Raj & Ors. v. Rohtash Singh,* (2023) 3 SCC 714, to contend that in the absence of a specific prayer, a decree for refund of earnest money could not have been granted.

46. ***Second challenge is*** to the finding of the learned Trial Court that the Suit instituted by the Plaintiff, ***was within the prescribed period of limitation.***It is contended that the Agreement dated 07.08.2013 was merely a continuation or modification of the earlier Agreement executed in September, 2011 and did not constitute a novation of the original contract. It is, therefore, asserted that the Suit instituted on 09.08.2016, was barred by limitation.

47. Without prejudice to the said contention, it is further urged that the Plaintiff had instituted the Suit only at the fag end of the prescribed period of limitation, without any explanation for the delay, disentitling him to the equitable relief of Specific Performance. Reliance has been placed on the decision of the Supreme Court in *Pydi Ramana @ Ramulu v. Davarasety Manmadha Rao* in support of the said contention.

48. The **Plaintiff/Respondent** has filed ***Written Submissions*** in support of the impugned Judgment. It is contended that the direction for refund of the advance amount was justified on equitable considerations, as denial of refund would result in unjust enrichment of the Defendant/Appellant.

49. It is further submitted that even in the absence of a specific prayer for refund in the Plaint, the Court was empowered to grant such consequential relief in exercise of its powers under Order VII Rule 7 and Order XLI Rule 33 of the Code of Civil Procedure, 1908. Reliance has been placed on the decision of the High Court of Judicature at Madras in *C.S. Udayakumar v. Palaniammal* (M.P. No. 1 of 2012).

50. It is further contended that the Plaintiff/Respondent had always been ready and willing to perform his part of the Agreement and that the learned Trial Court rightly exercised its equitable jurisdiction, while directing refund of the advance amount.

Submissions heard and record perused.

51. The Plaintiff/Respondent has been denied the reliefs of Specific Performance of the Agreement to Sell dated 07.08.2013 and Permanent Injunction; however, he has been granted refund of Rs.17,00,000/- along with pendente lite and future interest @ 8% per annum.

52. The present Appeal raises two challenges by the Defendant/Appellant:

(i) *Whether the learned Trial Court was justified in directing refund of Rs.17,00,000/- with pendente lite and future interest @ 8% per annum despite the absence of any prayer to that effect; and*

(ii) *Whether the Suit was rightly held to be within limitation.*

(iii) *Whether the Plaintiff was entitled to equitable relief of Specific performance of Agreement to Sell dated 07.08.2013*

<u>I. The Direction for refund of Rs. 17,00,000/- with interest:</u>

53. *The first and principal question which arises for consideration is whether the learned Trial Court, having declined the relief of Specific Performance, could have nevertheless directed refund of Rs.17,00,000/- to the Plaintiff in the absence of any specific prayer for refund in the Plaint.*

54. The prayer clause of the Plaint shows that the Plaintiff sought a decree of Specific Performance of the Agreement dated 07.08.2013, and a decree of Permanent Injunction restraining the Defendant from alienating, transferring or creating any third-party interest in the suit property. *There was admittedly no specific or alternative prayer for refund of the earnest money/advance amount of Rs.17,00,000/-*. It is also not in dispute that no amendment of the Plaint was sought at any stage for incorporating such a relief.

55. The controversy is squarely governed by Section 22 of the Specific Relief Act, 1963*(hereinafter referred to as " SRA")*, which reads as under:

> ***"22.Power to grant relief for possession, partition, refund of earnest money, etc***.—
> *(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure,1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—*

(a) possession, or partition and separate possession, of the property, in addition to such performance; or
***(b**) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.*
(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it hasbeen specifically claimed:
Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at anystage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claimfor such relief.
(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudiceto its powers to award compensation under section 21.

56. Section 22 of the SRA, 1963 specifically deals with the power of the Court to grant, *inter alia*, the relief of refund of earnest money or deposit in a suit for Specific Performance. Section 22(1)(b)enables a plaintiff suing for Specific Performance to seek, in an appropriate case, refund of earnest money or deposit paid by him, where the relief of Specific Performance is refused.

57. Section 22(2), however, *imposes an unequivocal bar:* ***no such relief shall be granted unless it has been specifically claimed.*** The ***proviso,*** while permitting amendment of the Plaint at any stage of the proceeding to incorporate such a claim, *does not dispense with the requirement of a specific prayer;* it merely provides a procedural window for the Plaintiff to seek amendment. The pleading of the alternative relief, whether in the original Plaint or by way of amendment, is therefore a *sine qua non* for the grant of a decree for refund of earnest money.

58. In *Desh Raj & Ors. v. Rohtash Singh*, (2023) 3 SCC 714, the Supreme Court, while construing Section 22(2) of the Specific Relief Act, 1963, held as under:

> "***35.*** *On a plain reading of the above reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contact is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint.* ***The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.***
> ***36…****…….* ***In the absence of such a prayer, it is difficult to accept that the courts would suo-moto grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of SRA Act is to be construed directory or mandatory in nature****.***"**

59. Thus, it was held that the prayer clause is a ***"sine qua non"*** for grant of a decree for refund of earnest money. The Court cannot *suo motu* grant such relief unless it has been specifically claimed, either in the original Plaint or by way of amendment. The existence of a general or residuary prayer, does not satisfy the express requirement of Section 22(2).

60. The Supreme Court in its decision in *Manickam v. Vasantha*, 2022 SCC OnLine SC 2096, which concerned the relief of possession under Section 22(1)(a) of the SRA, held that where possession is ancillary to and necessarily flows from a decree for Specific Performance, it need not be separately claimed. It was further observed that the expression *"at any stage of the proceeding"* includes proceedings in the Suit, Appeal and execution.

61. The law has been reiterated and explained in detail by the Supreme Court in *K.R. Suresh v. R. Poornima & Ors*., Civil Appeal No. 5822 of 2025, decided on 02.05.2025. In that case also, the plaintiff/purchaser had instituted a Suit for Specific Performance of an Agreement to Sell which contained a clause providing for forfeiture of the advance amount in the event of failure on the part of the purchaser to pay the balance sale consideration within the stipulated period. The purchaser was found *not ready and willing* to perform his part of the contract and the relief of Specific Performance was declined. Significantly, the plaintiff therein had neither specifically prayed for refund of the advance amount nor sought amendment of the Plaint to incorporate such a relief, but had relied upon a general prayer for grant of such other relief as the Court may deem fit.

62. The Supreme Court in *K.R. Suresh* (supra), while examining the scope of Section 22 of the SRA,explained that the said principle could not be extended to the refund of earnest money. Unlike possession, refund under Section 22(1)(b) does not automatically flow from a decree for Specific Performance and must, therefore, be explicitly sought. It was held as under:

> *"62. The reasoning set forth in the case of Manickam (supra) as regards the relief of possession under Section 22(1)(a) of the 1963 Act, can be appropriately imported in the present case to say that the relief of refund of earnest money under Section 22(1)(b) is not a relief that automatically flows from a decree for specific performance of a sale agreement and must, therefore, be explicitly sought."*

63. The Supreme Court, thereafter reiterated that although a Plaint may be amended at any stage of the proceedings to incorporate an alternative relief,

including refund of earnest money, *the Court cannot grant such relief suo motu*. It was held as under:

> *"58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments.* ***However, under Section 22 of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an 'appropriate case' exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in Desh Raj v. Rohtash Singh, (2023) 3 SCC 714."***

64. It was further clarified that a general or residuary prayer for such other relief as the Court may deem fit, cannot be construed as a specific prayer for refund of the advance amount. As regards the opportunity to cure the omission even at the appellate stage, the Supreme Court observed:

> *"61. Applying these principles to the facts of the case at hand, we find ourselves unable to accept the submissions of the appellant that, in the absence of a specific prayer for the refund of advance money paid by them, Prayer (c) of the plaint which specifies the grant of 'such other relief(s) as the Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice', can be construed to include a prayer for such an alternative relief.*
>
> *xxx*
>
> *63.* ***In our considered opinion, the law contained under Section 22(2) of the 1963 Act is adequately broad and***

> ***flexible to allow the appellant to seek an amendment of the plaint for the said relief, even at the appellate stage****. However, no such application for an amendment of the plaint was moved either before the trial court or during the course of the first appeal before the High Court. That is to say, the appellant never prayed for the refund of the advance money. Here, it would be redundant to state that the law aids the vigilant, not those who sleep over their rights."*

65. Thus, the Apex Court in *K.R. Suresh* (supra) considered Section 22 of the SRA, 1963 and reiterated that though the plaint may be amended at any stage to seek the alternative relief of refund, the Court cannot grant such relief *suo motu*, unless refund is specifically claimed in the original plaint or by way of amendment, no decree for refund can be passed.

66. The law is thus, settled on two aspects; ***firstly,*** a general or residuary prayer for such other relief as the Court may deem fit cannot substitute the specific claim contemplated under Section 22(2) of the SRA. ***Secondly***, though the omission may be cured by seeking amendment of the Plaint even at the appellate stage, the Court cannot grant refund unless the Plaintiff actually seeks incorporation of such relief.

67. Applying the aforesaid principles to the present case, the Plaintiff neither sought refund of Rs.17,00,000/- in the original Plaint nor moved any application for amendment of the plaint to incorporate such an alternative relief. Even during the pendency of the present Appeal, the Plaintiff/Respondent has not sought amendment of the Plaint, to include the relief of refund, under the proviso to Section 22(2) of the SRA. Thus, despite the statutory opportunity being available even at the appellate stage,

the relief of refund has not been specifically claimed at any stage of the proceedings.

68. The assertions contained in the Written Submissions defending the decree on equitable considerations, cannot substitute the specific claim contemplated under Section 22(2) of the SRA. The *proviso* to Section 22(2) affords a plaintiff an opportunity to cure the omission in the Plaint; it does not dispense with the requirement that the relief must actually be claimed before it can be granted. Consequently, the learned Trial Court could not have granted the relief of refund *suo motu*, merely in order to work out the equities between the parties.

69. The contention of the Plaintiff that the Court was empowered to grant such relief under Order VII Rule 7 or Order XLI Rule 33 of the CPC, also cannot be accepted. *Section 22 of the Specific Relief Act is a specific statutory provision governing reliefs in a suit for Specific Performance. It opens with a* ***non-obstante clause*** *and expressly stipulates that refund of earnest money or deposit cannot be granted unless specifically claimed.* The general powers of the Court under the CPC cannot, therefore, be invoked to override the express statutory bar of Section 22(2).

70. In *K.R. Suresh* (supra), the Supreme Court specifically noticed that the *non-obstante* clause in Section 22(1) gives the provision overriding effect over the CPC to the extent of any inconsistency. Thus, the reliance placed by the Plaintiff upon the decision of the Madras High Court in *C.S. Udayakumar v. Palaniammal* therefore, does not advance the case of the respondent, in view of the binding pronouncements of the Supreme Court in *Desh Raj* (supra) and *K.R. Suresh* (supra).

71. In view of the foregoing, the impugned Judgment and Decree dated 30.11.2024, directing the Defendant/Appellant to refund Rs.17,00,000/- to the Plaintiff/Respondent along with *pendente lite* and future interest @ 8% per annum, **is hereby set aside**.

II. Whether the Suit was barred by limitation:

72. The second challenge by the Appellant is the Suit was not within the prescribed period of limitation. It is contended that the Agreement dated 07.08.2013, was not a new Agreement to Sell, but only a continuation or modification of the earlier Agreement to Sell dated 23.09.2011 and that both the Agreements were to be read together. Therefore, the Suit instituted on 09.08.2016, was barred by limitation.

73. To appreciate this contention, it is necessary to refer to the covenants of the two Agreements and also the evidence to ascertain whether the second Agreement to Sell, was the continuation of the first Agreement to Sell.

74. According to the Plaint, the Defendant, who intended to sell the suit property, contacted the Plaintiff through the property dealer, Sh. Radha Ballabh. The parties entered into the Agreement to Sell and Purchase dated 23.09.2011, for the purchase of the suit property for a sale consideration of Rs.61,00,000/-. The Plaintiff claimed that he initially paid Rs.2,00,000/- as earnest money and subsequently, made further payments towards the sale consideration.

75. The Plaintiff claimed that disputes subsequently arose between the parties when he asked the Defendant to produce the original title documents of the suit property. The Defendant issued a Legal Notice dated 21.07.2012, to which the Plaintiff gave his Reply dated 25.07.2012.

76. The Plaintiff, in paragraph 5 of the Plaint, has stated thus:

> *"That the agreement as aforesaid between the plaintiff and the defendant dated 23.9.2011 was* ***reconsidered*** *when the defendant was making reluctance to execute the same and therefore, after a settlement it was decided that a* ***fresh agreement*** *to sale and purchase be executed preferred by defendant and therefore, the plaintiff has made no hitch and agreed to a* ***fresh agreement*** *and accordingly the same was executed on 7th August, 2013 narrating therein the conditions and the total consideration of Rs.79,00000/- for the purchase of the property No. 10 in J-Extension/ Laxmi 2. measuring 100 sq. yrd by the plaintiff from the defendant being the owner of the said property"*

77. Likewise, Defendant, in her in paragraph 5 of her Written Statement, has also averred that ***"it is the Plaintiff who had again approached the Defendant with fresh offer of Rs. 79,00,000/-".*** Though the Defendant, in her preliminary objections, has sought to characterise the Agreement dated 07.08.2013 as a *"supplementary agreement"* to the earlier Agreement of September, 2011, but her own factual her factual pleading on merits, records that the subsequent transaction arose from a ***fresh offer*** made by the Plaintiff at a revised sale consideration.

78. It is against the said backdrop, that the terms of the two Agreements are may also be considered. The material terms of the first Agreement to Sell dated 23.09.2011, were as under:

> *"1. That the entire consideration amount of the property/flat is finalised for a sum of Rs. 61,00,000/- (Rupees Sixty One Lacs Only).*
> *2. That First Party has received an amount of Rs. 2,00,000/- (Rupees Two Lacs Only) as earnest money from the second party at the time of signing this agreement.*

That the second party will pay Rs. 4,00,000/- ... as part payment to the first party on or before [date].
That the second party will pay Rs. 6,00,000/- ... as part payment to the first party on or before [date].
That the second party will pay Rs. 5,00,000/- ... as part payment to the first party on or before [date].
That the second party will pay Rs. 7,00,000/- ... as part payment to the first party on or before [date].
That the second party will pay Rs. 3,00,000/- ... as partpayment to the first party on or before [date].
3. That last balance payment of Rs. [amount] ... shall be paid by the second party to first party at the time of the sale deed registered before the concerned sub-registrar office. There shall not be any obligation on the second party to pay the above amount under the bound period.

.....

6. That if the first party proved defaulter to comply any terms and conditions of this agreement and fail to execute the concerned Sale Deed of the said property/flat in favour of second party in the office of concerned Sub-Registrar as per this agreement, then the first party shall have to pay double amount of earnest money to the second party. The second party shall have full right to get executed the same document by the first party through court of law at the cost and expense of the first party."

79. The first Agreement contemplated payment of an initial earnest money of Rs. 2,00,000/- at the time of its execution, followed by five part-payments aggregating Rs. 25,00,000/- on the stipulated dates. Significantly, at the bottom of the first agreement to Sell, it was noted that Rs.4,00,000/- had been received (which was the first instalment) and was further stated that the dates of remaining instalments shall be filled, as and when the money is received.

80. It was expressly stipulated that the Second Party would not be under any obligation to pay the said amount within the bound period. But Clause 3 provided that the last balance payment was to be made at the time of registration of the Sale Deed, before the concerned Sub-Registrar Office. **Pertinently, it specified no time frame for completion of the sale transaction.**

81. The material terms of the ***second Agreement to Sell and Purchase dated 07.08.2013,*** are as under:

> *"AND WHEREAS the first party has agreed to sell the said* ***property to the second party for a sum of Rs. 79,00,000/-*** *(Rupees Seventy Nine Lacs only),* ***out of which Rs. 17,00,000/- (Rupees Seventeen Lacs only) in cash has been paid*** *by the Second Party to the First Party as Advance/Earnest Money and the balance amount of Rs. 62,00,000/- (Rupees Sixty Two Lacs only)* ***shall be paid by the second party to the first party on or before 05.09.2013*** *at the time of Execution of Title Documents before the office of Sub Registrar. The terms and conditions are as under:—*
> *1. That the first party shall execute the necessary documents in respect of the said property in favour of the second party or in favour of his/her (second party's) nominee(s) after receiving the full and final payment from the second party and shall deliver the possession of the said property to the same on the spot.*
> *2. That in case the second party fails to pay the balance amount to the first party till the said last date****, the first party shall have full rights to forfeit the advance money.***
> *3. That in case the first party fails to comply the terms and conditions of this agreement, he/she (first Party) will have to pay just double of the advance amount to the second party.*
> *4. ...*
> *5. .....*

6. That the first party has no right to refuse to sell the above said property and if the first party will refuse then the second party will have the right to get the sale deed executed through court of law and in that event, all expenses will be borne by the party No.1 and the party No.1 will have no right to sale the above said property to any other person except the party No.2 and his nominees.
7. ***That the first party will handover the peaceful physical vacant possession of the property*** *under consideration to the second party at the time of execution of the sale deed."*

82. The main terms of the second Agreement dated 07.08.2013, are that the total sale consideration was fixed afresh at Rs. 79,00,000/-; an amount substantially different from the earlier sale consideration of Rs. 61,00,000/-. *Secondly*, a sum of Rs. 17,00,000/- was acknowledged as advance/earnest money in the second Agreement, while it was Rs.6,00,000/- *(Rs.2,00,000/- + Rs.4,00,000/-)* as stated in the first Agreement. *Thirdly*, the date of 05.09.2013 was stipulated for execution of the Sale Deed, while there was no date whatsoever, for execution of the Sale Deed mentioned in the first Agreement to Sell. *Fourthly* and significantly, the Agreement dated 07.08.2013 made no reference whatsoever to the earlier Agreement dated 23.09.2011 and there was no incorporation of any of the terms of the first Agreement.

83. The Agreement dated 07.08.2013, contains a complete set of reciprocal obligations relating to payment of sale consideration, execution of the title documents, delivery of possession and the consequences of default by either party. There is also no recital describing the subsequent Agreement as supplementary or in continuation of the earlier Agreement.

84. ***Section 62 of the Indian Contract Act, 1872*** recognises the doctrine of ***novation,*** and provides that where the parties to a contract agree to substitute a new contract for it, the original contract need not be performed.

85. The Supreme Court in *Lata Construction & Ors. v. Dr.Rameshchandra Ramniklal Shah*, (2000) 1 SCC 586, has explained that *novation* requires a complete substitution of a new contract in place of the old one, on such terms as would demonstrate that the parties intended the earlier contract to be extinguished and the new contract to take its place. Once such substitution is established, the original contract stands discharged, and the reciprocal obligations of the parties flow from the new contract alone.

86. Applying the said principles to the facts of the present case, it is evident that the Agreement dated 07.08.2013 constituted a *novation of the earlier Agreement dated 23.09.2011*, within the meaning of Section 62 Indian Contract Act, 1872. The parties, by their own admissions in the pleadings, conduct and the terms of the two Agreements, substituted a fresh contract, for the earlier one.

87. The Agreement dated 07.08.2013 being a fresh contract, the period of limitation for the institution of a Suit for Specific Performance is to be reckoned from the date of 05.09.2013 as fixed for performance, thereunder.

88. Under Article 54 of the Limitation Act, 1963, *the period of limitation for a suit for Specific Performance is three years from the date fixed for performance*, or where no such date is fixed, from the date when the Plaintiff has notice that performance is refused.

89. In the present case, the date fixed for performance under the Agreement dated 07.08.2013, was 05.09.2013. The Suit instituted on

09.08.2016, was within three years from the date fixed for performance, as has been rightly held by Ld. District Judge.

III. Whether the Plaintiff was entitled to equitable relief of Specific performance of Agreement to Sell dated 07.08.2013:

90. The Appellant/Defendant has next contended that the Ld. Trial Court, *dehors* the contention on merits, even otherwise, could not have granted the refund of Rs. 17,00,000/- to the Plaintiff, since the conduct of the Plaintiff, in filing his suit only at the *fag end* of the prescribed period of limitation and not satisfactorily explaining the steps taken by him during the intervening period, *disentitled him to the equitable relief of Specific Performance*, notwithstanding that the Suit was instituted within limitation. Reliance has been placed upon *Pydi Ramana @ Ramulu v. DavarasettyManmadha Rao*, (2024) 7 SCC 515.

91. The Ld. District Judge, on the basis of the evidence led by the parties, concluded that Plaintiff was not able to prove his *continuous readiness and willingness*, disentitling him to the relief of Specific Performance of Agreement to Sell. However, the admitted payment of ₹17,00,000/- by the Plaintiff under the Agreement, which ultimately did not fructify, weighed with the learned District Judge in exercising equitable discretion in his favour and directing refund of the said amount.

92. While this contention may be more of an ***academic discussion***, in view of the setting aside of decree for refund of Rs.17,00,000/-, it is being addressed as it raises an important question in regard *to the role of equity in the Suit under Specific Relief Act.*

93. It is, therefore, apposite to examine the ***concept of equity*** and its interplay with the statutory scheme governing the relief of Specific Performance. Equity, in its jurisprudential origin, developed in England as a distinct body of principles administered by the Court of Chancery, to soften the rigours of the common law, where the strict application of law would result in injustice.

94. The term *"equity"* may also be used to refer to an equitable interest. The High Court of Australia in *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265 decided on 12.04.1965, identified three kinds of equities: *equitable interests, mere equities and personal equities.* A mere equity, for example, may arise when one party has been unjustly disadvantaged by the unconscionable behaviour of another. Importantly, however, a *'mere equity'* will not prevail over an actual *bona fide* equitable interest, such as an equitable charge.

95. Historically, a principal justification for the intervention of equity was the Latin legal maxim, *ubi jus ibi remedium*, which according to Oxford Dictionary means that *"where there is a right there must be a remedy"*. Thomas Jefferson explained in 1785, that there are three main limitations on the power of a court of equity: *"If the legislature means to enact an injustice, however palpable, the court of Chancery is not the body with whom a correcting power is lodged. That it shall not interpose in any case which does not come within a general description and admit of redress by a general and practicable rule."*

96. The law of unjust enrichment and restitution is often justified on the equitable maxim that one should not profit from their wrong.It operated in *personam*, upon the conscience of the parties, and was guided by well-

recognised maxims that *equity follows the law*, *that equity acts in personam, that equity aids the vigilant and not those who slumber on their rights, and that he who comes into equity must come with clean hands.*

97. In the *Earl of Oxford's Case*, (1615) 1 Ch Rep 1 : 21 ER 485, the Court of Chancery declared that where the rigour of the common law would result in injustice, equity would intervene to *"soften and mollify the extremity of the law"*, and ***that in the event of a conflict between the two, equity would prevail***. The Judicature Acts of 1873 and 1875 in England thereafter, amalgamated the erstwhile separate courts of common law and equity, into a single Supreme Court of Judicature, which was directed to administer both streams of law together, and further provided that *where the rules of law and the rules of equity conflicted, the rules of equity would prevail.*

98. The maxim *equity follows the law, has always operated as an important limitation upon the exercise of equitable jurisdiction.* ***Equity supplements the law where it is silent or deficient, but does not override the law where it has spoken.*** Equity, in the classical formulation, does not contradict the law; it moves within the periphery of the law and intervenes only where the law itself permits such intervention.

99. In the Indian legal system, equity is not administered as a separate stream of jurisprudence, but is *embedded within the statutory framework of*the Specific Relief Act, 1963, which is a codification of the equitable jurisdiction of the Court in relation to the specific enforcement of civil rights arising out of contracts and property, and traces its jurisprudential foundation to the equitable jurisdiction of the English Court of Chancery,

which had developed to grant such relief where the common law remedy of damages was inadequate.

100. Section 20, Sections 21 and 22 of the said Act embody the parameters within which the Court exercises its ***equitable discretion*** in a Suit for Specific Performance, both in relation to the principal relief and to alternative reliefs including refund of earnest money and compensation. The Supreme Court, in *Universal Petro Chemicals Ltd. v. B.P. PLC*, Civil Appeal No. 3128 of 2009, decided on 18.02.2022, has observed that on equitable considerations, the Court cannot ignore or overlook the provisions of the statute, and that *"equity must yield to law"*.

101. The Court, therefore, while exercising equitable jurisdiction in a Suit for Specific Performance, is bound by the parameters that the statute itself has laid down. The language of *"broad justice"* cannot be invoked to grant a relief which the statute *expressly conditions upon a specific claim*, or to travel beyond the four corners of the statutory scheme.

102. In *Kamal Kumar v. Premlata Joshi*, (2019) 3 SCC 704, the Supreme Court reiterated that the grant of Specific Performance is a *discretionary and equitable relief* and while considering that the Plaintiff is entitled to the alternate reliefincluding refund of the earnest money, **must consider *whether it would be equitable to grant Specific Performance or whether its grant would cause hardship to the Defendant*.** The Supreme Court further observed that these questions form part of the statutory requirements under Sections 16(c), 20, 21, 22 and 23 of the SRA and *must be specifically pleaded and proved, before the Court may exercise its discretion to grant or refuse the relief of Specific Performance.*

103. One such inequitable circumstance can be delay and inaction on the part of the Plaintiff, as explained in _Pydi Ramana_ (supra), wherein the Supreme Court observed that although a Suit for Specific Performance may be instituted even on the last permissible day of limitation, the Plaintiff must explain in the Plaint and prove in evidence the steps taken by him from the date of the Agreement, until the institution of the Suit. *Long and unexplained delay and silence during the intervening period, may disentitle the Plaintiff to the equitable relief of Specific Performance.*

104. Applying the aforesaid principles to the facts of the present case, the learned Trial Court, upon declining the relief of Specific Performance on account of the failure of the Plaintiff to establish continuous readiness and willingness, noticed the payment of Rs. 17,00,000/- under the Agreement dated 07.08.2013. It further considered that, upon refusal of Specific Performance, the Plaintiff *would otherwise be left without any relief while the Defendant would continue to retain the admitted amount.* It was on the said *equitable considerations*, and to do *"broad justice" and "work out the equities*" between the parties, that the learned Trial Court directed refund of Rs. 17,00,000/- along with pendente lite and future interest @ 8% per annum, notwithstanding the absence of any prayer to that effect in the Plaint.

105. The *exercise of equitable discretion by the learned Trial Court*, however respectable the motivation, could not travel beyond the statutory boundaries within which such discretion has been confined. The relief of refund of earnest money in a Suit for Specific Performance is not an unstructured equitable relief; it is a statutory relief governed by Section 22 of the Specific Relief Act, 1963. The refund cannot be granted, unless specifically claimed.

106. As observed by the Supreme Court in _Kamal Kumar_ (supra), the entitlement to Specific Performance, and the alternative relief including refund of earnest money, form part of the statutory requirements contained in Sections 16(c), 20, 21, 22 and 23 of the Specific Relief Act, *but it must be specifically pleaded and proved before the Court may exercise its discretion.*

107. As further held in _K.R. Suresh_ (supra), refund under Section 22(1)(b) does not automatically follow from the refusal of Specific Performance, and cannot be granted *suo motu* unless specifically claimed, either in the original Plaint or by way of amendment.

108. Equity, as observed hereinabove, operates within the framework of the statute and not in derogation to it. Once the Plaintiff had failed to plead the alternative relief of refund in the Plaint, and had not sought amendment at any stage, either before the learned Trial Court or during the pendency of the present Appeal, the door to the grant of such relief stood statutorily shut. The invocation of *"broad justice"* and *"working out of the equities"* could not, be invoked to address the *perceived injustice* in the given circumstances, to cure the pleading deficiency mandated by Section 22(2) of the Specific Relief Act, 1963.

109. The Ld. Trial Court, thus, fell in error in invoking equity, despite the statutory bar of S.22(2) of the Specific Relief Act, 1963. The refund of Rs.17,00,000/-, has to be set aside.

Conclusion:

110. **The Appeal is accordingly, allowed**. The impugned Judgment and Decree dated 30.11.2024 directing the Appellant to refund Rs.17,00,000/- to

the Respondent along with *pendente lite* and future interest @ 8% per annum, ***is set aside***. Accordingly, ***the Suit of the Plaintiff is dismissed.***

111. Pending Applications, if any, are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 17, 2026/RS