

Sukhbir Singh vs Rajender Prasad on 1 December, 2021

THE COURT OF MS. SHIVALI SHARMA
ADDITIONAL DISTRICT JUDGE-03: WEST DISTRICT
TIS HAZARI COURT: DELHI

Civ DJ No. 612668/2016

In the matter of:-

Sukhbir Singh
S/o Sardar Joga Singh
R/o 13/37, Subhash Nagar,
New Delhi- 110 027.

.....Plaintiff

Versus

Rajender Prasad
S/o Shri Ram Murat Pandey
R/o 14/66, Second Floor,
Subhash Nagar,
New Delhi - 100 027.

.....Defendant

Date of institution	:	28.07.2011
Date of decision	:	01.12.2021

SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT,
PERMANENT INJUNCTION AND MANDATORY
INJUNCTION.

JUDGMENT

1. This is a suit for specific performance of contract, permanent Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 1/37 injunction and mandatory injunction filed by plaintiff S. Sukhbir Singh against the defendant Shri Rajender Prasad.

Plaintiff's case:

2. The case of the plaintiff as per plaint is that the defendant was desirous of selling the shop bearing no. 4, land ad□measuring (15' X 7') excluding roof rights, a part of back portion of property bearing no. 13/37, situated in Tihar No. 1, Subhash Nagar, New Delhi□110 027, with lease hold rights of the land under the said property (hereinafter referred as suit shop). A detailed and formal agreement to sell was executed on 24.04.2010 wherein the defendant had agreed to sell and plaintiff had agreed to purchase the suit shop for a total sale consideration of Rs. 6 lacs. At the time of execution of

agreement, the plaintiff paid a sum of Rs. 4,75,000/- to the defendant (80% of total sale consideration) and the receipt/agreement was also executed by the defendant on 24.04.2010 in the presence of witnesses. The balance sale consideration was decided to be paid to the defendant by the plaintiff at the time of execution of GPA/Sale Deed in the office of the Sub-Registrar concerned in favour of the plaintiff or his nominee/nominees.

3. The vacant and peaceful possession of the suit shop was also handed over to the plaintiff under sale on 04.12.2020. At the time of execution of agreement, the defendant had assured the plaintiff that the suit shop was free from all sorts of encumbrances like prior sale, gift, mortgage, lien, court order, surety, security, acquisition/requisite litigation, dispute, charges or any other registered or unregistered Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 2/37 encumbrances. As per the agreement, all unpaid dues of House Tax, Electricity, Water Development charges were to be cleared by the defendant upto the date of handing over of the vacant possession of the suit shop and thereafter, the same were to be borne by the plaintiff. However, still an amount of about Rs. 55000/- is due to Delhi Jal Board and about Rs. 15000/- are due towards House Tax to MCD.

4. After execution of the above said agreement to sell, receiving substantial amount from the plaintiff and handing over physical, vacant and peaceful possession to him, the defendant started avoiding any meeting to complete the said sale transaction due to the reason of sudden rise in the property rates. Despite requests and reminders, defendant did not take any step for execution of the sale deed. With the intervention of some known persons it was decided that the sale deed would be registered in the office of Sub-Registrar on 14.01.2011. Accordingly, plaintiff and his wife Mrs. Navneet Kaur (being his nominee visited the office of Sub Registrar at Janak Puri on 14.01.2011, however, defendant did not turn up for the execution of the sale deed.

5. Plaintiff served a legal notice dated 19.01.2011 upon the defendant calling upon him to comply with the agreement to sell dated 24.04.2010, however, defendant failed to give any reply to the said notice. On 24.02.2011, defendant came to the suit shop along with some gunda elements and his relatives and tried to take forcible possession of the suit shop from the plaintiff. The matter was immediately reported to the police. Thereafter, defendant tried to sell Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 3/37 the suit shop to the area property dealers. Hence, the present suit has been filed seeking specific performance of agreement to sell dated 24.04.2010 and injunction restraining the defendant from dispossessing the plaintiff or creating any third party interest in the suit shop.

Ex-parte Judgment:-

6. Initially after service, no one appeared on behalf of the defendant and no WS was filed. Accordingly, opportunity of the defendant to file WS was closed vide order dated 10.10.2012 and he was proceeded ex-parte vide order dated 11.04.2013. Vide ex-parte judgment and decree dated 15.10.2013, the suit of the plaintiff was decreed in his favour.

7. On 03.12.2013, defendant filed an application under Order 9 Rule 13 CPC r/w section 5 of Limitation Act which was allowed subject to cost vide order dated 03.05.2014.

Defendant's Case:

8. After setting aside of the ex parte decree, defendant filed his written statement wherein the suit of the plaintiff has been preliminarily objected to on the ground that the entire case of the plaintiff is based on false averments. It is alleged that defendant had purchased the suit shop from the father of the plaintiff namely Sh. Joga Singh in the year 1997 for a sum of Rs. 30,000/ vide GPA, Will and Indemnity Bond dated 07.04.1997. Plaintiff was a witness to the said transaction. The parties had cordial and friendly relations. Sometime in Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 4/37 the year 2007, when the defendant had suffered major loss in his business and his financial condition was vulnerable and he was in need of money, plaintiff offered to give him loan with a view to help him. He also told him that as a common business practice, the defendant had to sign certain stamp papers and cheques as security. Since the relation between the parties were cordial and defendant was in urgent need of money, he signed the documents and borrowed Rs. 50,000/ from the plaintiff. The loan was repaid in 2010 alongwith interest but at the time of repayment, plaintiff failed to return the signed documents stating that they have been misplaced. Later, the said documents were manipulated by the plaintiff and he filed the present false suit. He also got filed complaint under Section 138 N.I. Act in respect of the cheques which were given to him as security. In both the cases incorrect address of the defendant was mentioned and accordingly, he could not be served for a long time which is clearly indicative of the fact that plaintiff had not approached the court with clean hands.

9. On merits, it is categorically denied that defendant had agreed to sell the suit shop to the plaintiff or received any sale consideration in respect thereof. It is stated that the suit shop has been illegally occupied by the plaintiff by deliberately defrauding the defendant. It is specifically pleaded that the present suit has been filed by misusing the papers on which the defendant had appended his signatures in order to avail loan from the plaintiff. Other allegations made against the defendant in the plaint have been specifically denied.

Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 5/37 Replication:

10. Replication was filed by the plaintiff to the WS filed by the defendant controverting the averments made in the WS and reiterating the averments made in the plaint. It is however, admitted that the defendant had purchased the suit shop from Sh. Joga Singh, father of the plaintiff vide documents dated 07.04.1997. The contentions of the defendant regarding the advancement of loan to him by the plaintiff and signing of documents in lieu thereof have been categorically denied.

Issues:

11. After completion of pleadings, vide order dated 13.01.2015 following issues were framed: (1) Whether the signatures of the defendant were obtained on blank papers as alleged in the written statement? If so, its effect? OPD.

(2) Whether the plaintiff is entitled to a decree of specific performance as sought in the plaint? OPP.

(3) Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP (4)

Whether the plaintiff is entitled to damage? If so, what should be the quantum thereof?OPP.

(5) Relief.

PLAINTIFF'S EVIDENCE Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 6/37

12. Plaintiff examined four witnesses in support of his case. He examined himself as PW□ and stated and reiterated on oath the averments made in his plaint in his affidavit Ex.PW1/A. He relied upon the following documents.

(i)Ex. PW□/1 - Agreement to sell dated 24.04.2010.

(ii)Ex.PW1/2 - Receipt dated 24.04.2010.

(iii)Ex.PW1/3 (colly.)□Photographs of the suit shop showing his possession therein.

(iv)Ex.PW1/4 : Copy of application dated 14.01.2011 filed by wife of the plaintiff before Sub□ Registrar□II for inspection of records of shop bearing no. 4, land measuring (15' X 7') excluding roof rights, a part of back portion of property bearing no. 13/37, situated in Tihar No. 1, Subhash Nagar, New Delhi□110 027,

(v)Ex.PW1/5: Receipt dated 14.01.20□1 in respect of the inspection issued in the name of the wife of the plaintiff.

(v) Ex.PW1/6□Copy of legal notice dated 19.01.2011.

(vi) Ex.PW1/7 to Ex. PW1/9□Postal receipts and acknowledgment cards in respect of legal notice.

(vii) Ex.PW1/10□Complaint made to the police dated 25.02.2011.

13. PW2 Smt. Navneet Kaur is the wife of the plaintiff who deposed that her husband/plaintiff and defendant had agreed to get the sale deed registered in the office of sub□Registrar on 14.01.2011. On that day, she along with her husband had visited the office of Sub Registrar□I, Janak Puri and waited for defendant but he did not turn up. She made an application for inspection of record which is Ex.PW1/4 and paid Rs. 200/□Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 7/37 as the inspection fees, receipt of which is exhibited as Ex.PW1/5. She also deposed about the incident dated 24.02.2011 and stated that on that day, the defendant along with his relatives and gunda elements had come to the suit shop for taking forcible possession and the matter was reported to the police.

14. PW3 Sh. K. S. Sahani is a witness to the Agreement to sell dated 24.04.2010 (Ex. PW1/1). He deposed through his affidavit Ex. PW3/A that an agreement to sell the suit shop was entered into between the parties in his presence. He identified the signatures of the defendant on Ex.PW1/1 at points A to D and those of plaintiff at points E to H. His signatures were identified at point J and

those of other witness Ajay Arora at point I. He also deposed that on 20.04.2010 the plaintiff had also made a payment of Rs. 4,75,000/□to the defendant in his presence for which receipt Ex. PW1/2 was executed bearing signatures of defendant at point A, signature of witness Sh. Ajay Arora at point B and Sh. K. S. Sahni at point C.

15. PW4 Sh. Ajay Arora is the second witness to the agreement to sell dated 24.04.2010 (Ex.PW1/1). He deposed in consonance with deposition of PW3 by his affidavit Ex.PW4/A.

16. All the witnesses were duly cross examined on behalf of the the defendant.

DEFENDANTS' EVIDENCE

17. Defendant examined three witnesses in all in support of his Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 8/37 case.

18. He examined himself as DW1 through his affidavit Ex.DW1/1 and stated and reiterated on oath the averments made in his written statement. He relied upon the following documents:□

(i)Mark A : Copy of GPA dated 07.04.1997 executed by Sh. Joga Singh, father of the plaintiff in his favour qua the suit shop.

(ii)Mark B: Copy of Will dated 07.04.1997 of Sh. Joga Singh.

(iii)Mark C: Copy of Indemnity Bond dated 07.04.1997.

(iv)Mark D: Copy of Receipt dated 07.04.1997.

(v)Mark E: Copy of SPA dated 07.04.1997.

(vi)Mark F: Copy of complaint case dated 13.04.2011 filed by Sh. Bhupender Singh (relative of plaintiff) against him.

19. DW2 Sh. Ravinder Pandey and DW3 Sh. Ram Kewal Mishra are two known persons of the defendant. Their depositions vide affidavits Ex.DW2/A and Ex. DW3/A respectively are in consonance with each other.

20. They deposed that in the year 2007, defendant was going through tough days and he suffered loss in business. He was offered a friendly loan of Rs. 50,000/□by the plaintiff who was aware about his poor financial condition. The loan of Rs. 50,000/□was given by plaintiff to the defendant which was repaid by the defendant in 2010. Plaintiff obtained signatures of the defendant on certain papers while giving him the loan. Thereafter, plaintiff orchestrated complaint U/s 138 NI Act through his relative Bhupinder Singh. Defendant never intended to sell the suit shop as Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 9/37 told to them by defendant himself.

21. They also deposed that on 13.01.2011, they were present at the house of defendant when one person came and requested defendant to accompany him to the shop of plaintiff as plaintiff was desirous of settling the issue. They accompanied the defendant. At the shop of plaintiff, 4-5 persons were already sitting. There, plaintiff started threatening the defendant. They tried to intervene but persons present there overpowered and threatened them. Plaintiff was trying to make defendant sign some documents and was orally stating that defendant should get the property registered in the name of his wife. Somehow, they managed to leave safely from there.

22. In the same evening, plaintiff, his brother-in-law K S. Sahni alongwith few other persons came to the residence of the defendant and asked him accompany them to the house of the plaintiff. On refusal by defendant, he was misbehaved with and threatened with dire consequences for the safety of his family. Accordingly, defendant went with them. They also accompanied him. At the residence of the plaintiff, defendant was again pressurized to transfer the suit shop in the name of wife of the plaintiff but defendant refused categorically stating that he was not willing to sell the suit shop. Thereafter, Mr. Sahni, brother-in-law of the plaintiff intervened and asked them to leave threatening that they shall have the suit shop anyhow.

23. Defendant's witnesses were duly cross examined on behalf of the plaintiff.

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24. Final arguments have been heard. Written arguments filed by the parties and record is carefully perused.

Findings:

25. Now, I shall proceed to give my issue wise findings: Whether the signature of the defendant were obtained on blank papers as alleged in the written statement? If so, its effect? OPD.

26. The onus to prove this issue was on the defendant. It is the case of the defendant that in the year 2007, he was in need of money and was offered a loan of Rs. 50,000/- by the plaintiff who was known to him and aware about his financial condition and at the time of advancing loan he was made to sign certain blank documents and cheque as security. The relevant portions of written statement and deposition of defendant/DW1 on this aspect are reproduced hereinunder for the sake of clarity:

27. Para 3 of Preliminary Submissions in the written statement:

"3. That the terms between the parties were cordial and friendly. Sometimes in 2007, the answering defendant suffered major loss in his business and the financial condition of the answering defendant became very vulnerable. The answering defendant was in need of money as he had family to support. The plaintiff was fully aware of the situation, therefore, he suggested the Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 11/37 answering defendant that he can take loan from the

plaintiff but the plaintiff asked the answering defendant to sign certain stamp papers and cheque as security. The answering defendant was in urgent need of money therefore he conceded to signing on the documents, furthermore the terms between the plaintiff and the answering defendant were very cordial therefore the answering defendant never suspected the ill motives of the plaintiff. The loan of Rs. 50,000/□ was duly repaid by the answering defendant alongwith interest way back in the year 2010 and when the answering defendant demanded the signed documents back from the plaintiff, he started making excuses that the said documents have been misplaced and he shall return them at the earliest.

28. Para 2 of Para wise reply in the written statement:

"2. The content of Para 2 are categorically and vehemently denied as the same are incorrect and vexatious. It is denied that the plaintiff ever entered or signed the alleged agreement to sell dated 24.04.2010. It is submitted that the answering defendant had taken loan of Rs. 50,000/□ from the plaintiff as the answering defendant was known to the plaintiff. As the answering defendant is illiterate and was in urgent need of money the plaintiff took signature of the plaintiff on many blank papers. Furthermore, the plaintiff also asked the answering defendant to deposit the cheque with him as security against the loan. The answering defendant having no other option had to deposit the cheque with the plaintiff. It is further submitted in lieu of that cheque the plaintiff has filed a complaint under the N I Act through one person by the name of Mr. Bhupinder Singh, the answering defendant has no knowledge about the person who has filed the proceedings under the N I Act. It is also respectfully submitted that the mala fides of the plaintiff are evident from the fact that the plaintiff has deliberately submitted incorrect address of the defendant in both the proceedings in order to ensure Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 12/37 that the defendant is handicapped to appear before the Courts".

29. Para 4 of affidavit Ex.DW1/1:

"4: I say that the terms between the parties were cordial and friendly sometime in 2007 the Deponent suffered major financial crises and the financial condition of Deponent became very vulnerable. The deponent was in need of money as he had big family to support. The plaintiff was fully aware of the situation being living in the same premises on first floor and having shop adjacent to that of deponent. The plaintiff used to be friendly with deponent and he used to come and sit in shop of deponent. He (plaintiff) suggested that deponent can take loan from the plaintiff. Initially the plaintiff said it would be unconditional loan but plaintiff demanded that as so called common practice deponent has to sign certain stamp papers and cheque as security. The deponent was in urgent need of money therefore he conceded to signing on that document, furthermore the terms between the plaintiff and the deponent were cordial therefore the deponent never suspected the ill motivations of

the plaintiff. The deponent is not conversant with English language and my understanding of Hindi languages is also basic. The loan of Rs. 50,000/- was duly repaid by the deponent along with interest way back in the year 2010. When the deponent demanded the documents to be returned the plaintiff started making excuses that they have been misplaced and he shall return them at the earliest".

30. Defendant/DW1 further testified in his cross examination recorded on 04.04.2018 in following terms: "I took a loan of Rs. 50,000/- from the plaintiff in the year 2007, but I do not remember the date and month.

Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 13/37 I had signed three blank papers and two blank cheques of Punjab and Sindh Bank, which were given to the plaintiff. The said cheques were of Rajouri Garden Branch. Plaintiff did not give any receipt of Rs. 50,000/- at the time of refund of the loan to me. It is wrong to suggest that I did not take any loan from the plaintiff nor I refunded the same."

31. Perusal of the above reproduced statements of the defendant shows that at some places he had stated that he was made to sign some blank papers and cheques at the time of giving loan of Rs. 50,000/- in 2007 while at other places he stated that he was made to sign some stamp papers at that time. Nowhere, defendant identified any document as the said blank papers/stamp papers on which his signatures were obtained by the plaintiff. However, the crux of the arguments of the defendant is that the agreement to sell (Ex.PW1/1) and receipt (Ex.PW1/2) both dated 24.04.2010 were the said documents which the defendant was made to sign in blank at the time of giving loan of Rs. 50,000/- to him in the year 2007 by the plaintiff.

32. This contention of the defendant appears to be misfounded as agreement to sell Ex.PW1/1 is made on a stamp paper bearing the date of issuance as 24.04.2010. Thus, it is impossible to comprehend that the said documents were got signed by the plaintiff from the defendant in blank in the year 2007 itself. The signatures on these two documents i. e. Ex.PW1/1 and Ex.PW1/2 are also placed in such a manner which does not give any indication of signing of the documents in blank. The signatures of not only the executant but also the witnesses are well placed on the documents which makes it improbable that these documents were typed on blank Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 14/37 signed papers.

33. In view of these observations, the contention of the defendant that his signatures were obtained on blank papers and Ex.PW1/1 & Ex.PW1/2 were prepared on them at a later stage is clearly misfounded. The defendant has miserably failed to prove that his signatures were obtained on blank papers as alleged in the written statement. Per contra, the plaintiff has duly proved execution of documents Ex.PW1/1 and Ex.PW1/2 by examining not only himself but also two witnesses to the documents i.e. PW3 & PW4. Nothing material has come in the cross examination of the plaintiff's witnesses to doubt their testimony on this aspect. In the absence of any cogent evidence to support the contention of the defendant on this issue, the same is, accordingly, decided in favour of the plaintiff and against the defendant.

(2) Whether the plaintiff is entitled to a decree of specific performance as sought in the plaint?OPP

34. The onus to prove this issue was on the plaintiff. It is the case of the plaintiff that defendant had agreed to sell the suit shop to him vide agreement dated 24.04.2010 Ex.PW1/1 for a total sale consideration of Rs. 6 lakhs, out of which Rs. 4,75,000/- were paid by him to the defendant. In order to prove his case in this regard, plaintiff has examined himself as PW1 and two witnesses to the agreement to sell Ex.PW1/1 as PW3 and PW4. All these witnesses have duly proved this agreement to sell as Ex.PW1/1. The receipt of Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 15/37 Rs. 4,75,000/- is duly proved as Ex.PW1/2. Nothing has material come in the cross examination of PW1, PW3 and PW4 to create a doubt on the execution of agreement to sell Ex.PW1/1.

35. To counter the contention of the plaintiff regarding execution of agreement to sell Ex.PW1/1, the defendant had put forth his case of taking a loan from the plaintiff in the year 2007 in lieu of which he had given blank signed documents/stamp papers to the plaintiff. As held in my finding to issue no. 1 above, the defendant has miserably failed to prove his contention in this regard. The defense of the defendant that his signatures were obtained on blank papers on which agreement to sell Ex.PW1/1 and receipt Ex.PW1/2 were later on manipulated by the plaintiff is not duly proved on record.

36. In view of the evidence that has come on record. I have no hesitation in holding that the plaintiff has duly proved on record due execution of agreement to sell Ex.PW1/1 and Receipt Ex.PW1/2.

37. Now, I shall proceed to examine if the plaintiff is entitled to a decree of specific performance on the basis of agreement to sell Ex.PW1/1 as prayed by him. It is settled law that in order to obtain a decree of specific performance, the plaintiff has to prove the execution of a valid sale agreement, breach of the same by the defendant and his own readiness & willingness to perform his part of the contract.

38. For deciding the issue of readiness and willingness of the Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 16/37 plaintiff to perform his part of the contract, I am guided by the decision of our own Hon' ble High Court of Delhi in Om Prakash Aggarwal Vs. Rajkumar Mittal order dated 28.02.1019 CS (OS) 1284/11 wherein the legal position on this aspect has been summed up in following words: "Section 16(C) of the Specific Relief Act, 1963

13. In a suit for specific performance, the plaintiff has to prove a valid sale agreement; the breach of the contract by the defendant; and readiness and willingness of the plaintiff to perform his part of the contract.

14. Section 16(c) of the Specific Relief Act mandates "readiness" and "willingness" on the part of the plaintiff as a condition precedent to seek specific performance. Section 16 (c) is reproduced herein under: "Section 16 - Personal bars to relief: Specific performance of a contract can not be enforced in favour of a person xxx xxx xxx"

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendants.

Explanation□for the purposes of clause (c)□

(i) Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendants or to deposit in court any money except when so directed by the court.

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

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15. The "readiness" and "willingness" are two separate issues. The former depends on the availability of requisite funds whereas the latter depends on the intention of the purchaser.

(emphasis supplied)

16. The "readiness" has to be shown by the purchaser by documents relating to the availability of the funds whereas the intention has to be inferred from his conduct and circumstances.

17. If there is no availability of funds with the purchaser, he can be non□sued on the ground of non□readiness alone.

18. If the plaintiff is able to prove the availability of the balance sale consideration with him at the time fixed for performance in the agreement, it is an indication of his readiness but his willingness/intention to perform can not be inferred from readiness alone.

19. When the parties enter into an agreement relating to an immovable property, they amicably agree on the sale consideration, earnest money as well as the payment of the balance sale consideration. If both the parties are ready and willing, they usually complete the transaction within the stipulated time in the following manner:□19.1 The purchaser makes arrangement for the balance sale consideration within the stipulated time.

19.2 If the purchaser has to take loan from a bank or other financial institution, the purchaser has to complete all the formalities and obtain the loan before the stipulated date.

19.3 The purchaser informs the seller about the arrangement having been made.

Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 18/37 19.4 The purchaser drafts the sale deed and sends the draft sale deed to the seller for approval.

19.5 The seller approves the draft sale deed and returns it back to the purchaser.

19.6 The purchaser purchases the requisite stamp duty for the sale deed.

19.7 The purchaser prepares the sale deed on the requisite stamp papers.

19.8 Both the parties fix the date, time and place for payment of balance sale consideration, execution of sale deed, registration of the sale deed and handing over of the possession.

19.9 The parties complete the sale transaction on the agreed date, time and place.

19.10 In normal parlance, both the parties remain in touch either personally or through the property dealer.

20. The problem arises when one of the parties turns dishonest. However, the party in breach purports to be ready and willing and creates false evidence to that effect. At times, both the parties visit the office of Sub-Registrar on the last day of performance for obtaining a receipt of having attended the office of the Sub-Registrar to later on contend that they were ready and willing to perform and were waiting for other party. If the seller is in breach, he creates false evidence of readiness to avoid specific performance by the purchaser and to illegally forfeit the earnest money. On the other hand, if the purchaser is in breach, he creates false evidence of readiness and willingness to file a case of specific performance.

21. It is the duty of the court to find out which party has not performed and is trying to wriggle out of the contract.

22. The court has to take into consideration the ordinary Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 19/37 course of human conduct and common sense to draw necessary inference. Drawing presumption is the backbone of the judicial process.

23. The silence or absence of correspondence by any party may be indicative of his dishonest intention. The dishonest intention of the seller can be inferred where the purchaser repeatedly contacts the seller for providing copies of the title documents or approval of the draft sale deed or fixing time for payment of balance sale consideration or execution/registration of the sale deed but the seller does not respond or avoids contact. On the other hand, the dishonest intention of the purchaser can be inferred where the purchaser does not contact the seller for approval of the sale deed and fixing the date, time and place for payment of balance sale consideration and execution/registration of the sale deed and unilaterally visits the office of the Sub-Registrar to prepare a false ground that he was ready and willing to complete the sale. At times, the dishonest purchaser relies on an application for loan to the bank or financial institutions without completing the necessary formalities for taking the loan in order to create a false ground of readiness. By the time the suit is finally decreed, the purchaser would get the property at the price fixed in the agreement although the prices would have increased manifold. The court has to minutely examine the conduct of the parties in order to ascertain the truth. The purchaser would not be entitled to a decree merely because he had the sale consideration with him and had visited the office of the Sub-Registrar before the time fixed in the agreement.

24. Upon refusal of the seller to complete the sale in terms of the agreement, the purchaser is expected to issue a notice to place on record the refusal on the part of the seller to furnish copies of the documents or giving a response to the draft sale deed or fixing the schedule for execution and registration of sale deed. The purchaser can also notify the date and time for visiting the office of the Sub-Registrar along with proof of the balance sale Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 20/37 consideration to the seller. The purchaser is also expected to immediately file a suit for specific performance. Any delay in this regard may indicate his intention that he was not ready and willing and the court may refuse to grant specific performance.

25. In a rising market, the purchaser makes a profit by the delay. He may tie down a seller by creating false excuses and use the money for buying some other property. If the purchaser is in a property trade, he may tie down several properties and then decide on which one he can make more profit on. These factors have to be taken into consideration by the Court for deciding the "readiness" and "willingness"

26. Once a seller has entered into an agreement to sell an immovable property, he is looking for the sale consideration within the period stipulated in the agreement. If he does not get the money within the stipulated period, his plan to use the money for whatever purpose he has intended would get frustrated. He may have a plan to buy some other property or for some other purpose. Secondly, the delay in completion of sale also causes injustice to the seller as the property prices keep on increasing in normal parlance. As such, more the delay, the seller may suffer loss due to rise in property price and greater is the profit which the purchaser would derive by tying down a property and not paying the sale consideration within the stipulated period."

38. The Apex court has also held in N.P. Thirugnanam Vs. Dr. R. Jagan Mohan Rao (1995) 5SCC 115 that the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances to adjudge the readiness and willingness of the plaintiff. The amount of balance sale consideration must be proved to be available with the purchaser right from the date of execution till the date of decree. The continuous readiness and Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 21/37 the willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance.

39. Thus, the law is quite well settled that a buyer has to prove his continuous readiness and willingness to perform his part of contract from the date fixed for execution of the sale agreement till the date of the decree. It is also well settled that having the capacity to make the payment of sale consideration is indicative of readiness of the buyer to perform his part of the agreement.

40. Coming to the facts of the present case, it is argued by Id. Counsel for the defendant that the agreement to sell Ex.PW1/1 is an unregistered document. As per the case of the plaintiff, the possession of the property i. e. suit shop has also been handed over to him pursuant to execution of agreement to sell dated 24.04.2010 (Ex.PW1/1). However, being unregistered, the said agreement can not be relied upon for the purposes of section 53A of Transfer of Property Act, 1882. No cognizance or reliance can be placed on the said agreement in view of the mandate of Section 17 (1A) of the Registration Act which requires compulsory registration of agreement to sell immovable

property. Accordingly, no relief can be granted in favour of the plaintiff on the basis of agreement to sell. Reliance in this regard is placed upon the decision of our own High Court in *Shri Diwan Arora Vs. Smt. Tara Devi Sen & Ors.* CS (OS) No. 1095/2008 decided on 12.10.2009.

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41. Let us consider the provisions of law on this aspect. Section 17 of the Registration Act, 1908 provides the list of documents of which registration is compulsory. Sub section (1A) of the Act which was inserted by Amendment Act of 2001 provides that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 shall be registered if they are executed after the commencement of the Amendment Act of 2001 and if such documents are not registered then, they shall have no effect for the purposes of Section 53A of the Transfer of Property Act, 1882.

42. Section 53A of Transfer of Property Act deals with part performance of agreements for sale of immovable property. The relevant provision is reproduced hereinunder for the sake of clarity:□

53.A [Part performance]□Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance in contract, and the transferee has performed or is willing to perform his part of contract, then notwithstanding that to where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 23/37 against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of the transferee for consideration who has no notice of the contract or of the part performance thereof.

43. The provision as contained in Section 53A of Transfer of Property Act, 1882 recognizes the right of a transferee, where a transferor has given and the transferee has taken possession of the property or any part thereof, in part performance of an agreement to sell any immovable property for consideration. Under this provision, the transferee is entitled to resist any attempt on the part of the transferor to disturb his lawful possession under the contract for sale.

However, a conjoint reading of section 53A of Transfer of Property Act with section 17 (1A) of the Registration Act, makes it amply clear that the benefits of section 53A for protecting his possession can be taken by a transferee only when the agreement of sale of immovable property is registered and not otherwise.

44. However, there is no specific provision under the Registration Act, 1908 which requires compulsory registration of an agreement to sell an immovable property. Such a registration is required only when the benefit of Section 53A TPA is to be taken by a party to the agreement. Accordingly, for the purposes of filing the suit for specific performance, an agreement to sell an immovable property is not required to be compulsorily registered as alleged by the Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 24/37 defendant.

45. I have also perused the decisions of our own High Court in Diwan Arora's case (Supra). However, it is distinguishable on facts as in the said suit, the agreement to sell in question purported to also convey possession of immovable property to the buyer which is not the case in the present matter. The agreement to sell Ex.PW1/1 in the present suit does not mention about transfer of possession of the suit shop to the defendant either simultaneously with the execution of the agreement or at any time thereafter. Although, admittedly, the possession of the suit property was handed over by the defendant to the plaintiff after a few months of agreement to sell Ex.PW1/1, however, this transfer of possession is not part of agreement to sell Ex.PW1/1. It is also noteworthy that in Diwan Arora's case (supra), the suit was not dismissed merely on the ground that the agreement of sell was not registered but also because the plaintiff therein had failed to prove his readiness and willingness to perform his part of agreement.

46. A reference regarding the question whether the suit for specific performance can be decreed on the basis of an unregistered agreement to sell in view of Section 17(1A) of Registration Act, 1908 was heard and decided by Hon' ble High Court of Punjab and Haryana in Ram Kishan Vs. Bijender Mann in RSA No. 4946/2011 vide order dated 12.10.2012 wherein it has been specifically held as under: □Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 25/37 "A conjoint appraisal of Section 53A of Transfer of Property Act, 1882. Section 17 (1A) and Section 49 of the Registration Act, 1908, particularly to proviso to Section 49 of Indian Registration Act, in our considered opinion, leaves no ambiguity that, though, a contract accompanied by delivery of possession or executed in favour of a person in possession, is compulsorily registrable under Section 17 (1A) of the Registration Act, 1908, but the failure to register such a contract would only deprive the person in possession of any benefit conferred by Section 53A of the 1882 Act. The proviso to Section 49 of the Indian Registration Act clearly postulates that non □registration of such a contract would not prohibit the filing of a suit for specific performance based upon such an agreement or the leading of such an unregistered agreement into evidence".

A suit for specific performance based upon an unregistered agreement to sell accompanied by delivery of possession or executed in favour of a person who is already in possession, cannot, therefore, be said to be barred by Section 17(1A) of the Registration Act, 1908.

Section 17(1A) merely declares that such an unregistered contract shall not be pressed into service for the purpose of Section 53A of the Transfer of Property Act, 1882. Section 17(1A) of the Registration Act, 1908, does not, whether in specific terms or by necessary intent, prohibit the filing of a suit for specific performance based upon an unregistered agreement to sell, that records delivery of possession or its execution in favour of a person to whom possession is delivered and the proviso to Section 49 of the Indian Registration Act, 1908 put paid to any argument to the contrary.

"

47. In view of the discussion above, I have no hesitation to holding that mere non-registration of agreement Ex.PW1/1 is not Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 26/37 sufficient to dismiss the suit of the plaintiff for specific performance of the same.

48. The second limb of argument of Ld. counsel for the defendant is that the plaintiff has failed to make the payment of part consideration of Rs. 4,75,000/- as alleged by him in the plaint. It is stated that income tax prohibits cash transaction of larger amounts in the matters of immovable properties, however, the plaintiff claims to have made the said payment in cash which is against law. Moreover, the plaintiff has not substantiated his contention of part payment to tune of Rs. 4,75,000/- by leading cogent evidence to show his capacity to make the said payment. Accordingly, dismissal of the suit is prayed.

49. As held above, the plaintiff has duly proved on record execution of not only the agreement to sell Ex.PW1/1 but also the receipt Ex.PW1/2. The defendant has been unable to create any doubt on the authenticity of these two documents. Although it is correct that as per Income Tax Act, larger payments should not be made in cash, however, mere violation of the said directions is not sufficient to invalidate the complete transaction in case payment has been made in cash. The plaintiff has substantiated his contention of part payment of Rs. 4,75,000/- by examining not only himself but also two witnesses to the agreement that are PW3 and PW4. He has also produced his balance sheet dated 31.03.2011 (Ex.PW1/D1) in which payment of Rs. 4,75,000/- is shown as having being given to the defendant under the heading of loans and advances. The testimony of PW1, PW3 and Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 27/37 PW4 has remained unrebutted to this effect and no counter evidence has been produced by the defendant. In these circumstances, I have no hesitation in holding that the plaintiff has duly proved on record the part payment of Rs. 4,75,000/- made by him to the defendant in respect to the agreement to sell Ex.PW1/1.

50. Now let us examine the evidence brought on record by the plaintiff to show his readiness and willingness to perform his part of the contract. As per the agreement to sell Ex.PW1/1, the balance payment of Rs. 1,25,000/- was to be paid on or before 14.01.2011 and sale documents were to be executed. It is the case of the plaintiff that at the time of execution of agreement to sell Ex.PW1/1, 80% payment was made to the defendant. After about eight months of execution of agreement to sell Ex.PW1/1, the possession of the suit property was handed over by the defendant to the plaintiff on 04.12.2010. However, thereafter, after receiving the substantial amount from the plaintiff, defendant started avoiding any meeting with him to complete the sale transaction due to the reason of sudden rise in the property rates. Despite various oral request and reminders, defendant did not take any step for completion of the sale transaction. With intervention of know persons, it was decided between the parties to get the sale deed registered in the office of Sub Registrar-I on 14.01.2011 at a higher price. On the said date, plaintiff along with his wife namely Ms. Navneet Kaur/PW2 went to the office of Sub-Registrar -I, Janak Puri but defendant did not turn up for execution of the documents. Thereafter, a legal notice dated 19.01.2011 (Ex.PW1/6) was issued by the plaintiff to the defendant.

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51. The plaintiff has supported his case to this effect by examining himself as PW1 and reiterated these facts in paragraphs no. 5, 6, 7, 10, 11 & 12 of his affidavit Ex.PW1/A. In order to corroborate his statement, plaintiff has also examined his wife Smt. Navneet Kaur as PW2, who also deposed about their visit to the office of Sub-Registrar I, Janak Puri on 14.01.2011. The application for inspection made by her in the said office on 14.01.2011 along with receipt are Ex.PW1/4 and ExPW1/5 respectively. The legal notice issued to the defendant is also proved as Ex.PW1/6.

52. Perusal of all the pleadings, documents and depositions relied upon by the plaintiff clearly show that there is no averment made by the plaintiff regarding his readiness and willingness to comply with his part of agreement in either his plaint or his evidence, or legal notice Ex.PW1/6. Interestingly, while in paragraph no. 13 of his plaint and 11 of his evidence affidavit Ex.PW1/A, plaintiff has stated that on intervention of certain know persons, defendant had agreed to execute the sale deed at a higher price to which plaintiff had also agreed and thereafter, he had gone to the office of sub-Registrar I on 14.01.2011. But for the reasons best known to the plaintiff himself, he has nowhere disclosed the said higher consideration which was agreed between the parties. There is also no averment or deposition to the effect that he is/was ready and willing to pay the higher sale consideration or had taken the said amount with him to the office of Sub-Registrar on 14.01.2011 for completion of the said transaction. This submission of agreement regarding Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 29/37 higher sale consideration as agreed between the parties is also contradictory to the legal notice Ex.PW1/6 which talks about the original sale consideration of Rs. 6 lakhs only. As per the legal notice Ex.PW1/6, the plaintiff had gone to the office of Sub-Registrar on 14.01.2011 along with the remaining amount of the original sale consideration i. e. Rs. 1,25,000/- and not any higher amount. This contention in legal notice is however, missing in the plaint as well as in the evidence of PW1.

53. Considering the overall evidence produced on record by the plaintiff as well as his pleadings, I have no hesitation to holding that the plaintiff has miserably failed to prove on record his readiness and willingness to perform his part of the sale agreement which is a condition precedent for specific performance of an agreement to sell. When there is no clarity regarding the amount of balance sale consideration which the plaintiff was willing to pay, he cannot be held to be ready and willing pay the same. Accordingly, the plaintiff can not be granted the relief of specific performance in his favour.

54. This issue is, accordingly, decided against the plaintiff and in favour of the defendant.

(3) Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP

55. The onus to prove this issue was on the plaintiff.

Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 30/37 Plaintiff is seeking permanent injunction restraining the defendant from creating any third party interest in the suit property. In view of my issue wise findings given in issue no. 2 above, the relief of specific performance has been

denied to the plaintiff. Accordingly, plaintiff has no right, title or interest to restrain the defendant who is admittedly the owner of the suit shop from creating any third party interest in the suit shop.

56. This issue is, accordingly, decided against the plaintiff and in favour of defendant.

(4) Whether the plaintiff is entitled to damage? If so, what should be the quantum thereof ?OPP.

57. The onus to prove this issue was on the plaintiff. Although this issue was framed, however, there is no prayer in the suit seeking any kind of damages from the defendant. The prayer is only in respect of cost of litigation and court fee expenses. Even there is no pleading regarding any kind of damages suffered by the plaintiff on account of non-completion of sale transaction by the defendant.

58. Before giving my findings on the issue in hand, it is necessary to discuss the relevant provisions of law and their interpretations as given by the Superior Courts in respect of claim of parties to damages in such like agreements for sale of immovable properties.

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59. The relevant provision is contained in Section 74 of The Indian Contract Act 1872 which is reproduced herein under for the sake of clarity: 74: "Compensation for breach of contract where penalty stipulated for—when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for".

60. Even at the cost of repetition it is stated that as per Section 74 of the Indian Contract Act 1872, the party complaining the breach is entitled to receive from the party who has broken the contract a reasonable compensation.

61. Section 74 of the Indian Contract Act, 1872 has been interpreted by our Superior Courts in respect of the property transactions as is the case in hand in various decisions.

62. The Constitution Bench Judgment of the Apex Court reported as "Fateh Chand vs Balkishan Dass, (1964) 1 SCR 515" has dealt with Section 74 of the Indian Contract Act, 1872, at length. Para 10 of the judgment is relevant and read as under: 10. Section 74 of the Indian Contract Act deals Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 32/37 with the measure of damages in two classes of cases

(i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls

within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the court duty to award compensation according to the settled principles. The Section undoubtedly says that the aggrieved is entitled to receive compensation from the party who has broken the contract, whether or not actual damages or loss is proved to have been caused by the breach. Thereby it merely dispenses with the proof of "actual loss or damage", it does not justify the award of compensation when in consequence of the breach of contract no legal injury at all has resulted, because compensation for breach can be awarded to make good loss or damages which naturally arose in the usual course of things, or which the parties knew when they made the contact, to be likely to result from the breach".

63. Relying upon the judgment of Fateh Chand (Supra), our Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 33/37 own High Court in "Anand Singh Vs. Anurag Bareja RFA No. 480/2011 dated 28.11.2011 held as under:□"3. It is therefore, clear that a seller under an agreement to sell, when he has received monies under the agreement to sell, can not forfeit such amount, unless loss is pleaded and proved by him. It is the respondents/defendants who have to plead and prove entitlement to forfeiture on account of loss having been caused on account of breach of contract by the appellant/proposed buyer. Thus even assuming the appellant/plaintiff/proposed buyer is guilty of breach of contract, yet, the respondents/defendants will have to raise appropriate pleadings with respect to loss, get an issue framed, and thereafter lead evidence on such issue to show that losses have been caused to them on account of breach of agreement to sell by the appellant/plaintiff/proposed buyer, entitling the forfeiture of the amount.

64. In Anand Singh's case (Supra) the buyer was held guilty of breach of contract, still the seller was not permitted to forfeit the entire advance amount paid to him and suit of the plaintiff/ buyer for refund of advance money of Rs.10,00,000/□was decreed for a sum of Rs. 9,50,000/□alongwith interest @ 12% per annum simple.

65. Similarly, in Vandana Jain Vs. Rita Mathur & Ors. RFA No. 38/2018 decided on 20.04.2018; it has been held that forfeiture of the advance amount paid to the seller is allowed only to the extent of loss caused to the seller on account of the breach of Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 34/37 contract by the buyer.

66. Law has been well settled in the above referred decisions that the plaintiff has to specifically plead and prove the loss suffered by him on account of breach of contract by the defendant. Issue is required to be framed on this aspect and evidence led by the parties. Only thereafter, the court has to decide if the seller is entitled to forfeit any amount of the advance paid or the buyer is entitled to receive any compensation.

67. In the present case, indubitable position which has emerged from record is that there is no pleading of the plaintiff of any loss having been caused to him on account of non-execution the contract (Ex.PW1/1). There is also no issue framed on this aspect and obviously no evidence led on behalf of the plaintiff to show how breach of contract has caused loss to him entitling him to receive compensation, as prayed. Mere bald arguments addressed in this regard are insufficient to give any relief to the plaintiff in the absence of pleadings and evidence.

68. In view of the discussion and reasons given above, I have no hesitation in holding that the plaintiff has miserably failed to prove his right to receive any sum towards the damages, as prayed.

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69. Having held that plaintiff is not entitled to receive any compensation from the the defendant for non-execution/breach of agreement (Ex.PW1/1), this court is still required to balance the interest of both the parties as a sum of Rs. 4,75,000/- has been paid by the plaintiff to the defendant for purchase of a property, which transaction could not fructify. This payment of Rs. 4,75,000/- by the plaintiff to the defendant has been duly proved by him as discussed in my findings on issues no. 2 and 3 above. Equity demands that no one should be unjustly enriched at the cost of other. Retaining of the advance amount paid by the plaintiff to the defendant would amount to unjust enrichment of the defendant at the cost of the plaintiff.

70. In view of the law laid down in the decisions cited above, merely because the plaintiff/buyer has been at fault or has been unable to show his readiness and willingness to perform his part of the contract because of which decree of specific performance cannot be granted in his favour, it would not be lawful for the defendant/seller to forfeit the entire amount of the earnest money as it would amount to a penalty.

71. Considering the overall facts of the case, I am of the opinion that justice requires that the defendant refunds the earnest money of Rs. 4,75,000/- to the plaintiff without any interest. No order as to interest is passed because clearly the case has been delayed on account of the delays caused equally by both the parties.

Civ. DJ N. 612668/2016 Sukhbir Singh Vs. Rajender Prasad 36/37 However, this amount will carry a future interest @ 6% p.a. (simple) from the date of decree till its realization. This issue is accordingly, decided in favour of the plaintiff and against the defendant holding that the plaintiff is entitled to a money decree for a sum of Rs. 4,75,000/- with future interest @ 6% (simple) p.a. from the date of decree till its realization.

RELIEF

72. In view of my issue wise findings given above, the suit of the plaintiff qua the relief of specific performance and permanent injunction is dismissed and following relief is granted in his favour and against the defendant: □

1. A money decree for sum of Rs. 4,75,000/□
2. Future interest @ 6% (simple interest) from the date of the decree till its realization.
3. Costs of the suit.
73. Decree sheet be prepared accordingly.
74. File be consigned to record room.

ANNOUNCED IN THE OPEN COURT
ON 01.12.2021.

SHIVALI
SHARMA

SHIVALI SHARMA
Date: 2021.12.01
16:23:26 +0530

SHIVALI SHARMA

ADDITIONAL DISTRICT JUDGE-03(WEST)

TIS HAZARI COURT/01.12.2021

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