

# Harbhajan Singh Chopra And Anr vs M/S Fountainhead Motels Pvt Ltd & Ors on 29 July, 2015

**Author: Manmohan Singh**

**Bench: Manmohan Singh**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 29th July, 2015

+ I.A. No.8723/2014 in CS(OS) No.299/2012

HARBHAJAN SINGH CHOPRA AND ANR ..... Plaintiffs  
Through Mr.H.S. Phoolka, Sr. Adv. with  
Mr.Hrishikesh Baruah and  
Mr.Pranav Jain, Advs.

versus

M/S FOUNTAINHEAD MOTELS PVT LTD & ORS.. Defendants  
Through Mr.A.S. Chandhok, Sr. Adv. with  
Mr.Puneet Aggarwal, Mr.Ritesh  
Kumar, Ms.Mallika Ahluwalia and  
Mr.Mayank Banniyal, Advs.

CORAM:  
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs, namely, Harbhajan Singh Chopra and Smt.Surjit Kaur Chopra (husband and wife) have filed the suit for cancelling the Share Subscription Agreement dated 3rd August, 2010 and the Memorandum of Understanding dated 20th July, 2010 executed between the plaintiffs and defendants No.2 and 3 and a decree of declaration declaring all documents/instruments (including blank signed papers) executed by plaintiffs under coercion, threat, gun point documenting transfer of 100% shares of defendant No.1- Company in favour of defendants No.2 and 3 as null and void and a decree of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants from issuing shares/transferring shares of the, defendant No.1-Company or selling/transferring/alienating/conveying/disposing/dissipating the assets (including Hotel Claremont) of the defendant No.1-Company or creating any mortgage/charge/lien/encumbrance upon the defendant No.1-Company.

2. By this order I propose to decide the application under Order 12 Rule 6 CPC filed by the defendant Nos.2 and 3 being I.A. 8723/2014 prayer of which is strongly opposed by the plaintiffs. Many other applications are pending for disposal. Parties have made their submission only in the present application as they felt that the result of this application would have impact on other

applications and in the main suit.

3. It is relevant to mention the following averments made in the plaint :

a) The case of the plaintiffs is that they are the promoters/Directors of the Company M/s Fountainhead Motels Pvt. Ltd. (defendant No.1) which was incorporated on 16th June, 2005 under the Indian Companies Act, 1956 who owns the Hotel Claremont which is constructed on a land admeasuring 12 bighas 9 biswas bearing khasra No.558/2 (1-

5), 559/1 (2-2), 559/2 (2-14), 558/1 (3-9), 575/2 (1-8), 576 (1-

11) in village Aya Nagar, Tehsil Mehrauli, New Delhi. The total area prior to acquisition by the Delhi Metro Rail Corporation vide award no.4/2009-10 was equivalent to 12,522 square meters or 3.093 acres. The total area of the plot of land at present on which Hotel Claremont is constructed is equivalent to 2.594 acres approximately.

It is alleged in the plaint that defendants No.2 and 3 namely Krishan Kumar and Meenakshi are husband and wife who have illegally acquired 100 %shares of the defendant No.1's company without paying any consideration for the purchase of the shares of the company. The documents which were executed by the plaintiffs for the purpose of transferring 100% shares of the defendant No.1's company in favour of defendants No.2 and 3 were executed under gun point. The plaintiffs were forced and coerced by defendant No.2 to sign documents for transferring the shareholding of the defendant No.1-Company in favour of defendants No.2 and 3.

b) In order to establish their case, it is stated by the plaintiffs that they are British Nationals who came to India in about 2001 who have invested-their savings into properties in Delhi and Gurgaon, Haryana. They also invested their savings into purchasing the plot of land for setting up the Hotel Claremont. The plot of land was purchased by the defendant No.1- Company which is equivalent to land admeasuring 12 bighas 9 biswas bearing khasra No.558/2 (1-5), 559/1 (2-2), 559/2 (2-14), 558/1 (3-9), 575/2 (1-8), 576 (1-11) in village Aya Nagar, Tehsil Mehrauli, New Delhi.

c) Plaintiffs had a few debt liabilities which had arisen in 2007 and 2008. They desired to expand and restructure the defendant No.1-Company. They came into contact with two individuals; Mr.Davinder Sharma, son of Seesh Ram, resident of No.708, New Friends Colony, New Delhi-110065 and Mr.Baljeet, son of Rattan Lall, resident of Village and Post office Bharthal, New Delhi 110077 and both represented themselves to be expert real estate developers with expertise in debt structuring and corporate restructuring.

d) Mr.Davinder Sharma and Mr.Baljeet made the plaintiffs sign various documents and cheques for the purpose of creating liability on the defendant No.1-Company in their favour who were coerced under gun point and severe physical harm to sign the documents and cheques in favour of Mr.Davinder Sharma and Mr.Baljeet.

e) The plaintiffs had lodged an FIR No.12/2008 at the Police Station, Sunlight Colony, New Delhi against Mr.Davinder Sharma and Mr.Baljeet, Mr.Kuldeep Dalai and other co- accused alleging the criminal acts of the accused persons. They had also preferred a civil suit being No. CS (OS) No.271/2009 in this Court titled as 'H.S. Chopra and Ors. vs. Davinder Sharma and Ors'. seeking a declaration in cancelling all such documents which were executed by the plaintiffs under gunpoint.

However, the police authorities did not make proper investigation against the accused persons. The plaintiffs were not able to obtain any relief. They were then roped in frivolous and false cases and litigation by Mr.Davinder Sharma and Mr.Baljeet, owing to which the plaintiffs were besieged with very harsh circumstances, result of which they had lost control of their defendant No.1-Company and faced the threat of being evicted from their residential farmhouse and Hotel Claremont.

f) In early 2010, the plaintiffs came into contact with defendant No.2, who assured and promised them that he would protect them from harm from any person and also assist them in obtaining their full rights and interest in the Hotel Claremont and the defendant No.1-Company which had been taken away from the plaintiffs.

After some time, the plaintiffs found that defendant No.2 is a devious unscrupulous man who has high connections in the Punjab State machinery. Defendant No.2 claimed that he would help the plaintiffs and ensure their safety from Mr.Davinder Sharma in case Mr.Davinder tried and rope the plaintiffs in false cases from Punjab. Mr.Davinder Sharma had initiated false cases against the plaintiffs from Punjab. Defendant No.2 exercised his resources and powers and got an enquiry done into all such false cases initiated by Mr.Davinder Sharma against the plaintiffs.

g) Thereafter,Punjab Police ultimately found that the cases against the plaintiffs were false and therefore, Mr.Davinder Sharma was arrested by the Punjab Police for initiating such false cases against the plaintiffs. Defendant No.2 helped and assisted the plaintiffs in their endeavour to retrieve their property and defendant No.1-Company in return for monetary consideration offered by the plaintiffs. Defendant No.2 slowly began to assume control over the lives of the plaintiffs and the running and operations of the defendant No.1-Company and by using his power and connections in the top brass of the Punjab State machinery and was able to lawfully lodge a FIR No.70/2010, at Police Station: Mehatpur, District Jalandhar, Punjab against the illegal unlawful acts of Mr.Davinder Sharma who was arrested by the Punjab Police in connection with the aforesaid FIR No.70/2010.

h) Subsequently, Mr.Davinder Sharma agreed to enter into a Settlement Agreement dated 12th June, 2010 as a compromise with plaintiffs and for being released from jail and not pressing their FIR No.70/2010. However, he after being released from jail in Punjab pursuant to the Settlement Agreement, he filed a Civil Suit No. 1978/2010 in this Court titled as 'Davinder Sharma and Ors. vs. H.S. Chopra and Ors.', seeking cancellation of the Settlement Agreement dated 12th June, 2010.

The plaintiffs were forced by defendant No.2 to enter into a Settlement Agreement dated 8th July, 2010 with Mr.Baljeet wherein the defendant No.1-Company agreed to make a payment of Rs.5,50,00,000/- to Mr.Baljeet. The plaintiffs never agreed to such settlement terms and were

coerced and forced by defendant No.2 to sign the document.

i) Thereafter, defendant No.2 forced and coerced the plaintiffs into entering into a Share Subscription Agreement dated 3rd August, 2010. Defendant No.2 threatened to implicate the plaintiffs in false cases from Punjab police in offences punishable with life imprisonment if they did not accede to his demands. The defendant No.2 and his associates inflicted severe physical harm upon the plaintiff No.1 and humiliated and disrespected by stripping him naked and kicking him in his testicles before unknown armed men, in order to coerce him into signing the Share Subscription Agreement dated 3rd August, 2010 in which 76% share holding of the defendant No.1-Company was transferred in favour of defendants No.2 and 3 for a nominal sum of Rs.6,60,00,000/- as described in the agreement.

j) The payment of sum of Rs. 6,60,00,000/- was a mere sham as the plaintiffs being the majority shareholders of the defendant No.1-Company on 3rd August, 2010 were never benefitted from any such amount and the defendants No.2 and 3 retained control of the entire sum.

k) After assuming majority control of the defendant No.1- Company, defendants No.2 entered into another Memorandum of Settlement dated 28th March, 2011 with Mr.Davinder Sharma. The plaintiffs as Managing Director and Director of the defendant No.1-Company were also coerced into signing the Memorandum of Settlement dated 28th March, 2011. As they were helpless and completely at the mercy of defendant No.2 they signed the document and also cooperated in the registration of the Memorandum of Settlement dated 28th March, 2011 despite the fact that an Agreement to Sell dated 28th March, 2011 was also executed wherein it was agreed to sell the Hotel Claremont for a sum of Rs.110,00,00,000/- to a third party and the sale proceeds were to be divided between plaintiffs and defendants No.2 and 3 and Mr.Davinder Sharma. The plaintiffs and defendants No.1 and 2 were to divide a sum of Rs.70,00,00,000/- between them in the ratio of their shareholding in the defendant No.1-Company and Mr.Davinder Sharma were to get a sum of Rs.40,00,00,000/-.

It is stated in the pleading that the plaintiffs never agreed with the terms and conditions of the Memorandum of Settlement dated 28th March, 2011 and they were coerced and forced to sign the document by defendant No.2.

Hence the entire transaction of transferring shares equivalent to 76% shareholding of the defendant No.1- Company in favour of defendants No.2 and 3 was a sham and it was done to usurp upon the entire property of the defendant No.1-Company to the detriment of plaintiffs.

l) Subsequent to signing of the Memorandum of Settlement dated 28th March, 2011, defendant No.2 inflicted great physical harm upon plaintiff No.1 and humiliated and mortified him by ill treating him as a prisoner. Plaintiff No.1's health debilitated owing to constant torture which he was subject to by defendant No.2 who threatened to accuse the plaintiff No.1 in cases from Punjab punishable with offences under the Narcotics, Drugs and Psychotropic Substances Act, 1985 by implanting drugs at his residence and getting him arrested if he did not sign the documents and transfer 100% ownership of the defendant No.1-Company over to defendants No.2 and 3. The defendant No.2 had

also forced the plaintiffs to requisition their children who are all British Nationals, to send a sum of Rs.1,50,00,000/- to defendant No.2 failing which he will get plaintiff No.1 arrested for the aforementioned offences.

Thereafter the plaintiffs' daughter transferred a sum of Rs.1,50,00,000/- on 8th September, 2011 from her NRI account No. SB/3/990013 NRI account, Corporation Bank, Gurgaon Branch, Haryana to plaintiffs No.1's account bearing No.04/70009, in the Corporation Bank, Gurgaon Branch, Haryana.

Then defendant No.2 forced the plaintiff No.1 on 9th September, 2011 under gun point and threat of being implicated in cases from Punjab for offences punishable with life imprisonment to transfer a sum of Rs.2,00,00,000/- in favour of Priyanka Garments, a company which is run by the defendants No.2 and 3. The transaction was a complete sham and illegal transfer of sum of Rs.2,00,00,000/-.

m) Thereafter assuming control of the defendant No.1-Company, defendant No.2 forced the plaintiff No.1 to transfer from his personal savings account bearing No.04/70009 in Corporation Bank, Gurgaon Branch, Haryana a sum equivalent to Rs. 80,00,000/- to the defendant No.1- Company's account OD70001 TLS/0/50004 loan account in Corporation Bank, Gurgaon Branch, Haryana.

Defendant No.2 then illegally and forcefully usurped upon the silver coloured Mercedes Benz car (bearing registration No.DL 4CU 5000) and Honda Accord car (bearing registration No.DL 3C 1817).

n) Plaintiff No.1 was also compelled to sell their property at Nawanshehar, Punjab for a sum of Rs.50,90,000/-; the sale proceeds of which were illegally usurped by defendant No.2 by forcing plaintiffs to execute a self cheque dated 21st September, 2011 for the sale proceeds so received. The sale proceeds of the plaintiffs' property at Nawanshehar, Punjab was illegally appropriated into the hands of defendants No.2 and 3.

o) Plaintiff No.1 was constrained to sell his Bentley Arnage car which has a market price of Rs.1,25,00,000/- upwards for a very nominal price of Rs.50,00,000/- as they were in desperate need of money to sustain themselves.

The plaintiffs were not permitted to leave the Hotel Claremont premises without the supervision of defendant No.2's associates prior to execution of all documents transferring 100 % shareholding of defendant No.1-Company in favour of defendants No.2 and 3. Once the entire shareholding of defendant No.1-Company was transferred in favour of defendants No.2 and 3; the plaintiffs were forced to leave the Hotel Claremont.

p) After that the plaintiffs had taken a small flat on lease at Flat No.B-2, Richwood Estate, Gurgaon and were making payment of the monthly rentals for the premises out of the sale proceeds from the Bentley Arnage car. Defendant No.2 avarice was not just satisfied with the usurping of the entire defendant No.1-Company, he also forced the plaintiffs to handover a sum of Rs.30,00,000/- from

the sale proceeds of Bentley Arnage of Rs. 50,00,000/-.

q) Plaintiffs were able to obtain their passports from the Court of Metropolitan Magistrate, Saket District Court in FIR No.6/2007 under Sections 498A/406 IPC where the passports had been impounded owing to a complaint preferred by the plaintiffs' daughter in law as the plaintiffs no longer desired to stay in India as they had been subjected to severe physical, mental and economic torture and hardship. The plaintiffs came to know from reliable resources on receiving their passports that defendant No.2 and his associates were searching for them as they wanted to obtain their signatures on more documents to authenticate the transfer of 100 %shares of defendant No.1-Company in favour of defendants No.2 and 3.

r) The plaintiffs arrived at the Indira Gandhi International Airport on 3rd October, 2011, where the defendant No.2 and 4 other Punjab Police Officials intercepted the plaintiffs, seized their passports and exhorted them to sign blank documents and certificates that were carried by defendant No.2. It was under

the threat that the plaintiffs signed the blank documents and left the country.

s) The defendants No.2 and 3 have not paid any consideration for the transfer of shares of defendant No.1-Company in their favour. It is alleged that the defendants No.2 and 3 have illegally and unlawfully usurped upon the defendant No.1-

Company and all the properties moveable/immovable of the plaintiffs leaving them penniless. They have illegally and unlawfully procured the transfer of 100% shares of the defendant No.1-Company in their favour. The Claremont Hotel is the only asset of the defendant No.1-Company which the defendants No.2 and 3 are seeking to sell by causing wrongful loss to the plaintiffs and wrongful benefit to themselves. They have no legal source of income which can account for payment of the consideration for the transfer of shares of the defendant No.1-Company in their favour.

4. The defendants have filed the written statement wherein the following defences were raised:-

(a) The suit has not been valued properly and correctly and the court fee paid by the plaintiff is less and hence the suit is liable to be dismissed. The plaintiffs by way of the present suit are seeking to cancel the Share Subscriptions Agreement dated 3rd August, 2010 and Memorandum of Understanding dated 20th July, 2010 executed between plaintiffs and defendant Nos.2 and

3. By way of the said Share Subscription Agreement and the MOU 76% shares of the defendant No.1-Company were purchased by the defendant Nos. 2 and 3 for a consideration of Rs.6,60,00,000/-. The said MOU dated 20th July, 2010, the Share Subscription Agreement dated 3rd August, 2010 as well as the share certificates have already been filed by the plaintiffs along with the suit. The plaintiffs are required to pay Court Fee on the consideration of the transaction. Further, the plaintiffs and defendant Nos.2 and 3 entered into another Share Purchase Agreement dated 14th

September, 2011 for a consideration of Rs.7 crores in respect of remaining shares (24% share) of the defendant No.1-Company. The plaintiffs are required to pay ad valorem court fee on the amount of the total consideration i.e. Rs.13.60 crores which include Rs.6.60 crores as per the MOU dated 20th July, 2010 and Rs.7 crores as per the Share Purchase Agreement dated 14th September, 2011.

(b) The plaintiffs by way of the present suit are trying to raise a plea against the documents which are executed. The execution of the said documents is not denied by the plaintiffs. As per Section 91 of the Evidence Act the plaintiffs are barred to take such plea and also to lead oral evidence against the documents, so executed by them.

(c) The plaintiffs are habitual litigants, hardened criminals, seasoned cheaters and are involved in several cases of cheating and fraud. They have earned an expertise in twisting the facts to suit their own ill deeds and they very well know how to tackle the cases and then wriggle out of them by making a mockery of judicial proceedings and the process. About a dozen of FIRs have been registered against the plaintiffs for different offences in different police stations in different states. Even the documents filed by the plaintiffs in the present suit would show and prove their conduct as they along with their sons have been in the habit of cheating innocent persons, instigating them to invest money and or pay the same to them and thereafter, start frivolous cases against such persons. Details of the cases against the plaintiffs or filed by them are herein below:-

(i) FIR No.74/2008 P.S. EOW under Section 420/406/468/471 IPC (cheating of Rs. 22.50 crores) against defendants No.1 and 2 and their son Shri Gurinder Chopra for cheating Mumbai based firm M/s Litoller Property (P) Ltd. and its Director Mr.Ashok Mittal, owner of the Hotel Ramada previously Ashok Yatri Niwas, New Delhi. The defendant No.1 was arrested in this case and released on conditional bail subject to deposit of Rs.10 crores payable to the complainant therein. Defendant No.2 was also released on similar conditions. It may be relevant to mention that the defendant Nos.1 and 2 after cheating the said Shri Ashok Mittal, filed complaint against him to create false defence.

Subsequently on complaint of Sh. Ashok Mittal and after investigation, defendant No.1 was arrested. The defendant Nos.1 and 2 have similarly cheated other persons. The defendant Nos.1 and 2 are habitual offenders and it is seen that their modus-operandi is to cheat people, appropriate huge money and then file false cases against them and/or to turn back and say that the transactions were made under threat and force.

(ii) FIR No.477/1997 P.S. Vasant Vihar under Section 468/471/420/120B IPC (cheating of crores of rupees)

(iii) FIR No.6/2007 under Section 498 A/406 IPC P.S. Hazrat Nizamuddin New Delhi against defendant No.1 and his sons Shri Gurinder Chopra and Sh. Jitender Chopra.

(iv) Case of cheating and forgery filed by American Express Bank under Section 420/467 IPC against the entire family for manufacturing fake credit cards involving amount of about Rs. 160 crores.

(v) Multiple cases under Section 138 of Negotiable Instruments Act and Section 420 IPC.

(vi) Case registered by EOW against defendants No.1 and 2 by his daughter in-law Aarti Sabharwal;

(vii) FIR No.70/2010, P.S. Indrapuram Ghaziabad under Section 420/406/120B IPC, for cheating Mr.Atinder Jain of Rs. 6.5 crores. In this case, the defendant No.1 was arrested from Goa. The defendant No.2 approached Allahabad High Court, but her writ petition (for quashing of the FIR) was dismissed and this Court in its order has referred to various Criminal Cases against defendant Nos.1 and 2 and the order itself reflects that the defendant Nos.1 and 2 are seasoned criminals and cheaters.

(viii) A case was registered against Mr.Harbhajan Singh Chopra, and Surjit Kaur Chopra at P.S. Galshahid FIR No.43 under Section 406/420/467/471 IPC and plaintiff No.1 and 2 were taken in custody and later on released on bail. Cheating case at Moradabad, U.P. in which FIR has been registered and the plaintiff No.1 was taken into custody and later released on bail.

(ix) One another FIR was lodged against Harbhajan Singh Chopra in P.S. Fatehpuri Beri New Delhi and concerned court of Metropolitan Magistrate, New Delhi had issued NBW on 9th February, 2012 against Mr.Harbhajan Singh Chopra.

(x) Mr.Mani Gill belonging to Gurgaon having flourishing business lodged an FIR against Harbhajan Singh Chopra for cheating him of Rs. 2 crores and thereafter getting his cheque bounced.

(xi) An FIR lodged by Harbhajan Singh Chopra against Mr.Sanjay Kriplani FIR No.3 P.S. City Kapurthala, Punjab under Section 341/387/506/34/25/27 /54 /59 Arms Act.

(xii) An FIR was registered Mr.Harbhajan Singh Chopra and his son Parvinder Singh Chopra P.S. Mehtpur, District Jalandhar Rural, FIR No.21 under Section 307/120B IPC read with 25/54 /59 Arms Act.

(xiii) CS (OS) No.1883/2006 titled as 'M/s. Ishvakoo Grant Plaza vs. Parvender Singh Chopra and Anr'.

(xiv) A complaint filed by the Harbhajan Singh Chopra to the Chairman of Bar Council of Delhi against Mr.Kanwal Chaudhary, Advocate dated 31st May, 2010, in which Mr.Chopra alleged that Mr.Kanwal Chaudhary was in collusion with Mr.Devinder Sharma & Ors. and that his counsel had obtained his signatures on blank papers and that he misused those papers and also withdrew CS (OS) No.271/2009 without his consent. The said complaint filed with the Bar Council of Delhi was contested by Mr.Kanwal Chaudhary, Advocate who filed his reply, denying each and every allegations made by Harbhajan Singh Chopra. The said complaint case No.51/2010 was dismissed



by the Bar Council of Delhi.

(d) The plaintiffs earlier had a dispute with one Mr.Baljeet Singh and owed liabilities towards him. The said Mr.Baljeet Singh filed a civil suit before this Court being CS(OS) No.2471/09. In the said suit the plaintiffs herein and the said Mr.Baljeet Singh requested for mediation and their matter was referred to Delhi High Court Mediation and Conciliation Centre. The matter was settled between the plaintiffs and Mr.Baljeet Singh and a Settlement Agreement dated 8th July, 2010 was executed in the presence of the Mediator before the Delhi High Court Mediation and Conciliation Centre.

(e) After execution of the Settlement Agreement dated 8th July, 2010 as mentioned herein above before the Delhi High Court Mediation and Conciliation Centre, the plaintiffs tried to wriggle out of the said settlement and did not abide by the terms of the said settlement agreement. Mr.Baljeet Singh then filed an execution petition being Execution Petition No.179/2011 before this Court and this Court vide order dated 26th July, 2011 was pleased to issue warrants of attachment in regards to the property of the judgment debtor's bearing the Claremont Hotel, Khasra No.559/1 Mehrauli Gurgaon Road, Aaya Nagar, New Delhi. The plaintiffs herein again took a summersault and entered into a Memorandum of Settlement dated 1st August, 2011 with the said Mr.Baljeet Singh that Mr.Harbhajan Singh Chopra will abide by the terms and conditions of the earlier Memorandum of Settlement dated 8th July, 2010 as well as the Memorandum of Settlement dated 1st August, 2011. It was only then that the matter could finally be settled between the plaintiffs herein (Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra) and Mr.Baljeet Singh. The Settlement Agreement dated 1st August, 2011 was brought to the knowledge of this Court in Execution Petition No.179/11 by filing a joint application under Order 23 Rule 3 CPC. The said application was also supported with the affidavits of Mr.Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra. This Court vide order dated 10th August, 2011 was pleased to pass an order thereby dismissing the execution petition as withdrawn.

(f) The plaintiffs and Mr.Baljeet Singh etc. also jointly filed an Crl.

Misc. Application being Crl. Misc. (M) No.1396/11 pending before this Court seeking quashing of the FIR No.12/2008 against Mr.Baljeet Singh, Kuldeep Singh and ors. Another application seeking quashing of the same FIR against Mr.Davinder Sharma was also jointly filed by the plaintiffs herein and Mr.Devinder Sharma in W.P. (Crl.)No.1255/2011. In both the matters the plaintiffs herein not only executed and filed their affidavits but also actively attended the court hearings for the said purposes. As per knowledge of the defendant Nos.1 and 2 the date was fixed in the matters for quashing of said FIR No.12/2008 before this Court. FIR No.12/2008 was lodged by Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra against Devinder Sharma, Baljeet Singh and Ors.

(g) In another proceedings filed by one Mr.Devinder Sharma and another against Mr.Harbhajan Singh Chopra, Mrs. Surjit Kaur Chopra and Ors. being CS (OS) No.1978/2010 the plaintiffs filed an interim application under Order 23 Rule 3 CPC, which was again jointly signed by the said Mr.Devinder Sharma, Ms. Seema Sharma, Mr.Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra etc. Along with the said interim application under Order 23 Rule 3 CPC, the parties also filed

Memorandum of Settlement dated 28th March, 2011 which was executed and registered before the Sub-Registrar, Mehrauli, New Delhi. The said Memorandum of Settlement has already been filed by the plaintiffs along with the present suit. This Court disposed of CS (OS) No. 1978/10 vide order dated 4th April, 2011 on the basis of the said application.

(h) In a parallel proceedings filed by the said Mr.Davinder Sharma and Ors. against defendant No.1, the plaintiffs before the Company Law Board, Principal Bench, New Delhi being CP No.72 (ND)/2008, plaintiff No.1 filed his additional affidavit dated 1st April, 2011 along with the aforesaid Memorandum of Settlement dated 28th March, 2011. After filing the additional affidavit by plaintiff No.1 and Devinder Sharma the said CP No.72 (ND)/2008 before the Company Law Board was dismissed as not pressed and the order dated 5th April, 2011 was passed.

(i) The plaintiffs are unnecessarily trying to tarnish the image of the defendant Nos.2 and 3 by claiming that the defendant No.2 has got some connections with Punjab Police and some political persons. Neither the defendant No.2 nor the defendant No.3 belongs to the State of Punjab and they also do not have any relation, or any property in the state of Punjab. The defendant No.2 while belongs to District Ganga Nagar, Rajasthan and had been settled in Delhi for the last more than 20 years taking care of his ancestral Garment Business and his wife belongs to District Mirzapur, U.P. The plaintiff No.1 has sought an information under the RTI Act from the Govt. of Punjab and as per the reply to his RTI Application the defendant No.2 has never been appointed as P.A. or in any other capacity with Mr.Sukhbir Singh Badal, Deputy Chief Minister, Punjab. The said information was given by the Assistant PIO cum-Deputy Secretary, Secretariat Administration, Dept. of General Administration (Secretariat Establishment- 5 Branch) Govt. of Punjab, Chandigarh on 1st October, 2010. It has been reconfirmed recently by a letter dated 22nd February, 2011 written by the Director Prosecution to the Chief Vigilance Director in respect of a complaint filed by Sanjay Kriplani with the C.B.I. The suit contains false, frivolous, vague and scandalous averments. It is the other way round that brother in-law of plaintiff No.1 has been Additional Director General of Punjab Police and brother of Mr.H.S. Chopra was retired as a Joint Director, Department of Industries, Govt. of Punjab. The plaintiffs who belong to Punjab also have ancestral land in Jandla, District Nawanshahar Now Shaheed Bhagat Singh Nagar, Punjab. Plaintiff No.1 has also got deep social roots and contact in the state of Punjab.

In a nutshell, the case of the defendants is that the defendants No.2 and 3 presently own 100% of the shareholding of the defendant No.1 company. This 100% acquisition of shares has been allegedly done on the basis of 2 tranches of acquisition. The first alleged tranche is relating to 76% of shareholding and the second tranche is relating to 24% of the shareholding of the defendant No.1 company.

5. In the replication, it is stated by the plaintiffs that they have filed affidavits before the Division Bench about the admission of 76% transfer of the shareholding of defendant No.1 in favour of defendant No.1 and 2 under the threat and coercion of defendant No.2. The said affidavits were not executed out of the free will of the plaintiffs.

6. The overall case of the plaintiffs is that mere arrangement and settlement in judicial proceedings by the Court does not mean that a party is ousted to allege in the court that such settlement/arrangement is by way of fraud or coercion i.e. the statements made before Court regarding the agreements was as a result of fraud or coercion. Even the decrees passed by the Courts on the basis of the statement recorded by the parties can be challenged by filing appropriate judicial proceedings i.e. either by way of Section 151 CPC application or by way of a suit praying that the statement made before the Court regarding the agreement/settlement was as a result of fraud or coercion.

7. After framing of issues, the present application under Order 12 Rule 6 CPC has been filed by the defendants on the basis of the admissions made and the admitted documents on record. It is the case of the defendants in the application that many of the documents, reference of which has been made, have been filed by the plaintiffs themselves and averments have also been made in the plaint. It is the case of the defendants that in view of the admitted position in plaint and documents placed on record, there is no cause of action to proceed further in the suit which must be dismissed for abuse of the process of law and for suppressing of material facts. The plaintiffs themselves have taken advantage of the said documents and the affidavits filed in judicial proceedings cannot be allowed to wriggle out of the same.

8. It is submitted by Mr.A.S. Chandhiok, learned Senior counsel appearing on behalf of the defendants that non-filing of the documents in power and possession by the plaintiff to a lis and not disclosing the true facts in any judicial proceedings results in a fraud being played upon this Court and therefore the suit deserves dismissal on this ground, also apart from admissions made in the plaint, documents filed along with the plaint and in the judicial proceedings. Mr.Chandiok submits that even written application under Order XII Rule 6 CPC is not necessary and the Court can exercise its discretion without any application and at any stage. It is argued by him that it is not for the first time that the plaintiffs have made such attempts as the conduct of the plaintiffs in other transactions have already been brought to this Court by the defendants in the application.

9. Mr.Chandiok says that a bare perusal of the documents on record filed by the plaintiffs along with plaint would establish beyond doubt that the present suit is misconceived. The execution of the documents of 2010 and 2011 have been expressly admitted by the plaintiffs in judicial proceedings. Invocation of the jurisdiction of this Court by litigants like the plaintiffs must be nipped in the bud. The present suit is therefore liable to be dismissed for want of cause of action being vexatious and an abuse of the process of law. Apart from Share Subscription Agreement dated 3rd August, 2010 and MOU dated 10th July, 2010, the other documents which are admittedly signed by the plaintiffs have not been challenged and no declaration of cancellation of said documents are sought. The suit is hence not maintainable.

10. It is argued on behalf of the plaintiffs that the provisions of Order XII Rule 6 CPC can only be applied when 'there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.' The present case does not fall within the parameters laid down by the Courts for exercise of jurisdiction under Order XII Rule 6 CPC. The plaintiffs have specifically averred in the pleadings that the documents have been executed by the plaintiffs under duress, force and coercion and in case the plaintiffs are able to prove the same then the suit is to be decreed in

their favour. Therefore the application under Order XII Rule 6 CPC ought to be dismissed.

It is submitted that the issues have been framed by this Court by way of an order dated 6th September, 2013. The present application dated 5th May, 2014 is belated and therefore on this ground itself the application is liable to be dismissed.

11. It is argued on behalf of the plaintiffs that under the provision of Order XII Rule 6 CPC if there is an unequivocal admission by a party but the passing of a judgment which would result in injustice on one party, then the Court ought to refuse grant of a judgment on admission. In the present case there is a serious dispute towards the execution of the documents. The defendants are asserting 'alleged admissions'. Through the execution of the Memorandum of Understanding dated 20th July, 2010, the Share Subscription Agreement dated 3rd August, 2010 has been executed under undue influence and the affidavits filed before the Division Bench of this Court had been executed under threat and coercion. In relation to the Memorandum of Understanding dated 20th July, 2010 and the Share Subscription dated 3rd August, 2010, the plaintiffs had already asserted in the plaint the circumstances in which they have been executed. In relation to the Share Subscription Agreement dated 15th September, 2011 it is submitted that the plaintiffs have never signed the said agreement and the same is a forged and fabricated document.

12. I have gone through the pleadings and documents placed on record. I have also considered the rival submissions of the parties. Let me first deal with the issue of transfer of 76% shareholding of defendant No.1 in favour of defendants No.2 and 3 and to discuss whether the present case would fall within the four corners of the provision of Order XII Rule 6 CPC. If the answer is in positive, then the trial may not be required.

13. It is also settled law that the application under Order XII Rule 6 CPC can be filed by either of the parties. There is no condition in the said provision that it can only be filed by plaintiff who raised the claim.

14. Order XII Rule 6 CPC reads as under:

"Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

15. A bare perusal of Order XII Rule 6 CPC reproduced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the respondents have tried to put their own interpretation to those facts with a view to defeat the claim

of other party would not be a sufficient ground to decline relief under Order XII Rule 6 CPC. The entire scheme of Order XII Rule 6 CPC is to give a party right to speedy judgment. Order XII Rule 6 CPC stipulates that in an appropriate case a party on the admission of the other party can ask for judgment as a matter of legal right. If a dishonest litigant is trying to delay judgment on the flimsy grounds, the Courts cannot close their eyes and should not await the long period of trial. If the Court is of the view that all necessary requirement of the said provision are fulfilled, then the Court has a power to grant prayer under the said provision on the application filed by either party. In fact even written application is not necessary. Court suo moto can pass such orders.

16. The following cases are relevant in this regard:

a) In the case of Uttam Singh Duggal & Co. Ltd. vs. Union Bank of India, (2000) 7 SCC 120, it has been held as follows:

"In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed."

b) This Court in the case of Zulfiqar Ali Khan (dead) through LRs and Ors. vs. Straw Products Limited & Ors. 2000 (56) DRJ 590 in para 10 observed as under:

"10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. The issues will be framed in a suit only when pleadings raise material proposition of law and/or fact which need investigation and so could be decided after trial giving parties opportunities to adduce such relevant evidence as they may think necessary and proper. Material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved. If a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time."

With regard to acquisition of 76% of first tranche shareholding of defendant No.1 in favour of defendant Nos.2 and 3

17. Let me now discuss the rival submissions of the parties in the light of the pleadings, documents, admissions if any made by the plaintiffs pertaining to the shareholding of first tranche of 76% of transfer of shares of defendant No.1 company in favour of defendants No.2 and 3.

18. In the present case, the plaintiffs have filed the present suit seeking a decree of cancellation of Memorandum of Understanding dated 20th July, 2010 and Share Subscription Agreement dated 3rd August, 2010 admittedly executed between the plaintiffs and the defendants. They seek a declaration from this Court that the said documents had been executed by them under coercion, threat, gun point and are therefore be declared null and void.

19. It is not denied by the plaintiffs that they made admission about the transfer of 76% shareholding of defendant No.1 in favour of defendant No.2 and 3 as well the execution of documents of the record of judicial proceedings in this Court as well as before the Metropolitan Magistrate, New Delhi. It is also not denied by the plaintiffs that the plaintiffs filed the affidavits along with supporting various documents on admission before the Division Bench and the plaintiff in other proceedings including proceedings in FAO (OS) No.402 of 2009, titled as 'Mrs. Aarti Sabharwal vs. Mr.Jitender Singh Chopra and Ors.'s in which the plaintiffs were respondents No.2 and 3 the subject matter of the present suit namely the above said two impugned documents stand determined in judicial proceedings. The case of the plaintiffs is that the documents were signed under pressure of threat and coercion of defendant No.2 and at gun-point.

20. The execution of two agreements has been admitted in their prayer (a) in the suit itself wherein it is claimed that the above agreements be set aside.

By these two agreements, the plaintiffs inter alia admit that 76% share holding of defendant No. 1 was allotted to defendant Nos. 2 and 3 against a consideration of Rs. 6.60 crores.

The plaintiffs in para 1.17 of plaint admit that owing to frivolous and false cases and litigation by Mr. Devinder Sharma, plaintiffs were besieged with hard circumstances, as a result of which they lost control of defendant No. 1 Company and faced the threat of being evicted from their residential farm house and Hotel Claremont.

21. The plaintiffs have also disputed that there was a loan of Rs. 3.10 crores taken from Corporation Bank against the mortgage of the land belonging to defendant No. 1 and plaintiff No. 1 had personally guaranteed the said loan and defendant No. 1 was under a tax liability of over Rs. 80 lacs.

The plaintiffs in para 1.18 of the plaint admit that the plaintiffs came in contact with defendant Nos. 2 and 3 in early 2010. The registered Wills dated 18th June, 2010 which were admitted during admission/denial of documents. They also admit that a consideration of Rs. 6.60 crores was paid by defendant Nos. 2 and 3 for acquisition of 76% shareholding of defendant No. 1 in terms of the MOU dated 20th July, 2010 and 3rd August, 2010 but alleged that the said consideration is sham and that

they did not get the benefit thereof.

22. It is admitted by the plaintiffs that to regain control and to stop Mr. Devender Sharma from misusing his powers and positions, the plaintiffs on 19th September, 2008, increased the authorized share capital of the company to Rs. 1 Crore (from 15 Lacs) and allotted 6,50,000 shares. Mr. Devender Sharma preferred a petition sbearing company petition No. 72 of 2008 before the Company Law Board under Sections 397/398/399/402/403 of the Companies Act in the said company petition. In fact, on the basis of the false averments Devender Sharma got interim order dated 23rd October, 2008 granting the interim prayers in terms of para 23 (i) (ii) & (iv) (a) of the petition thereby suspending/ freezing the voting rights of the newly allotted shares and status quo in respect of the shareholding as on 18th September, 2008. Both Devender Sharma and Seema Sharma continued as Directors of the Company. Interim order dated 23rd October, 2008 was passed by the Company Law Board in CP No. 72 of 2008, in which, respondents No. 2 and 3 (plaintiff herein) were restrained from transferring, selling alienating, or encumbering their shareholding in the defendant No. 1 Company. Subsequently, the matter was compromised and an additional affidavit along with MOU dated 28th March, 2011 was filed by plaintiff No.1 in CP No. 72/08 on 1st April, 2011 before the CLB. On the basis of above mentioned MOU, the matter was disposed of by order dated 5th April, 2011 and interim order dated 23rd October, 2008 was vacated.

23. The plaintiffs have not denied the fact that prior to the Memorandum of Understanding dated 20th July, 2010 and the Share Subscription Agreement dated 3rd August, 2010 and in view of interim orders of Company Law Board, plaintiffs had executed registered Wills dated 18th June, 2010 bequeathing their shares in defendant No. 1 Company unto defendant No. 2. Execution of these registered Wills has been admitted in the list of admission/denial.

The plaintiffs also admit that four Relinquishment Deeds dated 16th July, 2010 and 19th July, 2010 were executed by the sons and daughters of the plaintiffs and it was categorically stated by them that they had no objection to the plaintiffs dealing with the shareholding in any manner of defendant No. 1 Company.

24. The plaintiffs themselves admitted by affidavits affirmed on oath in judicial proceedings, that not only the consideration of Rs. 6.60 crores was received but also 76% shares of defendant No. 1 Company were allotted to defendant Nos. 2 and 3 and out of the money received from defendant No. 2 and 3, the plaintiffs paid Rs.3.50 crores to Mr. Devinder Sharma and other amounts to Mr. Baljeet and other vendors.

25. There is no allegation in the appeal proceedings that these affidavits filed by the plaintiff on affirmation in judicial proceedings way back on 2nd May, 2011, 30th June, 2011 and 17th August, 2011 were under coercion and executed at gun point. But in the present suit, it is asserted that the said documents were executed under some coercion or threat or that the consideration of Rs. 6.60 crores was a sham. The two documents, of which cancellation is being sought by the plaintiffs in the present suit, namely, MOU dated 20th July, 2010 and the Share Subscription Agreement dated 3rd August, 2010 besides receipt, copies of the share certificate(s) in the name of defendant No. 2 and 3 and payment of the stamp duty for allocation of the said shares, form part of the judicial record filed

by the plaintiffs. There is no challenge to the same nor any cancellation thereof was even sought by the plaintiffs in the present suit.

26. In order to understand the correct position about the admissions, if any, made by the plaintiffs, it is necessary to refer those admissions made in the judicial proceedings by filing of affidavits, documents and Settlement Agreement executed between the parties before the Division Bench of this Court in FAO (OS) No.402/2009. The facts of the said case, where the admissions are as under :

i) The son of the plaintiffs namely Mr.Jitender Singh Chopra was married to Mrs. Aarti Sabharwal. He is stated to have obtained a decree of divorce in the Courts of United Kingdom and then got remarried.

ii) Mrs. Aarti Sabharwal initiated proceedings under Section 498-A read with Section 34 IPC and a complaint was also preferred by her before the Magistrate.

iii) A Civil Suit was also filed by Mrs. Aarti Sabharwal before this Court against Mr.Jitender Singh Chopra-her husband, the plaintiffs herein, being her in-laws and Mr.Gurinder Pal Singh @ David Chopra-brother of Mr.Jitender Singh Chopra, from which the FAO (OS) No.402 of 2009 arose.

iv) In the said appeal filed by Mrs. Aarti Sabharwal, the Division Bench of this Court passed an order dated 7th March, 2011. The said order was passed in the presence of plaintiff No.1 (respondent No.2 in the said appeal), where the plaintiff No.1 made a statement before the Division Bench of this Court that the property of the son known as Claremont Hotel, the land of which is transferred to an Incorporated Company which was controlled by him but his shareholding stands diluted to 3%, and "now his shareholding stand diluted only to 2-3%".

The said order reads as under :-

"FAO(OS) 402/2009 and CM 12863/2009 (stay) The learned counsel for respondent nos 2 and 3, on instructions from respondent no.2 who is present in Court, states that the respondent no.2 has no means to settle the dispute with the appellant as was earlier proposed in terms of Page 135 and 138 of the paper book. But, it is submitted that respondent no.2 was in touch with his son and the settlement proposal was backed by son at the relevant time though it was not recorded as such. Respondent no.2 states that he is still in touch with his son. Respondent no.2, surprisingly states that even in the property of the son known as Clairmont Hotel the land of which was transferred to a limited company controlled by him now his shareholding stands diluted to only 2 to 3%. We call upon respondent nos 2 and 3 to file an affidavit setting out the shareholding pattern of Fountain Motels Pvt Ltd. (FMPL) from its inception till date and as to how, in what manner, for what consideration and to which parties has this shareholding being transferred. The affidavit shall also provide the names of present directors of FMPL.



At this stage, respondent no.2 states that 15% of the shareholding is being held by his daughter. The affidavit will be supported by relevant documents of FMPL. Respondent no.2 will also set out all assets, to his knowledge of respondent no.1/his son, in India, at the time when he went away to UK and their status as on date. We may note that respondent no.1 is stated to be a UK citizen who, despite orders of this Court, without obtaining a divorce, from the concerned court in India, has not only remarried but has also stopped paying the maintenance which was being paid earlier. The maintenance was being paid by respondent no.2 which has not been paid for quite some time. In these circumstances, we are constrained to restrain respondent nos 2 and 3 from leaving the territory of India till further orders.

A copy of this order be sent to the Regional Passport Officer, for necessary action forthwith. A copy of this order be given also dasti to learned counsel for the appellant, to be served on the Regional Passport Officer; apart from a copy of the order being sent through the normal process.

A copy of this order be also served dasti on the Trial Court by learned counsel for the appellant, in which passport of respondent nos 2 and 3 are stated to have been deposited, pursuant to orders of the Court. Respondent no.2 also seeks time to obtain instructions from his son/respondent no.1 whether the said respondent is willing to arrive at a settlement with the appellant as per the earlier proposal.

List for directions on 21.04.2011."

v) The plaintiffs were therefore called upon by the Division Bench to file an affidavit setting out the shareholding pattern of the defendant No.1 from its inception till date and as to in what manner and for what consideration and to which parties the shareholding had to be transferred. The plaintiffs were also directed to file the details of the present Directors of the defendant No.1-Company besides directing to file all supporting documents and details of the assets of the son of the plaintiffs in India when he went to UK and their status in 2011 when the order was passed. The plaintiffs were restrained by the same order from leaving India till further orders.

vi) The matter came up before the Division Bench in FAO (OS) No.402/2009 on 21st April, 2010 wherein the following orders were passed:-

"FAO (OS) No.402/2009 and CM No.12863/2009 (Stay) Respondents 2 and 3 have failed to file the counter affidavit in terms of our direction passed on 7.3.011. There is no explanation for this inaction. The appellant has been compelled to engage a counsel and incur legal expenses when her husband (son of respondents 2 and 3) is not paying the maintenance. We, thus, grant further time to respondents 2 and 3 to comply with our directions within two (2) weeks and impose costs of Rs.10,000.00 on respondents 2 and 3 to be paid to the appellant towards legal expenses. Respondent No.2 also states that he has discussed the matter with his son-respondent No.1, and that respondent No.1 is not in a position to settle any claim

of the appellant. Interim directions passed on 7.3.2011 will continue till varied. We further direct that status quo will be maintained qua the properties and shareholdings of respondents 2 and 3 till further orders.

List on 12.7.2011.

Dasti to learned counsels for the parties."

vii) The time was sought by the plaintiffs to file an affidavit in terms of the order passed by the Division Bench on 7th March, 2011. While granting time to the plaintiffs, the plaintiff No.1 (respondent No.2 in the said appeal) also made a statement before the Division Bench that he had discussed this matter with his son Mr.Jitender Singh Chopra and that he was not in a position to settle any claim of Mrs. Aarti Sabharwal. The Division Bench while continuing the interim order passed earlier, also passed a status quo orders qua the properties and shareholdings of the plaintiffs in defendant No.1- Company. The plaintiff No.1 filed an affidavit on 2nd May, 2011 before the Division Bench but did not place on record the documents relating to share transfer in favour of defendant Nos. 2 and 3. The contents of the affidavit are reproduced herein below:-

"I, H.S. Chopra Respondent No. 2 herein S/o Sh, Gurbax Chopra, ages about 83 years R/o Hotel The Claremont, Aya Nagar, Mehrauli, New Delhi, do hereby solemnly state that I am swearing this compliance affidavit.

1. That this Hon'ble Court vide its order dated 07.03.2011 has called upon the Respondents .No. 2 &3 to file an affidavit setting out the shareholding pattern of Fountain Motels Pvt. Ltd. (FMPL) ("the Company") from its inception till the date of the order. This Hon'ble Court has further directed that the Respondent shall indicate as to the manner and the consideration for which the share in FMPL has been transferred. This Hon'ble Court has also directed that the affidavit shall provide, the name of the present Directors of FMPL.

2. That the son of Respondent No. 2 has no relationship with the Company and the Hotel Claremont is the property of the Company. The land and building was purchased by the Company vide sale deed dated 30.03.2006 from the Respondent No.1 The respondent No. 2 as on this date holds 22% of the equity capital while the Respondent No. 3 holds equity capital in the company.

3. That the company was incorporated in 2006 with the Respondent No. 2 & 3 as the only directors and shareholders of the Company.

4. That subsequently in 2008 Devinder Sharma and his wife Seema Sharma by forging and fabricating documents each of them claimed themselves to be the shareholders to the extent of 37,500/- shares.

5. That the Respondent No. 2 & 3 apart from Initiating Criminal Proceedings filed the Suit being CS (OS). No. 271 of 2009 seeking a declaration that Sh, Devinder Sharma and Smt Seema Sharma are not the shareholders of the Company (FMPL) apart from seeking other relief.

6. That Sh. Devinder Sharma and Smt Seema Sharma had filed a Petition. before Company Law Board being C.P. No. 72(ND)/2008.

7. That vide a settlement dated 12.06.2010, the Respondent No. 2 & 3 and the Company on the one hand and Sh. Devinder Sharma and Smt Seema Sharma on the other hand compromised the claim to the shares of the Company.

8. That the disputed shares which were being claimed by Sh. Devinder Sharma and Smt Seema Sharma were transferred on 20.07,2010 to the Respondent No, 2 herein.

9. That on 21.07.2010 Sh. Krishan Kumar and Smt Meenakshi Devi were allotted shares against payment. As on 31st March, 2011 the shareholding pattern of the Company is as under:-

S. No.	Name	Whether Director	Date of Appointment	No. of Shares	% Holding
1.	Harbhajan Singh Chopra	Yes	16-Jun-05	725.000	22%
2.	Surjit Kaur	Yes	16-Jun-05	75.000	2%

3. Krishan Kumar Yes 21-Jul-10 1,250.000 37%

4. Meenakshi Yes 21-Jul-10 1,283.350 39%

5. Vinod Yes 24-Jul-10 ---

Kumar 3,333,350 100% A print out from the Registrar of Companies website indicating the same is annexed as Annexure-1. A certificate issued by the Chartered Accountant certifying the change in the shareholding is annexed herewith as Annexure-2.

10. That Sh. Devinder Sharma and Smt Seema Sharma however challenged the settlement dated 12.06.2010 by filing CS (OS) No. 1978 of 2010, which was later disposed of vide order dated 04.04.2011 in terms of fresh settlement.

11. That the Respondent No. 2 has been extended substantial financial assistance (Approx. Rs 9 crores) by his daughter Mrs. Lakhbir Gurtata in the time of financial crisis faced by him. In view thereof the respondent no. 2 committed to transfer to his daughter 15% of the capital out of his own shareholdings. However it was erroneously conveyed to the Hon'ble court that she was holding 15% shares. The Respondent No. 2 intended to convey that 15% share is for the daughter. However by inappropriate words used he conveyed as If 15 % share are held by the daughter. It was in the above stated context the deponent was trying to convey that after transferring 15% share he would not be left with 5-7% shareholding. The deponent unconditionally apologizes for his error and mistake and seeks pardon of the Hon'ble Court. The Respondent No. 2 due to ongoing litigation with Sh. Devinder Sharma and Smt Seema Sharma could not effect the transfer of shares to the daughter and he would be doing hereafter,

12. This Hon'ble Court had further directed the Respondent No. 2 state on affidavit all assets, which in his knowledge, are held by his son/Respondent No. 1 at the time when he went away to UK and their status as on date. In respect to the assets of the Respondent No. 1 it is stated that the Respondent No. 2 & 3 had constructed an apartment at Court-118 Old DLF, Gurgaon Consisting of 11 flats. Each son has a share of one flat each in the apartment. However, one Sh. Gurvinder had sold his flat to his brother Paryinder. However one Sh. Baljeet Singh S/o Sh. Ratan Lai has grabbed the entire property whereby he got the sale deed executed with respect to the entire property, forcibly, in his name without any consideration thereof. The Respondent No. 2 has lodged FIR with Crime Branch and the same is pending investigation. The copy of the FIR is annexed herewith as ANNEXURE-3. As per the knowledge of respondent no.2 his son had no other asset in the year 2007 when he went away to U.K.

13. That the Respondent No. 2 had spoken to his son regarding possibility of any amicable settlement. Since he is in financial crisis and is therefore not able to offer any financial commitment to the appellant.

14. That in so far as offer for the settlement between my son Jitender Singh Chopra and the appellant recorded in the order dated 29.03.2007 (page 135 & 138) passed by in FIR No. 06/07 passed by the Ld. ASJ is concerned the same was not accepted by the appellant herein and that has been recorded in the order dated 28.05.2007 passed by Ld. MM Sh. Pritam Singh. Copy of the said order is annexed herewith as ANNEXURE-4."

viii) Consequently, an additional affidavit was filed by the plaintiff No.1 (respondent No.2 in the said appeal) which was affirmed on 30th June, 2011, wherein the plaintiffs admitted that a Memorandum of Understanding dated 20th July, 2010, the Company defendant No.1 herein and its Directors i.e. the plaintiffs had committed to allot 2533350 equity shares to Shri Krishan Kumar and Smt. Meenakshi defendant Nos. 2 and 3 at a price of Rs. 25 per share; Rs. 10/- as the share value plus Rs. 15/- as premium. A copy of the Memorandum of Understanding dated 20th July, 2010 was

also annexed with the said affidavit. The contents of the above said affidavit dated 20th June, 2011 are given as under:-

"I, H.S. Chopra Respondent No.2 herein S/o Sh. Gurbax Chopra, ages about. 83 years R/o Hotel The Claremont, Aya Nagar, Mehrauli, Delhi - 110 030 - do hereby so solemnly state that I am swearing this compliance affidavit.

1. That the deponent has filed the affidavit as directed by this Hon'ble Court on 02.05.2011.

2. That by way of the instant additional affidavit the deponent is placing the documents relating to share transfer in favour of Shri Krishan Kumar and Smt. Meenakshi.

3. That vide Memorandum of Understanding dated 20th July, 2010 the company and its directors had committed to allot 2533350 equity shares to Shri Krishan Kumar and Smt. Meenakshi at a price INR 26 per share. The copy of the Memorandum of undertaking dated 20th July, 2010 is annexed herewith as Annexure Plaintiffs-1.

4. That vide Share subscription agreement dated 3rd August, 2010, Shri Krishan Kumar and Smt. Meenakshi subscribed 1283350 and 1250000 shares respectively. The copy of the share subscription agreement dated 3rd August, 2010 is annexed herewith as Annexure Plaintiffs-2.

5. That Shri Krishan Kumar and Smt. Meenakshi had made a payment of Rs.6,60,00,000/- as consideration for the share subscription. The copies of share certificates are annexed herewith as Annexure Plaintiffs-3 (Colly). That the statutory stamp duty on transaction was paid to the Government vide order dated 17.08.2010. The copy of the order dated 17.08.2010 is annexed herewith as Annexure Plaintiffs-4."

ix) In the same affidavit as it appears, admissions were made of execution of the Share Subscription Agreement dated 3rd August, 2010 by the plaintiffs in favour of defendant Nos. 2 and 3 and a copy of the said Share Subscription Agreement dated 3rd August, 2010 was enclosed as Annexure-P-2 with the said affidavit. The plaintiffs also admitted on oath that Rs. 6.50 Crores had been paid by defendant Nos. 2 and 3 herein to the plaintiffs as consideration for the transfer of the said shares and a stamp duty had been paid after obtaining of the government order on 17th August, 2010.

The plaintiffs themselves placed on record copies of the share certificates and the Government order dated 17th August, 2010 in this regard. A copy of additional affidavit dated 30th June, 2011 along with the documents was placed before the Division Bench.

Perusal of the said affidavit and the documents annexed would disclosed that the documents are duly executed, the documents also have the photographs of the parties and the Agreement is duly

authenticated by a Notary Public and also annexed with the said affidavit are the copies of the passports of the plaintiffs and the identification of the defendant Nos. 2 and 3.

x) In the Share Subscription Agreement dated 3rd August, 2010 filed by the plaintiffs in the said appeal being FAO (OS) No.402 of 2009 and also filed in the Court records in para 4.1 that payment of Rs. 6,60,00,000/- was paid by the defendant Nos. 2 and 3 by cheques drawn on Bank of India between 26th July, 2010 and 2nd August, 2010. As a matter of fact, the plaintiffs themselves also admitted that defendant Nos. 2 and 3 were inducted to the Board of Directors of defendant No.1-Company on 21st July, 2010 and another nominee of the defendant Nos. 2 and 3 Mr.Vinod Kumar was inducted as a Director on 24th July, 2010.

xi) The document namely Share Subscription Agreement dated 3rd August, 2010 duly records the resolution of the Board of Directors held on 24th July, 2010, where the proposal to allot the shares to defendant Nos. 2 and 3 herein was accepted and a proposal was made to convene an extraordinary general body meeting of the Company to carry out amendments to the Articles of the Company which was held on 26th July, 2010 and 20 resolutions were passed in terms of Section 81(1-A) of the Companies Act, 1956 approving the allotment of shares to defendant Nos. 2 and 3 besides the amendment to the Memorandum and Articles of Association. It was in pursuance of these resolutions that the Share Subscription Agreement dated 3rd August, 2010 was executed and share certificates were handed over to defendant Nos. 2 and 3.

xii) The plaintiffs admitted in the said document that defendant No.2 owned 39% of the equity shares in defendant No.1-Company while his wife/defendant No.3 Smt. Meenakshi owned 37% shareholding of the defendants, namely 76% shares of defendant No.1-Company stood transferred to defendant Nos. 2 and 3 leaving a residue of only 24% with the plaintiffs.

xiii) The FAO (OS) No.402 of 2009 came up before this Court again on 12th July, 2011, whereupon, the Division Bench examined the affidavits filed by the plaintiffs and it was of the view that the affidavit filed by plaintiff No.1 does not bear the complete disclosure in terms of the directions issued by the Division Bench. The Bench also noticed in the said order that the subject matter of the proceedings was a property which was owned by the son of the plaintiffs and the husband of Mrs.Aarti Sabharwal which was sold by plaintiff No.1 as his attorney and consequently, at the request of the learned Senior counsel appearing for the plaintiffs herein, who sought the indulgence of this Court that they would try to resolve the issue with Mrs. Aarti Sabharwal. The order passed on 12th July, 2011 is reproduced herein below:

"FAO(OS) No. 402/2009 and CM No. 12863/2009 (Stay) We have heard the learned senior counsels for the parties at length. We find force in the contention of the learned counsel for the appellant that the affidavits filed by respondent no. 2 do not bear the complete disclosure in terms of our direction. We say no more at this stage because senior counsel for respondent nos. 2 and 3 assures that he will look into the matter dispassionately and endeavour to work out an amicable resolution to the disputes. This is specifically so in view of the fact that the property, which is subject matter of the dispute, was owned by the son of respondent nos. 2 and 3 and husband

of the appellant and was sold by respondent no. 2 as attorney of his son.

List on 18.08.2011."

xiv) The plaintiff No.1 filed yet another affidavit sworn on 17th August, 2011 wherein it was admitted that the plaintiffs had sold "the 76% of the shareholding in the Company to Shri Krishan Kumar and Smt. Meenakshi defendant Nos. 2 and 3 herein for a sum of Rs.6,58,00,000/-. The plaintiffs also submitted before the Division Bench that it still had 24% shareholding and was entering into a deal to sell the hotel which was constructed on the property of the son of the plaintiffs which was sold unto defendant No.1-Company herein and that there was an amount due to Corporation Bank from where loan had been taken besides a personal loan of Rs. 9 crores from his daughter. The contents of the affidavit dated 17th August, 2011 are reproduced herein below:

"I, H.S. Chopra, S/o Sh. Gurbax Singh Chopra, respondent no.2 herein aged about 83 years, R/o F-22, Ridge Wood Estate DLF, Gurgaon - 122002, Haryana, do hereby solemnly affirm and declare as under:-

1. That the deponent has filed the affidavits dated 02.05.2011 and 30.06.2011.
2. That the deponent craves the leave of this Hon'ble Court file the instant affidavit in view of the false and misleading affidavit filed by the Appellant.
3. The deponent along with his wife had shifted to India, from U.K. in the year 2000 with a view to live their rest of the life in the motherland and invested all his saving of 55 years from England and built the Motel Claremont.
4. The deponent being the Power of Attorney holder of his son Jitender Singh Chopra, purchased a land of approx 2.75 acre from Smt. Krishna Kumari Bhanot vide sale deed dated 22.0.2002 in his son's name.
5. The deponent along with his wife in 2005 incorporated a company by the name Fountainhead Motels Pvt. Ltd. the deponent and his wife Smt. Surjeet Kaur Chopra were the only shareholder and directors of the company. A chart showing shareholding pattern since Inception alongwith the Board of Directors are annexed herewith as Annexure-1.
6. The deponent acting as the attorney of Jitender Singh Chopra sold the land at Aya Nagar to Fountainhead' Motels Pvt. Ltd vide registered sale deed dated 07.04.2006.
7. That when the offer of settlement was made in March, 2007 by the deponent's son David for an amount of. Rs.4/- Crores and a flat worth Rs.60/-

Lacs it was a totally different situation for the deponent and his family and turn of events have made the deponent financially and emotionally so weak that he is in no position to fight the battle of life

any more. The following events profoundly changed the circumstances for the deponent :

(i) Delhi Metro Rail Corporation (DMRC) acquired 2032 square meter land of the Hotel Claremont for construction of Metro line and just paid Rs.8/- Lacs as compensation.

(ii) One Devender Sharma and his wife Seema Sharma illegally and unlawfully claimed to have acquired majority share holding of the company and thus raised their claim on the Hotel. The deponent had to initiate very taxing litigation to regain the control of the Hotel which finally ended in a compromise in 2011 and paid of Rs.3.5/- Crores to Devender Sharma. The copy of the agreement dated 12.06.2011 is annexed herewith as ANNEXURE-2.

(iii) Another notorious criminal Baljeet forcibly grabbed the deponents Gurgaon property.

(iv) The abovementioned incidents had a negative impact on the image of the Hotel and its business suffered adversely. In the wake of decreasing revenue, the deponent was about to shut down the Hotel. As a last resort, the deponent sold the 75% of the share, holding in the company to Shri Krishan Kumar. and Smt. Meenakshi for an amount of Rs.6.58/- Crores.

It was from the above mentioned sale proceeds the deponent was able to pay Rs.3.5/- Crores to Devender Sharma and other amount to Baljeet and other vendors.

(v) Devender Sharma and Seema Sharma despite entering into a settlement vide agreement dated 12.06.2010 again filed a suit no.1978 of 2010 before this Hon'ble Court. All the disputes and litigations were finally resolved vide settlement dated 28.03.2011 whereby the Hotel was agreed to be sold out to one Pradeep Rana for Rs.70/- crores.

(vi) The Hotel Claremont was agreed to be sold 2010 by the Monitoring Committee appointed by the Hon'ble Supreme Court and the same was desealed only 28th April, 2011 but only after carrying out demolition of 9 rooms.

(vii) The proposed buyers of the Hotel, Shri Pradeep Rana, in view of the demolition backed out from the deal and conveyed his intention of not purchasing the Hotel.

(viii) One Sanjay Kriplani on the basis of forged documents, filed a frivolous Suit No. C.S. (OS) No.;1219 of, 2011 before this Hon'ble Court against the company deponent and his wife including other defendants seeking recovery of Rs.4/- Crores among other reliefs. This Hon'ble Court vide ex-parte order dated 18.05.2011 had directed for deposit for deposit of Rs.4/- Crore from the sale of the Hotel with the Registrar General. The copy of the order.

dated 18.05.2011 is annexed herewith as ANNEXURE-3. It is, relevant-to mention that Pradeep Rana was also arrayed as the defendant and he has filed his written statement. The copy of the written statement annexed herewith as ANNEXURE-4.



(ix) The business of Hotel has touched a new low in as much as after desealing and till 16.08.2011, the total revenue generation was only Rs.6.55/- Lacs. The deponent apart from having the shareholding in the company has no other source of income.

8. The deponents submits with great respect, that on one hand his income has reduced considerably while his existing liabilities are as under :

(i) A Bank loan of Rs.3.10/- Crores (balance amount) from Corporation Bank, Sector-14, Gurgaon was obtained against the mortgage of the Hotel and personal guarantee of the deponent. The copy of the Statement of Account of the Bank regarding loan & OD is annexed herewith as ANNEXURE-5. There is a tax liability of Rs.80/- Lacs to be paid by the company,

(ii) Personal loan of Rs.9/- Crores from the deponent's daughter which was to be repaid by allotment of Shares in the company. The amount of Rs.9.20/- Crores transferred by the deponent's daughter through Corporation Bank, The copy of the Statement of Account of Deponent and his daughter, is annexed herewith as ANNEXURE-6.

9. It is in the abovestated facts and circumstances submitted by the deponent that the deponent and his wife are only having 24% shareholding and even If the Hotel is sold for Rs.70/- Crores, only an amount of Rs.17/- Crores (approx) would come to the deponent and his wife. Given the existing liability, the deponent would be having a small amount to themselves. Today, the deponent is 83 years old and his wife is 76 years' old. They do not have any residence in India or, abroad and presently living in a small rented fiat in Gurgaon. The deponent and his wife do not have any saving or even any investment in money market. Sadly, they have not been getting any support from children for last seven years. Neither the children visit the deponent nor the deponent and his wife have been able to go out of the country to meet children or grandchildren for last seven years. The deponent and his wife-are in highly difficult financial and emotional situation and the suffering they underwent over a period of last seven years has taken away the will to live any longer.

10. That the deponent and his wife after starting business in India, became a soft target for the criminals and land grabbers. Their old age and lack of connection in the society has somehow given the impression to such people that their properties could easily be grabbed and that is how the deponent and his wife at this stage of life had been running around in the Courts and different jails. The deponent submits, with respect that on being intimidated with this whole process of litigation, he decided to settle all the litigation even if they were not very suitable to them.

11. The deponent in the abovestated facts and circumstances leaves himself entirety in your lordships hands."

xv) The plaintiff No.2 who was respondent No.3 in the said appeal FAO (OS) No.402/2009, affirmed on oath that contents of the affidavit filed by plaintiff No.1 dated 2nd May, 2011, 30th June, 2011 and 17th August, 2011 are adopted by her and all such averments made therein may be treated as "my own averments and the same may be read as my own solemn affirmation".

xvi) On 18th August, 2011, the appeal being FAO (OS) No.402 of 2009 was listed before the Division Bench. The plaintiffs were present before the Division Bench along with defendant No.2 wherein the learned counsel appearing for the plaintiffs admitted that 25,33,350 shares stood sold and allotted and were held by defendant Nos. 2 and 3 herein and the plaintiffs still held 8,00,000 shares in defendant No.1-Company. The plaintiffs and defendant No.2 jointly requested the Division Bench that they would like to resolve the matter with the appellants in the said appeal and also with Mrs. Aarti Sabharwal and in fact, defendants No.2 and 3 took upon themselves as their personal liability to pay to Mrs. Aarti Sabharwal a sum of Rs.4,00,00,000/-. The plaintiffs and defendant No.2 sought a period of six months to sell the Motel to liquidate the liabilities. The order dated 18th August, 2011 reads as under:

"FAO (OS) No.402/2009 and CM No.12863/2009 (Stay) It is stated by learned senior counsel for respondents 2 and 3, on instructions and as per Annexure-1 to the additional affidavit filed by these respondents, that at present the said respondents hold eight lakh shares in the hotel while Mr. Krishan Kumar and his wife Mrs. Meenakshi hold 25,33,350 shares. Mr. Krishan Kumar is also present in Court along with respondents 2 and 3 and they state that they would like to sell the hotel to clear their liabilities and are agreeable to paying a sum of Rs.4.00 crore to the appellant in full and final settlement of the claim of the appellant. It is stated that this money will be paid out of the sale proceeds of the hotel and that it may take up to six (6) months to arrange for the sale. Mr. Krishan Kumar further states that he and his wife are also willing to accept the personal liability of this amount against their shareholding in the said hotel. It is suggested that the appellant can also make efforts to locate a customer for the said property for which on the last occasion respondents 2 and 3 and Mr. Krishan Kumar had got an offer of about Rs.70.00 crore. It is further stated before us by respondents 2 and 3 and Mr. Krishan Kumar that there is no lien or charge on this property except the bank loan which at present is about Rs.3.10 crore and thus there would be sufficient amount available from the sale proceeds to satisfy the claim of the appellant.

Learned senior counsel for the appellant also states that in case the sum of Rs.4.00 crore is paid within six (6) months, they would be willing to settle the disputes and not raise any further claim. Mr. Krishan Kumar further states that in case the sale is not arranged within six (6) months, he accepts the personal liability to pay Rs.4.00 crore within six (6) months so as to absolve respondents 2 and 3 of their liability for which he will give solvent security. Learned counsels for the parties state that they will need some time to work out the modalities so that an application can be filed in this court duly supported by affidavits/undertakings.

List for directions on 8.9.2011."

On the next date i.e. 8th September, 2011 before the Division Bench, the following order was passed:-

"FAO(OS) No.402/2009 and CM No.12863/2009(Stay) Learned senior counsel for the appellant states that they have not been able to get any better offer than Rs.70 crores. The terms on which the parties have agreed are already incorporated in our order dated 18.08.2011. The parties to file an appropriate compromise application duly supported by affidavits as well as undertakings on behalf of R-2 and R-3 as well as Mr.Krishan Kumar.

Learned counsel for the parties assure us that this application will be filed within a maximum period of 2 days.

List for directions on 14.09.2011."

xvii) On 13th September, 2011, a compromise application was filed under Order 23 Rule 3 CPC in FAO (OS) No.409 of 2009 for recording the settlement between Mrs. Aarti Sabharwal, the plaintiffs and defendant No.2 wherein Rs.4,00,00,000/- payable to Mrs. Aarti Sabharwal was taken in as liability and in the said compromise application, it was stated by the parties including the plaintiffs as under:

"3. That Mr. Krishan Kumar has given a personal guarantee irrespective of the fact that he is not a party, in view of the fact that he and his wife Ms. Meenakshi, are majority shareholders of Fountainhead Motels Pvt. Ltd. (FMPL), which as on date is the Owner of Hotel Claremont, which is sought to be sold."

Thus not only the plaintiffs herein admitted that the defendant Nos. 2 and 3 were the majority shareholders of defendant No.1 but even the appellant in the said appeal, Mrs. Aarti Sabharwal accepted the said position.

Defendant No.2 also handed over as part of the settlement post dated cheques drawn on Bank of India, Gurgaon dated 14th March, 2012 and undertook that the same shall be cleared on presentation unless the sale of the hotel brings about requisite funds to settle the claim of the appellant, Mrs. Aarti Sabharwal. A Copy of the application under Order 23 Rule 3 CPC being C.M. No.17141/2011 wherein the transfer of the 76% shares covered by the Memorandum of Understanding dated 20th July, 2010 and the Share Subscription Agreement dated 3rd August, 2010 was annexed. The extract of the terms and conditions of settlement application are reproduced herein below:-

"1. That the Appellant has filed the present appeal against the Order of the Ld. Single Judge dated 18.08.2009 in C.S. (OS) No. 276 / 2007, vide which the Ld. Single Judge was pleased to reject the Plaint of the Appellant herein for maintenance, declaration and permanent injunction, inter alia, qua the Respondent Nos.2 & 3 herein.

That the contents of the accompanying appeal are not being repeated herein, and the Applicants herein crave leave of this Court to read the same as a part of the present application.

2. That by Order dated 18.08.2011, the broad terms of settlement of dispute between the Appellant and the Respondent were arrived at and recorded before this Court, to the effect that Mr. Krishan Kumar as also Respondent Nos. 2 & 3 had undertaken to pay to the Appellant a sum of Rs.4.00 crore towards full and final settlement of her claim from the sale proceeds of Hotel Claremont, which was stated may take upto six(6) months.

It was further stated by Mr. Krishan Kumar that even, if the sale was not arranged within six'.(6): months, he undertook the personal liability to pay Rs.4.00 crore to the Appellant within a period of six (6) months, irrespective of the sale, for which he would give solvent security.

That time was granted to the parties to file; an appropriate application alongwith affidavits/ undertakings, for settlement of all disputes as per the terms recorded.

3 That Mr. Krishan Kumar has given a personal guarantee irrespective of the fact that he is not a party, in view of the fact that he and his wife, Ms. Meenakshi, are majority shareholders of Fountain Motels Pvt. Ltd. (FMPL),. which as on date is the owner of Motels Claremont, which is sought to be sold.

4. That as such, in terms of the settlement arrived at on 18.08.2011 before this Court, the. Present application is being filed setting out the terms of settlement as under :-

a) That Respondent Nos. 2 & 3 and/or Mr. Krishan Kumar will pay a total sum of Rs.4.00 crore to the Appellant as full and final settlement of all her claims towards maintenance, permanent alimony and / or any other claim of any nature whatsoever.

b) That Respondent Nos. 2 and 3 and/or Mr. Krishan Kumar shall pay the aforesaid sum of Rs.4.00 crore to the Appellant within a period of six (6) months from 14.09.2011, i.e. on or before 14.03.2012, in terms of the settlement arrived at before this Court.

That Respondent Nos. 2 and 3 and Mr. Krishan Kumar shall be at liberty to sell Hotel Claremont to clear their liabilities and make payment of the settlement amount of Rs.4.00 crore to the Appellant from the proceeds of the sale thereof, and the claim of the Appellant shall constitute first charge on the sale proceeds, meaning thereby that upon sale of the Hotel Claremont and clearance of the bank liability, which as stated, by Mr. Krishan Kumar before the Court on 18.08.2011 is, about Rs.3.10 crore, the sale proceeds shall be utilized for the claim of the Appellant and shall take precedence over any and all liabilities that Respondent Nos. 2 & 3 and / or Mr. Krishan Kumar may have. Respondent Nos. 2 and 3 and /or sh. Krishan Kumar undertake that they would, enter into agreement to Sell with the purchaser of the Hotel Claremont and pay 4 crores to the appellant from the earnest money/advance sale consideration received and only thereafter receive the balance sale, consideration and execute sale deed in favour of the purchaser.

c) That however, in the event of Respondent Nos. 2 & 3 not being able to arrange the sale of the Hotel Claremont within the period of six (6) months, Mr. Krishan Kumar personally undertakes to pay the settlement amount of Rs.4.00 crore to the Appellant within the above period of six (6) months, for which an undertaking by way of affidavit of Mr. Krishan Kumar is has been filed alongwith the present application.

That for this purpose, Mr. Krishan Kumar has tendered Post-dated Cheque No.000252 drawn on Bank Of India ,MGF Plaza Branch, MGF Plaza, Gurgaon 282004,Haryana dated 14.03.2012, undertaking that the same shall be cleared upon presentation. That the Appellant agrees and undertakes that in the event the amount of her settlement claim is made to her from the sale proceeds of Hotel Claremont within the six (6)month period as aforesaid, the Cheque, shall returned to. Mr. Krishan Kumar.

d) That to bring an end to the protracted litigation and towards an amicable settlement between the parties, the Appellant accepts the decree of divorce dissolving the marriage between the Appellant and Respondent No. 1, granted by Guildford County Court, United ,Kingdom, and agrees and undertakes not to challenge the same.

e) That in view of the present settlement, the Appellant has no objection if the passports of Respondent Nos. 2 & 3, lying deposited in the Court of Ms. Puja Talwar, Metropolitan Magistrate, Saket Courts, New Delhi is returned to them, and also has no objection to appropriate directions being issued to immigration authorities to revoke the Look Out Circular issued against the Respondents

f) That the present Appeal, being FAO (OS) No. 402/2009, and the Civil Suit, bearing CS (OS) No.276/2009, will stand disposed of in terms of the present settlement, and the Appellant undertakes to this Court to, within one week of receipt of the settlement amount of Rs 4 crores withdraw the Complaint filed by her in the Court of Ms. Puja Talwar, Metropolitan Magistrate, Saket Courts, New Delhi, being Complaint case No.204 of 2008, titled Aarti Sabharwal Vs. Jitender Chopra &Ors., and not pursue the case registered pursuant to FIR No, 6 of 2008 at P.S. Nizamuddin and co-operate with Respondent Nos. 2 & 3 in proceedings for the quashing of the said FIR.

g) That all claims, past, present and future, between the parties of every nature whatsoever shall stand, fully settled upon payment of the aforesaid settlement sum of Rs.4.00 crore by Respondent Nos. 2 &3 and Sh. Krishan Kumar, as the case may be, to the Appellant, and the Appellant will be left with no claim of any nature whatsoever against the Respondents or any of their properties.

h) That the parties have entered into this settlement out of their own free will and volition, without any coercion or pressure of any nature whatsoever, and undertake not to raise challenge to the terms contained herein before any Court of Law.

i) That the parties as also Mr. Krishan Kumar further undertake to duly abide by and honour the term of settlement both in letter and in spirit, and not to file any further cases / claims, both criminal and civil, against each other at any stage.

5. That the present application is filed bonafide and in the interests of justice."

xviii) The settlement application being C.M. No.17141/2011 came up before the Division Bench on 14th September, 2011. The undertaking given by defendant No.2 was accepted by the Division Bench besides the parties and the Division Bench recorded that though defendant No.2 was not a party to the original suit but he took upon himself to be a party to this settlement to facilitate discharge of obligations by plaintiffs and to enable them to travel outside the country. The above compromise was accepted and the appeal was disposed of with directions being issued to the competent Metropolitan Magistrate for release of the passports of the plaintiffs herein and to withdraw the lookout notice for the plaintiffs. The order passed on 14th September, 2011 is reproduced here as under:

"CM No.17141/2011 (u/o. XXIII Rule 3 r/w section 151 of CPC) This is an application filed by the appellant, respondent nos.2 and 3 as also by Mr. Krishan Kumar under order XXIII Rule 3 read with section 151 of the Code of Civil Procedure, 1908.

The appellant had filed a suit against her husband, her in-laws and her husband's brother seeking necessary reliefs arising from a matrimonial discord between the appellant and respondent no.1. Respondent no.1 is unfortunately absconding. He is reportedly settled in U.K. in the company of a new life partner/wife. It is his refusal to return to the country in order to comply with the directions passed by different courts which has persuaded us to intercede in the matter. In view of the aforesaid facts and circumstances, and keeping in mind the properties held by respondent nos. 2 and 3, and the allegation regarding the nature of those properties and the alleged share of respondent no.1 in the same, we had issued certain interim directions.

The parties have now fortunately arrived at a compromise qua their disputes. We may notice that Mr. Krishan Kumar becomes essential to the settlement in view of certain obligations undertaken by him as set out in the compromise. Such obligations are undertaken by him to ensure due payment is made to the appellant arising from the claims against respondent nos. 2 and 3 as per the settlement.

The application is supported by the affidavit of the appellant, respondent nos. 2 and 3 and Mr. Krishan Kumar. These parties have given an undertaking to this court and the undertaking given is accepted making the parties conscious of the consequences which may arise in case of any breach of undertaking which would include Mr. Krishan Kumar, who has voluntarily agreed to be a party to this settlement though he was not an original party, to facilitate discharge of obligations by respondent nos.2 and 3 and to enable respondent nos. 2 and 3 to travel outside the country, which at present is prohibited.

A cheque bearing no.000252 dated 12.03.2012 in favour of Aarti Sabharwal for a sum of Rs.4 Crores drawn on Bank of India, MGF Plaza, Haryana, in terms of the compromise has been handed over to the learned counsel for the appellant. The compromise is in accordance with law and the same is accepted and the parties will remain bound by the terms and conditions of the compromise and the undertakings given to this court.

The application accordingly stands disposed of.

FAO(OS) 402/2009 and CM No.12863/2009 (stay) The appeal and the application are disposed of in the aforesaid terms as set out in the compromise application being CM No.17141/2011.

A copy of this order along with the compromise application be placed before the competent Metropolitan Magistrate for seeking necessary directions for release of passports to respondent nos. 2 and 3 and withdrawal of Look-out Notice for these two parties.

Needless to say the appellant will have liberty to approach this court in the present appeal in case there is any violation of the terms and conditions and undertakings given by respondent nos. 2 and 3 and Mr. Krishan Kumar. The counsels and the parties have signed this order in token of acceptance.

Dasti to learned counsels for the parties."

27. On 19th September, 2011 an application was made on behalf of plaintiffs before Metropolitan Magistrate, Saket for releasing the passports and withdrawal of lookout notice on behalf of plaintiffs. On the same day, an order was passed accordingly and passports were released. Copy of the applications and orders passed thereon are extracted as under :-

"1. That the present complaint is pending before this Hon'ble Court and fixed for further proceeding.

2. That the complainant and the respondents have already settled their disputes and to this effect both the parties have filed a compromise deed before the Hon'ble High Court and further both the parties have made there statements before the Hon'ble High Court.

3. That the Hon'ble High Court have passed order to release the passports and withdrawal of look-out notice of respondent 2 and 3 in FAO(OS) 402 of 2009 titled as Aarti Sabhawal versus Jitender Singh Chopra and Ors. vide order dated 14.09.2011 with the direction to file a copy of the order along with the compromise application before this Hon'ble Court. Copy of the same order, compromise application and passports are enclosed herewith.

H.N. Din.

19.09.2011

Present :           Ld. APP for the State.  
                          Applicant with counsel.

File taken up on application for release of passport of accused Harbhan Singh Chopra and Surjeet Kaur Chopra as per the directions of Hon'ble High Court. The passports are being released.

Now to come up on the date already fixed.

Sd/-

(POOJA TALWAR) MM/MAHILA COURT SED/19.9.2011"

28. In pursuance of the orders passed by the Division Bench and Metropolitan Magistrate the passports were released to the plaintiffs who thereafter traveled back to United Kingdom.

29. The affidavits sworn by the plaintiffs on oath and benefits having utilized by them have not been revoked or resiled either before the Division Bench or anywhere else including this Court. The plaintiffs have thus not only made unequivocal express admissions without any reservations whatsoever that the defendant Nos. 2 and 3 were allotted and were holding 76% shareholding in defendant No. 1 Company and consideration paid was adequate and utilized by the plaintiffs.

30. A conjunctive reading of the three affidavits filed before the Division Bench in F.A.O. (OS) No. 402/2009 coupled with the admission made in para 1.23 of the plaint in the present suit it is clear that neither there was any coercion for execution of the Memorandum of Understanding dated 20th July, 2010 nor in the execution of the Share Subscription Agreement dated 3rd August, 2010, and the sale consideration of Rs. 6.60 crores was not sham or inadequate.

31. The present suit was filed in February, 2012. It was mentioned in the suit that the plaintiffs intended to move an application before the Division Bench that they have made the statement/admissions and filed the documents under gun-point and similarly the documents namely the Memorandum of Understanding dated 20th July, 2010 and Share Subscription Agreement dated August, 2010 also executed at gun point. But no such application was filed by the plaintiffs in the said appeal or before the Metropolitan Magistrate referred to above, withdrawing any of the admissions made therein or revision of any order(s) even as of today i.e. after the expiry of about 3 years and nine months.

32. In the present suit, the plaintiffs have not disclosed the admissions made by them before the Division Bench, affidavits filed by them and subsequent events occurred after the settlement arrived between the parties. The learned counsel for the plaintiffs have not denied the facts that all the affidavits filed by his clients bear their signatures so as the joint application for recording the settlement as well as the presence of plaintiffs before the Division Bench when those referred orders were passed. Merely vague averments are made in the plaint.

33. Mr. Chandhiok, learned Senior counsel for the defendants submits that the plaintiffs in the present case have deliberately and intentionally concluded the admissions made in the appeal and orders passed in the present suit of the plaintiffs. It is a serious issue and the plaintiffs should be



dealt with severely as they have abused the process of law by filing false and frivolous case before this Court.

34. Relevant decisions on the issue of concealment are :

i) In the case of Satish Khosla v. Eli Lilly Ranbaxy Ltd, 1998 (44) DRJ 109 (DB), wherein this Court compared the reliefs sought by way of two suits and observed as under:

"13. It is apparent that in the application in Suit No.261/97, the respondent is seeking the same relief of temporary injunction as had been sought in Suit No.3064/96.

14. Was it not obligatory on the part of the respondent to disclose to the Court that in an earlier suit filed by it, the Court had not granted any stay in its favour and if on such a disclosure having been made the Court still granted stay in favour of the respondent, it could be said that the respondent had not concealed any material fact from the Court. But not mentioning anything about the Court having not granted any stay in similar circumstances in favour of the respondent in the earlier suit, it appears that the respondent had not only concealed material facts from the Court but had also tried to over reach the Court. Being unsuccessful in obtaining stay in Suit No.3064/96, it was not permissible to the respondent to file the subsequent suit and seek the same relief which was not granted to it in the earlier suit."

ii) In United India Insurance Co. Ltd. vs. Rajendra Singh, (2000) 3 SCC 581, the Supreme Court observed that "Fraud and justice can never dwell together" (*fraus et jus numquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.

iii) In the case of Meghmala v. G. Narsimha Reddy, (2010) 8 SCC 383 it was observed that fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due.

iv) In the case of Satish Khosla (supra), reference was made to S.P. Chengalvaraya Naidu v. Jagannath and Ors., AIR 1994 SC 853, wherein it was held that the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

35. The said decisions apply to the facts of the present suit against the plaintiffs who have not disclosed material information which was within their knowledge as they appeared before the Division Bench on all relevant dates with regard to acquisition of 76% share-holding of defendant No.1 in favour of defendant Nos.2 and 3. They have filed their affidavits, and all requisite documents for the purpose of settlement were perused in their presence. The terms and conditions, affidavits and documents of settlement arrived before the Division Bench have not been pleaded in the plaint as well as the subsequent events which have occurred/acted upon after settlement and passing of the settlement order dated 14th September, 2011.

36. It is the duty of the parties to disclose all material facts as the party who approaches the Court with unclean hands is not entitled to justice and the applicability of this principle has been unequivocally extended to the petitions filed under Articles 32, 226 and 126 of the Constitution, as well as cases instituted in other Courts and judicial forums. Reliance in this regard is placed on the case of Ramjas Foundation vs. UOI, (2010) 14 SCC 38.

37. In fact, it impedes and impairs the dignity of the proceedings and orders of this Court and is in gross and willful contempt thereof. The plaintiffs, as it is evident from the said judicial proceedings, have derived benefit from the said affidavits and the judicial proceedings and have liquidated their liability, settled their litigation(s) inter alia with Mr. Devender Sharma, Mr. Baljeet and others and have had the restraint orders and look out notices recalled.

38. Mr. Phoolka submits that there is no basis for grant of a judgment on admission as sought by the defendants. The defendants have primarily argued that after the statements were made before the Division Bench in FAO(OS) No. 402 of 2009, the plaintiffs cannot maintain the present suit. They have also urged that allowing the suit to continue would effect judicial sanctity. The said submission is wholly misconceived and ought to be rejected. First, if in fact the said statements were made under "duress" or "coercion" as stated by the plaintiffs then the plaintiffs are entitled to establish this position in the trial. Secondly, the issue that the continuance of the proceedings would effect judicial sanctity is misconceived. Surely, a statement made before a Court of law has sanctity attached to it.

39. From the admissions made in the judicial proceedings and from two documents executed by the plaintiffs, it is clear that the trial in the matter would not be necessary and it will be merely wastage of time and cost of the parties, as the plaintiffs on the face of record have transferred the 76% shareholding of defendant No.1 in favour of defendants No.2 and 3. They have been paid consideration thereof. The claim of the plaintiffs is false and frivolous.

40. The plaintiffs have not denied the fact in the plaint that they have not received a sum of Rs.6,60,00,000/- rather their case is that by virtue of Share Subscription Agreement dated 3rd August, 2010 by which 76% share holding of defendant No.1 company was transferred in favour of defendant Nos.2 and 3 for a nominal sum and the documents were executed by them under pressure, threat, coercion and under gun point. To this argument, the defendants have specifically alleged in the written statement which are read as under :

"The plaintiffs Mr.Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra had been moving freely, without any hindrance all over the country and have been presenting themselves before different courts, different statutory authorities and different Forums. During the months of March/April, 2011 after the Hotel Claremont was sealed by the High Powered Committee appointed by the Supreme Court of India, It was the plaintiffs who presented themselves not once but several times before the High Powered Committee and before the Dy. Commissioner MCD and filed applications for permanent de-sealing along- with the affidavits dated 18.4.2011. It was only then that the Claremont Hotel finally de-sealed vide orders dated 20.4.2011 passed by the Assistant Engineer (B) I/SZ, MCD, Green Park, South Zone, New Delhi. BY way of this letter dated 20.4.11 the Assistant Engineer MCD requested Mr.Harbhajan Singh Chopra to be present on 28.4.2011 at the premises so that the property of the Hotel be de-sealed permanently in his presence and Harbhajan Singh Chopra accordingly received and acknowledged the de-sealing of the hotel on 28.4.2011. Mr.Harbhajan Singh Chorpa and Mr.Krishan Kumar (the Defendant No.2 herein) were jointly operating the bank accounts of Defendant No.1-Company and the hotel and were issuing cheques etc. to different vendors and were also making various representations etc. to various authorities jointly and have run the Hotel jointly for more than 11/2 years.

The conduct of the plaintiffs would also be clear from the fact that in another suit pending before this Court being CS (OS) No.1219/11 filed by one Mr.Sanjay Kriplani against the plaintiffs and others herein, the plaintiffs No.1 & 2 herein (who are Defendant No.2 & 3 in the said suit) had filed their written statement and also filed replies to various interim applications. Mr.Sanjay Kriplani, the Plaintiff in C.S.(OS) No.1219/2011 has filed a complaint case under section 156(3) Cr.P.C. against Mr.Harbhajan Singh Chopra, Mrs. Surjit Kaur Chopra and Mr.Krishan Kumar which is still pending. In the said suit the plaintiffs No.1 & 2 herein have taken the similar kind of defence by portraying that Mr.Sanjay Kriplani, the plaintiff in the said other suit has made the plaintiffs in the present suit to sign several documents under threat and coercion and at gun point. The plaintiffs No.1 & 2 herein even after pleadings fraud, coercions and pressure in the said CS (OS) No.1219/11 and denying any liability of Mr.Sanjay Kriplani, the plaintiff therein, have suddenly and surprisingly now moved an interim application being LA No.1979 of 2012 in the said CS (OS) No.1219/11 after colluding with the plaintiff therein under order 23 Rule 3 CPC to the effect that they admitted the liability of Mr.Sanjay Kriplani and that the said liability be paid off by M/s Fountain Head Motels Pvt. Ltd. the Defendant No.1. An purported agreement allegedly executed at England between Mr.Sanjay Kriplani and Mr.Harbhajan Singh Chopra and Mrs. Surjit Kaur Chopra was also filed alongwith the said I.A. By way of the said alleged agreement the Plaintiffs herein tried to accept the liability of the said Mr.Kriplani to be paid off by Defendant No.1-Company without being authorised to do so. The Court when felt something foul and was about to dismiss the said I.A. No.1979 of 2012 by imposing huge cost of Rs. 1 lac, the counsel for the plaintiff in the said CS (OS) No.1219/11 withdrew the said interim

application which was ordered to be dismissed as withdrawn vide order dated 6.2.2012."

41. From the above, the question of any pressure or threat or coercion does not arise for the period of more than one year. The plaintiffs appeared before Division Bench on many dates. They had the best platform to disclose the threat, if any. Further they are not laymen rather chronic litigants against whom various criminal and civil matters were/are pending. They are trying to mislead the Court. The decisions referred by Mr. Phoolka do not help the case of the plaintiffs as the facts in these cases are materially different. In the present case, the admissions are made before the Division Bench of this Court. The plaintiffs have filed the affidavits, documents, signed the settlement application. The orders were passed in their presence. The settlement was not recorded on one date. The terms of settlement were discussed from time to time for more than six months. Similarly affidavits have not been filed by the plaintiffs in one go, actually these were filed on various dates. The plaintiffs had many opportunities to inform the Division Bench in case of any threat or coercion that they have settled the matter under gun-point. The said court was the safest place for them. The most important fact is that more than several years have lapsed and the plaintiffs have not taken any steps for review of any order passed by the Division Bench.

42. It is well settled principle of law that admissions are substantive evidence *proprio vigore*. The admissions in the present case as are evident from the judicial proceedings *inter alia* referred to above and also in compliance with the statutory provisions of law are clear and unequivocal. There is not a whisper in the plaint or any documents to even rebut the presumption. As such, the said facts and execution of these documents and transfer of shareholding must be taken to be established.

43. The said admissions are unequivocal admissions of facts including the factum of execution of the Memorandum of Understanding dated 20th July, 2010 and the Share Subscription Agreement dated 3rd August, 2010 and the receipt of the consideration being adequate and also having been utilized by the plaintiffs for their benefit.

44. The plaintiffs have not mentioned the specific details i.e. the date and time as to when the alleged incidents took place or whether any police action was taken by the plaintiffs and how could the alleged coercion, pressure on gun point continued from July, 2010 till September, 2011.

45. There are clear admissions made in the affidavits and documents filed as well as in the settlement application under Order 23 Rule 3 CPC. The terms of settlement were acted upon between the parties. More than 3 years and 10 months have been passed and no application for review or of any nature is filed by the plaintiffs before the Division Bench where the settlement was arrived despite of mentioning by the plaintiffs in the suit filed by them in February, 2012. All other issues raised by the plaintiffs are wholly irrelevant which cannot be discussed in view of admissions already made before the Court in law, these are best admissions against false and frivolous pleas of the other side. Thus, the same are rejected.

46. Thus, the suit pertaining to 76% shareholding of defendant No.1 in favour of defendant Nos.2 and 3 is false and frivolous and same is dismissed by allowing the prayer made in the application. The case with regard to acquisition of remaining shareholding of second tranche of 24% of defendant No.1.

47. With regard to remaining share holding of 24%, the plaintiffs have denied having executed any documents though it was admitted in the replication that the plaintiffs had liability towards Corporation bank to the tune of Rs.3.10 crore. It was also admitted in the pleading as well as course of hearing that the daughter in law of the plaintiffs has received Rs.4 crore from the defendants in terms of the settlement arrived at before the Division Bench. However, it was denied by the plaintiffs that the consideration as mentioned above was ever paid to the plaintiffs towards sale of 24% remaining share holding of defendant No.1. The alleged agreement dated 15th September, 2011 relied by the defendants was never executed and it was a fabricated document. The letter of resignation is also forged. The application filed before Metropolitan Magistrate about the admission having receipt of amount of remaining shareholding of 24% is not signed by the plaintiffs. The plaintiffs have no knowledge of the same. It was the manipulations created by the defendant No.2. In the prayer of the suit the declaration is also sought about all the documents/ instructions including blank signed papers which were obtained by the defendant No.2 under coercion, threat and gun point after the order passed by the Division Bench on 14th September, 2011 and the same have been manipulated and used by the defendant No.2 for the purpose of transferring of 24% shareholding and for other purposes.

48. The case of defendants is that a) the plaintiffs nowhere in their plaint specifically dealt with or even alleged about the transfer of 24% shares or the documents executed by them including the Court proceedings. In effect, there is no challenge laid and/or spelt out in the plaint, though they admittedly had and have knowledge of the same when this transfer of 24% shareholding took place and F.A.O. (OS) No. 402/2009 was still pending before the Division Bench filed by Ms. Aarti Sabharwal, the daughter-in-law of plaintiffs.

b) In pursuance of above order, Memorandum of Understanding dated 3rd September, 2011 came to be executed between the parties. In this Memorandum of Understanding, plaintiffs again admitted the execution of the earlier Agreements and the amount of Rs. 6.58 crores having been paid by defendant Nos.2 and 3 and received at the plaintiff's end.

The plaintiffs themselves have confirmed that they had the liability to discharge the term loan of Corporation Bank of defendant No. 1 Company of Rs. 3 crores and also that they had given a personal guarantee for the payment of the said loan as is evident from the last recital of the said Memorandum of Understanding.

The plaintiffs herein executed a receipt wherein they admitted that a sum of Rs.3,00,00,000/- was paid to Corporation Bank by defendant Nos. 2 and 3 by two separate cheques, details whereof were given in the said receipt. The execution of this receipt is admitted by the plaintiffs in the reply to the application under Order 12 Rule 6 CPC.

c) A Share Purchase Agreement dated 15th September, 2011 was executed between the parties and the two recitals read as under:

"C. That the Second party has requested the First party to purchase all the equity shares, i.e. 8,00,000, held by the Second party of Third party (Fountainhead Motels Pvt. Ltd.) as on agreement date.

D. that the First party shall pay the consideration of INR 7 crore against 8,00,000 equity shares held by Second party. These shares are purchased at a value of Rs. 87.5 per share which include a premium amounting Rs. 77.5 per share and face value of Rs. 10 per share."

49. The parties agreed in Share Purchase Agreement as to how the said Rs. 7,00,00,000/- would be paid and it is stated therein that Rs. 4,00,00,000/- would be paid in terms of the order of this Court to Ms. Aarti Sabharwal and the remaining Rs.3,00,00,000/- in terms of the Memorandum of Understanding dated 3rd September, 2011. In the note at the said page, below the column 'completion', reference is made to the appeal F.A.O. (OS) No. 402/2009 wherein the settlement amount is affirmed to be paid by defendant Nos. 2 and 3 herein to Mrs. Aarti Sabharwal by giving a post dated cheque and the plaintiffs admit that total consideration of Rs.7,00,00,000/- being discharged by defendant Nos. 2 and 3 in the manner mentioned in the said documents, the plaintiffs would transfer 8 lac equity shares of defendant No. 1 Company (24% shareholding) to defendant Nos. 2 & 3 herein against the said consideration.

50. In a nut-shell, it is stated on behalf of defendants that on 13th March, 2012, as the period of six months was over and the payments were made to Mrs. Aarti Sabharwal, an application was filed on behalf of the plaintiffs before Metropolitan Magistrate, Saket for seeking dismissal of the Complaint filed by Mrs. Aarti Sabharwal wherein the plaintiffs themselves admitted that the 76% shareholding of defendant No.1 which was transferred in pursuance of the Memorandum of Understanding dated 20th July, 2010 and the Share Subscription Agreement dated 3rd August, 2010 were held by defendant Nos. 2 and 3. Admission was also made with respect to defendant No.2 having taken over the liability of paying Mrs. Aarti Sabharwal and in fact confirmed that the said post dated cheques given before the Division Bench stood encashed by Mrs. Aarti Sabharwal on 13th March, 2012 and a certificate from Bank of India was filed along with the said application. The plaintiffs further admitted that apart from the payment of Rs. 4,00,00,000/- to Mrs. Aarti Sabharwal by defendant Nos. 2 and 3, the defendant No.2 and 3 had also paid up the liability of a loan of Rs. 3 Crore with the Corporation Bank, Gurgaon obtained by plaintiff No.1 herein in his personal capacity and signed a receipt of Rs.3 Crore which was attached. Defendant No.2 had already paid a sum of Rs. 4 Crore to Mrs. Aarti Sabharwal, daughter-in-law of plaintiffs as mentioned above. In consideration of the total financial liability of Rs. 7 Crore taken over by defendant No.2 and 3, the plaintiffs had transferred their remaining 24% to defendant No.2 and 3 via Memorandum of Understanding dated 3rd September, 2011 and Share Subscription Agreement dated 15th September, 2011.

51. The relevant contents of the application filed before the Metropolitan Magistrate were :

"8. The applicant/accused H.S. Chopra and Surjeet Kaur Chopra were jointly having 24% share holding in the Fountainhead Motel Pvt. Ltd. while 76% share were being held by Shri Krishan Kumar and Smt. Meenakshi.

9. That since the complainant was insisting on early payment of Rs. 4 crores while the same of hotel was not getting finalized, in order to sign the compromise before the Hon'ble High Court, the applicant/accused, requested Shri Krishan Kumar to bail out them from the situation. It was in the abovesaid circumstances, Shri Krishan Kumar appeared before the Hon'ble High Court in FAO (OS) No. 402 of 2009 and took personal responsibility for payment of Rs. 4 crores by depositing a post dated cheque bearing no. 000252 drawn on Bank of India dated 12.03.2012 for an amount of Rs. 4 crores, which was to be encashed by the complainant in the event of sale of the Hotel Claremont not taking place before 12.03.2012. The complainant has encashed the abovementioned cheque on 13.03.2012. Further, the Rs. 3 crores had obtain from H.S. Chopra from Corporation Bank, Gurgaon as a Personal Guarantee which liability had also been taken over by Shri Krishan Kumar. In consideration of the total financial liability of Rs. 7 crores taken over by Shri Krishan Kumar and Meenakshi Devi, the applicant/accused had transferred their remaining 24% share to Shri Krishan Kumar and Smt. Meenakshi vide share transfer agreement dated 15.09.2011 and MOU dated 03.09.2011."

52. It is stated by the defendants that the plaintiffs have wrongly contended that the defendants have not denied the liability of the defendants to pay Rs.5,40,90,000/-. A bare perusal of the relief sought in the plaint would show that the plaintiffs nowhere claim any relief qua any of the said alleged claims. Prayers of the plaint makes no mention of the same. There is no prayer or no cause of action seeking the indulgence of this Court. No decree for recovery of money is even sought. No court fee has been paid. Cause of action is just in one line. In any event, out of the said amounts, a sum of Rs. 2 crores is claimed due from M/s Priyanka Garments who is not even a party to the present suit.

53. It is stated by the defendants that the plaintiffs' Advocate Mr. Gautam Awasthi who had filed the application before Metropolitan Magistrate where the admission was made about the receipt of amount towards the transfer of remaining second tranche of 24% shareholdings of defendant No.1. The said counsel had been representing the plaintiffs much prior to their coming into contact with defendant No. 2. He has been appearing in many matters on behalf of plaintiff upto 13th September, 2011. A Joint Crl. MC 1396/2011 under Section 482 Cr.P.C. for quashing of FIR No. 12/08 was filed by Baljeet Singh and plaintiff No.1 through Mr. Gautam Awasthi on 12th September, 2011 in this Court. The cheque which was handed over to Arti Sabharwal at the time of settlement before the Division Bench was encashed by Arti Sabharwal in March, 2012 i.e. after the present suit was filed. In view of admissions made by the plaintiffs, the suit with this regard is also liable to be dismissed.

54. The following decisions are referred by the defendants :

i) The Supreme Court in the case of Chief Engineer, MSEB v.

Suresh Raghunath Bhokare, (2005) 10 SCC 465 observed in para 5 as under:

"Thus applying the basic principle of rule of evidence which requires a party alleging fraud to give particulars of the fraud and having found no such particulars, the Industrial Court came to the conclusion that the Respondent could not be held guilty of fraud. In the absence of any such particulars being mentioned in the Show Cause Notice or at the trial, attributing some overt act to the Respondent we do not think the Board can infer that the Respondent had a role to play in sending a fraudulent list solely on the basis of the presumption that since the Respondent got a job by the said proposal, the said list is a fraudulent one."

ii) The Supreme Court while noticing the provisions of Section 58 of the Indian Evidence Act, 1872 in Sangramsinh P. Gaekwad and ors. v. Shantadevi P. Gaekwad and Ors., 2005 (11) SCC 314 and discussing the fact of admissions being made in the pleadings referred to an earlier decision of the Supreme Court in Nagindas Ramdas vs. Dalpatram, (1974) 1 SCC 242 in para 27 observed as under:

"Admissions if true and clear, are by far the best proof of facts admitted. Admissions and pleadings of judicial admissions admissible under Section 48 of the Evidence Act, made by the parties or their agent at or before the hearing of the case stand on a higher footing than evidentiary admissions. (Emphasis supplied). It was further observed that:-

"judicial admissions by themselves can be made the foundations of the rights of the parties."

55. Mr. H.S. Phoolka, learned Senior counsel appearing on behalf of the plaintiff in support of his arguments with regard to acquisition of 24% shareholding has made the following submissions :-

i) When the plaintiffs were given their passports by the Metropolitan Magistrate in view of final order passed by the Division Bench on 14th September, 2011, the defendant Nos.2 and 4 of Punjab Police officials met the plaintiffs at the Indira Gandhi International Airport on 3rd October, 2011. They seized the passport of the plaintiffs and exhorted them to sign blank documents and certificates carried by the defendant No.2. The plaintiffs do not admit the execution of any agreement for transfer of 24% of the shareholding of defendant No.1 Company.

They have made specific statement even in the replication that that "the plaintiffs have never signed a second Agreement to Sell or the Share Purchase Agreement dated 15th September, 2011. The entire Agreement has been executed by the defendant No.2 behind the back of the plaintiffs and the plaintiffs have no knowledge whatsoever about the said Agreement...It is denied that the Agreement dated 15th September, 2011 was ever executed. It is a fabricated and forged document..." [Emphasis supplied]



ii) In the admission/denial affidavit of the plaintiffs, the plaintiffs have specifically denied the execution of the Memorandum of Understanding dated 3rd September, 2011 as well as the Share Subscription Agreement dated 15th September, 2011. The documents filed by the defendants i.e. Memorandum of Understanding dated 3rd September, 2011, Share Purchase Agreement dated 15th September, 2011, Share Transfer Form, Share Certificates and resignation letter have also been denied by the plaintiffs.

iii) By way of an order dated 14th March, 2012, this Court had directed the plaintiffs to appear in person before this Court. Against the said order, the plaintiffs had preferred a Special Leave Petition [C] No. 19126-19128 of 2012. The Supreme Court by order dated 16th July, 2012 had given liberty to the plaintiffs to move an application for recall of the said order. The said application was moved. On 23rd November, 2012, the said application was listed before this Court. The defendant No. 2 had gone to London to meet the plaintiffs on or around 1st December, 2012. The defendant had insisted on a meeting with the plaintiff No. 1 and had barged in the residential house of the plaintiffs at London. In these circumstances, the plaintiffs' daughter (Lakhbir Gurtata) who was residing with the plaintiffs had filed a police complaint. The defendant No. 2 thereafter sought for a meeting to settle all disputes between the parties. This meeting was attended by this Lakhbir Gurtata, Mr. Bitu Bhalla [Queens Counsel], the defendant No. 2, Mr. Dhillon and Mr. Paul Lloyd. The transcript of the conversation was a subject matter of I.A. No. 10543 of 2013 and presently the subject matter of the Chamber Appeal O.A. No. 160 of 2014.

iv) The share transfer form requires 'attestation' by specific persons.

The instructions for attestation states that the signature has to be attested by a Magistrate, notary public etc. The share transfer forms do not have any attestation as required.

v) In the statements of the defendant No. 2 recorded by the Division Bench of this Court in FAO [OS] No. 402 of 2009 in the order dated 18th August, 2011, the Division Bench had specifically recorded that defendant No.2 has an offer of Rs. 70 Crores for the said property. The plaintiffs' affidavit dated 17th August, 2011 filed before the Division Bench had stated that even if the hotel is sold at Rs.70 Crores an amount of Rs. 17 Crores would come to the plaintiffs. In this background, if the Share Purchase Agreement dated 15th September, 2011 is examined, it is evident that the entire amount for acquisition of the 24% of the share holding is only Rs. 7 Crores. Out of this Rs. 7 Crores, a sum of Rs 3 Crores is the liability of the defendant No. 1 Company. The Share Purchase Agreement dated 15th September, 2011 clearly shows that the 'Third Party' had taken a secured term loan from Corporation Bank. The loan is only of the Company i.e. the defendant No. 1. Therefore, the amount allegedly paid by the defendant No. 2 was essentially to themselves. The remaining amount of Rs. 4 Crores is subject matter of the FAO [OS] No. 402 of 2009. The Division Bench by its order dated 12th July, 2011 recorded the statement that attempts to amicably resolve the dispute were made and the matter was listed on 18th August, 2011. On 17th August, 2011, an affidavit was filed by the plaintiffs. The matter came up before the Division Bench on 18th September, 2011. On that date, a statement was made by the defendant No. 2 that they would like to sell the hotel and pay a sum of Rs. 4 crores to the Ms. Aarti Sabarwal. The amount has to be paid from the proceeds out of the sale of the hotel. This undertaking was given much prior to the execution of these documents. This

undertaking was on the basis of the fact that he was a majority share holder of the defendant No. 1 Company.

vi) In the suit, the plaintiffs had specifically asserted that said money allegedly paid to the plaintiffs has been taken over from the plaintiffs in various manners. In paragraph 1.48 it is mentioned that a sum of Rs. 2 Crores has been paid to Priyanka Garments which is entirely owned by the defendant Nos. 2 and 3. The account statement showing the transfer of the said amount by the plaintiffs has been annexed. Further, the following amounts had been taken over by the defendant No. 2 by coercion etc. These amounts have been specifically reflected and details given in the suit. They are as under:-

a. A sum of Rs. 1.5 Crores transferred on 8th September, 2011 by the daughter of the plaintiffs. This amount along with another amount of Rs. 50 Lacs [totaling Rs. 2 Crores] was sent to Priyanka Garments.

b. Defendant No. 2 took over 1 silver colour Mercedes Benz Car and 1 Honda Accord c. The defendant No. 2 had forced the plaintiffs to sell a plot of land in Nawabshehar, Punjab for a sum or Rs. 50.90 Lacs. This fact had been admitted by the defendant No. 2 in the transcript.

d. The defendant No. 2 forced the plaintiffs to sell their Bentley Arnage car which had a market price of Rs. 1.25 Crores at a normal price of Rs. 50 Lacs. Out of this amount, a sum of Rs. 30 lacs first paid to the defendant No. 2.

e. Apart from the aforesaid, a sum of Rs. 80 Lacs was transferred to the company account of the defendant No. 1 by the plaintiffs.

vii) The application dated 13th March, 2012 stated to be filed by Mr. Gautam Awasthi, Advocate in the court of the Metropolitan Magistrate is manipulated by the defendant No.2 as per statement. The defendant filed the said application for the first time with IA No. 13318 of 2012 on 24th July, 2012. Thereafter, the said application has been filed with the application under consideration [i.e. Application under Order XII Rule 6 CPC i.e. IA No. 8723 of 2014 filed on 5th May, 2014].

viii) Mr. Gautam Awasthi was not the lawyer of the plaintiffs, the lawyer of the plaintiffs in the Complaint Case No 264 of 2008 was Mr. Raj Kamal who had filed his Vakalatnama on 7th September, 2010. He was the lawyer engaged by defendant No.2 and was representing the plaintiffs in some cases when the plaintiff and the defendant No. 2 were together. After the dispute between the plaintiffs and defendant No.2, Mr. Gautam Awasthi who was acting on the instructions of defendant No.2 instead of the plaintiffs. He was discharged as a lawyer by the plaintiffs. The discharge affidavit was filed in CS (OS)No. 1219 of 2011.

ix) In the complaint No 264 of 2008 before the Metropolitan Magistrate Gautam Awasthi was not the lawyer of the plaintiffs. From 8th September, 2010 Mr. Raj Kamal was the lawyer of the plaintiff.

x) The application in question was filed on 13th March, 2012. The cheque issued by defendant No.2 was dated 12th March, 2012 and only defendant No.2 was privy to the information about his account from the bank. The plaintiffs had already filed the present suit and were litigating against defendant No.2 and 3. There was no occasion for the plaintiffs to secure the information from the Bank of the defendant No.2.

xi) Prior to the application by Gautam Awasthi, in the suit as well as the criminal complaint, the plaintiffs had specifically challenged the execution of the said documents Memorandum of Understanding dated 20th July, 2010 of first tranche. Therefore, the plaintiffs could not have instructed Mr. Gautam Awasthi to make such an application. Infact, the plaintiffs are not even aware that such an application was filed. No such instructions were issued by the plaintiffs. Even Mr. Gautam Awasthi did not obtain any permission or instructions from the Plaintiffs in this regard as the plaintiffs left India on 3rd October, 2011 and thereafter, the plaintiffs never had any interaction with Mr. Gautam Awasthi. Therefore, the application has been entirely engineered by the defendants. The annexures to the application is a bank certificate dated 13th March, 2012 and a bank account statement dated 13th March, 2012. Both these documents had been issued only to defendant No. 2 Krishan Kumar and could not have been in the possession of a lawyer on the same date [i.e. 13th March, 2012] who is representing the plaintiffs.

xii) The case before the Metropolitan Magistrate was listed on 27th September, 2011, when the following order was passed:-

"Present: Counsel for the parties.

Matter is stated to be settled before the Hon'ble High Court. Time is sought for quashing the same. Allowed.

Renotify on 08.03.2012"

Thereafter, on 8th March, 2012, the matter could not be taken up and the matter was taken up on 12th March, 2012, when the following order was passed:-

"File taken up today as 8/3/2012 was holiday.

Present None For purpose fixed on 6/6/2012"

Therefore, the matter was already adjourned to 6th June, 2012. There was no occasion or no necessity for the plaintiffs to file any application. The sequence of events leading to the application clearly shows that application was filed on the behest of defendant No.2 who obtained a certificate from his Bank on the 13th March, 2012 and on the same date got the application filed from Gautam Awasthi. The said application was adjourned to 6th June, 2012 and no orders were passed on the said application by the Metropolitan Magistrate and the application was not even considered by the Court. In fact, Gautam Awasthi was not present. The order dated 6th June, 2012 is as follows:-

"Present: Counsel for the complainant.

Matter is stated to be compromised. Adjournment sought. Heard. Allowed for today only.

At request, adjourned to 06.09.2012"

xiii) Mr. Gautam Awasthi did not appear in the Court ultimately an application was filed by the lawyer of the complainant Ms. Aarti Sabharwal for withdrawal of the complaint. The said application was filed on 28th July, 2012 and was notified for 6th September, 2012. Thereafter, on 6th September, 2012, the statement of the complainant was recorded by the Court. The said statement is as under:-

"Statement of Ms. Aarti Sabharwal complainant.

WA This matter has been settled down in Hon'ble High Court. I want to withdraw the present complaint. The matter may kindly be dismissed as withdrawn."

On the basis of the said statement, the Magistrate passed the following order on 6th September, 2012:-

"Present: Complainant in person with counsel. Matter is stated to be compromised as stated by the complainant. Statement of the complainant to this effect recorded separately. In view of the statement so made today, the matter is dismissed as withdrawn as settled. File be consigned to record room."

It is stated by Mr. Phoolka that a bare perusal of the contents of the application shows that the application was filed only to subserve the interest of defendant No.2 and 3. There was absolutely no occasion for Mr. Gautam Awasthi to mention the transfer of 24% of the shares in defendant No.1 Company. The Court as well as the complainant was only interested in the encashment of the cheque and that averment was enough. The application is neither supported by an affidavit nor the same was signed by the plaintiffs.

xiv) The defendants had placed documents which are manipulated, forged, fabricated etc. One such instance is that the defendant had asserted that there was a board meeting held on 15th September, 2011 and in the said board meeting, the plaintiffs had resigned. The minutes of the Board Meeting were allegedly held on 15th September, 2011 and the resignation letter dated 16th September, 2011 was placed by the defendants. In view of the above said submission Mr. Phoolka submits that trial is imperative under these circumstances, the arguments of the defendants have no force. The prayer is made for cancellation of documents. The defendant No.2 had manipulated the said documents on blank papers and got them signed from the plaintiffs under coercion. The payment made by them have been returned to the defendants as per details. There is no specific denial by the defendants except vague denial. In any case issues in this regards have been framed. The plaintiffs' suit under these facts and circumstances cannot be dismissed.

56. Mr. Phoolka, learned Senior counsel has referred various decisions and addressed his submissions that the application filed by the defendants under Order XII Rule 6 CPC ought to be dismissed. The jurisdiction and discretion exercised by a Court while hearing an application under Order XII Rule 6 CPC has been the subject matter of several decisions.

i) In the case of Daljeet Singh Anand Vs. Harjinder Singh Anand, 149 (2008) DLT 303, the Court was considering an application filed by the plaintiff under Order XII Rule 6 CPC. The application was premised on 'Admission of documents by the Defendant'. For this purpose, the plaintiff had relied on 5 documents which were all admitted by the defendant and duly exhibited. The Single Judge of this Court relied upon an averment in the written statement and in the said averment, it was stated that the entire transaction was without consideration and void. Further, it was stated that the documents relied upon were executed by playing fraud. This Court had rejected the plea of the plaintiff for grant of a decree in terms of Order XII Rule 6 CPC.

The decision of the learned Single Judge was challenged before the Division Bench of this Court in FAO [OS] No. 228 of 2008 who had rejected the Appeal and held as under:-

"17. If the respondent is able to prove this fact, it can non-suit the plaintiff. Whether this defence of the respondent/defendant is weak or has adequate strength is not for the Court to examine at this stage. What is pointed out is that in view thereof, decree on the basis of admission under Order XII Rule 6 of the CPC could not have been passed. The submission of the appellant qua speedy disposal of the suit can be taken care of. Having regard to the admission of these documents. Obviously the onus would be upon the respondent/defendant to prove the alleged fraud etc. therefore, the controversy which remains is in a narrow campus which will require framing of limited issues and the suit can be put to trial and disposed of expeditiously." [Emphasis Supplied]

ii) In the case of Krishna Kumari Vs. Sunil Kumar Goel and Anr.

214 (2014) DLT 404. This Court held as under:-

"18. The purpose of Order 12 Rule 6 CPC is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the defendant. The rule only secures that if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined.

19. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event

cannot have a decree by virtue of provision of Order 12 rule 6 CPC without proving those issues. The case of State Bank of India Vs. Midland Industries and Ors, 1988 AIR (Del) 153 is relevant in this regard." [Emphasis Supplied]

iii) The Supreme Court in Himani Alloys vs. Tata Steel Limited (2011) 15 SCC 273 has laid down the parameters for grant of decree on admission wherein it was held as under:-

"11. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear admission by which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. vs. United Bank of India [2000 (7) SCC 120], Karam Kapahi vs. Lal Chand Public Charitable Trust [2010 (4) SCC 753] and Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha [2010 (6) SCC 601]. There is no such admission in this case." [Emphasis supplied]

iv) The Supreme Court in the case of M/s Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha AIR 2010 SC 1890 (para 14) had held that "wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed" then the principle in Order XII Rule 6 CPC would apply. Therefore, in the present case the principle afore stated would make it clear that the application under Order XII Rule 6 CPC has to be dismissed.

v) Similarly, the Division Bench of this Court in the case of Raj Kumar Chawla v. M/s Lucas Indian Services AIR 2006 Delhi 266 has held that "cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to the provision under Order XII Rule 6."

vi) The Division Bench of the Punjab and Haryana High Court in the case of Mukhtiar Singh v. Arjun Singh 1992 (Supp) Civil CC 81 had examined the expression "not lawful" in Rule 3A of Order XXIII. It came to the conclusion that an agreement which is obtained by "fraud, undue influence etc." is not a lawful agreement. In that case, the party would have to take recourse by filing an appropriate suit. Order XXIII Rule 3A would have no application in that case. Reliance is placed on A.A. Gopalakrishnan v. Cochin Devaswom Board, (2007) 7 SCC

482.

58. It is the admitted position that there is no averment in the written statement of the defendants in relation to the Memorandum of Understanding dated 3rd September, 2011. The statement about the Memorandum of Understanding has been mentioned in the application. In the written statement at two places, it is mentioned that after the disposal of appeal the plaintiffs have executed the Share-Substitution Agreement wherein they have admitted about the transfer of remaining shareholding of 24% of defendant No.1 in favour of defendant No.2 and 3. It is apparent that the defendants have pleaded their defence on the basis of Memorandum of Understanding dated 3rd September, 2011 in the written statement. The subsequent agreements were allegedly executed on the basis of MOU.

59. I have also considered the arguments of the learned Senior counsel for the parties as well as the pleadings and documents with regard to the second abovementioned trench. At this stage, I have to consider the application under Order XII Rule 6 CPC filed by defendants No.2 and 3 as to whether the claim raised by the plaintiffs with respect to the shareholding of 24% with defendant No.1 is the admission on the part of the plaintiffs, in order to allow the prayer made in the application and consequently dismiss the suit of second trench. Admittedly, the plaintiff has denied the execution of Memorandum of Understanding dated 3rd September, 2011 as well the Share Purchase Agreement dated 15th September, 2011 and other documents in pursuant to the Memorandum of Understanding. The case of the plaintiffs, these are forged and fabricated documents. The plaintiffs have also averred in the reply that under the coercion, they have also signed certain blank papers and since there is no admission on the part of the plaintiffs, the prayer made in the application of acquisition of 24% shareholding of defendant No.1 is not liable to be allowed. As already noted, the submission of the learned Senior counsel appearing on behalf of defendants No.2 and 3 is that before the Division Bench, full and final settlement of the claim of shareholding of 24% was arrived at between the parties and in lieu thereof, defendants No.2 and 3 have cleared the bank loan in which the property of defendant No.1 Company was mortgaged and the due amount of Rs.3,10,00,000/- was paid by defendant No.2 who has also paid the sum of Rs.4 crores to the daughter-in-law of the plaintiffs and she has already encashed the cheque issued by defendant No.2 after filing of the suit.

The other submission of the counsel is that not only that, in view of the full and final settlement, the plaintiffs have also signed the Transfer Certificate and they have resigned from defendant No.1 company, therefore, the said documents and the conduct of the plaintiffs clearly show that there are admissions on the part of the defendants. The suit of the plaintiffs is also liable to be dismissed. It is also stated that the settlement was arrived at between the parties before the Division Bench with regard to the remaining second trench of acquisition of 24% shareholding of defendant No.1 as the same is acted upon between the parties which would demonstrate from the subsequent conduct of the plaintiffs themselves. The plaintiffs prima facie have been able to establish that certain payments have been received by defendant No. 2 and 3 directly or indirectly during relevant time. At this stage, it is not possible to come to conclusion as to whether these payments are return of amount of more than seven crores received by the plaintiffs towards the 24% shareholding of defendant No.1 or not. The plea raised by the plaintiffs requires trial. I do not agree that the

plaintiffs have not pleaded their case with regard to 2nd tranche. If the prayer in the plaint is read in a meaningful manner, it appears that the plaintiffs are also challenging 2nd tranche of 24 % shareholding.

60. Without expressing any opinion about the validity of documents, at this stage, I do not agree with the submissions of the defendants as it is the admitted position that the plea of defendant No.2 is that on 3rd September, 2011 the Memorandum of Understanding between the parties was executed and on the basis of the said Memorandum of Understanding, the Share Purchase Agreement was executed on 15th September, 2011. Firstly, it appears from the written statement that there is no reference of Memorandum of Understanding executed between the parties. Rather, in the written statement, defendant No.2 is only stressing for acquisition of 24% shareholding on the basis of the Share Purchase Agreement dated 15th September, 2011 and in pursuant to that subsequent documents were executed. Secondly the settlement application under Order XXIII Rule 3 CPC which was executed between the parties on 13th September, 2011 supported by the affidavits did not have any reference to the Memorandum of Understanding dated 3rd September, 2011. The said application was listed before the Division Bench on 14th September, 2011. In the entire settlement application, there is no reference about the Memorandum of Understanding dated 3rd September, 2011 if any arrived at between the parties and the said order passed on the basis of Memorandum of Understanding.

61. There is a force in the submissions of Mr.Phoolka that in case the Memorandum of Understanding for the purpose of acquisition of shareholding of 24% in defendant No.1 is arrived at between the parties, it would have been mentioned in the settlement application under Order XXIII Rule 3 CPC. The parties ought to have mentioned the said fact before the Division Bench in order to inform that the remaining 24% shareholding has already been transferred by the plaintiffs in favour of defendants No.2 and 3. The application was duly signed by the parties on 13th September, 2011, which was also supported by the affidavits of daughter-in-law of the plaintiffs and defendant No.2. Rather, in para 3 of the application, it was mentioned that defendant No.2 has given the personal guarantee inspite of the fact that he is not a party, in view of the fact that he and his wife Ms.Meenakshi are majority shareholders of defendant No.1. If by virtue of Memorandum of Understanding, the remaining 24% shareholding had acquired by defendants No.2 and 3, it would have been mentioned the entire shareholding instead of majority shareholders. Therefore, without expressing any opinion on merits, I am of the considered view that prima-facie, there is a force in the submissions of the learned Senior counsel appearing on behalf of the plaintiffs that the issue raised by the plaintiffs on this aspect of acquisition of 24% shareholding of defendant No.1 in favour of defendants No.2 and 3 needs trial. Thus, the Court is of the considered opinion that the trial in this regard is necessary. The other issue raised by the defendants at this stage is not required to be discussed. Thus, the application with regard to the acquisition of 24% shareholding by the plaintiff in favour of defendants No.2 and 3 is dismissed. The application filed by defendants No.2 and 3 under Order XII Rule 6 CPC is accordingly disposed of. CS(OS) No.299/2012 & I.A. Nos.21264/2014 & 11508/2015

62. List on 20th October, 2015.



(MANMOHAN SINGH) JUDGE JULY 29, 2015