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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 25th August, 2026*# **CNR No : DLHC010291602023**+ **RFA 605/2023, CM APPL. 5782/2024, CM APPL. 73393/2024**

1. **AARTI KAKKAR**
D/o Bal Kishan Mehan,
W/o Vivek Kakkar
R/o H.No. 706, Khalwara Gate,
Opposite Sheetla Mata Mandir,
Phagwara, Punjab-144401. ...Appellant No.1
2. **BHARTI @ SUNAINA JETHI**
D/o Bal Kishan Mehan
W/o Manoj Kumar Jethi
R/o V P O, Yol Camp,
Chhatair (494/1), Dharamshala,
Kangra, Himachal Pradesh-176052 ...Appellant No.2
3. **DEEPAK MEHAN**
S/o Bal Kishan Mehan
R/o Vikas Nagar, Phagwara District,
Kapurthala, Punjab-14440 1 ...Appellant No.3
Through: Mr. Rishabh Malhotra, Mr. Abhishek
Lakra, Advocates with Appellants.

versus

1. **DINESH MEHAN**
S/ o Late Mohinder Kumar Mehan
Rio E-16/1269, Bapa Nagar,
Padam Singh Road, Karol Bagh,
New Delhi-110005 ...Respondent No.1
2. **DANNY MEHAN**



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S/o Late Mohinder Kumar Mehan
R/o E-16/1269, Bapa Nagar,
Padam Singh Road,
Karol Bagh, New Delhi-110005

....Respondent No. 2

Through: Mr. Bharat Chugh, Mr. Mayank
Arora, Mr. Maanish M. Choudhary,
Mr. Sarthak Mittal, Mr. Sukriti
Saxena, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

NEENA BANSAL KRISHNA, J.

1. **Regular First Appeal under Section 96 read with Order XLIII Rule 1A of the Code of Civil Procedure, 1908** has been preferred by the **Appellants/Defendants, Smt. Aarti Kakkar, Smt. Bharti @ Sunaina Jethi and Sh. Deepak Mehan**, assailing the **Judgment and Consent Decree dated 26.09.2022**, passed by the learned District Judge in **CS No.502/2017**, whereby the Suit filed by the Respondents/Plaintiffs for **Mandatory Injunction and Mesne Profits**, was decreed in terms of the settlement arrived at, between the parties.
2. The Appellants are also aggrieved by the subsequent **Order dated 23.03.2023**, whereby *their Application under Section 151 CPC seeking setting aside of the said **Consent Decree***, was dismissed.
3. The **Respondents/Plaintiffs, Sh. Dinesh Mehan and Sh. Danny Mehan**, are the sons of Late Sh. Mohinder Kumar Mehan, while the Appellants/Defendants are the children of his brother, Late Sh. Bal Kishan Mehan.



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4. The Respondents/Plaintiffs, Sh. Dinesh Mehan and Sh. Danny Mehan, had instituted *Civil Suit No. 502/2017 (CS DJ No. 3940/2017)* for *Mandatory Injunction and pendente lite and future mesne profits, in respect of one room and kitchen forming part of Property bearing No.E-16/1269, Bapa Nagar, Padam Singh Road, Karol Bagh, New Delhi-110005*, admeasuring about 270 sq. yards (*hereinafter referred to as the “suit property”*), with the following prayers:

“a) Pass a decree of mandatory injunction to vacate the portion marked in red colour in the site attached herewith as Annexure-A showing the picture of the suit property and structure built-up on the same of suit property at E-16/1269, Bapa Nagar, Padam Singh Road, Karol Bagh, New Delhi - 110005 admeasuring 270 sq. yards

b) Pass a decree of pendent lite and future mesne profits @ Rs.15,000/-;

c) Grant cost of the suit in favour of the plaintiff and against the defendant.

d) Pass any other or such further order(s) as this Hon'ble Court may deem fit and proper.”

5. The Appellants/Defendants contested the Suit, by filing their **Written Statement**, to which the Respondents/Plaintiffs filed their **Replication**. The Ld. Trial Court, *vide* Order dated **23.10.2018**, framed the Issues and the matter thereafter, proceeded to recording of **Plaintiff's Evidence**. **PW-1 Sh. Dinesh Mehan was examined and his cross-examination was partly conducted, whereafter the same was deferred.**

6. During the pendency of the Suit, the parties entered into negotiations



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for an amicable resolution of their disputes. The learned Trial Court, *in its* Order dated **13.09.2022**, recorded that the parties were exploring the possibility of settlement.

7. Thereafter, on **26.09.2022**, the Respondents/Plaintiffs as well as all the three Appellants/Defendants, appeared before the learned Trial Court along with their respective learned Counsels and made a **Joint Statement on solemn affirmation** regarding the settlement arrived at between them.

8. The learned Trial Court also enquired from the parties about the settlement, whereupon they stated that they had understood the terms thereof and agreed to the same. Consequently, *vide* **Order dated 26.09.2022**, the Suit was **decreed, in terms of the settlement**.

9. After passing of the Consent Decree, the Appellants/Defendants issued a **Legal Demand Notice dated 04.11.2022**, asserting that although the settlement recorded before the learned Trial Court reflected payment of **Rs.40,00,000/-**, they had not agreed to relinquish their alleged rights in the suit property, which was stated to be worth more than **Rs.15 Crores**, for the said amount alone. It was claimed that they had handed over possession on an assurance that a further sum of **Rs.3,00,00,000/-**, would be paid, upon sale of the suit property.

10. The Appellants further asserted that, apart from Rs.40,00,000/- paid before the learned Trial Court, the Respondents/Plaintiffs had issued **two Post-Dated Cheques aggregating to Rs.10,00,000/-**. Though the cheques were dated for the year 2025, they were allegedly given as security against an assurance that the amount would be paid in cash, within one month. Reliance was also placed upon an alleged telephonic conversation, stated to have been recorded by **Appellant No.1/Smt. Aarti Kakkar**.



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11. The Respondents, *vide* **Reply dated 16.11.2022**, denied any agreement to pay consideration beyond **Rs.40,00,000/-** and asserted that the said amount constituted the **full and final settlement** recorded before the learned Trial Court. In regard to the two Post-Dated Cheques, it was explained that they had been issued during earlier negotiations for vacation of the suit property, which had not fructified, and were liable to be returned. According to the Respondents, the settlement recorded on **26.09.2022**, superseded all prior negotiations.

12. Thereafter, **several correspondences were exchanged between the parties**, wherein they substantially reiterated their respective stands.

13. The Appellants/Defendants then moved an **Application under Section 151 CPC** dated 24.01.2023 before the learned Trial Court seeking setting aside of the Joint Settlement and the consequent Judgment and Decree dated 26.09.2022, *with an alternative prayer that the Respondents be directed to pay the amount covered under the aforesaid cheques.*

14. In the said Application, the Appellants substantially reiterated the case set up by them; they claimed that they had agreed to the settlement on the basis of assurances and representations made by the Respondents regarding payment of amounts over and above Rs.40,00,000/- and that the alleged additional understanding had not been incorporated in the settlement recorded before the learned Trial Court.

15. It was claimed that *their consent had been procured on the basis of false promises and representations and they relying upon the same*, had signed the settlement and handed over possession of the portion occupied by them.

16. The learned Trial Court, *vide* **Order dated 23.03.2023**, dismissed the



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aforesaid Application. It observed that the settlement recorded on 26.09.2022 categorically reflected receipt of Rs.40,00,000/- towards full and final settlement and contained no reference to any further payment, assurance or understanding.

17. It was further noticed that the Court had specifically enquired from the parties regarding the terms of settlement and the parties had stated that they understood and agreed to the same, without any objection being raised by the Appellants.

18. Moreover, the Joint Statement dated 26.09.2022, recorded in the presence of the learned Counsel for the parties, made no reference to any assurance regarding payment of an additional amount. It was held that the statements of the parties recorded before the Court, constituted the settlement between them and that the same had been entered into with free will and without any threat, fear or coercion. **Finding no ground to set aside the Judgment and Decree dated 26.09.2022, the Application was dismissed,** by the learned Trial Court.

19. Aggrieved by the Judgment and Consent Decree dated 26.09.2022 and the subsequent Order dated 23.03.2023, **the Appellants have preferred the present Appeal.**

20. **The ground of challenge** to the consent Decree dated **26.09.2022**, and the dismissal of the Application under S.151 CPC, are that the learned Trial Court failed to appreciate that the settlement between the parties was allegedly for a total sum of **Rs.3.5 Crores**, comprising of **Rs.50,00,000/- as upfront payment** and the balance amount of **Rs.3,00,00,000/- upon sale of the suit property**. It is asserted that the amount of Rs.50,00,000/- comprised Rs.40,00,000/- paid through Demand Drafts and



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Rs.10,00,000/- was covered under the two Post-Dated Cheques.

21. It is asserted that though the Appellants wanted the complete terms of settlement to be recorded before the learned Trial Court, the Respondents/Plaintiffs persuaded them not to incorporate the entire arrangement, on account of the alleged implications of **Court Fee and Income Tax/Capital Gains**. It is claimed that the Appellants agreed to the settlement and handed over the possession, only on the aforesaid representations and assurances. According to them, the Consent Decree dated 26.09.2022 was vitiated by **fraud, misrepresentation and undue influence**, and the learned Trial Court erred in dismissing their Application seeking setting aside of the said Consent Decree.

22. The **Respondents/Plaintiffs have contested the present Appeal by filing their Reply** to the Regular First Appeal, which has been subsequently supplemented by their **Written Arguments/Submissions** dated 06.08.2024.

23. A *preliminary objection* has been raised to the maintainability of the Appeal on the ground that the Judgment and Decree dated 26.09.2022 was passed with the consent of the parties and an Appeal thereagainst, **is barred by Section 96(3) CPC**.

24. It is further asserted that the Appellants had already approached the Court which recorded the compromise, by filing an Application under Section 151 CPC and, the said Application having been dismissed vide Order dated 23.03.2023; they could not thereafter, maintain another challenge to the same settlement, by way of this Appeal.

25. It is further contended that *Order XLIII Rule 1A(2) CPC would not come to the aid of the Appellants*, since no dispute regarding the factum or



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terms of the compromise had been raised when the settlement was recorded on 26.09.2022.

26. According to the Respondents, all the Appellants had appeared before the learned Trial Court along with their learned Counsel, acknowledged receipt of Rs.40,00,000/- as full and final settlement and have handed over possession of the portion in their occupation.

27. On **merits**, the Respondents have denied that the Appellants had any right, title or interest in the suit property and reiterated that they and their parents had occupied only one room and kitchen admeasuring about 28.58 sq. yards, as permissive licensees. The alleged arrangement for payment of Rs.3.50 Crores has also been specifically denied on the ground that no such term finds mention either in the Joint Statement dated 26.09.2022 or in the settlement recorded before the learned Trial Court.

28. In support of their objections, the Respondents have placed reliance upon *Banwari Lal v. Chando Devi*, (1993) 1 SCC 581; *Kishun @ Ram Kishun v. Behari*, (2005) 6 SCC 300; *Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566; *Daljit Kaur v. Muktar Steels Pvt. Ltd.*, (2013) 16 SCC 607; *R. Janakiammal v. S.K. Kumarasamy*, (2021) 9 SCC 114; and *Vipan Aggarwal v. Raman Gandotra*, (2023) 10 SCC 529, and have sought dismissal of the Appeal, both on the ground of maintainability as well as on merits.

Submissions heard and record perused.

29. The Respondents/Plaintiffs had filed **Civil Suit No. 502/2017** for Mandatory Injunction and *Mesne* Profits on the averments that the



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Appellants/Defendants were permissive and limited licensees in respect of one room and kitchen forming part of the suit property, who had failed to vacate the same despite termination of the said permission.

30. During the pendency of the Suit, the parties arrived at a Settlement, which was recorded on **26.09.2022** and the Consent Decree was passed on the said date. The relevant terms thereof, are reproduced as under:

“We have amicably settled the matter. The defendants acknowledge that they and/or their legal heirs/ anyone claiming through them have no right, title and interest in the property E-16/1269, Bapa Nagar, Padam Singh Road, Karol Bagh, New Delhi 110005 (admeasuring 270 sq. yds.) and they have handed over the peaceful possession of the portion in their possession in the property in question.

In the room in question, an old double bed, refrigerator, sofa, old TV, Gas stove, utensils are lying and the defendants have no objection, if the same are sold by the plaintiff as scrapped and the defendants claim no right over the same or its sale proceeds.

They have handed over two keys of said room/kitchen (portion in their possession) to the plaintiffs today in the court. The plaintiffs have handed over three demand drafts to the tune of Rs.40 Lakhs to the defendants (13 lakhs to defendant no.1; 14 Lakhs to defendant no.2 and Rs.13 Lakhs to defendant no.3 by way of demand drafts).



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They acknowledge that this is full and final settlement and defendants acknowledge that they have not created any right, title, interest, encumbrance, in the said property in favour of anyone.

The parties further undertake that there will be no litigation with respect to this property from either side, civil or criminal and this is a full and final settlement. We shall be bound by the statement made today before the Court”

31. The **impugned Order accepting the Settlement between the parties, dated 26.09.2022 inter-se the parties**, reads as under:

“Ld. counsels for parties submit that plaintiffs and defendants have amicably settled the matter. The defendants submitted that they and/ or their legal heirs/ anyone claiming through them have no right, title and interest in the property E- 16/1269, Bapa Nagar, Padam Singh Road, Karol Bagh, New Delhi 110005 (admeasuring 270 sq. yds.) and they have handed over the peaceful possession of the portion in their possession in the property in question. Defendants further submit that in the room in question, an old double bed, refrigerator, sofa, old TV, Gas stove, utensils are lying and they have no objection, if the same are sold by the plaintiffs as scrapped and they claim no right over the same or its sale proceeds. Defendants have handed over two keys of said room/kitchen (portion in their possession) to the plaintiffs today in the court and the plaintiffs have handed over three demand drafts to the tune of Rs. 40 Lakhs to the defendants (13 lakhs to defendant no. 1, 14 Lakhs to defendant no. 2 and Rs. 13



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Lakhs to defendant no. 3 by way of demand drafts). Parties submit that this is full and final settlement and defendants acknowledged that they have not created any right, title, interest, encumbrance, in the said property in favour of anyone. The parties further undertake that there will be no litigation with respect to this property from either side, civil or criminal and this is a full and final settlement.

The court has enquired from the parties about the settlement and parties submit that they have understood the terms of the settlement and agreed to the same.

Joint statement of plaintiffs and defendants is recorded to this effect.

In view of the same, the present suit is decreed in terms of settlement.

Pending application(s) stands disposed off.

Decree sheet be prepared accordingly.

File be consigned to record room after due compliance.”

32. It is admitted by the parties that all the three Appellants/Defendants along with their respective learned Counsels, were personally present before the learned Trial Court on **26.09.2022**. Their Joint Statement was recorded on solemn affirmation, wherein they acknowledged that they, their Legal Heirs or anyone claiming through them, had **no right, title or interest in the suit property**. They handed over peaceful possession along with the two keys of the portion in their occupation and simultaneously received three Demand Drafts totalling to **Rs.40,00,000/-**, from the Respondents/Plaintiffs. The parties further categorically stated that it was their **full and final settlement and that there would be no further civil or criminal litigation, in respect of the suit property**.



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33. It is further **not disputed** that the learned Trial Court had specifically enquired from the parties about the settlement and they affirmed that they had understood its terms and agreed to the same. **Consequently, the Suit was decreed, in terms of the settlement.**

34. Essentially, the controversy in the present Appeal arises from the **Consent Decree dated 26.09.2022**. The two aspects for consideration are: **firstly**, whether an Appeal against the said Consent Decree is maintainable, in view of the statutory bar contained in **Section 96(3) CPC**; **secondly**, whether the **Compromise Decree dated 26.09.2022**, was vitiated as certain alleged assurances and monetary terms allegedly forming part of the settlement between the parties, *were not incorporated in the Joint Statement recorded before the learned Trial Court.*

Maintainability of the Appeal against Consent Decree, in terms of Section 96(3) CPC:

35. To appreciate the controversy, it would be pertinent to reproduce proviso to **Section 96 CPC**, along with *Order XXIII Rules 3 and 3A* and *Order XLIII Rule 1A*. They read as under:

Section 96 — Appeal from original decree

“96. Appeal from original decree.—

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.



(2) *An appeal may lie from an original decree passed ex parte.*

(3) *No appeal shall lie from a decree passed by the Court with the consent of parties.*

(4) *No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”*

Order XXIII Rule 3 — Compromise of suit

“3. Compromise of suit.— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

Order XXIII Rule 3A — Bar to suit

“3A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

Order XLIII Rule 1A — Right to challenge non-appealable orders in appeal against decrees

“1A. Right to challenge non-appealable orders in appeal against decrees.—



(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.”

36. The law in regard to maintainability of an Appeal against a Consent Decree, has been recently explained by the Supreme Court in ***Sakina Sultanali Sunesara (Momin) v. Shia Imami Ismaili Momin Jamat Samaj & Ors., 2025 INSC 570***, wherein it was observed as under:

*“8. In our opinion, the interpretation of these provisions is **quite clear and coherent**. A party that accepts the compromise is bound by it and cannot appeal (Section 96(3)). A party that denies the compromise must first raise that dispute before the Trial Court (proviso to Order XXIII Rule 3). A fresh suit is no longer possible (Order XXIII Rule 3-A). **If, and only if**, the Trial Court decides the objection and passes a decree adverse to the objector, a first appeal lies under Section 96(1); in that appeal the appellant may, by virtue of Order XLIII Rule 1-A(2), challenge the recording of the compromise.”*

37. It is thus, evident that the statutory scheme contemplates a **specific and sequential course of challenge** to a Compromise Decree. Where the compromise is accepted by the parties, the bar under Section 96(3) CPC operates to challenge it by way of Appeal. **However, where the compromise itself is disputed**, the party is required to first approach the



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Court which had recorded the compromise, in terms of the *proviso to Order XXIII Rule 3 CPC*. It is only upon such objection being considered and decided adversely that the decree can thereafter, be carried in a First Appeal under Section 96(1) CPC, wherein Order XLIII Rule 1A(2) CPC enables the Appellant to assail the recording of the compromise. Therefore, the remedy before the Appellate Court is preceded by, and necessarily follows, an adjudication by the Court which had recorded the compromise.

38. The Supreme Court in *Sakina Sultanali Sunesara (Momin) (supra)* thereafter, crystallised the aforesaid position and observed as under:

“11. The path is therefore settled: the proviso to Order XXIII Rule 3 is not optional; it is the exclusive first part of call for any party on record who denies the compromise. Order XLIII Rule 1-A does not create a new right of appeal; it merely enables an appellant, already before the Appellate Court, to attack the decree on the ground that the compromise should not have been recorded. When the fact of compromise is not disputed, the bar in Section 96(3) is absolute.”

39. It is thus, unequivocally held that a party who disputes the compromise, **cannot bypass the Court which had recorded the same**. The first recourse necessarily lies before that Court under the proviso to **Order XXIII Rule 3 CPC**. It does not confer an independent right of Appeal, but only enables the Appellant already before the Appellate Court, to challenge the Decree on the ground that compromise should not have been recorded. **Therefore, the statutory scheme places the initial determination of the validity of the compromise before the Court**



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which had recorded it.

40. The Appellants herein, have followed this very course, as stated in Sakina Sultanali Sunesara (Momin) (supra). The Appellants, first approached the learned Trial Court, which had recorded the compromise and questioned the settlement ***on the ground that their consent had been obtained on the basis of certain assurances and monetary terms which, according to them, had not been incorporated in the Joint Statement.***

41. The learned Trial Court however, considered the aforesaid objections and declined to set aside the Consent Decree. The first recourse contemplated under the statutory scheme, as explained in *Sakina (supra)*, therefore, **stood exhausted.**

42. The Appellants have thereafter, approached this Court assailing the Consent Decree as well as the rejection of their challenge, thereto. The present Appeal has, therefore, travelled through the sequential course contemplated under the CPC and explained in *Sakina (supra)*.

43. **The Appeal, is therefore, held to be maintainable, as per Order XLIII Rule 1A CPC read with Section 96(3)CPC.**

II. Whether the Consent Decree dated 26.09.2022 stood vitiated on account of the alleged unrecorded terms:

44. The Explanation to **Order XXIII Rule 3 CPC** provides that an agreement or compromise which is *void or voidable* under the **Indian Contract Act, 1872**, shall not be deemed to be lawful within the meaning of the said Rule. The question which, therefore, arises for consideration is whether the **Consent Decree dated 26.09.2022**, founded upon the



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compromise recorded before the learned Trial Court, stood vitiated on account of the alleged fraud, inducement or assurances of payment beyond the terms expressly incorporated in the Joint Statement dated **26.09.2022**.

45. A bare perusal of the **Joint Statement dated 26.09.2022**, as reproduced hereinabove, reflects that the settlement recorded before the learned Trial Court was **neither vague nor ambiguous, nor was it incomplete or uncertain**. The consideration was specifically quantified at **Rs.40,00,000/-**, which stood paid through three Demand Drafts of Rs.13,00,000/-, Rs.14,00,000/- and Rs.13,00,000/- respectively. Simultaneously, the Appellants handed over possession along with the two keys and acknowledged that neither they nor their Legal Heirs or anyone claiming through them had any right, title or interest in the Suit Property. **The parties thereafter unequivocally declared that the aforesaid arrangement constituted their full and final settlement.**

46. The manner in which the settlement was recorded is equally material. All three Appellants were personally present before the learned Trial Court along with their respective learned Counsels and their Joint Statement was recorded on solemn affirmation. The learned Trial Court did not merely act upon a statement made on their behalf, but specifically enquired from the parties *whether they had understood the terms of settlement and whether they agreed to the same*. The Appellants answered the said query in the affirmative.

47. The Appellants do not deny having made the aforesaid statements, nor do they dispute that the settlement was acted upon and possession was handed over to the Respondents. Their case, essentially, is that apart from



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the terms expressly recorded, there existed **further monetary assurances**, which formed part of the bargain between the parties but were deliberately kept outside the Joint Statement.

48. According to the Appellants, the suit property was worth about **Rs.15 Crores** and there was no reason for them to surrender their claims merely upon receipt of Rs.40,00,000/-. It is asserted that the Respondents had further assured payment of **Rs.3 Crores upon sale of the Suit Property**, apart from the amount represented by the two Post-Dated Cheques.

49. The nature of the alleged omitted term itself assumes significance. The alleged additional monetary liability cannot be treated as an **incidental or peripheral term** of the settlement. If payment of a further sum of Rs.3 Crores was indeed an integral part of the consideration which induced the Appellants to surrender possession and relinquish their claims in the suit property, **it would ordinarily and naturally have found a specific and express mention in the settlement recorded before the learned Trial Court.**

50. Its complete absence from the Joint Statement is, therefore, significant, particularly when the parties expressly recorded Rs.40,00,000/- as their **full and final settlement**. A settlement solemnly affirmed before a Court must ordinarily be regarded as the **last word on the terms finally agreed between the parties**, unless cogent material establishes that the terms so recorded did not represent their true and voluntary agreement.

51. What the Appellants seek to do is not to interpret an ambiguous or existing term of the settlement, but to **superimpose an additional monetary obligation** which finds no reflection whatsoever in the Joint



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Statement. Such an obligation cannot be read into a concluded settlement merely on the basis of subsequent assertions, unless its existence as part of the final bargain is established by clear and cogent material.

52. The aforesaid conclusion also finds support from the principles embodied in **Sections 94 and 95 of BSA**. Once the terms of a transaction have been reduced into writing, the document itself constitutes the primary evidence of those terms and oral assertions cannot ordinarily be relied upon to *contradict, vary, add to or subtract from* the terms so recorded.

53. In the present case, the Joint Statement categorically records payment of **Rs.40,00,000/- as the full and final settlement** between the parties. Consequently, unless the Appellants are able to establish fraud, inducement or any other circumstance affecting the validity of their consent, the alleged oral assurance of payment beyond the recorded amount cannot, by itself, be read into or added to the settlement.

54. The conduct of the parties at the time of settlement further militates against the case now set up by the Appellants. The compromise was not merely recorded for performance at a later stage; it was **acted upon contemporaneously**. The Appellants accepted Rs.40,00,000/-, handed over possession and the keys, relinquished their claims in respect of the Suit Property and agreed that no further civil or criminal litigation would survive in relation thereto. **Having accepted the benefits flowing from the settlement and simultaneously performed their reciprocal obligations, it is not open to the Appellants to resile from the settlement**, unless they establish by cogent material that their consent itself stood vitiated.



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55. The reliance upon the **two Post-Dated Cheques of Rs.5,00,000/- each** also does not advance the case of the Appellants. The Respondents have explained that the said cheques had been issued during earlier negotiations and did not form part of the final settlement dated 26.09.2022. Significantly, while the Joint Statement specifically records the three Demand Drafts comprising the settlement consideration of Rs.40,00,000/-, it makes **no reference whatsoever to the two Post-Dated Cheques** or to any further amount payable thereunder.

56. The mere existence or issuance of the said cheques, therefore, does not establish that they formed part of the final settlement. **What was required to be established was a clear nexus between the said cheques and the compromise ultimately recorded before the Court.** No such nexus has been demonstrated. The liability represented by the said cheques, therefore, cannot be said to have *crystallised into a binding term of the final compromise*.

57. The subsequent manner in which the case of the Appellants has developed also assumes significance. In the present Appeal, an additional explanation has been introduced that the alleged monetary terms were deliberately not recorded as their disclosure would entail additional **Court Fee and income-tax/capital-gains implications**. This assertion did not find mention in the Application under **Section 151 CPC** preferred before the learned Trial Court.

58. This explanation goes to the very root of the alleged omission. If the additional monetary terms had consciously been kept outside the Joint Statement for the reasons now asserted, **such a material circumstance would naturally have been disclosed at the first available opportunity,**



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when the Consent Decree itself was sought to be recalled. Its subsequent introduction in Appeal, therefore, assumes the character of an **improvement upon the original case**.

59. There is yet another significant circumstance. In their Application seeking setting aside of the Consent Decree, the Appellants themselves proceeded on the premise that the settlement was **binding upon the parties**, while simultaneously asserting that certain further assurances remained to be performed. Their own pleading, therefore, indicates that the grievance initially raised was founded upon an alleged collateral promise beyond the recorded settlement, rather than upon there being no valid settlement between the parties at all.

60. The allegations of **fraud, inducement, cajoling or false assurances** cannot acquire substance merely by use of such expressions. The Appellants were required to establish the foundational facts constituting the alleged vitiating circumstances, namely, the specific representation allegedly made to them, the material proving the same and the manner in which such representation operated upon their consent despite their categorical affirmation before the learned Trial Court that they had understood and accepted the settlement.

61. **No material of such probative value has been brought on record.** The existence of prior negotiations or Post-Dated Cheques may, at the highest, indicate that discussions had taken place between the parties. However, every proposal, assurance or term discussed during negotiations does not necessarily *crystallise into a binding obligation forming part of the final settlement*. What was required to be established was that the alleged additional monetary terms were finally accepted by the parties as



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part of the compromise which was placed before and acted upon in Court. **The record does not establish the same.**

62. Pertinently, the Application under **Section 151 CPC** seeking recall of the Consent Decree was moved on **24.01.2023**, approximately four months after the settlement dated 26.09.2022 had been recorded and acted upon. The delay, by itself, may not determine the validity of the challenge; however, when considered along with the contemporaneous Joint Statement, the unequivocal affirmation before the Court and the complete performance of the recorded terms, **the subsequent retraction further weakens the case now sought to be set up by the Appellants.**

63. The Appellants have, therefore, failed to establish that the settlement was entered into under any undue influence or that their statements were made without understanding their nature and effect. **The material on record does not establish any fraud, inducement or other circumstance sufficient to render the compromise void or voidable.**

64. In the absence of such material, the alleged unrecorded assurances cannot be permitted to **supplant, vary or enlarge** the settlement which the parties themselves solemnly placed before the Court and acted upon. **The Consent Decree dated 26.09.2022, therefore, cannot be said to have been vitiated on account of the alleged additional terms.**

Conclusion

65. The learned Trial Court has, therefore, rightly declined to set aside the **Consent Decree dated 26.09.2022**. The impugned Order does not suffer from any infirmity warranting interference in Appeal.

66. **Accordingly, there is no merit in the present Appeal, which is**



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hereby dismissed.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 25, 2026/va