2026:DHC:3828-DB

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

***Reserved on: 20.03.2026***
***Pronounced on: 06.05.2026***

\+ **EFA(OS) 19/2018 & CM APPLs. 51232/2018, 231/2020, 12415/2021**

HOUSING & URBAN DEVELOPMENT CORPORATION LTD .....Appellant

versus

TOMORROW LAND TECHNOLOGIES EXPORTS LTD & ANR .....Respondents

\+ **RFA(OS) 79/2018 & CM APPLs. 48747/2018, 48748/2018**

HOUSING & URBAN DEVELOPMENT CORPORATION LTD (HUDCO) .....Appellant

versus

TOMORROW LAND TECHNOLOGIES EXPORTS LTD & ANR .....Respondents

\+ **RFA(OS) 1/2025**

M/S TOMMORROWLAND LIMITED, FORMERLY KNOWN AS M/S SHOES EAST LTD .....Appellant

versus

HOUSING AND URBAN DEVELOPMENT CORPORATION LTD AND ANR .....Respondents

\+ **RFA(OS) 2/2025**

M/S TOMMORROWLAND LIMITED, FORMERLY KNOWN AS M/S SHOES EAST LTD .....Appellant

versus

HOUSING AND URBAN DEVELOPMENT CORPORATION LTD AND ANR .....Respondents

**Present:** Mr.Rohit Sharma, Mr.Nikhil Purohit and Mr.Jatin Lalwani, Advs. for HUDCO.

Ms.Iram Majid, CGSC with Mohd. Suboor, Adv. for UOI.
Mr.Kirtiman Singh, Sr. Adv. with Mr.Pavan Sachdeva, Mr.Ishan Sachdeva and Mr.K. K. R. Dass, Advs. for Tomorrow Land Technologies Exports Ltd.

**CORAM:**
**HON'BLE MR. JUSTICE NAVIN CHAWLA**
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**J U D G M E N T**

**NAVIN CHAWLA, J.**

I. ***PREFACE:***

1.1. RFA(OS) 79/2018 has been filed by the Housing & Urban Development Corporation Ltd. (HUDCO) challenging the judgment AND Decree dated 13.01.2017 passed by the learned Single Judge of this Court in CS(OS) 1551/2005.

1.2. HUDCO has also filed EFA(OS) 19/2018 challenging the order dated 29.10.2018 passed by the learned Single Judge of this Court in EA No.482/2018 in Ex.P. No.19/2018, dismissing the objections filed by it against the execution of the judgment and decree dated 13.01.2017.

1.3. RFAs(OS) 1 and 2/2025 have been registered on Special Leave Petition (Civil) 10752-10753/2018 filed by M/s Tommorrow Land Limited against HUDCO being transferred to this Court in terms of the order dated 10.12.2024 passed by the Supreme Court in the said petitions. The said petitions had been filed by M/s Tommorrow Land Limited, earlier known as M/s Shoes East Ltd. Co., challenging the

judgment and decree dated 13.01.2017 as also the order dated 12.12.2017 passed by the learned Single Judge of this Court in Review Petition No.313/2017, which in turn, had been filed by it seeking review of the judgment and decree dated 13.01.2017 passed in the abovementioned suit.

1.4. As these appeals primarily arise out of and challenge the judgment and decree dated 13.01.2017 passed by the learned Single Judge of this Court in the abovementioned Suit, they had been taken up together for hearing and are being disposed of by this common judgment.

1.5. We may herein itself note that as far as RFA(OS) 79/2018 is concerned, the same had been filed with a delay of 620 days and HUDCO had filed an application seeking condonation of the said delay, being CM APPL. 48747/2018. At the very commencement of the hearing of these appeals and with the consent of the counsels appearing for the parties, we had clarified that as the issue of condonation of delay also raises similar submissions of facts as raised in the appeal, it shall be considered along with the appeals. In case we find the delay not to have been sufficiently explained by HUDCO, RFA(OS) 79/2018 shall be dismissed without going into the merits of the same, while in case we find the delay to be explained and sufficient cause being shown by HUDCO to condone the delay, the appeals shall be considered on merits. We have, therefore, proceeded to hear the counsels appearing for the parties on not only the application seeking condonation of delay in filing of RFA(OS) 79/2018 but also on the merits of the appeals.

1.6. As these are cross appeals, for sake of convenience, HUDCO shall hereinafter be referred to as the ***'appellant'*** and Tommorrow Land Technologies Exports Ltd. shall be referred to as the ***'respondent'***.

## *II. FACTUAL MATRIX:*

Facts in brief giving rise to the present set of appeals are as under:

2.1. The appellant is a Public Sector Government company engaged in providing loans for the purpose of housing and urban infrastructure projects in India.

2.2. The land admeasuring about 60.6 acres situated at Pinjrapole (Andrews Ganj) in Delhi was allotted to the appellant by the Ministry of Urban Development vide the allotment letter dated 01.11.1990. The said allotment letter provided that the piece of land admeasuring 17.6 acres was meant for the purpose of a Community Centre (hereinafter referred to as the 'HUDCO Place') to be utilized for the development of hostel and guest house facilities as per the urban design for the complex approved by the Ministry of Urban Development. Subsequently, allotment letters dated 27.03.1992 and 15.06.1993 were issued by the Government of India in favour of the appellant, modifying the terms of the allotment.

2.3. The appellant, on 30.06.1994, released a brochure inviting bids for giving on long term co-terminus lease of 99 years, constructed properties on the above land, including guest houses, comprising of rooms, restaurants, shops, etc., and a Five Star Hotel land along with car park, built and situated in the HUDCO Place.

2.4. The respondent, on 15.07.1994, submitted a bid of Rs. 3.85 crores for 9 guest house blocks, 9 restaurants and 25 shops situated and constructed in HUDCO Place with the facilities as claimed by the aforesaid brochure. The respondent was announced as the highest bidder and through three separate allotment letters dated 31.10.1994, allotted 9 guest house blocks, 9 restaurants and 25 shops, respectively, for a total consideration of Rs. 99.01 Crores on a sub-lease basis. The said allotment letter for guest house blocks had provided a schedule of payment for the respondent to deposit the requisite amount in three instalments in the manner as follows:

| Instalment | Instalment Amount | Deadline |
|---|---|---|
| 1st | Rs. 28,40,40,000/- (Balance amount after deducting the earnest money paid with the offer amounts to Rs. 25,25,40,000/-) | By 28.11.1994 (Within four weeks of the date of the allotment letter dated 31.10.1994) |
| 2nd | Rs. 28,40,40,000/- | By 31.01.1995 (Within three months of the date of the allotment letter dated 31.10.1994) |
| 3rd/Final | Rs. 14,20,20,000/- | Payable at the time of handing over the possession of the guest house blocks. |

2.5. The allotment letter for 9 restaurants provided a schedule of payment for the respondent to deposit the requisite amount in three instalments in the manner as follows:

| Instalment | Instalment Amount | Deadline |
|---|---|---|
| 1st | Rs. 8,69,72,000/- (Balance amount after deducting the earnest money paid with the offer amounts to Rs. 8,24,72,000/-.) | By 28.11.1994 (Within four weeks of the date of the allotment letter dated 31.10.1994) |

| | | |
|---|---|---|
| 2nd | Rs. 8,69,72,000/- | By 31.01.1995 (Within three months of the date of the allotment letter dated 31.10.1994) |
| 3rd/Final | Rs. 4,34,86,000/- | Payable at the time of handing over the possession of the restaurants. |

2.6. The allotment letter for 25 shops had provided a schedule of payment for the respondent to deposit the requisite amount in three instalments in the manner as follows:

| Instalment | Instalment Amount | Deadline |
|---|---|---|
| 1st | Rs. 2,50,28,000/- Balance amount after deducting the earnest money paid with the offer amounts to Rs. 2,25,28,000/- | By 28.11.1994 (Within four weeks of the date of the allotment letter dated 30.10.1994) |
| 2nd | Rs. 2,50,28,000/- | By 31.01.1995 (Within three months of the date of the allotment letter dated 31.10.1994) |
| 3rd/Final | Rs. 1,25,14,000/- | Payable at the time of handing over the possession of the shops. |

2.7. Simultaneously, the appellant also issued Allotment Letter dated 31.10.1994 in favour of the respondent for perpetual lease for the Five Star Hotel land admeasuring 3 acres along with 415 Car Park, for a consideration of Rs. 64.10 crores (for the Hotel site) and Rs. 14 crores (for the Car Park), payable in instalments as under:

> *"(A) Hotel Site (Rs. 64.10 Crores)*
> *(i) Within 4 weeks of the date of this allotment*

*letter (i.e. before 28.11.94)- 40% (Rs. 25,64,00,000)*
*(ii) Before the end of one year of the date of this allotment letter (i.e. before 31.10.95)- 30% (Rs.19,23,00,000)*
*(iii) Before the end of two years of the date of this allotment letter (i.e. before 31.10.96)- 30% (Rs.19,23,00,000)*

*Rs.64,10,00,000*

*(B) Car Parking Space (Rs.14.00 Crores)*
*(i) Within four weeks of the date of issue of allotment letter (i.e. before 28.11.94)- 10% (Rs. 1,40,00,000)*
*(ii) Before the end of one year of the date of issue of allotment letter (i.e. before 31.10.95)- 40% (Rs.5,60,00,000)*
*(iii) Within four weeks of issue of letter by HUDCO intimating that the services were ready for being handing over- 50% (Rs.7,00,00,000)*

*Rs.14,00,00,000*"

2.8. The respondent filed Suit No. 1062/1995 before this Court seeking declaration that Clause 2 (viii) of the allotment letters is void and inoperative and also prayed for a permanent injunction against the appellant from cancelling the allotment letters dated 31.10.1994, with a further mandatory injunction directing the appellant to grant an extension of six months for the respondent to pay the amount payable as the second instalment of payments to be made for the aforementioned allotment of Guest Houses, Restaurants and shops.

2.9. This Court, *vide* an interim order dated 15.12.1995, directed that subject to the payment of the dues owed by the respondent till 31.04.1995 along with interest at the rate of 24% from 01.05.1995 to 31.12.1995, on or before 31.12.1995, the appellant shall remain restrained from terminating the allotment in favour of the respondent. It was further clarified that on the respondent failing to make the

payment, the injunction granted in favour of the respondent shall be deemed to be vacated and the appellant shall be free to proceed in accordance with law.

2.10. The said order was not complied with by the respondent due to which, the appellant issued three separate cancellation letters dated 01.01.1996, cancelling the said allotments made *vide* allotment letters dated 31.10.1994 and forfeiting the amount already paid by the respondent.

2.11. As recorded in the order dated 11.01.1996 passed by this Court in Suit No. 1062/1995, the respondent had offered a bank draft of Rs. 90 Crores to the appellant. The same was, however, not accepted by the appellant.

2.12. The Land & Development Office, in supersession of the letter dated 27.03.1992, issued allotment letter dated 19.03.1996 in favour of the appellant, allotting 42.6 acres of land at Andrews Ganj in favour of the appellant, subject to certain conditions.

2.13. Pursuant to the aforementioned allotment letters, the appellant had obtained sanctions for building plans for the guest house blocks from the Fire Department on 14.05.1996 and from the Delhi Urban Art Commission on 15.05.1996.

2.14. The appellant on 14.06.1996 proceeded to release a fresh brochure inviting bids for the Guest House Blocks. However, no bids were received by the appellant.

2.15. The Municipal Corporation of Delhi, *vide* approval letter dated 09.08.1996, approved the building plans for the guest house blocks situated in HUDCO Place.

2.16. In November, 1996, the appellant released another brochure inviting bids for the Five Star Hotel situated in the community centre, while disclosing that perpetual lease of the same was yet to be executed in its favour. Pursuant to such invitation, the bids for the five-star hotel were allotted in favour of Leela Hotels Ltd. for Rs. 217.94 Crores on 31.03.1997.

2.17. It is the case of the respondent that simultaneously, the appellant granted further extensions of time for payment of instalments without levy of interest in favour of another allottee within the same Community Centre project, namely Ansal Properties & Industries Ltd., in respect of the Shopping Arcade component situated in HUDCO Place.

2.18. In January 1997, the respondent instituted Suit No. 2/1997 before the Court of the learned Additional District Judge, Delhi against the appellant and the Municipal Corporation of Delhi, challenging the cancellation letters dated 01.01.1996 and seeking declaratory and injunctive reliefs in respect of the guest house blocks, restaurants and shops, along with consequential protection against coercive municipal demands.

2.19. Thereafter, on 30.01.1997, the respondent filed an application in Suit No. 1062/1995, which was pending before this Court, and sought withdrawal of the said suit while stating that a comprehensive subsequent suit had already been filed covering the full cause of action arising from cancellation and forfeiture.

2.20. This Court, *vide* order dated 13.02.1997, permitted withdrawal of Suit No. 1062/1995 in view of the subsequent comprehensive

proceedings, and the earlier suit accordingly stood disposed of as withdrawn.

2.21. As far as the Five Star Hotel land and car park is concerned, the appellant issued an allotment letter dated 31.03.1997 in favour of Leela Hotels Ltd.

2.22. The Land & Development Office executed a perpetual lease deed dated 04.07.1997 for a period of 99 years in respect of the land allotted for the Community Centre in favour of the appellant, thereby formalising the long-term leasehold rights of the appellant over the project land.

2.23. Following infrastructure allotments and grid sub-station arrangements within the project area, in November 1997, electricity connections to the Guest House Blocks were commissioned through the concerned utility Service Provider.

2.24. In Suit No. 2/1997 filed by the respondent, the learned Additional District Judge, *vide* order dated 23.02.1998, confirmed the *interim status-quo* protection earlier granted in favour of the respondent and disposed of the pending interim applications filed by both sides. Aggrieved by the same, the appellant had preferred FAO No. 129/1998 before this Court.

2.25. In the said appeal, this Court, *vide* its order dated 26.03.1998, stayed further proceedings in the Suit.

2.26. In September 2003, the appellant filed an application in FAO No. 129/1998, seeking permission to utilize the subject properties without re-tendering or creating third party rights, including by way of short-term licensing to government bodies or other entities, pending

final adjudication of the appeal. This Court passed a consent order dated 18.11.2003, modifying the earlier status quo directions and permitting limited utilization of the properties by the appellant without re-allotment, while preserving the rights and contentions of the parties in the pending suit.

2.27. This Court, by a consent order dated 17.12.2003, disposed of the appeal by directing that the Suit shall be amended to include relief of specific performance and damages, and on payment of requisite court fee, the Suit shall be transferred to this Court.

2.28. In the meantime, the Municipal Corporation of Delhi issued Occupancy Certificate dated 06.07.1998 in favour of the appellant in respect of nine Guest House Blocks along with restaurants and shops forming part of the project, and on the same date, revised layout approvals were granted subject to approval of service and drainage plans. The Water Supply Scheme was also approved on 30.08.1999. Additionally, on 06.09.1999, an approval was granted for the Drainage Plan Scheme for the project area by the concerned authority. Thereafter, the Revised Sewerage Scheme for the project was approved on 07.09.1999 by the competent authority, thereby completing the set of major utility and service plan sanctions required for the project layout.

2.29. Meanwhile, this Court also delivered a judgment dated 20.01.2003 in OMP No. 308/2002, titled ***HUDCO vs. Leela Hotels Ltd.,*** filed by the appellant, directing refund of the entire amount paid by Leela Hotels Ltd. together with interest at the contractual rate. The appeal of the appellant against the same was dismissed by the

Division Bench of this Court *vide* its order dated 09.11.2004, and the Special Leave Petition filed by the appellant also came to be dismissed by the Supreme Court *vide* order dated 12.02.2008.

2.30. As noted above, this Court passed a consent order dated 17.12.2003, directing that the pending suit be amended to include reliefs in the nature of specific performance and that requisite court fees be paid, and be transferred to this Court for expeditious disposal within the time indicated. In compliance therewith, the Suit No. 2/1997 was transferred to this Court on 16.01.2004 and renumbered as CS(OS) No. 1551/2005.

2.31. In the Suit, the appellant filed an application, being I.A. No. 15484/2008, seeking vacation of the *interim* order dated 17.12.2003 restraining it from re-allotment of the Suit Properties. The same was, however, rejected vide order dated 24.05.2010, albeit permitting the appellant to let out the same by inviting applications from the general public.

2.32. On 10.08.2016, the learned Single Judge passed the following order in the Suit:-

> *1. Today's hearing is in pursuance to the order dated 25th July, 2016.*
> *2. The senior counsel for the plaintiff at the outset, without prejudice to the rights and contentions of the plaintiff and to put an expeditious end to the controversy and to prevent further waste of the property subject matter of this suit, states that the plaintiff would be willing to consider resolving the dispute subject to the entire amount paid by the plaintiff to the defendant no.1 Housing & Urban Development Corporation Ltd. (HUDCO) being refunded to the plaintiff with*

*interest at such rate which may be deemed appropriate by the Court.*

*3. On enquiry, I am told that the plaintiff has paid a sum of about Rs.3.85 crores as earnest money, Rs.1.45 crores towards delayed payment interest and about Rs.36 crores towards first instalment as against the total price of about Rs.99 crores.*

*4. The clause in the agreement between the parties with respect to forfeiture has been perused. The same indeed permits forfeiture of all amounts paid till date. However the fact remains that as per the prevalent law, the defendant no.1 HUDCO, to be entitled to forfeiture of such a large amount, is required to prove damage to that extent accruing from the breach of the agreement by the plaintiff. The question of breach itself is a disputed one and it is yet to be determined whether the breach was on the part of the plaintiff or on the part of the defendant no.1.*

*5. As far as I recollect, as per the recent dicta of the Supreme Court in* ***Kailash Nath Associates Vs. Delhi Development Authority*** *(2015) 4 SCC 136 it would be difficult for defendant no.1 HUDCO to sustain a claim for forfeiture of such a large amount of money especially when on enquiry I am informed that the claim for forfeiture in the written statement is only on the basis of contractual clause and not on the basis of having suffered any actual loss. The only loss which the defendant no.1 HUDCO appears to have suffered is of the property being locked up since the year 1997-98 when the completion certificate was issued. That aspect can be taken into consideration while directing refund to the plaintiff.*

*6. This is informed to be a commercial dispute within the meaning of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and the CPC, as applicable to commercial suits, permits the Court to summarily dispose of the suit.*

*7. Prima facie, it appears that the proposal*

> *placed by the plaintiff today and as recorded above is a reasonable one and should be seriously considered by the defendant no.1 HUDCO and Union of India (UOI), having regard to the fact that the expeditious disposal of the suit in terms thereof will set free the property and the defendant no.1 HUDCO would be able to immediately reap benefits therefrom. I may add that even if the restraint order in force qua the property were to be vacated, the cloud over the title of the property would remain and which would prevent the defendant no.1 HUDCO from freely dealing with the property.*
>
> *8. It is therefore deemed appropriate that the Board of Directors of defendant no.1 HUDCO and the Secretary, Ministry of Urban Development, Government of India should bestow their attention to the proposal in a commercial sense, as is the purport of introducing the Commercial Courts Act.*
>
> *9. The Secretary of defendant no.1 HUDCO is requested to, within one week, issue notices convening a meeting of the Board of Directors of defendant no.1 HUDCO to consider the proposal and in the event of the Ministry of Urban Development being approached by defendant no.1 HUDCO in this regard, the Secretary, Ministry of Urban Development is also requested to expeditiously consider the proposal along with the comments if any of defendant no.1 HUDCO. 10. A copy of this order be also forwarded to Mr. Sanjay Jain, Additional Solicitor General for appropriate steps."*

2.33. The above order can be said to be the genesis of the entire dispute now before us.

2.34. Pursuant to the above order, the Board of Directors of the appellant passed the following resolution in its meeting held on 23.08.2016:

*"Thereafter, the Board unanimously passed the following resolution(s):*
*"RESOLVED THAT in view of the Hon'ble High Court of Delhi order dated 10th August, 2016 and subject to necessary approval/NOC of the Ministry of Urban Development (MoUD), the approval of the Board be and is hereby accorded for refund of first instalment forfeited by HUDCO excluding earnest money & the interest for delayed payment paid thereon by MS Shoes East Limited (MSSEL) for Guest House Block(s) after adjusting the commercial losses caused to HUDCO due to the omission and commission of MSSBL, etc, and other expenses incurred by HUDCO since 1997-98, from the date of completion of project.*

*RESOLVED FURTHER THAT MoUD be requested for*
*i. Issuing 'NOC' to refund/ release the payment of first Instalment paid by MS Shoes East Limited and release the aforesaid payment to HUDCO for onward release to MSSEL in view of the advice of Hon'ble High Court of Delhi; and*
*ii. Release the accumulated outstanding balance in the 'No lien AGR Account', which is presently in a deficit subject to reconciliation by General Accounts Wing, HUDCO,*

*RESOLVED FURTHER THAT in case the MoUD so directs and in view of the High Court Orders, approval of the Board be and is hereby accorded to HUDCO to refund the first instalment to MS Shoes, East Limited (MSSEL) paid by them after adjusting the commercial losses caused to HUDCO due to the omission and commission of MSSEL, etc, and other expenses incurred by HUDCO since 1997-98, from the date of completion of project and the same be debited to No Lien AGP Account as project expenditure which shall be charged Interest @ 10.75% p.a., as approved by the*

*Board in its 472nd meeting held on 27th August, 2010 vide Item no. 47210.*

*RESOLVED FURTHER THAT approval of the Board be and is hereby accorded to work out the commercial losses and other expenditure incurred by HUDCO since completion of Guest House Blocks in 1997-98 through independent valuation to be got done an top priority by the WD Wing in a time bound manner through a professional real estate valuation entity dealing with such type of complex projects and if so required, limited tender may be invited by following the due procedure.*

*RESOLVED FURTHER THAT HUDCO's Advocate be advised to plead before the Hon'ble Delhi High Court for not paying any interest on the first call money paid by MSSEL for Guest House Blocks, keeping in view the various expenses incurred/commercial losses suffered by HUDCO on the project.*

*RESOLVED FURTHER THAT HUDCO to continue implementing the project as per existing arrangements and continue seeking reimbursement of the amount spent by it, through the 'No lien AGP Account' which is presently in deficit on the projects out of its own resources for carrying out Andrewsganj Project liabilities including the future expenditure, if any, to be incurred on the project.*

*RESOLVED FURTHER THAT WD Wing to continue to vigorously follow up the matter with MoUD for immediate settlement of No lien AGP Account and till the same is settled, HUDCO to continue to charge Interest @10.75% p.a. as approved by the Board earlier."*

2.35. The appellant also addressed a letter dated 19.09.2016 to the

L&DO bringing to their attention the order passed by the learned Single Judge of this Court as also the Board Resolution dated 23.08.2016, and for seeking their No Objection to the refund/release of the first instalment paid by the respondent excluding Earnest Money and interest, etc.. We quote from the letter as under:

> *"In view of the above the action on part of HUDCO has been taken for complying Hon'ble High Court direction and MoUD is kindly requested to consider the following to comply court direction.*
>
> *i. Issue 'No Objection Certificate' (NOC) to refund/release the payment of first installment paid by MS Shoes East Limited excluding Earnest Money and the interest of the delayed payment and release the aforesaid payment to HUDCO for onward release to MSSEL in view of the advice of Hon'ble High Court of Delhi.*
>
> *ii. Release the accumulated outstanding balance of Rs.330.16 crore in the 'No Lien AGP Account', which is presently deficit balance as on 31st August, 2016.*
>
> *iii. A direction to make due payment and book the same into the 'No Lien AGP Account' of Govt. of India being maintained by HUOCO in case of funds are not released by MoUD.*
>
> *An early decision is solicited to facilitate Hon'ble High Court direction as the matter is listed on 27.09.2016."*

2.36. In response to the above, the L&DO, *vide* a communication dated 25.11.2016, informed the appellant that in view of a decision taken in a meeting dated 27.04.2015, NOC was not required. We quote the letter as under:

> *"I am directed to refer to your e-mail dated 24.11.2016 on the above cited subject and to Inform that on perusal of old records, it has been found that a meeting was held on 27.04.2015 In the chamber of Secretary (HUPA), which was also attended by the Secretary (UD) along with officers from MoUD, MoHUPA, L&DO and NBCC to discuss the issues related to HUDCO's Andrewsganj Project and to finally decide the future course of action in this matter (copy of the Minutes of Meeting enclosed). After detailed discussions, the decision taken in the meeting related to this case, in para 5(ii), is reproduced as under:*
>
> *"HUDCO as a lessee will bear all the liabilities of its Andrewsganj Project including liabilities generated out of compliance of various court Orders in cases related to this project."*
>
> *2. In view of tile above decision taken in the aforesaid last high level meeting, issues of NOC to the HUDCO, as requested by them, vide their letter dated 19th September, 2016 is simply not required. In view of this decision, no further clarification from Ministry of Urban Development/ L&DO is required to be given in this case.*
>
> *3. It Is, therefore, requested to kindly enter appearance on the next date of hearing i.e, 28.11.2016 and apprise the Hon'ble High Court, the above position."*

2.37. In the hearing of the Suit held on 28.11.2016, the counsel for the Union of India also placed similar instructions received by him. Though the counsel for the appellant objected to the same and sought time to sort out this issue with the Central Government, the learned Single Judge of this Court felt that the same was not required. We quote the order as under:

> *"1. This order is in continuation of the earlier*

*order dated 10th August, 2016. The counsel for Union of India states that Union of India has vide letter dated 25th November, 2016 informed that it is for HUDCO to take a decision in the matter. He has in this regard handed over a copy of the said letter dated 25th November, 2016 and which is taken on record.*

*2. The counsel for HUDCO states that the said letter is on the basis of some earlier Minutes which do not convey what the said letter interprets the same as.*

*3. The counsel for the Union of India reiterates that HUDCO can take a decision without reference to Union of India.*

*4. Once that is so, it matters not whether the reason given by HUDCO is correct or not.*

*5. The counsel for the HUDCO then states that the time be given to consider the letter and take a decision.*

*6. The matter cannot be adjourned like this. I have already in the order dated 10th August, 2016 stated the reasons in law for which the suggestion as contained therein was made.*

*7. The counsel for the HUDCO upon being asked to argue, states that the senior counsel engaged will be arguing.*

*8. The counsel for the plaintiff states that HUDCO has already taken a decision as contained in the letter dated 19th September, 2016 to refund the monies received except the earnest money and interest.*

*9. The counsel for the HUDCO agrees but states that that was the suggestion of HUDCO to Union of India which Union of India has to accept or reject.*

*10. As per the letter dated 25th November, 2016, HUDCO does not need any further clarification from the Ministry of Urban Development.*

*11. List on 23rd December, 2016. Mr. Akhilesh Kumar, Executive Director (WD) of HUDCO to also remain present in court on the next date."*

2.38. The appellant, *vide* its letter dated 02.12.2016 addressed to the

L&DO, contested the stand of the L&DO and again sought NOC from it to the terms of the settlement.

2.39. On 23.12.2016, both, the L&DO and the appellant, reiterated their respective stands before the learned Single Judge. The learned Single Judge directed them to hold a meeting and to communicate the categorical decision in this regard to the Court on 13.01.2017, failing which the concerned officers were to remain present before the Court.

2.40. On 13.01.2017, the learned Single Judge was again informed that the L&DO and the appellant could not reach a consensus and there was a dispute between them as to who shall bear the financial burden of the proposed settlement with the respondent. At this juncture, the learned Single Judge proceeded to consider the claim of the appellant for forfeiture of the amount paid by the respondent and found that for the same the appellant would have to prove damages accruing from the breach of the agreements by the respondent. The learned Single Judge, relying on the provisions of the Commercial Courts Act, 2015, invoked its power for a summary disposal of the Suit and observed that while the appellant was willing to refund most of the amounts paid by the respondent, the only impediment to the settlement was the submission of the appellant that it required permission of the Government to do so, while the Government was maintaining that no such permission is required. The learned Single Judge opined that this was not an issue to be determined in the Suit and found that the same cannot act as an impediment to the appellant paying amounts to the respondent and getting the property freed of the encumbrance. As far as the plea of the appellant that it did not have

the resources to pay the respondent, the learned Single Judge opined that the appellant can transfer the property to third party and realise substantial amount; it can also pass on the responsibility of getting the property converted to freehold and to bear the charges for the same. The learned Single Judge, accordingly, passed the impugned Decree in favour of the respondent and against the appellant for a sum of Rs. 35,75,40,000/-, being the principal sum of the first instalment paid by the respondent. As far as interest on the same is concerned, the learned Single Judge directed interest at the rate of 16.48% per annum to be paid on the above amount from 30.11.1994 till 30.01.1995 and at the rate of 6% per annum from 30.01.1995 till the date of payment. We quote from the impugned Decree as under:-

> *"18. The position which emerges is that the plaintiff is willing to finish the litigation on refund of the amounts paid and defendant no.1 HUDCO Ltd. is willing to refund most of the said amounts. The only impediment to disposal of this suit in terms of the said settlement/agreement is, that while HUDCO Ltd. says that it needs the permission of Government of India to do so, Government of India states that HUDCO Ltd. does not need such permission.*
>
> *19. The question, whether defendant no.1 HUDCO Ltd. need such permission or not is not to be adjudicated in this suit and is beyond the scope thereof. Whether the said issue is pending before another bench of this Court or not is also not material as even if it is not pending, since the competent authority of HUDCO Ltd. has agreed to refund as aforesaid and the Government of India is not saying that HUDCO Ltd. is not entitled to, there is no impediment to HUDCO Ltd. paying the same to the plaintiff and to having its*

*property freed.*

*20. As far as the contention of the senior counsel for defendant no.1 HUDCO Ltd. that HUDCO Ltd. has no resource to pay the same, I have enquired from the senior counsel for defendant no.1 HUDCO Ltd. whether not HUDCO Ltd. would realize monies from further transfer of the said property / parts thereof upon the same being freed from this litigation and as to why the amounts to be so paid by HUDCO Ltd. cannot be paid therefrom.*

*21. The senior counsel for defendant no.1 HUDCO Ltd. states that as per the terms and conditions imposed by Government of India there are lot of impediments to such transfer.*

*22. The counsel for Government of India states that Government of India in fact has offered that on HUDCO Ltd. complying with the requisite conditions, the leasehold rights in the land underneath can be converted to freehold.*

*23. It appears to me that HUDCO Ltd. while further transferring the property can always pass on the responsibility of getting the said freehold conversion done and to bear the charges therefor on the prospective transferee/s. Though the senior counsel for HUDCO Ltd. has expressed apprehensions about the requisite permissions being granted by Government of India but I am confident that the Government of India would not add to the wastage which the property has already undergone for the last more than 20 years.*

*24. In the aforesaid state of affairs, when HUDCO Ltd. has agreed to refund most of the amounts on receipt of which the plaintiff has agreed to the settlement of its claims subject matter of the suit and otherwise with respect to the property, I see no impediment to disposal of the suit in terms thereof. Though the*

*litigation is twenty years old but, if the application for rejection of plaint is not accepted, issues even in the suit have not been framed as yet. Moreover, the matter is still in the first Court and any orders of the first Court would be subject to appeals.*

*25. I accordingly pass a decree in favour of the plaintiff and against the defendant no.1 HUDCO Ltd. for recovery of Rs.35,75,40,000/- being the principal amount of the first instalment paid by the plaintiff to the defendant HUDCO Ltd. for purchase of the property.*

*26. The senior counsel for the defendant no.1 HUDCO Ltd. states that HUDCO Ltd. has agreed to the same subject to its claims for compensation being adjudicated.*

*27. The senior counsel for the plaintiff states that the plaintiff is also entitled to interest on the said amount from the date of payment. It is informed that the said first installment as per the agreement was payable on 30th November, 1994 but Rs.35,00,00,000/- was paid on 30th January, 1995 and Rs.75,40,000/- was paid on 13th February, 1995; that the plaintiff has paid interest at the rate of 16.48% amounting to Rs.98,91,594/- for the delay in payment of first installment and thus the plaintiff is entitled to interest on the amount of Rs.35,75,40,000/- with effect from 30th November, 1994. It is further contended that since HUDCO Ltd. demanded and collected interest at the rate of 16.48%, it should pay interest at the same rate while refunding the monies to the plaintiff.*

*28. The senior counsel for the defendant no1. HUDCO Ltd. states that the defendant HUDCO Ltd. has suffered commercial loss owing to the interim order obtained by the plaintiff in this proceeding and in the proceedings earlier instituted which resulted in defendant HUDCO Ltd. being not able to*

*put the property to any use.*

*29. I have considered the rival contentions. If the contract had been fulfilled, the defendant no.1 HUDCO Ltd. would have received the balance amount of about Rs.60,00,00,000/- from the plaintiff and would have enjoyed the benefit thereof. Though the property has remained in the possession of defendant no1. HUDCO Ltd. but owing to interim orders, defendant no.1 HUDCO Ltd. has been unable to reap any benefit therefrom.*

*30. Having considered all the aforesaid facts and having heard the counsels, I am of the opinion (and in which respect the plaintiff had left the decision to the Court) that a direction to the defendant no1. HUDCO Ltd. for payment to the plaintiff, of besides the said sum of Rs.35,75,40,000/-, interest thereon at the rate of 16.48% per annum from 30th November, 1994 till 30th January, 1995, amounting to Rs.98,91,594/- and interest at the rate of 6% per annum with effect from 30th January, 1995 till the date of payment, would serve the interest of justice and balance the equities.*

*31. Accordingly, in lieu of the reliefs claimed in the suit, a decree is passed, in favour of the plaintiff and against the defendant no.1 HUDCO Ltd., for recovery of Rs.35,75,40,000/- with interest at the rate of 16.48% per annum from 30th November, 1994 till 30th January, 1995 amounting to Rs.98,91,594/- and at the rate of 6% per annum with effect from 30th January, 1995 till the date of payment.*

*32. It is further clarified that the interim orders restraining the defendant No.1 HUDCO Ltd. from dealing with the property is vacated save that defendant no.1 HUDCO Ltd., before executing a document of transfer with respect to the property or any part thereof*

> *and before receiving the entire transfer consideration of the property, shall clear the dues under this decree and this decree would be a first charge on the consideration to be received by defendant no.1 HUDCO Ltd. for transfer of the property."*

2.41. It is important to note here that in terms of paragraph 35 of the impugned judgment dated 13.01.2017, the Decree was to remain inexecutable till 30.06.2017 to enable the appellant to arrange for the monies to be paid under it.

2.42. By an Office Memorandum dated 31.01.2017, the L&DO reiterated that it cannot be made liable for making any payment vis-a-vis its contractual obligations or on account of court orders and there was no reason for L&DO to give its NOC to the appellant for making any payment to any third party nor was there any question of releasing funds from the AGP account for such purpose. It opined that there also was no question of converting the property to freehold.

2.43. On the other hand, the appellant, *vide* their communication dated 24.03.2017, again sought NOC of the Government to refund/release the payment in terms of the impugned judgment and to either release a sum of Rs. 338.67 crores to the 'No Lien AGP Account' or to allow the appellant to make payment out of its own resources and book the same to the said account. In this communication, the appellant also gave a reference to the decision taken by its Board in the meeting held on 23.02.2017. We quote from the letter as under:

> *"In terms of Hon'ble High Court order /decree dated 13.01.2017 passed by the Delhi High Court regarding refund of*

*first installment paid by M/s MS Shoes East Ltd. for Guest House Blocks at Andrewsganj Project and Ministry letter dated 31st January, 2017 and 2nd Feb., 2017, the matter was considered by HUDCO Board in its 575th Meeting held on 23.2.2017 (Item No. 575.21) copy of the Board Minutes is enclosed at Annexure-VI.*

*The Board deliberated the entire proposal and decided that necessary approval from MoUD may be obtained for refund/ release of payment of first installment paid by MS Shoes East Limited and the Ministry may also be requested to release the aforesaid payment to HUDCO for onward release to MSSEL in view of the advice of Hon'ble High Court of Delhi;*

*Further, the Board unanimously passed the following resolution(s):*

*1. "RESOLVED THAT the Board took serious concern over the contents of the L&DO letter dated 31st January, 2017 and the Joint Secretary, Ministry of Urban Development, D.O. Letter dated 2nd February 2017, wherein certain issues relating to overall development of Andrewsganj Project (AGP) have been raised like declining to give NOC to HUDCO (Lessee) for making any payment to any third party and to convert the property into freehold, as it required Cabined approval etc. etc. ETC. and directed that the matter be taken up with the MoUD on top priority by the WD Wing by giving point-wise HUDCO stand on the Issues raised by MoUD in terms of the Hon'ble High Court directions given vide its orders dated 13th January 2017.*

*2. RESOLVED FURTHER THAT claim/bill be lodged with MoUD immediately for outstanding balance in the 'No Lien Account' which is presently in a deficit of Rs. 338.67 crore as on 31st December, 2016 alongwith upto date interest @ 10.75 p.a. and the vigorous follow up be made by WD Wing with the MOUD for immediate settlement/payment of account outstanding balance in the 'No Lien Account'.*

*3. RESOLVED FURTHER THAT MoUD be approached on priority for seeking an amount of Rs. 84,83,22,894/- (Rs. 35,75,40,000/- being the principal amount plus Rs. 98,91,594/- being the Interest @ 16.48% p.a. from 30th November, 1994 till 30th January, 1995 plus interest @ 6% after 30th January 1995 till June 2017) for making payment to the MSSEL in terms of Hon'ble High Court decree dated 13th January 2017.*

*4. RESOLVED FURTHER THAT in case MoUD does not provide funds for making payment to the MSSEL in terms of Hon'ble High Court orders dated 13th January 2017, MoUD be requested to give specific direction for making payment of the same from 'No Llen AGP' Account, which shall continue to attract interest @ 10.75% p.a. on the outstanding balance in the account till its final settlement by MoUD or by sale of assets/or otherwise.*

*5. RESOLVED FURTHER THAT approval of the Board be and is hereby accorded in principle accepting the final order/decree dated 13th. January 2017 passed by the Hon'ble High Court of Delhi In the case of M/s MS Shoes East Limited regarding refund of first*

*Installment paid by MSSEL alongwith Interest In terms of decree for 9 guest house blocks at Andrews Ganj Project.*

*6. RESOLVED FURTHER THAT in case MoUD do not provide necessary funds for making payment to MSSEL as per orders of Hon'ble High Court dated 13th January, 2017; however, gives its specific directions for making payment from 'No Lien Account', approval of the Board be and is hereby acoorded for making the payment to MSSEL as per approval granted by MoUD.*

*7. RESOLVED FURTHER THAT the Ministry of Housing & Urban & Poverty Alleviation, (MoHUPA) be requested to Intervene and take-up the issues related to AGP at the highest level of MoUD for amicable resolution of the pending issues including payment of outstanding balance in the 'No Lien AGP Account' with update Interest @ 10.75% p.a.*

*7 In view of the above, the action required on part of HUDOO has been taken as per the direction of the Hon'ble High Court of Delhi and MOUD is requested to consider, the approval of the following decisions for complying with the court direction :-*

*i. Issue 'No Objection Certificate' (NOC) to refund/ release the payment of first Installment paid by MS Shoes East Limited excluding Earnest Money and the interest of the delayed payment i.e. Rs. 84,83,22,894/- principal amount plus Rs. 98,91,594/- being the interest @ 16.48% (Rs. 35,75,40,000/- being the p.a. from 30th November, 1994 till 30th January, 1995 plus interest @6% after 30th January 1995 till June 2017) and release the aforesaid payment to HUDCO for onward release to MSSEL*

> *In view of the direction of Hon'ble High Court of Delhi,*
>
> *ii. Release the accumulated outstanding deficit balance of Rs.338.67 crore in the 'No lien AGP Account' (as on 31.12.2016).*
>
> *iii. In case funds are not released by MoUD, a direction to make the due payment out of HUDCO's own resources and book the same Into the 'No lien AGP Account' of Govt. of India, being maintained by HUDCO, be issued."*

2.44. As far as the decree denied refund of the Earnest Money Deposit and curtailed the interest, aggrieved by the same, the respondent preferred Special Leave Petition (Civil) No. 9648/2017 before the Supreme Court. The Supreme Court, *vide* order dated 07.04.2017, permitted the respondent to withdraw the SLP with liberty to file a review petition before the learned Single Judge and gave liberty to the respondent to challenge the Decree dated 13.01.2017 as also the order dismissing its review, in case the review is dismissed.

2.45. Accordingly, the respondent had preferred Review Petition No. 313/2017 before this Court, which was dismissed *vide* order dated 12.12.2017, observing that the impugned decree was a Consent Decree. We quote from the order as under:

> *"9. The circumstances leading to the disposal of the suit vide order dated 13th January, 2017 of which review is sought are set-out in the order itself as well as in the order sheet in the suit w.e.f. 10th August, 2016. The proposal for settlement of the dispute subject matter of the suit which had then been pending since 1997 with an earlier litigation having commenced in*

> *the year 1995, had emanated from the senior counsel for the plaintiff / review applicant during the hearing on 10th August, 2016. It was stated on that date that subject to the entire amount paid by the plaintiff / review applicant to the defendant no.1 HUDCO Ltd. being refunded to the plaintiff / review applicant with interest at such rate as may be fixed by the Court, the plaintiff / review applicant was willing to settle the matter. The proceedings w.e.f. 10th August, 2016 resulted in a settlement on most of the issues being reached between the plaintiff / review applicant on the one hand and the defendant no.1 HUDCO Ltd. on the other hand, leaving some aspects on which no settlement could emerge. It was in this context that the decision on the said aspect was left to this Court and which onus this Court took up on itself finding that valuable immovable property comprising of nine Guest House Blocks, nine Restaurants and twenty five shops in Andrews Ganj Project of defendant no.1 HUDCO Ltd. was lying waste since 1995. The order dated 13th January, 2017 thus, though not recorded to be a consent order was in the nature of consent order in the circumstances reflected in the order sheet of this suit w.e.f. 10th August, 2016."*

2.46. By the said order, the learned Single Judge also recorded the submissions of the learned Senior Counsel appearing for the appellant and the learned counsel appearing for the UOI on their respective stands on the execution of the Decree, and clarified that the consent of the appellant shall not affect the proceedings as recorded in the orders dated 10.08.2016 and 13.01.2017. We quote from the order as under:

> *"15. The senior counsel for the defendant no.1 HUDCO Ltd. has drawn attention to an affidavit dated 8th November, 2017 of Ms. Arti Tygai, Joint General Manager (Projects) of*

*the defendant no.1 HUDCO Ltd. filed in this proceeding. It is contended that the defendant no.2 UOI has now issued a notice to the defendant no.1 HUDCO Ltd. to show cause as to why the compromise was entered into. It is further stated that owing to the circumstances created by the defendant no.2 UOI and as detailed in the said affidavit, the defendant no.1 HUDCO Ltd. is unable to pay the monies which were to be paid by the defendant no.1 HUDCO Ltd. to the plaintiff / review applicant under the order dated 13th January, 2017 of which review is sought.*

*16. I have enquired from the counsel for the defendant no.2 UOI also present in the Court and in whose presence the entire proceedings resulting in the order dated 13th January, 2017 took place.*

*17. The counsel for the defendant no.2 UOI states that the said aspect has no relevance as far as the present Review Petition is concerned.*

*18. The senior counsel for the defendant no.1 HUDCO, Ltd. also states that she will take appropriate remedies with respect thereto.*

*19. In view of the aforesaid, all that can be clarified is that the observations in para 9 hereinabove of the defendant no.1 HUDCO Ltd. having consented to the order shall not affect the proceedings as recorded in the order sheet of this Court w.e.f. 10th August, 2016 and as recorded in the order dated 13th January, 2017."*

2.47. We must note that in the meantime, *vide* letter dated 21.04.2017, the L&DO had already advised the appellant to urgently explore the possibility of seeking an appropriate legal remedy/file appeal against the Decree dated 13.01.2017. Further, in a Meeting

held on 21.09.2017 under the Chairmanship of Secretary (HUPA), it was decided to issue a Show Cause Notice to the appellant to explain as to what prompted it to compromise the dispute with the respondent. It was also decided that neither the NOC will be issued nor will any amount be given by the Ministry, and the appellant will also not book the expenditure from 'No Lien AGP Account'.

2.48. On dismissal of the review application filed by the respondent, the appellant filed a Recall Application bearing I.A. No. 15619/2017 in CS(OS) 1551/2005, seeking recall of the impugned decree dated 13.01.2017 on the ground that the appellant was not in a financial condition to pay the decretal amount to the respondent and in order to pay the said decretal amount, Union of India would have to first disburse the said amount to the appellant pursuant to which the appellant would be able to comply with the impugned decree. It was contended that the stand of the Government of India and the respondent after the passing of the Decree, had resulted in 'fractured consent'.

2.49. The recall application was dismissed by the learned Single Judge *vide* order dated 28.08.2018 wherein the learned Single Judge observed that the ground regarding appellant not having any monies to pay the decretal amount and the appellant not being able to raise funds for the same, cannot constitute a valid ground to recall the impugned decree as it is up to the respondent to execute the impugned decree by the remedies as available in law. The learned Single Judge also dismissed the second ground raised by the appellant, wherein the appellant had contended that the Union of India had refused to give a

No Objection Certificate for transfer or conversion of the subject properties from leasehold to freehold in favour of the appellant, while observing that the executing Court would consider all these aspects while adjudicating the attempt to release the said amount for satisfaction of the impugned decree. The learned Single Judge also observed that the compromise decree as arrived at between the contesting parties, which was later crystalized into a decree by the Court, cannot be opted out from, as the said compromise decree was in the nature of a binding contract.

2.50. The appellant challenged the above order as also the impugned Decree before the Supreme Court by way of SLP (Civil) Diary No. 34720/2018, which was permitted to be withdrawn *vide* the order dated 18.09.2018, with liberty to the appellant to raise objections to the executability of the decree before the Executing Court/learned Single Judge, as in the meantime, the respondent had filed Execution Petition No. 19/2018 seeking execution of the impugned decree dated 13.01.2017 passed by the learned Single Judge.

2.51. As far as the Execution Petition is concerned, the learned Single Judge, *vide* order dated 03.05.2018, directed attachment of the Head Office of the appellant herein, however, the said attachment was said to be kept in abeyance till the next date of hearing.

2.52. The appellant had filed its objections by way of E.A. No. 482/2018 in the Execution Petition No. 19/2018. The said objections were rejected by the learned Single Judge, *vide* order dated 29.10.2018.

2.53. Aggrieved by the order dated 29.10.2018, the appellant has filed

EFA(OS) No. 19/2018 seeking setting aside of the said order. The appellant has also filed RFA (OS) 79 of 2018 challenging the Decree dated 13.01.2017.

2.54. The respondent had also preferred Special Leave Petitions (Civil) No. 10752-10753/2018 before the Supreme Court challenging the impugned decree dated 13.01.2017 as well as the order dated 12.12.2017 passed by the learned Single Judge wherein the review petition filed by the appellant challenging the impugned decree was dismissed. The Supreme Court, *vide* order dated 10.12.2024, directed that these Special Leave Petitions be transferred to this Court and to be re-numbered as Regular First Appeals, as the appellant had already filed a RFA(OS) No. 79/2018 which was pending adjudication before this Court. The Special Leave Petitions, on their transfer, have been re-numbered as RFA(OS) No. 1-2/2025.

## *III. SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANT:*

3.1. In support of the appeals filed by the appellant as also for seeking condonation of delay in filing of RFA(OS) 79/2018, Mr.Rohit Sharma, the learned counsel for the appellant, submits that though couched as a consent decree, there was no consent of the appellant before the learned Single Judge for passing the same. In fact, the impugned judgment and decree itself records the objections of the appellant to refund any amount to the respondent from its own funds. He submits that the same is also evident from the meetings that preceded the passing of the impugned decree. He submits that once

there was no consent, the learned Single Judge has erred in law in passing the impugned decree, purportedly on consent of the parties.

3.2. He submits that a suit can be disposed of on basis of consent only after drawing up of a written compromise agreement signed by the parties, as mandated in Order XXIII Rule 3 of Code of Civil Procedure, 1908 (hereinafter referred to as '*CPC*'). In absence of the same, the Suit can be disposed of only by following the due process provided under the CPC, that is, framing of issues, leading of evidence and issue-wise adjudication. In support, he places reliance on the judgments of the Supreme Court in ***Gurpreet Singh v. Chatur Bhuj Goel***, (1988) 1 SCC 270 and ***Pushpa Devi Bhagat v. Rajinder Singh & Ors.***, (2006) 5 SCC 566.

3.3. He submits that the appeal, that is, RFA(OS) 79/2018 is, therefore, maintainable in terms of Order XLIII Rule 1A(2) of the CPC and not hit by Section 96(3) of the CPC, and the impugned judgement and decree is liable to be set aside.

3.4. He submits that the learned Single Judge, while dismissing the review application filed by the respondent *vide* order dated 12.12.2017, had also observed that the impugned decree is not passed by consent, as would be evident from reading of paragraph 9 and paragraph 19 thereof. He submits that the impugned decree is, therefore, passed not in accordance with law and is liable to be set aside on this short ground itself as being without jurisdiction.

3.5. He submits that as far as the delay in filing of the same is concerned, it would be evident from a reading of the decree itself that the learned Single Judge had premised it on the Government of India

taking active part in ensuring that the amount payable under the same is made available to the appellant. The Government of India, however, refused to release the necessary funds nor permitted the suit property to be transferred or converted to free hold. This forced the appellant to file an application seeking recall of the decree before the learned Single Judge, being I.A. No. 15619/2017. The same was dismissed by the learned Single Judge *vide* order dated 28.08.2018. In the meantime, the respondent was also in challenge to the impugned decree, by first filing a Special Leave Petition being SLP(C) No.9648/2017 and thereafter, Review Petition No.313/2017 and finally, SLP(C) No.10752-53/2018. In all these proceedings, the appellant maintained that the impugned decree is not passed by consent and its execution can be forced only if the Government of India gives its support to the same. Instead, the Government of India had, in fact, issued Show Cause Notice to the appellant to explain how the impugned decree came to be passed on basis of the purported consent.

3.6. Placing reliance on the judgments of the Supreme Court in ***Bhivchandra Shankar More v. Balu Gangaram More & Ors.***, (2019) 6 SCC 387 and ***Inder Singh v. State of Madhya Pradesh***, 2025 SCC OnLine SC 600, he submits that there was no negligence or want of *bona fide* on part of the appellant in filing of the present appeal, and, therefore, the delay should be considered to have been explained on 'sufficient cause'. In any case, the appeal involves public money, therefore, this Court should adopt a liberal approach in condoning the delay.

3.7. On the objection of the learned senior counsel for the respondent that the Special Leave Petition filed by the appellant, that is, SLP(C) Diary No.34720, being dismissed as withdrawn by the Supreme Court *vide* its order dated 18.09.2018 reserving liberty only to raise objections to the executability of the decree before the Executing Court thereby making the challenge to the impugned decree, that is, RFA(OS) 79/2018, as not maintainable, he submits that as the SLP had been dismissed at a preliminary stage, it cannot be said to be an expression of opinion by the court nor can act as a *res judicata.* Therefore, it can also not bar the maintainability of the present appeal. In support, he places reliance on the judgments of the Supreme Court in ***Indian Oil Corp. Ltd. v. State of Bihar & Ors.***, (1986) 4 SCC 146 and ***Kunhayammed & Ors. v. State of Kerala & Anr.***, (2000) 6 SCC 359.

3.8. As far as the appeal filed by the respondent is concerned, he submits that, on one hand, the respondent has contended that the impugned decree is passed by consent while on the other hand, challenges the same as an 'adjudication' by the learned Single Judge. He submits that the impugned decree cannot be an adjudication of dispute on merits as has been contended hereinabove.

3.9. On merits, he submits that the claim of the respondent was not maintainable inasmuch as the cancellation of the allotments took place on 01.01.1996 due to own default of the respondent in payment of the second instalment, even in violation of the order of the High Court dated 15.12.1995 in Civil Suit No.1062/1995. The Suit, that is, CS(OS) 1551/2005, in which the impugned decree has been passed,

was itself not maintainable in terms of Order XXIII Rule 1(4) of the CPC, as an earlier suit had been withdrawn without taking any liberty to file the second suit. He submits that even the requisite court fee for the prayer of specific performance had not been affixed by the respondent and there was no prayer for refund of any amount even in the amended plaint. Placing reliance on the judgment of the Supreme Court in ***K.R. Suresh v. R. Poornima & Ors.***, 2025 SCC OnLine SC 1014, he submits that in absence of a specific prayer for refund, the learned Single Judge has erred in granting the same in favour of the respondent.

3.10. As far as EFA(OS) 19/2018 is concerned, he submits that the decree dated 13.01.2017 was a conditional decree wherein the land was to be converted into free hold and the amount to be refunded was to be generated from the transfer of the suit property and not from the own funds of the appellant. These pre-conditions/contingencies are inseparable from the obligation of the appellant to pay any amount to the respondent, and as these could not be fulfilled, the occasion to execute the decree never arose. He submits that the learned Single Judge, while dismissing the objections filed to the execution by the impugned order dated 29.10.2018, has held that the judgment dated 13.01.2017 does not impose any reciprocal obligations nor makes it contingent on the conversion of the suit property into free hold. The learned Single Judge has held that the only remedy of the appellant is to seek enforcement of its right against the Government of India, however, that cannot be a ground to reject the enforcement of the decree. He submits that this is an erroneous finding of the learned

Single Judge. In support, he places reliance on the judgments of the Supreme Court in ***Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari***, 1950 SCC 766; ***Chen Shen Ling v. Nand Kishore Jhajharia***, (1973) 3 SCC 376 and ***Jai Narain Ram Lundia v. Kedar Nath Khetan & Ors.***, (1956) 1 SCC 75.

3.11. He submits that without the conversion of the property, in fact, the appellant cannot generate the funds for making payment to the respondent in terms of the impugned decree.

## *IV. SUBMISSIONS MADE BY THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT:*

4.1. On the other hand, Mr.Kirtiman Singh, the learned senior counsel appearing for the respondent, submits that the appeal filed by the appellant, that is, RFA(OS) 79/2018, is not maintainable as it is challenging a decree passed by consent as far as the direction to refund the amount is concerned. In support, he places reliance on the judgments of the Supreme Court in ***Parayya Allayya Hittalamani v. Sri Parayya Gurulingayya Poojari & Ors.***, (2007) 14 SCC 318 and ***Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Anr.***, (1973) 2 SCC 40.

4.2. He submits that the consent of the appellant to refund the amount to the respondent is evident from various meetings and Board resolutions that have been referred hereinabove. It is also evident from the subsequent conduct of the appellant, specifically the minutes of meeting dated 23.02.2017, 29.06.2017 and 21.09.2017. It is also

evident from various correspondence addressed by the appellant to the Government of India and the stand taken by the appellant in other proceedings between the parties.

4.3. He submits that the appeal is also not maintainable due to the limited liberty granted by the Supreme Court vide its order dated 18.09.2018 passed in SLP(C) Diary No. 34720, wherein liberty was limited to raise objections to the executability of the decree and not to challenge the same by way of a separate appeal. In support, he places reliance on the judgments of the Supreme Court in ***Kunhayammed*** (supra) and ***Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal***, (2019) 4 SCC 376.

4.4. On the issue of delay in filing of the appeal, he submits that the appellant had, in fact, accepted the appeal, as has been submitted hereinabove. It is only belatedly that the appellant decided to challenge the decree because its objections against the executability of the same were dismissed. Placing reliance on the judgments of the Supreme Court in ***Ajit Singh Thakur Singh & Anr. v. State of Gujarat***, (1981) 1 SCC 495; ***K.B. Lal v. Gyanendra Pratap & Ors.***, 2024 SCC OnLine SC 508; ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project & Anr.***, (2008) 17 SCC 448; ***Postmaster General & Ors. v. Living Media India Ltd. & Ors.***, (2012) 3 SCC 563; ***Shivamma v. Karnataka Housing Board & Ors.***, 2025 SCC OnLine 1969; ***Mohinder Singh v. Paramjit Singh & Ors.***, (2018) 5 SCC 698 and ***State of M.P. v. Ramkumar Choudhary,*** 2024 SCC OnLine SC 3612, he submits that the appellant has shown no cause, leave alone sufficient cause, for condoning the delay.

4.5. On the submission of the learned counsel for the appellant that the impugned decree is conditional in nature, he submits that the same has no merit. He submits that the learned Single Judge in the impugned decree has only suggested a potential course of action for raising money by transferring the property including the liability for its conversion to a third party. He submits that sub-leasing of the property was permissible in terms of the lease deed dated 04.07.1997 as well as the minutes of meeting dated 24.07.2018. Instead of raising the money in this manner, the appellant is expressing its inability to make payment to the respondent in terms of the impugned decree, which cannot be accepted. He submits that, in fact, for another allottee, that is, M/s Leela Hotels Ltd., as far as a five star hotel land is concerned, the appellant has complied with the decree passed against it. He submits that for a decree to be conditional, the condition must be extraneous and beyond the control of the parties; in the present case, not only was the Government of India a party to the suit, but the decree was also not conditional on the conversion of the property. In support of his plea, he places reliance on the judgments of the Supreme Court in ***Yeswant Deorao Deshmukh*** (supra); ***Antonysami v. Arulanandam Pillai & Anr.***, (2001) 9 SCC 658 and ***Om Prakash Navani & Anr. v. Juno Changas Pereira & Ors.***, 2003 SCC OnLine Bom 308.

4.6. He submits that even assuming that the appellant has any claim against the Government of India, the only remedy available to it is to seek enforcement of such condition against Government of India. In support, he places reliance on the judgments of the Supreme Court in

***Bhaskaran v. Sreedharan***, MANU/SC/0554/2002; and ***Antonysami*** (supra).

4.7. He submits that the Executing Court cannot also go behind the decree and, therefore, the objections to the execution of the same have rightly been dismissed by the learned Single Judge. In support, he places reliance on the judgment of the Supreme Court in ***Deepa Bhargava & Anr. v. Mahesh Bhargava & Ors.***, 2009 (2) SCC 294.

4.8. On the own appeals of the respondent, that is, RFAs(OS) 1 and 2/2025, he submits that the learned Single Judge, in passing the impugned decree, wrongly adjudicated the claim of the respondent for refund of the earnest money deposit and interest thereon and rejected the refund of the EMD while restricting the interest. The learned Single Judge, however, failed to appreciate that the appellant had not suffered any loss on account of the *interim* orders passed during the proceedings of the suit(s) filed by the respondent and in absence of the same could not forfeit any amount paid by the respondent. There was no stay on the utilisation of the subject property as the *interim* order passed in favour of the respondent had been stayed by this Court in FAO 129/1998 vide order dated 18.11.2003 on the consent of the respondent. He submits that the stay on dealing with the property operated only from 1998 till 2003 whereafter, the appellant was free to put the property to commercial use and generate funds. The appellant, however, failed to utilise the property for reasons best known to it and cannot now pass the alleged loss/damage to the respondent as it has arisen out of its laxity. He submits that, in fact, no loss would have been suffered by the appellant as the property prices have increased

substantially and this was also contended by the appellant before the learned Single Judge. In support, he places reliance on the judgment of the Supreme Court in ***Kailash Nath v. Delhi Development Authority***, (2015) 4 SCC 136.

4.9. For its claim of interest, he submits that even to M/s Leela Hotels Ltd., interest has been directed to be paid at the contractual rate, that is, 20%, which was later reduced by the Supreme Court to 18%. He submits that the appellant itself charged interest from the respondent at the rate of 16.48%, which was stipulated for maximum delay of 3 months. Therefore, essentially it was compound interest with quarterly rests. The respondent was entitled to the same on reciprocal basis.

## V. ***ANALYSIS AND FINDINGS:***

5.1. We have considered the submissions made by the learned counsels for the parties.

5.2. At the outset, we need to consider the question of delay in filing of the appeal, that is, RFA (OS) No. 79/2018. We would note that the delay is rather huge, that is, of 620 days.

5.3. The appellant has tried to explain the same by contending that it first tried to implement the impugned judgment by writing to the Government of India for the necessary NOC and for the release of funds, and having failed in this attempt, filed an application seeking recall of the impugned judgment before the learned Single Judge. It has been contended that only when the same was dismissed by the learned Single Judge *vide* order dated 28.08.2018, the appellant was

forced to file the present appeal. On the other hand, the learned senior counsel for the respondent has insisted that the appellant, in fact, accepted the decree and cannot now challenge the same.

5.4. Section 5 of the Limitation Act, 1963 (hereinafter referred to as 'Limitation Act') provides for condonation of delay in filing of the appeal if the appellant satisfies the Court that it had 'sufficient cause' for not preferring the appeal within the period of limitation. It has been held that the term *'sufficient cause'* is to be construed liberally and in order to meet the ends of justice. Section 5 of the Limitation Act confers the discretionary power on the Court to condone the delay, which must be exercised judiciously, however, not where there is gross negligence or want of diligence on part of the litigant. It must be remembered that the expiration of period of limitation prescribed for making an appeal gives rise to rights in favour of the decree holder to treat the decree as binding between the parties and, therefore, such right should not be light-heartedly disturbed.

5.5. In ***Shivamma*** (supra), the Supreme Court in an exhaustive study on the subject, held that it is not sufficient to only explain the delay caused in the period between the last of the dates of limitation and the date on which the appeal/application is actually filed, rather an explanation must also be offered for what the concerned party was doing for the entire period of the prescribed limitation from the date of actual filing. Events that occurred after the expiry of the period of limitation till the date of actual filing of appeal or application, as the case may be, would be of no consequence insofar as condonation is concerned, if it is unable to explain what came in the way of the party

in filing the appeal within limitation. It was emphasised that the law of limitation is founded on public policy and though the rules of limitation are not meant to destroy the rights of parties, they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. It was further held that the discretion vested in the Court under Section 5 of the Limitation Act is two fold; first, for determining if *'sufficient cause'* existed; and second, where the former is answered in the affirmative, then whether the case is a fit one for it to condone the delay. *'Sufficient cause'* for the delay in filing of an appeal has to be established by some event or circumstance that had arisen before the limitation expired and the party seeking condonation of delay has to explain the delay of the entire continuum commencing from the point at which the limitation period first began to run until the eventual filing of the appeal. It was further held that the phrase *'sufficient cause'* is an expression of elastic import, incapable of precise definition, yet not without boundaries. Its purpose is to empower courts to advance the cause of justice, however, is not itself a loose panacea for the ill of pressing negligent and stale claims. It must be construed in a manner that advances substantial justice while preserving the discipline of limitation. Length of delay may be instructive but not determinative of the same. It must also be borne in mind that rules of procedure are handmade of justice and technical consideration of limitation, when in conflict with the imperative of substantial justice, the latter should ordinarily prevail. The court cautioned that the test of *'sufficient cause'* cannot be substituted by an examination of the merits of the case.

5.6. Applying the above principles to the facts of the present case, and without being in any manner influenced by the merits of the contentions raised by the parties on the merits of the impugned decree, and by presuming the same to be a consent decree passed, we shall now consider whether the appellant has been able to make out sufficient cause for condoning the delay.

5.7. As noted in the impugned judgment/decree, the court had not gone into the issue whether the appellant required the consent of the Government of India to implement the terms of the so-called agreement. On the plea of lack of resources with the appellant to meet the liability under the decree, the court opined that the same can be generated by transferring the subject property, including the responsibility of getting it converted into free hold.

5.8. From the above sequence of events, what is also evident is that the appellant first tried to explore its option of making the Government of India agree to the implementation of the decree in a manner it wanted, that is by getting an NOC as also release of funds from the government. In this regard, we would again refer to certain communications and developments between the appellant and the L&DO post the impugned Decree, which are as follows:-

(a) The MOUD, Government of India, issued an Office Memorandum dated 31.01.2017 stating that Government of India cannot be made liable for the amounts to be paid under the Decree. It also stated that the Suit Property cannot be converted into free hold;

(b) The appellant in its Board Meeting held on 23.02.2017,

again resolved to persuade the Government of India for the NOC to enter into the compromise terms and also for the release of funds. The same was communicated to the Government *vide* letter dated 24.03.2017;

(c) The L&DO, *vide* its letter dated 21.04.2017, advised the appellant to urgently explore the possibility of seeking an appropriate legal remedy/file appeal against the impugned Decree;

(d) The Board of Directors of the appellant, *vide* resolution dated 29.06.2017, resolved as under:

> *"That HUDCO should take legal action as per the legal opinion of its senior advocate in Guest House matter in the Delhi High Court as follows:*
> *(i) Contest Review petition of MSSEL on merits and take all necessary grounds for its dismissal*
>
> *(ii) As MSSEL has already filed review petition for review of the Order/Decree dated 13.01.2017 passed by the Delhi High Court by resiling back and praying for the award of higher interest and other reliefs as claimed in the review petition, HUDCO should also seek Recall of Order 13.01.2017 and contest the matter on merits and pray for stay of execution petition that may be filed by MSSEL in terms of the High Court Order dated 13.01.2017.*
>
> *(iii) Resolved further in view of the Review Petition filed by the MSSEL in the matter of Guest House case, HUDCO may contest special leave petition filed by MSSEL in Supreme Court on merits against the Order dated 03.06.2016 in Hotel Site Case."*

(e) In a meeting held under the Chairmanship of Secretary,

HUPA along with the representatives of the appellant on 21.09.2017, a decision was taken that the 'No Lien AGP Account' would be thoroughly audited and a show-cause notice was directed to be issued to the officers of the appellant to explain under what circumstances consent was given in the Suit. Accordingly, a show cause notice dated 01.11.2017 was issued, which was later withdrawn.

5.9. Not only the above, even the respondent did not accept the impugned Decree insofar as it rejected the refund of EMD and restricted the interest awarded to the respondent. It filed SLP(C) 9648/2017 before the Supreme Court, which was withdrawn by it on 07.04.2017, with liberty to file a review before the learned Single Judge. It then filed a Review Petition before the learned Single Judge, which came to be dismissed *vide* order dated 12.12.2017. The respondent then challenged the impugned Decree as also the order dated 12.12.2017 before the Supreme Court by way of SLP(C) 10752-53/2018, which, on transfer to this Court, have been numbered as RFA (OS) 1-2/2025. Therefore, it was not as if the respondent had also accepted the impugned Decree.

5.10. The appellant, having failed to obtain the desired result from the Government of India, filed an application seeking recall of the judgment, being I.A. No.15619/2017, before the learned Single Judge, which came to be dismissed *vide* order dated 28.08.2018.

5.11. Therefore, the appellant was fighting at multiple fronts; on one hand, with the Government of India, and on the other hand, the

respondent itself. In our view, therefore, the appellant has been able to make out sufficient cause for condoning the delay in filing of the present appeal.

5.12. The delay in filing of RFA(OS) 79/2018 is accordingly condoned and C.M. No. 48747/2018 is allowed.

5.13. This now brings us to the merits of the appeals filed by the parties.

5.14. While considering the merits of the appeals filed by the appellant, at the outset, we need to determine the nature of the decree passed by the learned Single Judge as, if it is a consent decree, different result will ensue inasmuch as the appellant would not be allowed to challenge the same. Order XXIII Rule 3 of the CPC, so far as is relevant to the present set of appeals, reads as under:

> *"**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 satisfied the plaintiff in respect to 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.*

***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."*

5.15. A reading of the above provision would show that it is in two parts. In the first part, the Court has to be satisfied that the suit has been adjusted wholly or in part by any lawful agreement or compromise "*in writing and signed by the parties*"; and in the second part, the defendant has to satisfy the plaintiff in respect to the whole or any part of the subject-matter of the suit.

5.16. The decree passed under Order XXIII Rule 3 of the CPC has a special status inasmuch as the compromise between the parties gets a sanction of the court and is thereafter enforced like a judgment. It also acts on a principle of *estoppel* inasmuch as it cannot be challenged in an appeal or by another suit. Where the court delivers or pronounces a judgment by consent, what the court does in effect is to place its imprimatur on a contractual arrangement between the parties. It is the agreement between the parties which forms the foundation of the judgment.

5.17. In ***Gurpreet Singh*** (supra), the Supreme Court held that the court must insist upon the parties to reduce the terms of their settlement in writing. This was emphasised again in ***Pushpa Devi Bhagat*** (supra).

5.18. In ***Amro Devi & Ors. v Julfi Ram & Ors.,*** (2024) 19 SCC 782, the Supreme Court emphasised the need of the compromise agreement to be in writing and signed by the parties, by holding as under:

> *"**24.** A plain reading of the above provision clearly provides that for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court. In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise. Even the question of proving such document to the satisfaction of the court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20-8-1984 was an order under Order 23 Rule 3 CPC.*
> ***26.** Additionally, we must also note Som Dev v. Rati Ram [Som Dev v. Rati Ram, (2006) 10 SCC 788] as presented by the appellants to clarify the rigors of Order 23 Rule 3CPC. In this case, it was clarified by this Court that after the amendment of the Civil Procedure Code in 1977, a compromise decree can be passed only on compliance with the requirements of Order 23 Rule 3; otherwise it may not be possible to recognise the same as; compromise decree. When a compromise is to be recorded and a decree is to be passed, Order 23 Rule 3 of the Code requires that the terms of the compromise should be reduced to writing and signed by the parties."*

5.19. It also needs to be emphasised that in case there is any dispute between the parties on the terms of the consent, under Order XXIII Rule 3 of the CPC, it is not for the court to determine the same for the parties. The Court must, in such an eventuality, proceed to consider the suit on its own merits, which would be in form of framing of

issues, recording evidence of the parties, and passing a judgment on merits, or where the case is made out, pass a decree in terms of Order XII Rule 6 of the CPC or, in cases of a commercial dispute governed by the Commercial Courts Act, 2015, under Order XIII A in form of a summary judgment.

5.20. In the present case, by the order dated 10.08.2016, the learned Single Judge had highlighted the reasons which should persuade the parties to settle their disputes amicably. Pursuant thereto, in a meeting of the Board of Directors of the appellant held on 23.08.2016, while it was resolved that the appellant shall refund the first instalment excluding earnest money and interest on delayed payment forfeited by it, it was further resolved that the necessary No Objection of the Government of India for the same should be obtained and the amount be released from 'No Lien AGR Account'. The Government of India, by its Letter dated 25.11.2016, however, informed the appellant that it is not necessary to issue the No Objection to the appellant to enter into a settlement with the respondent. This was brought to the notice of the learned Single Judge in the hearing held on 28.11.2016. Even on 13.01.2017, as recorded in the impugned judgment, while the Government of India maintained that the NOC was not required, the appellant insisted that it has no resources to pay in terms of the offer without the NOC.

5.21. From the above, what would be evident is that leave alone, there being no application or a compromise deed signed by the parties before the learned Single Judge, even the compromise terms as agreed unilaterally by the appellant, were stated by the appellant to be not

workable in absence of the NOC from the Government of India.

5.22. The learned Single Judge instead of leaving the matter at that and proceeding to adjudicate the suit on its own merits, in the impugned judgment, suggested the means and manner in which the conditions on which the appellant had agreed to refund the amount of first instalment to the respondent, could be achieved. In our view, this was neither the mandate nor the jurisdiction of the learned Single Judge; especially under Order XXIII Rule 3 of the CPC.

5.23. As noted hereinabove, there was no compromise deed filed before the learned Single Judge and the entire matter was still under discussion between the appellant and the respondent with the Government of India. In case such discussion has not yielded a concrete settlement result, the learned Single Judge had no option but to proceed with the adjudication of the suit on its own merits in accordance with the procedure prescribed by the CPC. It could not have acted as a mediator or a conciliator to suggest what it felt would be a viable mode of achieving the settlement.

5.24. What is also important to note here is that the respondent was not only claiming refund of the EMD but also interest on the amount to be refunded. As resolved in the minutes of meeting dated 23.08.2016 of the Board of Directors of the appellant, this prayer of the respondent had been rejected. Therefore, there was, in fact, no settlement between the parties on the terms of the settlement. The learned Single Judge could not have presumed and acted on the basis that while the refund of the first instalment had been agreed and, therefore, a decree under Order XXIII Rule 3 of the CPC could be

passed, for the others it was open for adjudication. The offer of settlement by the appellant was one and could not have been bifurcated in this manner.

5.25. As the appeal, RFA (OS) No. 79/2018, challenges that there was in fact, no consent to the passing of the decree and the learned Single Judge has wrongly invoked its jurisdiction under Order XXIII Rule 3 CPC, with which we agree, the present appeal is maintainable in terms of Section 96(3) of the CPC, which we reproduce herein-below:

> *"**96. Appeal from original decree.**—(3) No appeal shall lie from a decree passed by the Court with the consent of parties."*

5.26. This brings us to the other objection of the respondent on the maintainability of the present appeal by contending that the appellant, when it challenged the order dated 28.08.2018 before the Supreme Court by way of SLP(C) Diary No.34720/2018, it was permitted to withdraw the same *vide* order dated 18.09.2018 with a limited liberty to raise its objections on the executability of the decree and not on its merits. It is contended that, therefore, the appeal of the appellant is barred.

5.27. We do not find any merit in the said objection. The order of the Supreme Court was at a preliminary stage without leave being granted. It was by a non-speaking order, and cannot act as a *res judicata* or as a bar on the appellant invoking its statutory remedies. We reproduce the order dated 18.09.2018 as under:

> *"Mr. Ranjit Kumar, learned Senior Counsel appearing for the petitioner prays for*

*withdrawal of these petition with liberty to raise all objections as to executability of decree before the court below in accordance with law.*
*Prayer is allowed.*
*Accordingly, the special leave petitions are dismissed as withdrawn with the liberty aforesaid."*

5.28. In this regard, we may usefully refer to the judgments of the Supreme Court in ***Indian Oil Corp. Ltd.*** (supra) and ***Kunhayammed*** (supra).

5.29. Coming back to the merits of the challenge, we reiterate that the impugned judgment and decree passed by the learned Single Judge cannot be said to be one passed under Order XXIII Rule 3 of the CPC; there being no unequivocal consent of the parties to the terms of the settlement. It is also not a judgment as defined under Section 2(9) of the CPC or a decree in terms of Section 2(2) of the CPC. The same not being an adjudication of the issues in dispute between the parties. In fact, the respondent itself is challenging the judgment as far as the refusal of the learned Single Judge to direct refund of EMD and also on the determination of the rate of interest awarded to the respondent is concerned. The said adjudication has also happened without the evidence of the parties and only on what appeared to the learned Single Judge to meet the ends of justice. In our view, the suit cannot and could not have been determined only on what appears to be just and proper, but has to be adjudicated on the basis of evidence led by the parties; that stage had not arisen. The Court cannot decide these disputes as *ex aequo et bono* or as *amiable compositeur*.

5.30. The impugned decree is, therefore, liable to be set aside.

5.31. In view of the above, we refrain from considering the other plea raised by the respondent on its claim for refund of the EMD and the rate of interest, lest it may prejudice the parties in the Suit, which, because of the impugned judgment and Decree being set aside, shall be restored to its original number and be commenced from the stage that it was at before the passing of the impugned Decree.

5.32. To summarise:

(a) We find sufficient cause having been shown by the appellant to condone the delay in filing of the appeal, that is, RFA(OS) 79/2018. The delay is, accordingly, condoned, and C.M. 48747/2018 filed therein is allowed;

(b) We also find merits in the appeals filed by the parties, that is, RFA(OS) 79/2018 and RFAs(OS) 1 and 2/2025. The same are allowed. The impugned judgment and decree, dated 13.01.2017, is hereby set aside and consequently, the order dated 12.12.2017 dismissing the Review Petition No.313/2017 filed by the respondent, is also hereby set aside;

(c) The Suit, that is, CS(OS) 1551/2005 is restored and shall be taken up by the Roster Bench from the stage that it was at before the passing of the impugned judgment and Decree. The parties shall appear before the learned Single Judge on 22nd May, 2026 for further directions;

(d) As the suit had been filed in the year 1997, we request the learned Single Judge to expedite the hearing of the same. It is made clear that the learned Single Judge shall hear and

decide the suit on its own merits, remaining uninfluenced by any observations made by us in the present judgment; and,

(e) As far as EFA(OS) 19/2018 is concerned, in view of this judgment setting aside the impugned decree dated 13.01.2017, the same has been rendered infructuous and is, accordingly, disposed of. The order dated 29.10.2018 passed in EA No.482/2018 in Ex.P. No.19/2018 is set aside.

5.33. The appeals along with the pending applications are disposed of in the above terms.

5.34. The parties shall bear their own costs.

**NAVIN CHAWLA, J.**

**RENU BHATNAGAR, J.**

**MAY 6, 2026**/ns/as