2026:DHC:8952

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

Date of decision: 06th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010324082026**

\+ O.M.P.(I) 10/2026 & I.A. 19270/2026

SANJEEV SINGHAL .....Petitioner

Through: Mr. Sandeep Sethi,Senior Advocate with Mr. Siddharth Arora, Mr. Gaurav Kumar, Mr. Abhishek Arora, Ms. Jasleen Kaur, Ms. Shreya Sethi and Ms. Ananya Singh, Advocates

versus

SHEFALI VARMA .....Respondent

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Arshdeep Singh Khurana, Mr. Kotla Harshvardhan, Ms. Simran Khurana, Ms. Divija Mahajan, Mr. Pallav Arora, Ms. Vidisha Bajaj, Mr. Naman Maheshwariand Mr. Prabhav Bahuguna, Advocates

\# **CNR No. DLHC010335472026**

\+ O.M.P. 3/2026, I.A. 19928/2026, I.A. 19929/2026, I.A. 19930/2026, I.A. 19931/2026, I.A. 20004/2026

SANJEEV SINGHAL .....Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Siddharth Arora, Mr. Gaurav Kumar, Mr. Abhishek Arora, Ms. Jasleen Kaur and Ms. Ananya Singh, Advocates

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CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. By way of the instant Judgment, this Court shall dispose of both the instant Petitions filed by the Petitioner, one being OMP No. 3/2026 filed under Section 34 of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] for setting aside the Final Arbitral Award dated 17.07.2026 ["**Impugned Award**"] and the other being OMP (I) No. 10/2026, seeking restraining orders against the Respondent in respect of the Subject Property being land in Khasra Nos. 518 (4-5) **less* (2-16), 519 (0-9), 520 (1-8) **less* (1-3), 530 (3-5), 531 (2-3), 532 (4-16), 535/1 (1-4), 535/2 (1-4), and 536 (3-9), comprised in Village Gadaipur, Mehrauli, Delhi ["**Subject Property**"], till the disposal of the Petition filed under Section 34.

2. A brief factual background arising from the instant Petitions is stated as under:

(i) An Agreement to Sell dated 17.01.2022 ["**ATS**"] was executed between the parties herein, in relation to the Subject Propertyfor a total consideration of Rs. 22,00,00,000/- (Rupees Twenty-Two Crores only). As per Clause A of the ATS, the Respondent held title to the Subject Property in three distinct ways:

(a) An absolute, undisputed title to one (1) acre comprised in Khasra No. 532, which is referred to as the "**SV Parcel**";

(b) An undivided one-fifth (1/5th) co-ownership share in approximately 22 *bigha* 7 *biswa* spread across Khasra Nos. 519, 516, 517, 518, 520 and 529, which is referred to as the "**Co-Ownership Parcel**"; and

(c) An expectancy, dependent on the conclusion of pending family settlements to land comprised in Khasra No. 530, 531, 532, 535/1, 535/2 and 536, then held in the name of, or under claim by, Smt. Neeta Anand and other family members, which is referred to as the "**Neeta Anand Parcel**".

(ii) In terms and furtherance of the ATS, the Petitioner deposited in advance a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) by way of a cheque on the very same date that the ATS was executed. Subsequent payments of Rs. 1,00,00,000/- (Rupees One Crore only) and Rs. 48,50,000/- (Rupees Forty-Eight Lakhs Fifty Thousand only) were also made by the Petitioner on 21.01.2022 and 27.01.2022, respectively.

(iii) As per Clause 6 of the ATS, a family settlement was to be executed on 31.03.2022, which would have a direct bearing on the Respondent's title to the Neeta Anand Parcel defined above. Clause 6 of the ATS further provided that in the event the said family settlement is not executed on or before 31.03.2022, then the Petitioner would be entitled to get a refund on the entire payment made by it at the rate of interest of 15% from the date of payment.In addition, Clause 7 of the ATS provided that if the

family settlement with Neeta Anand takes place, then the sale deed of balance land of out of 5.50 acres will also be done in favor of the Petitioner. Clauses 6 and 7 of the ATS are reproduced to read as under:

> *"**6.** That in the event if the family settlement will not be executed on or before 31st March 2022, then the Vendee will be entitled to get a refund of entire payment with interest at the rate of 15% per annum from the date of payment. Such payment will be made within a period of 45 days from 31st March 2022 i.e., 15 May 2022. If the family settlement with the mother, Mrs. Meenakshi Varma wife of Late Sh. Ashok Varma, sister Mrs. Shibani Varma Kapoor wife of Yadur Kapoor and also RD Varma Trust is done than the sale deed for an area of approximately 2.5 Acres will be done in favour of Vendee in Khasra No. 518. 519, 520 and 529.*
>
> ***7.** That if the family settlement with Smt. Neeta Anand will take place then the sale deed of balance land of out of approximately will also be done in favor of the Vendee"*

(iv) On 28.03.2022, the Respondent acquired additional title documents through a Sale Deed, Gift Deed and Relinquishment Deed from the family members.

(v) As noted in the Impugned Award, a further payment of Rs. 1,48,50,000/- (Rupees One Crore Forty-Eight Lakhs and Fifty Thousand only) was made by the Petitioner to the Respondent on 12.04.2022. However, not long thereafter, on 13.07.2022, 20.07.2022and 02.08.2022, the Respondent refunded a cumulative amount of Rs. 2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only) to the Petitioner.

(vi) In the interregnum, two registered Sale Deeds were executed in favor of the nominee of the Petitioner, M/s Ultraville LLP on 28.07.2022 and 17.08.2022. Nine months thereafter, the Petitioner issued a Public Notice dated 15.06.2023 which was published in the 'Times of India' newspaper, asserting his rights over the Subject Property.

(vii) On 03.08.2023, a meeting regarding the available land took place between the parties, through one Mr. Pradeep Singh.

(viii) Later on, the Deed of Exchange dated 03.05.2024 was executed between the Respondent and Smt. Neeta Anand, perfecting the former's title to the 'Neeta Anand parcel' of the Subject Property. Upon gaining knowledge of this, the Petitioner immediately issued two Demand Letters dated 07.08.2024 and 31.08.2024, stating therein that he was ready and willing to proceed with the sale deed pertaining to the remaining land.

(ix) When the Petitioner did not receive replies to either of the Demand Letters dated 07.08.2024 and 31.08.2024 despite their due service upon the Respondent, he invoked the arbitration clause being Clauses No. 18 and 19 contained in the ATS by way of a Letter dated 26.10.2024.

(x) When no response was forthcoming from the Respondent, the Petitioner approached this Court on 06.12.2024 by way of a Petition under Section 11 of the Arbitration Act being ARB.P. 2014/2024, seeking appointment of an arbitrator. Shortly thereafter, the Respondent terminated the ATS by way of a Letter dated 10.12.2024.

(xi) Subsequently, *vide* the Order dated 10.01.2025, this Court appointed an arbitrator to adjudicate upon the disputes between the parties.

3. After conducting an examination into the statements of claim and defense, evidence and oral arguments on behalf of the parties, the Impugned Award dated 17.07.2026 was passed by the learned Sole Arbitrator. Operative portion of the Impugned Award reads as under:

> *"**XIII. AWARD***
>
> *144. In view of the foregoing analysis and findings, this Tribunal makes the following Award:*
>
> *(A) The Claimant's claim for specific performance of the Agreement to Sell dated 17.01.2022, in respect of the land more particularly described in the Statement of Claim, is hereby dismissed.*
>
> *(B) The Claimant's prayer for a declaration that the Notice of Termination dated 10.12.2024 is illegal, non est, null and void is declined as unnecessary, specific performance having been refused.*
>
> *(C) The Claimant's prayer for a permanent injunction restraining the Respondent from dealing with the subject property is declined as a consequential matter.*
>
> *(D) The Respondent shall refund to the Claimant the sum of Rs.97,00,000 (Rupees Ninety-Seven Lakhs only), this direction being made on the basis of the Respondent's own unconditional admission of record and not upon any counterclaim, none having been pleaded.*
>
> *(E) The Respondent shall pay interest on the said sum of Rs.97,00,000 at the rate of 15% per annum from*

17.08.2022 being the date on which the second of the two 2022 Sale Deeds was registered and the excess amount crystallized until the date of this Award. The Respondent ought to have refunded the excess payment in 2022 itself or at the latest upon termination of the contract; the contractual rate of 15% per annum under Clause 6 of the Agreement is applied by analogy. Taking the date of this Award as 17.07.2026, the period from 17.08.2022 is 3 years and 11 months. Simple interest at 15% per annum on the principal sum of Rs.97,00,000 for that period amounts to Rs.56,98,750 (Rupees Fifty-Six Lakhs Ninety-Eight Thousand Seven Hundred and Fifty only), yielding a combined principal- and-interest sum of Rs.1,53,98,750 (Rupees One Crore Fifty-Three Lakhs Ninety-Eight Thousand Seven Hundred and Fifty only) as of the date of this Award.

(F) In the event the total amount under (D) and (E) above is not paid within sixty days from the date of this Award, the Respondent shall be liable to pay future interest at the rate of 15% per annum on the outstanding balance from the expiry of that period until realisation.

(G) The Respondent shall pay costs of Rs.25,00,000 (Rupees Twenty-Five Lakhs only) to the Claimant. The Respondent held an admitted sum of Rs.97,00,000 from 17.08.2022 and offered no justification for its non-refund either in 2022 or upon termination of the contract in December 2024. The Claimant was compelled to initiate arbitration proceedings to recover a sum the Respondent herself acknowledged was due. In these circumstances, a costs order in the Claimant's favour is just under Section 31A of the Arbitration and Conciliation Act, 1996. All other fees and expenses shall be borne equally by the parties.

(H) All other reliefs claimed by either party and not specifically addressed above are denied."

4. It is pertinent to note that after the passing of the Impugned Award, the Petitioner, seeking ad-interim reliefs, filed a Petition under Section 9 of the Arbitration Act being O.M.P.(I) 10/2026 before this Court with the following prayers:

> *"(a) Pass an appropriate order restraining the Respondent, her agents, associates, employees, family members, etc., from encumbering, mortgaging, selling, dealing with, transferring possession, raising any construction, or otherwise creating any third-party interest in the subject property i.e. land in Khasra Nos. 518 (4-5) *less (2-16), 519 (0-9), 520 (1-8) *less (1-3), 530 (3-5), 531 (2-3), 532 (4-16), 535/1 (1-4), 535/2 (1-4), and 536 (3-9), comprised in Village Gadaipur, Mehrauli, Delhi, subject matter of the Agreement to Sell dated 17.01.2022, pending the filing, listing, and final disposal of the Petitioner's challenge under Section 34 of the Arbitration and Conciliation Act, 1996; and*
>
> *Pass any other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."*

5. By way of this Judgment, O.M.P.(I) 10/2026 shall also be disposed of by this Court.

6. Learned Senior Counsel for the Petitioner contends that the Impugned Award is in contravention with the fundamental policy of Indian law, is patently illegal and as such, must be set aside. To substantiate his contention, he submits as under:

(i) Finding of the learned Sole Arbitrator that the Petitioner failed to establish continuous readiness and willingness, is without consideration of the vital documentary evidence produced by the Petitioner and is, as such, perverse and vitiated by patent illegality.

(ii) Even after confining his analysis to only two of the Chartered Accountant Certificates and treating them as documents prepared for unrelated third-party regulatory purposes, the learned Sole Arbitrator gave a completely contrary finding to conclude that the Petitioner did not place on record any document evidencing availability of funds between 2022 and 2024. This is despite the Petitioner having produced the following documents:

  (a) Income Tax Returns for Assessment Years 2021-22 to 2024-25, reflecting income of up to Rs. 25.93 Crores;

  (b) Audit Reports;

  (c) Stock Valuation Reports showing liquid assets of up to 59.64 Crore capable of being liquidated at short notice;

  (d) Letter of the Federal Bank, certifying a subsisting account balance of Rs. 13.95 Crore as on 09.03.2025; and

  (e) Chartered Accountant Certificates, which were general net-worth certificates issued without any third-party lender disclaimers.

(iii) It is submitted that the learned Sole Arbitrator ought to have considered the overall conduct of the parties, such as the payments made between 17.01.2022 and 17.08.2022, assistance in completion of the conveyances in the year 2022, immediate refutation of termination and pursuit of remedies under Sections 9,

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11 and 17 of the Arbitration Act, in conjunction with the financial record produced by the Petitioner. Reliance in this regard is placed on the judgment of the Apex Court in K.S. Manjunath v. Moorasavirappa, **2025 SCC OnLine SC 2378.**

(iv) Finding of the learned Sole Arbitrator's that the Petitioner was required to maintain idle liquid funds exceeding Rs. 18 crores between 2022 and 2024 is unfounded on any legal principle whatsoever.

(v) The learned Sole Arbitrator has rendered mutually contradictory findings in the Impugned Award. It is submitted that the learned Sole Arbitrator first observed that the ATS depends on a single, indivisible contingency covering the entire Subject Property, and on the other hand,it observed that the Sale Deeds registered on 28.07.2022 and 05.09.2022 constituted part-performance of the ATS and was not contrary to the terms of the ATS. The final findings in the Impugned Award, being based on such self-contradictory reasoning, cannot be sustained.

(vi) By construing that Clause 7 of the ATS contained a cut-off date (i.e., 31.03.2022) which was never agreed to between the parties, the learned Sole Arbitrator has rewritten the ATS and travelled beyond the jurisdiction conferred by the said ATS.

(vii) The learned Sole Arbitrator overlooked the crucial aspect that Clause 6 and Clause 7 of the ATS pertained to different family members of the Respondent, i.e., while Clause 6 relates to the immediate family members of the Respondent comprising her mother, sister and a family trust, Clause 7 relates to a relative of

the Respondent, i.e., her aunt. Overlooking such an essential aspect goes to the root of the matter, and is not a matter of mere alternate interpretation, but one that was unreasonable, uncalled for and that frustrated the very intention of the parties while entering into the ATS.

(viii) The Respondent initially expressly mentioned in the Termination Notice that there was no objection to carry out the registry of the Neeta Anand Parcel. However later, the Respondent in the Section 9 proceedings before this Court stated that since there was no agreement between the Respondent and Ms. Neeta Anand in terms of Clause 7 of the ATS, the same cannot be enforced, carefully concealing the factum of entering into the Deed of Exchange.The learned Sole Arbitrator ignored this dishonest conduct of the Respondent.

(ix) The Petitioner's readiness and willingness should have been assessed in light of the antecedent obligation resting upon the Respondent, who perfected her title to the Neeta Anand Parcel only on 03.05.2024 and thereafter, denied the very document through which the title was secured. However, the learned Sole Arbitrator, in violation of the judgment of the Apex Court in K.S. Manjunath (Supra), did not take into account the conduct of the parties.

(x) The Impugned Award violates the fundamental policy of Indian law by deciding the dispute on repealed equitable principles under former Section 20(2) of the SRA. By deciding on subjective notions of fairness and vendor hardship, the learned Sole

Arbitrator acted *ultra vires* his jurisdiction and decided otherwise than in accordance with substantive law.

(xi) The learned Sole Arbitrator abandonedhis adjudicatory functions by refusing to decide upon certain framed Issues and by holding that the exact figure inserted in Clause 2 of the ATS does not need to be decided. It is submitted that leaving formally framed issues of contractual validity and agreed price unresolved while adjudicating consequential specific performance constitutes a manifest abdication of adjudicatory duty, giving rise to patent illegality on the face of the record.

7. *Per contra,* learned Senior Counsel appearing for the Respondent submits as under:

(i) The learned Sole Arbitrator has correctly concluded that the time limit of 31.03.2022 stipulated in Clause 6 of the ATS was intended to be applicable to the land parcel mentioned in Clause 7 and not restricted to the land parcel in Clause 6 alone and consequently, the Respondent was discharged from her obligations under the ATS once the family settlement in relation to the Neeta Anand parcel did not fructify before 31.03.2022.

(ii) Interpretation of Clauses 6 and 7 of the ATS as given by the Petitioner would result in the Respondent being bound by the ATS for an indefinite period, which was not intended by the parties.

(iii) The learned Sole Arbitrator's interpretation of Clauses 6 and 7 of the ATS as well as the applicability of the deadline of 31.03.2022 is a fair and reasonable interpretation of the contract out of which

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disputes have arisen between the parties, and as such, is least susceptible to challenge under Section 34 of the Arbitration Act.

(iv) By way of the present Petition, the Petitioner has only sought to reiterate an alternate plausible interpretation of the ATS which was also advanced before the learned Sole Arbitrator and struck down as untenable and unsupported by evidence. However, the Petitioner has not been able to show why the learned Sole Arbitrator's interpretation is untenable or implausible to warrant this Court's interference under Section 34 of the Arbitration Act.

(v) The Petitioner has been unable to identify as to which vital evidence was ignored by the learned Sole Arbitrator in arriving at the conclusion that the Petitioner was unwilling to execute the ATS.

(vi) Finding of the learned Sole Arbitrator on the Petitioner's financial capacity is one of facts and based on the relevant evidence produced by the parties and the Petitioner's objection on this count would call for re-appreciation of evidence, which is impermissible under Section 34 of the Arbitration Act.

(vii) The Petitioner's reliance on post-cut-off conveyances and payments to contend that the ATS did not terminate on the cut-off date is misconceived, and the learned Sole Arbitrator has correctly observed that the payment made on 12.04.2022 and other conveyances of the year 2022 relate to the Co-Ownership Parcel under Clause 6 and not Neeta Anand Parcel under Clause 7.

(viii) The Petitioner's contention that the SV Parcel fell outside the ambit of Clauses 6 and 7 of the ATS is fundamentally flawed as

the ATS was entered into for the entire Subject Property, rather than for three (3) sets of separate parcels. As rightly observed by the learned Sole Arbitrator, this conclusion has been incorporated in Clause 7 of the ATS under the phrase "*balance land out of approximately 5.50 acres.*"

(ix) It is submitted that the observations of the learned Sole Arbitrator on the Petitioner's readiness and willingness are factual, have been dealt with independently of each other and are based on appreciation of all the evidence produced by the parties. For instance, the observation of the learned Sole Arbitrator that the evidence did not depict readily deployable funds with the Petitioner between 2022 and 2024, was only arrived at after due consideration was given to the documents placed on record.

(x) In response to the Petitioner's contention that his ITRs for four assessment years was not looked into by the learned Sole Arbitrator, it is submitted that in the two relevant assessment years, i.e., 2023-24 and 2024-25, the Petitioner's income has been disclosed to be Rs. 4.09 crores and Rs. 9.91 crores respectively, which even cumulatively were in sufficient to fund the balance sale consideration of Rs. 18 crores. In any event, as rightly noted by the learned Sole Arbitrator, income tax returns are not sufficient to prove that funds were maintained in readily deployable form between 2022 and 2024 with the Petitioner.

(xi) The Petitioner's own audited balance sheet as on 31.03.2022 shows a total of Rs. 1,89,59,44,118/- (approximately 189.59

crores), of which the cash and bank balances together stood at only Rs. 80,63,946/, as against the requirement of Rs. 18 crores.

(xii) The Chartered Accountant Certificates relied upon by the Petitioner to show financial readiness were issued specifically for the purpose of third-party lending institutions, in connection with regulatory and/or net-worth certification purposes. It is submitted that the Certificates expressly disclaim use for any other purpose and in any event, do not certify availability of funds for the transaction in question.

(xiii) The Petitioner's submission that the learned Sole Arbitrator has decided upon the merits of the case on equitable considerations is a plain misreading of the Impugned Award, as the learned Sole Arbitrator specifically notes that the statutory framework of SRA in respect if granting or refusing specific performance of a post-2018 contract prevents acting upon equitable considerations. Keeping this in mind, the learned Sole Arbitrator rightly identifies the operative bases of the Impugned Award as firstly, the lapse of the ATS on its stipulated temporal limit and secondly, the statutory bar under Section 16(c) of the SRA.

8. Heard the learned Senior Counsels for the parties and perused the material on record.

9. Before deciding upon the rival contentions, this Court deems it fit to remind itself of the contours within which the present Petition under Section 34 of the Arbitration Act must be adjudicated upon by this Court.

10. It is trite law that a challenge to the arbitral award can only be on the grounds provided under Section 34 of the Arbitration Act. The award should

not be interfered with until the conclusion arrived at is perverse. Proceedings under Section 34 of the Arbitration Act cannot be equated with appellate jurisdiction and the court cannot reappreciate evidence. Accordingly, interference by the court is limited to the grounds specified under the Arbitration Act, including violation of public policy, fundamental principles of Indian law or patent illegality going to the root of the matter. Mere errors of law or reassessment of evidence do not justify setting aside an arbitral award. Reference is made of the Judgment of the Apex Court in MMTC Ltd. v. Vedanta Ltd., (**2019) 4 SCC 163**, wherein the following observations were made:

> "***11.*** *As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

12. *It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends CoalCarbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])*

13. *It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.*

> ***14.*** *As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.*"

11. Reference is also made to the judgment of the Apex Court in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., **(2025) 2 SCC 417**, with specific reference to the following observations on construction of 'in contravention with the fundamental policy of Indian law:

> *"**In contravention with the fundamental policy of Indian law***
>
> ***51.*** *As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:*
>
> *(a) the fundamental policy of Indian law; and/or*
> *(b) the interest of India; and/or*

(c) justice or morality.

xxx

55. *The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.*

56. *Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:*

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding

effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law,

the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).”

12. ‘Patent illegality’ as a ground of challenge has also been discussed by the Apex Court in OPG Power Generation (Supra) as under:

“***Patent illegality***

65. *Sub-section (2-A) of Section 34 of the 1996 Act, which wasinserted by the 2015 Amendment, provides that an arbitral awardnot arising out of international commercial arbitrations, may alsobe set aside by the Court, if the Court finds that the award is visitedby patent illegality appearing on the face of the award. The provisoto sub-section (2-A) states that an award shall not be set asidemerely on the ground of an erroneous application of the law or byreappreciation of evidence.*

66. *In ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, whiledealing with the phrase “public policy of India” as used in Section34, this Court took the view that the concept of public policyconnotes some matter which concerns public good and publicinterest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an awardcould also be set aside if it is patently illegal. It was, however,clarified that illegality must go to the root of the matter and if theillegality is of trivial nature, it cannot be held that award is against public policy.*

67. *In Associate Builders v. DDA, (2015) 3 SCC 49, this Courtheld that an award would be patently illegal, if it is contrary to:*
(a) substantive provisions of law of India;
(b) provisions of the 1996 Act; and

(c) terms of the contract [See also three-Judge Bench decision ofthis Court in State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022)2 SCC 275].
The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention ofSection 28(1)(a) of the 1996 Act. Similarly, violating terms of thecontract, in effect, is in contravention of Section 28(3) of the 1996Act.

68. *In SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019)15 SCC 131 this Court specifically dealt with the 2015Amendment which inserted sub-section (2-A) in Section 34 of the1996 Act. It was held that "patent illegality appearing on the faceof the award" refers to such illegality as goes to the root of matter,but which does not amount to mere erroneous application of law. Itwas also clarified that what is not subsumed within "thefundamental policy of Indian law", namely, the contravention of astatute not linked to "public policy" or "public interest", cannot bebrought in by the backdoor when it comes to setting aside an awardon the ground of patent illegality [See SsangyongEngg. &Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131]. Further, itwas observed, reappreciation of evidence is not permissible underthis category of challenge to an arbitral award [See SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131].*"

13. For the sake of convenience, this Court shall reproduce hereinbelow all those clauses in the ATS which relate to the controversy between the parties:

"***2.*** *That the Vendee shall pay an amount of Rs. 22,00,00,000(Rupees Twenty-Two Crore only) (at the rate of Rs. ___ per acre) ("Sale Consideration")*

towards purchase of the said property to the Vendor in the fallowing manner:

> *i. "An amount of Rs. 50,00,000/- only (Rupees FIFTY LAKHS only) ("Advance") has been paid vide Cheque No. 51131602, dated 17 January 2022, Federal Bank, Chandni Chowk, Delhi, by the Vendee to the Vendor.*
>
> *ii. The Balance amount of Rs. 21,50,00,000/- (Rupees Twenty- One Crore Fifty Lakhs only) ("Balance Consideration") shall be paid by the Vendee to the Vendor within three months of the Vendor, showing the clear proof of execution of family settlement and complete title and ownership of 5.50 acres from its family members as mentioned in Para A of the present agreement. The Vendor will send by registered post or via email to (sanjeevsinghal7@yahoo.co.in) the proof of complete ownership/mutation/inheritance/relinquishment deed/sale deed or any other valid ownership document in her favour, to the Vendee and after receipt of such communication, within next 90 days the Vendee shall pay the entire balance sale consideration.*
>
> *xxx*

6. *That in the event if the family settlement will not be executed on or before 31st March 2022, then the Vendee will be entitled to get refund of entire payment with interest at the rate of 15% per annum from the date of payment. Such payment will be made within a period of 45 days from 31st March 2022, i.e. 15 May 2022. If the family settlement with the mother Mrs. Meenakshi Varma wife of Late Sh. Ashok Varma, sister Mrs. Shibani Varma Kapoor wife of Yadur Kapoor and*

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also RD Varma Trust is done than the sale deed for an area of approximately 2.5 Acres will be done in favour of Ven dee in Khasra No. 518,519,520 and 529.

7. *That if the family settlement with Smt. Neeta Anand will take place then the sale deed of balance land of out of approximately 5.50 acres will also be done in favour of Vendee.*"

14. Perusal of the Impugned Award shows that the adjudication the six (6) framed issues was based on the following analytical heads:

i. *"Analytical Issue I addresses the execution and authenticity of the ATS, the stamping and registration objections, and the objection under Section 25 of the Indian Contract Act, 1872, and subsumes framed Issues 1 and 2.*

ii. *Analytical Issue II addresses whether the ATS was a contingent contract that became void, including the proper construction of Clauses 2, 6, and 7, and corresponds to framed Issue 3.*

iii. *Analytical Issue III addresses the effect of post-31.03.2022 conduct on the continuation of the ATS, including the application of Annamalai v. Vasanthi, and corresponds to framed Issue 4.*

iv. *Analytical Issue IV addresses readiness and willingness, the Public Notice and Clause 20, and unclean hands; the Respondent's objection under Section 17(1)(b) read with Section 49 of the Registration Act, 1908; and the Claimant's entitlement to specific performance under Section 16(c) of the Specific Relief Act, 1963, being the disposition issue corresponding to framed Issue 5.*





v. Analytical Issue V addresses the consequential reliefs of declaration, injunction, refund of the sum of Rs. 97,00,000, interest, and costs, and corresponds to framed Issue 6."

15. One of the arguments raised by the learned Senior Counsel for the Petitioner is that the learned Sole Arbitrator unjustly refused to adjudicate upon the frames Issues No. 1 and 2, or Analytical Issue I, to conclude the true and correct figure of financial consideration of the ATS. This Court shall, thus, peruse the findings of the learned Sole Arbitrator on the Analytical Issue I.

16. A closer scrutiny into the discussion under Analytical Issue I shows that the Respondent's contention was that the ATS was forged/tampered to the extent of the sale consideration, balance sale consideration as well as the per-acre rate under Clause 2. It was the case of the Respondent before the learned Sole Arbitrator that the Petitioner failed to discharge the burden cast on him under Section 65 of the BharatiyaSakshyaAdhiniyam, 2023 ["**BSA**"] to the prove the handwritten insertion in the ATS.

17. Perusal of the Impugned Award specific to the findings on Analytical Issue I depicts that the contentions in the preceding paragraph were discussed by the learned Sole Arbitrator, which spanned across three (3) pages and twelve (12). Three things have been considered; firstly, the mathematical correspondence between the ATS rate and the rate reflected in the two registered Sale Deeds of 28.07.2022 and 17.08.2022, secondly, that the Respondent at no stage pleaded as to what amount, if not Rs. 22 crores, was the agreed price and thirdly, the inconsistent mechanics of escrow pleaded by the Petitioner to allege that there were no photocopies of the

ATS. As such, this Court finds it difficult to agree with the argument of the learned Senior Counsel for the Petitioner that the framed Issues No. 1 and 2 were not decided by the learned Sole Arbitrator at all.

18. Even this Court has perused the documents placed on record, which were also part of the arbitral record. Indeed, there is no indication of any other consideration amount for the ATS, apart from Rs. 22 crores. Moreover, it is correctly noted by the learned Sole Arbitrator that while the Respondent pleaded that Rs. 22 crores was not the sale consideration under the ATS, implying that there was no concluded contract at all, her overall conduct in accepting consideration from the Petitioner and registering conveyances under the same instrument, painted a completely contrary picture.

19. In addition to the above, contentions regarding the purported forgery of the ATS have also been dealt with in the Impugned Award, to the extent arbitrable. Ultimately, the learned Sole Arbitrator was of the view that the Respondent was unable to make out a tenable case of forgery to establish that the consideration figures were inserted by the Petitioner after execution. The law dictates that the deceit is an important and necessary ingredient to establish an allegation of fraud, which ultimately would lead to a case of forgery. This Court reminds itself of the law laid down by the Apex Court in Vimla (Dr) v. State (NCT of Delhi), **(1963) 33 Comp Cas 279**, which observes as under:

> *Before we consider the decisions cited at the Bar it would be convenient to look at the relevant provisions of the Indian Penal Code.*
>
> *"463. Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or*

title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. A person is said to make a false documentFirst- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or...."

The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows: (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority: (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in section 464, i.e., "fraudulently" and the intention to commit fraud in section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions bearing on the subject. The second thing to

be noticed is that in section 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus:

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

"Fraudulently" is defined in section 25 thus:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of "fraud" would include not only deceit but also some injury to the person deceived, it would be

> *appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist."*

20. The allegations advanced by the Respondent, as rightly observed by the learned Sole Arbitrator, did not meet the seriousness which is called for when establishing an allegation of forgery, more so, when there was already a criminal complaint against such an allegation pending. Even if this allegation is coupled with the argument that the ATS was void without a settled consideration as per Section 25 of the Indian Contract Act, 1872 ["**Contract Act**"], it is crucial that documentary evidence to buttress the argument is shown. However, as rightly observed in the Impugned Award, the structural bargain contained in the ATS vis a vis an undisputed advance of Rs. 50,00,000/- paid by the Petitioner and accepted by the Respondent, strikes down the Respondent's argument.

21. Above all, in an event that an Arbitral Tribunal frames an issue and goes on to limit its examination thereunder and yet takes into account all the relevant documents, this Court finds it appropriate to remind itself that how thorough an examination of a particular issue ought to be, is within the purview of the Arbitral Tribunal. As such, it cannot be said that the learned Sole Arbitrator abdicated from its adjudicatory duties at all.

22. For the foregoing reasons, this Court does not find any reason to divulge from the views of the learned Sole Arbitrator under Analytical Issue I.

23. Next is Analytical Issue II, which dealt with whether the ATS was contingent or not and the proper construction of Clauses 2, 6 and 7 of the ATS. On this aspect, law is settled to the effect that a reasonable interpretation of the contract between the parties adopted by an arbitral tribunal cannot be interfered with merely because another interpretation is possible [Ref: DMRC v. DAMEPL (Supra)]. At the same time, the Apex Court has also held that the arbitrator cannot rewrite the contract or make a new agreement for the parties or introduce terms which the parties never agreed upon [Ref: State of Chhattisgarh v.Sal Udyog Pvt. Ltd., **(2022) 2 SCC 275**]. Thus, while the choice between two possible interpretations isordinarily left to the Tribunal, that discretion is not without limits.Where the interpretation adopted has no basis in the Contract, ignoresits clear terms, or is otherwise such that no reasonable person couldhave arrived at it, interference by this Court is permissible in suchcircumstances.

24. Thrust of the Respondent's argument on this issue before the learned Sole Arbitrator was that Clauses 2(ii), 6 and 7 of the ATS must be holistically read together and doing so would show that the ATS was contingent upon the family settlements, to be carried out by 31.03.2022. It was further submitted that the said family settlements would pertain to the entire Subject Property and not to any segregated portion. Lastly, it was contended that since the settlement pertaining to the Neeta Anand Parcel could not fructify, the ATS became a void agreement in terms of Section 32 read with Section 35 of the Contract Act.

25. *Per contra*, the Petitioner's stand before the learned Sole Arbitrator was that Clause 7, which deals with the Neeta Anand Parcel was silent as to any cut-off date and the date of 31.03.2022 was only limited to Clause 6,

which concerns settlements only with Ms. Meenakshi Varma, Mrs. Shibani Varma Kapoor and the R.D. Varma Trust and the consequent 2.5-acre conveyance. It was further submitted that the Respondent's contentions are self-contradictory when compared to her conduct of accepting payments and registering sale deeds after 31.03.2022. While placing reliance on the judgment of the Apex Court in Chand Rani v. Kamal Rani,**(1993) 1 SCC 519**, it was contended that in contracts for sale of immovable property, there is ordinarily a presumption against time being of the essence and the intention to make time of essence must be expressed in the contract unequivocally.

26. The learned Sole Arbitrator sided with the arguments of the Respondent to hold that 31.03.2022 was a cut-off date to the entirety of the ATS and not just Clause 6. The learned Sole Arbitrator recalled the judgments of the Apex Court in Radha Sundar Dutta v. Mohd. Jahadur Rahim,**1958 SCC OnLine SC 38**, and R. Kandasamy v. T.R.K. Sarawathy,**(2025) 3 SCC 513**, to observe that Clause 7 of the ATS does not negate the temporal limit fixed in Clause 6, rather it aims to identify a further parcel of the same 'larger property' referred to in Recital A, conveyance of which was to follow completion of a further family settlement of the same general character as those mentioned in Clause 6.

27. Essence of the findings contained in the Impugned Award appears to be that the parties in no way could have intended to remain bound by the ATS for an indefinite period, and thus, the temporal limit of 31.03.2022 applied through the clauses therein.

28. In the above context, this Court recalls the following observations contained in the Judgment of the Apex Court in SaradamaniKandappan v.

S.Rajalakshmi, **(2011) 12 SCC 18**, which was also discussed by the Apex Court in R. Kandasamy (Supra):

> *"**36.** The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.*
>
> ***37.** The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to*

grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. ***A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice.Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality.*** *As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.*

38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable. *In Rattan Arya v. State of T.N. [(1986) 3 SCC 385] this Court held: (SCC pp. 389-90, para 4)*

"4. ... We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs 400 per month in 1973 will today cost at least five times more. In these days of universal, day-to-day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this Court in Motor General Traders v. State of A.P. [(1984) 1 SCC 222] a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14."

(emphasis supplied)

xxx

41. *A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyanadam v. Vairavan [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in Chand Rani [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)*

> *"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ...*
>
> *11. ... We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."*
>
> *(emphasis supplied)*"
>
> (Emphasis Supplied)

29. Thus, looking at the ATS in a contemporaneous manner, this Court finds it difficult to falter with the views in the Impugned Award and accept the contention of the learned Senior Counsel for the Petitioner that Clause 7 of the ATS had no temporal limit at all. That being so and in view of the fact that the family settlement with respect to the Neeta Anand Parcel did not take place prior to the temporal limit, i.e., 31.03.2022, the obvious conclusion is the one that the learned Sole Arbitrator arrives at – that Clauses 6 and 7 of the ATS have to be read together, and the Respondent

was discharged from any further obligations under the ATS after 31.03.2022. Obviously, as also noted by the learned Sole Arbitrator, this did not prevent the parties from engaging in discussions beyond 31.03.2022 and giving effect to the sale and purchase of the Subject Property.

30. For the above reasons, this Court finds no reason to interfere with the findings in the Impugned Award on Analytical Issue II.

31. Analytical Issue III adjudicates upon the continuity of the ATS beyond the 31.03.2022, in light of the conduct of the parties beyond the said date. Before the learned Sole Arbitrator, the Petitioner's case hinged on the findings of the Apex Court in Annamalai v. Vasanthi,**(2026) 3 SCC 769**. *Per contra,* the Respondent's submission hinged on the broader case of the ATS having ceased to be in effect after 31.03.2022 and no subsequent conduct could revive it.

32. The learned Sole Arbitrator undertook to distinguish the factual matrix involved in Annamalai (Supra) from the factual circumstances involved in the present case. This Court deems it fit to extract the relevant observations in the Impugned Award on this aspect hereinbelow:

> *"90. The present case shares with Annamalai the broad feature that payment was accepted, and further dealings under the agreement occurred, after the date on which the Respondent now says the contingency under Clause 6 expired. On a closer examination, however, there is a material distinction between the two cases, going to what the post-deadline payment and post-deadline conduct actually represented. In Annamalai, the additional payment accepted after the deadline was, on the facts as recorded by the Hon'ble Supreme Court, paid and accepted as further consideration toward the very same, single, undivided property that remained to be conveyed under the*

agreement; there was only one parcel, one sale deed remaining to be executed, and the vendors' demand for and acceptance of more money toward that one transaction is what supported the inference of waiver. The vendors additionally compounded that waiver by themselves repudiating the agreement first selling to a third party before they purported to terminate which is what rendered the termination a void act in response to the vendors' own prior breach.

91. The present record does not present that fact pattern. The payment of Rs.1,48,50,000 received by the Respondent on 12.04.2022, on the Claimant's own pleaded case, was sought and made in order to fund the Respondent's acquisition, from her own family members, of the Co-Ownership Parcel - the very land conveyed to the Respondent four days earlier, on 28.03.2022, by Sale Deed, Gift Deed, and Relinquishment Deed, and which the Respondent went on to convey onward to the Claimant's nominee in July and August 2022. That payment and that subsequent conveyance both relate, on the timeline, to the Clause 6 parcel the parcel for which the family settlement had in fact been concluded shortly before, on 28.03.2022 and not to the Neeta Anand parcel under Clause 7, which remained entirely unaffected by these events and in respect of which no payment, conveyance, or other dealing took place in 2022 at all. RW-2's admission that the Ultraville sale deeds "happened in light of this Agreement" is, on a fair reading, an admission that those 2022 conveyances were performance of the ATS as to the Clause 6 parcel; it is not, on its terms, an admission that the Respondent thereby also undertook to convey land she did not yet own and had no defined date for acquiring. Nor is there, on this record, any act by the Respondent analogous to the vendors' pre-termination sale to a third party in Annamalai; whatever view is taken of the events of 2023 and 2024,

> *addressed below, there is no finding available on this record that the Respondent dealt with the Neeta Anand parcel inconsistently with the ATS before any termination was issued.*
>
> *92. Accordingly, Annamalai does not compel the conclusion that the Respondent waived any temporal limit on her obligations concerning the Neeta Anand parcel specifically."*

33. Thus, the views of the learned Sole Arbitrator on Analytical Issue III attempt to compare the factual matrix of the dispute between the parties to a case-law which establishes a principle relevant to the present case and draw a conclusion accordingly. Naturally, in this process, the previous findings in the Impugned Award are kept in mind, as are the clauses of the ATS, in order to maintain an overall degree of coherence. It is, for these reasons, that this Court does not deem it fit to pick apart the learned Sole Arbitrator's findings.

34. In any event, once concluded that the ATS ceased to be in place on 31.03.2022 as the parties would never have intended to keep a contract running in perpetuity, the answer to Analytical Issue III could not have been – and is not – running contrary to such a conclusion. As such, the findings contained in the Impugned Award on Analytical Issue III are hereby upheld.

35. Analytical Issue IV dealt with the question of the Petitioner's readiness and willingness to execute the ATS as well as to whether or not the Petitioner was entitled to a decree of specific performance of the ATS. Discussion regarding the Public Notice dated 15.06.2023 and Clause 20 of the ATS has also been undertaken under this head.

36. Under the Analytical Issue IV, stand of the Respondent was that the Petitioner failed to satisfy the personal bar under Section 16(c) of the SRA and the Chartered Accountant Certificates are poor evidence of the Petitioner's 'readiness' to pay the consideration under the ATS. It was further submitted by the Respondent that the Public Notice dated 15.06.2023 published within forty-eight (48) hours of the Respondent's confirmation that the original ATS remained secured, breached the express confidentiality obligation in Clause 20 and independently bars relief under Section 16(b) of the SRA. It was lastly urged that even if Section 16(c) of the SRA was held to be not satisfied, it would be unequitable to direct specific performance of a 2022 agreement after two years, considering the price escalation of properties.

37. *Per contra*, the Petitioner's case before the learned Sole Arbitrator was that the ATS was valid, continuing and supported by part-performance. It was argued that since the Respondent ultimately held title to the entire Subject Property, Section 13(1)(a) and the current scheme of SRA after the 2018 Amendment, entitles the Petitioner to the conveyance out of the later-acquired interest. It was further submitted that the Petitioner was always ready and willing and had sufficient financial capacity to go through with all the conveyances relating to the Subject Property.

38. On the question of entitlement of the Petitioner to a specific performance, grounds of equity and former Section 20 of the SRA, the learned Sole Arbitrator first refers to the judgment of the Apex Court in Kamal Kumar v. Premlata Joshi,**(2019) 3 SCC 704**, wherein, the framework of material questions that must be addressed in a specific performance claim were stated to be as under:

> *"**10.** It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds."*

39. This Court is mindful of the significant legislative shift brought about by the Specific Relief (Amendment) Act, 2018, which fundamentally altered the jurisprudential approach governing the enforcement of commercial contracts. The pre-amendment position, wherein specific performance was viewed as an exceptional and discretionary remedy while damages constituted the ordinary rule, has undergone substantial dilution pursuant to the 2018-Amendment. The legislative intent underlying the amendment unmistakably reflects a conscious policy shift towards strengthening contractual sanctity, ensuring commercial certainty, and promoting greater



confidence in the enforceability of agreements, particularly in the context of modern commercial and infrastructure transactions.

40. As noticed by the Division Bench of this Court in Global Music Junction Pvt. Ltd. v. Shatrughan Kumar @ Khesari Lal Yadav,**2023 SCC OnLine Del 5479** the amended statutory framework now substantially tilts in favour of enforcement of contractual obligations, subject only to limited and narrowly construed statutory exceptions. Relevant portion of the Global Music (Supra) reads as under:

> "***AMENDMENT ACT, 2018 HAS MADE SPECIFIC PERFORMANCE OF A CONTRACT A GENERAL RULE RATHER THAN AN EXCEPTION. THE LEGISLATIVE SHIFT IS TOWARDS STRONGER ENFORCEMENT OF CONTRACTS.***
>
> ***29.*** *Specific performance is an equitable relief given by the Court to enforce against a defendant the duty of doing what he agreed by the contract to do. It was in the process of a search for effective remedial action that Specific relief emanated from the Equity Courts in England. Sir Edward Fry in his, A Treatise on the Specific Performance of Contracts, 6th Edn. states "The only remedy at common law for the non-performance of a contract was in damages…. The common law treats as universal a proposition which is for the most part, but not universally true, namely, that money is a measure of every loss. The defeat of justice which arose from this universality of the common law principle was met and remedied in certain cases by the jurisdiction of Courts of Equity to compel specific performance."*
>
> ***30.*** *The principles built up by successive Chancellors of England in this branch of law were borrowed by the Indian Courts and served to enrich the Indian Law. The*

Specific relief Act of 1877 was modelled on the draft New York Civil Code of 1862 and embodied in it the relevant doctrines evolved by the Courts of Equity in England. The Act of 1877 was not exhaustive. For decades this Act was subjected to judicial interpretations which revealed many deficiencies and lacunae.

31. *On the recommendations of the Law Commission's Ninth Report, the Specific relief Act, 1963 was brought into force. The Act, 1963 as originally enacted, conferred wide discretionary powers upon the Courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the Courts in majority of cases awarded damages as a general rule and granted specific performance as an exception.*

32. *However, it was recently felt that the Act, 1963 is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that were needed for the overall development of the country. India also did not fare well in the international rankings in 'Enforcement of Contracts' and 'Ease of Doing Business'. The World Bank in its 'Ease of Doing Business' 2018 report ranked India at 100 out of 190 countries. In 'Enforcement of Contracts', India was ranked at 164 out of 190 countries as per World Bank Doing Business indicators.*

33. *Accordingly, with the intent of promoting public interest, 'Ease of Doing Business' and to provide an effective remedy to parties who have suffered loss due to breach or non fulfilment of a contract, the Government of India appointed an Expert Committee under the Chairmanship of Mr Anand Desai.*

34. *Acting on the recommendations of the said Committee, the Government of India decided to amend the Act, 1963 prospectively (See: Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355). The Statement of Objects and Reasons of the Specific relief (Amendment) Act, 2018 (hereinafter be referred to as 'Amendment Act, 2018') is reproduced hereinbelow:*

*"**STATEMENT OF OBJECTS AND REASONS***

The Specific relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.

2. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.

3. In view of the above, it is proposed to do away with the wider discretion of courts to grant specific

performance and to make specific performance of contract a general rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc.

4. A new Section 20A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project. The Department of Economic Affairs is the nodal agency for specifying various categories of projects and infrastructure sub-sectors, which is provided as Schedule to the Bill and it is proposed that the said Department may amend the Schedule relating to any such category or sub-sectors.

5. Special Courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor. The Bill seeks to achieve the above objectives…"

41. Noting the fact that the freestanding equitable discretion to refuse specific performance on grounds of hardship, price escalation or it having

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become inequitable was no longer subsisting after the 2018 Amendment to the SRA, the learned Sole Arbitrator rightly denies the Respondent's averment that specific performance of the ATS must be refused under Section 20 of the SRA, especially when the ATS was executed after 2018.

42. Adjudicating upon the argument on Section 16(c) of the SRA, the learned Sole Arbitrator first and foremost rejected all those arguments based on case laws that involved interpretation of the SRA prior to the 2018 Amendment. This cannot be faulted with. For the sake of convenience, Section 16 of the SRA is reproduced hereinbelow:

> "***16. Personal bars to relief.—****Specific performance of a contract cannot be enforced in favour of a person—*
>
> *(a) who has obtained substituted performance of contract under Section 20; or*
>
> *(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*
>
> *(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*
>
> *Explanation.—For the purposes of clause (c),—*
> *(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*





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

43. Thus, in order to obtain a decree for specific performance, the plaintiffmust aver and prove that he has performed his part of the contract and hasalways been ready and willing to perform the terms of the contract whichare to be performed by him. Section 16(c) of the SRA mandates 'readiness and willingness' of the plaintiff to be averred andproved and it is a condition precedent to obtain the relief of specificperformance. However, there is a distinction between the terms 'readiness' and 'willingness'. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised [Ref: His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, **(1996) 4 SCC 526**].

44. Pertinent to the facts of the present case, the Apex Court in Shenbagam v. KK Rathinavel, **2022 SCC OnLine SC 71** has observed as under:

> ***41.*** *True enough, generally speaking, time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of*

> *the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. However, we order a refund of the consideration together with interest at 6% per annum."*

45. Keeping in mind all the above principles, the learned Sole Arbitrator ventured into the documentary evidence to infer 'readiness' and 'willingness' – or lack thereof – on part of the Petitioner. The long and unexplained gap between the registration of the two sale deeds in 2022 and the Public Notice dated 15.06.2023 was taken note of by the learned Sole Arbitrator, as something that blurred the Petitioner's claim of readiness and in the opinion of this Court, rightfully so. Mere oral *ipsi dixit* of the Petitioner that meetings took place between the parties as regards continuity of the ATS cannot be, by itself, a proof of continuous 'readiness' or 'willingness'. Rather, as rightly pin-pointed by the learned Sole Arbitrator, it was a strange act on part of the Petitioner to publish a public announcement of securing his rights by way of the Public Notice dated 15.06.2023, if there was already a prior agreement thereto with the Respondent, whom the Petitioner claims to have been known personally over the past several years.

46. As to the question of financial capacity, the learned Sole Arbitrator emphasized on one of the many documents produced by the Petitioner, i.e., the Chartered Accountant Certificates, to observe at the outset that these were prepared for unrelated third-party regulatory submissions, expressly disclaim use for any other purpose and most importantly, did not certify availability of funds for the transaction. To support this observation, the

learned Sole Arbitrator recalled the judgment of the Apex Court in Ritu Saxena v. J.S. Grover,**(2019) 9 SCC 132**, which lays down the position that financial capacity being established for one purpose is insufficient to discharge the burden of proving financial capacity to perform the specific contract in question. In this view of the matter, it is difficult to accede to the argument advanced by the learned Senior Counsel for the Petitioner that vital evidence was not considered by the learned Sole Arbitrator, as it is clear that vital evidence to show his financial capacity such as bank statement, fixed deposit confirmation or any other direct financial record demonstrating the Petitioner's financial capacity was never produced before the learned Sole Arbitrator. A balance sheet, for instance, being a self-serving statement by the Petitioner, is insufficient to discharge the onus of proving financial capacity [Ref: N.P. Thirugnanam (Dead) by LRs v. Dr. R. Jagan Mohan Rao and Ors., **(1995) 5 SCC 115**].

47. With the above discussion, this Court has no hesitation in upholding the findings of the learned Sole Arbitrator on the Analytical Issue IV, which was decided against the Petitioner.

48. On the last Analytical Issue V, which dealt with the consequential reliefs of declaration that the Termination Notice dated 10.12.2024 is void, injunction, the sum of Rs. 97,00,000/- paid as advance, interest and counterclaims, the learned Sole Arbitrator first disposed of the first two as having become infructuous on account of having previously denied specific performance of the ATS and there remaining no right in the Petitioner to compel transfer, which would require protection by injunctive relief. On the issue of the Petitioner having deposited Rs. 97,00,000/- as advance consideration towards the ATS, the learned Sole Arbitrator noted that the

Respondent, in her Statement of Defence, had categorically admitted that the said amount remained with her and that the Respondent was willing to refund the said amount to the Petitioner. As such, and in light of the principles pronounced by the Apex Court in J.J. Lal v. M.R. Murali,**(2002) 3 SCC 98**, the learned Sole Arbitrator directed the Respondent to refund the amount of Rs. 97,00,000/- to the Petitioner, along with an interest of 15% per annum till realization. Since this Analytical Issue V has not been actively challenged before this Court, no further discussion is warranted.

49. A careful and comprehensive perusal of the Impugned Award demonstrates that the Arbitral Tribunal has examined the pleadings, documentary material, correspondence exchanged between the parties, and the evidence led in support of their respective claims and assertions. The Impugned Award reflects due consideration of the relevant facts and surrounding circumstances germane to the disputes.

50. The Impugned Award reflects a plausible and reasoned interpretation of the contract and an evaluation of evidence within the jurisdiction of the Arbitral Tribunal. It is well settled that a court exercising limited supervisory jurisdiction under Section 34 of the Arbitration Act cannot re-appreciate evidence or substitute its own interpretation of contractual clauses where the view taken by the Arbitral Tribunal is a possible and reasonable one.

51. Viewed in its entirety, the Impugned Award reflects a reasoned and structured adjudication of the disputes by the Arbitral Tribunal within the confines of the contractual terms agreed upon by the parties, the material placed on record, and the jurisdiction vested in the Arbitral Tribunal. The Impugned Award demonstrates due application of mind to the pleadings, evidence, and relevant contractual provisions.

52. In view of the foregoing discussion, this Court is of the considered opinion that the Petitioner has failed to establish any ground under Section 34(2) or Section 34(2A) of the Arbitration Act warranting interference with the Impugned Award.

53. Accordingly, the Petition under Section 34 of the Arbitration Act being O.M.P. 3/2026, stands dismissed, along with pending Application(s), if any.Further, in view of this Court's findings of this Court in O.M.P. 3/2026, O.M.P. (I) 10/2026 is rendered infructuous and is disposed of as such.

SUBRAMONIUM PRASAD, J

OCTOBER 06, 2026
AP