



2025:DHC:8107-DB



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

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***Judgment reserved on: 08.09.2025******Judgment pronounced on: 16.09.2025***

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EFA(OS) 16/2018

KAVITA AGARWAL

....Appellants

Through: Mr. Abhishek Agarwal  
Advocate.

versus

AVNEET SONI

.....Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. Through the present Appeal, the Appellant [Judgment Debtor before the learned Single Judge] assails the correctness of order passed on 10.08.2018 [hereinafter referred to as 'Impugned Order'], wherein the learned Single Judge, while adjudicating an Execution Petition arising from an *Ex Parte* Arbitral Award [hereafter referred to as 'Award'], attached the Appellant's rights under two Agreements to Sell, both dated 11.03.2018 [hereinafter referred to as 'said agreements'] relating to the second and third floor along with the terrace rights of the property being K-15, Hauz Khas Enclave, New Delhi [hereinafter referred as the 'suit property'], while exercising powers under Section 60 of the Code of Civil Procedure, 1908



[hereinafter referred to as ‘CPC’], The operative part of the Impugned Order reads as under:

*“9. I am in full agreement with the view taken by the Allahabad High Court (In. Bhairon Prasad Chaurasiya vs. Smt Tara Devi AIR 1980 All 36) and, therefore, hold that the rights possessed by the Judgment Debtor under the Agreement(s) to Sell, being assignable at her own volition, are liable to attachment in terms of Section 60(1) of the CPC.”*

### **FACTUAL MATRIX**

2. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

3. A perusal of the record reflects that, the Appellant’s husband, Sh. C.S. Agarwal and Sh. D.K. Jain shared a long-standing business relationship involving multiple real estate transactions. They agreed to jointly purchase a property, from the original vendor, Ms. Sonia Dhir, with second and third floor involving terrace rights in name of Sh. D.K. Jain and Smt. Nirmal Jain [hereinafter referred to as ‘Jains’] and Basement, ground floor and first floor in name of the Appellant.

4. Subsequently, owing to Sh. D.K. Jain’s financial difficulties, Sh. C.S. Agarwal paid the entire consideration for the property, but separate sale deeds dated 04.08.2006, were executed as per their prior understanding. To further formalize the arrangement, the said agreements were executed, whereby Sh. D.K. Jain agreed to sell the suit property to the Appellant for a balance consideration of Rs.3 crores, payable by 30.04.2010.

5. The Appellant and Sh. C.S. Agarwal, while continuing possession of the suit property as per the Receipt-cum-Possession



Letter dated 07.08.2006, filed a civil suit being CS(OS) No. 2439/2009, seeking specific performance of the said agreements, against the Jains. The Defendants argued the arrangement was merely a lease.

6. On 18.12.2009, a *status quo* order was passed, and during the pendency of the suit the Appellant executed a Memorandum of Understanding [hereinafter referred to as 'MoU'] dated 15.05.2010 in favour of Sh. Avneet Soni, the Respondent [Decree Holder before the learned Single Judge] for sale of the third floor at Rs.5 crores, with Rs.2.25 crores paid upfront, balance due on sale deed execution. The MoU allowed the Respondent to claim double the paid amount, i.e., Rs.4.50 crores, if the suit was decided against the Appellant or within the stipulated time, which the Respondent subsequently enforced.

7. The Appellant's post-dated cheque for Rs.4.5 Crores was dishonoured due to "account closed". Following notice under Section 138 of the Negotiable Instruments Act, 1881 [herein after referred to as 'NI Act'] dated 12.09.2012, the Appellant executed a second MoU on 26.10.2012, issuing three cheques for Rs.2 Crores, Rs.2.5 Crores, and Rs.30 Lakhs due on 31.01.2013, which all were dishonoured for "insufficient funds." A fresh notice under Section 138 of the NI Act was issued on 21.05.2013.

8. The parties agreed to arbitration on 13.03.2014. The Appellant ceased participation after 07.08.2014, leading to the Award, thereafter, the learned Single Judge, by the Impugned Order, directed the Appellant to pay Rs.4.8 Crores with 6% interest from 01.02.2013,



along with an arbitration fee of Rs.1,92,000 and Rs.35,000 lawyer's fee, while attaching the right and interests of the Appellant under the said agreements.

### **CONTENTIONS OF THE APPELLANTS**

9. Learned counsel for the Appellant has submitted that the learned Single Judge erred in holding that the rights under the said agreements are liable for attachment under Section 60(1) of the CPC. Learned counsel has submitted that the reliance placed by the learned Single Judge upon the judgment passed by the Full Bench of the Allahabad High Court in ***Bhairon Prasad Chaurasiya v. Tara Devi***<sup>1</sup>, is misplaced, contending it to be contrary to the settled law which establishes that a contract to purchase of immovable property does not create any proprietary interest.

10. It is submitted by the learned counsel for the Appellant that clause (m) of the proviso to Section 60(1) of the CPC specifically exempts contingent or possible rights from attachment. It is further submitted that since the suits for specific performance were pending, the Appellant had no vested right, and the rights claimed were merely contingent.

11. Learned counsel for the Appellant has further submitted that the rights under the said agreements were jointly held by the Appellant and her husband, Sh. C.S. Agarwal, and attachment without adjudicating Sh. C.S. Agarwal's interest would prejudice both the parties. Attachment at this stage would also impair the Appellant's

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<sup>1</sup> 1979 SCC OnLine All 716



ability to enforce the said agreements, as issues of genuineness and pending adjudication render the rights incapable of being attached.

12. Furthermore, learned counsel for the Appellant has submitted that the Impugned Order could facilitate collusion between the vendors and the Respondent, allowing them to evade obligations, and that only absolute rights, not contingent or possible rights, are liable to attachment under the settled law.

### **CONTENTIONS OF THE RESPONDENT**

13. *Per contra*, it is the case of the Respondent that the Appellant possesses enforceable rights under the said agreements. It is contended that the Appellant instituted civil suits being CS(OS) 2439/2009 and CS(OS) 2443/2009 seeking specific performance and continues in peaceful possession, thereby establishing substantive rights.

14. It is contended by the Respondent that under Section 60 of the CPC, any saleable property — movable or immovable — over which the Appellant has disposing power, is liable for attachment, irrespective of the registered ownership. It is also contended that the rights under the said agreements are concrete and enforceable, not contingent or speculative, as evidenced by the Appellant's active prosecution of specific performance suits.

15. Furthermore, the Respondent has contended that attachment of the Appellant's rights is necessary to secure enforcement of the Award and to prevent potential collusion with other parties. It is contended that the balance of convenience favours attachment, as the rights are



saleable and transferable for execution of the decree.

### **ANALYSIS & FINDINGS**

16. This Court has considered the submissions advanced by learned counsel for the parties at length and with their able assistance, perused the paperbook along with the record of the suit.

17. It is evident that the learned Single Judge has duly considered all relevant aspects of the matter and proceeded to record the following observations:

*“5. In the present case, the Agreement(s) to Sell authorize the Judgment Debtor to assign her rights in these Agreement(s) to a third party. Clause 10 of the Agreement(s) to Sell is reproduced hereinbelow:*

*“10. That the Vendee shall have the full right to nominate and/or assign all rights under this Agreement to Sell in favour of any person or persons, be- it a body Corporate, firm or Association of Persons or an individual and the Vendor shall have no-objection thereto.”*

*6. In. **Bhairon Prasad Chaurasiya vs. Smt Tara Devi** (AIR 1980 All 36), the Full Bench of the Allahabad High Court has held that having regard to the width, and. the amplitude of the words in Section 60 of the Code of Civil Procedure, particularly the words 'All other saleable-property, whether movable or immovable, belonging to the Judgment Debtors or over, which, or the profits of which he has a disposing power (.....) properties of all sorts and of whatever nature, whether movable or immovable, are, save for the expectations specifically mentioned in Section, 60(1) of the CPC, liable to attachment and. sale in execution of a decree. The only qualifications required are that the property must be saleable and the Judgment Debtor should have a disposing power over it.*

*7. It was further held that an Agreement to Sell an immovable property was clearly assignable, unless there was a contract to the contrary in the Agreement itself. Unless, the contract itself provides that the rights under the Agreement to Sell shall not be assigned or that the terms of the contract lay down conditions which may indicate that the contract has to be personally, performed by the parties to it, an Agreement to Sell, a property is assignable. What is assignable is*



*clearly saleable property, which is distinct from a right in the property itself. It was held as under:*

*“74, We hold that: a right to get a property is itself a property, distinct and separate from the property which is sought to be purchased and that such a right is saleable and, therefore, liable to attachment and sale. We have reached that conclusion notwithstanding that an agreement to sell does not create an interest in the property agreed to be sold”*

*8. The Court further negated, the arguments based on Proviso (m) to Section 60(1) of the CPC.*

*9. I am in full agreement with the view taken by the Allahabad High Court and, therefore, hold: that the rights possessed by the Judgment Debtor under the Agreement(s) to Sell, being assignable at her own volition, are liable to attachment in terms of Section 60(1) of the CPC”*

18. This Court finds that, the submission of the learned counsel for the Appellant, that Section 60 of the CPC does not apply to an agreement to sell lacks substance, particular in view of the aforesaid facts. It is noted that the Appellant is in both constructive and actual possession of the suit property, as evidenced by the receipt-cum-possession letter dated 07.08.2006. The rights under the said agreements are currently exercisable, enforceable, and assignable, and therefore cannot be considered speculative or contingent under Section 60(1)(m) of the CPC.

19. Additionally, it is pertinent to refer to the settled principle under Section 54 of the Transfer of Property Act, 1882, which establishes that a contract for the sale, does not confer immediate ownership or proprietary interest in the property. Instead, it creates a distinct, enforceable right in favour of the purchaser to acquire the property upon fulfilment of contractual obligations. Such a right, being separate from ownership, qualifies as an actionable claim and is therefore



subject to execution.

20. In *Bhairon Prasad Chaurasiya* (supra), the Full Bench of the Allahabad High Court held that a right to acquire property, being distinct from the property itself, qualifies as “property” for attachment if it is assignable. The Full Bench emphasized that the assignability establishes a disposing power, making the right saleable and attachable, notwithstanding the absence of immediate proprietary interest. Applying this principle, Clause 10 of the Agreements to Sell expressly permits assignment of rights, confirming that the Appellant possesses enforceable and saleable rights.

21. Moreover, the Appellant’s physical possession of the property, along with the pendency of suits for specific performance, does not diminish the substantive and vested nature of her legal rights under the said agreements. The said agreements confer enforceable, definite, and transferable rights, which are not merely personal but constitute a recognized and actionable proprietary interest. Being capable of independent transfer and enforcement, such rights fall squarely within the ambit of “property” under Section 60 of the CPC and are inherently saleable and attachable in execution proceedings.

22. Furthermore, the apprehensions regarding potential collusion or prejudice are adequately addressed under Section 64 of the CPC and Order XXI Rule 64 of the CPC. Section 64 of the CPC safeguards attached property from improper devolution, while Order XXI Rule 64 of the CPC protects interests of co-owners during execution, ensuring that Sh. C.S. Agarwal’s rights are not adversely affected.





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23. In view of the aforesaid observations, this Court does not deem it appropriate to interfere with the Impugned Order, while observing that the learned Single Judge has rightly held that the rights under the said agreements are liable to attachment in execution of the Award. The Agreements to Sell confer rights that are enforceable, assignable, and saleable; they fall squarely within the ambit of Section 60 of the CPC and are rightly subject to attachment for execution of the arbitral award.

24. Hence, finding no merit, the present Appeal, is accordingly dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**SEPTEMBER 16, 2025/jai/db**