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

***Reserved on: 22 July 2024***
***Pronounced on: 24 July 2024***

\+ ARB.A. 2/2023

SHARAD BHANSALI & ANR. .....Appellants
Through: Mr. Anshumaan Sahni, Adv.

Versus

MUKESH AGGARWAL & ANR. .....Respondents
Through: Mr. Pranshu Paul, Mr. Pulkit Gupta, Mr. Karan Jain and Mr. Himanshu Gupta, Advocates for R-2 with R-2 in person

**CORAM:**
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**
% **24.07.2024**

**ARB.A. 2/2023**

**1.** Respondent 2 owns a property situated at F-20, Geetanjali Enclave, New Delhi[1]. Respondent 2 entered into a Collaboration Agreement dated 24 October 2010 with Respondent 1, for demolition and reconstruction of the disputed property. The reconstructed portion was to have basement, ground floor, first floor, second floor and third floor with terrace. The Collaboration Agreement gave Respondent 1 the rights to sell the second floor of the disputed property.

[1] "the disputed property", hereinafter

**2.** On 14 November 2011, Respondent 1 entered into an Agreement to Sell[2] with the appellants, whereunder the reconstructed second floor of the disputed property was to be sold to the appellants. The following covenants of the ATS are relevant:

> "1. That in consideration of a sum of Rs 2,85,00,00/- (Rupees Two Crores Eighty Five Lakhs only), the First Party do hereby agree to grant, convey, sell, transfer and assign all their rights, title and interests, in the said portion of the said property, fully described above to the Second Party, on the terms and conditions herein contained provided that nothing herein stated shall confer or deemed to have conferred upon the Second Party exclusively any right or title to the common driveway, staircase, lift, overhead, sewers. Water meters and other common facilities to the exclusion of the 'Owner' or other occupants of the other units of the Said Property.
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> 4. That there will be no balance amount that shall be payable when the Sale Deed is executed and registered and possession of the said portion of the said property is handed over to the Second Party as per the terms and conditions of this Agreement and in accordance with the said Collaboration Agreement. Time being the essence of this Agreement for the payment of the consideration.
>
> 5. That it is agreed between the parties that in case any Service Tax, Sales Tax or any other tax by whatsoever name called in lieu of these taxes becomes payable in addition of these taxes, then the same shall be borne and payable by the Second Party in addition to the consideration so settled above."

**3.** In terms of the ATS, the appellants paid, to Respondent 1, ₹ 2,10,00,000/- on 14 November 2011, ₹ 25 Lakhs on 26 November 2011 and ₹ 50 Lakhs on 27 December 2011. The entire sale consideration was, therefore, paid by the appellants to Respondent 1 within the time envisaged in the ATS. Consequent thereon, possession of the disputed property was given, to the appellants, on 25 July 2012.

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[2] "ATS", hereinafter

**4.** Disputes arose between the appellants and Respondent 1, in the context of the ATS. Clause 14 of the ATS envisaged resolution of disputes by arbitration. The appellants approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointing an arbitrator to resolve the disputes. By order dated 2 May 2022, this Court appointed an advocate, practising before it, as the arbitrator. Respondent 2 was permitted to be co-opted in the arbitral proceedings, though he was not a party, and only a witness, to the ATS. The order dated 2 May 2022 was never challenged. The learned arbitrator has since entered on the reference, and is presently *in seisin* of the disputes.

**5.** During the course of arbitral proceedings, Respondent 2 filed an application, before the learned Arbitrator, under Section 16 read with Section 23 of the 1996 Act, for impounding the ATS as having been insufficiently stamped. The learned Arbitrator has, by the impugned order dated 7 June 2023, accepted the plea of Respondent 2 and has held that the ATS was not sufficiently stamped, as required by Article 23A[3] of Schedule I-A to the Indian Stamp Act, 1899, as applicable to Delhi read with Section 53A[4] of the Transfer of Property Act, 1882[5].

[3] Article 23A is titled "CONVEYANCE IN THE NATURE OF PART PERFORMANCE" and covers "Contracts for the transfer of immovable property in the nature of part performance in any union territory under Section 53A of the Transfer of Property Act, 1882 (4 of 1882)." Such a document is required to bear, as per the Article, stamp duty @ 90% of the duty as a Conveyance, payable under Article 23.

[4] **53-A. Part performance**. – Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any

In so holding, the learned Arbitrator has placed reliance on ***Suresh Kumar v. Satish Mehra***[6], rendered by a learned Single Judge of this Court. However, she has held that the plea for impounding the ATS could be decided only when the original ATS was produced before her. The learned Arbitrator has, therefore, adjourned the proceedings for arguments on the application for producing the original ATS and other prayers in the application.

**6.** Aggrieved by the finding that the ATS was insufficiently stamped, the appellants, as the claimants before the learned Arbitral Tribunal, have preferred the present appeal under Section 37(2)(a) of the 1996 Act.

**7.** I have heard Mr. Anshuman Sahni, learned Counsel for the appellants and Mr. Pranshu Paul, learned Counsel for Respondent 2, at length.

**Rival Submissions**

<u>Submissions of Mr. Anshuman Sahni for the petitioner</u>

**8.** Mr. Sahni submits that Article 23A of Schedule I-A to the Stamp Act, in terms, does not apply to the ATS in dispute. Article 23A, according to him, would apply only to documents which *convey*

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person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

[5] "the TPA" hereinafter

immovable property, as is apparent from the use of the word "conveyance". Inasmuch as the ATS does not convey any immovable property, it is not covered by Article 23A. Such a document, he submits, would have to bear stamp duty in accordance with Article 23. Mr. Sahni has also relied on the Master Table of Stamp Duties issued by the Government of National Capital Territory of Delhi[7], which requires a "Sale Agreement" to be stamped @ 5.4% *ad valorem*, and a "Sale Agreement without Possession" to bear a stamp duty of only ₹ 100/-.

**9.** Mr. Sahni further submits that Section 53A of the TPA would also apply only where assumption of possession of the property is *simultaneous* with the execution of the ATS. I may note, here, that, in para 7 of the written submissions filed by the petitioner, this stand is somewhat diluted:

> "7. A perusal of the above two cases reveal that it is only when the possession of property has NOT accrued *pursuant to the Agreement to Sell*, the Agreement to Sell cannot be treated as a sale coming within the purview of Explanation I to Article 47-A of Schedule I-A of the Stamp Act and the Agreement is only an Agreement to Sell without delivery of possession; and mere fact that possession has been delivered, at a later point of time, does not make the document liable to be stamped as though it is a sale deed."
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> (Emphasis supplied)

Thus, though, in arguments, Mr. Sahni sought to contend that Section 53A of the TPA – and, consequently, Article 23A of the Stamp Act – would apply only where transfer of possession of the property is *simultaneous* with the execution of the ATS, para 7 of the written

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[6] **2010 (116) DRJ 364**
[7] "GNCTD" hereinafter

submissions submits that all that is required is accrual of the right to possession of the property *pursuant to* the ATS.

**10.** Mr. Sahni cites, in support of his submissions, para 8 of the judgment of the High Court of Punjab & Haryana in ***Dilawar Singh v. Amandeep Singh***[8], paras 5 and 6 of the judgment of the Supreme Court in ***Patel Natwarlal Rupji v. Shri Kondh Group Kheti Vishayak***[9], paras 3 to 5 of the judgment of the High Court of Andhra Pradesh in ***Sri Lakshmi Housing Enterprises v. Haji Begum***[10] and paras 6 and 10 of the judgment of the High Court of Andhra Pradesh in ***Karumuri Ramatheertham v. Tippavathi Seshachalam***[11].

Submissions of Mr. Pranshu Paul for Respondent 2

**11.** Responding to the submissions of Mr. Sahni, Mr. Pranshu Paul, appearing for Respondent 2, submits that the judgments of the High Courts of Andhra Pradesh and Punjab & Haryana would not apply, as Article 47A[12] of the Schedule to the Stamp Act, read with Explanation I[13] thereto, as it applies to the State of Andhra Pradesh, and Article 5(cc) of the Schedule as it applies to the States of Punjab and Haryana, themselves require the ATS to evidence delivery of possession, for the Articles to apply.

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[8] **(2016) 182 PLR 436**
[9] **AIR 1996 SC 1088**
[10] **(2010) 6 ALT 24: 2010 SCC Online AP 676**
[11] **(2012) 2 ALT 253: 2011 SCC OnLine AP 882**
[12] Article 47A applies to "SALE as defined in section 54 of the Transfer of property Act 1882".
[13] **Explanation I** – An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a 'sale' under this article. Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesiaid or in pursuance of an agreement referred to in clause (B) of article 6, the stamp duty, if any, already paid or recovered on the agreement of sale shall be adjusted towards the total duty leviable on the sale deed.

**12.** Mr. Paul also relies on the Possession Letter dated 25 July 2012, whereunder the petitioner obtained possession of the disputed property. It reads thus:

> "<u>POSSESSION LETTER</u>
>
> I, Mukesh Aggarwal, son of Mr. O.P. Aggarwal, resident of B-2/23 (Third Floor), Safdarjung Enclave, New Delhi 110029, hereby hand over the possession of the property namely Second Floor, F-20, Geetanjali Enclave, New Delhi 110017 to Mr. Sharad Bhansali s/o Mr L.R. Bhansali, resident of F-21, Geetanjali Enclave, New Delhi 110017 in terms of the Agreement to Sale dated November 14, 2011 entered between the said parties as the formal Sale Deed is likely to take some more time. I shall make best attempts to get the Sale Deed registered as soon as possible in the name of Mr Sharad Bhansali or his assigns.
>
> Mukesh Aggarwal
> B-2/23, Safdarjung Enclave,
> New Delhi 110029"

**13.** Mr. Paul further refers to paras 8 and 22 of OMP 490/2014, filed by the appellants in this Court, seeking pre-arbitral interim reliefs, in which the appellants have averred thus:

> "8. That in the meantime and after repeated reminders, the Respondent No. 1 duly executed a Possession Letter dated 25.07.2012 in favor of Applicants. By way of the said Letter, Applicants were given a confirmation of entry, ingress and egress and right of all uses of the Suit Property and the associated facilities as provided for in the terms of the Agreement. It was intimated to Applicants that the necessary execution of the Sale Deed and the associated execution of the conveyance deed in favour of the assigns of Applicants would be duly undertaken. Pursuant to that, Applicants were entitled to start using the Suit Property and use all the facilities, rights, interests and easements therein. However, upon entering the Suit Property, Applicants were shocked and surprised by the fact that none of the amenities had been completed and the Suit Property was in a bare and unlivable state. Under no circumstances, could Applicants have been able to reside in the Suit Property. Subsequently, the Respondent No. 1 informed Applicants. that the necessary

rectifications would be done. Further, while the Respondent No. l had handed over the aforesaid letter, it had not handed over the complete property. A copy of the Possession Letter dated 25.07.2012 is attached herewith and marked as **Annexure A/6**.

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22. That unless restrained by an ad interim ex parte order of injunction as prayed for herein, the Applicants shall suffer irreparable loss and damages in terms of finances and reputation. The Applicant states that the Respondent's action is the confirmation of its dishonest intentions. It is submitted that any interim injunction by this Hon'ble Court will deny the Respondent the right to create any third party interest in relation to the suit property. Balance of convenience rests solely in favour of the Applicants and against the Respondent."

Mr. Paul submits that the rights ventilated by the appellants in these paras are premised on Section 53A of the TPA. The appellants cannot, therefore, seek to dispute the applicability of the said provision. It is further submitted that a similar stand was taken by the appellants before the learned arbitrator by way of an application under Section 17 of the 1996 Act.

**14.** Mr. Paul cites, in support of his submissions, paras 2 and 6 of ***Suresh Kumar v. Satish Mehra***[14] and para 2 of ***Vinod Kumar v. Ajit Singh***[15], both of which have been rendered by learned Single Judges of this Court, paras 9 and 10 of the judgment of the Division Bench of this Court in ***Ajit Singh v. Vinod Kumar***[16]**,** which was the appeal preferred against ***Vinod Kumar v. Ajit Singh*** and paras 2, 3 and 9 of the judgment of the Division Bench of this Court in ***Asas Investment P. Ltd. v. Collector of Stamps***[17], the SLP against which was dismissed

[14] **2010 (116) DRJ 364**
[15] **2013 (138) DRJ 324**
[16] **2014 SCC OnLine Del 192**
[17] **2012 (129) DRJ 253 (DB)**

by the Supreme Court.

**Analysis**

**15.** The safest, and surest, guide to interpreting a statute, is the statute itself. Where the words of a statute are plain, the Court is not expected to accord, to it, other and unintended meanings by resorting to interpretative calisthenics. The legislature is the voice of the people in a democracy, and one attributes, to it, intelligence, meaning and purpose. The statute must be presumed to say what it intended. An *avatar* of this principle – though it is sometimes regarded as an exception to the plain meaning rule – is the doctrine of purposive interpretation which, with the judgments in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[18], ***Richa Mishra v. State of Chhattisgarh*** [19] and ***Lanco Anpara Power Ltd v. State of U.P.***[20]

Article 23A of Schedule I-A of the Stamp Act as applicable to Delhi, *vis-à-vis* corresponding provisions as applicable to Andhra Pradesh and Punjab & Haryana

**16.** Article 23A of Schedule I-A to the Stamp Act, as applicable to Delhi, clearly applies to contracts for the transfer of immovable property, covered by Section 53A of the TPA. Mr. Paul is correct in his submission that the applicable clause of the Schedule to the Stamp Act in Delhi is different from the clause which applies in Andhra Pradesh or Punjab and Haryana. Explanation I in the Schedule, as

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[18] **(2016) 3 SCC 619**
[19] **(2016) 4 SCC 179**
[20] **(2016) 10 SCC 329**

applicable to Andhra Pradesh clearly deems an agreement to sell followed by or evidencing delivery of possession of the property to be chargeable as a "sale" and, therefore, liable to stamp duty under Article 47A. Similarly, Article 5(cc) of Schedule I-A of the Stamp Act, as applicable to the State of Punjab refers to an "agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold". These clauses, therefore, do not incorporate, by reference, the provisions of Section 53-A of the TPA, as thus Article 23A of Schedule I-A to the Stamp Act, as applicable in Delhi.

**17.** Mr. Sahni also sought to contend that Article 23A applies only way they contract itself actually conveys the property and would not, therefore, apply to an ATS. This submission is directly contrary to Article 23A itself, as Article 23A is expressly made applicable to Section 53A of the TPA. Incidentally, a learned Single Judge of this Court, in ***Vinod Kumar***, adopted the view which Mr. Sahni seeks to canvass and the Division Bench, in its judgment in appeal in ***Ajit Singh***, expressed his *prima facie* disagreement with this point of view. Paras 8 to 10 of the judgment of the Division Bench may, in this context, be reproduced, to the extent relevant:

> "8. A plain reading of article 23A shows that it refers to contracts for the transfer of immoveable property in the nature of part performance in any union territory under Section 53A of the Transfer of Property Act, 1882. In the present case the agreement dated 05.08.2011 purports to be on stamp paper of Rs. 10/- only. The learned Single Judge while considering this aspect of the matter has dealt with it as under : -
>
> > "11. Now, with regard to the submissions that the agreement was not properly stamped, as per Article 23A of Schedule 1A of ISTA, I may state without hesitation that

Article 23A also was not attracted inasmuch as it applies to the contracts for transfer of properties under Section 53A of the Transfer of Property Act. As noted, the plaintiffs suit is not based on the part performance under Section 53A of the T.P. Act and the agreement to sell could not be said to be conveyance in the nature of part performance as envisaged in Article 23A. As per Section 2(10) of ISTA, "conveyance" includes conveyance of sale and other instruments by which property, whether movable or immovable, is transferred intra-vivous and which is not otherwise specifically provided for by Schedule-I. By any interpretation, such an agreement to sell cannot be termed as conveyance as defined in Section 2(10) of ISTA. That being so, and the agreement to sell in question not creating any right, title or interest over the suit property, except that of the cause of action asking for the execution of the sale deed, Article 23A was not attracted and thus, the provisions of Sections 33 of ISTA is not attracted. As there is no Article in Schedule-I specifically providing for agreement to sell of immovable property, it would come within the ambit of residuary clause (c) of Article 5 of Schedule 1 of ISTA, which is extended to union territory of Delhi by Delhi Amendment Act of 2001. The stamp duty as per residuary clause (c) of Article 5 thereof is Rs. 50/-. The agreement to sell in question being on stamp paper of Rs. 10/-, is seen to be deficient of Rs. 40/- only and as per Section 35 proviso (a), the same would become admissible in evidence on payment of penalty equivalent to 10 times of the deficient portion of the stamp duty. The deficiency being of Rs. 40/- only, the penalty payable comes to Rs. 400/- and thus, this penalty and the deficiency of Rs. 40/- i.e. Rs. 440/- would be payable by the plaintiff for seeking admissibility of this agreement. The plaintiff would be required to do the needful in this regard." (underlining added)

9. It will be evident from the above extract that the learned Single Judge held that the agreement would not fall under article 23A and would fall under residuary provision of article 5(c) of Schedule 1A and would, therefore, require a stamp duty of Rs. 50/- . Since, according to the learned Single Judge, the agreement was on a stamp paper of Rs. 10/- only, it was held that it was deficient by Rs. 40/- and, consequently, by virtue of Section 35 the same could only be admissible in evidence on payment of penalty equal to ten times of the deficient portion of the stamp duty. Consequently, the learned Single Judge held that the penalty payable would be Rs. 400/- and the deficient stamp was Rs. 40/- and, therefore, the respondent/plaintiff was required to pay a sum

of Rs. 440/- (Rs. 40/- towards deficient stamp duty and Rs. 400/- as penalty) before seeking admissibility of the said agreement.

10. *Prima facie, we do not agree with the conclusion arrived at by the learned Single Judge with regard to the quantification and the applicability of article 5(c) and the non-applicability of article 23A of Schedule 1A to the facts of the present case*. However, we refrain from making any conclusive pronouncement on this aspect of the matter, inasmuch as we feel that the stage at which the document could be impounded and the penalty could be imposed has not been reached."

(Emphasis supplied)

**18.** Article 23A of Schedule I-A of the Stamp Act, as applicable to Delhi, clearly covers ATS to which Section 53A of the TPA applies. Mr. Sahni's submission that Article 23A does not apply is, therefore, rejected.

Applicability of Section 53A of the TPA

**19.** Mr. Sahni sought to submit that Section 53A of the TPA is a shield, and not a sword, and is intended to protect a transferee, who is in possession of immovable property by way of part performance of an agreement to sell the property, from being dispossessed of his rights to that property. Specifically, it applies as a protection against the transferor of the property enforcing his rights, in respect of the property, against the transferee, who is in possession of the property by way of part performance of the contract for transfer of the property for consideration.

**20.** There can be no cavil with this proposition. It is, however, completely off the mark. It does not address the issue which actually arises for consideration in the present case. The impugned order deals

only with the issue of whether the ATS was, or was not, sufficiently stamped. That has nothing to do with the purpose for which the ATS was to be invoked or applied. Every contract for transfer of immovable property, in the nature of part performance under Section 53A of the TPA, has to bear stamp duty as prescribed by Article 23A. The purpose of which the document is to be applied is completely irrelevant, where liability to stamp duty under Article 23A is concerned.

**21.** When Section 53A of the TPA is vivisected into its ingredients, it is seen that the circumstances which must coalesce, for the provision to apply, are that

(i) one person must contract to transfer, for consideration, immovable property,

(ii) the terms of transfer must be capable of being asserted with reasonable certainty from the contract,

(iii) the transferee takes possession of the whole, or part, of the property or must continue in possession thereof, if he is already in possession, or does some act in furtherance of the contract,

(iv) such taking, or continuance of possession of the property, or act, must be in part performance of the contract, and

(v) the transferee must have performed, or must be willing to perform, his part of the contract.

Thus, the taking of possession of the property is only to be "in part performance of the contract". Section 53A does not, either expressly

or by necessary implication, require the taking of possession to be simultaneous with the execution of the ATS, or even immediately pursuant thereto. The use of the word "in", in the expression "in part performance of the contract" merely connotes a nexus between the taking of possession of the property by the transferee and the contract which envisages transfer of the property. If, therefore, the transferee, in the case of an ATS, acquires possession of the property forming subject matter of the ATS, consequent upon its execution, Section 53A would *ipso facto* apply, even if the acquisition of possession is not simultaneous with, or immediately following, the execution of the ATS.

**22.** The Possession Letter dated 25 July 2012, under which possession of the disputed property was handed over by Respondent 1 to the appellants clearly states that the position was being handed over "*in terms of the Agreement to Sell* dated November 14, 2011". In para 8 of OMP 490/2014, the appellants themselves asserted that it was pursuant to the ATS that the appellants were entitled to start using the disputed property. As Mr. Paul has correctly submitted, the appellants, in the said OMP, specifically asserted their right to use the disputed property, which arose in terms of Section 53A of the TPA.

**23.** This position is supported by the following recitals, as contained even in the ATS:

> "<u>NOW THIS AGREEMENT WITNESSETH AS UNDER</u>
>
> 1. That in consideration of a sum of ₹ 26,500,000/– (Rupees Two Crores Eighty Five Lakhs only), the First Party do hereby agree to grant, convey, sell, transfer and assign all their rights, title and interests, in the said portion of the said property, fully

described above to the Second Party, on the terms and conditions herein contained provided that nothing herein stated shall confer or deemed to have conferred upon the Second Party exclusively any right or title to the common driveway, staircase, list, overhead, sewers. Water metres and other common facilities to the exclusion of the "Owner" or other occupants of the other units of the Said Property.

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4. That there will be no balance amount that shall be payable when the Sale Deed is executed and registered and *possession of the said portion of the said property is handed over to the Second Party as per the terms and conditions of this Agreement* and in accordance with the said Collaboration Agreement. Time being the essence of the Agreement for the payment of the consideration.

5. That it is agreed between the parties that in case any Service Tax, Sales Tax or any other tax by whatsoever name called in lieu of these taxes becomes payable in addition of these taxes, then the same shall be borne and payable by the Second Party in addition to the consideration so settled above.

6. That the parties so agree that the First Party shall complete the construction and handover the possession of the said portion of the said property on receipt of the final consideration as specified above on or before 31 March 2012 extendable by a grace period of a month and this time will be coextensive with the date and time fixed in the collaboration agreement.

That in case the First Party fails to complete the construction of the proposed building within the above stipulated period and the completed, vacant, physical possession of the Builder's Alocation is not handed over to the Second Party, then the First Party shall be liable to pay liquidated damages to the tune of ₹ 2,500/– (Rupees Two Thousand five hundred only) per day to the Second Party."

(Emphasis supplied)

Clearly, therefore, the taking of possession of the disputed property, by the appellants, was in furtherance of the ATS. They constitute inextricably interlinked events.

**24.** The scope of Section 53A stands explained by the Supreme

Court, in ***Sardar Govindrao Mahadik v. Devi Sahai***[21] thus:

> "13. … The departure under our law is that when giving it a statutory form in Section 53-A of the Act the existence of a written contract has been made sine qua non and simultaneously the statute also insists upon proof of *some act having been done in futherance of the contract. The act relied upon as evidencing part performance must be of such nature and character that its existence would establish the contract and its implementation. Each and every act subsequent to contract by itself may not be sufficient to establish part performance. The act must be of such a character as being one unequivocally referable to the contract and having been performed in performance of the contract.* In ***Lady Thynne v. Earl of Glengall***[22] it was observed that "part performance to take the case out of the Statute of Frauds, always supposes a completed agreement. There can be no part performance where there is no completed agreement in existence. It must be obligatory, and *what is done must be under the terms of the agreement and by force of the agreement*". This approach would necessitate that the act relied upon as being in the part performance of the contract was such as by its own force would show the very same contract as is alleged by the person seeking the protection of part performance.
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> *****
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> 31. … *To qualify for the protection of the doctrine of part performance it must be shown that there is a contract to transfer for consideration immovable property and the contract is evidenced by a writing signed by the person sought to be bound by it and from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. These are prerequisites to invoke the equitable doctrine of part performance. After establishing the aforementioned circumstances it must be further shown that a transferee had in part performance of the contract either taken possession of the property or any part thereof or the transferee being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract. The acts claimed to be in part performance must be unequivocally referable **to the pre-existing contract** and the acts of part performance must unequivocally point in the direction of the existence of contract and evidencing implementation or performance of contract. There must be a real nexus between the contract and the acts done in pursuance of the*

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[21] **(1982) 1 SCC 237**
[22] **2 HL Cases 158**

> <u>*contract or in furtherance of the contract and must be unequivocally referable to the contract*</u>."
>
> (Emphasis supplied)

The same decision observes, elsewhere, that "induction into possession of an immovable property for the first time subsequent to the contract touching the property, may be decisive of the plea of part performance." The High Court of Madras expressed the same view in ***Chinnaraj v. Shekh Davood Nachair***[23], by observing that in a case where a person claims benefit of part performance, evidence that he was inducted into possession for the first time subsequent to the contract, would be a strong piece of evidence regarding the contract, and of possession changing hands pursuant to the contract.

**25.** In ***Nanjegowda v. Gangamma***[24], the ingredients of Section 53A were thus identified by the Supreme Court:

> "9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:
>
> (i) The contract should have been in writing signed by or on behalf of the transferor;
>
> (ii) The transferee should have got possession of the immovable property covered by the contract;
>
> (iii) The transferee should have done some act in furtherance of the contract; and
>
> (iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract."

Obtaining of possession of the property subsequent to the agreement,

[23] **AIR 2003 Mad 89**
[24] **(2011) 13 SCC 232**

*and not referable to it*, is not an act of part performance.[25] Where, however, the subsequent assumption of possession over the property is clearly referable to the agreement, Section 53A would squarely apply. The act in question must be referable to the contract as alleged to have been partly performed. This has been held , by the Supreme Court in ***Fgp Ltd v. Saleh Hooseini Doctor***[26], to be the definitive test to determine whether, in the facts of a particular case, the doctrine of part performance is, or is not, attracted.

**26.** Thus, while the obtaining of possession of the contracted property immediately following the contract may *support* an inference that possession has been handed over in pursuance of the contract, the mere fact that there is a gap of time between the two events is not necessarily contradictive thereof.

**27.** Applying the above principles, every ingredient of Section 53A stands satisfied in the present case. There was a pre-existing ATS. Possession of the disputed property was handed over to the petitioner pursuant to, and in terms of, the ATS. The assumption of possession of the disputed property by the petitioner was, in fact, itself evidence of the existence of the ATS. The ATS envisaged grant of possession of the disputed property to the petitioner. As such, the anti-over the possession of the disputed property to the petitioner was by way of part performance of the ATS. The Possession Letter, under which the appellants obtained possession of the disputed property, specifically states so. The execution of the ATS, making of payment by the

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**[25] Manjural Hoque v. Mewajan Bibi, AIR 1956 Cal 350**
**[26] (2009) 10 SCC 223**

petitioner thereunder, and grant of possession of the disputed property to the petitioner, are inalienable events, which cannot be divorced from one another. They are part of one transaction. The ATS, therefore, is squarely covered by Section 53A.

**28.** It is facile, therefore, for the appellants to seek to contend that possession of the disputed property was not taken by the appellants in part performance of the ATS. It clearly was. The mere fact that some time elapsed between the taking of possession of the disputed property by the appellants and the execution of the ATS does not break the nexus between the two events. In view of the fact – conceded by the appellants in writing and also evidenced by the Possession Letter – that the appellants were handed over possession of the disputed property in terms of the ATS, the ATS clearly attracts Section 53A of the TPA and, in its wake, Article 23A of Schedule I-A to the Stamp Act as applicable to Delhi.

<u>Judgments cited by the appellants</u>

**29.** The decisions cited by Mr. Sahni do not advance the case that he seeks to espouse. The judgments of the High Courts of Andhra Pradesh and, Punjab and Haryana need not be dealt with, in light of the clear enunciation of the law by the Supreme Court, as also because, as correctly pointed out by Mr. Paul, the applicable covenants of the Schedule to the Stamp Act, in those states, specifically envisage the ATS being followed by evidence of delivery of possession of the property. The decision in ***Patel Natwarlal Rupji*** merely observes that Section 53A is intended to be used as a shield,

and not as a sword. I have already noted that, while this principle is unexceptionable, it has no relevance to the issue of whether the ATS was duly stamped. In fact, para 5 of the report in ***Patel Natwarlal Rupji*** again sets out the ingredients of Section 53A of the TPA, all of which are satisfied in the present case.

**The sequitur**

**30.** The impugned order reflects an appreciation and interpretation, by the learned Arbitrator, of Article 23A of Schedule I-A to the Act, as applicable to Delhi, *vis-à-vis* Section 53A of the TPA. Given the overarching principle of reticence by courts, in interfering with the view is taken by arbitral tribunals, no case for interference with the view expressed by the learned Arbitrator in the impugned order, can be said to exist.

**31.** I entirely concur with the view expressed by the learned Arbitrator. The appreciation, by her, of Section 53A of the TPA, is correct and in sync with the existing law on the subject.

**Conclusion**

**32.** The appeal, therefore, fails and is dismissed, with no orders as to costs.

**C.HARI SHANKAR, J**

**JULY 24, 2024**