IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

Before:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

APD No. 5 of 2026

With

IA- GA 1 of 2026

(Arising out of C.S 124 of 2011)

Nirmal Kanodia & Ors.
Vs.
Umadevi Agarwalla & Ors.

With

APDT No. 18 of 2026

(Arising out of C.S. No. 264 of 2012)

Nirmal Kanodia & Ors.
Vs.
Umadevi Agarwalla & Ors.

With

OCOT No. 5 of 2026

Nirmal Kanodia & Ors.

Vs.

Umadevi Agarwalla & Ors.

For the Appellants : Mr. Jishnu Saha, Sr. Adv.
Mr. Tanuj Kakrania
Ms. Shreya Goenka
Ms. Tapashya Bhattacharya

For the Respondents : Mr. Sabyasachi Chowdhury, Sr. Adv.
Ms. Urmila Chakraborty
Mr. Amit Meheria
Ms. Paromita Banerjee
Mr. Sayan Dey
Mr.Tamoghna Chattoapdhyay

Hearing Concluded On : 20.08.2026

Judgment Delivered On : 10.09.2026

Aryak Dutt, J.:

1. These two appeals and the cross-objection arises out of one common judgment and decree dated May 12, 2026, passed by the Learned Single Judge in two cross-suits, being C.S. No. 124 of 2011 and C.S. No. 264 of 2012, which were heard analogously. Since both suits turn upon the construction and performance of a single document, namely a Memorandum of Understanding dated September 20, 2010, and since the appeals and the cross-objection raise overlapping questions, they have been heard together and are disposed of by this common judgment.

2. Umadevi Agarwalla and others, who were the plaintiffs in C.S. No. 124 of 2011 and are the vendors under the said Memorandum of Understanding, are referred to as "the vendors". Nirmal Kanodia and others, who were the defendants in that suit and the plaintiffs in C.S. No. 264 of 2012, and who are the purchasers under the said Memorandum of Understanding, are referred to as "the purchasers". The Memorandum of Understanding dated September 20, 2010, marked Exhibit A, is referred to as "the MOU".

3. By the impugned common decree, the learned Single Judge decreed C.S. No. 124 of 2011 in favour of the vendors for a sum of Rs. 5.51 crore, holding that the purchasers have committed breach of the MOU, and simultaneously decreed C.S. No. 264 of 2012 in favour of the purchasers for refund of Rs. 1 crore. The purchasers have preferred APD No. 5 of 2026 assailing the decree in C.S. No. 124 of 2011. The vendors have filed OCOT No. 5 of 2026 by way of cross-objection to certain findings and observations in the said suit. The vendors have also separately preferred an APDT No. 18 of 2026 contending that, having found breach on the part of the purchasers, the learned Judge ought to have dismissed C.S. No. 264 of 2012 altogether and ought not to have adjusted the sum of Rs. 1 crore against the decree in C.S. No. 124 of 2011, decreeing the latter for Rs. 4.51 crore.

4. The facts, to the extent that they are admitted or beyond controversy, may be shortly stated. The vendors owned and controlled, directly and through family members and other entities, a company named Bhoomi Minerals Limited, whose principal asset was a sponge iron manufacturing unit of 100 MT per day installed capacity at Village Beliad, P.O. - Chirkunda, District - Dhanbad, Jharkhand. The company had availed credit facilities from Indian Overseas Bank, which held a charge over the factory, the personal guarantees of the vendors, and a pledge of collateral and corporate securities. The company was in financial distress, was unable to service the loan account, and faced an imminent threat of coercive action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

5. Allegedly sometime in July 2010, the purchasers approached the vendors with an offer to acquire the company and take over its management. After several rounds of discussion and due diligence, including inspection of books of account, records, bank statements and fixed assets, the purchasers agreed to acquire the company and take over its management and control as a going concern on an "as is where is" basis for a lump sum consideration of Rs. 28.01 crore. The liability to the Bank at the material time stood at about Rs. 22 crore. Even before the MOU on September 20, 2010, was formally executed, the purchasers had paid Rs. 1 crore towards discharge of the company's dues to the Bank, and the particulars of that payment stand recorded in the MOU itself.

6. On September 21, 2010, a proposed amendment to the MOU, marked as Exhibit 2, was sent on behalf of the vendors to the purchasers. On September 24, 2010, the purchasers, by an SMS (Exhibit B), jointly declared their status as withdrawn and the MOU as cancelled, and asked for refund of the money paid by them. Thereafter, by a letter dated November 6, 2010 (Exhibit C), the Bank intimated that the loan account had been classified as a non-performing asset as on October 31, 2010, and on December 30, 2010 the Bank issued a notice under Section 13(2) of the SARFAESI Act claiming about Rs. 22.30 crore (Exhibit D). The vendors wrote to the purchasers on March 9, 2011 (Exhibit E). The purchasers wrote to the vendors on April 30, 2011 (Exhibit G). C.S. No. 124 of 2011 was instituted on May 25, 2011, and the vendors replied to Exhibit G by a letter dated June 9, 2011 (Exhibit 3). The vendors additionally relied upon an alleged Memorandum of Understanding dated February 10, 2011 (Exhibit F) said to have been entered into with one Banwari Lal Agarwal and Sri Gopal Agarwal for Rs. 22.50 crore, whereby, according to them, they were constrained to effect a distress sale.

7. On the pleadings, the learned Judge framed nine issues on September 14, 2017. The first four issues concerned maintainability, limitation, jurisdiction and non-joinder, and were answered in favour of the vendors. No serious argument was addressed before us on those issues, and the findings thereon are not disturbed. The issues that matter for the present appeals are the fifth, which asked whether the defendants were in breach of the MOU; the sixth and seventh, which concerned liability for damages and entitlement to the sum claimed; and the eighth, which asked whether the MOU was legal, valid and binding.

8. The learned Judge held the MOU to be valid and binding and the plea of misrepresentation to be unsustainable. He held that the purchasers had suddenly terminated the agreement and refused to perform their part, that this was "clearly a breach of contract for which they are liable to pay damages", and that the reasons and justification for the termination "were absent at the first instance" and were sought to be supplied some six months later. The Learned Single Judge quantified the loss at Rs. 5.51 crore, being the difference between the contracted consideration of Rs. 28.01 crore and the sum of Rs. 22.50 crore said to have been realised under Exhibit F.

9. During hearing of this appeal the Learned Senior Advocate for the purchaser submitted that MOU is read as a commercial document and construed harmoniously, obliged the vendors, immediately upon its execution and upon payment of Rs. 50 lakh, to transfer 51 per cent of the shareholding of the company to the purchasers and to convene and hold a meeting of the Board of Directors at which the purchasers' nominees would be appointed directors and the vendors would resign. The vendors admittedly did neither. On the contrary, they sought, within twenty-four hours, to modify an essential term of the bargain by the proposed amendment of September 21, 2010. The purchasers were therefore relieved of any obligation to make further payment and were entitled to avoid the MOU, as they did by the SMS of September 24, 2010. In any event, no loss whatsoever was proved since the alleged MOU of February 10, 2011 was a concoction, of which there is no contemporaneous trace and under which not a farthing is shown to have been received or a single share shown to have been transferred.

10. The Learned Senior Counsel for the vendors, on the other hand, submitted that the obligation to transfer not less than 51 per cent arose only upon payment of the balance sum of Rs. 27.51 crore by November 30, 2010, and that the contrary reading is a deliberate misreading of the clause. He further contended that no payment at all was made after execution of the MOU and that the alleged amendment was never an accepted or acted-upon document. Moreover, Nirmal Kanodia himself admitted in cross-examination that the purchasers did not execute it and that the original agreement stood unaltered. The purchasers having themselves terminated the contract on September 24, 2010 cannot be heard to complain of breach by the vendors, by reason of Section 53 of the Indian Contract Act, 1872. Furthermore, Section 60 of the Sale of Goods Act, 1930, entitles the vendors to treat the contract as subsisting until November 30, 2010 and thereafter to sue for damages. He further submitted that Exhibit F having been marked without objection, the subsequent sale at Rs. 22.50 crore stands proved and that in the absence of a refund clause, a forfeiture clause must be implied, for which reliance was placed on *K.R. Suresh v. R. Poornima & Ors.*, reported in *2025 SCC OnLine SC 1014*.

11. At this point, it is useful to recall the settled approach to the construction of a commercial document. A commercial contract is to be construed in a commercial sense so as to give it business efficacy, and the document must be read as a whole and construed harmoniously so as to give effect to all its terms. A clause is not to be read in isolation, and a construction that renders another clause of the same instrument otiose, or that produces a commercially absurd result, is to be rejected in favour of one that does not. These principles are well established and have been reiterated in ***Nabha Power Limited v. Punjab State Power Corporation Limited***, reported in ***(2018) 11 SCC 508***, in ***Bank of India v. K. Mohandas***, reported in ***(2009) 5 SCC 313***, and, as regards the rejection of a construction that renders a covenant nugatory, in ***Radha Sundar Dutta v. Mohd. Jahadur Rahim***, reported in ***AIR 1959 SC 24***. Both sides, it must be said, invoked these principles. The difference lay in the result each said they produced.

12. The relevant clauses are clauses 3, 6, 14 and 15. Clause 14 records the agreement of the purchasers to take over the entire liability of the Bank as at the beginning of September 21, 2010, that is to say, the day immediately following the execution, and provides that the vendors would thereafter in no way be responsible for repayment of the same. Clause 6 provides that Rs. 50 lakh would be paid on execution of the MOU and the balance within November 30, 2010, subject, however, to transfer of not less than 51 per cent of the total shareholding of the vendors to the purchasers, with interest at the applicable bank rate on any outstanding amount. Clause 3 provides for the convening and holding of a meeting of the Board of Directors of the company to appoint nominees of the purchasers and to record the resignation of the vendors as directors, so that the Board should be constituted exclusively of the purchasers' nominees. Clause 15 provides that the purchasers would obtain the release of the pledged collateral securities and the personal guarantees of the vendors from the Bank within March 31, 2011. Only upon such release would the vendors make over to the purchasers the balance 49 per cent shares. If the purchasers failed to procure such release within March 31, 2011, they would pay the balance consideration for the sale of the shares to the vendors, even pending transfer of the said balance 49 per cent shares.

13. Reading these clauses together, we are unable to accept the construction pressed by the vendors, namely that not a single share was to move until the entirety of Rs. 27.51 crore had been paid by November 30, 2010. Several features of the document stand in the way of that reading.

14. In the first place, Clause 14 required the purchasers to shoulder the entire liability of the Bank, then standing at about Rs. 22 crore, with effect from September 21, 2010. Clause 15 required the purchasers to procure the release of the vendors' personal guarantees and pledged collateral by March 31, 2011. It would be a commercially unintelligible bargain that a purchaser should assume a liability of that magnitude from the day after execution, and should undertake to negotiate with a secured creditor for the release of another's guarantees, while owning not one share in the company, having no voice in its Board and no lawful means of dealing with its assets, its accounts or its dealings with the Bank. The obligations undertaken by the purchasers under Clauses 14 and 15 are intelligible only on the footing that control of the company was to pass to them at once. To hold otherwise is to read the document in a manner that defeats its evident commercial purpose.

15. Clause 3 is not made conditional upon payment of the balance consideration or upon the arrival of November 30, 2010. It stands as an obligation to be performed following execution. The vendors have not pleaded, nor did they contend before us, that Clause 3 was to be given effect only after payment of Rs. 27.51 crore. If, therefore, the Board was to be reconstituted immediately in favour of the purchasers' nominees, it is impossible to suppose that the parties intended the controlling shareholding to remain with the vendors in the meanwhile. Management and controlling interest were, on the plain sense of the document, intended to move together and to move at once.

16. The language of Clause 6 supports the purchasers. The payment of the balance is expressed to be "*subject, however, to transfer of not less than 51 per cent of the total shareholding*". A stipulation that one party shall pay a sum subject to the other doing an act is naturally read as making that act the condition, and not the consequence, of payment.

17. Fourthly, and to our mind decisively, Clause 15 contains a fall back that is irreconcilable with the vendors' construction. It contemplates that, if the purchasers should fail to procure the release of the securities and guarantees by March 31, 2011, they would then pay the balance consideration even pending transfer of the balance 49 per cent shares. That provision presupposes that a part of the consideration remained payable after March 31, 2011. On the vendors' reading, the whole of the balance of Rs. 27.51 crore fell due on November 30, 2010 and nothing at all could have remained outstanding four months later. Clause 15's fallback would then be a dead letter. It is significant, moreover, that the vendors themselves place reliance on this very limb of Clause 15, describing it as recording the purchasers' agreement to pay the balance amount to the vendor immediately pending transfer of shares. That reliance concedes what the vendors elsewhere deny, namely that the parties did not intend transfer of shares and payment of consideration to be rigidly simultaneous, and that shares were in contemplation to be transferred while consideration remained outstanding.

18. On a harmonious reading, therefore, the scheme of the MOU was that, upon execution and payment of Rs. 50 lakh, the vendors were to transfer not less than 51 per cent of the shareholding and to reconstitute the Board in favour of the purchasers' nominees, thereby vesting control in the purchasers. The purchasers were correspondingly to take over the Bank liability from September 21, 2010 and to pay the balance consideration within November 30, 2010. The residual 49 per cent was to be made over upon the purchasers procuring the release of the vendors' guarantees and collateral by March 31, 2011. The vendors' obligation under Clauses 3 and 6 was thus the promise that was to be performed first.

19. That obligation was not performed. The position on this is not merely established, it is admitted. No meeting of the Board of Directors was ever convened. No nominee of the purchasers was appointed as a director. No vendor resigned from the Board. Not a single share was transferred, and no offer to transfer any share was ever made. Indeed, the vendors' own written notes assert that the question of transferring shares "was neither contemporaneously demanded nor was there any chance of the same without payment of the agreed quantum" — a statement which, whatever its intended effect, is an admission that they neither transferred nor ever intended to transfer any share before receiving the entire balance consideration. It is also admitted that the shares of the company were not pledged with the Bank, so that no impediment whatever stood in the way of their transfer.

20. Against this, what the purchasers did must be said. The purchasers’ obligation on execution was to pay Rs. 50 lakh. They had in fact paid Rs. 1 crore, being twice that sum, and had done so even before the MOU was formally executed, in discharge of the company's dues to the Bank. The receipt of that payment is recorded in the MOU itself and is not in dispute. The condition upon which the vendors' obligation to transfer 51 per cent and to reconstitute the Board depended was therefore not merely satisfied but exceeded.

21. In this state of facts, Sections 51 to 54 of the Indian Contract Act, 1872 govern the rights of the parties. Section 51 provides that where a contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Section 52 provides that where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order. Section 54 provides that where a contract consists of reciprocal promises such that one of them cannot be performed, or its performance cannot be claimed, until the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise and must make compensation to the other party for any loss which such other party may sustain by the non-performance of the contract.

22. Applying these provisions, the vendors, having failed to perform the promise which under the MOU was to be performed first, could not claim performance by the purchasers of the promise to pay the balance of Rs. 27.51 crore. That obligation, on the terms of Clause 6 itself, never became enforceable, because the condition to which it was expressly made subject was never fulfilled. The learned Judge's finding that the purchasers refused "to perform their part" therefore proceeds upon an assumption that a duty to pay had accrued which the document does not support.

23. Equally, we are unable to accept the submission that the case of the purchasers is an afterthought, first raised in the written statement, or that the alleged amendment finds "no whisper" in Exhibit G. The letter dated April 30, 2011

(Exhibit G, Volume I, pages 57 to 60) records at page 58, in terms, that despite the assurance of the vendors, no meeting of the Board of Directors had been convened for appointing the purchasers as directors or for recording the resignation of the vendors, and that despite being called upon to transfer 51 per cent shares in the company against payment of Rs. 50 lakh, the vendors had failed to do so, thereby frustrating the MOU. The substantive grievance of the purchasers was thus articulated in a contemporaneous document written well before either suit was instituted. It is the same grievance that they have maintained throughout.

24. It follows that the observation of the learned Judge that the purchasers terminated the agreement on September 24, 2010 and sought to justify their reasons only after a period of six months, such that "reasons and justification were absent at the first instance", cannot be sustained. It overlooks Exhibit G, and it attaches to an SMS, an expectation it could not bear. An SMS is by its nature a communication of a decision, not a reasoned document. What matters is whether, as on the date of the SMS, a ground for avoidance in fact existed. For the reasons already given, it did.

25. The SMS of September 24, 2010 was therefore not a wrongful repudiation but a lawful avoidance of a contract which the other side had already broken. In this connection, the vendors' reliance on Section 53 of the Contract Act is misplaced. That section provides that when a contract contains reciprocal promises and one party prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and that he is entitled to compensation from the other party for any loss he may sustain in consequence of the non-performance of the contract. The section confers a right upon the innocent party it does not arm a defaulting party with a shield. On the findings recorded above, it is the purchasers, and not the vendors, who could invoke it.

26. Nor does it assist the vendors to say that the purchasers were all along aware of the Bank dues and of the imminence of the Bank's action, and that they received letters from the company demanding payment and did not reply. Awareness of a liability creates no obligation to discharge it. The purchasers' assumption of the Bank liability under Clause 14 was one limb of a composite bargain whose consideration on the vendors' side wholly failed. Having avoided the contract on September 24, 2010, the purchasers were under no duty to answer demands made thereafter, and their silence carries no adverse inference.

27. The classification of the loan account as a non-performing asset as on October 31, 2010 and the issuance of the notice under Section 13(2) on December 30, 2010. They were, moreover, the consequence of the company's own protracted default in servicing the loan, a default which long ante-dated the MOU and which was the very occasion for the transaction. These events cannot be laid at the door of the purchasers.

28. Compensation for breach of contract is governed by Section 73 of the Contract Act. It is compensatory and not punitive. The party complaining of breach must be placed, so far as money can do it, in the position it would have occupied had the contract been performed. It must take reasonable steps to mitigate and critically, it must prove the loss it claims. In ***Murlidhar Chiranjilal v. Harishchandra Dwarkadas***, reported in ***AIR 1962 SC 366***, the Supreme Court held that where damages are claimed for non-delivery, the measure is the difference between the contract price and the market price as on the date of breach. It is for the party claiming damages to prove the market rate. Failing such proof, the claim must fail. In ***Kanchan Udyog Limited v. United Spirits Limited***, reported in ***(2017) 8 SCC 237***, the Court reiterated that damages cannot be awarded on the basis of conjecture, speculation or hypothetical calculation, and that loss must be established by evidence.

29. Tested against that standard, the claim of Rs. 5.51 crore does not survive. The entire claim rests on the proposition that, in consequence of the purchasers' default, the vendors were compelled to sell for Rs. 22.50 crore what they had contracted to sell for Rs. 28.01 crore. That proposition depends wholly upon the alleged MOU dated February 10, 2011 with Banwari Lal Agarwal and Sri Gopal Agarwal (Exhibit F).

30. There is no evidence that any share was ever transferred by the vendors to Banwari Lal Agarwal or Sri Gopal Agarwal. There is no evidence of receipt of any consideration from them. There is no statutory return of the company reflecting any change in the shareholding. Not a rupee is traced. On the material before the Court, the vendors continue to hold the shares which they say they were forced to sell at a loss.

31. The absence of contemporaneous reference is equally striking. The letter dated March 9, 2011 (Exhibit E) was written a month after the date of Exhibit F, and its very purpose was to press the purchasers with the consequences of the Bank's SARFAESI notice. Had the vendors in fact, by then sold the company at a shortfall of Rs. 5.51 crore, that would have been the first and most natural thing to say. Exhibit E is silent. The vendors rely instead upon Exhibit 3 dated June 9, 2011, in which they say they informed the purchasers of a distress sale at Rs. 22.50 crore. That letter carries no weight on this question, for it post-dates the institution of C.S. No. 124 of 2011 on May 25, 2011. A statement made by a party after it has already sued upon the very claim is not a contemporaneous record; it is a pleading in another form.

32. The vendors met this difficulty by submitting that whether Gopal and Banwari Agarwal in fact paid Rs. 22.50 crore to the Bank "cannot be a concern of the Kanodias", who would otherwise have to bear the entire loss of about Rs. 28.01

crores. That submission inverts the burden of proof. It was for the plaintiffs, and no one else, to prove the loss they claimed. A plaintiff cannot establish damages by inviting the defendant to disprove them.

33. The reasoning of the learned Judge on this issue, with respect, suffers from the same difficulty. His Lordship reasoned that if the purchasers had paid Rs. 28.01 crore, the Bank dues of Rs. 22.30 crore would have been liquidated and the vendors would have been left with a surplus of about Rs. 5.51 crore. That is an arithmetical statement of the profit the vendors expected from the transaction. It is not proof that they lost it. Damages under Section 73 are not a device for decreeing the unpaid balance of the price under the guise of compensation. To recover the difference between the contract price and the value of what was retained, the vendors had to prove the value of what they had retained. No such evidence was led. In its absence the claim was incapable of quantification, and the decree for Rs. 5.51 crore cannot stand.

34. The vendors' reliance upon Section 60 of the Sale of Goods Act, 1930 does not repair the deficiency. That section deals with anticipatory breach and preserves to the innocent party an election either to treat the contract as subsisting and wait till the date of delivery, or to treat it as rescinded and sue for damages. The section presupposes repudiation by the other side and a party invoking it who was itself ready and willing to perform. On the findings recorded above, neither condition is satisfied here. Beyond that, all that the section confers is a right to "sue for damages". It does not create damages, and it does not relieve a claimant of the burden of proving them. The section therefore takes the vendors' case no further.

35. There remains the question of the sum of Rs. 1 crore. The vendors contend that they were entitled to forfeit it, and that since the MOU contains no clause for refund, a clause of forfeiture must be implied. For this they rely upon *K.R. Suresh v. R. Poornima & Ors., 2025 SCC OnLine SC 1014*, and in particular upon paragraphs 30, 31, 51 and 52 thereof.

36. The agreement to sell contained an express and explicit covenant that the amount paid would stand forfeited in the event of the purchaser's default. The Court expressly noted the existence of such recitals in the agreement. The Court there reiterated the settled principle that to justify the forfeiture of advance money as earnest money, the terms of the contract must be clear and explicit. And the party in default in that case was the purchaser, who had failed to pay the balance sale consideration within the stipulated period. Both of the features on which that decision turns are absent here. There is no forfeiture covenant in this MOU and the vendors do not assert one. However, the vendors count on the Court to supply one even though the party in default is not the payer but the payee.

37. Indeed, the proposition that a forfeiture clause is to be implied from the absence of a refund clause is untenable in principle. A right to appropriate money paid by the other party is a right in the nature of a penalty, and rights of that character are not implied. They must be conferred by clear and express words. Where a contract is rightfully avoided by the innocent party, Section 65 of the Contract Act requires the party who has received an advantage under it to restore that advantage. There is no equity in a defaulting vendor retaining money paid to it by a purchaser whom it has failed.

38. There is a further answer. Only Rs. 50 lakh was stipulated as payable on execution of the MOU. The remaining Rs. 50 lakh of the Rs. 1 crore was paid in discharge of the company's dues to the Bank and was part payment of the price. It is well settled that part payment of price is not earnest and is not liable to forfeiture. Even in respect of a sum properly characterised as earnest, forfeiture is permissible only in accordance with the contract. On the findings recorded above, the vendors have proved no loss at all.

39. The decree passed in C.S. No. 264 of 2012 directing refund of Rs. 1 crore is accordingly correct, though it requires to be supported on a ground different from that adopted below. The learned Judge decreed it while simultaneously holding the purchasers to be in breach, and it is that inconsistency of which the vendors complain in APDT No. 18 of 2026. The inconsistency disappears once it is held, as we hold, that the breach was that of the vendors. The purchasers, having lawfully avoided the MOU, are entitled to restitution of what they paid under it.

40. It also follows that the alternative relief sought by the vendors in APDT No. 18 of 2026, namely adjustment of Rs. 1 crore against a decree in C.S. No. 124 of 2011, does not arise, there being no decree in C.S. No. 124 of 2011 against which anything can be adjusted.

41. The purchasers had pleaded that the MOU was void or voidable for misrepresentation and falsehood. That plea was rightly negative. The purchasers had conducted due diligence over several months, had inspected the books of account, records, bank statements and fixed assets of the company, and had contracted on an "as is where is" basis with full knowledge of the Bank's dues and of the securities held by it. The MOU itself records that the transaction was designed to meet the liabilities of Indian Overseas Bank. No case of misrepresentation was made out, and the plea was, rightly, not pressed with any vigour before us. The MOU was a legal, valid and binding contract. The purchasers succeed in this appeal not because the contract was void, but because the vendors breached it.

42. Whether the defendants in C.S. No. 124 of 2011, that is to say the purchasers, were in breach of the Memorandum of Understanding dated September 20, 2010, is answered in the negative: the purchasers were not in breach, the vendors were. The purchasers are not liable to pay damages to the vendors. The vendors are not entitled to a decree for Rs. 5.51 Crores together with interest or for any lesser sum, no loss having been proved. We hold that the vendors are not entitled to any relief in C.S. No. 124 of 2011.

43. In the result, APD No. 5 of 2026 is allowed. The judgment and decree dated May 12, 2026, insofar as it decrees C.S. No. 124 of 2011 for Rs. 5.51 crore together with interest and costs, is set aside, and C.S. No. 124 of 2011 stands dismissed. All the pending applications, if any, stands also disposed of. Interim order, if any, stands vacated.

44. OCOT No. 5 of 2026, the cross-objection filed by the vendors, is dismissed. The observations and findings against which the cross-objection is directed cannot survive the conclusions recorded above, and to the extent that the cross-objection seeks enhancement or affirmance of a decree that has been set aside, it is infructuous. All the pending applications, if any, stands also disposed of. Interim order, if any, stands vacated.

45. APDT No. 18 of 2026 is dismissed. The decree passed in C.S. No. 264 of 2012 is affirmed in its entirety, together with such interest as has been awarded thereby. All the pending applications, if any, stands also disposed of. Interim order, if any, stands vacated.

46. Having regard to the nature of the dispute and the relationship between the parties, there will be no order as to costs in any of the three matters. All connected applications, if any, stands disposed of.

(ARYAK DUTT, J.)

47. I Agree.

(DEBANGSU BASAK, J.)