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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 237/2025, CM APPL. 53580/2025 & CM APPL. 53581/2025**

HARMEET SINGH KAPOOR & ANR.Appellants
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus

M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa Chouhan, Mr. Mohit Matani, Ms. Ritika Harplani & Ms. Anshita Shrivastava, Advs.

WITH

39

+ **FAO (COMM) 238/2025, CM APPL. 53583/2025 & CM APPL. 53584/2025**

M/S JAGMOHAN ENTERPRISES LLPAppellant
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus

M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa Chouhan, Mr. Mohit Matani, Ms. Ritika Harplani & Ms. Anshita Shrivastava, Advs.

WITH

40

+ **FAO (COMM) 239/2025, CM APPL. 53586/2025 & CM APPL. 53587/2025**

RAHUL BHARGAVA & ANR.Appellants
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus



M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa Chouhan, Mr. Mohit Matani, Ms. Ritika Harplani & Ms. Anshita Shrivastava, Advs.

WITH

54

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FAO (COMM) 204/2025 & CM APPL. 47782/2025
HARMEET SINGH KAPOOR & ANR.Appellants
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus

M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa Chouhan, Mr. Mohit Matani, Ms. Ritika Harplani & Ms. Anshita Shrivastava, Advs.

WITH

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FAO (COMM) 210/2025 & CM APPL. 47810/2025
RAHUL BHARGAVA & ANR.Appellants
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus

M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa Chouhan, Mr. Mohit Matani, Ms. Ritika Harplani & Ms. Anshita Shrivastava, Advs.

56

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FAO (COMM) 211/2025 & CM APPL. 47813/2025
RAHUL BHARGAVA & ANR.Appellants
Through: Mr. Tanmay Mehta, Mr. Rajinder Singh and Mr. Arjun Sharma, Advs.

versus

M/S NEO DEVELOPERS PVT LTDRespondent
Through: Mr. Jitender Chaudhary, Ms. Shilpa



Chouhan, Mr. Mohit Matani, Ms.
Ritika Harplani & Ms. Anshita
Shrivastava, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

ORDER
% **18.09.2025**

1. This hearing has been done through hybrid mode.

CM APPL.53579/2025 in FAO (COMM) 237/2025
CM APPL. 53582/2025 in FAO (COMM) 238/2025
CM APPL. 53585/2025 in FAO (COMM) 239/2025

2. These applications are filed seeking exemption from filing certified copies. Allowed, subject to all just exceptions. Applications are disposed of.

CM APPL.53580/2025 in FAO (COMM) 237/2025
CM APPL. 53583/2025 in FAO (COMM) 238/2025
CM APPL. 53586/2025 in FAO (COMM) 239/2025

3. Permission to file the annexures with dim pages is granted.
Applications are disposed of.

FAO (COMM) 237/2025 & CM APPL.53581/2025
FAO (COMM) 238/2025 & CM APPL. 53584/2025
FAO (COMM) 239/2025 & CM APPL. 53587/2025
FAO (COMM) 204/2025 & CM APPL. 47782/2025
FAO (COMM) 210/2025 & CM APPL. 47810/2025
FAO (COMM) 211/2025 & CM APPL. 47813/2025

4. These are appeals filed by the Appellants challenging the impugned judgments by which petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 by the Appellants herein have been rejected by the concerned Commercial Courts.

5. Brief background of the cases is that the Appellants had entered Memoranda of Understanding (hereinafter, 'MoU') with the Respondent– M/s



Neo Developers Pvt. Ltd. The Appellants had booked commercial spaces in Neo Square Mall, Sector-109, Gurugram.

6. Subsequently, some disputes arose between the parties in respect of assured returns, delay in construction and not handing over the possession of the said commercial spaces.

7. The Appellants approached the Economic Offences Wing, Delhi Police and also filed complaints with Haryana Real Estate Regulatory Authority (hereinafter, 'HARERA'). The said complaints were adjudicated by HARERA and an order was passed on 14th August, 2024. The following reliefs were granted by HARERA vide order dated 14th August, 2024:

“H. Directions of the authority

41. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The cancellation dated 07.06.2021 is hereby set aside and the respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 31.01.2015 till the commencement of the first lease on the said unit as per the memorandum of understanding, after deducting the amount already paid by the respondent on account of assured return to the complainants.

ii. The respondent is directed to pay arrears of accrued assured return as per MOU dated 31.01.2015 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9% p.a. till the date of actual realization.



iii. The respondent is directed to offer possession of the unit within 2 months from the date of obtaining occupation certificate from the concerned authorities.

iv. The respondent is directed to execute conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.”

8. Similar orders were passed by the HARERA in all the present appeals.

9. After the said order was passed by HARERA, communications are stated to have been sent to the Appellants by the Respondent on 27th February, 2025 raising demands in respect of certain fit-out charges etc., with respect to the commercial space.

10. The Appellants, on the other hand, filed for execution of the order dated 14th August, 2024, passed by HARERA and simultaneously, filed petitions under Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Courts, Central District, Tis Hazari Court, Delhi.

11. The said petitions have been dismissed *vide* separate orders, primarily on the ground that since the Appellants had already availed remedies under the Real Estate (Regulation and Development) Act, 2016 (hereinafter, '*RERA Act*'), the petitions under Section 9 of the Arbitration and Conciliation Act, 1996, would not be maintainable. The reasoning in the impugned judgments is that it is not permissible for the Appellants to seek and agitate the same reliefs before different fora. Hence, the present appeals.

12. *Vide* order dated, 5th August, 2025, this Court had directed as under:

“16. Accordingly, in view of the above background, the



following directions are issued in the matter:

(i) The Respondent shall place on record a short affidavit giving the current status of the commercial spaces and whether the said spaces have been rented out or leased out to third parties and if so, on what terms and what amounts have been collected till date.

(ii) The Commercial Courts, before whom similar petitions under Section 9 of the Arbitration & Conciliation Act, 1996 relating to the same Mall i.e. Neo Square Mall, Sector-109, Gurugram are pending, shall not pass any final orders in the said matters till further orders of this Court, in order to avoid multiplicity of proceedings.”

As per the above order, affidavits were directed to be filed by the Respondent giving the details as to whether the commercial spaces have been rented out and if so, what amounts have been collected till date.

13. Today, submissions have been heard on the question of interim relief. An affidavit has been filed on behalf of the Respondent in compliance with the above order. One such affidavit is extracted below which reads:

“5. That the units have been leased out by Respondent to Vexto Commercials Private Limited at the monthly rental of INR. 143.50, by way of lease deed dated 30.06.2025. The lease deed has been executed for the term of 9 years. The copy of lease deed dated 30.06.2025 between Respondent and Vexto Commercials Private Limited is already been filed in FAO (COMM) No. 210/2025 and the respondent wishes to reply upon the same.

6. That Appellant has not paid the demand and has not come forward to take the possession of the Unit's. The true copy of demand letter dated 27.02.2025 pertaining to Priority No. 21 to 26 has



already been filed in FAO (COMM) No. 210/2025 and the respondent wishes to reply upon the same.

7. That sum total of demand pertaining to priority numbers i.e. 21 to 26 is INR 92,41,672.00 (Rupees Ninety Two Lac Forty one thousand Six Hundred and Seventy Two only). ”

14. It is emphasized by Mr. Mehta, Id. Counsel appearing for the Appellants that the various orders passed by HARERA in these matters clearly gave possession to the Appellants. The petitions under Section 9 of the Arbitration and Conciliation Act, 1996 were thereafter filed upon completion certificates being issued seeking directions from the Court.

15. Mr. Mehta, Id. Counsel further submits that the new company by the name M/s Vexto Commercials Private Limited which is the Lessee, as per the above affidavit, was incorporated by the Respondents on 6th May, 2025 only to defeat rights of the Appellants. This company is wholly connected to the promoters of the Respondent-M/s Neo Developers Pvt. Ltd. Id. Counsel submits that one of the promoters of M/s Neo Developers Pvt. Ltd. is Mr. Ashish Anand whose son, Mr. Swaraj Anand was a designated partner in the M/s H5 Hospitality LLP from 5th June, 2023 till 27th December, 2024. This M/s H5 Hospitality LLP has currently two designated partners, namely, Mr. Rohit Sehgal and Mr. Nitin Dayal. They are the promoters of M/s Vexto Commercials Private Limited. Thus, they are closely linked with the promoters and are the alter ego of the promoters of M/s Neo Developers Pvt. Ltd. itself.

16. Therefore, Mr Mehta, Id. Counsel submits that the lease is a sham and this lessee is holding the property belonging to the Appellants on behalf of M/s Neo Developers Pvt. Ltd. Further, it is submitted that HARERA orders



are clear to the effect that in 2020, no lease could have been executed as the completion certificate had not been issued. Despite the HARERA orders, since the Appellants were not able to secure possession and the execution petitions were continued to be delayed for whatever reasons, the Appellants had no option but to file petitions under Section 9 of the Arbitration and Conciliation Act, 1996 to seek an interim order of injunction thereby restraining the Respondent etc. from leasing out the property or creating third party interest till the commencement of arbitration and restraining the Respondent from cancelling the Unit/ BBA or MoU. The petitions under Section 9 of the Arbitration and Conciliation Act, 1996, have, however, been dismissed by the impugned judgments and payments which were made by the Appellants way back in 2015 have still not seen any fruits till date.

17. On behalf of the Respondents, Mr. Chaudhary, Id. Counsel has taken the Court firstly through the decision of the Supreme Court in ***Ireo Grace Realtech Private Limited v. Abhishek Khanna and Ors., (2021) 3 SCC 241.*** It is his submission that once a party elects a remedy, there is an estoppel against availing of any further remedy under the Arbitration and Conciliation Act, 1996. This is clear from a reading of paragraphs 37.5, 38, 39 and 40 of the decision in ***Ireo Grace Realtech Private Limited (Supra).***

18. Various clauses of the MoU are relied upon by Mr. Chaudhary, Id. Counsel to argue that the Respondent has been given considerable rights under the MoU in order to be able to choose the lessee to whom the lease is to be given. Even the manner in which the revenue is to be shared is agreed between the parties. Clauses 5 to 9, Clause 12 to 14 and other related Clauses are relied upon by Id. Counsel for the Respondents.

19. In addition, it is submitted by Id. Counsel for the Respondent that there



are demands which are raised against the Appellants in respect of fit-out which is charged by the lessee to whom the property has been leased out. The obligation to pay the fit-out charges also is upon the Appellants.

20. Mr. Chaudhary, Id. Counsel points out that even earlier, in 2020 when the Respondents wanted to lease out the premises, the Appellants did not cooperate. This is clear from the demand notice dated 11th March, 2025 where communications were written to the Appellants who then reneged from their obligations.

21. In rejoinder, Mr. Mehta, Id. Counsel for the Appellants submits that the reliefs claimed before the HARERA and in the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 are different. It is only simultaneous pursuing of remedies which is barred by the decision in ***Ireo Grace Realtech Private Limited (Supra)***. Moreover, the payments which were to be made by the Respondents to the Appellants under the said Buyer's agreements have also not been made. It is again emphasized by Id. Counsel that the lessee is nothing but a front company of the Respondent itself and therefore, the entire lease is also fraudulent. The concerned space is actually lying vacant. Moreover, Id. Counsel submits that since 2015, payments having been made to the Respondent, no benefit has been accrued to the Appellants and the Respondent is enjoying not just the payments made by the Appellants but also the rentals/lease amounts.

22. The Court has considered the matter. There are two issues to be considered in this matter:

- i) As to whether the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 are *prima facie* maintainable;
- ii) As to what should be the interim order to be passed during the



pendency of these appeals.

23. On the first aspect, the Court has considered the decision in ***Ireo Grace Realtech Private Limited (Supra)*** where the Supreme Court has observed as under:

“37.3 Section 79 of the RERA Act bars the jurisdiction only of civil courts in respect of matters which an authority constituted under the RERA Act is empowered to adjudicate on. Section 79 reads as :

Section 79 reads as : “79. Bar of jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

37.4 Section 88 of the RERA Act is akin to Section 3 of the Consumer Protection Act, and provides that the provisions of the RERA Act shall apply in addition to and not in derogation of other applicable laws. Section 88 reads as :

—88. Application of other law not barred: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

37.5 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action. ”

Thus, a party cannot simultaneously proceed at avail of different remedies – i.e., under RERA and under the 1996 Act.



24. In order to appreciate as to whether the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 would be maintainable or not, the relief sought by the Appellant before HARERA and the relief sought in the petitions under Section 9 of the Arbitration and Conciliation Act, 1996, deserves to be seen. By way of illustration, the relief(s) sought in **FAO (COMM) NO 211/2025** in both the fora is extracted below:

“5. Relief(s) sought (before HARERA)

In view of the facts mentioned in paragraph 4 above, the Complainants prays for the following relief(s)

- a) Direct the Respondent to pay Assured Returns (i)@ Rs. 90 per sq feet per month amounting to Rs. 22,500/- (Rupees Twenty-Two Thousand Five Hundred Only) for Unit No. 23, since July, 2019 till handing over the possession/leasing out the property after completion.*
- b) To execute the Sale Deed after the competition of the project in favour of the Complainant.*
- c) set aside the illegal demands of VAT made by the Respondent vide letter dated 22.01.2020 and 30.10.2020.*
- d) Restrain the Respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the Complainant.*
- e) To direct the Respondent to pay the penalty charges of damages with interest as per RERA Act.*
- f) Pass such other order as this Hon'ble commission deems fit in the fact and circumstances of the case.*

xxx

xxx

xxx

Relief(s) sought (under Section 9 of The Arbitration and Conciliation Act, 1996)

A. Pass an interim order of injunction in favour of the



Petitioners and against the Respondent thereby restraining the Respondent and their agents, servants attorney heir contractors labourers, representatives etc. from leasing out the property or creating third part interest till the commencement of arbitration and

B. Pass an interim order of injunction in favour of the Petitioners and against the Respondent thereby restraining the Respondent from cancelling the Unit/ BBA or MoU till the commencement of the Arbitration; and

C. Pass such other and further orders in the Interest of Justice as this Hon'ble Court deem necessary in the fact and circumstances of the present case.”

25. A perusal of the complaint filed before HARERA would show that the relief sought was in respect of payment of assured returns, execution of sale deed and for restraining the Respondent from entering into any lease deed with the third party till the completion of the project and handing over of possession to the Appellants. In this complaint, HARERA directed as under:

“H. Directions of the authority

41. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The cancellation dated 07.06.2021 is hereby set aside and the respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 31.01.2015 till the commencement of the first lease on the said unit as per the memorandum of understanding, after deducting the amount already paid by the respondent on account of assured return to the complainants.

ii. The respondent is directed to pay arrears of



accrued assured return as per MOU dated 31.01.2015 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9% p.a. till the date of actual realization.

iii. The respondent is directed to offer possession of the unit within 2 months from the date of obtaining occupation certificate from the concerned authorities.

iv. The respondent is directed to execute conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.”

26. As can be seen from the above order rendered by HARERA, the arrears were directed to be paid as per the assured returns in the MoU till the date of the order *i.e.*, 27th February, 2025. In addition, the possession of the unit was to be offered by the Respondent within two months after obtaining the occupation certificate. The occupation certificate in this case was issued after the order of HARERA which was rendered on 14th August, 2024.

27. On the other hand, the prayer in the petitions under Section 9 of the Arbitration and Conciliation Act, 1996, is for restraining the Respondents from leasing out the property to any third party after the occupation certificate is issued and also for restraining the cancellation of the unit till the commencement of arbitration.



28. In the opinion of this Court, there can be no doubt that persons like the Appellants are forced to avail of remedies at different stages before different authorities. The HARERA complaint has resulted in the order dated 14th August, 2024 of which execution is still pending. The admitted position is that the possession of the concerned units have not been given to the Appellants. Simultaneously, the Respondent has chosen to lease out the units and also earn a substantial amount of rent. As per the Respondent, the total rent for the said units is stated to be as under:

Sr. No.	Case No.	Petitioner	floor	Unit no.	Size S.F.	Rent PSF/PM	Vexto share	Lessor Share	Rent from 30/6/2025 to 30/9/2025	Remarks
1	FAQ(comm) 210/2025	Mr. Rahul Bhargava	Third Floor	Priority No. 26	250	143.5		10	133.5	101237*
2	FAQ(comm) 211/2025	Mr. Rahul Bhargava	Third Floor	Priority No. 21	250	143.5		10	133.5	101237*
3	FAQ(comm) 239/2025	Mr. Rahul Bhargava	Third Floor	Priority No. 25	250	143.5		10	133.5	101237*
4	FAQ(comm) 237/2025	Hameet Singh Kapoor	Ground Floor		N.A.					Unit Not Available
5	FAQ(comm) 204/2025	Hameet Singh Kapoor	Ground Floor		N.A.					Unit Not Available
Towards Expenses of Vexto towards Administration.									* Subject to Clause 7 (a) and 7(b) of MOU towards payment of Upside Consideration @Rs. 54.55 Per SF. for every Rupee increase.	

Subject to Fit Out and Rent Free Period
as per Lease Agreement.

29. Under Section 9 of the Arbitration and Conciliation Act, 1996 the Court can pass various interim measures of protection including –

- Preservation of the subject matter of the agreement
- Securing the amount in dispute in arbitration
- As also such other interim measures of protection as appear to the Court to be just and convenient.
- The Court is also empowered to appoint receivers or grant an interim injunction.

Thus, the power of the Court under Section 9 of the Arbitration and Conciliation Act, 1996, is quite broad and would permit grant of relief in cases



where *prima facie* case, balance of convenience and irreparable injury is made out.

30. *Prima facie*, the legal issue which has been raised in respect of the decision in ***Ireo Grace Realtech Private Limited (Supra)***, would not bar the filing of petitions under Section 9 of the Arbitration and Conciliation Act, 1996 as the proceedings before HARERA are not from the same cause of action. They were filed prior to the issuance of completion certificates and at a different stage of the project. The section 9 petitions have been filed after completion certificates have been issued. Moreover, the continued non-adherence of any obligations by the Respondent, constitutes a continuing cause of action in favour of the Appellants. Thus, the Appellants are well within their rights to seek further relief from the appropriate forum for securing their interest.

31. In all these appeals, the Appellants are running from pillar to post since the last several years, as is evident from the proceedings before the HARERA and the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 in order to secure their units which they have booked. They have made substantial payments to the Respondent and have not enjoyed any fruits of the said payment.

32. On the other hand, Respondent has entered into lease deeds and is earning substantial amounts through rent/lease amounts. The Respondent has not complied with the HARERA order of giving possession to the Appellants as well. Under such circumstances, this Court has no doubt that some protection ought to be extended to the Appellants at this stage.

33. In the overall facts and circumstances, the following directions are issued:



- i) The Respondent shall, deposit the entire lease amount being earned *qua* each of the Appellants and in respect of each of the units which belong to the Appellants with the worthy Registrar General of this Court. The date of lease entered into by the Respondent is stated to be from 30th June, 2025, therefore, from 1st July, 2025 onwards, the entire rent amount, without any deduction, applicable to the units of Appellants shall be deposited by 30th September, 2025 by Respondent with the worthy Registrar General of this Court. Going forward, the said rent from 1st October, 2025 onwards shall be deposited by the Respondent by 15th of each month with the worthy Registrar General. The entire amount received shall be kept in a fixed deposit on an auto-renewal mode;
- ii) The Appellants and the Respondent shall file computations of all the amounts which are due to them in respect of each of the units by at least one week before the next date of hearing.
- iii) **Mr. Syed Hussain Adil Taqvi, Advocate (Mobile No.-9911694947)** who is present in Court is appointed as the Local Commissioner to visit the 3rd and 4th Floor of Neo Square, Sector 109, Dwarka Expressway, Gurgaon, Haryana to inspect as to what is the current status of the said property and file a report in this regard along with photographs and videos. The Local Commissioner shall report as to who is occupying the said floors of the property and as to if there are any sub-tenants/tenants of the units. Copies of the lease deeds from the said sub-tenants/ tenants shall also be obtained by the Local Commissioner;



34. The fee of the Local Commissioner is fixed at Rs.2 lakhs. The same shall be paid by the Respondent. The inspection can be carried out on two dates, if required and a comprehensive report shall be filed by the Local Commissioner within a period of two weeks.

35. The Local Commission shall be carried out on 20th September, 2025 and 22nd September, 2025.

36. Two representatives of the Appellants along with one lawyer shall be permitted to accompany the Local Commissioner. Similarly, the Respondent's two representatives and one lawyer can accompany the Local Commissioner.

37. The Respondent shall also comply with the direction given in paragraph 16 (i) of the order dated 5th August, 2025 by this Court, as mentioned above, for filing the affidavits in all appeals. The same is extracted below:

“(i) The Respondent shall place on record a short affidavit giving the current status of the commercial spaces and whether the said spaces have been rented out or leased out to third parties and if so, on what terms and what amounts have been collected till date.”

38. List this matter on 30th October, 2025. Other interim orders granted to continue.

39. *Dasti.*

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

SEPTEMBER 18, 2025

Rahul/Ck