

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

Reserved on: 31st October, 2013

Pronounced on: 05th December, 2013

+ W.P.(C) 8523/2008

SEVEN HEAVEN BUILDCONS P.LTD. & ANR.

..... Petitioners

Through Mr. Anil K. Aggarwal with Mr. Abhay
Kumar, Advocates

versus

D.D.A. & ANR.

..... Respondent

Through Mr. Ajay Verma, Advocate for
Respondent No.1/DDA

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. By virtue of this writ petition under Article 226 of the Constitution of India, the Petitioners seek refund of the earnest money of `64,21,000/- along with interest.
2. The facts of this case are not in very much dispute. By an advertisement dated 21.03.2008, the DDA invited tenders in respect of 170 freehold build-up shops/offices in a prime location of Delhi. Petitioner No.1 submitted a tender in respect of a unit situated at LSC, Vikas Puri, Block-C, Ground Floor. The Petitioner's offer of `2,56,84,000/- being the highest was accepted. Consequently, 25% of the bid amount towards earnest money amounting to `64,21,000/- was deposited with the DDA by

way of Draft No.052208 dated 27.03.2008. It is also not in dispute that in the tender document, it was not disclosed to Petitioner No.1 that the earlier stated office unit was part of a previous auction wherein successful bidder was not allotted the office unit in view of reservation of the office unit for post office purpose. By an allotment letter dated 21.04.2008, the DDA demanded the balance amount of the bid price of `1,92,63,045/-. By a letter dated 26.04.2008, the Petitioner informed the DDA that in the allotment letter, the Petitioner's name was wrongly mentioned as Seven Heaven Builders Pvt. Ltd. instead of Seven Heaven Buildcons Pvt. Ltd. On Petitioner's request to correct the document in order to avail a loan facility, the DDA corrected the name of the first Petitioner by a revised letter No.3073 dated 23.06.2008 requiring the first Petitioner to deposit balance amount within 30 days. The DDA further informed the Petitioner that if the payment is not made with interest within a period of 180 days, the allotment would stand automatically cancelled and EMD forfeited.

3. According to the Petitioners, the first Petitioner started the process of trying to obtain a loan for the arrangement of the balance amount to be deposited with the DDA. To the utter shock and surprise of the Petitioners, Petitioner No.1 was served with summons in Suit No.1577/2009 titled *Shashi Bala Nangia v. DDA & Ors.* In the said civil suit, it was claimed that Respondent No.2, one Shashi Bala Nangia, Plaintiff before the learned Civil Judge was declared a successful bidder in respect of this very office unit in an auction held on 19.04.2000. In the said civil suit, it was averred that DDA had withdrawn the office unit from the tender on the ground that it was required to be allotted to the Office of Chief Post Master General, Delhi. Along with the civil suit, an application under Order XXXIX Rules 1 and 2 CPC was also filed by

Respondent No.2 (herein) for grant of a temporary injunction.

4. It is not in dispute that no *ex parte* or interim injunction on merits was granted in favour of Respondent No.2. Thus, the DDA was to execute the conveyance deed in favour of the present Petitioner.
5. It is the admitted case of the parties that during the pendency of the writ petition, the said civil suit was dismissed. Respondent No.2 was further also unsuccessful in the appeal preferred against the judgment dated 11.05.2012 passed by the learned Civil Judge.
6. The case of the Petitioners is that Petitioner No.1 was denied loan facility in view of the pendency of the civil suit filed by Respondent No.2. The Petitioners relied on a letter dated 26.09.2008(Annexure P-10) written by RVAG Centurion Infra Solutions Ltd. to Petitioner No.1. The Petitioners represented to the DDA to extend the time for depositing of the balance amount because of the pendency of dispute being raised by Respondent No.2 claiming allotment of the office/shops space in question. The request to extend the time was rejected by the DDA by a letter dated 03.10.2008 (Annexure P-11). Petitioner No.1 was directed to deposit the balance amount as per the terms of the allotment letter failing which the DDA shall cancel the allotment and forfeit the EMD in accordance with the terms and the conditions of the tender.
7. In the counter affidavit filed by the DDA, the facts stated are not disputed. Rather, it is admitted that Respondent No.2 did participate in the tender programme opened on 19.04.2000 for the office which showed it's usage as 'post office'. Subsequently, the bid of Respondent No.2 was rejected on the ground that several representations were received from different tender purchasers that they were interested in the unit but did not tender for the same because it was reserved for a post office and thus, the

amount deposited by Respondent No.2 was refunded without any deduction. In the counter affidavit, it is stated that the restricted use of 34 vacant properties, *i.e.*, 17 post offices and 17 banks was changed to ‘general’ office use after following due formalities. Thereafter, the said units were put to auction again on 28.03.2008 as “office use only” in which the Petitioner was the highest bidder. The representation for extension of time made by the Petitioners is not disputed by the DDA. It is stated that after examining the representation, the Petitioner was informed that he was obliged to make the payment in terms of the Demand-cum-Allotment letter dated 21.04.2008 failing which the DDA shall have no alternative except to cancel the allotment and forfeit the earnest money. In the written statement dated 31.05.2010 filed in CS (OS) No.1577/2009, a specific plea was taken that the unit in question was floated in the tender invited on 19.04.2000 for use of “post office” and the space was offered to the Postal Department. A request dated 11.04.2000 was received from the Chief Post Master General and the space was offered to the post office on licence fee. It was requested to the Chief Post Master General to convey his consent for allotment, but no response was received and thereafter the use of units meant for “banks” and “post office” lying vacant with the DDA were changed in consultation with the Planning Department and were offered to the general public. Paras B, 1,2 and 3 of the written statement of the DDA is extracted hereunder:

“B. Brief synopsis:

- 1. That a unit measuring 81.7 sq.mtrs at LSC, Vikas Puri, Block-C was floated in tender invited on 19.04.2000. The answering defendant had received three tenders against the said unit and Mrs.Shahi Bala Nangia was found the highest*

bidder who offered the amount of `15,11,000/- and deposited `3,77,750/- as earnest money by P.O./DD No.514130 dated 18.04.2000 towards the 25% of the tendered amount. Since the unit in question was earmarked for the use of "Post Office" and the answering defendant had received several representations from the Postal Department stating that they were interested in the unit but did not tender for the same and a request dated 11.04.2000 from Chief Post Master General, Delhi Circle, was received for allotment of the said unit, the bid/tender of Mrs. Shashi Bala Nangia was rejected and about this, she was informed vide letter date 31.05.2000 and the P.O./DD deposited by her was also returned therewith.

- 2. That subsequently, the Chief Post Master General was offered the said unit vide letter dated 01.03.2002 to allot the same to the Postal Department on licence fee at the rate of `2,24,800/- per annum which would be increased by 10% every year. It was requested to the Chief Post Master General to convey their consent for allotment. But no response therefrom was received.*
- 3. That thereafter, the use of units meant for "Banks" & "Post Offices" lying vacant with DDA were changed after consulting the Planning Deptt. of DDA into use of "Office" and the said unit was disposed of through tender invited on 28.03.2008 which was in favour of M/s Seven Heaven Buildcon Pvt. Ltd."*

8. In para 16 of the written statement filed by the DDA, the DDA stated as under:

"16. That in reply to this para, it is admitted that the unit which was put to auction in the year 2008 was the same unit which was put to auction in the year 2000. However, it is submitted that the unit was put to tender again after getting its use changed into "office" because there was no requirement/acceptance received from the Postal Authority. The Reserve Price keeps changing from year to year depending upon the average auction/tender rate fetched during the last preceding financial year. It is, however, denied that in the tender

form which was floated in the year 2008, the term P.O. had been clarified to be "Prop. Office". However, it is made clear that the term P.O. was clarified as "Pro Office", which means professional office. It is denied that the answering defendant acted mal fide in inviting bid for the same shop at the higher reserve price. It is pertinent to mention that in the year 2000, the use of the unit in question was "Banks" and "Post Offices" whereas after the change of the use as "Office", after due permission from the competent authority, the unit was floated in the fresh tender in the year 2008."

9. The DDA has taken up a plea that there is no restraint order passed by the Civil Court in the civil suit filed by Respondent No.2 and thus, the DDA is willing to handover possession of the unit/shop in question to the Petitioner on payment of premium with applicable interest in accordance with demand letter issued on 21.04.2008. The DDA has further taken up a plea that a letter dated 03.10.2008 was written to the Petitioners to deposit the balance amount of `1,92,63,045/- in accordance with the demand-cum-allotment letter dated 21.04.2008 within the stipulated period, failing which the allotment was liable to be cancelled and the earnest money to be forfeited.
10. The learned counsel for Respondent No.1 states that it is not one of the terms and conditions of the auction that the purchaser (Petitioner No.1 herein) would be entitled to raise a loan to make the payment. No document has been placed on record to prove the same. A successful bidder cannot be permitted to withhold the payment to the owner of a plot simply because some unnecessary and unwarranted litigation has been commenced by a third person.
11. In a separate reply to the writ petition filed by Respondent No.2 (who was the initial successful bidder in the auction), it is admitted that the DDA

had informed Respondent No.2 that since the unit/shop was earmarked for the post office, it had decided to withdraw the said unit/shop from the tender and it was to be allotted to the Chief Post Master General, Delhi, who had requested for the said space for opening of a post office. Respondent No.2 has further taken up the plea that since the shop/unit in question was not allotted to the post office, a suit was filed by her against the DDA and the Petitioner. Respondent No.2 has thus prayed for allotment of the unit/shop to her on the terms and conditions of the initial auction.

12. The learned counsel for the Petitioner referring to *ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors.*, 2004 (3) SCC 553 has urged that if the State acts in an arbitrary manner even in a matter of contract, the aggrieved party can approach the Court by way of a writ under Article 226 of the Constitution and the Court depending upon the facts of the said case is empowered to grant relief.
13. There is no dispute about the proposition of law as urged by the learned counsel for the Petitioner. In *ABL International* relying on *Gujarat State Finance Corporation v. Lotus Hotels Pvt. Ltd.*, (1983) 3 SCC 379, in para 11 the Supreme Court observed as under:-

“11. In the case of Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd. (1983) 3 SCC 379 this Court following an earlier judgment in Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489 held:

The instrumentality of the State which would be ‘other authority’ under Article 12 cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the State Financial Corporations Act, falls within the expression of ‘other authority’ in Article 12 and if it backs out from such a promise, it

cannot be said that the only remedy for the aggrieved party would be suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.”

14. Now, the question for consideration is whether the DDA has acted in a totally arbitrary manner and that the Petitioner can be granted relief by virtue of this writ petition.
15. It is not in dispute that a civil suit was filed by Respondent No.2 (herein) against the DDA and the Petitioner was impleaded as Defendant No.2 in the said civil suit. Respondent No.2 admittedly in the said civil suit sought the relief of cancellation of the auction in question. It is also not in dispute that in the said civil suit, no restraint order was granted against the DDA from execution of a conveyance in favour of the Petitioner. The said civil suit, as well as first appeal thereto has also been since dismissed by the Courts of competent jurisdiction and the matter has attained finality.
16. Relying on *Haryana Finance Corporation & Anr. v. Rajesh Gupta*, AIR 2010 SC 338 and *Mohd. Gazi v. State of M.P. & Ors.* (2000) 4 SCC 342, Mr. Anil K. Aggarwal, learned counsel for the Petitioner has argued that where the seller is unable to pass on a marketable title, he is not entitled to forfeit the earnest money on refusal of the purchaser to pay the balance sale consideration.
17. On the other hand, Mr. Ajay Verma, learned counsel for Respondent No.1 DDA has relied upon a Division Bench judgment of this Court in *Aggarwal Associates (Promoters) Ltd. v. DDA & Anr.*, 69 (1997) DLT 716 (DB) to buttress his contention that the DDA was always willing to transfer a valid title and deliver possession of the shop in question to the Petitioner and the earnest money paid by the Petitioner stood forfeited on

account of violation of the terms of the auction.

18. In *Haryana Finance Corporation* (HFC) on 08.01.1998, the HFC had issued an advertisement for sale of various units including the land of M/s. Unique Oxygen Pvt. Ltd., Old Hansi Road, Jind. Respondent Rajesh Gupta on that very day had deposited an amount of `2.5 lacs by way of earnest money. Said Rajesh Gupta on visiting the factory premises on 21.01.1998 found that the premises did not have any appropriate passage from the road and therefore wrote a letter dated 21.01.1998 requesting HFC to apprise him about the same so that they did not face any problem if they acquire the unit as per the offer. The HFC preferred not to respond to the said letter. By a letter dated 19.02.1998, HFC called Rajesh Gupta for negotiation and enhanced the bid amount from `25 lacs to `50 lacs. Rajesh Gupta again wrote a letter dated 07.03.1998 raising the same issue about the approved/authorised passage to the factory sufficient to pass a truck through it. It was matter of record that by a letter dated 03.04.1998, the Branch Manager of HFC had brought the objection of Rajesh Gupta to the notice of the Head Office. The Branch Manager was informed by the head office that a clear cut passage had been provided to the unit as per the documents submitted by the defaulting unit at the time of availing loan. On 13.04.1998, the Branch Manager wrote another letter to the Head Office of HFC pointing out the discrepancies in the area of the factory as also of the passage. In spite of the factual position, the HFC issued a letter dated 18.05.1998 to the Respondent advising him to deposit the balance bid amount within 15 days failing which the amount of earnest money would be forfeited without further notice. The Respondent again raised the issue regarding the passage at the open house held by HFC at Hisar on 12.06.1998. The

HFC relied upon a demarcation report of the Revenue Officers dated 27.06.1998 (made after the bid that 16.5 ft. passage is provided in the west of the unit). Not satisfied with the report, the Respondent did not pay the balance amount whereupon the HFC forfeited the sum of `2.5 lacs deposited by the Respondent and thereafter invited fresh tenders for the sale of the land, which was challenged before the Punjab and Haryana High Court.

19. The facts of *Haryana Finance Corporation* are clearly distinguishable. In that case Respondent had deposited bid amount of `2.5 lacs on 08.01.1998. He wrote a letter dated 29.01.1998 on his observations upon the visit to the factory on 21.01.1998. HFC did not give any response to the doubts raised by the Respondent and rather invited him for negotiation by a letter dated 19.02.1998 and thereby on negotiation, the bid amount was enhanced from `25 lacs to `50 lacs. It was not only Respondent Rajesh Gupta who had raised concern about the passage before he was called for negotiations and the bid amount was enhanced but also the Branch Manager of the HFC who had pointed out the discrepancies in the actual passage and the records. It was in these circumstances that the Supreme Court had observed that the HFC had acted unfairly and was trying to take advantage of its own wrong. Consequently, decision to set aside the forfeiture was passed.
20. Similarly, in *Mohd. Gazi*, a tender notice inviting tenders for disposal of tendu leaves of 1995 session was issued by the State of MP on 20.11.1995. Respondent No.4 offered his tender in respect of different lots including Lot No.597 and was declared the highest bidder for the said Lot on 02.12.1995. On account of some complaints made by other bidders and allegations of manipulations on the part of the officials of the

State of M.P., the highest bid of Respondent No.4 was not accepted and his tender was cancelled by an order dated 27.01.1996. Fresh notice for tenders for the aforesaid Lot was issued on 20.15.1996 in which the Appellant Mohd. Gazi was declared as the highest bidder. In the meantime, Respondent No.4 filed a writ petition in the High Court challenging the order of cancellation dated 27.01.1996 and re-tender notice dated 23.05.1996. On his prayer for grant of interim relief, the High Court by an order dated 18.06.1996 issued the interim direction restraining the State of M.P. from taking any step pursuant to the fresh tender notice. Appellant Mohd. Gazi was not impleaded as a party/respondent in the said writ petition. He received a letter from the officials of the State of M.P. calling upon him to execute a purchase agreement as per clause 7(2) of the tender notice with the Conservator of Forest after depositing the balance security as shown in the letter dated 01.19.1996. Consequently, the Appellant deposited a sum of `2,68,217.72P as security amount. The Appellant also filed an application for intervention in the writ petition filed by Respondent No.4 which was rejected on 01.04.1997. The writ petition filed by Respondent No.4 was disposed of by a learned Single Judge of the High Court by quashing the order dated 27.01.1996 to the extent by which the earnest money deposited by Respondent No.4 had been directed to be forfeited and a direction was issued to refund the earnest money to Respondent No.4. After the disposal of the aforesaid writ petition, the Appellant also by his letter dated 24.04.1997 requested Respondents No.2 and 3 to refund the security amount of `2,68,271.72P.

21. The Hon'ble Supreme Court after noticing the facts held as under:-

“3. The facts of the case giving rise to the determination of the questions of law formulated hereinabove are that a tender notice inviting tenders for disposal of tendu leaves for the 1995 session was issued by the respondent State on 20-11-1995. Respondent 4 offered his tender in respect of different lots including Lot 597 and was declared the highest bidder for the said lot on 20-12-1995. On account of some complaints made by other bidders and on account of alleged manipulations on the part of the respondent officials the highest bid of Respondent 4 was not accepted and his tender cancelled by order dated 27-1-1996. Fresh notice for tenders for the aforesaid lot were issued on 20-5-1996 in which the appellant herein was declared the highest bidder. In the meantime, Respondent 4 filed Writ Petition No. 2147 of 1996 in the High Court challenging the order of cancellation of tender dated 27-1-1996 and retender notice dated 23-5-1996. He also prayed for interim relief to the extent that pursuant to the fresh tender notice dated 20-5-1996 the respondent officials be restrained from executing any fresh agreement. The High Court vide order dated 18-6-1996 issued an interim direction restraining the respondent officials from taking any step pursuant to the fresh tender notice. It is pertinent to note that the appellant herein was not impleaded as a party-respondent in the aforesaid writ petition. He received a letter from officials Respondents 1 to 3 calling upon him to execute purchase agreement as per clause 7(2) of the tender notice with the Conservator of Forests after depositing the balance security as shown in the letter dated 1-9-1996. Consequently, the appellant deposited a sum of Rs 2,68,217.72 as security amount. The appellant also filed an application for intervention in the writ petition filed by Respondent 4 which was rejected on 1-4-1997. The writ petition filed by Respondent 4 was disposed of by a learned Single Judge of the High Court by quashing order dated 27-1-1996 to the extent by which the earnest money deposited by Respondent 4 had been directed to be forfeited and a direction was issued to refund the earnest money to Respondent 4. After disposal of the aforesaid writ petition the appellant requested Respondents 2 and 3 to refund his security amount of Rs 2,68,217.72 vide his letter dated 24-4-1997. He pleaded that tendu leaves, which was a perishable item, had already perished and become rotten with the result that its value had become useless by lapse of time. He also prayed for 18% interest on the security amount which was

alleged to have illegally been detained by the respondent officials for no fault of the appellant. It is contended by the appellant that after his letter dated 24-4-1997 Respondent 2 sent an ante-dated letter dated 10-4-1997 directing the appellant to execute the agreement by 10-5-1997 and deposit the remaining tender price in four instalments as detailed therein. Apprehending that the authorities might proceed to forfeit his earnest money and blacklist him, the appellant was constrained to file Writ Petition No. 1934 of 1997 in the High Court praying for quashing of order dated 1-4-1997 and refund of earnest money along with an amount of Rs 10 lakhs claimed as damages. He further prayed that he should not be compelled to enter into an agreement in pursuance of a letter dated 19-6-1996. The writ petition was allowed by a learned Single Judge of the High Court on 10-12-1997 with a direction to Respondents 1 to 3 to refund the security amount to the appellant forthwith. Not satisfied with the order of the learned Single Judge, Respondents 1 to 3 filed a letters patent appeal before the Division Bench of the High Court which was partly allowed vide the order impugned in this appeal.

4. It is not disputed that on account of litigation initiated by Respondent 4 without impleading the appellants as party in his litigation, he was prevented from taking the benefit of the acceptance of his tender notice by the respondent officials. It also cannot be denied that tendu leaves are a perishable item. For no fault of his the appellant was prevented from collecting the tendu leaves for which he had deposited his security amount. It is worth noticing that when the writ petition filed by Respondent 4 was partly allowed by a learned Single Judge of the High Court, the respondent officials had not filed a letters patent appeal.

5. In Writ Petition No. 1934 of 1997 filed by the appellant, the learned Single Judge of the High Court held on facts:

“In view of these circumstances, this Court has no hesitation in holding that the contract between the parties has frustrated. The respondents are not entitled to compel the petitioner to purchase or lift the tendu leaves at the price quoted by him. The respondents are duty-bound to return the money received from the petitioner at the time of submission of the tender. If the

respondents suffer any losses because of the acts of Respondent 4 they are free to take proper legal proceedings before the competent court of law for recovery of damages if the laws permit them. The petition is allowed. No costs."

6. The Division Bench, while disposing of the LPA, also found that the appellant could not be held responsible for not lifting the tendu leaves and thereby had not committed breach of any condition of the tender. Finding that the State was also not responsible for any breach, the Division Bench decided to pass the order impugned on the basis of equities. The arguments advanced on behalf of the appellant before the Division Bench that there was no fault on his part because he had offered bid and was prepared to accept the tendu leaves which he could not lift on account of stay order were found by the Division Bench to be not erroneous. The Division Bench held that "the submission of the learned counsel does not appear to be erroneous". As the State also could not be held responsible for the fault, the Division Bench directed that a sum of Rs 30,000 be deducted from the earnest money of the appellant. Such a direction of the High Court cannot be sustained in view of the findings of fact returned in favour of the appellant."

22. In my view the authorities cited above are not applicable to the facts of the present case and hence are of no help to the Petitioners.
23. On the other hand, the case is squarely covered by a Division Bench judgment of this Court in *Aggarwal Associates* where the Petitioner declined to deposit the balance sale consideration on the ground that there was some dispute between the MCD and the DDA. The Division Bench while upholding the order passed by the learned Single Judge that the DDA was bound to deliver possession of the property only on the Petitioner depositing the balance 75% of the bid money, held that the Petitioner wanted to project a case that the DDA was not in a position put the Petitioner in possession which was only a make-believe affair. In the instant case also, in the first tender the unit/shop was offered for post

office only whereas in the second tender (in question) the unit/shop was offered as a general shop (professional office). The Division Bench dealt with at great length as to what is bid amount, what is earnest money and what are the consequences of deposit of such money, and when the same can be forfeited. Paras 2 to 7 of the judgment in *Aggarwal Associates* are extracted hereunder:-

“2. The learned Counsel Mr. Vashisht submitted that the DDA was not in a position to give possession of the property, therefore, the petitioner was fully justified in not paying the balance 75%. The DDA has no right to forfeit the sum of Rs.7,50,000/-. The learned Counsel for the DDA submitted that the auction conditions provide for forfeiture and the petitioner did not act in accordance with the terms and conditions of the auction notice, the DDA was always ready to hand over possession of the property and, as a matter of fact, the petitioner by letter dated 16.4.1994 asked for extension of time by 45 days for the payment of balance amount. The possession of the plot was always with the DDA and in terms of Clause 2(viii) of the Terms and Conditions of the Auction, the auction was liable to be cancelled and the DDA was entitled to pass an order forfeiting the earnest money.

3. The Supreme Court had an occasion to consider the question of the right of the DDA to forfeit the amount in Delhi Development Authority v. Grishthapana Cooperative Group Housing Society Ltd., 1995 Supp (1) SCC 751. The facts as noticed by the Supreme Court are this:

“The appellant proposed to allot land to about 260 Cooperative Group Housing Societies in Dwaraka Phase-I, so also to about 60 such societies in Narela. When the proposal was first made on 1.10.1990, the cost was fixed at Rs. 975/- per sq. m. for Dwaraka land and Rs. 950/- for Narela land. The societies interested in the allotment land were required to deposit Rs. 5 lakhs as earnest money and to formally apply for allotment. On the interested societies accepting the offer, formal allotment was made by communication of the appellant dated 25.1.1991. Before possession of the land came to be delivered, the appellant by

its communication dated 3.11.1992 stated that the premium of the land shall be payable at Rs. 1650.65 per sq. m. which was the value determined by the Government of India, vide its notification dated 21.10.1992/23.10.1992. Some of the societies approached the Delhi High Court being aggrieved at the enhancement of the premium. The High Court ultimately upheld the enhancement, which decision has since been reported in 26 Delhi Reported Judgments 156. On this Court being approached against the judgment of the High Court by way of special leave petitions, the same came to be disposed of by extending the time of paying the first instalment upto 31.5.1993 which date had been fixed by the High Court as 30.4.1993. This Court made it clear in its order that the facility to pay first instalment with interest will be available only upto 31.7.1993; and no extension of time beyond this date would be granted.”

The respondents not paying the amount, as ordered by the Supreme Court, the DDA forfeited a sum of Rs.5/- lakhs, which was payable as earnest money as per clause 4 II of the allotment order dated 3.11.1992. This was challenged before this Court and this Court directed the DDA not to make any deduction and directed the DDA to refund the entire amount. That was challenged before the Supreme Court.

4. The Supreme Court noted the submission on behalf of the DDA in the following terms:

“In support of the first legal proposition, Mr. Jaitley referred us principally to a three-Judge Bench decision of this Court in Hanuman Cotton Mills v. Tata Air Craft Ltd., 1969) 3 SCC 522 in which there is a detailed discussion of what is meant by earnest money and what are the consequences of deposit of such money and when can the same be forfeited. The Bench after reviewing various decisions noted in the judgment which includes that of the Privy Council rendered in Chiranjit Singh v. Har Swarup, AIR 1926 PC 1, culled out the following principles regarding the ‘earnest’ at page 139: (SCC p. 531, para 21)

“(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, ‘earnest’ is given to bind the contract.

(3) It is part of the purchase price when the transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest.”

5. The Society which was the respondent before the Supreme Court Contended:

“In view of the aforesaid legal position, the contention advanced by Mr. Bishwajit Bhattacharya for the respondents is that there was no acceptance of the offer given on 3.11.1992 in which mention was made about the rate of premium being Rs. 1650.65. The appellant is, therefore, not entitled, according to the learned Counsel, to forfeit the earnest money, as no such money had been deposited after this date in token of acceptance of the proposal.”

6. The Supreme Court held that the sum of Rs. 5 lakhs, which was deposited, was liable to be forfeited by the D.D.A. and judgment of this Court reversed.

7. The dictum laid down by the Supreme Court is that the terms agreed between the parties have to be considered for considering the question of the right to forfeiture by one of the parties to the contract.”

24. Since the forfeiture of the earnest money was in terms of the tender, the Petitioner cannot make any grievance about the same.
25. It is true that by letter dated 26.09.2008, RVAG Centurion Infra Solutions Ltd. informed the Petitioner that the Petitioner’s request for loan proposal

of `150 lacs could not be considered because of the litigation in respect of the above mentioned property, the fact however, remains that it was not one of the conditions of the offer that the successful bidder would be entitled to avail loan from any Financial Institutions. Since, the Petitioner has violated the terms and conditions of the bid, the Respondent was entitled to forfeit the earnest money in terms of the tender.

26. The writ petition, thus, is devoid of any merit and the same is accordingly dismissed.
27. Pending applications, if any, also stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 05, 2013
pst/vk