



2026:DHC:7086



\$~

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

%

Judgment reserved on: 07.07.2026
Judgment pronounced on: 24.08.2026

+ RFA 85/2014

CHANDRA KANTA MATTA

.....Appellant

Through: Mr. Rajeev Saxena, Senior
Advocate along with Ms.
Megha Saxena and Ms. Shreya
Bhatnagar, Advocates.

versus

SMT. LILY KHANNA

.....Respondent

Through: Mr. Deepak Khadaria,
Advocate.**CORAM:****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Regular First Appeal has been preferred under Section 96 read with Order XLI Rule 1 and Section 151 of the **Code of Civil Procedure, 1908**¹, assailing the **Judgment and Decree dated 27.11.2013**² passed by the **learned Presiding Officer, MACT/ADJ (Central), Tis Hazari Courts, Delhi**³, in Civil Suit No. 146/2012 titled '*Lily Khanna v. Chandra Kanta Matta*'.

2. By the Impugned Judgment, the learned Trial Court partly decreed the suit filed by the Respondent/Plaintiff against the

¹ CPC

² Impugned Judgment

³ Trial Court



2026:DHC:7086



Appellant/Defendant and directed the Appellant/Defendant to refund a sum of INR 15,00,000/- to the Respondent/Plaintiff along with interest @6% per annum from the date of institution of the suit i.e., 03.10.2012, within two (02) months.

3. Further, the Appellant/Defendant was also directed, in case of default in complying with the aforesaid directions within two (02) months, to pay interest @12% per annum from the date of filing itself. The learned Trial Court further held that only a sum of INR 2,50,000/- could validly be retained by the Appellant/Defendant towards earnest money as well as reasonable compensation for the breach of contract by the Respondent/Plaintiff.

4. The controversy in the present Appeal arises out of an **Agreement to Sell dated 24.04.2012⁴** executed between the parties in respect of the immovable property, *namely*, **Second Floor, 930, Mukherjee Nagar, Delhi, situated on a plot of land measuring about 160 sq. yds. without roof rights⁵** for a total sale consideration of INR 1,56,00,000/-.

5. At the outset, it is made clear that the principal question arising for consideration in the present Appeal is whether the Appellant/Defendant was justified in forfeiting the entire sum of INR 17,50,000/-, comprising the earnest money and/or part payment received under the Agreement to Sell, on account of the alleged default by the Respondent/Plaintiff, or whether the learned Trial Court was justified in holding that only a sum of INR 2,50,000/- constituted earnest money and, consequently, directing the refund of the balance amount of INR 15,00,000/- to the Respondent/Plaintiff.

⁴ Agreement to Sell

⁵ Suit Property



2026:DHC:7086



6. For the sake of clarity, uniformity and consistency, the parties in the present Appeal shall hereinafter be referred to in accordance with their ranks in the present Appeal.

BRIEF FACTS:

7. Shorn of unnecessary details, the brief facts necessary for the adjudication of the present Appeal are as follows:

- (a) The Appellant is the owner of the Suit Property for which the parties entered into the Agreement to Sell for a total sale consideration of INR 1,56,00,000/-.
- (b) Under the said Agreement to Sell, the Respondent paid a sum of **INR 12,50,000/-⁶** to the Appellant at the time of its execution, i.e., as on 24.04.2012. The balance sale consideration of INR 1,43,50,000/- was agreed to be paid by the Respondent **on or before the end of July, 2012⁷**.
- (c) The Agreement to Sell further recorded an endorsement made on its reverse side, whereby the parties agreed that a sum of INR 10,00,000/- would be paid by the Respondent on or before 05.05.2012 to the Appellant.
- (d) It is not in dispute that the Respondent subsequently paid only **INR 5,00,000/-⁸** to the Appellant on 31.05.2012, whereupon a separate receipt acknowledging the said payment was executed by the Appellant. Consequently, the aggregate amount paid by the Respondent under the transaction stood at INR 17,50,000/-.
- (e) Clause 7 of the Agreement to Sell provided that in the event the purchaser failed to complete the transaction within the stipulated

⁶ Earnest Money

⁷ Stipulated period

⁸ Part Payment



2026:DHC:7086



period, the earnest money would stand forfeited and the seller would be at liberty to resell the Suit Property.

- (f) The sale transaction did not fructify, as the Respondent failed to pay the balance sale consideration within the period stipulated under the Agreement to Sell i.e., on or before the end of July, 2012. Consequently, the Appellant, *vide* **Legal Notice dated 05.09.2012⁹**, cancelled the Agreement to Sell and invoked Clause 7 thereof to forfeit the amount of INR 12,50,000/- received as earnest money from the Respondent. The Appellant also forfeited the subsequent amount of INR 5,00,000/- paid as part payment by the Respondent towards the sale consideration on the ground that the Respondent committed breach of the Agreement to Sell.
- (g) The Respondent, *vide* **Reply dated 11.09.2012 to the Legal Notice¹⁰** disputed the Appellant's action and asserted that the purchase of the Suit Property was dependent upon the sale of another property owned by the Respondent, which was allegedly being facilitated through one Mrs. Renu Kalra and that the Respondent did not personally have adequate funds to complete the transaction of sale of the Suit Property. The Appellant categorically denied knowledge about the transaction being dependent upon the arrangement between the Respondent and Mrs. Renu Kalra.
- (h) Thereafter, the Respondent instituted Civil Suit No. 146/2012 before the learned Trial Court seeking recovery of INR 18,50,000/- along with interest @18% per annum, contending that the forfeiture of the earnest money as well as the part

⁹ Legal Notice

¹⁰ Reply to the Legal Notice



2026:DHC:7086



payment effected by the Appellant was illegal and contrary to law.

- (i) The Appellant entered appearance and filed a Written Statement contesting the suit. The Appellant maintained that the Respondent had failed to perform her contractual obligations within the stipulated period and that the forfeiture of the earnest money received under the Agreement to Sell was in accordance with Clause 7 thereof.
- (j) The Appellant further contended that the amount of INR 5,00,000/-, paid subsequently towards the sale consideration as part payment, was also liable to be forfeited on account of the Respondent's breach of the Agreement to Sell. The Appellant also denied the Respondent's plea regarding the alleged understanding involving Mrs. Renu Kalra.
- (k) Upon completion of pleadings, the learned Trial Court framed the necessary issues for adjudication. Thereafter, both parties led oral as well as documentary evidence in support of their respective stands.
- (l) After considering the pleadings, evidence led by the parties and the material placed on record, the learned Trial Court, *vide* the Impugned Judgment, partly decreed the suit in favour of the Respondent, while holding that only a sum of INR 2,50,000/- could validly be retained by the Appellant towards earnest money as well as reasonable compensation for the breach of contract by the Respondent.
- (m) Consequently, the Appellant was directed to refund a sum of INR 15,00,000/-, along with interest @6% per annum from the date of



2026:DHC:7086



institution of the suit till actual realization. Further, the Appellant was also directed, in case of default in complying with the aforesaid directions within two (02) months, to pay interest @12% per annum from the date of filing itself. Aggrieved thereby, the Appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

8. Learned counsel appearing on behalf of the Appellant would assail the Impugned Judgment principally on the ground that the learned Trial Court erred in holding that only a sum of INR 2,50,000/- constituted earnest money under the Agreement to Sell and, consequently, directing refund of the remaining amount of INR 15,00,000/- to the Respondent. It would be contended that the said finding is contrary to the express terms of the Agreement to Sell as well as the evidence available on record.

9. Learned Counsel for the Appellant would further submit that the Agreement to Sell unequivocally records that a sum of INR 12,50,000/- was paid as earnest money at the time of execution of the Agreement to Sell and Clause 7 thereof expressly entitled the Appellant to forfeit the earnest money in the event of default on the part of the Respondent in completing the transaction within the stipulated period. Learned counsel for the Appellant would contend that the Respondent admittedly failed to pay the balance sale consideration within the contractual timeline and, therefore, the Appellant was fully justified in invoking Clause 7 of the Agreement to Sell to forfeit the earnest money of INR 12,50,000/-. It would be further contended that the subsequent amount of INR 5,00,000/-, paid by the Respondent towards the sale consideration, was also liable to



2026:DHC:7086



be forfeited on the ground of illegality and unlawful withholding of the sale of the Suit Property.

10. Learned counsel for the Appellant would further submit that the learned Trial Court, having itself recorded a finding that the Respondent had committed default under the Agreement to Sell, could not thereafter have restricted the forfeiture to INR 2,50,000/- by treating the remaining amount as refundable. According to the learned counsel for the Appellant, once the Agreement to Sell itself characterized the amount of INR 12,50,000/- as earnest money and provided for its forfeiture upon the purchaser's default, the learned Trial Court could not rewrite the contractual terms between the parties.

11. It would be further contended that the Respondent's plea that her obligation to pay the balance sale consideration was dependent upon the sale of another property through one Mrs. Renu Kalra was wholly *dehors* the Agreement to Sell and unsupported by any contractual stipulation. Learned counsel for the Appellant would argue that no such condition finds mention in the Agreement to Sell and, therefore, the learned Trial Court ought not to have attached any significance to the said plea.

12. Learned counsel for the Appellant would also submit that the documentary evidence on record, particularly the Agreement to Sell, the receipt dated 24.04.2012 acknowledging payment of INR 12,50,000/- and the subsequent receipt dated 31.05.2012 evidencing payment of INR 5,00,000/-, clearly established the nature of the payments made by the Respondent. It would, therefore, be argued by the learned counsel that the learned Trial Court erred in disregarding



2026:DHC:7086



the contractual documents and in concluding that only INR 2,50,000/- constituted earnest money.

13. In support of the aforesaid submissions, learned counsel for the Appellant would place reliance upon *Shree Hanuman Cotton Mills v. Tata Air Craft Limited*¹¹, *Satish Batra v. Sudhir Rawal*¹², *HUDA v. Kewal Krishan Goel and Ors.*¹³, and *Kailash Nath Associates v. Delhi Development Authority*¹⁴, to contend that where the Agreement to Sell expressly identifies an amount as earnest money and provides for its forfeiture upon default, the rights of the parties must primarily be determined with reference to the terms of the Agreement to Sell and the settled principles governing forfeiture of earnest money.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

14. Learned counsel appearing on behalf of the Respondent would support the Impugned Judgment and submit that the learned Trial Court has rightly held that only a sum of INR 2,50,000/- constituted earnest money under the Agreement to Sell and that the remaining amount received by the Appellant was liable to be refunded. It would be contended that the findings returned by the learned Trial Court are borne out from the contractual documents, the oral evidence led by the parties and the settled principles governing forfeiture of earnest money.

15. Learned counsel for the Respondent would further submit that the transaction pertaining to the Suit Property was intrinsically connected with the proposed sale of the Respondent's property at

¹¹ (1969) 3 SCC 522

¹² (2013) 1 SCC 345

¹³ (1996) 4 SCC 249

¹⁴ (2015) 4 SCC 136



2026:DHC:7086



Jawahar Nagar through Mrs. Renu Kalra and that both transactions were intended to proceed simultaneously. It would be contended that the Respondent had entered into the Agreement to Sell with the Appellant on the understanding that the balance sale consideration would be arranged from the sale proceeds of the Jawahar Nagar property. According to the learned counsel for the Respondent, the evidence led by the Respondent, including the documents relating to the proceedings arising out of the transaction involving Mrs. Renu Kalra, substantiated the existence of such an arrangement.

16. It would be further submitted that the amount of INR 12,50,000/- received by the Appellant could not be treated entirely as earnest money merely because the receipt described it as such. Learned counsel for the Respondent would contend that the initial payment of INR 2,50,000/- alone represented the earnest money, whereas the subsequent payments constituted part payment towards the agreed sale consideration. It would, therefore, be argued that the learned Trial Court rightly declined to permit forfeiture of the entire amount.

17. Learned counsel for the Respondent would also submit that time was never intended to be the essence of the Agreement to Sell. It would be contended that the Agreement to Sell itself contemplated payment by the end of July, 2012 without stipulating any specific date for execution of the Sale Deed and that the evidence adduced by the parties did not establish that strict adherence to time formed the basis of the contract.

18. Learned counsel for the Respondent would further contend that the Appellant, admittedly, had subsequently sold the Suit Property to a



2026:DHC:7086



third party and neither pleaded nor proved that any actual loss had been suffered on account of the alleged breach by the Respondent. It would, therefore, be submitted that, in the absence of any pleading or evidence regarding loss or damage, the Appellant was not entitled to retain the amount received from the Respondent beyond what could legitimately be treated as earnest money.

19. In support of the aforesaid submissions, learned counsel for the Respondent would place reliance upon *Fateh Chand v. Balkishan Das*¹⁵, *Kailash Nath Associates (supra)*, *M.C. Luthra v. Ashok Kumar Khanna*¹⁶, and *M/s Versatile Commotrade Pvt. Ltd. v. Kesar Devi & Ors.*¹⁷ to contend that forfeiture of amounts paid under an Agreement to Sell is impermissible beyond the extent legally permissible, particularly in the absence of any pleading or proof of loss, and that the substance of the transaction, rather than the nomenclature assigned to the payment, must govern the rights of the parties.

ANALYSIS:

20. This Court has heard the learned counsel appearing for the parties and carefully perused the pleadings, oral and documentary evidence, and the entire record.

21. Before advertng to the rival submissions and examining the evidence on record, it would be apposite to briefly recapitulate the nature and scope of the jurisdiction exercised by a First Appellate Court under Section 96 of the CPC.

¹⁵ 1963 SCC OnLine SC 49

¹⁶ 2018 SCC OnLine Del 7462

¹⁷ 2019 SCC OnLine Del 8182



2026:DHC:7086



22. It is well settled that a first appeal is a valuable statutory right. Unless expressly curtailed by statute, the entire case, both on facts and law, is open for reconsideration before the First Appellate Court. The appellate court is not confined to examining errors of law alone but is under a duty to independently assess the pleadings, appreciate the oral and documentary evidence, consider the submissions advanced by the parties, and arrive at its own findings supported by cogent reasons.

23. At the same time, it is equally well settled that where the findings recorded by the learned Trial Court are based upon a proper appreciation of oral and documentary evidence, particularly after evaluating the credibility and demeanour of witnesses who have deposed before it, such findings ordinarily deserve due weight and deference. Interference with such findings is justified only where they are shown to be perverse, contrary to the evidence on record, based on an erroneous application of law, or are such that no reasonable judicial mind could have arrived at the conclusions reached by the Trial Court

24. The aforesaid principles have been consistently reiterated by the Hon'ble Supreme Court in ***Santosh Hazari v. Purushottam Tiwari***¹⁸, ***Madhukar v. Sangram***¹⁹, ***H.K.N. Swami v. Irshad Basith***²⁰; and several other decisions. These principles were comprehensively restated by the Hon'ble Supreme Court in ***Malluru Mallappa v. Kuruvathappa***²¹, wherein the Court succinctly explained the scope and ambit of a first appeal under Section 96 of the CPC, the obligation of the appellate court to independently evaluate the evidence and record reasons in compliance with Order XLI Rule 31 of the CPC,

¹⁸ (2001) 3 SCC 179

¹⁹ (2001) 4 SCC 756

²⁰ (2005) 10 SCC 243

²¹ (2020) 4 SCC 313



2026:DHC:7086



while simultaneously recognizing that where the appellate court concurs with the appreciation of evidence by the Trial Court, it need not unnecessarily restate the entire evidence or reiterate every reason recorded by the Trial Court. The relevant observations as made in the said Judgement read as under:

“**10.** Section 96 CPC provides for filing of an appeal from the decree passed by any court exercising original jurisdiction to the court authorised to hear the appeals from the decisions of such courts. In the instant case, the appeal from the decree passed by the trial court lies to the High Court. The expression “appeal” has not been defined in CPC. *Black's Law Dictionary* (7th Edn.) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. It is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal. The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

11. In *Hari Shankar v. Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698 it was held that a right of appeal carries with it a right of rehearing on law as well as on fact, unless the statute conferring a right of appeal limits the rehearing in some way as has been done in second appeal arising under CPC.

12. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat*, (1969) 2 SCC 74 it was held thus: (SCC pp. 77-78, para 5)

“5. ... In the well-known work of *Story on Constitution* (of United States), Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762, the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial.”

13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided



2026:DHC:7086



by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions [see: **Santosh Hazari v. Purushottam Tiwari**, (2001) 3 SCC 179, **Madhukar v. Sangram**, (2001) 4 SCC 756, **B.M. Narayana Gowda v. Shanthamma**, (2011) 15 SCC 476, **H.K.N. Swami v. Irshad Basith**, (2005) 10 SCC 243 and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**, (1980) 4 SCC 259.

14. A first appeal under Section 96 CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

15. Order 41 Rule 31 CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order 41 Rule 31 CPC is as under:

“31. Contents, date and signature of judgment. - The judgment of the appellate court shall be in writing and shall state-

- (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision; and
 - (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
- and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

16. In **Vinod Kumar v. Gangadhar**, (2015) 1 SCC 391 this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under: (SCC p. 395, para 15)

“15. Again in **B.V. Nagesh v. H.V. Sreenivasa Murthy**, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and



2026:DHC:7086



(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [**H.V. Sreenivasa Murthy v. B.V. Nagesha, 2008 SCC OnLine Kar 837**] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide **Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179, SCC p. 188, para 15** and **Madhukar v. Sangram, (2001) 4 SCC 756, SCC p. 758, para 5.**)”

17. In **Shasidhar v. Ashwini Uma Mathad, (2015) 11 SCC 269**, it was held as under: (SCC p. 277, para 21)

“21. Being the first appellate court, it was, therefore, the duty of the High Court [**Shasidhar v. Ashwini Uma Mathad, 2012 SCC OnLine Kar 8774**] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general



2026:DHC:7086



agreement with the reasons given by the trial court would ordinarily suffice.”

25. As already discussed hereinbefore, the controversy in the present Appeal lies within a narrow compass. While it is not in dispute that the Respondent failed to complete the transaction within the stipulated period contemplated under the Agreement to Sell and that the Agreement to Sell consequently did not fructify, the principal dispute pertains to the forfeiture of the aggregate sum of INR 17,50,000/-, comprising the earnest money and the part payment. The Appellant contends that a sum of INR 12,50,000/-, expressly described in the Agreement to Sell as earnest money, was liable to be forfeited in terms of the contractual stipulation, and that the subsequent amount of INR 5,00,000/- as part payment towards the sale consideration, was also liable to be forfeited on account of illegality and breach of the Agreement to Sell. The Respondent, on the other hand, maintains that only INR 2,50,000/- constituted earnest money and that the remaining amount represented advance sale consideration, which could not be forfeited.

26. Before examining whether the learned Trial Court was justified in treating only INR 2,50,000/- as earnest money, it is necessary to notice the settled legal principles governing the determination of the character of a payment made as earnest money under an agreement to sell.

27. In this regard, the Hon’ble Supreme Court has, in ***Shree Hanuman Cotton Mills (supra)***, which has since been followed in ***Satish Batra (supra)***, ***The Authorised Officer, Central Bank of India***



2026:DHC:7086



v. Shanmugavelu²² and **K.R. Suresh v. R. Poornima**²³, consistently held that whether a particular payment constitutes earnest money cannot be determined merely by the nomenclature employed by the parties. Though the description assigned by the parties is undoubtedly a relevant circumstance, it is not conclusive of the true character of the payment. The Court is required to ascertain the true character of the payment from the terms of the contract, the intention of the parties and the surrounding circumstances attending the transaction. The Court must examine, *inter alia*, whether the amount was paid at the inception of the contract, whether it was intended as a guarantee for due performance, whether it formed part of the purchase price upon completion of the transaction and whether it was liable to forfeiture in the event of default. The relevant portion of **Shree Hanuman Cotton Mills** (*supra*) laying down the tests for determining whether a payment constitutes earnest money, are reproduced hereinbelow:

“21. From a review of the decisions cited above, the following principles emerge regarding “earnest”:

- (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 that 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.”

28. In the present case, the amount of INR 12,50,000/- was admittedly paid contemporaneously with the execution of the

²² (2024) 6 SCC 641

²³ 2025 SCC OnLine SC 1014



2026:DHC:7086



Agreement to Sell and would have formed the part of the total purchase price upon completion of the transaction. It was neither a subsequent instalment nor an amount payable upon the fulfilment of any future obligation. The payment thus satisfies one of the essential attributes of earnest money recognized by the Hon'ble Supreme Court in the aforesaid decisions, namely, that it is deposited at the time the bargain is concluded and forms part of the purchase price.

29. Equally significant is the contractual framework within which the payment of the earnest money was made. Clause 7 of the Agreement to Sell expressly stipulates that in the event of the purchaser committing default, the earnest money would stand forfeited, whereas in the event of default by the vendor, the purchaser would be entitled to enforce her remedies in accordance with law. The reciprocal nature of the stipulation unmistakably demonstrates that the payment was intended to secure the due performance of the contract rather than merely to constitute an advance adjustable towards the sale consideration.

30. The surrounding circumstances also reinforce the aforesaid conclusion. The parties consciously executed a written Agreement to Sell describing the amount of INR 12,50,000/- as earnest money. The receipt dated 24.04.2012 acknowledges payment of the same amount. Significantly, at no point contemporaneous to the execution of the Agreement to Sell did the Respondent dispute the description of the amount as earnest money or assert that only a part thereof bore such character. There is no subsequent correspondence, endorsement or agreement suggesting that the parties intended INR 10,00,000/- to be treated differently from the remaining INR 2,50,000/-. On the



2026:DHC:7086



contrary, the Respondent's entire case seeking such distinction rested upon the alleged arrangement concerning Ms. Renu Kalra, which, as already noticed, has not been substantiated by any documentary or oral evidence and was not accepted by the learned Trial Court itself.

31. Examined on the aforesaid touchstone, this Court finds that all the essential attributes of earnest money laid down in the aforementioned Judgments stand satisfied in the present case. The amount of INR 12,50,000/- was paid contemporaneously with the execution of the Agreement to Sell; it formed part of the purchase price; it was intended to secure the due performance of the contract, as is evident from Clause 7 of the Agreement to Sell; and the surrounding circumstances, including the contemporaneous receipt and the absence of any evidence to the contrary, collectively reinforce the intention of the parties to treat the entire sum of INR 12,50,000/- as earnest money. This Court is, therefore, unable to agree with the finding of the learned Trial Court that only INR 2,50,000/- constituted earnest money as well as reasonable compensation for the breach of contract. Such finding overlooks both the documentary record and the legal principles governing the determination of earnest money as laid down by the Hon'ble Supreme Court.

32. Having held that the amount of INR 12,50,000/- constituted earnest money, it is equally necessary to examine whether the Appellant was justified in forfeiting INR 12,50,000/- as earnest money by invoking Clause 7 upon the Respondent's failure to perform the Agreement to Sell within the stipulated time. The determination of the above stated issue necessarily begins with the terms of the Agreement to Sell itself. It is a settled principle that where the rights of the parties



2026:DHC:7086



arise from a written contract, the intention of the parties is, in the first instance, to be gathered from the language employed therein. It is, therefore, the Agreement to Sell, read as a whole, that must guide this Court in ascertaining the character of the payments made by the Respondent.

33. A reading of the Agreement to Sell shows that the total sale consideration for the Suit Property was fixed at INR 1,56,00,000/-. The Agreement to Sell further records that the Respondent had paid a sum of INR 12,50,000/- to the Appellant at the time of its execution, and specifically describes the said amount as “Bayana/Earnest Money”. The Agreement to Sell thereafter stipulates the schedule for payment of the remaining sale consideration and also incorporates a specific clause i.e., Clause 7 governing the consequences of default by either party.

34. Consequently, Clause 7 of the Agreement to Sell assumes significance in the present case as it embodies the commercial bargain consciously entered into by the parties. It is of significance that the said clause does not operate unilaterally. The said clause provides that in the event the purchaser fails to perform her obligations under the Agreement to Sell, the earnest money shall stand forfeited and the seller would be at liberty to deal with the property in any manner deemed appropriate. Conversely, in the event of default on the part of the seller, the purchaser would be entitled to seek appropriate remedies in accordance with law. Thus, the parties intentionally incorporated reciprocal consequences governing breach of the Agreement to Sell. Having voluntarily accepted such a stipulation, it would not be open to either party to seek a rewriting of the contractual



2026:DHC:7086



bargain after the occurrence of the contemplated contingency. Clause 7 of the Agreement to Sell is reproduced hereinunder:

“7. That if the first party infringes the terms and conditions of this agreement, then the second party shall be entitled to get the Double Earnest money/Bayana through the court of law under Specific Performance Act, at the cost and expenses of the first party on the other hand the second party refuses to purchase the same within the stipulated period as mentioned above, the said Earnest money/Bayana shall be forfeited, then the first party will be on liberty to resell the said property to whom he wishes.”

35. At this stage, it is necessary to notice that in the Impugned Judgment the learned Trial Court did not dispute either the execution of the Agreement to Sell or the fact that the Respondent had committed default in performing her obligations thereunder. The learned Trial Court, however, proceeded on the premise that although the Agreement to Sell mentions INR 12,50,000/- as earnest money, only INR 2,50,000/- was, in substance, intended to be earnest money, whereas the balance amount of INR 10,00,000/- constituted advance sale consideration. It is this finding that falls for examination in the present Appeal. The relevant portion of the Impugned Judgment reads as under:

“7. Issue no. 1: -

Plaintiff's case is that she had entered into agreement to sell dated 24/04/2012 with the defendant and had made payment of earnest of Rs. 2.5 lakhs on 09/04/2012. Thereafter, further made part payments and in total paid Rs. 17.5 lakhs to the defendant. He had to pay the remaining payment of Rs. 1,3^,50,000/- to defendant but could not make the payment as she herself did not receive payments from one Mrs. Renu Kalra who through Subhash Sharma had executed an agreement to sell to purchase her house for Rs. 2.1 crore. Defendant was aware that plaintiff was to make payment for purchase of her house from the money received by him from Mrs. Renu Kalra. Various meetings were held between son of defendant and Mrs. Renu Kalra to this effect and Rs. 1 lakh was also paid by Mrs. Renu Kalra to defendant, to compensate for the delayed payment. Mrs. Renu Kalra defaulted in payment and consequently, plaintiff could not make the payment to the defendant. It is stated

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 25.08.2026
15:41:46

RFA 85/2014

Page 20 of 47



2026:DHC:7086



that defendant had cancelled the agreement, forfeited the earnest money and sold the property to a third party. Plaintiff has claimed recovery of Rs. 18.5 lakhs paid to the defendant.

Defendant's ground is that as per terms of agreement, plaintiff was to make the entire payment by end of July, 2012 but only paid Rs. 17.5 lakhs. The remaining amount of Rs. 1,38,50,000/- was neither paid nor offered. Defendant had no option but to cancel the agreement which was done through legal notice dated 05/09/2012. Plaintiff was not entitled to claim the amount.

The documents agreement to sell dated 24/04/2012, payments of Rs. 17.5 lakhs, notice & reply by the parties are admitted. There is no proof of payment of Rs. 1 lakh by Renu Kalra to defendant. Thus, the only dispute is in regard to the entitlement of defendant to forfeit the amount of Rs. 17.5 lakhs received by them from the plaintiff.

As per the plaintiff the earnest money was Rs. 2.5 lakhs which was paid on 09/04/2012. Further payments of Rs. 10 lakhs on 24/04/2012 and Rs. 5 lakhs on 31/05/2012 were part payment and not earnest money. Even otherwise defendant was aware that the plaintiff was to make the payment only after receiving the same from Mrs. Renu Kalra who had agreed to purchase plaintiff's house. Therefore, there was no default on part of the plaintiff and defendant could not have forfeited the part sale consideration. As per agreement to sell Ex. PW1/1, Rs. 12.5 lakhs is stated to have been received as earnest money and as per para 7 it is mentioned that in case there was default on part of the defendant, plaintiff would be entitled to double the earnest money and in case of default by plaintiff, defendant was entitled to forfeit the Bayana amount.

The factum of default on part of the plaintiff is established, as the agreement in question had no clause or stipulation of this kind, plaintiff also did not lead any evidence to prove that defendant had agreed to the condition that her payment was subject to the payment made by Mrs. Renu Kalra. Plaintiff has stated that Rs 1 lakh was paid as interest by Mrs. Renu Kalra to the defendant which was denied. Plaintiff also did not examine the said witness to prove payment of interest to the defendant. Defendant had further sold the suit property and did not either plead or lead any evidence to show any actual loss suffered by her by selling her property to a third party. There is no evidence to show that property had depreciated in value since the date of the contract nor is there any evidence to show defendant has suffered any other special damage.

As per Section 74 of the Contract Act, *'when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have*



2026:DHC:7086



been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Thus, the party responsible for breach of the contract is required to reasonably compensate the other party, but, it is also provided that the compensation should be reasonable but could not exceed the amount specified as penalty in the agreement. In the present case as per Ex. PW1/1, Rs. 12.5 lakhs is mentioned as the earnest money which is stated to be liable to be forfeited in case of default by the plaintiff. This amount is however, in the form of penalty and due to lack of proof of any actual loss suffered by defendant cannot be forfeited in entirety. As per plaintiff's own case Rs. 2.5 lakhs was paid as earnest money on 09/04/2012 i.e. even before entering into an agreement to sell Ex. PW1/1 dated 20/04/2012. Accordingly, it can reasonably be concluded that this amount of Rs. 2.5 lakhs was by way of token money for the contract and can also be taken as the reasonable compensation for the breach of contract by the plaintiff. The remaining amount received by defendant i.e. Rs. 15 lakhs is thus to be refunded to the plaintiff, Accordingly, issue no. 1 is partly decided in favour of the plaintiff."

36. The Respondent sought to explain Clause 7 contained in the Agreement to Sell by pleading that although a sum of INR 12,50,000/- was shown therein as earnest money, in reality only INR 2,50,000/- constituted the earnest money, while the remaining INR 10,00,000/- represented advance sale consideration. It was further the Respondent's case that the payment of the said amount was intrinsically linked to a separate transaction with one Ms. Renu Kalra and that the Appellant was aware of the said arrangement. According to the Respondent, since the transaction with Ms. Renu Kalra did not materialize, she was unable to mobilize the requisite funds to complete the purchase.

37. The burden of establishing the aforesaid plea squarely rested upon the Respondent. This is for the reason that the Agreement to Sell, a written contract admittedly executed by both parties, unequivocally records that a sum of INR 12,50,000/- was paid as



2026:DHC:7086



“Bayana/Earnest Money”. Once the terms of a written agreement expressly embody the understanding between the parties, any plea seeking to attribute a different character to the transaction must necessarily be supported by cogent and convincing evidence.

38. Upon an independent appreciation of the pleadings and the evidence adduced by the parties, this Court finds that the Respondent has failed to discharge the aforesaid burden. Neither the Agreement to Sell nor any contemporaneous document records that only INR 2,50,000/- was intended to constitute earnest money or that the balance amount of INR 10,00,000/- was liable to be treated differently. Equally absent is any stipulation making the Respondent's obligation to perform the Agreement to Sell contingent upon the outcome of the alleged transaction with Ms. Renu Kalra.

39. Significantly, the Respondent's plea regarding the alleged understanding with respect to Ms. Renu Kalra remains unsupported by any independent documentary evidence. The Respondent did not produce any written communication, agreement or contemporaneous record to demonstrate that the Appellant had accepted such an arrangement or had agreed that performance of the Agreement to Sell would depend upon the culmination of the said transaction. The alleged understanding, therefore, rests solely upon the Respondent's own assertion.

40. The oral evidence led by the Respondent also does not improve her case. Even if it is accepted that the Respondent expected to arrange funds from the proposed transaction with Ms. Renu Kalra, such circumstance merely explains the source from which she intended to finance the purchase. It does not establish that the



2026:DHC:7086



Appellant had contractually agreed to make the Respondent's obligations under the Agreement to Sell conditional upon the success of an altogether independent transaction. The inability of a purchaser to arrange finances, irrespective of the reason therefor, cannot by itself alter the terms of a written contract voluntarily executed between the parties.

41. On the contrary, the documentary record consistently reflects a single and unambiguous understanding between the parties. The Agreement to Sell specifically describes INR 12,50,000/- as earnest money; the receipt dated 24.04.2012 executed acknowledges payment of the said amount as earnest money; and there is no subsequent document evidencing any modification of the contractual terms. In the absence of any material demonstrating that the parties mutually agreed to alter the nature of the payment, there was no basis to segregate the amount of INR 10,00,000/- from the earnest money expressly recorded under the Agreement to Sell.

42. The reasoning adopted by the learned Trial Court, however, does not appear to be in consonance with its own appreciation of the evidence on record. While the learned Trial Court rightly rejected the Respondent's plea that her obligation to make further payments under the Agreement to Sell was contingent upon the completion of the alleged transaction with Ms. Renu Kalra, and further observed that no material had been produced to establish any such arrangement between the parties, it nevertheless proceeded to hold that only a sum of INR 2,50,000/- constituted earnest money and could be awarded as reasonable compensation for breach of contract. In the considered



2026:DHC:7086



opinion of this Court, the latter conclusion does not logically follow from the findings already recorded.

43. Once the Respondent's plea regarding the alleged understanding with Ms. Renu Kalra stood disbelieved, the very foundation on which the Respondent sought to distinguish the amount of INR 10,00,000/- from the earnest money ceased to exist. The learned Trial Court, having rejected the factual basis of the Respondent's defence, could not have proceeded to independently re-classify the amount expressly described by the parties as earnest money in the Agreement to Sell, in the absence of any other evidence justifying such departure.

44. The Agreement to Sell does not contemplate two separate categories of payment, *namely*, earnest money and advance sale consideration. Rather, the Agreement to Sell unequivocally records that the Respondent had paid a consolidated sum of INR 12,50,000/- as “Bayana/Earnest Money” at the time of its execution. There is no clause suggesting that any part of the said amount was intended to bear a different legal character. Had it indeed been the intention of the parties that only INR 2,50,000/- would constitute earnest money and the remaining INR 10,00,000/- would merely be an advance adjustable towards the sale consideration, nothing prevented the parties from expressly incorporating such a stipulation in the Agreement to Sell itself. Significantly, no such distinction finds place in the Agreement to Sell.

45. Equally significant is the fact that the Respondent never sought rectification, cancellation or avoidance of the Agreement to Sell on the ground that it failed to correctly record the true understanding between the parties. The Respondent accepted the execution of the



2026:DHC:7086



Agreement to Sell and relied upon it for asserting her own rights. Having done so, it was incumbent upon her to establish, by cogent evidence, circumstances warranting a departure from the express recitals contained therein. As noticed hereinabove, no such evidence has been forthcoming.

46. The learned Trial Court appears to have been persuaded by the circumstance that the Respondent had subsequently paid a further sum of INR 5,00,000/- on 31.05.2012, and therefore inferred that the earlier payment of INR 10,00,000/- should also be treated as part payment of the sale consideration. In the opinion of this Court, such inference is not supported by the contractual stipulations. The mere fact that subsequent payments were made towards the sale consideration does not alter the character of the amount already acknowledged by the parties, at the inception of the contract, as earnest money. The legal character of a payment must necessarily be determined from the contract under which it was made, and not from subsequent events unless the parties have expressly agreed to vary the original terms.

47. The aforesaid conclusion is further fortified by the settled principle embodied in Sections 91 and 92 of the Indian Evidence Act, 1872, now corresponding to Sections 94 and 95 of the Bharatiya Sakshya Adhiniyam, 2023. The underlying rule is that where the terms and conditions governing a transaction have been reduced into writing by the parties, the rights, liabilities and obligations arising therefrom must ordinarily be ascertained from the written instrument itself. The parties cannot, by means of oral assertions or subsequent explanations unsupported by contemporaneous documentary material,



2026:DHC:7086



seek to vary, contradict, alter or substitute the terms expressly recorded in the written instrument. Consequently, where the Agreement to Sell unambiguously records the nature and character of the amounts paid thereunder, such stipulation must be given due effect, unless the party seeking to depart from the written terms establishes a legally recognized exception to the rule of documentary evidence.

48. Once the Respondent failed to honour her contractual obligations within the stipulated period, the contingency contemplated under Clause 7 of the Agreement to Sell stood attracted, entitling the Appellant to forfeit the earnest money. The forfeiture, therefore, was not an independent penal consequence, but the contractual consequence expressly agreed upon by the parties in the event of the purchaser's default.

49. The conclusion arrived at hereinabove also finds complete support from the decision of the Hon'ble Supreme Court in **Satish Batra** (*supra*). In the said case, after considering **Videocon Properties v. Dr. Bhalchandra Laboratories & Ors.**²⁴ and other earlier authorities, the Hon'ble Supreme Court reiterated that earnest money is paid at the time of entering into the contract as security for its due performance and that where the contractual terms are clear and explicit, the seller is entitled to forfeit the earnest money upon the purchaser committing default. The relevant portion of the Judgment is reproduced hereinunder:

“15. The law is, therefore, clear that to justify the forfeiture of advance money being part of “earnest money” the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge

²⁴ (2004) 3 SCC 711



2026:DHC:7086



for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, “earnest” is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.”

50. The factual matrix of the present case bears substantial similarity to that before the Hon’ble Supreme Court in **Satish Batra** (*supra*). In both cases, the amount in question was paid contemporaneously with the execution of the Agreement to Sell, formed part of the sale consideration upon completion of the transaction, and the Agreement to Sell expressly provided that the earnest money would stand forfeited upon default by the purchaser. The Respondent admittedly failed to perform her obligations under the Agreement to Sell. Consequently, Clause 7 became operative in accordance with its express terms.

51. The aforesaid position has recently been reaffirmed by the Hon’ble Supreme Court in **K.R. Suresh** (*supra*), wherein the Hon’ble Supreme Court once again distinguished earnest money from mere advance payment and reiterated that where the contractual stipulations unequivocally demonstrate that the payment was intended as security for due performance, forfeiture thereof upon the purchaser's default is



2026:DHC:7086



legally permissible. That the relevant portion of the Judgment is reproduced hereinunder:

“i. Validity of the Forfeiture of Advance Money

a. Difference between Earnest Money and Advance Money

30. At the outset, it is pertinent to distinguish between “advance money” and “earnest money”. The said terms are often used interchangeably. The distinction becomes all the more essential, given that the ATS explicitly refers to the forfeited sum as “advance money”.

31. Here, we consider it apposite to refer to the meanings of the said terms. The word “advance” means money in whole or in part, forming the consideration of an agreement paid before the same is completely payable. On the other hand, the word “earnest” stands for a sum of money given for the purpose of binding a contract, which is forfeited if the contract does not go off and adjusted in price if the contract goes through. [See: **P Ramanatha Aiyar in “Advanced Law Lexicon”, 7th Edn.**]

32. The principles governing the scope of “earnest money” were succinctly explained in the case of **Shree Hanuman Cotton Mills v. Tata Air Craft Ltd., (1969) 3 SCC 522**, reproduced as under:

“21. From a review of the decisions cited above, the following principles emerge regarding ‘earnest’:

‘(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 that 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.”

(Emphasis supplied)

33. In the case of **Videocon Properties Ltd. v. Bhalchandra Laboratories, (2004) 3 SCC 711**, while assessing the difference between “advance” and “earnest”, this Court took the view that the words used in the agreement alone cannot be determinative of the true nature of the amount advanced. Instead, the intention of the parties and the surrounding circumstances serve as more apt indicators. Further, the Court observed that earnest money fulfils a dual purpose: first, it operates as part-payment of the purchase price and; secondly, as security for the performance of the contractual obligations. Thus, its true character and purpose can



only be canvassed on a close reading of the agreement, and the relevant contextual factors. The relevant observations are reproduced hereinbelow:

“14. [...] Further, it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that have to be looked into and what may be called an advance may really be a deposit or earnest money and what is termed as ‘a deposit or earnest money’ may ultimately turn out to be really an advance or part of purchase price. Earnest money or deposit also, thus, serves two purposes of being part-payment of the purchase money and security for the performances of the contract by the party concerned, who paid it.”

(Emphasis supplied)

34. In **Satish Batra v. Sudhir Rawal**, (2013) 1 SCC 345, this Court emphatically held that it is only the “earnest money”, paid as a pledge for the due performance of the contract, that can be forfeited by the seller on account of the buyer's default. In the same vein, earnest money can also be doubled and paid back to the buyer if the contract falls through due to the seller's default. An amount which is in nature of an “advance” or serves as part-payment of the purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. The Court further held that despite the existence of an outright forfeiture clause, it shall not apply if the amount stipulated in the contract is found to be only in the nature of part-payment of the purchase price. Consequently, the forfeiture of “advance money” as part of earnest money can only be justified if the terms of the contract are clear and explicit to that effect. The relevant observations are reproduced hereinbelow:

“6. [...] In Chiranjit Singh v. Har Swarup [AIR 1926 PC 1] it has been held that (LW p. 174) the earnest money is part of the purchase price when the transaction goes forward and it is forfeited when the transaction falls through, by reason of the fault or failure of the purchaser. [...]

xx xx xx

10. In **DDA v. Grihsthapana Coop. Group Housing Society Ltd.** [1995 Supp (1) SCC 751], this Court following the judgment of the Privy Council in **Har Swarup** [AIR 1926 PC 1] and **Shree Hanuman Cotton Mills** [(1969) 3 SCC 522], held that the forfeiture of the earnest money was legal. In **V. Lakshmanan v. B.R. Mangalagiri**, [1995 Supp (2) SCC 33] this Court held as follows: (SCC p. 36, para 5)

“5. The question then is whether the respondents are entitled to forfeit the entire amount. It is seen that a



specific covenant under the contract was that the respondents are entitled to forfeit the money paid under the contract. So when the contract fell through by the default committed by the appellant, as part of the contract, they are entitled to forfeit the entire amount.”

XX XX XX

15. The law is, therefore, clear that to justify the forfeiture of advance money being part of “earnest money” the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.”

(Emphasis supplied)

35. A forfeiture clause identical to the one in the present ATS was found in the case of **Satish Batra** (supra). It provided for the forfeiture of earnest money in case of the purchaser's default, as well as the payment of double the amount of earnest money in case of the vendor's default. This Court allowed the forfeiture of the earnest money, which was held to be security for the due performance of the contract, by the seller when the transaction fell through on account of the purchaser's fault. The relevant forfeiture clause and observations are reproduced hereinbelow:

“5. [...] The question whether the seller can retain the entire amount of earnest money depends upon the terms of the agreement. The relevant clause of the agreement for sale dated 29-11-2005 is extracted hereunder for easy reference:

“(e) If the prospective purchaser fails to fulfil the above condition, the transaction shall stand cancelled and earnest money will be forfeited. In case I fail to complete the transaction as stipulated above, the purchaser will get DOUBLE the amount of the earnest money. In both conditions, the DEALER will get 4% commission from the faulting party.”

The clause, therefore, stipulates that if the purchaser fails to fulfil the conditions mentioned in the agreement, the transaction shall stand cancelled and



2026:DHC:7086



earnest money will be forfeited. On the other hand, if the seller fails to complete the transaction, the purchaser would get double the amount of earnest money. Undisputedly, the purchaser failed to perform his part of the contract, then the question is whether the seller can forfeit the entire earnest money.

xx xx xx

17. We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs. 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit.[...]”

(Emphasis supplied)

36. A three-Judge Bench of this Court, of which one of us (J.B. Pardiwala, J.) was a part, reiterated the distinction between “earnest” and “advance” in **Central Bank of India v. Shanmugavelu [(2024) 6 SCC 641]**, thus stating that “earnest” differs from “advance money”, though the former can be treated as part-payment of the sale consideration if the contractual terms are duly honoured. In other words, earnest money is adjusted against the total sale consideration if the contract goes through. The relevant observations are reproduced hereinbelow:

“84. The difference between an earnest or deposit and an advance part-payment of price is now well established in law. Earnest is something given by the promisee to the promisor to mark the conclusiveness of the contract. This is quite apart from the price. It may also avail as a part-payment if the contract goes through. But even so it would not lose its character as earnest, if in fact and in truth it was intended as mere evidence of the bargain. An advance is a part to be adjusted at the time of the final payment. If the promisee defaults to carry out the contract, he loses the earnest but may recover the part-payment leaving untouched the promisor's right to recover damages. [...]”

(Emphasis supplied)

37. From the above exposition of law, it becomes amply clear that the amount of Rs. 20,00,000/- termed as “advance money” in the ATS, was essentially “earnest money”. In other words, it was in the nature of a guarantee for the due performance of the contract. In a fashion akin to earnest money, the said amount was paid at the very execution of the ATS. It was meant to be adjusted against the total sale consideration of Rs. 55,50,000/- if the transaction was carried out, which is evident from the ATS clause that states the balance sale consideration to be as Rs. 35,50,000/-. Further, it was liable to be forfeited in the event that the transaction fell through by reason of the default on part of the purchaser. Consequently,

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 25.08.2026
15:41:46

RFA 85/2014

Page 32 of 47



2026:DHC:7086



when the appellant-purchaser failed to comply with the contractual stipulation of paying the balance sale consideration within a period of four months from the date of the agreement, the respondent nos. 1-4 (vendors) were justified in forfeiting the advance money.”

52. In the considered opinion of this Court, the present case squarely satisfies the parameters laid down in ***Shree Hanuman Cotton Mills (supra)***, as reiterated in ***Satish Batra (supra)***, ***Shanmugavelu (supra)*** and ***K.R. Suresh (supra)***.

53. Having held that the amount of INR 12,50,000/- constituted earnest money and the Respondent admittedly committed breach of the Agreement to Sell, the Appellant was contractually entitled to invoke Clause 7 and forfeit the earnest money, subject to the legal consequences flowing from Section 74 of the **Indian Contract Act, 1872²⁵**, which shall presently be examined.

54. The Respondent has, however, sought to sustain the Impugned Judgment by contending that the Appellant neither pleaded nor proved that any loss had been suffered on account of the Respondent's breach. It has been argued that the Suit Property was subsequently sold to a third party for substantially the same consideration and, therefore, in the absence of proof of actual loss, the Appellant could not have forfeited the amount received under the Agreement to Sell. It is this contention which now falls for consideration.

55. The aforesaid submission, at first blush, appears attractive. However, the same overlooks the well-recognised distinction drawn by the Hon'ble Supreme Court between the forfeiture of earnest money, which is intended as security for the due performance of the contract, and the forfeiture of amounts constituting mere advance or part-payment of the sale consideration. It is in the backdrop of this

²⁵ ICA



2026:DHC:7086



distinction that the applicability of Section 74 of the ICA is required to be examined.

56. The law relating to Section 74 of the ICA has its genesis in the celebrated decision of the Hon'ble Supreme Court in ***Fateh Chand (supra)***, wherein the Court held that Section 74 of the ICA governs stipulations by way of penalty, including clauses providing for forfeiture of amounts already paid under a contract. At the same time, the Hon'ble Supreme Court drew a clear distinction between earnest money, which had been expressly described and paid as such, and other amounts paid merely towards the sale consideration. While permitting forfeiture of the earnest money, the Hon'ble Supreme Court held that the balance amount, being merely part-payment of the sale consideration, could not be retained in the absence of proof of loss. The relevant observations by the Hon'ble Supreme Court are reproduced hereinbelow:

“11. Before turning to the question about the compensation which may be awarded to the plaintiff, it is necessary to consider whether Section 74 applies to stipulations for forfeiture of amounts deposited or paid under the contract. It was urged that the section deals in terms with the right to *receive* from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however, no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the, aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression “the contract contains any other stipulation by way of penalty” comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has



2026:DHC:7086



jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. We may briefly refer to certain illustrative cases decided by the High Courts in India which have expressed a different view.

12. In *Abdul Gani & Co. v. Trustees of the Port of Bombay* [ITR 1952 Bom 747] the Bombay High Court observed as follows:

“It will be noticed that the sum which is named in the contract either as penalty or as liquidated damages is a sum which has not already been paid but is to be paid in case of a breach of the contract. With regard to the stipulation by way of penalty, the Legislature has chosen to qualify ‘stipulation’ as ‘any other stipulation’, indicating that the stipulation must be of the nature of an amount to be paid and not an amount already paid prior to the entering into of the contract. The section further provides that a party complaining of a breach is entitled to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for. Therefore, the section clearly contemplates that the party aggrieved has to receive from the party in default some amount or something in the nature of a penalty: it clearly rules out the possibility of the amount which has already been received or the penalty which has already been provided for.”

13. In *Natesen Aiyar v. Appavu Padayachi* [ILR 3 Mad 178], the Madras High Court seems to have held that Section 74 applies where a sum is named as penalty to be paid in future in case of breach, and not to cases where a sum is already paid and by a covenant in the contract it is liable to forfeiture.

14. In these cases the High Courts appear to have concentrated upon the words “to be paid in case of such breach” in the first condition in Section 74 and did not consider the import of the expression “the contract contains any other stipulation by way of penalty”, which is the second condition mentioned in the section. The words “to be paid” which appear in the first condition do not qualify the second condition relating to stipulation by way of penalty. The expression “if the contract contains any other stipulation by way of penalty” widens the operation of the section so as to make it applicable to all stipulations by way of penalty, whether the stipulation is to pay an amount of money, or is of another character, as, for example, providing for forfeiture of money already paid. There is nothing in the expression which implies that the stipulation must be one for rendering something after the contract is broken. There is no ground for holding that the expression “contract contains any other stipulation by way of penalty” is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does



2026:DHC:7086



not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited.

15. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties predetermined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression “to receive from the party who has broken the contract” does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach.

16. There is no evidence that any loss was suffered by the plaintiff in consequence of the default by the defendant, save as to the loss suffered by him by being kept out of possession of the property. There is no evidence that the property had depreciated in value since the date of the contract provided; nor was there evidence that any other special damage had resulted. The contract provided for forfeiture of Rs 25,000 consisting of Rs. 1039 paid as earnest money and Rs 24,000 paid as part of the purchase price. The defendant has conceded that the plaintiff was entitled to forfeit the amount of Rs 1000 which was paid as earnest money. We cannot however agree with the High Court that 13 percent of the price may be regarded as reasonable compensation in relation to the value of the contract as a whole, as that in our opinion is assessed on an arbitrary assumption. The plaintiff failed to prove the loss suffered by him in consequence of the breach of the contract committed by the defendant and we are unable to find any principle on which compensation equal to ten percent of the agreed price could be awarded to the plaintiff. The plaintiff has been allowed Rs 1000 which was the earnest money as part of the damages. Besides he had use of the remaining sum of Rs 24,000, and we can rightly presume that he must have been deriving advantage from that amount throughout this period. In the absence therefore of any proof of damage arising from the breach of the contract, we are of opinion that the amount of Rs 1000 (earnest



2026:DHC:7086



money) which has been forfeited, and the advantage that the plaintiff must have derived from the possession of the remaining sum of Rs 24,000 during all this period would be sufficient compensation to him. It may be added that the plaintiff has separately claimed mesne profits for being kept out possession for which he has got a decree and therefore the fact that the plaintiff was out of possession cannot be taken, into account in determining damages for this purpose. The decree passed by the High Court awarding Rs 11,250 as damages to the plaintiff must therefore be set aside.

xxxxxx

19. The decree passed by the High Court will therefore be modified. It is ordered that the plaintiff is entitled to retain out of Rs 25,000 only Rs 1,000 received by him as earnest money, and that he is entitled to compensation at the rate of Rs 140 per mensem and interest on that sum at the rate of six per cent as it accrues due month after month from June 1, 1949 till the date of delivery of possession, subject to the restriction prescribed by Order 20 Rule 12(1)(c) of the Code of Civil Procedure. Subject to these modifications, this appeal will be dismissed. In view of the divided success, we direct that the parties will bear their own costs in this Court.”

57. A careful reading of the aforesaid decision makes it abundantly clear that **Fateh Chand** (*supra*) does not lay down an absolute proposition that every amount paid under an Agreement to Sell becomes refundable unless actual loss is proved. On the contrary, the Hon’ble Supreme Court expressly recognised the seller’s entitlement to retain the amount which genuinely constituted earnest money. The requirement of proving loss arose only in relation to the additional amount which formed part of the sale consideration and was not found to be earnest money.

58. In the present case, however, the amount of INR 12,50,000/- sought to be forfeited does not partake the character of advance sale consideration or part-payment of the purchase price simpliciter. As already held hereinabove, the amount of INR 12,50,000/- constituted earnest money in the true legal sense. Consequently, the premise on



2026:DHC:7086



which the learned Trial Court proceeded, *namely*, that the Appellant was required to establish actual loss before invoking Clause 7 of the Agreement to Sell, does not accord with the distinction consistently maintained by the Hon'ble Supreme Court between earnest money and amounts paid merely towards the sale consideration.

59. The aforesaid distinction was reiterated in ***Maula Bux v. Union of India***²⁶, wherein the Hon'ble Supreme Court held that forfeiture of a reasonable amount paid as earnest money does not amount to the imposition of a penalty and, therefore, stands on a different footing from the forfeiture of other contractual payments. It was observed that Section 74 of the ICA would apply only where the forfeiture is in the nature of a penalty and not where the amount genuinely represents earnest money. The relevant observations of the Judgment read as under:

“5. Forfeiture of earnest money under a contract for sale of property — Movable or immovable — If the amount is reasonable, does not fall within Section 74. That has been decided in several cases: ***Chiranjit Singh v. Har Swarup***; ***Roshan Lal v. Delhi Cloth and General Mills Company Ltd. Delhi*** [1910 SCC OnLine All 98]; ***Mohd Habibullah v. Mohd Shafi*** [1919 SCC OnLine All 87]; ***Bishan Chand v. Radhakishan Das.*** [1897 SCC OnLine All 52] These cases are easily explained, for forfeiture of reasonable amount paid as earnest money does not amount to imposing a penalty. But if forfeiture is of the nature of penalty. Section 74 applies. Where under the terms of the contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty.”

60. The principle enunciated in ***Maula Bux (supra)*** fortifies the conclusion already reached by this Court. Since the amount of INR 12,50,000/- has been found to constitute earnest money and not merely advance sale consideration, its forfeiture cannot be tested on

²⁶ (1969) 2 SCC 554



2026:DHC:7086



the same parameters as amounts which are purely compensatory or penal in nature. The mere absence of evidence regarding actual monetary loss, therefore, cannot by itself invalidate the forfeiture of genuine earnest money.

61. The aforesaid distinction has recently been reaffirmed by the Hon'ble Supreme Court in *Shanmugavelu (supra)*. After an exhaustive survey of the earlier decisions, including *Fateh Chand (supra)*, *Maula Bux (supra)* and *Satish Batra (supra)*, the Hon'ble Supreme Court explained that there exists a fundamental distinction between the forfeiture of earnest money and the forfeiture of any other amount paid under a contract. While the latter may assume the character of a penal stipulation attracting the rigours of Section 74 of the ICA, forfeiture of genuine earnest money constitutes a general forfeiture clause intended to secure the due performance of the contract and, ordinarily, does not partake the character of a penalty. The Hon'ble Supreme Court observed as under:

"81. Even otherwise, what is discernible from the abovereferred decisions of *Fateh Chand v. Balkishan Dass* [1963 SCC OnLine SC 49], *Maula Bux v. Union of India*, [(1969) 2 SCC 554] and *Satish Batra v. Sudhir Rawal* [(2013) 1 SCC 345] is that there lies a difference between forfeiture of any amount and forfeiture of earnest money with the former being a penal clause and the latter a general forfeiture clause. A clause providing for forfeiture of an amount could fundamentally be in the nature of a penalty clause or a forfeiture clause in the strict sense or even both, and the same has to be determined in the facts of every case keeping in mind the nature of contract and the nature of consequence envisaged by it.

82. Ordinarily, a forfeiture clause in the strict sense will not be a penal clause, if its consequence is intended not as a sanction for breach of obligation but rather as security for performance of the obligation. This is why *Fateh Chand v. Balkishan Dass* [1963 SCC OnLine SC 49], *Maula Bux v. Union of India* [(1969) 2 SCC 554] and *Satish Batra v. Sudhir Rawal*, (2013) 1 SCC 345] held that forfeiture of earnest money deposit is not a penal clause, as the deposit of earnest money is intended to signify assent of the



2026:DHC:7086



purchaser to the contract, and its forfeiture is envisaged as a deterrent to ensure performance of the obligation.

83. We are conscious of the fact that in **Maula Bux v. Union of India [(1969) 2 SCC 554]** this Court observed that the deposit of a sum by the purchaser as security for guaranteeing due performance was held as a penalty. However, a close reading would reveal that the reason why this Court held the said deposit as a penal clause was because the said amount was paid over and above the earnest money deposit already paid by the purchaser in the said case and more importantly the said sum was not liable to be adjusted against the total consideration. Hence, this Court held the same to be a penalty rather than earnest money. The relevant observation read as under : (SCC p. 558, para 4)

“4. ... In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part-payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money.”

(emphasis supplied)

84. The difference between an earnest or deposit and an advance part-payment of price is now well established in law. Earnest is something given by the promisee to the promisor to mark the conclusiveness of the contract. This is quite apart from the price. It may also avail as a part-payment if the contract goes through. But even so it would not lose its character as earnest, if in fact and in truth it was intended as mere evidence of the bargain. An advance is a part to be adjusted at the time of the final payment. If the promisee defaults to carry out the contract, he loses the earnest but may recover the part-payment leaving untouched the promisor's right to recover damages. Earnest need not be money but may be some gift or token given. It denotes a thing of value usually a coin of the realm given by the promisor to indicate that the bargain is concluded between them and as tangible proof that he means business. Vide **Howe v. Smith, (1884) LR 27 Ch D 89 (CA).**”

62. The principle enunciated in **Shanmugavelu (supra)** puts the matter beyond any pale of controversy. As already discussed hereinabove, the amount of INR 12,50,000/- constituted earnest money in the true legal sense and was intended by the parties to operate as security for the due performance of the Agreement to Sell. Clause 7 merely gives effect to that intention by providing for

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 25/08/2026
15:41:46

RFA 85/2014

Page 40 of 47



2026:DHC:7086



forfeiture of the earnest money in the event of the purchaser committing default. The forfeiture contemplated thereunder is, therefore, in the nature of a general forfeiture clause and cannot be equated with the forfeiture of an amount constituting mere advance sale consideration or with a stipulation by way of penalty.

63. Learned counsel for the Respondent has, however, placed considerable reliance upon the decision of the Hon'ble Supreme Court in ***Kailash Nath Associates (supra)*** to contend that in the absence of any pleading or proof of actual loss, the Appellant was not entitled to forfeit the earnest money received under the Agreement to Sell. In the opinion of this Court, the reliance placed on the said decision is misplaced and proceeds on an erroneous understanding of the ratio laid down therein.

64. In ***Kailash Nath Associates (supra)***, the Hon'ble Supreme Court was concerned with the forfeiture of an amount deposited in a public auction conducted by the Delhi Development Authority. While examining the scope of Section 74 of the ICA, the Hon'ble Supreme Court reiterated the principles laid down in ***Fateh Chand (supra)*** and ***Maula Bux (supra)***, namely, that compensation awarded under Section 74 of the ICA must bear a reasonable nexus with the loss suffered and that where no loss has occurred or where loss is capable of being proved, forfeiture of amounts constituting penalty cannot ordinarily be sustained. Significantly, however, the Hon'ble Supreme Court did not dilute the settled distinction between genuine earnest money and amounts paid merely towards the sale consideration. On the contrary, the Court expressly approved the earlier decisions



2026:DHC:7086



recognising that earnest money occupies a distinct legal position. The relevant portion of the Judgment is reproduced hereinunder:

“41. It must, however, be pointed out that in cases where a public auction is held, forfeiture of earnest money may take place even before an agreement is reached, as DDA is to accept the bid only after the earnest money is paid. In the present case, under the terms and conditions of auction, the highest bid (along with which earnest money has to be paid) may well have been rejected. In such cases, Section 74 may not be attracted on its plain language because it applies only “when a contract has been broken”.

42. In the present case, forfeiture of earnest money took place long after an agreement had been reached. It is obvious that the amount sought to be forfeited on the facts of the present case is sought to be forfeited without any loss being shown. In fact it has been shown that far from suffering any loss, DDA has received a much higher amount on re-auction of the same plot of land.

43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the



2026:DHC:7086



contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction *before* agreement is reached, Section 74 would have no application.

44. The Division Bench has gone wrong in principle. As has been pointed out above, there has been no breach of contract by the appellant. Further, we cannot accept the view of the Division Bench that the fact that DDA made a profit from re-auction is irrelevant, as that would fly in the face of the most basic principle on the award of damages—namely, that compensation can only be given for damage or loss suffered. If damage or loss is not suffered, the law does not provide for a windfall.

45. A great deal of the argument before us turned on notings in files that were produced during cross-examination of various witnesses. We have not referred to any of these notings and, consequently, to any case law cited by both parties as we find it unnecessary for the decision of this case.

46. Mr Sharan submitted that in case we were against him, the earnest money that should be refunded should only be refunded with 7% per annum and not 9% per annum interest as was done in other cases. We are afraid we are not able to agree as others were offered the refund of earnest money way back in 1989 with 7% per annum interest which they accepted. DDA having chosen to fight the present appellant tooth and nail even on refund of earnest money, when there was no breach of contract or loss caused to it, stands on a different footing. We, therefore, turn down this plea as well.

47. In the result, the appeal is allowed. The judgment and order [***Kailash Nath and Associates v. DDA*** [2007 SCC OnLine Del 1229] of the Single Judge is restored. The parties will bear their own costs.”

65. A careful reading of ***Kailash Nath Associates*** (*supra*) would show that the observations regarding proof of loss were made in the particular facts of that case, where the Court found, *inter alia*, that no breach had in fact been committed by the purchaser and that the authority had itself suffered no loss. It was in those circumstances that the forfeiture was held to be unsustainable. The decision cannot, therefore, be read as laying down a universal proposition that



2026:DHC:7086



forfeiture of genuine earnest money is impermissible in every case unless actual loss is separately pleaded and proved.

66. The facts of the present case stand on an entirely different footing. Unlike ***Kailash Nath Associates (supra)***, it is an admitted position that the Respondent failed to perform her obligations under the Agreement to Sell within the stipulated period. This Court has further held that the amount of INR 12,50,000/- constituted genuine earnest money intended to secure the due performance of the contract. The forfeiture in the present case, therefore, flowed directly from the contractual stipulation contained in Clause 7 of the Agreement to Sell upon the Respondent committing default. The ratio of ***Kailash Nath Associates (supra)*** is, therefore, of no assistance to the Respondent.

67. Thus, the legal position emerging from ***Shree Hanuman Cotton Mills (supra)***, ***Fateh Chand (supra)***, ***Maula Bux (supra)***, ***Satish Batra (supra)***, ***Shanmugavelu (supra)*** and ***K.R. Suresh (supra)*** is consistent. The character of the amount sought to be forfeited must first be determined. Where the amount constitutes genuine earnest money intended as security for the due performance of the contract and the purchaser commits breach, forfeiture thereof is legally permissible in accordance with the contractual stipulation. It is only where the amount sought to be retained is not earnest money but merely advance or part-payment of the sale consideration that the principles governing proof of loss under Section 74 of the ICA assume significance. Since the amount of INR 12,50,000/- in the present case has been found to constitute earnest money, the learned Trial Court erred in directing refund of INR 15,00,000/- to the Respondent.



2026:DHC:7086



68. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Trial Court fell in error in holding that only a sum of INR 2,50,000/- constituted earnest money liable to forfeiture. Having rightly rejected the Respondent's defence regarding the alleged understanding with Ms. Renu Kalra and having concurrently found that the Respondent had failed to perform her obligations under the Agreement to Sell, there existed no justification for disregarding the express contractual stipulation contemplated under Clause 7 of the Agreement to Sell describing the amount of INR 12,50,000/- as earnest money. The finding returned by the learned Trial Court overlooks both the contemporaneous documentary record and the settled principles governing the nature and forfeiture of earnest money as consistently expounded by the Hon'ble Supreme Court.

69. The forfeiture, therefore, represents the contractual consequence voluntarily agreed upon by the parties and not a penal stipulation attracting the rigours of Section 74 of the ICA. Equally, Clause 7 cannot be said to be unconscionable or one-sided, inasmuch as it provides reciprocal obligations by providing corresponding consequences in the event of default by either contracting party thereby maintaining contractual parity between the parties.

70. Consequently, this Court holds that the Appellant was legally entitled to invoke Clause 7 of the Agreement to Sell and forfeit the earnest money of INR 12,50,000/- upon the Respondent committing breach of her contractual obligations. The direction issued by the learned Trial Court requiring the Appellant to refund a sum of INR 15,00,000/- to the Respondent, together with interest thereon,



2026:DHC:7086



therefore, cannot be sustained and is liable to be set aside to this extent.

71. However, a different conclusion must follow in respect of the subsequent amount of INR 5,00,000/-, admittedly paid by the Respondent as part payment towards the sale consideration. As discussed hereinabove, the said amount was neither described nor intended by the parties to constitute earnest money. Unlike the amount of INR 12,50,000/-, it was not paid at the time of execution of the Agreement to Sell as security for the due performance of the contract, nor does the Agreement to Sell contain any stipulation authorising its forfeiture in the event of the purchaser's default.

72. On the contrary, the contractual right of forfeiture under Clause 7 is expressly confined to the earnest money of INR 12,50,000/-. The Appellant's plea that the said amount was also liable to be forfeited on account of the Respondent's alleged illegality and unlawful withholding of the sale of the Suit Property is unsupported either by the contractual terms or by any independent evidence establishing a legal basis for such forfeiture. In the absence of any contractual or legal entitlement to retain the said amount, the Appellant cannot be permitted to forfeit the sum of INR 5,00,000/-, which is consequently liable to be refunded to the Respondent.

CONCLUSION:

73. In view of the foregoing discussion, the present Appeal succeeds in part. The Judgment and Decree dated 27.11.2013 passed by the learned Presiding Officer, MACT/ADJ (Central), Tis Hazari Courts, Delhi in Civil Suit No. 146/2012 are set aside to the extent of



2026:DHC:7086



the direction requiring the Appellant to refund a sum of INR 15,00,000/- to the Respondent.

74. This Court holds that the amount of INR 12,50,000/-, paid by the Respondent at the time of execution of the Agreement to Sell dated 24.04.2012, constituted earnest money in the true legal sense. The Respondent having committed breach of the Agreement, the Appellant was entitled to invoke Clause 7 of the Agreement to Sell and validly forfeit the said amount. The further amount of INR 5,00,000/- paid by the Respondent on 31.05.2012 did not constitute earnest money and no contractual stipulation authorising its forfeiture has been brought on record. The Appellant would, therefore, be liable to refund the said amount to the Respondent.

75. Consequently, the Respondent shall be entitled to recover only a sum of INR 5,00,000/- from the Appellant.

76. Insofar as interest is concerned, the award of interest @6% per annum by the learned Trial Court shall stand confined only to the aforesaid sum of INR 5,00,000/- and shall otherwise remain unaltered.

77. In the facts and circumstances of the case, the present Appeal, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

78. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 24, 2026/ma