

\$~14

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

+ CONT.CAS(C) 699/2012 & CM Appl. 14639/2014

HC SARIN

..... Petitioner

Through: Ms. Iti Sharma, Adv.

versus

DDA

..... Respondent

Through: Ms. Kanika Agnihotri with Mr. Karan Minocha, Adv. for DDA

%

Date of Decision: 05th September, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present contempt petition has been filed alleging wilful disobedience of the order dated 23rd July, 2012 passed in WP(C) 4172/2012 whereby the respondent was directed to refund the deposits made by the petitioner towards the cost of the shop with interest @ 6 per cent per annum from the date when the payment was received till the date of refund.

2. Learned counsel for the petitioner states that the respondent-DDA has refunded Rs.12,90,296/- being the cost and interest payable on it. She, however, states that deposits mentioned in the order dated 23rd July, 2012 includes the earnest money deposit of Rs. 3,03,000/- which was paid by the

petitioner on 07th August, 1998.

3. She prays that the said amount of Rs.3,03,000/- along with interest be refunded by DDA.

4. On the other hand, learned counsel for the respondent-DDA states that cancellation of allotment of petitioner's shop as well as forfeiture of earnest money deposit was upheld by a Coordinate Bench of this Court in RFA 18/2011. She points out that the SLP against the said order was also dismissed by the Apex Court and the petitioner was given opportunity to avail of an appropriate remedy for award of interest on the amount deposited by him. According to her, the expression 'amount deposited' can only refer to the amount paid by the petitioner after deducting the earnest money deposit that had been forfeited.

5. Having heard learned counsel for the parties, this Court finds that the petitioner had initially filed a suit for specific performance challenging the cancellation of allotment of a shop as well as forfeiture of earnest money deposit.

6. Though the petitioner's suit was initially decreed, yet in appeal being RFA 18/2011, the judgment and decree passed by the Civil Court was set aside.

7. The SLP filed by the petitioner was also dismissed by the Supreme Court by way of a speaking order. The relevant portion of the Supreme Court order is reproduced hereinbelow:-

“The respondent challenged the judgment of the trial court in RFA No. 18/2011. The learned Single Judge analyzed the pleadings of the parties and evidence produced by them and held that the trial court committed grave error by declaring the action of the DDA to cancel the allotment to be illegal with a

direction to allot the plot in question to him. The learned Judge also referred to letter dated 27.1.2000 written by the petitioner to the Commissioner, Commercial Estate Branch (LAND), DDA and held that once the petitioner had volunteered to seek refund of the earnest money, the allotment made in his favour stood automatically cancelled. The learned Single Judge further observed that the representations made by the petitioner in 2005 and, thereafter, were of no avail to him because the allotment made in his favour had already been cancelled.

We have heard learned counsel for the petitioner for some time and carefully perused the record.

In our view, the decree passed by the trial court was ex facie perverse and legally unsustainable and the High Court did not commit any error by setting aside the same. In the suit filed by him, the petitioner had prayed for grant of relief of specific performance but he did not give particulars of the agreement of which he was seeking specific performance. That apart, the learned trial court altogether ignored that the allotment made in his favour stood cancelled almost six years prior to filing of the suit.

We are also of the view that the High Court did not commit any error by declaring that the petitioner did not have the right to seek regularisation of allotment because he had omitted to comply with the conditions specified in the allotment letter.

With the above observations the Special Leave Petition is dismissed.

However, it is made clear that the petitioner shall be free to avail an appropriate remedy for award of interest on the amount deposited by him.”

8. This Court is of the opinion that the order dated 23rd July, 2012 has to be read in conjunction and in consonance with the aforesaid order dated 06th January, 2012 passed by the Apex Court in SLP(C) 35586/2011.

9. Since the forfeiture of earnest money deposit was upheld by this Court in RFA 18/2011 and the special leave petition against the said

judgment was dismissed, this Court is of the view that the respondent-DDA has committed no breach/disobedience of the order dated 23rd July, 2012 by refusing to refund the earnest money deposit along with interest.

10. Accordingly, the present contempt petition being bereft of merits, is dismissed.

SEPTEMBER 05, 2016
NG

MANMOHAN, J