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

Date of decision: 16.03.2026

\+ **W.P.(C) 13422/2022 & CM APPL. 40764/2022**

BISHT CERAMICS .....Petitioner

Through: Mr. Karan Babuta, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

...Respondents

Through: Mr. Anish Dhingra, Mr. Arihant Nowlkha and Mr. Manish Dhingra, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (*ORAL*)**

1. This is a writ petition filed under Article 226 of the Constitution of India seeking the following prayers:-

"A. Issue order or direction in the nature of Mandamus/Certiorari or appropriate writ thereby directing the respondents to refund the entire Earnest Money amount deposited by the petitioner along with an Interest @ 15% per annum from the date of deposit till the date of release of the amount. AND;

B. Pass any other and further order that this Hon'ble

Court may deem fit and proper in the facts and circumstances of the present case."

2. The case of the petitioner is that the petitioner is a partnership firm having its registered office at Shop No. 6, DDA, D.D.A. Market, Pocket-4, Sector-2, Rohini, Delhi-110085.

3. On 15.08.2021, the respondent No. 1 i.e., Delhi Development Authority ("***DDA***"), through respondent No. 2, made an advertisement in the newspaper for E-Auction of residential plots in the Rohini Area. As per the Document for E-Auction ("***Document for E-Auction***") there were a total of 127 plots and one of the plot was Plot No. 6, Sector-28, Pocket C-4, Rohini Delhi, 110042 ("***said plot***"). The area mentioned in the Document for E-Auction was 333.500 sq meter and the reserve price was Rs. 2,33,71,680/-. The said plot was near the main road and thus, had such a high reserve price.

4. The petitioner applied for the E-Auction and deposited 5% of the reserve price i.e., Rs. 11,68,525/- along with requisite documents.

5. On 27.09.2021, online bidding was carried out by the respondents and the petitioner was the highest bidder for the said plot, which was auctioned for Rs. 4,50,21,680/-, which is double the reserve price fixed by the respondents.

6. Subsequently, on 20.10.2021, Letter of Intimation was issued by the respondent declaring the petitioner as the successful bidder and thus, on 27.10.2021, the petitioner deposited the remaining 20% of the Earnest Money i.e., Rs.1,00,86,895/-. Thereby, by

27.10.2021, the petitioner had deposited a total sum of Rs. 1,12,55,420/- with the respondents being the Earnest Money.

7. On 14.11.2024, the petitioner again visited the said plot near the main road and then came to know from the people staying around that there was another plot with the same number in the same pocket near Kankan Khera village, which is about 500 meters away from the said plot.

8. Subsequently, on 16.11.2021, the petitioner wrote a letter to respondent No. 2 and director of DDA, Land Sale branch (Residential Land), inquiring about which plot was allotted to the petitioner and also to provide map of the allotted plot. However, the respondent did not reply. Thereafter, the petitioner wrote numerous letters but there was no response.

9. On 05.01.2022, respondent No. 1 issued a letter acknowledging the petitioner was the successful bidder and has deposited Rs. 1,12,55,420/- as Earnest Money and sought the deposit the remaining amount of Rs. 3,37,66,360/- within 270 days from the date of the issuance of the said letter, failing which the bid shall be cancelled and the earnest money forfeited.

10. Upon learning that the plot allotted to the petitioner is one near Kankan Khera Village and not the one the petitioner visited, the petitioner sought refund of the Earnest Money. However, no action has been taken by the respondents.

11. Hence, the present petition.

12. Mr. Babuta, learned counsel for the petitioner, states that in the present case the description of the property mentioned in the

Document for E-Auction is misleading as there were 2 plots of identical description and similar area. The petitioner on account of the mistaken identity of the plot in auction saw the other plot (which was not put to auction) and thinking of the said plot, to be the one under auction, made his bid. The plot for which the petitioner had made the payment was a plot abutting the main road and hence, of a high value to the petitioner. On the other hand, the plot which was actually auctioned by the respondents, was near the Kankan Khera Village and hence, not of the same value.

13. Mr. Dhingra, learned counsel for the respondents, draws my attention to the counter affidavit and states that the confusion is an artificial confusion made by the petitioner and there is no ambiguity in the description of the plot advertised in the Document for E-Auction and both the plots are identifiable. He further states that the Plot No. 6, Pocket C-4, Sector 28, Rohini measuring 3350 sq. metres is the plot that was auctioned and the other plot is Plot No. 6, Pocket IV, Block C, Sector 28 measuring 3325 sq. metres is a different plot and the same has already been allotted to another person on 04.07.2023.

14. He further draws my attention to Clause No. 2.4.4 and 2.4.5 under the heading “E-AUCTION DETAILS FOR PRESENT AUCTION” and Clause No. 9 under the heading “ GENERAL TERMS & CONDITIONS OF THE E-AUCTION” of the Document for E-Auction, and states that in terms of said clauses the respondents are entitled to forfeit the Earnest Money, in case

the amount is not paid. The said clauses read as under:-

"2.4.4 After deposit of second stage EMD, the DDA shall issue a Demand-cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 (ninety) days of issue of this Letter.

2.4.5 In case the payment of balance premium is not received within the stipulated period as in the Demand-cum-Allotment Letter, the bid shall automatically stand cancelled and the entire EMD (25% of Premium offered) shall stand forfeited without any notice. In that eventuality, DDA shall at liberty to re-auction the plot.

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9. The demand-cum-allotment letter would be sent to the successful bidder immediately after the bid is accepted by the competent Authority. The highest bidder is required to make payment of balance 75% bid amount, as demanded vide said demand letter referred to above, within 90 days from the date of issuance of the demand letter (without interest)/within 270 days from the date of issuance of demand letter (subject to payment of interest on the balance amount @ 10.00% p.a. during the extended period) by RTGS/Online Payment through Net banking/Credit Card/Debit Card, failing which the bid will automatically stand cancelled without any further notice. No extension of time will be granted for payment of

75% of bid amount for period after 270 days from the date of issuance of demand-cum- allotment letter."

15. He further states that there is an arbitration clause in the Brochure and the petitioner has an equally efficacious remedy of filling arbitration claim. Additionally, the Document for E-Auction, participating in the E-Auction and making payment, brings a concluded contract into picture and contractual disputes should not be entertained in the writ petition.

16. Further, the Clause No. 1 under the heading "GENERAL INSTRUCTION TO BIDDERS/PROSPECTIVE BIDDERS" of the Document for E-Auction states that that the parties are advised to visit the site and satisfy themselves, as the plot was sold at "as is where is" basis. The Clause reads as under:

> *"1. Delhi Development Authority (DDA) invites e-Auction for the sale of Residential Plots as per details described at ANNEXURE: I under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, on 'as is where is basis' as per the Terms and conditions described in the Auction Document. It will be presumed that the bidder has visited the site and satisfied himself/herself with the prevalent site conditions in all respects including status and infrastructural facilities available, etc. before participating in the e-Auction and submitting the bid."*

17. He also states that the petitioner could have gone and visited the property in question, which he failed to do.

18. I have heard learned counsels for the parties.

19. The perusal of the facts stated above, clearly show that the description of both the plots are identical, except for the fact of pocket being 4 or IV. The layout plan (annexed as Annexure-F with the petition) of the property which was auctioned by the respondents, clearly shows that it is adjacent to Kankan Khera Village, which was not mentioned in the brochure. The same to my mind, is a fact which cannot be ignored. Had the property been described better, namely being adjacent to Kankan Khera Village, there would have been no ambiguity in identification of the plot.

20. From the perusal of the above said, it cannot be said that the properties by their description of the address, were sufficiently identifiable. It is very much possible for a common man to make a mistake with regard to Pocket 4 and Pocket IV and being misled as to the identity of the property.

21. At the outset, paragraph No. 2 of the "Disclaimer" to the Document for E-Auction is important and reads as under:-

> "*This e-auction document is not an agreement and is neither an offer nor invitation by DDA to the prospective Applicants or any other person. The purpose of this e-auction document is to provide interested parties with information that may be useful to them in the formulation of their application for expressing their interest pursuant to this e-auction (the "Application"). This e-auction document includes statements, which reflect various*

assumptions and assessments arrived at by DDA in relation to the Auction. Such assumptions, assessments and statements do not purport to contain all the information that each applicant may require. This e-auction document may not be appropriate for all persons, and it is not possible for DDA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this e-auction document. The assumptions, assessments, statements and information contained in this e-auction document may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this e-auction document and obtain independent advice from appropriate sources."

22. A perusal of the paragraph, as reproduced above, shows that the E-auction Document is only an information Brochure and not an agreement or an offer nor an invitation by the DDA to the applicants or any other persons. The purpose of the Brochure is to provide the interested parties with information to formulate their expression of interest. In this view of the matter, to state that there is a concluded contract on deposit of the Earnest Money, would not be proper.

23. Additionally, the Hon'ble Supreme Court in ***Kailash Nath Associates v. DDA, (2015) 4 SCC 136,*** has summarised the law on for forfeiture of Earnest Money and more particularly in paragraph No. 43, which reads as under:-

*"**40.** From the above, it is clear that this Court held that Maula Bux case [Maula Bux v. Union of India, (1969) 2 SCC 554 : (1970) 1 SCR 928] was not, on facts, a case that related to earnest money. Consequently, the observation in Maula Bux [Maula Bux v. Union of India, (1969) 2 SCC 554 : (1970) 1 SCR 928] that forfeiture of earnest money under a contract if reasonable does not fall within Section 74, and would fall within Section 74 only if earnest money is considered a penalty is not on a matter that directly arose for decision in that case. The law laid down by a Bench of five Judges in Fateh Chand case [Fateh Chand v. Balkishan Dass, (1964) 1 SCR 515 : AIR 1963 SC 1405] is that all stipulations naming amounts to be paid in case of breach would be covered by Section 74. This is because Section 74 cuts across the rules of the English common law by enacting a uniform principle that would apply to all amounts to be paid in case of breach, whether they are in the nature of penalty or otherwise. <u>It must not be forgotten that as has been stated above, forfeiture of earnest money on the facts in Fateh Chand case [Fateh Chand v. Balkishan Dass, (1964) 1 SCR 515 : AIR 1963 SC 1405] was conceded. In the circumstances, it would therefore be correct to say that as</u>*

earnest money is an amount to be paid in case of breach of contract and named in the contract as such, it would necessarily be covered by Section 74.

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".*

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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 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*

<u>*no application.*</u>"

(Emphasis added)

24. In the present case, as observed above, there was no contract between the parties. The petitioner deposited Earnest Money as the same was a requirement to be considered for the allotment. To allow forfeiture of the Earnest Money amount deposited by the petitioner, would be akin to compensation for breach of contract under section 74 of the Indian Contract Act, 1872 and the same cannot be permitted in view the fact that there is no contract between the parties, as held in ***Kailash Nath (supra).***

25. Additionally, Clause No. 2.4.4, 2.4.5 and 9 of the Brochure, as reproduced above, do not mention that the Earnest Money deposited by the petitioner is a genuine pre-estimate of damages fixed with consent of both the parties and the plot in question is available to the respondents to re-auction. Therefore, in absence of any proof of damages or loss, forfeiture of the Earnest Money amount cannot be allowed.

26. Mr. Babuta, learned counsel for the petitioner, also presses on the interest on the amount deposited and has relied upon two judgments i.e., ***Manju Gupta v. DDA, 2003 SCC OnLine Del 211*** and ***DDA v. S.P. Bansal, 2005 SCC OnLine Del 1350*** to urge that the petitioner should be entitled to interest on the amount deposited and kept with the respondent.

27. In my view, both the judgments are differentiable on facts as in neither of the cases it is discernible that due to the acts of the petitioner, the DDA was restrained from dealing with the

property in question during the pendency of the petition. However, in the present case, *vide* order dated 27.09.2022, this Court restrained the respondents from taking any coercive steps against the petitioner. Had the said order not been passed, the respondents would have auctioned the plot in question and recovered the money, which could have been utilised by the respondents.

28. Since on account of the order dated 27.09.2022, the respondents have not auctioned the plot in question and have been deprived of substantial amounts of money (which could have been Rs. 3.5 crores in the present case, as the petitioner submitted its bid for Rs. 4.5 crores), I am not inclined to award any interest to the petitioner.

29. Hence, the amount deposited by the petitioner shall be refunded by the respondents within 2 weeks from today. Once the amount is refunded, the respondents shall be entitled to re-auction the plot, free from any fetters.

30. The parties are at liberty to initiate appropriate legal proceedings in accordance with law once the auction of the plot takes place post return of the money.

31. With the said directions, the present petition is disposed of, along with pending applications, if any.

JASMEET SINGH, J

MARCH 16, 2026/NG

(Corrected and released on 21.03.2026)