

Delhi High Court

M.C. Luthra vs Ashok Kumar Khanna on 27 February, 2018

2. At the time of issuance of the notice in this appeal on 12.9.2017, the following order was passed and which shows that the appellant/defendant/counter-claimant contended that the appellant/defendant should be held entitled to forfeit, if not the amount of Rs.9 lacs decreed in favour of the respondent/plaintiff, then at least the amount of Rs.3 lacs. This order dated 12.9.2017 reads as under:-

—C.M. Appl. No. 33138/2017 (for exemption) Exemption allowed, subject to all just exceptions. The application stands disposed of.

RFA 780/2017 and C.M. Appl. No. 33137/2017 (for stay)

1. Learned counsel for the appellant argues that the entitlement of the appellant/proposed seller, if not to forfeit the entire earnest money, was to forfeit a reasonable part thereof once the respondent/plaintiff was guilty of breach of contract, and which the respondent/plaintiff was in the facts of the present case. It is accordingly argued that ordinarily in cases like the present Court have allowed forfeiture of 10% of the price or lesser depending on the facts of each case, and therefore, it is argued that in the present case appellant is entitled to forfeit at least a sum of Rs.3,00,000/- from the amount of Rs.9,00,000/- received by the appellant.

3. Notice be issued to the respondent on filing of process fee, both in the ordinary method as well as by registered AD post, returnable on 22 nd January, 2018.||

4. There is no dispute between the parties that parties had entered into an agreement to sell dated 15.9.2005 for the appellant/defendant to sell the subject suit property to the respondent/plaintiff. The total sale consideration was Rs.31.50 lacs and it is not in dispute that at the time of entering into the agreement to sell the appellant/defendant received an amount of Rs.9 lacs with the amount of Rs.7 lacs being paid in terms of demand drafts and a sum of Rs.2 lacs being paid in cash. Disputes and differences arose between the parties as to who was guilty of breach of contract in not performing the agreement to sell dated 15.9.2005.

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. The High Court has, therefore, committed an error in reversing the judgment of the trial court.||

— AGREEMENT TO SELL AND PURCHASE This agreement is executed at Delhi, on this 15/09/2005 BETWEEN Sh. M.C. Luthra s/o Sh. Mangal Das Luthra R/o H. No.691, Sector-V R.K. Puram, New Delhi (hereinafter called the PARTY NO.1) AND Sh. Ashok Kumar Khanna S/o Sh. Sant Ram Khanna R/o D-32, Fateh Nagar, New Delhi (hereinafter called the PARTY NO.2) The expression of both the Parties wherever they occur in the body of this agreement shall means, and include their respective heirs, legal representative, administrators, executors, successors, and assigns.

(ii) Therefore in my opinion in the facts of the present case appellant/defendant cannot contend that earnest money amount was Rs.9,00,000/- and therefore this Court holds that the earnest amount is Rs.7,00,000/-.

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

(emphasis added)

18.(i) In view of the aforesaid discussion, this appeal is allowed to a limited extent that the appellant/defendant is held entitled to forfeit only a nominal sum of Rs.50,000/- and not a sum of Rs.9,00,000/- as claimed by the appellant/defendant inasmuch as no loss is pleaded and proved to be caused to the appellant/defendant on account of the breach of the agreement to sell by the respondent/plaintiff. The impugned judgment of the trial court therefore is partly modified in that the judgment and decree in favour of the respondent/plaintiff will be only of an amount of Rs.8,50,000/-

and not Rs.9,00,000/-. Also, in exercise of powers under [Order XLI Rule 33 CPC](#), and as prayed before this Court on behalf of the respondent/plaintiff, since the trial court has not granted pre-suit interest, I hold that the impugned judgment and decree which only grants pendente lite and future interest will be modified in view of the judgment of the Supreme Court in [South Eastern Coalfields Ltd. Vs. State of M.P. and Others](#) (2003) 8 SCC 648 (as per paras 21 and 22 thereof) that the respondent/plaintiff will be entitled to interest at the rate granted by trial court of 12% per annum from the date of the agreement to sell being 15.9.2005 till the filing of the suit also i.e respondent/plaintiff will be entitled to interest at 12% per annum on the amount of Rs.8,50,000/- from 15.9.2005 till the filing of the suit, and thereafter pendente lite and future till payment. Decree sheet be drawn accordingly.

19. The appeal is accordingly disposed of, leaving the parties to bear their own costs.