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

% ***Reserved on: 14th August, 2026***
Pronounced on: 2nd November, 2026
Uploaded on: 2nd November, 2026

CNR No. DLHC010216422021

\+ **RFA 268/2021, CM APPL. 21677-21678/2021**

SH. K.G. KRISHNAMURTHY
S/o Late Sri K. Kottaya
R/o C-490, YojnaVihar, Delhi.

.....Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

MS. VIJYETA GUPTA
W/O Sh. Ashish Gupta
R/o B-68, Suraj Mal Vihar,
Delhi.

.....Respondents

Through: Mr. Arjun Sanjay, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. This Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure has been filed against the Judgment and Order dated 04.03.2021, whereby the suit bearing CS No.207/2017 *was decreed in favour of the Plaintiff/Respondent for Recovery of Rs.1,50,00,000/- along with pendent lite and future interest @ 4% per annum*. The Counter-Claim

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bearing C.S. No.477/2020 filed by the Defendant/Appellant, Sh. K.G. Krishnamurthy for Rs. 1,00,00,000/- *was dismissed.*

2. The ***facts in brief*, as narrated in the Plaint,** are that the Defendant, Sh. K.G. Krishnamurthy approached her husband, Sh. Ashish Gupta, in February 2016, for the sale of his property bearing No.*C-490, Yojna Vihar, Delhi, admeasuring 336.87 Sq. Yards* (hereinafter referred to as "*suit property*") *vide* Agreement to Sell dated 15.02.2016.

3. The Plaintiff asserted that at the time of the preparation of the draft Agreement, she had made it clear that she would be obtaining a housing loan for the purchase of the suit property and that Clauses 4 and 5 were incorporated in the Agreement for this purpose. It was further asserted that the Agreement was to be executed and registered upon receipt of the original documents relating to the suit property from the Defendant.

4. The Plaintiff paid a total sum of Rs.1,50,00,000/- (1,05,00,000/- in cash and Rs.45,00,000/- *vide* DD No. 501393 dated 15.02.2016) on the presumption that the Defendant shall perform all the duties and obligations, as mentioned in the draft Agreement.

5. The Plaintiff further asserted that, despite having received ₹1,50,00,000/-, the Defendant failed to provide the original Lease Deed, which was necessary for obtaining a housing loan for the purchase of the suit property. Consequently, she could not avail of the loan, and the processing fee paid for the purpose, was forfeited by the Bank

6. It was further asserted that since she along with other family members, was in need of a residence, she purchased another property for which she availed housing finance from Axis Bank.

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7. The Plaintiff stated that the Defendant, with mala fide intention, issued a Legal Notice dated 30.09.2016 calling upon her to pay the balance consideration. In her Reply dated 10.12.2016, the Plaintiff sought refund of Rs.1,50,00,000/- on the ground that the Defendant had failed to fulfil his obligation; however, the amount was not refunded.

8. ***Aggrieved, the Plaintiff filed the Suit for Recovery of Rs.1,50,00,000/- along with pendent lite and future interest @ 18% per annum.***

9. The **Defendant, Sh. K.G. Krishnamurthy,** ***in his Written Statement*** **and also the Counter-Claim,** took the preliminary objection that, in terms of Clause 8 of the Agreement to Sell dated 15.02.2016 and Legal Notice dated 30.09.2016, the earnest money stood forfeited, and the Agreement stood cancelled. He further stated that because of this act of the Plaintiff, he had to undergo losses as he intentionally delayed in purchasing the property and therefore, he was entitled to seek damages of Rs. 1,00,000,00/-.

10. It was also stated that the Plaintiff had not paid the requisite Court Fee and that the Suit was without a cause of action.

11. **On merits,** the Defendant averred that the Plaintiff, along with her husband and one Mr. Batra, had approached him for purchase of the suit property, pursuant to which the Agreement dated 15.02.2016 was prepared and duly witnessed. It was stated that Mr. Batra had also written the Plaintiff's name in capital letters below her signatures and that the Plaintiff had admitted the execution of the draft Agreement to Sell dated 15.02.2016.

12. It was further asserted that the Plaintiff had not placed on record any document to show that she had sought the original title documents between 15.02.2016 and 10.05.2016, i.e., when she entered into another Agreement

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until 10.12.2016, when the plea regarding non-supply of documents was taken up for the first time only in the Reply to the Legal Notice, but, by then, because of lapse of time, the earnest money stood forfeited.

13. It was further asserted that copies of the necessary documents had been supplied to the Plaintiff, at the time of execution of the Agreement to Sell. Further, he stated that Clauses 4 and 5 of the Agreement did not specifically require the supply of original documents. Although in Clause 5 of the Agreement, it was mentioned that "*the buyer will be availing home loan and necessary documents, legal/KYC, will be provided by the seller*", he had supplied to the Plaintiff copies of all the documents relating to the suit property. The Plaintiff never sought original documents, nor placed on record any document to show that she had ever asked for original documents from the Defendant.

14. It was claimed that the Plaintiff concealed the fact that she purchased another property, *vide* Agreement to Sell dated 10.05.2016 and had also deposited the title papers before the bank, on 17.05.2016.

15. The Defendant further claimed that the Plaintiff had breached the terms of the Agreement and that the earnest money stood forfeited, as the Agreement to Sell Clauses had been flouted by the Plaintiff. Therefore, by her own conduct, she cannot seek the refund of the amount by asserting that it is by way of prevalence.

16. The Defendant further asserted that he had performed his obligations under the Agreement and had given the Plaintiff one more opportunity to pay the balance amount by 20.10.2016 instead of the stipulated date of 15.08.2016. In paragraph 8 of the Legal Notice dated 30.09.2016, the Defendant wrote to the Plaintiff as under:

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> *"My client tried to contact you numerous times, but you neither acknowledged nor you have the courtesy to call my client and explain the difficulty which prevent you from performing your part of the contract."*

17. Moreover, it was averred that the Plaintiff had failed to arrange the balance sale consideration, resulting in forfeiture of the earnest money under Clause 8 of the Agreement. He stated that he had visited the office of the Sub-Registrar on 16.08.2016, but the Plaintiff had failed to appear.

18. It was, therefore, submitted that the suit of the Plaintiff was liable to be dismissed.

19. The Appellant/Defendant, K.G. Krishnamurthy, had also filed a **Counter-Claim bearing CS No. 477/2020 seeking recovery of ₹1,00,00,000/-** from Mrs. Vijeta Gupta, by asserting that he had suffered damages on account of the Plaintiff having failed to honour the Agreement to Sell.

20. The Plaintiff, Vijeta Gupta, in her ***Written Statement* to the Counter-Claim,** took the *preliminary objection* that the Agreement to Sell dated 15.02.2016 was a forged document, bearing forged signatures, and that she had never signed the Agreement, as the original Agreement is in her custody. She denied that the Counter-Claimant was entitled to forfeit the earnest money.

21. The Plaintiff, in her ***Replication to the Main Suit,*** reaffirmed the assertions made in the plaint and denied the averments made in the Written Statement.

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22. The Defendant, in his **Replication** to the **Written Statement filed in the Counter-Claim,** reaffirmed the assertions made in the Counter-Claim.

23. The **issues on the pleadings in the Suit were framed on 20.08.2018**, as under :

> *"(1) Whether plaintiff is entitled for decree of recovery as prayed for along with pendent lite and future interest @ 18 % per annum from the date of filing of suit till realization ? (OPP)*
> *(2) Whether plaintiff is entitled for relief to restrain the defendant from creating any third party interest in the subject property ? (OPP) (re-framed vide order dated 01.02.2021).*
> *(3) Whether the plaintiff has not paid requisite court fee? (OPD)*
> *(4) Relief."*

24. The issues on the **Counter-Claim** were framed on 20.08.2018 as under:

> *"(1) Whether the counter-claimant is entitled for decree of counter-claim or damages as prayed for? (OPC/C)*
> *(2) Whether the counter-claimant is entitled for interest @ 12 % per annum compoundable quarterly from the date of filing of the counter claim along with pendent lite and future interest till realization as prayed for ? (OPC/C)*
> *(3) Relief."*

25. The evidence in both the suits was recorded together. In support of her case, the Plaintiff examined herself as **PW-1**, who tendered evidence by way of affidavit and proved the Agreement to Sell dated 15.02.2026 as PW1/1, copy of document relating to property No. 118, Shreshtha Vihar as Mark A, Legal Notice dated 30.09.2016 as PW1/2, copy of reply dated 10.12.2016 as

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Mark B, Postal receipts of dispatch of the reply along with tracking report as Ex. PW1/3.

26. **PW-2, Manish Gupta**, **brother-in-law of the Plaintiff,** tendered his evidence by way of Affidavit, Ex. PW2/A and deposed on similar lines as PW-1.

27. **PW-3, Sumit Chhabra**, **Real Estate Agent,** tendered his evidence by way of Affidavit, Ex. PW 3/A and supported the testimony of the Plaintiff.

28. The **Defendant, K.G. Krishnamurthy**, examined himself as **DW-1**, who tendered his evidence by way of Affidavit and proved the copy of the receipt dated 16.08.2016 issued from the office of the Sub-Registrar as Mark. DW1/2 and reply dated 10.12.2016 to the legal notice as Ex. DW1/3.

29. **DW-2, Srikanth Koneru**, **son of the Defendant**, corroborated the testimony of DW-1.

30. The **learned District Judge**, in the judgment dated 04.03.2021, referred to the evidence of the Plaintiff to conclude that it was not established by her that she had ever sought the original documents of title of the property from the Defendant nor had she mentioned any date and month when she had orally requested the Defendant for the same. Further, it was observed that she had not placed any written communication from the Bank which required her to provide the original perpetual Sub-Lease Deed of the suit property, for the purpose of sanctioning the loan.

31. Further, it was observed that it was for the Defendant to prove that he had suffered damages on account of non-performance of the Agreement to Sell dated 15.02.2016. It was held that the Defendant had failed to prove that he had suffered any damages on account of breach of the Agreement to Sell, as the **News- Paper Articles** relied upon by him, were general and they

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were not supported with any Certificate under Section 65B Indian Evidence Act,

32. ***Consequently, the Plaintiff was held entitled to recovery of ₹1, 50, 00,000/- along with pendent lite and future interest @ 4% per annum. However, the Counter-Claim of the Defendant for recovery of damages of ₹1, 00, 00,000/-, was dismissed***.

33. Aggrieved by the Decree of the Suit and dismissal of the Counter Claim, the Defendant/Appellant has filed the present Appeal.

34. The ***grounds of challenge*** are that the Trial Court has not appreciated that the Defendant/Appellant, to prove his losses, had filed a registered Sale Deed dated 23.05.2016 in respect of property bearing No. 118, ShresthaVihar, Delhi, ad-measuring 300.10 sq. yards, purchased by the plaintiff on 20.05.2016, for a sale consideration of ₹4,25,00,000/-.

35. It is contended that the Defendant/Appellant was not required to file any other Sale Deed, since the other property purchased by the Respondent, was at a distance of 0.5 km from the suit property. Both properties were situated in the same locality, but the best evidence has been ignored by the learned trial court.

36. It is contended that YojanaVihar and ShresthaVihar are adjacent to each other and are in the same locality and both the colonies come under the jurisdiction of the VivekVihar Sub-Registrar Office and belong to the same category for stamp duty classification. It is contended that from the Sale Deed dated 23.05.2016, the price of the suit property, along with similar properties in the same locality, stood established.

37. It is further contended that the Plaintiff/Respondent had agreed to purchase the suit property for ₹12,80,00,000/-, whereas a similarly situated

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property was purchased by her for ₹4,25,00,000/-, that is, at a much lesser price. It is, therefore, evident that the price of the suit property was declining and the Appellant suffered a loss of sale price.

38. Further, it has not been considered that the prices of the property had gone down by 10% to 15%, as is evident from the Economic Survey conducted by '*Hindustan Times' and 'Times of India'*, published *vide* Articles dated 09.11.2017 and 31.01.2017, respectively.

39. These crucial Reports have been erroneously overlooked on the ground that they were not supported by a Certificate under Section 65B of the Indian Evidence Act. It is contended that the Trial Court ought to have taken judicial notice of the reports submitted by the Ministry of Housing and Urban Affairs before the Parliamentary Committee regarding the decrease in prices of property in all major cities in India ought to have been taken.

40. Further, the Plaintiff/Respondent conveniently backed out of buying the Suit Property and never indicated her willingness and readiness to purchase the suit property by paying the balance sale consideration. The appellant suffered the loss of an opportunity to sell the suit property to any other person since the Respondent had agreed to purchase it.

41. It was contended that the judgment of the Supreme Court in *Fateh Chand v. BalkishanDass*, AIR 1963 SC 1405, entitles the Appellant to forfeit a reasonable amount, without proving any damages in case of breach of an Agreement, which judgment was not considered by the learned trial court.

42. Furthermore, it is settled law that in case of breach of the Agreement, the affected party has to prove the loss and not the quantum of loss, in order

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to forfeit the earnest money, as agreed upon by the parties at the time of entering into the Agreement.

43. Further, the Plaintiff/Respondent has not approached the court with clean hands. It has been held by the Apex Court on numerous occasions that a person who approaches the court with tainted hands is not entitled to any relief. The conduct of the Plaintiff/Respondent was not bona fide throughout the transaction. In fact, she purchased another property without informing the Appellant. After receiving the Legal Notice from the Appellant calling upon her to perform her part of the obligation, the Plaintiff/Respondent filed a false Suit for recovery on false averments.

44. *It is, therefore, submitted that the impugned Judgment be set aside and the suit of the Plaintiff be dismissed while the counter-claim of the appellant/Defendant be allowed.*

45. A prayer is also made that additional evidence be permitted to be led by the **Appellant under Order XLI Rule 27 CPC**, in regard to the loss of price.

46. The Defendant/Appellant, in his additional Written Submissions, reiterated the assertions made in his pleadings as well as the grounds of Appeal.The Appellant has relied upon the judgment of *Desh Raj & Ors. vs. Rohtash Singh* [2022] 18 SCR 65, *K.R. Suresh vs. R. Poornima & Ors*. [2025] 6 SCR 22 and*Satish Batra vs. Sudhir Rawal* [2012] 9 SCR 662.

Submissions heard and record perused.

47. The present dispute arises out of the Agreement to Sell between the parties dated 15.02.2016 in respect of the suit property, along with the entire superstructure, for a total sale consideration of Rs. 12,80,00,000/-. The Agreement to Sell dated 15.02.2016 stipulated that the balance sale

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consideration was to be paid on or before 15.08.2016. Also, admittedly, part sale consideration of Rs.1,50,00,000/- was paid by the Plaintiff to the defendant/Appellant.

48. The **relevant clauses of the Agreement to Sell** as relied upon by the parties are produced under:

NOW THIS AGREEMENT WITNESSES AS UNDER:-

1. That the entire consideration amount of the property is finalised for a sum of Rs.12,80,00,000/-(Rupees Twelve Crores Eighty Lacs Only).

2. First Party has received an amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs Only) as earnest money(Byana) from the second party at the time of signing this agreement, details as under:

   a. Rs.45,00,000/- (Rupees Forty Five Lacs Only), Vide Demand Draft No.501393, Dated:15.02.2016, issued by ICICI Bank Ltd. Cannaught Place, New Delhi-110001.
   b. Rs.1,05,00,000/- (Rupees One Crore Five Lacs Only) in Cash.

3. Balance payment of Rs.11,30,00,000/- (Rupees Eleven Crores Thirty Lacs Only) shall be paid by the second party to first party on or before 15.08.2016 at the time of handing over the vacant possession of said property and execution of transfer documents in favour of second party or his/her nominee(s) and any other third person and in that case the First Party shall exchange the DD.

5. That all the expenses of this transaction (i.e. registration shall be borne by the second party only).The Buyer will be availing home loan and all necessary documents legal\kyc will be provided by the seller.

6. If the first party shall be defaulter to comply any terms & conditions of this agreement and fail to execute the concerned documents for transfer the ownership of this said property in favour of second party or his nominee , in the office of concerned S.R. as per the fixed period by this agreement, then the first party shall have to pay double amount of earnest money to the second party or the second party shall have full right to get executed the same documents by the first party through court of law at the cost and expense of first party.

8. If the second party fails to arrange the payment of the balance amount as per clause 3 above, the transaction will be considered as cancelled and the earnest money given will be forfeited.

49. It is not in dispute that the Plaintiff purchased another property bearing No. 118, Shrestha Vihar, Delhi, ad-measuring 300.10 sq. yards for a sale consideration of ₹4,25,00,000/-,*vide* Agreement to Sell dated

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10.05.2016, which was before the expiry of the first Agreement to Sell. It is also not in dispute that the Plaintiff, even though she purchased the above-mentioned Property on 10.05.2016,had not given any Notice to the Defendant.

50. The *question which arises for consideration* is *whether the Plaintiff was entitled to recovery of ₹1,50,00,000/- which she had admittedly paid under the Agreement to Sell, and whether the Defendant was entitled to damages in the sum of ₹1,00,00,000/-.*

51. The ***first aspect*** which emerges is that, though the amount of ₹1,50,00,000/- was described as the ***bayana (earnest money)*** in the Agreement to Sell dated 15.02.2016, the balance consideration of Rs. 11,30,00,000/- was payable on or before 15.08.2016. Furthermore, Clause 5 of the Agreement to Sell recorded that the Plaintiff would avail a loan facility to pay the balance sale consideration.

52. The Apex Court in a plethora of judgments, has explained the distinction between *"earnest money" and "advance/part payment."*

53. The term **"advance/part-payment"** means money, in whole or in part, forming part of the consideration of an Agreement, paid before the same becomes fully payable. On the other hand, "**earnest money**" means a sum of money given for the purpose of binding a contract, which is forfeited in case the contract does not materialise.

54. In the case of *Shree Hanuman Cotton Mills vs. Tata Air Craft Ltd.*, (1969) 3 SCC 522, while dealing with the concept of earnest money it was held as under:-

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"16. Benjamin, in his book on 'Sale, 8th Edition, after referring to clause 17 of the Statute of Frauds and S. 4(1) of the Sale of Goods Act, 1893 providing for giving "something in earnest to bind the -contract, or in part payment", says, at p. 219 :

" give something in earnest' or 'in part payment,' are often treated as meaning the same thing, although the language clearly intimates that the earnest is something to bind the bargain,' or, 'the contract,' whereas it is manifest that there can be no part payment till after the bargain has been bound, or closed."

The author further states that there are two distinct alternatives, viz., a buyer may give the seller money or a present as a token or evidence of the bargain quite apart from the price, i.e., earnest, or he may give him part of the agreed price -to be set off against the money to be finally paid, i.e., part payment and that if the buyer fails -to carry out the contract and it is rescinded, cannot recover the earnest, but he may recover the part payment. But this does not affect the seller's right to recover damages for breach of contract unless it as by way of deposit or guarantee in which case it is forfeited. It is further stated that an earnest does not lose its character because the same thing might also avail as a part payment.

...

18. Halsbury, in "Laws of England", Vol. 34, III Edition, in paragraph 189 at p. 118, dealing with deposit, states :

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"Part of the price may be payable as a deposit. A part payment is to be distinguished from a deposit or earnest. A deposit is paid primarily as security that the buyer, will duly accept and pay for the goods, but, subject thereto, forms part of the price. Accordingly, if the buyer is unable or unwilling to accept and pay for the goods, the seller may repudiate the contract and retain the deposit."

Earl Jowitt, in his Dictionary of English Law, says

"Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g., a shilling) as a token that the parties are in earnest or have made up their minds."

...

21. ..., 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 the transaction is carried out.

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

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

55. The Apex Court again, in the case of *Videocon Properties Ltd. vs. Bhalchandra Laboratories*, (2004) 3 SCC 711, examined the nature and character of the earnest money deposit and observed that earnest money

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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 examined on a close reading of the agreement, and the relevant contextual factors. Further, 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 appropriate indicators. The relevant observations are reproduced herein below:

> *"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 performance of the contract by the party concerned, who paid it."*

56. The three-judge Bench of the Apex Court in the *Case of Central Bank of India vs. Shanmugavelu*, (2024) 6 SCC 641, reiterated the difference between the "earnest money" and the "advance money". It was held that if earnest money is adjusted towards the sale consideration, it loses its character of earnest money and becomes part-payment. It was held that the earnest money can be treated as part-payment of sale consideration, only if the contractual terms under the Agreement are honoured. An advance is a

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part to be adjusted at the time of final payment. If the promise defaults in carrying out the contract, he loses the earnest money, but may recover part payment, leaving untouched the promisor's right to recover the damages.

57. Applying the aforesaid principles to the facts of the present case, the amount of ₹1,50,00,000/- cannot be treated as earnest money liable to forfeiture, merely based on its description as *bayana* in the Agreement to Sell. The total sale consideration was ₹12,80,00,000/-, with the balance amount of ₹11,30,00,000/- payable on or before 15.08.2016. Clause 5 further recorded that the Plaintiff would avail a loan facility to pay the balance sale consideration. A conjoint reading of these terms indicates that the amount of ₹1,50,00,000/- constituted part payment of the sale consideration, intended to be adjusted against the purchase price,at the time of completion of the transaction.

58. While the learned Trial Court rightly observed that the Plaintiff had failed to place on record any document showing that the loan had been availed, or that an Application had been made for obtaining the loan, or that the original documents had been sought from the Defendant for that purpose, the ***main aspect*** for considerationis *whether the Defendant was entitled to forfeit the amount received by him under the Agreement to Sell.*

59. In this regard, it would be pertinent to refer to Section 73 and 74 of the Indian Contract Act, 1872, which reads as under:

> ***"73. Compensation for loss or damage caused by breach of contract.—****When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally*

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arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

74. Compensation for breach of contract where penalty stipulated for.- *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 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."*

60. A plain reading of Section 73 makes it evident that a party who suffers on account of breach of contract is entitled to compensation for the loss or damage caused to it by such breach. Section 74 further provides that, even where a sum is named in the contract as payable in case of breach, the aggrieved party is entitled only to reasonable compensation, not exceeding the amount so named or the penalty stipulated.

61. The Constitution Bench of the Supreme Court in *Fateh Chand v. Balkishan Das*, (1964) 1 SCR 515, held that the words *"whether or not actual damage or loss is proved"* in Section 74 merely dispense with proof of the precise quantum of loss and do not dispense with the existence of

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legal injury. "*Section 74 does not justify the award of compensation where, in consequence of the breach, no legal injury has resulted".*

62. The principles were comprehensively restated by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, wherein it was held as under:

> ***"***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.*
>
> *…*
>
> *43.6. 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."*

63. Thus, the party claiming compensation or seeking forfeiture of an amount stipulated under the contract is required to establish that it has suffered legal injury or loss on account of the breach. Where the loss is capable of being proved, the same is required to be established by evidence. It is only where the loss is difficult or impossible to quantify that the stipulated amount, if it represents a genuine pre-estimate of loss, may be awarded as reasonable compensation.

64. From the aforesaid judgments, it emerges that the Defendant had to prove that he had suffered a loss on account of non-performance of the

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Agreement to Sell dated 15.02.2016. The only evidence relied by the Defendant in this regard is the Sale Deed dated 10.05.2016, of the property purchased by the Plaintiff for a consideration amount of ₹4,25,00,000/-, instead of the property of the Defendant, in respect of which Agreement to Sell dated, was executed between the parties. The said property was claimed by the defendant to be similarly situated in the vicinity and admeasured almost the same area, that is, 300.10 sq. yards, which was comparable to 336.87 sq. yards of the suit property.

65. The issue herein was not that the Plaintiff was able to purchase a similarly situated property at more than half less value, but the burden was on the Defendant that value of his property depreciated or that he was compelled to sell his property at a lesser price or even that during this time the value of his property depreciated to the extent claimed by him. However, no positive evidence has been led to establish any fall in real estate price of his property, to the extent claimed by the Defendant.

66. The Defendant has merely relied upon two Newspaper Reports published in *Hindustan Times* and *The Times of India*. These Reports are essentially general in nature and referred to the general trends in the real estate business, but cannot, by themselves, establish that the value of the suit property had depreciated to the extent claimed by the Defendant.

67. The Plaintiff may have been able to secure a better deal in purchasing a similarly situated property at a much lower consideration, but that, in itself, is not sufficient to conclude that the value of the suit property had also depreciated or had fallen from ₹12,80,00,000/- to ₹4,25,00,000/-.

68. The contention of the Defendant is essentially speculative and is not supported by any cogent evidence to establish that, on account of non-

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performance of the Agreement to Sell dated 15.02.2016, he had suffered loss or that the value of his property had diminished to ₹4,25,00,000/-. There may have been various circumstances which enabled the Plaintiff to purchase the other property at a much lower consideration, but that, in itself, cannot be a ground to hold that the value of the suit property had correspondingly diminished to ₹4,25,00,000/-. For the same reasons, there is not an iota of evidence to show how and in what manner the Defendant suffered a loss of ₹1,00,00,000/-, as claimed by him.

69. The learned Trial Court, therefore, rightly held that the Defendant had failed to prove that he had suffered any loss on account of non-performance of the Agreement to Sell and was, consequently, not entitled to forfeit the amount paid by the Plaintiff under the Agreement to Sell.

70. The Appellant has filed **CM APPL. 21678/2021** under **Order XLI Rule 27 read with Section 151 CPC** for placing on record additional documents, which are as under:

> *a. New notification of the Circle Rate dated 26.02.2021 to establish that the circle rates have been substantially reduced (Annex. A-15)*
>
> *b. The sale deed of Plot No. 162, Yojna Vihar, dated 18.08.2016 ad. Measuring 298.9 sq. mts., similar to the Suit Property (Annex. A-16)*
>
> *c. New Editions of reports of The Hindustan Times and Times of India dated 31.01.2017 and 09.11.2017 reflecting a reduction ofproperty prices by 10% to 15%.*

71. It is, therefore, submitted that the Appellant be allowed to prove these additional documents in proof of his claim of loss.

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72. Order XLI Rule 27 provides for production of additional evidence in the Appellate Court in the following circumstances:

> *"27. Production of Additional Evidence in Appellate Court.*
>
> *(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if:*
>
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
> *(aa) the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."*

73. In the present case, the documents sought to be produced by the Appellant were neither placed before the learned Trial Court nor was any request to take them on record refused. Moreover, these documents were not unavailable at the time of the trial before the learned ADJ. Further, these are not documents which would enable the Appellate Court to pronounce its judgment.

74. None of the conditions stipulated under Order XLI Rule 27 CPC for permitting the production of additional evidence has been satisfied by the Appellant. The Appellant is merely seeking to lead further evidence to

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substantiate his contentions, having failed to establish his claim before the learned Trial Court by producing cogent evidence.

75. Further, the Sale Deed of the similarly situated property is of 2016, which was available at the relevant time. Moreover, the subsequent Circle Rates of the year 2021 cannot be taken into consideration for deciding the present Suit, which was instituted in the year **2017**. Likewise, the relevant Survey Reports had been produced, which had been considered.

76. The Appellant has failed to establish any of the circumstances warranting the production of additional evidence under Order XLI Rule 27 CPC. Accordingly, the Application seeking permission to lead additional, evidence is dismissed.

Conclusion:

77. Thus, ***the learned District Judge has rightly decreed the Suit of the Plaintiff for recovery of ₹1,50,00,000/- along with interest @ 4% per annum, and has rightly dismissed the Counter-Claim of the Appellant.***

78. There is **no merit** in the Appeal, which is accordingly dismissed. The pending Applications are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 2, 2026
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