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

% ***Date of decision : 19th March, 2026***

\+ **RFA 251/2026, CM APPL. 17360-17363/2026**

RASHID HUSSAIN
S/o Rehmat Hussain
R/o A-82, JJ Colony, Camp No.2,
Nangloi, Delhi-110041.

.....Appellant

Through: Mr. Vishva Nath Kumar, Advocate

versus

MANJEET PATWA
S/o Sh. Vijay Pal Patwa,
R/o F-1422-D, Adhyapak Nagar,
Nangloi, Delhi-110041.

.....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')* has been filed for setting aside the Impugned Judgment and Decree dated 26.03.2025 passed by Ld. District Judge, Tis Hazari, Delhi whereby *the Suit of the Plaintiff for Recovery of Rs.2,51,000/- along with interest @ 9% p.a. was decreed.*

2. The Plaintiff/Respondent has filed a Suit bearing Civ.DJ No. 1134/2018 **for recovery of Rs.5,02,000/- along with *pendente lite*** *and*

future interest @ 18% p.a., against the Appellant/Defendant.

3. ***Brief facts*** are that the Defendant, Rashid Hussain, was the owner of Property bearing No. 1, area admeasuring 31 sq. yards out of Khasra No. 40/16, situated in the area of Village Nangloi, Jat Colony known as extension II D, Block-D, Nangloi, Delhi (*hereinafter referred to as the "Suit Property"*).

4. The ***Plaintiff/Respondent*** entered into an Agreement to Sell dated 18.01.2018 for a total consideration of Rs.25,00,000/-. A sum of Rs.2,51,000/- was paid to the Defendant on 18.01.2018, as earnest money in terms of the Agreement dated 18.01.2018. In order to complete the payment in respect of the aforesaid Agreement to Sell, the Plaintiff sold his residential property R.Z.Q. 32 Nihal Vihar, Nangloi, Delhi. He then requested the Defendant to provide him with the title documents of the Suit Property, so as to get the **draft of Sale Deed prepared**. Despite repeated requests, Defendant failed to provide the document, on one pretext or the other.

5. The Sale Deed was to be executed on or before 15.04.2018 and the Plaintiff was always ready and willing to perform his part of the Agreement and to pay the balance sale consideration of Rs.22,49,000/-, subject to the Defendant fulfilling his requirement of supplying the copies of all requisite documents.

6. The Plaintiff reached the office of Sub-Registrar, Nangloi on 16.04.2018 for execution of the Sale Deed, but the Defendant failed to turn up, nor did he respond to the phone calls made by the Plaintiff. Therefore, the Plaintiff moved an Application in the office of Sub-Registrar intimating his presence and the refusal of the Defendant to execute the Sale Deed. The

Plaintiff claimed that he was always ready and willing to perform his part of the Agreement to Sell dated 18.01.2018.

7. The Plaintiff requested the Defendant on various occasions, to return his earnest money paid under the Agreement, but when the Defendant failed to do so, the Plaintiff issued a Notice dated 01.08.2018 requesting the refund of *double the amount of earnest money i.e. Rs.5,02,000/-* in terms of the Agreement dated 18.01.2018.

8. Thereafter, *a Suit for recovery was filed by the Plaintiff for Rs.5,02,000/- along with pendente lite and future interest @ 18% p.a.*

9. The Suit was contested by the ***Defendant/Appellant,*** who in his **Written Statement**, claimed that there was no cause of action in favour of the Plaintiff. In fact, it was the Plaintiff who failed to pay the balance sale consideration by 15.04.2018, as per the terms and conditions of the Agreement to Sell dated 18.01.2018; which thus stood terminated by the acts of the Plaintiff himself.

10. It was claimed that the Defendant had entered into the Agreement to Sell dated 18.01.2018 on account of dire need of money. Since the Plaintiff did not adhere to the terms of the Agreement and committed serious breach, *the Defendant had rightly forfeited the earnest money*.

11. ***On merit***, all the averments made in the Plaint were denied and it was stated that the Suit of the Plaintiff is liable to be rejected. It was further asserted that a registered letter dated 28.03.2018 was sent by the Defendant/Appellant, however, the Plaintiff/Respondent failed to come forward to perform his part of the obligations. Consequently, upon expiry of the stipulated period on 15.04.2018, the Agreement stood terminated, and the earnest money paid by the Plaintiff stood forfeited *vide* the Defendant's

registered letter dated 16.04.2018.

12. ***The Replication was filed by the Plaintiff/Respondent*** reiterating the assertions made in the Plaint.

13. The ***Issues were framed*** by the learned Trial Court on 21.01.2019, as under:

> *"1. Whether plaintiff is entitled to decree of recovery of Rs.5,02,000/- against the defendant? OPP*
> *2. Whether plaintiff is entitled for pendente lite and future interest @ 18% p.a. from the date of filing of the Suit till realization? OPP*
> *3. Whether the plaintiff has suppressed the material facts and has not come to the court with clean hands? OPD.*
> *4. Whether there is no cause of action for the plaintiff to file the present suit? OPD.*
> *5. Whether the agreement dated 18.01.2018 stood terminated for the acts of the plaintiff and, therefore, whether the defendant was justified in forfeiting the amount? OPD.*
> *6. Relief."*

14. The Plaintiff in support of his case, examined himself as **PW-1** and tendered his evidence by way of affidavit Ex. PW-1/A, wherein he reiterated the contents of the plaint and relied upon documents exhibited as Ex. PW-1/1 to Ex. PW-1/5.

15. **PW-2,** Sh. Vishal Shukla, Assistant Programmer, SR-IIA, produced the Application submitted by the Plaintiff Ex. PW-1/2 (also referred to as Ex. PW-2/1). **PW-3,** Sh. Amit Walia, Public Relations Inspector, produced letter No. F-1/Summon-16/DHQ/2022-23, Ex. PW-3/1 (colly). **PW-4,** Sh. S.B. Singh, produced letter bearing no. F/Misc/Court Notice/2022-23, Ex. PW-4/1.

16. The Defendant, in support of his case, examined himself as **DW-1** and

tendered his evidence by way of affidavit Ex.DW-1/A, wherein he reiterated the stand taken in the Written Statement.

17. The learned District Judge observed that both parties had failed to establish their respective stands inasmuch as the Plaintiff could not prove his readiness and willingness to perform his part of the Agreement, while the Defendant failed to justify the forfeiture of the earnest money. It was thus, held that neither party could be permitted to take advantage of its own default and that the Plaintiff was entitled only to restitution of the amount paid, without any claim to double the earnest money.

18. Accordingly, the Suit of the Plaintiff/Respondent was decreed in the sum of Rs.2,51,000/- along with interest @ 9% p.a.

19. Aggrieved by the said judgment, *the present Appeal has been preferred by the Appellant/Rashid Hussain.*

20. The ***grounds of challenge*** are that the Plaintiff during the cross-examination, had stated that he had only seen the GPA in favour of the Appellant executed by the owner of the Suit Property, but did not see the entire chain of ownership documents. He further claimed that the Defendant had agreed to show the documents in the following week, but he was unable to show any ownership documents, even thereafter. He is a practicing Advocate and it is highly improbable that he would enter into an Agreement to Sell without verification of the ownership of the Suit Property.

21. The Plaintiff even stated in his cross-examination that he had contacted property dealer, Shri Devender Rajoria, who was a Mediator in Delhi and also asked him to request the Defendant to show him the entire chain of ownership documents.

22. It is asserted that Plaintiff had admitted in his evidence that he had

been searching for a residential property near DMRC. In the month of January 2018, through a property dealer, he had seen the Suit Property pursuant to which he entered into the Agreement to Sell, for a total sale consideration of Rs.25 lakhs. The Plaintiff in his cross-examination stated that he had sold his previous property in which he was residing in December, 2017, for a sum of Rs.24-25 lakhs and had received the consideration in cash, but in his affidavit of evidence, he stated that he had sold the aforesaid residential property prior to entering into the Agreement to Sell, without disclosing the availability of the balance consideration. Moreover, the property, i.e. F-142D, Adhyapak Nagar, Nangloi, Delhi where he is residing, was purchased on **01.04.2018,** for a total sale consideration of Rs.15 lakhs.

23. It is submitted that the Agreement to Sell *qua* the Suit Property was to be executed on or before 15.04.2018. Since the plaintiff had already purchased another property, he had no need to purchase the Suit Property and had no sufficient funds to honour the Agreement dated 18.01.2018.

24. Further, the Plaintiff had not filed any Account Statement or led any evidence, to show his financial capacity. His suit for return of earnest money, was only to extort money from the Defendant, under the garb of Agreement dated 18.01.2018.

25. It has not been appreciated that while the Plaintiff claimed that he had visited the Office of Sub-Registrar on 16.04.2018 and had submitted an Application Ex.PW-1/2, but in his cross-examination, he admitted that he did not contact the mediator Devender Rajoria, but had tried to contact the Appellant with whom he could not establish contact.

26. He further stated that he had reached the Office of Sub-Registrar,

Nangloi without contacting the Appellant, since he was under the impression that in terms of written Agreement, he was obligated to pay the consideration amount and get the sale executed, for which he approached the Office of Sub-Registrar.

27. The claim of the Plaintiff that he had contacted the Appellant before going to the Office of said Registrar, is a false claim as he himself admitted that he did not have any contact number of the Appellant/Defendant.

28. The defence of the Plaintiff that he had taken the balance sale consideration of Rs.22,49,000/- in cash, to the Office of the Sub-Registrar, is not tenable and also highly improbable, for the simple reason that no cash transaction is allowed at the Office of Sub-Registrar in respect of sale consideration. Furthermore, consideration amount was to be paid through cheque, RTGS and not in cash.

29. The Plaintiff further stated in his cross-examination that he had several meetings with the Appellant/Defendant through Mediator in January-February 2018, but the Defendant was not willing to fulfil the terms of the Agreement dated 18.01.2018. The plaintiff had asserted that the suit property was fetching more consideration amount and after the deal with some person, Defendant agreed to return the earnest money, even though he had never agreed for the same.

30. It is submitted that Respondent/Plaintiff has stated two different situations which are inconsistent to each other; *on the one hand*, he claimed that he reached the Office of Sub-Registrar with the balance sale consideration in cash, without any intimation or contact with the mediator or the Appellant. *On the other hand,* he stated that Defendant was not interested to sell the Suit Property, which was mentioned hereinabove.

31. Moreover, the Respondent/Plaintiff has admitted *that he did not issue any Legal Notice before 15.04.2018 to the Defendant*, to accept the balance sale consideration for execution of the Sale Deed.

32. Also, the testimony of the Appellant as DW1, has not been appreciated in the correct perspective. The Defendant had issued Letters dated 28.03.2018 and 16.04.2018 for getting the Sale Deed executed, despite which the Plaintiff failed to come forward to execute his part of the Agreement.

33. It is further contended that the Appellant had to sell the property for a lesser amount of Rs.15,00,000/-, while he had entered into an Agreement with the Plaintiff for sale of the property for Rs.25,00,000/-. The loss was incurred by the Appellant, and therefore, he had rightly forfeited the earnest amount.

34. Hence, the Appeal be allowed and the impugned judgment, be set aside.

Submissions heard and record perused.

35. It is the admitted case of the parties that the Defendant/Appellant was the owner of the Suit Property and had agreed to sell the property to the Plaintiff/Respondent *vide* Agreement to Sell dated 18.01.2018, for a total sale consideration of Rs.25,00,000/-. The Plaintiff/Respondent paid Rs.2,51,000/- as earnest money on 18.01.2018.

36. It is further not in dispute that in terms of the Agreement to Sell, the balance amount was to be paid up to 15.04.2018, on which date the Sale Deed was to be executed. It is further a fact that, this Agreement to Sell was not honored and the *Defendant/Appellant forfeited the earnest money in the sum of Rs.2,51,000/-*.

37. The core issue is whether the Plaintiff was entitled to refund of his earnest money, on account of non-performance of an Agreement to Sell. Essentially, in such contracts, two distinct concepts arise, namely, earnest money and advance payment, which are often used interchangeably. To comprehend the controversy, it is pertinent to understand the two concepts.

I. Concept of "*advance money" and "earnest money":*

38. The term '***advance'*** *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.

39. In the case of *Charanjeet Singh vs. Har Swarup*, AIR 1926 PC 1, the *nature of earnest money* was explained in the terms, that it 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.*

40. This concept of **earnest money**, was succinctly explained in the case of *Shree Hanuman Cotton Mills vs. Tata Air Craft Ltd.*, (1969) 3 SCC 522, as under: -

> *"21. ..., the following principles emerge regarding* ***'earnest':***
>
> *(i) It must be given at the moment at which the contract is concluded.*
> *(ii) It represents a guarantee that the contract will be fulfilled or, in the other words, "earnest" is given to bind the contract.*
> *(iii) It is part of the purchase price when that transaction is carried out.*

(iv) It is forfeited when the transaction falls through by reason of the default of failure of the purchaser.
(v) 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."

41. 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 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 apt 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."*

(Emphasis supplied)

42. While explaining these terms, the Apex Court again in the case of

Satish Batra vs. Sudhir Rawal, (2013) 1 SCC 345 emphasised that to justify the forfeiture of '*advance money'* being part of *earnest money*, the terms of contract should be clear and explicit. *The earnest money is paid or given at the time when the contract is entered into*, as a pledge for its due performance by the depositor, to be forfeited in case of non-performance by the depositor. There can be a 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 shall not apply.*

43. These principles were reiterated and reconfirmed in the case of *DDA vs. Grihsthapana Coop. Group Housing Society Ltd.*, 1995 Supp (1) SCC 751 wherein it was observed that the specific covenant under the contract must be seen to conclude whether the Respondent is entitled to forfeiture of money paid under the contract. 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.

44. 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

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

45. Having defined the parameters for advance money and earnest money, it becomes relevant to consider the facts of this case.

II. Whether the Entire Amount is liable to be forfeited:

46. In this context, it is also pertinent to ascertain the extent of permissible forfeiture. The principles underlying forfeiture clause was considered in the case of *Fateh Chand vs. Balkishan Dass,* 1963 SCC OnLine SC 49 wherein it was held that Section 74 of the Indian Contract Act, 1872, would apply to every covenant involving a penalty; whether it is for a future payment on breach of the contract or the forfeiture of the sum already paid. It was held that evidence of loss incurred by a vendor on account of breach of contract by the buyer, would be mandatory to justify forfeiture and only a reasonable amount with such loss, can be forfeited. It observed as under:-

> *"14. [……] 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 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."

47. This aspect was again considered by the Supreme Court in the case of *Maula Bux vs. Union of India*, (1969) 2 SCC 554 wherein it was held that *the forfeiture of earnest money, cannot be deemed as penal under Section 74 of the Contract Act, 1872 and would only apply where forfeiture is in the nature of penalty*. It was held that the forfeiture of reasonable amount paid as earnest money, does not amount to imposing a penalty. But if forfeiture is in the nature of penalty, Section 74 would apply. *Where under the terms of the contract, the party in breach, had undertaken to pay a sum of money or to forfeit the sum of money, which is already paid to a party complaining of a breach of contract, the undertaking is in the nature of a penalty.*

48. These judgments were considered by the Apex Court in the case of *Shanmugavelu* (supra) and it was observed that a clause providing for forfeiture of an amount, could fundamentally be in the nature of a penalty clause or a statutory 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.

49. Thus, in the case of *Maula Bux (*supra), *Fateh Chand* (supra), *and Satish Batra* (supra), it was held that ordinarily a forfeiture clause in the strict sense will not be a penal clause, if the consequence is intended not as a sanction for breach of obligation, but rather as security of performance of the obligation. The forfeiture of earnest money is not a penal clause as its

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

50. Similarly, in the case of *Lakshmanan vs. B.R. Mangalagiri*, 1995 Supp (2) SCC 33, the Apex Court held that where the contract falls through due to default on the part of the purchaser and the resulting loss suffered by the vendors exceed the amount forfeited under the contract, the forfeiture cannot, by any measure, be termed as unjustified.

51. In the recent case of *K.R. Suresh vs. R. Poornima & Ors.,* 2025 INSC 617, this entire law as detailed above, was considered in detail and it was held that the *fundamental principle is that the forfeiture of the money paid, can be justified only if it is in the nature of earnest money, intended to ensure the performance of the contract.*

III. Whether the Appellant was entitled to forfeit Rs.2,51,000/- on account of non-performance of Agreement to Sell Dated 18.01.2018:

52. In the present case, as borne out from the pleadings of the parties, the relevant terms of the Agreement to Sell dated 18.01.2018, insofar as they pertain to dealing with the payment of the amount, reads as under:-

> ***"1.*** *That the second party have paid a sum of Rs.2,51,000/- (RUPEES TWO LAKHS FIFTY-ONE THOUSAND ONLY) to the first party on 18/01/2018, IN CASH*
>
> ……
>
> ***4.*** *that buyer second party along with the chain of documents verified / inspected from S.D.M. or concerned office and in case of any wrong, ambiguous, disputed ownership title the first party will have to refund or return the earnest money.*

.....

12. *that in case the second party fails to complete the sale bargain within the above said stipulated period then the earnest money of the second party will be forfeited by the first party.***"**

53. Thus, the Agreement to Sell dated 18.01.2018 records that a sum of Rs. 2,51,000/- was paid by the Plaintiff to the Defendant on 18.01.2018. It further provides that the said amount was liable to be forfeited in the event of default on the part of the purchaser. However, the Agreement to Sell does not expressly classify the amount of Rs.2,51,000/- as either "earnest money" or "advance payment". Therefore, the nature of the said payment is required to be ascertained from the terms of the Agreement, the intention and conduct of the parties, and the surrounding circumstances.

54. Subsequently, in Clause 12 of the Agreement, it was stipulated that *if the buyer failed to perform his part of the contract, the seller was entitled to forfeit this amount. Likewise, if the seller did not perform his part of the contract, the buyer shall be entitled to double the amount so paid by him*.

55. There is nothing in the Agreement to Sell indicating whether this amount was an earnest money or an advance payment. The covenants of the Agreement to Sell, do not clearly establish that it was intended to be earnest money; *rather, the terms reflect that it was an advance paid by the Respondent, which was liable to be adjusted towards the sale consideration in case the Agreement to Sell went through.*

56. The next aspect for consideration is the respective conduct and the intention of the parties, which led to non-performance of the Agreement to Sell dated 18.01.2018.

Conduct of the Plaintiff/Respondent, Sh. Manjeet Patwa:

57. *It may be first considered* ***whether it was the Plaintiff/Respondent who was in breach of the Agreement to Sell dated 18.01.2018****, and failed to perform his part of the Agreement to Sell.*

58. The Plaintiff asserted that he was always ready and willing to perform his part of the Agreement to Sell. His first ground taken for non-compliance of the Agreement to sell, was that he had not been shown the complete chain of documents at the time of Agreement to Sell and despite repeated requests to the Defendant, the chain of documents was not supplied to him.

59. Learned District Judge has considered the evidence of the parties wherein the Plaintiff had deposed in his cross-examination as PW1, that he had contacted the property dealer, Shri Devender Rajoria who was the Mediator in the deal, and requested him to ask the Defendant to provide the entire chain of ownership documents. *He further admitted that he never personally demanded from the Defendant the entire chain of documents.*

60. The learned District Judge thus, concluded that though Plaintiff had asserted that despite requesting the supply of entire previous chain of documents, but the Defendant did not do so, but from his cross-examination, it emerged that he himself had never contacted the Defendant/Appellant. The best person to prove this aspect was Devender Rajoria, who pertinently was not been examined.

61. The contention of the Defendant that the Plaintiff was a lawyer by profession and it was difficult to accept that he would enter into an Agreement to Sell without first checking the previous chain of documents,

was accepted and the learned District Judge rightly held this ground of non-providing of chain of documents, as not tenable.

62. *The second aspect* was ***the readiness and willingness of the Respondent, to perform his part of the Agreement to Sell.*** The Plaintiff, in order to prove his willingness, deposed that in terms of the Agreement to Sell, he had visited the office of Sub-Registrar on 15.04.2018 along with the balance amount of Rs.22,49,000/- in cash, but the Defendant failed to perform his part of Agreement to Sell to register the Sale Deed in favour of the Plaintiff/Respondent. To corroborate his assertions, he had given a Letter Ex. PW1/2 for marking his presence in the Office of Sub-Registrar which was proved by PW-2, Sh. Vishal Shukla.

63. Interestingly, PW-2 Sh. Vishal Shukla, Assistant Programmer at SR-IIA Office, deposed that he did not accept the Application with the sample, as mentioned in the Application, in **his official capacity**. He also clarified that before registration of any document, an online appointment has to be taken.

64. The learned District Judge noted that the Plaintiff/Respondent nowhere asserted that he had taken an online appointment for registration of the Sale Deed, which was a mandatory requirement. He admittedly did not give any Notice to the Defendant nor was there any draft Sale Deed prepared of which the registration could have been done. Thus, his going to the office of Sub-Registrar without any prior appointment and prior intimation to the Defendant, was only a ploy to claim that he had performed his part of the Agreement.

65. Further, while the Plaintiff claimed that he had taken the balance of Rs.22,49,000/- in cash to the office of sub-registrar, but there is no evidence

whatsoever to explain the source of income. In fact, he has also not been able to show that there was any Agreement between the parties that the balance amount would be paid to the Defendant in cash.

66. An interesting fact to be observed is that as per the Plaintiff, he had sold his Property where he was residing in December, 2017, and thereafter he had entered into this Agreement to Sell in January, 2018 with the Defendant/Appellant. Significantly, he thereafter, had purchased a new Property on 01.04.2018, for a total sale consideration of Rs.15,00,000/-. Once, the Plaintiff had already purchased another flat, neither was there any need for him to go through the present Agreement to Sell transaction nor is there any reflection that the cash obtained by him by sale of his flat, was still available for the purchase of the Suit Property. It all reflects that the Plaintiff having acquired another Property, had no interest to execute the present Agreement to Sell dated 18.01.2018.

67. Admittedly, the Plaintiff never ever issued any Notice to the Defendant/Appellant, either before, on, or after 15.04.2018, i.e. the agreed date of execution of the Sale Deed, for showing his willingness to perform his part of the contract.

68. Thus, the learned District Judge, therefore, rightly concluded that the plaintiff failed to prove that he was ready and willing to perform his part or take any steps towards the execution of the sale deed, pursuant to the ATS dated 18.01.2018. **Therefore, his claim that he was entitled to repayment of double the earnest money, was absolutely not tenable.**

Conduct of the Defendant/Appellant, Sh. Rashid Hussain:

69. *The question which arises is* ***whether the Defendant/ Appellant was in breach of the Agreement to Sell dated 18.01.2018,*** *who failed to perform his part of the Agreement to Sell.*

70. The question for consideration is the *readiness and willingness* on the part of Defendant/Appellant to perform his part of the Agreement, in order to forfeit the earnest amount of Rs.2,51,000/-.

71. The Defendant/Appellant in order to show that he was willing to perform his part of the Agreement, relied upon his Letter dated 28.03.2018 Ex. DW1/X, which he had allegedly sent to the Plaintiff for execution of the Sale Deed. The Defendant/Appellant admitted that the letter was sent to his address at H.No. F-142-D, Adhyapak Nagar, Nangloi, but that was not the address mentioned in the Agreement to Sell, where the Plaintiff was shown as resident of H. No. RZQ-32, Nihal Vihar, Nangloi, Delhi, Delhi-110041.

72. The Defendant did not give any explanation of sending the Legal Notice to an address different from the one mentioned in the Agreement to Sell. The learned District Judge thus, rightly observed that the Defendant had not led any evidence and had not been able to discharge the burden of proving that the Letter dated 28.03.2018, was ever served upon the Plaintiff.

73. The ***second aspect*** was that the date for execution of the Sale Deed was on or before 15.04.2018. The learned District Judge observed that 14.04.2018 and 15.04.2018 were government holidays, being Saturday and Sunday. The parties could have either visited the Office of the Sub-Registrar on 13.04.2018 or 16.04.2018. The Defendant had not adduced any cogent evidence to show his willingness, to perform his part of the Agreement or had ever made an endeavor to take an appointment with the Sub-Registrar.

So much so, he never ever visited the Office of the Sub-Registrar on or before 15.04.2018.

74. The Defendant/Appellant had claimed that he had made several calls to the Plaintiff to perform his part of the Agreement to Sell, but no such suggestion was given to PW1, Plaintiff, in his cross-examination. Moreover, there were no details or dates given on which the alleged calls were made.

75. Moreover, the Defendant neither in his Written Statement nor in his testimony, disclosed the dates when he visited the Plaintiff or the Mediator for the purpose of execution of Sale Deed or to demand the balance sale consideration. The learned District Judge also noted that the best person to prove the nature of transaction between the parties was Devender Rajoria, Mediator, but he had not been examined by either party.

76. The Defendant had claimed that since he was in dire need of money and he had to subsequently sell the Suit Property *vide* Sale Deed dated 18.09.2018, for a much less sale consideration of Rs.13,75,000/-. It is asserted that on account of non-performance of the Agreement to Sell, Defendant suffered a huge loss. In respect of this, it is pertinent to observe that the Defendant/Appellant, as per his own testimony, had forfeited the earnest amount on 16.04.2018 itself, when the Agreement to Sell did not materialize.

77. There is no cogent evidence to show that indeed the said property was sold for Rs.13,75,000/-, the consideration amount mentioned in the Sale Deed. The most pertinent person to prove the consideration amount for which the property was sold was the subsequent purchaser, but he has not been examined. Furthermore, at the time of forfeiture of the earnest money in April, 2018, there is no evidence to show that he had suffered any kind of

loss. Thus, his claim of having to sell the property at a lesser price, is not tenable in order to ascertain his right to forfeit the earnest money.

78. The Defendant/Appellant had asserted that he had issued Letter dated 28.03.2018 calling upon the Plaintiff, to honour his part of the Agreement. However, it has emerged in the evidence that this Notice was sent by the Defendant to the Plaintiff at an address where he was admittedly and to the knowledge of the Defendant, was not residing.

79. The Appellant had also sent a Legal Notice dated 16.04.2018 **Ex.PW-1/DX2,** informing the Plaintiff in categorical terms, that despite the stipulated date for execution of the Sale Deed expired on 15.04.2018 in the Agreement to Sell dated 18.01.2018, the balance amount has not been paid till **16.04.2018** i.e. the date of the Legal Notice and therefore, the amount is forfeited.

80. There is nothing to show that a delay of a day or two entitles the Appellant, to forfeit the amount without first ascertaining the willingness and readiness of the Plaintiff to execute the Sale Deed. The hurry in which the Agreement was terminated on 16.04.2018 itself, shows that he himself was not inclined to go through the deal. It may also be noted that in the Legal Notice, it was stated that the Agreement has not been executed till 15.04.2018, while the Notice itself was stated 16.04.2018 thereby reflecting the incongruity in the Legal Notice.

81. It was thus, rightly concluded by *the ld. District Judge that the onus to prove his willingness was on the Defendant, which he had failed to prove.*

82. It can therefore, be concluded that it was a case where neither the Plaintiff nor the Defendant had been able to prove their respective readiness and willingness to perform their respective part of the Agreement to Sell.

83. It emerges that both, the Plaintiff as well as the Defendant, were not serious in the performance of the Agreement to Sell and the Defendant, immediately on the last date of the contract, rescinded the contract and forfeited the amount.

Conclusion:

84. It is quite evident that both the parties were equally responsible for non-execution of the Agreement to Sell and therefore, the Defendant is liable to return the amount of Rs.2,51,000/-, which had been taken under the Agreement to Sell as part of the total sale consideration.

85. In view of the aforesaid, the learned District Judge has rightly directed the recovery of the earnest money of Rs.2,51,000/- along with interest at the rate of 9% p.a., against the Appellant/Defendant.

86. There is no merit in **the present Appeal, which is hereby dismissed.** Pending Applications, if any, also stand disposed of.

NEENA BANSAL KRISHNA, J.

MARCH 19, 2026
N/RS