



2026:DHC:3678



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

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Reserved on: 20th February, 2026

Pronounced on: 30th April, 2026

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RFA 232/2021, CM APPL. 14752/2021, 14753/2021 & 46719/2021

DELHI DEVELOPMENT AUTHORITY

Through its Vice Chairman

Vikas Sadan, INA, New Delhi

.....Appellant

Through: Ms. Manika Tripathy, Standing
Counsel and Mr. Ashutosh Kaushik,
Panel Counsel with Mr. Saksham
Singh, Adv.

Versus

1. DR. FRESH ASSETS LIMITED

Through its Authorized Representative

Sh. Pabitra Patra

Having its office at:

B-1/E-24, Mohan

Co-operative Industrial Estate,

New Delhi - 110044

2. MINISTRY OF URBAN DEVELOPMENT

Nirman Bhawan, New Delhi

Through its secretary,

Service through Standing Counsel,

Union of India.

.....Respondent

Through: Mr. Anil K. Khaware, Mr. Yogendra
Kumar and Mr. Manoj Ram,
Advocates for Respondent No.1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. Regular First Appeal under Section 96 read with Order XLI Code of Civil Procedure, 1908 (CPC) has been filed against the Impugned Judgment and Decree dated 13.02.2020 whereby *the Suit for the Recovery of ₹46,85,671/- as interest @ 18% per annum on a principal amount of ₹63,12,500/- from 17.12.2008 to 29.01.2013 and future and pendente lite interest @ 18% p.a. from 29.01.2013 until its realization.*

2. *The Plaintiff/Respondent had filed a Suit for Recovery of ₹46,85,671/- as interest on the wrongful retention of the principal amount of ₹63,12,500/- for four years.*

3. *The brief facts as per Complaint, are* that the Plaintiff is a Company incorporated under the provisions of Companies Act, and inter alia, deals in real estate, development of properties and constructions activities. The Defendant No.1, i.e. Delhi Development Authority (DDA) had advertised for an auction of plot bearing site no. 4, near plot no. A-373 Defence Colony, New Delhi-110024 measuring about 91 sq. meters. The reserve price of the said plot in the auction was Rs. 1,29,90,614/-, and in the auction held on 17.12.2008, the Plaintiff was declared as the highest bidder. The Plaintiff deposited Rs. 63,12,500/- towards the earnest money with the Defendant No.1 authority, as under:

Date	Cheque No.	Amount (Rs.)
07.12.2008	428520 (Oriental Bank of Commerce)	7,50,000/-
17.12.2008	428518 (Oriental Bank of Commerce)	5,00,000/-
17.12.2008	781322 (Oriental Bank of Commerce)	10,02,500/-
17.12.2008	726747	40,60,000/-
	TOTAL	63,12,500/-



4. Thereafter, a *Writ Petition W.P.(C) 123/2009* was filed by *Sh. Rajesh Kumar Sethi & Ors., i.e. the residents of Defence Colony*, for setting aside the auction, inter alia, claiming the action of DDA as arbitrary and illegal, wherein it was claimed that in the event of auction and construction in the said plot, i.e. site no.4. the width of the road around the said plot be reduced for the air and light to flow into the property A-373. Besides, the proposed auction was alleged to be contrary to stipulated norms, and hence, be held impermissible.

5. Initially, the Defendant had opposed the petition i, but later conceded that the auction of the said plot should have been carried out by the DDA. *Consequently, an additional affidavit was filed by the DDA, in W.P.(C) 123/2009, stating that the auction be cancelled.* The Plaintiff herein, contested the Petition and filed the Application for impleading himself as a party, which was allowed, *vide* order dated 15.03.2011.

6. The Plaintiff, after the acceptance of the highest bid, asked the Defendant for early culmination of the auction *vide* letters dated 14.02.2009, 18.12.2008, 22.12.2008, 29.12.2008, 25.02.2009, 27.08.2009 and 07.08.2018.

7. The Plaintiff, thus *vide* letter dated 20.09.2012 asked the Defendant No.1 to refund the earnest money of Rs.63,12,500 along with 18% interest p.a. However, the Defendant No.1, on 29.01.2013 returned the earnest money of Rs. 63,12,500/- (only the principal amount), via RTGS, back to the Plaintiff. The plaintiff asserted that the money was retained by the DDA,



for more than four years, i.e. 07.12.2008 till 29.01.2013 on which no interest was paid.

8. The Plaintiff claimed commercial rate of interest @ 18% per annum from the date of amount deposited till its realization. The claim of the Plaintiff towards the interest @ 18% p.a. on the earnest money, is as under:

Date of deposit	Amount (Rs.)	Days	Interest (Rs.)
07.12.2008	7,50,000/-	1514	5,59,973/-
17.12.2008	5,00,000/-	1504	3,70,849/-
17.12.2008	10,02,500/-	1504	7,43,553/-
17.12.2008	40,60,000/-	1504	30,11,296/-
	TOTAL		46,85,296/-

9. Further, the Plaintiff filed an Application CM Appl. No. 10781/2013 in the W.P. (C) No. 123/2009. The Application and the Writ Petition bearing no. W.P.(C) 123/2009 both were disposed of, by this Court *vide* order dated 06.08.2012, whereby the Plaintiff sought the liberty to file the fresh petition.

10. Consequently, a *Writ Petition No. 5483/2013* was filed by the Plaintiff seeking recovery of the interest, over and above the principal amount/earnest money. Thereafter, this Court, *vide* order dated 10.09.2013 directed the Plaintiff to file a Civil Suit for the recovery of the interest.

11. On 15.10.2013, a Legal Notice was sent to Defendant Nos.1 & 2 as per the mandate under section 80 CPC for the recovery of the interest. Thereafter, *the Plaintiff filed a Suit on 22.04.2016, for the Recovery of*



₹46,85,671/- along with interest @ 18% per annum on a principal amount of ₹63,12,500/- from 17.12.2008 to 29.01.2013 and interest @ 18% per annum from 29.01.2013 until its realization, and further Damages for wrongful retention Rs. 46,85,671/-.

12. The Defendant No.1/DDA in its Written Statement took a defence that though admittedly the Legal Notice dated 15.10.2013, was sent by the Plaintiff under Section 80 CPC read with Section 53B of the DDA Act, 1957, but as Section 53B DDA Act, a Demand/Legal Notice has to be served two months prior to the institution of the Suit. Section 53B (2) DDA Act also mandates that if such a Demand/Legal Notice is served, then the Suit be instituted within 6 months from the date of cause of action arises.

13. It is apparent from the Plaint that the last cause of action arose on 29.01.2013, i.e. when the payment was released by the DDA to the Plaintiff. Thus, the present Suit should have been filed by the Plaintiff by 28.07.2013, as per Section 53B (2) DDA Act. However, the present Suit was filed by the Plaintiff in July, 2014, is barred under the Section 53-B DDA Act.

14. On merits, the averments made in the Plaint for interest were denied.

15. The Plaintiff in his Replication, vehemently opposed the averments made by Defendant No.1 and submitted that the DDA Act, 1957, has no applicability in the present case, as the Legal/Demand Notice was sent to Defendant Nos. 1&2 as per procedure prescribed Under Section 80 CPC. It is a well settled law that the DDA Act, only applies when the relief is sought within the ambit of DDA Act.



16. Further, it is also submitted that an Application Under Order VII Rule 11, filed by the Defendant No.1 in on the same issue of limitation under Section 53B of the DDA Act, was **dismissed in I.A. 24684/2014 in C.S.(OS) No. 1936/2014, vide Order dated 29.07.2015 by this Court.**

17. The *Issues on the pleadings*, were framed *vide* Order dated 18.07.2017, as under:

1. *“Whether plaintiff is entitled for recovery of Rs. 46,85,671/-? OPP*
2. *Whether plaintiff is also entitled for interest if so at what rate? OPP*
3. *Whether plaintiff is also entitled for future interest on the suit amount w.e.f. 29.01.2013? OPP*
4. *Whether plaintiff is also entitled for cost of the suit? OPP*
5. *Whether suit of the plaintiff is barred by limitation in view of Section 53 B? OPD*
6. *Relief.”*

18. The **Plaintiff in support of its case**, examined *PWI Sh. Pabitra Patra* who tendered his evidence by way of affidavit as Ex. PW-1/A, wherein he reiterated the content of his *Plaint* and replication and proved the relevant documents as Ex.PW1/1 till PW-1/33.

19. The **Defendant in support of its case** examined *DWI Sh. Amit Kumar, Assistant Director (OSB), DDA* who in his affidavit of evidence Ex. DW1/A reiterated the contents of the *Written Statement*.

20. The **Learned Additional District Judge after appreciating the evidence, observed** that Plaintiff is a commercial entity dealing with development of property and construction, and its investment was for commercial reasons only. If this amount had been not held up, it would have



gainfully invested somewhere else by the Plaintiff. Therefore, it was held that the Plaintiff is entitled for the interest for the period from 07.12.2008 till 29.01.2013 @ 12% per annum, on the earnest money amount of Rs. 63,12,500/- and future interest @ 9% per annum from the date of judgment till its realization with cost of the Suit. **The suit was accordingly, decreed.**

21. Aggrieved by the Impugned Judgment dated 13.02.2020, the present Appeal has been preferred by the Defendant No.1 *on the grounds* that the learned Trial Court has wrongly decreed the Suit in favour of the Plaintiff, on an assumption that the Plaintiff had made its stand known to Defendant No.1 for the return of the earnest money with interest @18%, through the Application under Order I Rule 10 CPC, filed in W.P.(C)123/2009, which contained the letter dated 25.02.2009, whereby 18% interest was claimed.

22. Further, the Ld. Trial Court wrongly observed that the reasoning in Para 8 of the Impugned Judgment dated 13.02.2020. In the Application under Order I Rule 10 CPC, filed by the Plaintiff in W.P.(C)123/2009, was sufficient enough to show that the Plaintiff was not interested in the refund of the money along with interest, but it was more interested in challenging the Writ Petition and taking a chance that he might succeed.

23. Since the Plaintiff voluntarily intervened in Writ Petition bearing No. W.P.(C) 123/2009 by moving an Application under Order I Rule 10 CPC, the Plaintiff himself chose to involve themselves in the litigation challenging the auction. Consequently, their proactive participation, negates any grounds for claiming interest during that period.



24. Moreover, it was only on the disposal of the *W.P.(C)123/2009*, that the Plaintiff sought to recover the earnest money from the Delhi Development Authority, *vide* its letter dated 20.09.2012. It is claimed that the Plaintiff is also not entitled to any interest on the earnest money, because the terms and conditions of the auction Ex. PW1/3, did not provide for the payment of any interest, over and above the earnest money.

25. Moreover, it has not been considered that the cause of action first arose in 26.04.2012 i.e. when the auction of the sale was cancelled *vide* Order dated 26.04.2012 in *W.P.(C) 123/2009*. The Suit has been filed on 22.04.2016.

C.M. App. No. 46719/2021 under Order 41 Rule 22: Cross Objections by the Plaintiff/Respondent:

26. **The Plaintiff/Respondent No.1 filed cross objections** wherein he has he has sought a grant of interest @ 12% p.a. for the left-out period from 29.01.2013 (when the earnest money was refunded by the Defendant No.1/ DDA to the Plaintiff) till 30.06.2014 (the date of filing of the Suit bearing no. C.S.(OS) 1936/2014, which was later transferred to the District Courts).

27. **The Defendant No.1/Appellant in his reply to the cross objection** has averred that the cross objections are barred by limitation, as they were not filed within the stipulated time period i.e. within one month from the date of service of Notice of the day, fixed for hearing the Appeal.

Submissions Heard and Record Perused.

28. The first and principal objection urged on behalf of the Appellant/Defendant No.1 is that the Suit was barred by Section 53B of the DDA Act, 1957, inasmuch as it *was not instituted within 6 months* from the



date the cause of action last arose, which, according to the Appellant/Defendant No.1, was 29.01.2013 i.e. when the earnest money was refunded to the Plaintiff.

29. For the better understanding, Section 53B DDA Act is reproduced as under:

“53B. Notice to be given of suits.- (1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.....”

30. Pertinently, the present suit is not one seeking enforcement of any right created under the DDA Act. The relief claimed by the Plaintiff is for interest on the earnest money of Rs.63,12,500/- received by the Appellant on



17.12.2008, was retained by the Appellant for more than 04 years, and returned only on 29.01.2013 without any interest.

31. In M/s Lucky Star Estates (India) Pvt. Ltd. v. Delhi Development Authority in RFA(OS) 10/1987, this Court, dealing with a similar challenge based on Section 53B, held that a suit seeking damages/interest on the principal amount/earnest money wrongfully retained by DDA, does not *ipso facto* fall under the expression of ‘*any act done or purporting to have been done under this Act,*’ so as to attract the special 06 month limitation envisaged under sub-section (2). It was observed that the DDA cannot take refuge under Section 53B(2) DDA Act, to defeat substantive contractual or restitutionary claims which are otherwise, within the general limitation period, as per law.

32. Admittedly, an Application, i.e. I.A. 24684/2014 in CS(OS) 1936/2014, under Order VII Rule 11 CPC, was earlier filed by the Appellant, raising the identical plea that the suit was barred by Section 53B (2) of the DDA Act. By the order dated 29.07.2015, this Court rejected the said Application, holding that the suit for recovery of interest on earnest money was not liable to be rejected on the ground of Section 53B.

33. Therefore, learned trial court, rightly observed that the suit was not barred by Section 53B of the DDA Act.

34. The next limb of challenge is that in view of Clause 7 of the advertisement issued by Defendant No.1, the Plaintiff could not have been awarded any interest, beyond what was stipulated therein.

35. *Clause 7 of the advertisement* reads as under:



*“7. If the bid is not accepted, the Earnest Money will be refunded to the bidder without any Interest. If DDA has to withdraw the residential plot from auction (including not handing over the residential plot to successful bidders due to any reason like excess area or less area, etc.) then the E.M, and premium deposited will be returned to the auction purchaser **without any interest upto a period of 06 months period from the date of auction. Beyond 06 months period, DDA will pay an interest of 7% for the amount lying with DDA for such period.**”*

36. On bare perusal of Clause 7, it is evident that the Appellant/DDA did not exclude the liability to pay interest. On the contrary, it acknowledged that where DDA retains the earnest money beyond 06 months, it is contractually bound to pay interest @ 7% p.a. for the period during the retention period of the earnest money/principal with the Defendant No.1/DDA.

37. Reliance is placed upon *Lucky Star Estates (India) Pvt. Ltd. (supra)*, wherein the Court held DDA liable to pay interest on monies wrongfully retained, and repelled the contention that the authority could rely on contractual silence, to avoid such liability.

38. In the present case, the Appellant did withdraw from the auction on 26.04.2012 and retained the Plaintiff's earnest money for more than four years, yet refunded only the principal amount on 29.01.2013, without paying the interest @ 7% p.a., as envisaged in Clause 7 of the advertisement made by the Appellant/DDA. The Appellant is, therefore, in breach even of its own contractual stipulation.



39. Therefore, the learned Additional District Judge has rightly observed that the Plaintiff is a commercial entity engaged in development of properties and construction and that its investment in the auction was driven by commercial considerations. Had the amount of ₹63,12,500/- not retained with the Appellant from 07.12.2008 to 29.01.2013, the Plaintiff could have gainfully utilised it in its business. The Appellant/Defendant No.1, on the other hand, enjoyed the benefit of the retained amount throughout this period.

40. The Appellant/ Defendant no.1 further asserted that the Plaintiff voluntarily chose to intervene in the Writ Petition and to contest the auction and, therefore, cannot claim interest for the period during which the writ petition remained pending. This contention is absolutely misconceived. It is a matter of record that in W.P.(C) 123/2009, filed by the residents challenging the auction. The Plaintiff's participation in the Writ Petition was in its capacity as the successful bidder, seeking to protect its legitimate commercial interest in the auction of site no. 4, and not as a volunteer who kept the litigation alive for speculative gain.

41. Subsequently, the Writ Petition was ultimately disposed of on the basis of DDA's own stand that the auction ought to be cancelled by way of additional affidavit. The cancellation of the auction was, therefore, not a consequence of any election or default on the part of the respondent. Once the Appellant itself resolved not to proceed with the auction, elementary fairness required that the earnest money be refunded promptly along with a reasonable interest. Thus, the Plaintiff cannot be penalized for having been impleaded as a respondent, in the writ proceedings.



42. *The suit of the Plaintiff for interest, has been rightly, decreed.*

Cross-Objections of the Plaintiff/Respondent:

43. The grievance in the cross-objections is that while the Ld. Trial Court has awarded interest @ 12% p.a. from 07.12.2008 till 29.01.2013, it has inadvertently omitted to grant interest for the period from 29.01.2013, i.e. when the earnest money was refunded, till 30.06.2014, i.e. when the present Suit was instituted.

44. Once, as per the admissions of the Respondent/Plaintiff himself that the entire earnest money was refunded on 29.01.2013, there is no question of grant of interest thereafter, on the earnest money. Therefore, as has been claimed by the Respondent, having received the entire earnest money on 29.01.2013, there is no further liability of the Appellant to pay the interest for the period from the date of return of earnest money till the date of filing of the Suit.

45. The cross-objections filed by Respondent No.1/Plaintiff in C.M. Appl. 46719/2021, are without merit, and is therefore, dismissed.

Conclusion:

46. In light of the above discussion, **there is no merit in this Appeal, which is hereby, dismissed.** Cross-objections filed by the respondent, also has no merit and is hereby, dismissed. Pending Applications, if any, are disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2026/R