Ms Shoes East Ltd Vs Delhi Development Authority

Court: Delhi High Court

Date of Decision: May 17, 2018

Acts Referred: Code Of Civil Procedure, 1908 â€" Section 11, Order 15 Rule 3(1), Order 12 Rule 6
Delhi Development Authority (Disposal Of Developed Nazul Land) Rules, 1981 â€" Rule 27, 29, 32, 45(2)
Limitation Act, 1908 â€" Article 97
Limitation Act, 1963 â€" Article 47, 113
Delhi Development Act, 1957 â€" Section 22(3), 41(3), 53B, 53B(1), 53B(2), 56(2)(j)
Limitation Act, 1963 â€" Section 14, 29(2)
Specific Relief Act, 1963 â€" Section 22, 22(2), 24
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 22
Indian Contract Act, 1872 â€" Section 73, 74

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Ravi Gupta, Ankit Jain, S. Rai , Sachin Jain, Pawan Mathur

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J

IA No.13157/2016 (of the plaintiff under Order XV Rule 3(1) read with Order XII Rule 6 CPC)

1. The plaintiff, in this suit for recovery of Rs.11,62,45,657/- with interest from the defendant Delhi Development Authority (DDA), after the framing

of the issues and during the course of recording of evidence, has applied for judgment forthwith.

2. The application came up before this Court first on 24th November, 2016 when notice thereof was ordered to be issued. The plaintiff filed another

application being IA No.15697/2016 seeking deferment of the recording of evidence in the suit till the decision of this application. IA No.15697/2016

came up before this Court on 19th December, 2016, when it was the contention of the counsel for the defendant DDA that the plaintiff, inspite of

repeated opportunities had failed to lead evidence and the plaintiff, being unable to lead evidence, had filed IA No.15697/2016. In the face of such

contention, the recording of evidence as scheduled was not deferred as sought by the plaintiff. No reply to the application has been filed by the

defendant DDA despite opportunity. The senior counsel for the plaintiff and the counsel for the defendant DDA were heard on 2nd May, 2017 and

judgment reserved.

3. The plaintiff, on 21st December, 2010, instituted this suit pleading:

(i) That the defendant DDA floated tenders for sale of a plot admeasuring 18070 sq. mtrs. for construction of a five star hotel at Netaji Subhash

Place, opposite Wazirpur Depot near Pitampura, Delhi.

(ii) That the bid of the plaintiff of Rs.15.62 crores was accepted and allotment letter dated 14th December, 1994 issued by the defendant DDA in

favour of the plaintiff.

(iii) That the plaintiff paid a sum of Rs.3.91 crores at the time of the bid, which was treated as the first installment; the second installment of

Rs.3,90,50,500/- was deposited on 13th March, 1995 and representations were made for extension of time to pay the balance amount of Rs.781 lacs.

(iv) That the defendant DDA refused to grant extension and vide letter dated 8th June, 1995 threatened that if the balance payment is not made by

12th June, 1995, the amount already paid would stand forfeited.

(v) W.P.(C) No.2253/1995 was filed by the plaintiff and during the pendency whereof the plaintiff deposited Rs.100 lacs on 22nd June, 1995 and

another Rs.100 lacs on 3rd August, 1995, leaving the balance amount payable at Rs.581 lacs.

(vi) W.P.(C) No.2253/1995 was disposed of vide order dated 14th February, 1996 giving liberty to the plaintiff to represent to the Central Government

and directing the Central Government to decide the said representation within four weeks of receipt thereof.

(vii) That the representations so made by the plaintiff were rejected vide letter dated 17th July, 1996.

(viii) That the defendant DDA vide letter dated 13th August, 1996 conveyed to the plaintiff that the allotment was cancelled and the earnest money of

Rs.3.91 crores forfeited.

(ix) Aggrieved therefrom, the plaintiff filed W.P.(C) No.3185/1996 which was dismissed on 9th September, 1996, observing that so far as forfeiture of

earnest money is concerned, the plaintiff would be at liberty to challenge the same before a competent forum.

(x) That the defendant DDA, under cover of its letter dated 4th October, 1996, refunded a sum of Rs.4,90,50,050/- and under cover of another letter

dated 25th October, 1996 refunded the sum of Rs.100 lacs.

(xi) That another representation dated 19th June, 1998 was made by the plaintiff to the Union Minister of Urban Affairs & Employment and the Union

Minister of Urban Affairs & Employment passed an order of restoration of allotment and directing the plaintiff to deposit the balance amount along

with 12% interest per annum.

(xii) That the plaintiff, vide its letter dated 13th April, 1999 wrote for issuance of the necessary letter for making payment of the balance amount along

with interest.

(xiii) That in the meantime, the HonÃ¢â‚¬Ëœble Minister for Urban Development relinquished his charge and another Minister took over at his place; the

plaintiff received a letter dated 18th August, 1999 stating that the representation of the plaintiff was examined and the request of the plaintiff declined.

(xiv) That aggrieved therefrom, the plaintiff preferred W.P.(C) No.7251/1999 which was dismissed on 15th January, 2003; LPA No.282/2003 was

filed by the plaintiff and vide interim order in the said appeal, it was directed that re-auction of the plot would be subject to final outcome of the appeal.

(xv) That the defendant DDA trifurcated the plot and two of the plots were auctioned on 30th June, 2006 for Rs.69.58 crores and Rs.65.09 crores

respectively.

(xvi) LPA No.282/2003 was dismissed on 20th October, 2009.

(xvii) That aggrieved therefrom, Special Leave Petition (C) No.6049/2010 was filed by the plaintiff which was dismissed on 6th August, 2010.

(xviii) That the plaintiff is entitled to refund of Rs.3.91 crores forfeited by the defendant DDA together with interest at the rate 12% per annum

amounting to Rs.7,38,99,000/- as well as interest at the rate of 12% per annum on other amounts deposited by the plaintiff with the defendant DDA,

for the period for which they remained deposited with the defendant DDA i.e. for a total amount of Rs.11,62,42,657/-.

4. The suit, filed without appropriate court fees and with other defects, was refiled on 24th December, 2010, 4th January, 2011, 7th January, 2011 and

came up first before this Court on 14th January, 2011 when time of eight weeks sought was granted for payment of court fees. Finally, vide order

dated 24th August, 2011, on court fees being deposited, summons of the suit were issued.

5. The defendant DDA has contested the suit, filing written statement pleading:

(a) That the suit claim is barred by time; the cause of action to seek recovery of Rs.3.91 crores accrued to the plaintiff on 13th August, 1996 when the

plaintiff was intimated about the cancellation and forfeiture; the cause of action for interest on the other amounts deposited by the plaintiff accrued on

4th October, 1996 and 25th October, 1996 when the defendant DDA refunded Rs.4,90,50,050/- and Rs.100 lacs to the plaintiff; the suit had been filed

after 14 years from the date when the cause of action first accrued.

(b) That the plaintiff, vide letter dated 29th May, 1998 had called upon the defendant DDA to refund the earnest money of Rs.3.91 crores and the suit

filed in the year 2011 is patently barred by time.

(c) That the earnest money of Rs.3.91 crores has been forfeited by the defendant DDA on account of inability of the plaintiff to make the payment of

the balance price of the plot as per the terms and conditions of the tender.

(d) That no challenge was made by the plaintiff to the letter dated 13th August, 1996 of cancellation and forfeiture.

(e) That the cancellation of allotment has however been upheld in several rounds of litigation instituted by the plaintiff.

(f) That the plaintiff having not challenged the cancellation of allotment, the forfeiture of earnest money is as per the terms and conditions of the

tender and the present suit is hit by the provisions of Section 11 of the CPC and the principles of estoppel, in view of the decisions in the earlier rounds

of litigation.

(g) That no notice under Section 53B of the Delhi Development Act, 1957 has been issued preceding the suit.

(h) That the suit had not been filed by a duly authorised person; the plaintiff is a sick company within the meaning of Sick Industrial Companies

(Special Provisions) Act, 1985 (SICA) and an Operating Agency has been appointed by the Board for Industrial and Financial Reconstruction (BIFR)

with respect to the plaintiff.

(i) That Rs.3.91 crores deposited by the plaintiff, being 25% of the tendered premium, was the earnest money which has been forfeited by the

defendant DDA as per the terms and conditions of the tender.

(j) That the plaintiff, in W.P.(C) No.2253/1995 had also sought a writ, order or direction in the nature of certiorari striking down the tender conditions

No.8 and 14 relating to cancellation and forfeiture of earnest money and the plaintiff withdrew the petition with liberty to approach the Government of

India for extension of time.

(k) That the deposit by the plaintiff of Rs.200 lacs in two tranches was a unilateral act of the plaintiff.

(l) That the defendant DDA is not liable for payment of any interest.

6. On the pleadings of the parties, the following issues were framed on 9th January, 2013:

Ã¢â‚¬Å“1. Whether the plaintiff is entitled to the amounts as claimed in the suit? OPP.

2. If the answer to the first is in affirmative, then, whether the plaintiff is entitled to any interest? If so, at what rate and for which period and on which

amount? OPP.

3. Whether the suit is barred by the limitation? OPD.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the suit is liable to the dismissed on the principles of estoppel? OPD.

6. Whether the suit is liable to be dismissed for want of notice under Section 53-B of the Delhi Development Act? OPD.

7. Whether the plaintiff company is a sick company and under the Operating Agency, and if so, whether the suit filed by the plaintiff through the

Managing Director is maintainable, and if not, to what effect? OPD. and the suit set down for evidence.

7. No witness was examined by the plaintiff till 21st March, 2016 when the first witness of the plaintiff tendered his affidavit by way of examination-

in-chief. However the witness did not appear subsequently for completion of his cross-examination and the Joint Registrar, vide order dated 29th

November, 2016, gave last opportunity for the witness to appear on 20th December, 2016. At that stage this application and IA No.15697/2016 supra

were filed.

8. The dicta of the Supreme Court in Kailash Nath Associates Vs. Delhi Development Authority (2015) 4 SCC 136 forms the pivot of the argument of

the senior counsel for the plaintiff. It was argued that the suit is for refund of earnest money and the defendant DDA in its written statement has

nowhere pleaded having suffered any loss owing to non compliance by the plaintiff of the agreement to purchase the plot and the plaintiff is thus

entitled to a decree for refund of Rs.3.91 crores immediately, in accordance with the said judgment and the Court can award interest at such rate as

may be deemed appropriate in the facts and circumstances of the case.

9. The defendant DDA in its written statement having taken a plea of limitation and an issue having been framed thereon, it was enquired from the

senior counsel for the plaintiff as to how the suit claim is within time. In the light of the history of litigation, it was also enquired, whether the plaintiff

has taken the plea of Section 14 of the Limitation Act, 1963.

10. The senior counsel for the plaintiff stated that the plaintiff is not relying on Section 14 of the Limitation Act. On going through the pleadings also as

aforesaid, it is not found so.

11. The senior counsel for the plaintiff argued that the suit is not barred by time. It was urged that the cause of action for the relief of refund of

earnest money would accrue to the plaintiff only when the claim of the plaintiff made in the earlier litigation, for specific performance of the

Agreement to Sell, is finally decided and which was finally decided on dismissal on 6th August, 2010 of SLP(C) No.6049/2010 as aforesaid.

12. It was enquired from the senior counsel for the plaintiff, whether not the cause of action for the relief of refund of earnest money as claimed in

this suit is the same as the cause of action for the relief of specific performance of the Agreement to Sell and whether not a plaintiff is required to

simultaneously and not successively claim all the reliefs to which the plaintiff may be entitled to from the same cause of action. It was further put to

the senior counsel for the plaintiff that if it was to be held that a plaintiff is entitled to successively sue for different reliefs to which he may be entitled

to from the same cause of action, whether not the litigation would become endless and a source of harassment.

13. The senior counsel for the plaintiff contended that the claim for refund of earnest money being diametrically opposite and repugnant to the claim

for specific performance of the Agreement to Sell, the plaintiff could not have possibly claimed the relief of refund of earnest money till it was

pursuing the relief of specific performance. It was further argued that the cause of action for the relief of refund of earnest money could not have

accrued till it was finally decided whether the plaintiff is entitled to the relief of specific performance or not.

14. On it being put, that the plaintiff had not sought the relief of specific performance also, it was contended that the reliefs claimed in the writ

petitions earlier filed were in the nature of specific performance.

15. To justify that the cause of action for the relief of earnest money is different from the cause of action for the relief of specific performance,

reference was made to Section 22 of the Specific Relief Act, 1963 as under:

Ã¢â‚¬Å“22. Power to grant relief for possession, partition, refund of earnest money, etc. Ã¢â‚¬"(1) Notwithstanding anything to the contrary contained in the

Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an

appropriate case, ask forÃ¢â‚¬

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for

specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where

the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as

may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under

section 21.

and it was argued that it is for this reason only that the proviso to SubSection (2) of Section 22 of the Act permits amendment of the plaint in a suit for

specific performance, at any stage of the proceeding, to include a relief of refund of earnest money. Reliance in this regard was placed on Mahender

Nath Gupta Vs. Moti Ram Rattan Chand AIR 1975 Delhi 155, para 31 whereof is as under:

Ã¢â‚¬Å“31. Section 22 enacts a rule of pleading. The legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings

the plaintiff may claim a decree for possession in a suit for specific Performance even though, strictly speaking, the right to possession accrues only

when specific performance is decreed. The legislature has now made a statutory provision enabling the plaintiff to ask for Possession in the suit for

specific performance and empowering the court to provide in the decree itself that upon payment by the Plaintiff of the consideration money within the

given time, the defendant should execute the deed and put the plaintiff in possession. and it was argued that just like the right to possession was held to

accrue only when specific performance was decreed, similarly, the right to refund of earnest money accrues only when specific performance is

denied. Reliance in this regard was placed on Babu Lal Vs. Hazari Lal Kishori Lal (1982) 1 SCC 525 laying down that under the proviso to Section

22(2), relief of recovery of possession can be claimed even in execution of a decree for specific performance and it was argued that the same is

indicative of the cause of action for the relief of possession or for the relief of refund of earnest money not accruing till the relief claimed of specific

performance is under adjudication.

16. With respect to the other queries raised, it was contended that though the plaintiff in the writ petitions aforesaid could have in the alternative

claimed the relief of refund of earnest money but the relevant question is, whether the plaintiff, if has not raised the said claim, is barred by time from

raising it after relief in the nature of specific performance is finally declined.

17. It was enquired from the senior counsel for the plaintiff, which Article of the Schedule to the Limitation Act governs the limitation for a suit for

refund of earnest money as the present suit is. Upon the senior counsel for the plaintiff not drawing attention to any Article, his attention was drawn to

Article 47, providing the period of three years for filing a suit for money paid upon an existing consideration which afterwards fails, commencing from

the date of failure. It was enquired, whether not the date of such failure of consideration would be the date of forfeiture.

18. It was yet further enquired from the senior counsel for the plaintiff, whether a judgment of a Court of law, of refusal of specific performance, can

be a cause of action and for that matter, whether any judgment or order of the Court can at all be a cause of action for another original claim and not

for an appeal thereagainst. In my opinion, it cannot be.

19. The senior counsel for the plaintiff reiterated that since Section 22 of the Specific Relief Act, notwithstanding the reliefs permitted to be added

being barred by time by then, permits the same to be added at any time, on the same principle that a suit for refund of earnest money can be instituted

after the relief of specific performance is declined till the highest Court.

20. Though the senior counsel for the plaintiff also referred to Rohit Kochhar Vs. Vipul Infrastructure Developers Ltd. 122 (2005) DLT 480 and

Adcon Electronics Pvt. Ltd. Vs. Daulat (2001) 7 SCC 698 relied therein but on attention of the senior counsel for the plaintiff being drawn to Vipul

Infrastructure Developers Ltd. Vs. Rohit Kochhar (2008) 102 DRJ 178 (DB) setting aside the judgment of the Single Judge, the same were not

pressed further.

21. Reliance was also placed on Harbans Lal Vs. Daulat Ram 2006 SCC OnLine Del 1520 (DB) observing in para no.8 thereof, Ã¢â‚¬Å“On a plain

reading of Section 22 of the Specific Relief Act, there can be no quarrel with the proposition that a person suing for specific performance of a

contract can in appropriate cases ask for further / additional reliefs by way of possession or partition and separate possession of the property or by

way of refund of the earnest money or deposit paid in case his claim for specific performance is refused.

22. Qua the plea in the written statement of the defendant DDA, of non issuance of notice under Section 53B of the Delhi Development Act, reliance

was placed on para no.27 of my judgment in I.P. Power Generation Company Ltd. Vs. Siddhartha Extension Resident Welfare Association 2013 SCC

OnLine Del 4956 holding that the suit cannot be dismissed on such technical ground after it has been contested and that notice under Section 53B is

not required where there is earlier litigation between the parties.

23. With respect to the plea in the written statement of the defendant DDA, of the suit having been not instituted by a duly authorised person, it was

contended that the bar of Section 22 of SICA is with respect to suing a sick company and not with respect to the sick company instituting the suit.

24. The counsel for the defendant DDA contended i) that the plaintiff is misconstruing Section 22 of the Specific Relief Act; ii) that the plaintiff never

sued for specific performance; iii) that the cause of action for the relief claimed of refund of earnest money accrued to the plaintiff on 13th August,

1996 when the defendant DDA cancelled the allotment in favour of the plaintiff and forfeited the earnest money; iv) that the plaintiff, after accepting

the amount of Rs.4,90,50,050/-refunded by the defendant DDA on 4th October, 1996 and Rs.100 lacs refunded by the defendant DDA on 25th

October, 1996, is not entitled to challenge the cancellation; v) that the contention of the plaintiff that the cause of action for the relief of refund of

earnest money did not accrue till the decision on 6th August, 2010 of the Supreme Court is also falsified from the letters dated 30th April, 1998 and

29th May, 1998 of the plaintiff asking for refund of the earnest money with interest; vi) that in fact the repeated rounds of litigation by the plaintiff in

the past were also in abuse of the process of the Court; the plaintiff, after relief had been denied to it, made representations and thereafter filed fresh

litigation on rejection of the said representations; repeated representations / review sought cannot keep the cause of action alive.

25. The senior counsel for the plaintiff, in rejoinder contended that the letter dated 13th August, 1996 of the defendant DDA was during the pendency

of W.P.(C) No.3185/1996 and thus subject to outcome thereof and if that writ petition had succeeded, the said letter would have also gone; much

emphasis was placed on the interim order in LPA No.282/2003 preferred against the dismissal of the W.P.(C) No.7251/1999.

26. Attention during the hearing having been bestowed on Section 53B of the Delhi Development Act, it was enquired from the senior counsel,

whether not Sub-Section (2) thereof prohibiting the institution of a suit against the defendant DDA, save a suit for recovery of immovable property or

for declaration of a title thereto, after the expiry of six months from the date on which the cause of action arises, prescribes a lesser period than that

prescribed in the Limitation Act for suits against the DDA of the nature described in Section 53B(1).

27. It was further enquired from the senior counsel for the plaintiff, whether a cause of action for the relief of refund of earnest money can in law

remain eclipsed till the decision on the relief claimed of specific performance.

28. I have considered the matter. The arguments having proceeded primarily on the aspect of limitation and it being the case of the plaintiff itself that

no evidence is required thereon and the suit can be decreed forthwith, I proceed to consider the same first.

29. The first question which has to be decided qua the aspect of limitation is, the Article of the Limitation Act applicable to a claim for refund of

earnest money. During the hearing, attention of the counsel, as aforesaid, was invited to Article 47 of the Limitation Act.

30. I find Govindasami Pillai Vs. The Municipal Council, Kumbakonam A.I.R. 1918 Mad. 728, Nathulal Vs. Sulal AIR 1962 Raj 83, Modern Builders

by its partner P. Ganesan Vs. B.G. Narayanan 1990 SCC OnLine Mad 482 and Punita Bharti Vs. Kirpal Singh AIR 2010 HP 29 to have held that the

suit for recovery of earnest money would be governed by the said Article 47 or its equivalent Article 97 in the Schedule to the Limitation Act, 1908

and the consideration to have failed on the date of cancellation of the Agreement to Sell. I however find the Division Bench of this Court in Ram Lal

Puri Vs. Gokalnagar Sugar Mills Co. Ltd. AIR 1967 Del 91 to have held that a suit for refund of earnest money is not covered by Article 47 or by any

other specific Article of the Schedule to the Limitation Act and is to be thus governed by the residuary Article 113. It was reasoned that earnest

money is intended to serve as a proof of bona fide of the purchaser so that if the transaction falls through for the reason of the purchaser, the amount

is liable to forfeiture; on the other hand if transaction goes forward, earnest money becomes part of the purchase price Ã¢â‚¬" earnest money thus cannot

be said to have been paid upon an existing consideration which afterwards failed. Another Division bench of this Court, comparatively recently, in

India Trade Promotion Organisation Vs. India International Textile Machinery Exhibitions Society (2013) 199 DLT 40, also held Article 113 to govern

a suit for refund of earnest money.

31. That brings us back to the question, when the right to sue for refund of earnest money can be said to accrue i.e. on the date when the contract

under which earnest money is paid is cancelled and notice of forfeiture of earnest money given or the date when the challenge if any made to the

cancellation of contract finally fails.

32. To hold that the cause of action for refund of earnest money would remain suspended and accrue only when the challenge to cancellation finally

fails, would amount to holding that a decision of a Court which finally declines the challenge to cancellation of contract, is capable of giving rise to a

cause of action for a new relief. In my opinion, the decision of a Court can only furnish a cause of action for preferring the remedy provided in law, of

appeal or otherwise thereagainst and cannot be the cause of action for any relief different from that claimed in the suit by the plaintiff.

33. Law generally provides for a period of three years, to make a challenge to forfeiture of earnest money or cancellation of a contract [see Vinod

Sharma Vs. Delhi Development Authority 2012 SCC OnLine Del 5745 (DB)]. The purchaser, who has paid the earnest money and contract to sell in

whose favour has been cancelled, may not institute the challenge immediately. If it were to be held that the right to sue for refund of earnest money

accrues only when the challenge if any made to cancellation finally ends, I have wondered what will be the date of commencement of period of

limitation Ã¢â‚¬" whether expiry of three years from the date of cancellation, within which challenge to cancellation could have been made or the date of

cancellation and whether such period will stop running or stand suspended on the date when challenge is made and again start running when the

challenge finally fails. I have further wondered that if it were to be latter, would it not be against the well settled law that the time under the Limitation

Act, once begins to run, runs continuously.

34. In my opinion, the plaintiff, by claiming one relief, cannot be said to have suspended or eclipsed the limitation from running for the other relief,

which had also begun to run. Thus the cause of action for refund of earnest money which undoubtedly would accrue on cancellation of the contract

and notice of forfeiture being issued, would accrue on the same day and continue to run and the suit for refund of earnest money can be made within

three years only from the date of cancellation of contract and / or notice of forfeiture of earnest money, irrespective of the challenge if any made to

cancellation of contract having been made.

35. I will however be failing in my duty if do not mention that in Munni Babu Vs. Kunwar Kamta Singh 1923 ILR (All) XLV 378 and in some other

judgments of that era, it was held that cause of action for a suit for recovery of earnest money accrues on the dismissal of a suit for specific

performance, but on the premise of the governing Article of the Schedule to the Limitation Act, 1908, being Article 97 which is equivalent to Article 47

of the 1963 Act. However the view of this Court as aforesaid, is otherwise and thus the said judgments are of no avail.

36. Reliance, by the senior counsel for the plaintiff, on Section 22 of the Specific Relief Act, in my opinion, is misconceived. The liberty granted

thereunder, to, at any stage of a suit for specific performance of a contract for transfer of immoveable property, amend the plaint for including a claim

for possession of the property or any other relief to which the plaintiff may be entitled to, including of refund of earnest money, in case relief of

specific performance is refused, cannot be utilised for bringing within limitation an independent suit for recovery of money paid as earnest money and

when the plaintiff has never sued for specific performance. I am also unable to deduce therefrom that the cause of action for refund of earnest money

remains eclipsed till the dismissal of a claim for specific performance. Moreover, the plaintiff in the present case has in the past also never sued for

specific performance and the challenge by the plaintiff to the cancellation of the agreement to sell on account of breach of contract by the plaintiff

cannot be equated to a claim for specific performance. Section 22 only vests a special right in the plaintiff in a suit for specific performance and

Section 22 cannot be read as prescribing the limitation for a suit for recovery of earnest money or the date of commencement of limitation. An attempt

to interpret Section 22 as entitling a claim for earnest money, only if made alongwith a claim for specific performance, was rejected in Harbans Lal

Vs. Daulat Ram supra. Rather, from Section 22 it appears that cause of action for a claim for refund of earnest money accrues simultaneously with

the cause of action for the relief of specific performance and the only benefit which a plaintiff has been given is to add the said relief to a suit for

specific performance, even if not originally made. If it were to be held that the cause of action for a relief of earnest money accrues only upon

dismissal of a suit for specific performance, there would have been no occasion for the Legislature to, in Section 22, permit for inclusion of the said

relief in the alternative.

37. Seen in this light, the cause of action to the plaintiff accrued on 13th August, 1996 when the defendant DDA cancelled the contract and notified

the plaintiff of forfeiture of earnest money. The suit could thus have been filed within three years therefrom i.e. by 12th August, 1999 and has

admittedly been filed after eleven years therefrom, on 21st December, 2010.

38. Though the senior counsel for the plaintiff stopped at Section 22, Section 24 of the Specific Relief Act as under:

Ã¢â‚¬Å“24. Bar of suit for compensation for breach after dismissal of suit for specific performance.Ã¢â‚¬"The dismissal of a suit for specific performance of

a contract or part thereof shall bar the plaintiffÃ¢â‚¬Ëœs right to sue for compensation for the breach of such contract or part, as the case may be, but shall

not bar his right to sue for any other relief to which he may be entitled, by reason of such breach. could have been better invoked.

39. The same undoubtedly suggests that the dismissal of a suit for specific performance of a contract does not bar the plaintiff from suing for any

other relief to which the plaintiff may be entitled to by reason of such breach. I have wondered, whether therefrom it can be said that a cause of

action for the relief of refund of earnest money accrues on or remains eclipsed till, the dismissal of a suit for specific performance.

40. There was no equivalent of Section 24 of the Specific Relief Act in the Specific Relief Act, 1877. A perusal of the 9th Report of the Law

Commission of India on the Specific Relief Act, 1877 shows the Law Commission to have, with respect thereto opined/observed as under: Ã¢â‚¬Å“As we

have included in the Act specific provisions enabling a plaintiff to ask for reliefs such as a refund of earnest money, in a suit for specific performance,

we recommend that, by way of abundant caution, it should be made clear that a dismissal of a suit for specific performance, will not bar a suit for any

relief other than damages.Ã¢â‚¬â€‹

41. It would thus appear that Section 24 is only clarificatory and would have no impact qua the Limitation Act. I have further wondered about the

interplay between Section 24 of the Specific Relief Act and the Limitation Act, both of the year 1963. Section 24 only clarifies that a suit for refund of

earnest money would not be barred after dismissal of a suit for specific performance but does not say, it would be also within limitation, if limitation

provided for in the Limitation Act has lapsed. While Specific Relief Act is a statute enacted to define and amend the law relating to certain kinds of

specific relief, the Limitation Act has been enacted to consolidate and amend the law for limitation of suits. Limitation Act being a special law, would

prevail over the Specific Relief Act in the matter of limitation for instituting suits.

42. There is another aspect. Section 24 of the Specific Relief Act only clarifies that dismissal of a suit for specific performance shall not bar the

plaintiffÃ¢â‚¬Ëœs right to sue for any other relief to which he may be entitled by reason of such breach. The said clarification is applicable only in the case

of dismissal of a suit for specific performance. The plaintiff in the present case never instituted a suit for specific performance and which is inherently

dissimilar to the relief claimed by the plaintiff in the writ proceedings.

43. W.P.(C) No.2253/1996 was preferred impugning the letter dated 8th June, 1995 of defendant DDA informing the plaintiff, in response to

representations of plaintiff for extension of time, that according to the terms of tender, time for payment could not be extended and that if the payment

was not made, the defendant DDA would treat the auction as cancelled and forfeit 25% amount paid. It was the contention of the plaintiff before the

Writ Court, as recorded in order dated 14th February, 1996, that though defendant DDA had no power to extend time, the Central Government does

have power under Section 41(3) of the Delhi Development Act and Rule 45(2) of the Delhi Development Authority (Disposal of Developed Nazul

Land) Rules, 1981. On the said submission, W.P.(C) No.2253/1996 was disposed of with liberty to plaintiff to represent to Central Government.

44. It will thus be seen that there was nothing in the nature of the specific performance, for consideration before the Writ Court.

45. W.P.(C) No.3185/1996 was filed by the plaintiff impugning the decision dated 17th July, 1996 of the Central Government, rejecting the application

of plaintiff under Section 41(3) supra, on the ground of the same having been passed in violation of principles of natural justice. The said contention

was not accepted and vide order dated 9th March, 1996, W.P.(C) No.3185/1996 was dismissed. However the order records that (a) during the course

of hearing, defendant DDA vide letter dated 13th August, 1996 cancelled the tender and forfeited the earnest money of Rs.3.91 crores; (b) the

counsel for plaintiff stated that the plaintiff, in the said petition, was confining the challenge to the decision dated 17th July, 1996; (c) the plaintiff

thereafter sought to withdraw W.P.(C) No.3185/1996, to file a comprehensive petition but which was declined; and, (d) that with the dismissal of the

petition, the controversy to the extent of petitionerÃ¢â‚¬Ëœs challenge to the decision dated 17th July, 1996 and to the refusal of defendant DDA to extend

time, stood concluded; Ã¢â‚¬Å“So far as the forfeiture of the earnest money is concerned, the petitioner is at liberty to challenge the same before the

competent forum pursuing such remedy as may be advised.

46. The plaintiff did not challenge the order dated 9th March, 1996 aforesaid further and the same attained finality.

47. As would be evident from above, W.P.(C) No.3185/1996 also was not in the nature of or akin to a claim for specific performance.

48. The plaintiff, after dismissal on 9th March, 1996 of W.P.(C) No.3185/1996, did not approach any forum qua forfeiture of earnest money or for

refund/recovery thereof. The plaintiff however, after two years therefrom, on 19th June, 1998 made another representation to the then Union Minister

of Urban Affairs and Employment and on which representation, the plaintiff claims that the Union Minister of Urban Affairs and Employment,

notwithstanding the matter of cancellation of allotment having attained judicial finality, took a decision of restoration of allotment of the plot to the

plaintiff. However, the plaintiff itself admits that the Union Minister who took this decision was changed shortly thereafter and the said decision was

not honoured by the next incumbent and on the contrary vide letter dated 18th August, 1999, the representation dated 19th June, 1998 of the plaintiff

rejected.

49. The plaintiff thereafter started another round of litigation, by filing W.P.(C) No.7251/1999. As per the order dated 15th January, 2003 of dismissal

of the said writ petition, the challenge in the said writ petition was to the review by the next incumbent, of the decision taken by the earlier Union

Minister, of restoration of plot of land to the plaintiff. It was found in the order dated 15th January, 2003 of dismissal of W.P.(C) No.7251/1999 that

the decision taken by the earlier Union Minister in favour of the plaintiff had not been communicated to the plaintiff. It was held, (a) that the order

dated 9th September, 1996 of dismissal of W.P.(C) No.3185/1996 left no manner of doubt that save for the challenge to forfeiture of earnest money,

no other issue survived for consideration; (b) that the representation dated 19th June, 1998 had been filed after a lapse of considerable period of time

of almost two years and that too after encashing the cheques for refund of the amount in excess of the earnest money sent by the defendant DDA to

the plaintiff; (c) that the representation dated 19th June, 1998 was clearly an afterthought; repeated representations to the government do not require

the government to hear and decide each such representation; (d) that the decision taken by the Union Minister and which had been reviewed, was not

final; and, (e) that the plaintiff had had numerous rounds of litigation and there was no occasion for the plaintiff to make a representation dated 19th

June, 1998 after the dismissal on 19th September, 1996 of W.P.(C) No.3185/1996.

50. The plaintiff preferred LPA No.282/2003 against the order dated 15th January, 2003 of dismissal of W.P.(C) No.7251/1999 supra. LPA

No.282/2003 was dismissed vide judgment dated 20th October, 2009. It was held, (a) that mere writing on the file in the Ministry of Union of India

does not amount to an order; (b) that no order restoring the allotment of the plot of land aforesaid in favour of the plaintiff had been issued; and, (c)

that the order dated 9th September, 1996 disposing of W.P. (C) No.3185/1996 concluded the issue against the plaintiff and a belated administrative

redressal sought two years thereafter could not resurrect the dead claim.

51. SLP(C) No.6049/2010 preferred by the plaintiff against the order dated 20th October, 2009 supra of dismissal of LPA No.282/2003 was dismissed

in limine on 6th August, 2010.

52. Thereafter, this suit, as aforesaid, was filed on 21st December, 2010.

53. The contention of the senior counsel for the plaintiff, that the writ proceedings taken by the plaintiff prior to the institution of the present suit were

akin to or in the nature of a claim for specific performance is thus contrary to record. The question of the plaintiff being entitled to the benefit of

Section 24 of the Specific Relief Act thus, even otherwise does not arise.

54. However, even if it were to be held that the plaintiff is entitled to the benefit of Section 24, as aforesaid, the challenge by the plaintiff to the

cancellation of allotment came to an end upon dismissal on 9th March, 1996 of W.P.(C) No.3185/1996 and which order / judgment attained finality.

Even if the limitation of three years were to commence therefrom, the said limitation lapsed on 8th March, 1999, eleven years prior to the institution of

this suit on 21st December, 2010. The plaintiff as aforesaid, after dismissal on 9th March, 1996 of W.P.(C) No.3185/1996, though had opportunity to

challenge the forfeiture of earnest money and / or to seek refund thereof, did not do so and accepted the refund of the monies over and above the

earnest money paid / deposited by the plaintiff and allowed the matter to rest for over two years. The representation dated 19th June, 1998 made by

the plaintiff after two years has already been held as aforesaid to be not capable of reviving the claim of the plaintiff which was dead by then. Even

otherwise, it is settled law that repeated representations or notices or reminders do not extend the period of limitation. The plaintiff thus is not entitled

to count the period of limitation with effect from dismissal on 6th August, 2010 of the SLP preferred by the plaintiff against the dismissal of LPA

No.282/2003.

55. There is another aspect. Section 24 of the Specific Relief Act does not bar the right of the plaintiff, whose suit for specific performance has been

dismissed, from claiming any other relief to which he may be entitled by reason of breach of contract. Applicability of Section 24 thus presupposes a

finding in the judgment of dismissal of suit for specific performance, of the plaintiff being not in breach. The relief of specific performance is a

discretionary relief and can be denied inspite of plaintiff being not in breach. In the facts of the present case, from the judgment dated 14th February,

1996 of dismissal of W.P.(C) No.2253/1996 and from the judgment dated 9th March, 1996 of dismissal of W.P.(C) No.3185/1996, it is clear that it

was the plaintiff who has been found to be in breach. Section 24 has no application to a plaintiff who is himself in breach of the agreement.

56. That brings me to Section 53B of the Delhi Development Act, 1957 which is 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 Ã¢â‚¬" 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 office or place or 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 there to, be

instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be

defeated by the notice or the postponement of the institution of the suit.

57. Per Section 53B(2), a suit, as described in sub-Section (1) and not being a suit for recovery of immovable property and / or for declaration of title

thereto, is prohibited from being instituted after the expiry of six months from the date on which the cause of action arises.

58. Section 29(2) of the Limitation Act provides that where any special or local law prescribes for any suit, a period of limitation different from the

period prescribed by the Schedule, it is the provision in the special law that will prevail and not the provisions of the Limitation Act. Thus the period of

limitation for a suit against DDA, prescribed in Section 53B, would not be of three years even, but of six months only.

59. A Division Bench of this Court, in Durga Chand Kaushish Vs. Union of India ILR (1971) II Delhi 350, held that the period of limitation prescribed

in Section 53B(2) is only for the category of suits falling under sub-Section (1) and finding the suit in that case for refund of money collected by DDA

which DDA was not legally entitled to do and further finding that the calculation of excess amount was not an act falling within the scope of Delhi

Development Act, it was held that there could be no reduction of period of limitation therein.

60. It has thus to be determined, whether the receipt of earnest money and forfeiture thereof by the defendant DDA is an act done or purporting to

have been done in pursuance to the Delhi Development Act or any Rule or Regulation made thereunder.

61. The plaintiff, in its list of documents has filed as Annexure-4 thereto, a copy of the bid and tender dated 30th November, 1994 issued by the

defendant DDA inviting the tenders in which the plaintiff had participated and has in the list of documents itself mentioned the same to be under the

Ã¢â‚¬Å“Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. Similarly, as Annexure-5 to the said list, the plaintiff has filed

allotment letter dated 14th December, 1994 from the defendant DDA, again under Ã¢â‚¬Å“Delhi Development Authority (Disposal of Developed Nazul

Land) Rules, 1981. A perusal of the said documents also shows the allotment of the land for which the plaintiff had bid, to be under the Delhi

Development Authority (Disposal of Developed Nazul Land) Rules, 1981 framed by the Central Government in exercise of powers conferred by

Section 56(2)(j) read with Section 22(3) of the Delhi Development Act.

62. The said Rules provide for the manner of dealing by the defendant DDA with the nazul land developed by or under the control and supervision of

the DDA. The said Rules, in Rules 29 and 32 thereof under Chapter III titled Ã¢â‚¬Å“Allotment by Auction. provides as under:

Ã¢â‚¬Å“29. Sale to the highest bidder Ã¢â‚¬" The officer conducting the auction shall normally accept, subject to confirmation by the ViceChairman, the

highest bid offered at the fall the hammer at the auction and the person whose bid had been accepted shall pay as earnest money, a sum equivalent to

25 per cent of his bid and he shall pay the balance amount to the Authority within fifteen day; of acceptance of the bid or within such period as the

Vice-Chairman may specify in the public notice under rule 27 or in another public notice.

32. Forfeiture of earnest money Ã¢â‚¬" A person who fails to pay the balance amount of the bid within the period provided in rule 29 shall forfeit the

earnest money and it shall be competent for the ViceChairman to re-auction the plot.

63. The action of defendant DDA demanding and receiving the earnest money of Rs.3.91 crores paid / deposited by the plaintiff, constituting 25% of

the total land premium and the receipt thereof by the defendant DDA and the forfeiture thereof by the defendant DDA is thus governed by Rules

framed under the Delhi Development Act and this suit seeking refund of the said earnest money is within the description contained in Section 53B(1)

of the Act and per Section 53B(2), the limitation for filing thereof was of six months from the date the cause of action arose.

64. I would however be failing in my duty if do not notice some of the other judgments of this Court qua Section 53B supra.

65. Delhi Development Authority Vs. H. Dohil Construction Co. AIR 1984 Delhi 124 was a suit for specific performance of contract to sell land and

was held to be a suit essentially for recovery of immovable property and not within the scope of Section 53B(2).

66. Ram Dulari Vs. Delhi Development Authority 1995 (34) DRJ 129 was a suit for recovery of damages accruing from the action of the DDA of

demolishing the construction on the property of the plaintiff. It was held that the act of demolition is integrally connected with the duties of the DDA

and covered by Section 53B(2) of the Act.

67. Lucky Star Estates (India) Pvt. Ltd. Vs. The Delhi Development Authority AIR 2004 Delhi 428 was a suit for refund of earnest money with

interest. The Single Judge held the suit to be barred by limitation under Section 53B(2). However, the Division Bench in appeal found that the

cancellation of the bid was after one year and without disclosing any reason, earnest money had been illegally retained. In these facts, Section 53B(2)

was held to be not applicable. I may however notice that the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 were not

noticed and it was generally observed that auctioning of nazul land was an act done under a contract but not required by the DDA Act.

68. For the reason of the finding in Lucky Star Estates (India) Pvt. Ltd. supra, of the DDA having acted illegally and for the reason of the said

judgment not noticing the Rules aforesaid, I am humbly of the opinion that the same does not bind me.

69. Mayurdwaj Cooperative Group Housing Society Ltd. Vs. Delhi Development Authority 2011 (121) DRJ 317 (RFA (OS) No.0549/2011 preferred

whereagainst was dismissed on 19th December, 2012) was a suit for refund of composition fee collected by the DDA and finding that DDA was not

entitled to collect the composition fee, the suit was held to be not within the ambit of Section 53B(2).

70. Fresh Assets Ltd. Vs. DDA MANU/DE/2632/2015 was a suit for recovery of interest on the earnest money deposited with the DDA and which

was returned by DDA on its own, on sale being stayed by an order of another Court. The plaintiff claimed interest for the period for which the said

money had been retained. With respect to the defence of Section 53B(2), it was held relying on Lucky Star Estates (India) Pvt. Ltd. supra that the

facts of the subject case did not warrant the restriction of the larger period of limitation prescribed under the Limitation Act to be whittled down to the

period prescribed under Section 53B(2) of the Act.

71. As would be obvious, in Fresh Assets Ltd. supra there was an admission of the DDA of the DDA being not entitled to retain the earnest money

and DDA on its own had refunded the same but after some delay. It was in this light held that the action of the DDA of retaining the monies was not

an act done or purported to have been done in pursuance of the Delhi Development Act or any rule or regulation made thereunder and the said

judgment has no application to the facts of the present case.

72. I thus hold Section 53B(2) to be applicable and the limitation available to the plaintiff being of six months only.

73. The suit having been filed beyond the said six months, whether counted from 12th June, 1995 or from 9th March, 1996, is palpably barred by time.

74. Though as aforesaid, the suit is liable to be dismissed but I may add that as far as the invocation by the counsel for the plaintiff of Kailash Nath

Associates supra is concerned, though the defendant DDA undoubtedly in its written statement has not pleaded any loss but at the same time, it

cannot be forgotten that the defendant DDA has been constituted for the purposes of providing for the development of Delhi according to plan and for

matters ancillary thereto. The defendant DDA is not a body which carries out sale of land for profit and sales and agreement to sell effected by it of

land are for public purposes. Though it cannot be said that the defendant DDA suffers loss on account of breach of contract by the plaintiff which

stands established, as any other seller of land would suffer but breach of contract by a purchaser of land from the defendant DDA results in public

damage/loss.It has been held in Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705 that in such contracts, it is the public which

suffers damage and which damage is very difficult / impossible to assess/compute/prove. The sale by the defendant DDA to the plaintiff in the

present case also was for the purpose of construction of a hotel and the construction of the hotel has certainly been delayed on account of breach by

the plaintiff. Though it cannot be said that the defendant DDA had suffered any loss on account of delay in construction of hotel but the loss has been

caused to the public at large which has been deprived of timely availability of a facility of a hotel in the locality. In such circumstances, a pre-estimated

assessment of damage in the form of providing for forfeiture of earnest money, in terms of Saw Pipes Ltd. supra, is in accordance with law. It was

held in Saw Pipes Ltd. supra that where in respect of situations, where it would be difficult to prove exact loss or damage which the parties suffer

because of the breach, the parties having pre-estimated such loss after clear understanding, it would be unjustified to arrive at the conclusion that the

party who has committed breach of the contract is not liable to pay compensation and it would also be against the specific provisions of Sections 73

and 74 of the Contract Act, 1872.

75. In the present case also, as aforesaid, breach on the part of the plaintiff stands concluded by the judgments in the writ proceedings and it would be

unjustified to deny the pre-estimated damages to the defendant DDA.

76. I may further state that Kailash Nath Associates supra struck a note slightly different from the position of law prevailing for sometime past

thereto, holding forfeiture of earnest money to be permissible. Need however is not felt to elaborate the said aspect as the said aspect has recently

been discussed in detail in M.C. Luthra Vs. Ashok Kumar Khanna 2018 SCC OnLine Del 7462, and reference thereto alone is deemed to be

sufficient.

77. The plaintiff in this suit, besides claiming the relief of refund of earnest money with interest, has also claimed interest on payments over and above

earnest money made by the plaintiff to the defendant DDA and which have already been refunded by the defendant DDA to the plaintiff. Not only

would the claim for such interest be also barred by time for the reasons aforesaid but I may also state that the said payments were made / deposited

by the plaintiff during the pendency of the writ proceedings and the plaintiff, after the order dated 9th March, 1996 of W.P.(C) No.3185/1996

accepted refund thereof. The claim if any of the plaintiff for interest on the said payments, ought to have been made in the writ proceedings during the

pendency whereof the same were made and cannot be by way of this independent suit.

78. Resultantly, IA No.13157/2016 of the plaintiff under Order XV Rule 3(1) read with Order XII Rule 6 of the CPC, though is allowed but instead of

the plaintiff being found entitled to a decree forthwith for money in its favour, it is found that the suit claim is blatantly barred by time and not

maintainable.

79. Resultantly, the suit is dismissed.

80. The plaintiff is also burdened with costs of this suit of Rs.5 lacs, payable to the defendant DDA.Decree sheet be drawn up.