[2025] 2 S.C.R. 998 : 2025 INSC 207

M/s Tomorrowland Limited
v.
Housing and Urban Development Corporation Limited and Another

(Civil Appeal No. 2531 of 2025)

13 February 2025

[Surya Kant* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether HUDCO was in breach of its reciprocal contractual obligations under the allotment letter dated 31.10.1994, and whether the appellant was entitled to refund of the forfeited amount in terms of cl.5(vi) of the allotment letter; further, whether Appellant entitled to discretionary relief of interest on refund of forfeited amount u/s.34 of the Code of Civil Procedure, 1908.

Headnotes†

Appellant, highest bidder, allotted land by R1/HUDCO for construction of hotel – Appellant paid first instalment in terms of allotment letter – Dispute arose as Appellant claimed further instalments were due only after HUDCO obtained statutory clearances and executed sub-lease in its favour – Despite lacking perpetual lease, HUDCO insisted on instalments and threatened cancellation – Appellant filed First Suit seeking injunction to defer payments and restrain cancellation of allotment – HUDCO cancelled allotment, forfeited amount, and invited fresh bids, now disclosing perpetual lease was not yet executed – Second Suit filed seeking declaration that cancellation was illegal and for possession – First Suit dismissed as withdrawn unconditionally – R2/Ministry of Urban Development, Government of India impleaded in Second Suit, sought rejection u/Or.VII r.11 CPC for deficient court fee – Trial Court rejected, but High Court upheld objection and held fee payable on market value – Appellant then dropped relief of possession and confined suit to declaration – Civil Court decreed suit holding HUDCO guilty of breach entitling Appellant to declaration on account of concealment and gross misrepresentation of fact – Affirmed by First Appellate Court – High Court allowed second appeal holding suit suffered from

* Author

fatal defect of not claiming possession as further relief in terms of proviso to s.34 Specific Relief Act – Further noting Appellant's conduct was inequitable and aimed at prolonging litigation, thus disentitling discretionary relief – Hence, appeal before Supreme Court:

Held: Clause 5(vi) of Allotment Letter imposed mandatory obligation on HUDCO to obtain statutory approvals and to execute requisite documents – Had this not been obligatory, the clause would not have mandated refund in case of failure – There was also breach of clauses requiring execution of sub-lease – Without perpetual lease in its favour, HUDCO could not have executed sub-lease or handed over possession – Perpetual lease was obtained only after cancellation of appellant's allotment – Failure to execute sub-lease owing to lack of title amounted to breach – HUDCO, being incapable of fulfilling its reciprocal obligations, was not entitled to demand further instalments – HUDCO also failed to secure revised layout plan approvals – Having found HUDCO in breach, Appellant liable to refund as provided for in allotment letter as it is imperative to maintain the sanctity of contractual terms – A commercial document ought not to be interpreted in a manner that defeats the parties' original intention. [Paras 31-40, 42, 44-47, 60(i)]

Appellant was not entitled to interest under the allotment letter – However, interest pendente lite or post-decree may be awarded under s.34 CPC, dehors the contract, as a discretionary relief based on equitable considerations – Ensuring neither undue enrichment nor unfair deprivation – Thus, court examined conduct of Appellant: failure to deposit Rs. 15 crores under a status quo order in First Suit, followed by unconditional withdrawal of the suit with an oblique motive to avoid proceedings before the very Court whose order had not been complied with amounted to forum shopping and abuse of process – In Second Suit, Appellant abandoned relief of possession to evade court fee, casting doubt on its bona fides – Material on record indicated appellant lacked clean hands and sought to prolong litigation to mask financial incapacity – A party seeking equity must come with clean hands – 'Clean hands' implies absence of concealment or attempt to secure illegitimate gains – Any contrary conduct disentitles a party from relief – Courts cannot abet inequity; he who seeks equity must do equity – Though as general rule in commercial disputes, interest pendente lite or post-decree is granted to compensate for time value of money that was due but withheld during legal process, present case warranted deviation. [Paras 48-59, 60(ii)]

Case Law Cited

Central Bank of India v. Ravindra & Ors., **2001 INSC 520 : [2001] Supp. 4 SCR 323 : (2002) 1 SCC 367 – relied on.**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Breach of contract; Refund of forfeited amount; Mandatory clause; Commercial document interpretation; Original intention of parties; Award of interest; Discretionary relief; S.34 CPC; Equity; Clean hands doctrine; Forum shopping.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2531 of 2025

From the Judgment and Order dated 03.06.2016 of the High Court of Delhi at New Delhi in RSA No. 362 of 2014

Appearances for Parties

Advs. for the Appellant:
Tejinder Singh Dhindhsa, M.C. Dhingra, Sr. Advs., Pawan Sachdeva, Ishan Sachdeva, Gaurav Dhingra, Ms. Niharika Dubey, Shashank Singh, Piyush Kant Roy, K K R Dass.

Advs. for the Respondents:
Mrs. Aishwarya Bhati, A.S.G., Ms. Meenakshi Arora, Sr. Adv., Sonal Kumar Singh, Obhirup Ghosh, Nikilesh Ramachandran, Mrs. Suhasini Sen, Saurabh Mishra, Mrs. Vanshaja Shukla, T.S. Sabarish, Ishaan Sharma, Amrish Kumar.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

Leave granted.

2. The instant appeal preferred by M/s Tomorrowland Technologies Exports Limited (*formerly M S Shoes East Ltd.*) is directed against

the judgment dated 03.06.2016 (**Impugned Judgment**) passed by the High Court of Delhi (**High Court**) in RSA No. 362/2014 whereby the concurrent findings returned by the courts below have been set aside. Consequently, the Appellant's suit seeking declaratory relief has been dismissed for being not maintainable.

3. The fulcrum of the dispute herein lies in respect of the forfeiture of the Appellant's payments by Respondent No. 1, namely the Housing and Urban Development Corporation Limited (**HUDCO**), on account of non-performance of contractual obligations by the Appellant. Before adverting to the respective contentions of the parties, we deem it appropriate to briefly narrate the factual background leading to the present appeal.

A. Factual Background

4. The sequence of events in the instant appeal commenced with the Ministry of Urban Development, Government of India (**MUD**), i.e., Respondent No. 2 herein, having decided in 1990 to develop an area of 71 acres of land located at Andrew's Ganj, New Delhi, through Respondent No. 1. Bids were thus invited by Respondent No. 1 for properties at Andrew's Ganj *inter alia* offering:

   (i) Land, which was to be leased for 99 years, in order to establish a 5-star Hotel, along with an already-built Car Park;

   (ii) Nine Guest House blocks, nine Restaurants, and 25 Shops already constructed by Respondent No. 1;

   (iii) A Shopping Arcade and;

   (iv) A Cultural Centre to be built by the successful bidder(s).

   We must underscore that the scope of the present appeal is restricted only to Item No. (i) specified hereinabove, i.e. 'land, which was to be leased for 99 years, in order to establish a 5-star Hotel, along with an already-built Car Park' (**Subject Property**). We further clarify that the conclusions drawn in the instant appeal will have no bearing on the ongoing disputes in respect to the other bids.

5. Reverting to the facts, the Appellant seems to have emerged as the highest bidder for the Subject Property after the conclusion of the bidding process. As a result, Respondent No. 1 issued the allotment letter dated 31.10.1994 (**Allotment Letter**), on such terms and conditions as specified therein, including the following:

5. *"The broad terms and conditions for the allotment are as follows:-*

The 5-star hotel building shall be constructed within the parameters of the approved overall Urban Design Form after obtaining required approvals from the concerned local authority and the Delhi Urban Arts Commission. The height coverage in basement and such related development controls shall be as per the operative norms of the statutory authorities.

You shall make the payment of premium, i.e., consideration of Rs. 64.10 Cores (Rs. Sixty Four Crores and ten lacs only) for the allotment of the Hotel site and Rs. 14.00 crores for the allotment of car parking space. The payment shall be made in the following manner/stages:

(A) ***Hotel Site*** *(Rs. 64.10 Crores)*

(i) Within 4 weeks of the date of this allotment letter (i.e. before 28.11.94) - 40%

(Rs. 25,64,00,000)

(ii) Before the end of one year of the date of this allotment letter (i.e. before 31.10.95) - 30%

(Rs 19,23, 00,000)

(iii) Before the end of two years of the date of this allotment letter (i.e. before 31.10.96) - 30%

(Rs. 19, 23,00,000)

Rs. 64,10,00,000

(B) ***Car Parking Space*** *(Rs. 14.00 Crores)*

(i) Within four weeks of the date of issue of allotment letter (i.e. before 28.11.94) - 10%

(Rs.1,40,00,000)

(ii) Before the end of one year of the date of issue of the allotment letter (i.e. before 31.10.95) - 40%

(Rs. 5,60,00,000)

(iii) Within four weeks of issue of letter by HUDCO intimating that the services were ready for being handing over - 50%

(Rs.7,00,00,000)

Rs. 14,00,00,000

The above payments shall be made through demand drafts drawn in favour of HUDCO payable at New Delhi.

(iii) No interest will be charged on payments made before the due dates stated above. ***In case of default, interest shall be charged @ 16% p.a. for three months if the payment is made after the due date. Additional penal interest @ 3% p.a. shall also be charged on the interest for three months. Any delay beyond three months would entail cancellation of allotment and/or forfeiture of the total amount deposited to date.***

(iv) You will be required to complete the construction of the Hotel Site within three years of the date of handing over possession of the Hotel Site on licence basis for construction of the Hotel building as per terms and conditions contained in the proforma of Agreement to Sub- lease, two copies of which are enclosed with this allotment letter. In the event of non-completion of construction within the stipulated time, HUDCO may consider granting extension if exceptional and unavoidable circumstances have prevented you to complete construction within the stipulated time. The decision of HUDCO regarding the existence of the exceptional and unavoidable circumstances will be final and binding upon you. In case the construction is not completed within the prescribed period or the extended period as decided by HUDCO, HUDCO

will have the right to take over the land along with the unfinished building with materials, fixtures, if any, on the site without payment of any compensation to you. Since the underground car parking space will be made available to you in the adjacent building, you may provide underground linkage from the hotel with the parking space. However, cost of such linkages shall be borne by you.

(v) You shall not have any right to sell, transfer, assign or otherwise parting with the possession without the prior permission of Lessor/ HUDCO. You may also at the discretion of HUDCO, be permitted to raise loan only for construction of the building and equipment, to mortgage the premises subject to such terms and conditions including recovery of 50% unearned increase in the value of this land as will be laid down in the lease documents and subject to the first charge of HUDCO for the unpaid cost of land for the hotel as well as other dues payable hereunder.

(vi) ***Hudco will execute all required documents for obtaining approval of the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and also of the Appropriate Authority in terms of Chapter XX C of the Income Tax Act. If these approvals are not accorded Hudco will refund the amount paid without any interest and you shall not be entitled to claim any compensation for damages****.*

(vii) You shall pay annual ground rent at the rate of 2-1/2% of the premium for land for the Hotel site land the proportionate cost of land underneath the car parking space from the date of handing over of possession of the Hotel site and the car parking space to you. The ground rent shall be revised periodically in accordance with the terms and conditions of the sub lease deed.

(viii) Initially, the Hotel site will be on a licence under an Agreement to Sub-lease and upon fulfilment of

> *the terms of the said agreement including payment of all dues, perpetual sub-lease will be executed. The terms and conditions of the perpetual sub-lease shall be as per the proforma duly approved by the Govt. of India, a copy of which will be sent to you in due course.*
>
> *(ix)* ***Upon the receipt of the first instalment of the premium both for the Hotel site as well as the car parking space as indicated in para 5(ii) and also after receipt of approvals as indicated in para 5(vi), the Agreement to Sub-lease will be made available to you for execution for the Hotel site and upon its execution, the possession of Hotel Site will be handed over to you for raising construction****.*
>
> *(x) All costs for the preparation of required documents, stamp duty, registration charges and other levies of any kind whatsoever will have to be borne by you. Property taxes and other municipal levies shall borne by you from the date of possession of the site(s)".*
>
> [**Emphasis supplied**]

6. The Appellant duly deposited the first instalment of Rs. 27.04 Crores along with interest at the rate of 16.48% for three months, amounting to Rs. 1,04,81,939, as per Clause 5(A) of the Allotment Letter. In addition, the Appellant also deposited a sum of Rs. 2.5 Lakhs towards the maintenance corpus. As such, the total amount paid by the Appellant was admittedly Rs. 28,11,31,939.

7. Subsequently, a dispute arose between the parties; purportedly on account of the Appellant's assertion: that in terms of the Allotment Letter, Respondent No. 1 was obligated to execute certain documents after obtaining clearances under the Income Tax Act, 1961 (**IT Act**) and the Urban Land (Ceiling and Regulation) Act, 1976 (**ULCR Act**). Respondent No. 1 was further obligated to execute an '***agreement to sub-lease***' in favour of the Appellant. The Appellant thus claimed that as per the terms and conditions of allotment, the second and third instalments would have become due in favour of Respondent No. 1, only in the event that the abovementioned documents were duly executed by the latter.

8. Thereafter, the Appellant sent letters to Respondent No. 1 requesting compliance with the reciprocal contractual obligations enshrined in the Allotment Letter. That being said, it is imperative to caveat at this juncture that Respondent No. 1 was bereft of a perpetual lease to be executed in its favour by MUD, and as such, was not in a position to execute the '***agreement to sub-lease***' in favour of the Appellant. Regardless thereto, Respondent No. 1 insisted on payment of the second and third instalments, and further sought to threaten the Appellant that non-compliance with the payment schedule would result in cancellation of the allotment in its favour.

9. At this point, it is also relevant to bring on record that Ansal Properties & Industries Limited (**Ansals**), who being the successful bidders for the establishment of a Shopping Arcade (as enumerated in Item No. (iii) of Paragraph 4), were allotted land in this regard as well as access to utilise certain portion of the aforementioned Car Parking, which indubitably would have to be shared with the Appellant. Pertinently, the Ansals also delayed the payment of further instalments on the similar ground that the Car Park was allegedly illegal/unauthorised. Pursuant thereto, the Ansals appear to have been granted an interest-free extension of instalment payments by Respondent No. 1.

10. In these circumstances, the Appellant filed Suit No. 275/1996 before the High Court (**First Suit**), seeking mandatory injunction against Respondent No. 1 to extend the dates for payment of the second and third instalments until Respondent No. 1 fulfilled its reciprocal obligations. The Appellant further sought a permanent injunction to restrain Respondent No. 1 from cancelling its allotment.

11. The High Court passed a conditional *status quo* order on 31.01.1996 in the First Suit, in terms whereof, the Appellant was directed to deposit Rs. 15 Crores by 08.04.1996, failing which such an order would stand automatically vacated. It is not in dispute that the Appellant failed to deposit the aforesaid amount even within the extended period. As a result, the *status quo* order stood vacated.

12. This followed an order by Respondent No. 1 issued on 02.05.1996, whereby the allotment was cancelled and the entire amount of Rs. 28,11,31,939 was forfeited.

13. Respondent No. 1 thereafter invited fresh bids in November, 1996 for the development of the Subject Property, this time disclosing

in the bid that a lease in its favour for the said land was yet to be executed. Additionally, Respondent No. 1 also filed an application in the pending First Suit seeking its dismissal on the ground that the proceedings had become infructuous, owing to the cancellation of the allotment.

14. The Appellant being aggrieved by the cancellation of their allotment filed a fresh suit bearing Suit No. 1/1997 (**Second Suit**), changing the forum from the High Court to Tis Hazari Courts, Delhi (**Civil Court**). In the Second Suit, the Appellant sought a declaration that the cancellation of allotment by Respondent No. 1 was illegal, null and void. They also consequently sought possession of the Subject Property.

15. Interestingly, the Appellant moved an application before the High Court for the withdrawal of their First Suit, on the plea that the Second Suit had been filed before the Civil Court on the basis of a fresh cause of action. The High Court rejected the aforesaid application on 22.04.1997, citing that there were several factual aversions made by the Appellant. Eventually, the First Suit was dismissed as withdrawn unconditionally, upon the statement made by the Appellant's counsel before the High Court.

16. In the meantime, Leela Hotels Limited (**Leela**) emerged as the highest bidder in the fresh bid invited for the Subject Property, followed by allotment. Leela's allotment, however, was contingent on the outcome of the pending suit filed by the Appellant. It is also relevant to note that the Respondent No. 2/MUD executed the perpetual lease deed in favour of Respondent No. 1 on 04.07.1997.

17. The Appellant, meanwhile, impleaded Respondent No. 2 as one of the defendants in the Second Suit. The Respondent No. 2, in turn, filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**CPC**), seeking rejection of the plaint based on the assertion that the Appellant had allegedly not paid the requisite court fee. Though the Civil Court rejected that application, the High Court thereafter, on revision, allowed the objection raised by Respondent No. 2, holding that the Appellant was liable to pay court fees based on the market value of the Subject Property.

18. The Appellant, mirroring the characteristics of a chronic defaulter, this time decided to evade the liability of paying the court fee by abandoning the relief of delivery of possession. Resultantly, the

Appellant restricted the relief in the Second Suit only to a declaration that the cancellation of the allotment by Respondent No. 1 was null and void.

19. The Civil Court eventually decreed the Second Suit *vide* judgment dated 03.07.2010, *inter alia*, holding that: (***i***) Respondent No. 1 was guilty of committing a breach of the terms of allotment; (***ii***) the Appellant was discriminated against and was denied parity with the Ansals; and (***iii***) a declaration under Section 34 of the Specific Relief Act, 1963 (**SR Act**) to the effect that the cancellation letter was null, void, and inoperative is warranted on account of the concealment and gross misrepresentation of facts by Respondent No. 1.

20. Respondent No. 1 unsuccessfully laid challenge to the judgment and decree dated 03.07.2010, as the First Appellate Court dismissed the Regular First Appeal *vide* judgment dated 18.07.2014, reiterating the same grounds.

21. Still aggrieved, Respondent No. 1 preferred a Regular Second Appeal before the High Court, which was allowed *vide* the Impugned Judgment dated 03.06.2016. Notably, the High Court overturned the concurrent findings of the courts below, and has *inter alia* observed that the Appellant admittedly did not have sufficient funds and, thus, wanted to prolong the litigation. The High Court further held that:

> *"39. … the suit filed by the Appellant suffered from a fatal defect of not claiming possession as a further relief in terms of proviso to Section 34 of the Specific Relief Act, and therefore the decree seeking only declaration to the effect that the cancellation letter dated 02.05.1996 was bad in law could not have been passed by the courts below"*.

Additionally, the High Court went on to observe that the grant of declaration under Section 34 of the SR Act, being a discretionary relief, cannot be bestowed upon a party who indulges in 'sharp' practices. Hence, this appeal.

B. Contentions on behalf of the Appellant

22. Shri Tejinder Singh Dhindsa, learned Senior Counsel, representing the Appellant has painstakingly taken us through the voluminous material placed on record. He contended that the High Court has

committed grave error in upsetting the concurrent finding of fact arrived at by the courts below.

23. Shri Dhindsa advanced the following submissions on behalf of the Appellant to challenge the Impugned Judgment:

a) At the time of allotment of the Subject Property, Respondent No. 1 failed to disclose that it had no subsisting lease in its favour to execute the sub-lease in favour of the Appellant. As such, it is a clear case of misrepresentation on the part of Respondent No. 1.

b) After payment of the first instalment by the Appellant, Respondent No. 1 was obligated to execute the '***agreement to sub-lease***' in favour of the Appellant and further execute documents for obtaining statutory approvals under the ULCR Act and IT Act. However, Respondent No. 1 failed to execute these documents in the absence of a perpetual lease in its favour. There was, thus, no contractual obligation on the Appellant to pay further instalments.

c) The High Court erroneously held that the Second Suit filed by the Appellant suffered from a fatal defect of not claiming possession as a further relief in terms of the *proviso* to Section 34 of the SR Act. The High Court in this regard overlooked the fact that possession could be sought from Respondent No. 1 only after the execution of the sub-lease agreement, which was admittedly not done at the time of filing of the Second Suit. For this reason, the Appellant gave up the consequential relief of possession in the Second Suit, and it would be unfair to non-suit the Appellant on this ground.

d) After the Subject Property was allotted to Leela under the subsequent bidding process, a dispute arose between Respondent No. 1 and Leela on account of failure of the former to disclose that the revised layout plan was yet to be approved by the Competent Authority. The said dispute was adjudicated by an Arbitrator directing refund of the entire sum paid by Leela, along with 20% interest. That Award attained finality, except that the rate of interest was reduced to 18% by this Court. The Appellant being similarly placed, therefore, deserved to be treated at par with Leela.

e) The treatment meted out to the Appellant was discriminatory when juxtaposed with the Ansals, who were granted repeated interest-free extensions for paying the second and third instalments, in regards to the shared Car Parking. Conversely, the Appellant was compelled to pay instalments as per the payment schedule and was threatened with cancellation of the allotment in the event of default.

f) The forfeiture of the amount paid by the Appellant towards the first instalment was done on account of misconstruction and selective reading of the mutual obligations emanating from the Allotment Letter and not on account of any actual loss suffered by Respondent No. 1.

24. Alternatively, Shri Dhindsa submitted that since considerable time has passed following the allotment and its cancellation, it would be in the interests of justice and equity to entertain the Appellant's limited relief for return of Rs. 28,11,31,929 along with the applicable rate of interest.

C. Contentions on behalf of Respondent No. 1

25. Ms. Meenakshi Arora, learned Senior Counsel appearing on behalf of Respondent No. 1, contrarily opposed the Appellant's prayer *inter alia* and vehemently contended that not only did they fail to comply with the terms and conditions of the Allotment Letter but that the Appellant had disqualified itself from any relief on account of its deceitful, unfair and unethical conduct.

26. Ms. Arora canvassed the following grounds in support of her submissions:

a) The Appellant defaulted on the payment schedule stipulated in the Allotment Letter, resulting in a breach of contractual obligations. As a result, Respondent No. 1 exercised its contractual right by cancelling the allotment in favour of the Appellant and forfeited the deposited amount, as envisaged in Clause 5(iii) of the Allotment Letter. The operation of the aforementioned Clause is not interlinked or contingent on any other clause of the Allotment Letter and therefore, non payment of the instalment is bound to entail cancellation of the allotment and forfeiture of the deposited amount.

b) The Second Suit filed by the Appellant was barred under Order II Rule 2 of the CPC, considering the cause of action of both the suits was one and the same, and also because the Appellant relinquished a portion of the claim which they could have sought in the First Suit itself.

c) The Second Suit was also barred in view of Clause (3) of Rule 1 of Order XXIII of the CPC, since in the First Suit which was unconditionally withdrawn by the Appellant, the High Court did not grant any liberty therein to institute a fresh suit.

d) The Appellant in the Second Suit, while seeking declaratory relief of the cancellation of allotment being null and void, abandoned the consequential relief of possession in order to avoid paying court fees. Such a recourse defies the *proviso* to Section 34 of the SR Act, which mandates that consequential relief be sought along with a declaratory decree. Hence, the High Court has rightly held that the Second Suit was non-maintainable.

e) The Appellant brazenly attempted to overreach the judicial process; indulge in forum shopping and finagle the judicial process. This is writ large from: (***i***) the Appellant dishonouring the High Court's direction to deposit Rs. 15 Crores for continuation of the order of *status quo*; (***ii***) the First Suit being withdrawn due to *forum non conveniens*; (***iii***) the Second Suit being crafted with a view to change the forum from the High Court to the Civil Court; (***iv***) the relief of possession being abandoned to avoid payment of court fees as the entire *lis* was speculative for the Appellant; and (***v***) non-payment of further instalments and failure to perform reciprocal obligations such as securing statutory approvals.

f) Unlike the Appellant, the Ansals had secured approval from the Income Tax authorities, whereas the Appellant did not take any steps to do so, despite categorical assertions in the Allotment Letter. Hence, no parity with the Ansals can be claimed when the Appellant never demonstrated any willingness to honour their obligations.

27. In essence, Ms Arora contended that the conduct of the Appellant throughout has been to prolong the litigation and entangle Respondent No. 1 in vexatious litigation. She thus maintained that the High

Court has rightly reversed the findings of the courts below or that the Appellant is not entitled to any discretionary relief under Section 34 of the SR Act.

28. Ms. Aishwarya Bhati, learned Additional Solicitor General of India, on behalf of Respondent No. 2 reiterated the contentions put forth by Ms. Arora. She further fairly submitted that if this Court fixes any liability on Respondent No. 1 to refund the forfeited amount, it is *inter-se* the Respondents to comply with such direction. Ms Bhati maintained that Respondent No. 1 has sufficient assets to meet any liability imposed by this Court.

D. Issues for Consideration

29. In our considered view, the salient issues that arise for our consideration can be summed up as follows:

    (a) Whether Respondent No. 1/HUDCO was in breach of its reciprocal contractual obligations *qua* the Appellant?

    (b) If so, whether the Appellant is entitled to a refund of the forfeited amount under Clause 5(vi) of the Allotment Letter?

    (c) If Issue (b) above is answered in the affirmative, whether the Appellant is entitled to interest on refund of the forfeited amount?

E. Analysis

E. 1 Whether Respondent No. 1/HUDCO was in breach of its reciprocal contractual obligations *qua* the Appellant?

30. We have carefully perused the terms and conditions of the Allotment Letter and find that there are several reciprocal obligations placed upon the Appellant and Respondent No. 1.

31. *First*, a bare reading of the relevant recitals in the Allotment Letter extracted at Paragraph 5 above, leaves no room to doubt that Clause 5(vi) obligates Respondent No. 1 to '*execute all required documents for obtaining approval of the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and also of the Appropriate Authority in terms of Chapter XX C of the Income Tax Act*'. In fact, in the event of failure to do so this very Clause also necessitates that Respondent No. 1 '*will refund the amount*

paid without any interest and you shall not be entitled to claim any compensation for damages'.

32. Though Respondent No. 1 has, in this regard, attempted to wriggle out of its obligations on the premise that it could only assist the Appellant in executing the necessary documents, we do not find any merit in such submission. We say so for the reason that had it not been obligatory on Respondent No. 1 to execute the necessary documents under the first part of Clause 5(vi), the second part thereof would not have mandated refund of the amount paid by the successful bidder. It seems to us that since the failure to secure approval of the Statutory Authorities and resultant execution of requisite documents has necessary consequences of refund of the amount paid, the first part of Clause 5(vi) is mandatory in nature. Respondent No. 1 therefore cannot be allowed to shirk its responsibility and leave the Appellant at the mercy of the Statutory Authorities for such approvals.

33. That being the clear intent of the relevant terms and conditions of the Allotment Letter as well as the supporting material placed on record, we are of the considered opinion that Respondent No. 1 was in breach of its contractual duty under Clause 5(vi) of the Allotment Letter.

34. *Second,* a conjoint reading of Clauses 5(viii) and (ix) of the Allotment Letter postulates an unambiguous promise on the part of Respondent No. 1: that upon receipt of the first instalment and on grant of approvals by the Statutory Authorities, an '***agreement to sub-lease***' will be executed by Respondent No. 1, followed by handing over of possession of the Subject Property to the Appellant.

35. As held earlier, Respondent No. 1, even after the receipt of the first instalment, did not take any tangible steps to secure the necessary statutory approvals. It is obvious that the said failure led to breach of Clause 5(viii) and (ix) also, as admittedly, no '***agreement to sub-lease***' was executed in favour of the Appellant, owing to the non-execution of a perpetual lease by Respondent No. 2 in favour of Respondent No. 1. Nonetheless, we proceed to examine the contention of the Appellant that Respondent No. 1 also concealed the fact that it did not have the title and authority to execute the '***agreement to sub-lease***' in favour of the Appellant.

36. The Appellant's plea to this effect is fortified by the contents of long drawn correspondence, including letters dated 03.01.1995,

24.01.1995, 03.03.1995, and 29.03.1995, whereby Respondent No. 1 had been requesting Respondent No. 2 to execute the perpetual lease deed in its favour, in absence whereof, no sub-lease could be executed in favour of the Appellant.

37. The other cascading effect of non-execution of perpetual lease in favour of Respondent No. 1, or sub-lease in favour of the Appellant, was that the possession of the Subject Property could not have been handed over to the Appellant. Admittedly, the perpetual lease deed in favour of Respondent No. 1 was executed only after the cancellation of allotment in favour of the Appellant, belatedly on 04.07.1997.

38. Our attention was also drawn towards several legal opinions and internal documents of Respondent No. 2 and the Ministry of Law & Justice in the context of the underlying bid dispute. While we do not intend to delve into these documents, we cannot be ignorant of the fact that these records tend to support the claim of the Appellant that Respondent No. 1 could not furnish the sub-leasing arrangements until the perpetual lease was executed in its favour.

39. As such, Respondent No. 1 being incapable of fulfilling its reciprocal promises, was not entitled to demand payment for the second instalment until the perpetual lease deed was executed in its favour. We therefore hold that Respondent No. 1's failure to execute the sub-lease in favour of the Appellant, owing to the lack of its authority and title, also amounts to a breach of their contractual obligations.

40. We may hasten to add that besides the breach of aforementioned contractual obligations, it seems that Respondent No. 1 did not have the necessary sanctions permitting construction of the 5-star Hotel at the site. This fact came to light only after Leela succeeded in getting an Arbitration Award in its favour, on account of alleged failure of Respondent No. 1 to disclose that the revised layout plan of the Subject Property was yet to be approved.

41. Furthermore, there is some merit in the Appellant's grievance of differential treatment when compared to the Ansals. As noted earlier, the Ansals were granted an interest-free extension for the pending instalments under similar circumstances, but the request of the Appellant was declined. It is difficult to comprehend as to how granting the same relief to the Appellant would have been detrimental to the interest of Respondent No. 1, when such a relief was granted to another similarly placed party.

42. As an upshot of the foregoing, we have no doubt in our mind that Respondent No. 1 was in breach of several obligations as contemplated in the Allotment Letter, *viz.* failure to execute documents for securing approval under the ULCR Act and the IT Act; failure to execute the *sub lease agreement* in favour of the Appellant and; failure to secure the approval of the revised layout plan for the construction of the hotel.

E. 2 Whether the Appellant is entitled to a refund of the forfeited amount?

43. Having held that Respondent No. 1 has breached its contractual obligations, we now proceed to determine the Appellant's entitlement to refund of the forfeited amount. We may clarify here that during the course of oral arguments, the Appellant sought a refund of the forfeited amount along with reasonable interest. However, in the written submissions, the Appellant, while reiterating their stance, has sought a refund of Rs. 28,11,31,929 along with interest from the date of payment at the rate of 16.48%, i.e., the contractual rate of interest charged by Respondent No. 1.

44. Clause 5 (vi) of the Allotment Letter, which deals with the monies paid by the Appellant, provides that Respondent No. 1 will execute all required documents to obtain approval from the Competent Authority under the ULCR Act and also from the Appropriate Authority as envisaged in Chapter XX C of the IT Act, failing which, Respondent No. 1 will refund the amount paid without any interest.

45. The contents of the above clause unequivocally enumerate that the parties had ample knowledge of the obligation cast upon Respondent No. 1 to refund the amounts paid by the Appellant, in case statutory approvals were not accorded. Significantly, the said clause also provides that such a refund will be without any interest or claim of compensation for damages.

46. We have already held in Issue No. E. 1 of this judgment that Respondent No. 1 was in breach of several obligations as contemplated in the Allotment Letter.

47. That being the case, it is imperative to maintain the sanctity of the terms of the agreement between the parties. It is a settled position of law that a commercial document ought not to be interpreted in a manner that arrives at a complete variance with what may originally have been the intention of the parties. As a result, we hold that Respondent No. 1

is liable to refund the amount of Rs. 28,11,31,939 (*First instalment of Rs. 27.04 Crores along with interest for three months amounting to Rs. 1,04,81,939/- and Rs. 2.5 Lakhs towards maintenance corpus*) deposited by the Appellant pursuant to the Allotment Letter.

E. 3 Whether the Appellant is entitled to interest on refund of the forfeited amount?

48. Having held that Respondent No. 1 is liable to refund the principal sum, we may now proceed to determine the Appellant's claim for interest on the amount directed to be refunded. Evidently, the Appellant is not entitled to any interest on the amount to be refunded in terms of the Allotment Letter. The Appellant, of course, can seek award of interest under Section 34 of the CPC, which *inter alia* provides that "*the court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree*."

49. It is trite law that under Section 34 of the CPC, the award of interest is a discretionary exercise steeped in equitable considerations. The law in this regard has been succinctly discussed in the Constitution Bench judgment of this Court in ***Central Bank of India v. Ravindra & Ors.; (2002) 1 SCC 367,*** which states:

> "***Award of interest pendente lite or post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties.*** *In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest.* ***The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons***."
>
> [**Emphasis supplied**]

50. There is no gainsaying that the power to award interest ought to be exercised judiciously, aligning with equitable considerations and also ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case,

applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.

51. It is against this backdrop that the contentions of Respondent No. 1 concerning the conduct of the Appellant become material. Respondent No. 1 has contended that the Appellant's actions demonstrate unscrupulous and evasive conduct, apart from their financial incapability to honour the contractual obligations, undermining the essence of the contract.

52. It is not in dispute that in the First Suit, the High Court on 31.01.1996, passed a *status quo* order against Respondent No. 1 conditionally, obligating the Appellant to deposit Rs. 15 Crores by 08.04.1996. It was contemplated in the order that if the Appellant fails to make the stipulated deposit, the *status quo* order would stand vacated. Admittedly, despite seeking an extension of 10 days, the Appellant failed to deposit Rs. 15 Crores and establish their *bona fides*.

53. Shortly after the vacation of the *status quo* order and cancellation of the allotment, the Appellant sought to withdraw the First Suit which was pending before the High Court under its original jurisdiction, instead of seeking amendment of the plaint and the consequential relief(s) on the basis of subsequent events. This was done with an oblique motive, as the Appellant did not want to take a chance before the High Court whose order they had failed to comply with. The Appellant thus withdrew the First Suit unconditionally even without the liberty to file a fresh one, ostensibly with a calculated mindset.

54. We have no hesitation in holding that such conduct was nothing short of a brazen attempt at forum shopping, as the Appellant wanted to avoid the jurisdiction of the High Court before whom they had failed to prove their *bona fides* by not depositing the stipulated sum. Such demeanour not only raises grave suspicions on the Appellant's propriety, but also amounts to sheer abuse of the process of law and a waste of precious judicial time.

55. Even in the Second Suit, upon an objection raised by the Union of India when the High Court directed the Appellant to deposit requisite court fees, the Appellant abandoned the relief of possession of the suit land to avoid payment of *ad-valorem* court fees. This again casts serious aspersions on the *bona fides* and financial capabilities of the Appellant.

56. The material on record sufficiently indicates that the Appellant did not approach the Court with clean hands and instead attempted to hoodwink the judicial process by creating a facade to subterfuge their inability to meet their contractual obligations. We are constrained to observe that the intent of the Appellant throughout appears to be that of prolonging the litigation to cloak its impecuniousness.

57. It needs no emphasis that whosoever comes to the court claiming equity, must come with clean hands. The expression 'clean hands' connotes that the suitor or the defendant have not concealed material facts from the court and there is no attempt by them to secure illegitimate gains. Any contrary conduct must warrant turning down relief to such a party, owing to it not acting in good faith and beguiling the court with a view to secure undue gain. A court of law cannot be the abettor of inequity by siding with the party approaching it with unclean hands. This also brings to mind the oft-quoted legal maxim—he who seeks equity must do equity.

58. We are conscious of the fact that as a general principle, in commercial disputes, the award of interest *pendente lite* or post-decree is typically granted as a matter of course. This is because such interest serves to compensate the aggrieved party for the time value of money that was due but withheld during the legal process. It reflects an established norm aimed at ensuring fairness and equity in commercial transactions.

59. Having said so, we find the instant case to be fit to justify a deviation from the established standards. In the facts and circumstances, though we have held Respondent No. 1 to be in breach of several contractual obligations, the conduct of the Appellant is rife with instances where it has also sought to undermine the authority and integrity of the judicial process, by treating the Court with disregard, and attempting to exploit procedural mechanisms for personal gain. We, thus, hold that in view of the above reasons, the Appellant is not entitled to any discretionary relief of interest under Section 34 of CPC.

F. ***CONCLUSION***

60. Striking a balance between these considerations, we deem it appropriate to allow this appeal in part, and dispose of the same in the following terms:

    (i) Respondent No. 1/HUDCO, was in breach of its reciprocal contractual obligations, thereby disentitling them from forfeiting

the monies already paid by the Appellant towards the first instalment as enshrined in Clause 5 (iii) of the Allotment Letter dated 31.10.1994.

(ii) Given that the Appellant has blatantly engaged in forum shopping, and considering that their overall conduct does not in any manner reflect an approach aligning with the clean hands doctrine, they are not entitled to grant of any discretionary relief of interest in their favour.

(iii) The Impugned Judgement dated 03.06.2016 passed by the High Court is set aside to the extent above.

(iv) The Second Suit filed by the Appellant is decreed in part, and the Appellant is held entitled to a refund of the principal amount, without any interest.

(v) As a sequel to the above, we direct Respondent No. 1/HUDCO, to refund the amount of Rs. 28,11,31,939 to the Appellant within three (3) months from the date of this order.

(vi) In the event Respondent No. 1 fails to refund the amount within the stipulated time, the Appellant shall be entitled to interest at the rate of 6% per annum till the date of realisation.

61. We find it necessary to clarify that the above-mentioned directions pertain only to the Subject Property, i.e., land for the establishment of a 5-star Hotel and the already built Car Park. We have not expressed any opinion on the pending matters between the parties insofar as the other properties are concerned. The other pending cases shall be decided by the concerned Court on their own merit and in accordance with law.

62. The appeal is disposed of in the above terms.

63. Pending interlocutory applications are also disposed of in the above terms. Ordered accordingly.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Aandrita Deb, Hony. Associate Editor
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