

Kailash Nath Associates v. Delhi Development Authority (2015) | 27 Jan 2025

Introduction

- This is a landmark judgment relating to award of damages under Section 74 of the Indian Contract Act, 1872 (ICA).
- The Judgment was delivered by a 2 judge bench consisting of Justice RF Nariman and Justice Ranjan Gogoi.

Facts

- **The Auction and Bid was as follows:**
 - Delhi Development Authority (DDA) conducted a public auction.
 - The appellant (Kailash Nath & Associates) made the highest bid of ₹3.12 crores for Plot No. 2-A, Bhikaji Cama Place, New Delhi.
 - The appellant deposited 25% of the bid amount (₹78 lakhs) as earnest money.
- **The Auction Conditions were as follows:**
 - Earnest money (25%) was to be paid immediately after the auction.
 - The bid was subject to acceptance by the Vice-Chairman, DDA.
 - Balance 75% of the bid amount was to be paid within three months of acceptance of the bid.
 - In case of default, the earnest money was liable to be forfeited.
- **Bid Acceptance and Delay:**
 - DDA accepted the appellant's bid on **18th February 1982** and asked for the remaining 75% payment by **17th May 1982**.
 - The appellant sought an extension citing industrial recession.
 - A High Powered Committee recommended extending the payment deadline, and DDA extended it until **28th October 1982**, with interest ranging from 18% to 36%.
- **Further Delays:**
 - A second High Powered Committee recommended more time for payment, specifically including the appellant's case.
 - Despite accepting the recommendations on **14th May 1984**, DDA took no action until **1st December 1987**.
- **Appellant's Consent:**
 - On **1st December 1987**, DDA sent a letter seeking the appellant's consent to pay the remaining amount with 18% interest as per future directions of the Ministry of Urban Development.
 - The appellant consented the same day but received no formal approval from DDA.
- **Central Government Clarification:**
 - On **1st March 1990**, the Central Government informed DDA that the land in question was not Nazul land, making government approval unnecessary.
- **Cancellation of Bid and Forfeiture:**
 - DDA canceled the allotment and forfeited the earnest money (₹78 lakhs) via a letter dated **6th October 1993**, citing non-payment of the balance amount.
- **Re-Auction of the Plot:**
 - On **23rd February 1994**, DDA re-auctioned the plot for ₹11.78 crores.
- **Legal Proceedings:**
 - The appellant filed a suit for specific performance, alternatively seeking damages and refund of the earnest money.
 - The Single Judge ordered a refund of ₹78 lakhs with 9% interest but rejected claims for specific performance and damages.
 - The Division Bench of the Delhi High Court overturned this, upholding the forfeiture of the earnest money.
 - An appeal was filed before the Supreme Court against the above judgment.

Issues Involved

- Whether there should be forfeiture of earnest money in the present facts?
- What are the principles governing award of damages and compensation under Section 74 of Indian Contract Act, 1872 (ICA)?

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Observation

- The Court observed that Section 74 of ICA is sandwiched between Section 73 and 75 which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain through non-fulfillment of a contract after such party

rightfully rescinds such contract.

- It is important to note that like Sections 73 and 75, compensation is payable for breach of contract under Section 74 only where damage or loss is caused by such breach.
- The law on compensation for breach under Section 74 of ICA was summarised as follows:
 - Firstly, the following was laid down by the Court:

Scenario	Condition	Compensation Allowed
Liquidated amount payable (genuine pre-estimate)	If the sum named is a genuine pre-estimate of damages agreed by both parties and found reasonable by the Court.	Full liquidated amount (as a genuine pre-estimate).
Liquidated amount payable (not a genuine estimate)	If the sum named is not a genuine pre-estimate of damages.	Only reasonable compensation, not exceeding the stated amount.
Penalty amount fixed in contract	If the sum is in the nature of a penalty.	Only reasonable compensation, not exceeding the penalty amount.
General rule (both cases)	The amount named (either liquidated or penalty) acts as the upper limit.	Court cannot award compensation beyond this upper limit.

- Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.
- Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.
- The Section applies whether a person is a plaintiff or a defendant in a suit.
- The sum spoken of may already be paid or be payable in future.
- The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.
- Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.
- The Court upheld the decision of the Single Judge in the present facts.

Conclusion

This is the landmark judgment which laid down the principles governing the law on award of damages under Section 74 of the ICA.