

SMT. SARITA DOKANIA AND ANR.ETC.

v.

SMT. KRISHNA DEY AND ANR.  
(Civil Appeal Nos. 4547-4548 of 2013)

MAY 06, 2013

**[SURINDER SINGH NIJJAR AND  
PINAKI CHANDRA GHOSE, JJ.]**

*Interest – On earnest money – Suits for specific performance of agreement – Decreed by trial court – Decree modified by High Court declining the relief of specific performance and granting the alternative relief of refund of earnest money – On appeal to Supreme Court notice issued limited on the question of interest on earnest money – Plea of vendor that vendee was not entitled to interest because the vendor had immediately after the agreement had offered to refund the earnest money – Held: Vendor was liable to pay interest on the earnest money from the date of its receipt – The vendors in order to avoid the liability to pay interest, should have deposited the earnest money with the trial court, instead of utilizing the same – Direction to vendor to refund the earnest money alongwith interest at the rate of 9% from the date of receipt of earnest money, till the date of its payment.*

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4547-4548 of 2013.**

From the Judgment & Order dated 04.01.2011 of the High Court of Patna in FA No. 5 and 8 of 2008.

Dhruv Mehta, A.K. Das, Bankey Bihari, Sameer for the Appellants.

Neeraj Shekhar for the Respondents.

A The following Order of the Court was delivered

**O R D E R**

1. We have heard learned counsel for the parties.

B 2. Leave granted.

C 3. The appellants impugn the judgments dated 4th January, 2011 rendered by the Patna High Court in First Appeal No. 5 of 2008 and First Appeal No. 8 of 2008. The appellants have filed two suits against the respondents for specific performance of agreements dated 25th July, 1999 and 27th July, 1999. The suits were contested by the respondents on legal issues as well as on facts. It was the specific plea of the respondents that notice dated 4th September, 1999 was sent to the appellants with a request to receive back the earnest money as the legal representatives of the sister were not agreeing to the performance of the Agreement executed by the respondents. The appellants, however, did not accept the aforesaid offer and filed the suit for specific performance.

D 4. The Trial Court decreed the two suits for specific performance. The respondents challenged the judgment and decree passed by the Trial Court in First Appeal Nos. 5 of 2008 and 8 of 2008.

E 5. The High Court upheld all the findings recorded by the Trial Court but declined the relief of specific performance and granted the alternative relief for refund of the earnest money deposited by the appellants. The relief of specific performance was denied to the appellants on the ground that specific performance of the contract would cause undue hardship to the respondents. However, on admission that the respondents had received the earnest money, a direction was issued to refund the same. The judgment and decrees passed by the Trial Court was modified accordingly.

F 6. In the present two appeals, the appellants claim that the

High Court having upheld on facts the agreements entered into between the parties and noticing that the respondents had received the earnest money, wrongly declined to grant relief of specific performance to the appellants.

7. We are not inclined to examine the issue on merits at this stage, even though Mr. Dhruv Mehta, learned senior counsel appearing for the appellants has tried to persuade us to decide the issue on merits. This Court while issuing notice on 9.12.2011 restricted the same as to why the appellants be not granted interest on the earnest money admittedly received by the respondents. Faced with this situation, Mr. Mehta submits that the appellants are entitled to receive interest from the date the respondents received the amount till date. On the other hand, Mr. Neeraj Shekhar, learned counsel for the respondents submits that the appellants had been asked to receive back the earnest money on 27th July, 1999. Therefore, the appellants cannot now, rightly, claim any interest.

8. We have considered the submissions made by the learned counsel for the parties. We are of the opinion that the claim made by the appellants with regard to interest deserves to be accepted. It is not disputed that the respondents had offered to pay back the earnest money. However, the offer was rejected by the appellants and the necessary relief was sought by bringing the two Civil Suits. We are not inclined to accept the submission made by the learned counsel for the respondents that as soon as the respondents had made an offer to return the earnest money, the appellants cannot claim interest on the amount of earnest money, which has still not been returned to the appellants. Undoubtedly, the respondents had shown their bonafide to return the money. However, since the refund was not accepted, the respondents ought to have deposited the earnest money in the Trial Court, where the two suits were pending. There was no impediment in the respondents adopting such a course to avoid the liabilities to pay interest. The net result is that the respondents have utilised

A the earnest money ever since it had been received by them. Consequently, in our opinion, the appellants would be entitled to interest on refund of the earnest money.

B 9. In view of the above, we allow the appeals to this limited extent. The respondents are directed to refund to the appellants the amount of earnest money, which have been indicated by the High Court in paragraph 20(vii) of the judgment, together with interest at the rate of 9% from the date of receipt of the earnest money till payment. Let the amount be paid within three months from the date of receipt of copy of this order.

C

K.K.T.

Appeals partly allowed.