**SOME UPDATES**

**EARNEST MONEY CAN BE FORFEITED ON NON-PERFORMANCE IF IT WAS GIVEN BY WAY OF PERFORMANCE GUARANTEE**

Whether the amount deposited with the seller of a property is earnest money capable of being forfeited in the case of non-performance by the buyer, would depend upon the language of the contract. If the contract says explicitly that the deposit made is contemplated to be a performance guarantee and no less, it can be forfeited by the seller in the event of non-performance by the buyer.

The Supreme Court in Satish Batra v. Sudhir Rawal laid down the following ingredients which must be present in the contract so as to enable the seller to forfeit the deposit.

(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, “earnest” is given to bind the contract.

(3) It is part of the purchase price when the transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest.

In the case on hand, the petitioner seller had entered into a sale agreement with the respondent to sell a property for Rs 70 lakh with the buyer making a deposit of Rs 7 lakh liable to be forfeited if he does not keep his part of the promise. On the flip side, it was also agreed that the seller would pay double this amount i.e. Rs 14 lakh to the buyer in case he defaults. On the facts of the case the Supreme Court had no hesitation in overturning the Delhi High Court verdict and instead upholding the claim of the petitioner to forfeit Rs 7 lakh deposited with him as earnest money.

**LOOSE-SHEET ENTRY CANNOT BE THE BASIS FOR TAXING AS UNEXPLAINED INVESTMENT**

When in the course of search, loose documents, not being part of returns or accounts are found, the entries found therein cannot be the basis for taxing the amount as unexplained investment emanating from an undisclosed income. In CIT v. Ranchi Medical Research & Development Foundation (P) Ltd, the Jharkhand High Court found that the assessing officer had based his presumption of unexplained investment of Rs 36 lakh from noting in a loose-sheet found in the course of search. What aroused his suspicion was against this payment, the name of one Mithlesh Singh was mentioned. Accordingly, he went on to conclude that this must represent a transaction of purchase of immovable property from Mithlesh Singh.

The High Court agreed with the Respondent that nothing turned on this entry alone without further corroborative evidence as to purchase of immovable property from out of undisclosed income. The Respondent gave the explanation that the entry in the loose sheet in fact represented the need for arrangement of margin money payable to bank for loan for purchase of diagnostic equipments from Siemens Ltd.

# LAW OF LIMITATION WILL NOT APPLY WHEN COURT DECREES AN AMOUNT AS DEBT

When bank guarantees are enforced and the bank pays up, the amount thus payable to the bank becomes a debt to which the law of limitation applies. But when the firm disputes the amount payable to the bank and such dispute is finally resolved in favour of the bank, the amount payable not only becomes a debt but in addition is not subject to the law of limitation.

### C.S. COMPANY CASE

This was the verdict of Kerala High Court in *C. S. Company vs Punjab and Sind Bank*. The petitioner was a partnership firm at whose request the respondent-bank had furnished two guarantees for Rs 1 lakh and Rs 19 lakh in 1983 to Kerala State Electricity Board.

On enforcement of the guarantees by the electricity board, the bank demanded payment of the guarantee amount with interest from the petitioner. The matter got embroiled in litigation with the trial court holding in favour of the bank, but the High Court reversed the trial court verdict leading to appeal before the Supreme Court which ruled in favour of the bank.

The firm continued to persist with its delaying tactics and prevarications when the bank sought to read the riot act to it, invoking the Securitisation Act of 2002 to seize the firm’s properties to realise its dues.

### NOT AN NPA

First the firm raised the bogey of the amount not having been declared an NPA (non-performing asset) when the amount decreed by the apex court was not paid.

The Kerala High Court, however, was not amused and held that the amount decreed by the apex court indeed was a debt within the meaning of the Securitisation Act and it was not necessary to declare the amount as NPA after every court proceeding.

That the amount was declared an NPA in 1987 was good enough for the purposes of the Securitisation Act.

The petitioner wanted to wriggle out of his liability on another ground — that between 1983 when the guarantee was extended and 2012 much had happened and the law of limitation of 12 years had caught up with the bank. The High Court pointed out that the law of limitation did not apply to amounts decreed by courts.

***Source: The Hindubusinessline***