

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21031/2007

(From the judgement and order dated 17/08/2007 in CMWP No.
38144/2007 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

AHTRAM ELAHI Petitioner(s)

VERSUS

STATE OF U.P.& ANR. Respondent(s)

(With prayer for interim relief and office report)
(For final disposal)

Date: 26/10/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE G.S. SINGHVI

For Petitioner(s) Dr. Rajeev Dhawan, Sr. Adv.
Mr. Lakshmi Raman Singh, Adv.
Ms. Udit Singh, Adv.

For Respondent(s) Mr. Vishwajit Singh, Adv.
Ms. Veera Kaul Singh, Adv.
Mr. Siddharth Sengar, Adv.
Mr. Abhindra Maheshwari, Adv.
Mr. Pankaj Singh, Adv.

Ms. Shobha Dikshit, Sr. Adv.
Ms. Malvika Trivedi, Adv.
Mr. Anuvrat Sharma ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Appeal is allowed in terms of the signed order.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.7129 of 2009
(Arising out of SLP (C) No.21031 of 2007)

Ahtram Elahi ... Appellant

Vs.

State of U.P. & Anr. ... Respondents

O R D E R

Leave granted. Heard learned counsel.

2. The second respondent (for short 'NOIDA') invited applications for allotment of HIG flats in Sector 105, Noida vide brochure issued in July, 2006. The appellant made an application on 19.8.2006 for allotment of a HIG flat costing Rs.34,93,500/- and made an initial deposit of Rs.6,00,000/-. By letter of allotment dated 18.9.2006 sent to the Jeddah address (Saudi Arabia) of the appellant, NOIDA allotted flat No.39-A, Block A, Sector 105 to the appellant and called upon him to deposit the balance price of Rs.28,93,500/- within two months. Well within the said two months' period, on 8.11.2006, the appellant instructed his banker (Citibank, Lucknow, where he was having an NRI Account) to prepare and tender a demand draft in favour of NOIDA for the said sum of Rs.28,93,500/-. Due to some mistake and oversight, the Bank sent the draft to a wrong branch and as a result, demand draft reached NOIDA only on 21.12.2006, after the 60 days period. The appellant explained the reasons for the delay by his letter dated 18.1.2007.

3. The said demand draft was encashed by NOIDA. However, subsequently, NOIDA cancelled the allotment by letter dated 26.2.2007 on the ground that the appellant did not deposit the balance amount within 60 days as required by the letter of allotment and there was also no request for extension within the said period. NOIDA, therefore, forfeited 5% of the total deposited amount and refunded Rs.33,30,075/- by a cheque to the appellant. The appellant has not encashed the said cheque.

4. The appellant challenged the cancellation of allotment by filing a writ petition before the Allahabad High Court. The High Court, by order dated 2.7.2007 directed NOIDA to reconsider the matter and take appropriate decision.

Accordingly, Noida considered the representation given by the appellant and rejected the request for restoration by letter dated 2.8.2007. That led to a second writ petition being filed by the appellant and that writ petition has been dismissed by the impugned order dated 17.8.2007. Feeling aggrieved, the appellant has filed this appeal by special leave contending that the court has not considered the relevant aspects.

5. The scheme of allotment makes it clear that Rs.6 lakhs had to be paid as registration amount and the balance of Rs.28,93,500/- could be paid within 60 days without interest and in the event of deposit of the balance beyond the stipulated date, interest at the rate of 13% per annum with half yearly rests, would be charged. It is not seriously disputed that Citibank, the appellant's banker, were instructed to send a demand draft well in time but due to some mistake and oversight on its part, there was delay in tendering the balance. But the fact remains that the amount was paid by the appellant before cancellation. We are of the view, in the peculiar facts and circumstances of this case, interest of justice would be served if NOIDA is directed to restore the allotment.

6. But it should also to be noticed that when appellant ultimately paid the balance, he did not tender the interest for the belated period. Nor did he seek any extension. When there was delay in payment, the appellant ought to have tendered the interest also. He did not do so. Therefore, we are of the view that forfeiture of 5% of the price as penalty, does not call for interference.

7. We accordingly allow this appeal and set aside the judgment of the High Court, allow the writ petition and quash the cancellation of allotment. We direct the respondents to restore the allotment subject to the following :

(i) The appellant shall pay the interest on the sum of Rs.28,93,500/- at 13% per annum from 16.11.2006 to 21.12.2006.

(ii) The appellant shall also pay 5% of Rs.34,93,500/- to make good the price.

(iii) The amounts as per paras (i) and (ii) shall be remitted by the appellant to NOIDA within six weeks.

(iv) On such payment, Noida shall restore the allotment, deliver the flat and convey the same as per Rules.

8. As the order is made on the peculiar facts of the case, it shall not be treated as a precedent.

J.
(R V Raveendran)

New Delhi;
October 26, 2009.

J.
(G S Singhvi)