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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 94 of 2020

1 - Arun Choudhari S/o Dharm Narayan Choudhari Aged About 36 Years R/on Sarju Bagicha, C. B. Heights, Bilaspur Tahsil And District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

... Appellant

versus

1 - Ajay Shukla S/o Sudama Prasad Shukla Aged About 46 Years R/o Green Park Colony Jarhabhatha, Bilaspur Tahsil And District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

2 - State of Chhattisgarh Through The Collector, Bilaspur District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

... Respondents

For Appellant	:	Ms. Divya Sahu, Advocate on behalf of Shri Rajeev Kumar Dubey, Advocate
For Respondent No.1	:	Shri Shyam Kumar, Advocate on behalf of Shri Achyut Tiwari, Advocate
For Respondent No.2/State	:	Shri Rishabh Chandra Singh Deo, Panel Lawyer

Hon’ble Shri Justice Sachin Singh Rajput

Judgment on Board

16/09/2026

1. Invoking the First Appellate Jurisdiction under Section 96 of the Code of Civil Procedure, 1908 (for short ‘CPC’) the

appellant/defendant No.1 has preferred this first appeal assailing the legality, correctness and validity of the judgment and decree dated 13.12.2019 passed by 2nd Additional District Judge, Bilaspur, District Bilaspur (CG) in Civil Suit No.32A of 2017.

2. By the judgment and decree impugned, while denying the decree of specific performance of contract, the learned Trial Court has granted a decree of refund of earnest money of Rs.4,00,000 with 6% interest.
3. The appellant happens to be defendant No.1, whereas respondent No.1 happens to be the plaintiff and respondent No.2 happens to be defendant No.2 before the learned Trial Court.
4. The plaintiff filed a suit for specific performance of a contract in respect of the suit land bearing Khasra No.778/4, 779/5 total area 0.24 acre out of 0.90 acre situated at Mouja Ameri, P.H.No.26 (New 43), R.I.C. and Tahsil Sakri, District Bilaspur (Chhattisgarh). As per further pleadings, defendant No.1 came in contact with the plaintiff and stated that he is in need of money and, thus, he inclined to sell the suit land which is recorded in his name and free from all encumbrances. Thus, a proposal was made by defendant No.1 to the plaintiff and believing upon the wordings of defendant No.1, the plaintiff agreed to purchase the suit land for a total consideration of Rs.24,00,000 and an agreement was reduced in writing by executing an agreement to sell on 7.2.2014 in presence of two witnesses. An amount of Rs.4,00,000 as an earnest money was received by defendant No.1 from the plaintiff through a cheque bearing No.153957. An

assurance was given by defendant No.1 that sooner registry of the suit land will be executed. However, defendant No.1 denied registration of the suit land despite of receiving Rs.4,00,000 as earnest money. The plaintiff further pleaded that he was always ready and willing to perform his part of the contract and purchase the suit land in terms of the agreement to sell. On 28.2.2017, a registered notice was sent by the plaintiff to defendant No.1 seeking specific performance of the contract, however, the same has not been done by defendant No.1. Thus, the suit for specific performance of the contract was filed.

5. A written statement was filed by defendant No.1 in which he denied the averments of the plaint. He further denied the execution of the agreement to sell and his signature on the agreement to sell. It has been further pleaded by defendant No.1 that he does not know the witnesses, namely, Manish and Sushant Goswami mentioned in the agreement to sell. He further pleaded that on the basis of forged and fabricated document the suit for specific performance of contract was filed. No such agreement was ever executed by him.
6. Defendant No.2/State being a formal party has not filed any written statement and it was proceeded *ex parte*.
7. On the basis of above pleadings, following issues have been framed by the learned Trial Court:

"क्र.	वाद-प्रश्न	निष्कर्ष
01.	क्या दिनांक 07.02.2014 को प्रतिवादी क्रमांक 01 ने वाद भूमि को वादी के पक्ष में विक्रय करने का	"प्रमाणित हां"

	करार करते हुये 4,00,000/-रु० चैक क्रमांक-153957 के माध्यम से बतौर अग्रिम प्राप्त कर अनुबंध निष्पादित किया था ?	
02.	क्या वादी इकरारनामा का पालन करने के लिए सदैव इच्छुक एवं तत्पर रहा है?	"नहीं"
03.	क्या वादी संविदा के विनिर्दिष्ट अनुपालन की डिकी पाने का अधिकारी है ?	"नहीं"
04.	क्या वादी संविदा के विनिर्दिष्ट अनुपालन न हो पाने की स्थिति में बतौर अग्रिम दिए गए प्रतिफल राशि प्रतिवादी क्रमांक 01 से मय ब्याज प्राप्त करने का अधिकारी है?	हां वादी चार लाख रुपये अनुबंध पत्र निष्पादन दिनांक से अदायगी दिनांक तक 06 प्रतिशत वार्षिक ब्याज की दर से प्राप्त करने का अधिकारी है।
05.	सहायता एवं वाद व्यय ?	निर्णय की अंतिम कंडिका अनुसार"

8. The plaintiff examined as many as 4 witnesses to prove his pleadings and exhibited 6 documents as Ex.P1 to P6. Defendant No.1 examined himself and exhibited 2 documents as Ex.D1 and D2.
9. The learned Trial Court, on assessment of the evidence and other material available on record, decided issue No.1 as positive, however, decided issue No.2 as negative and against the plaintiff. While deciding issue No.4, instead of grant of a decree of specific performance of the contract, a decree of refund of the earnest money of Rs.4,00,000 with 6% interest was granted.
10. Challenging the same, this first appeal has been filed by

defendant No.1.

- 11.** Learned counsel appearing for the appellant vehemently argued that the finding recorded by the learned Trial Court is erroneous, contrary to the evidence on record and bad in law. She further submits that the learned Trial Court has not appreciated the evidence on record in its proper perspective and committed an error of law in granting the decree of refund of earnest money. She further submits that the plaintiff was not able to prove the execution of the agreement to sell and the agreement to sell was specifically denied by defendant No.1. Despite that, the learned Trial Court has committed an error in deciding issue No.1 as positive and granting the decree of refund of earnest money of Rs.4,00,000 with 6% interest. She further submits that the plaintiff could not prove the signature of defendant No.1 on the agreement to sell. She further submits that the plaintiff could not prove that any earnest money was paid by him to defendant No.1. Thus, the findings on these issues require to be set aside.
- 12.** Learned counsel appearing for respondent No.1 supports the impugned judgment and decree and submits that the findings recorded by the learned Trial Court are based on proper appreciation of the evidence on record. The learned Trial Court has meticulously examined the evidence and after proper marshaling of the evidence, decided issues No.1 and 4 in favour of respondent No.1/plaintiff and the findings so recorded do not appear to be contrary to the evidence on record. The findings do not require any interference by this Court and this appeal deserves to be dismissed.

- 13.** I have heard learned counsel appearing for the parties and perused the record of the learned Trial Court with due care.
- 14.** The points for determination before this Court are as to whether the Trial Court was justified in granting a decree of refund of Rs.4,00,000 with 6% interest in favour of the plaintiff and whether the plaint sustains the judicial scrutiny of this Court?
- 15.** A submission has been advanced by learned counsel appearing for the appellant that the finding on issue No.1 is erroneous and contrary to the evidence on record. Though the learned Trial Court has decided issue No.1 as positive, however, with regard to issues No.2 and 3 it has been held by the learned Trial Court that the plaintiff was not ready and willing to perform his part of the agreement to sell and also held that he is not entitled to a decree of specific performance of the contract. Now the issue which remains to be determined by this Court is as to whether the plaintiff is entitled to refund of the earnest money. Learned counsel for the appellant/defendant No.1 has tried to persuade and convince this Court that as the agreement to sell was not executed by defendant No.1, question of any refund does not arise. The question whether the plaint sustains the judicial scrutiny of this Court also needs to be determined.
- 16.** The burden to prove issue No.4 was upon the plaintiff. In order to prove the payment of Rs.4,00,000, the plaintiff has examined an official of his bank as a witness who has categorically stated that a cheque bearing No.153957 (Ex.P5) was issued by the plaintiff in favour of defendant No.1 which contains the signature of the

plaintiff on front side of the cheque and that of defendant No.1 on its rear side. Learned counsel for the appellant has also stated that the amount was debited from the bank account of the plaintiff and was credited into the bank account of the appellant/defendant No.1. On the basis of above evidence, the learned Trial Court came to a conclusion that the amount of Rs.4,00,000 through bank transaction was paid to defendant No.1. No contrary evidence disputing the said fact is otherwise available on record to suggest that there was no transaction of Rs.4,00,000 in the bank account of defendant No.1. Thus, in the opinion of this Court, the finding so record by the learned Trial Court appears to be based on proper appreciation of the evidence on record, particularly, when the amount was paid through bank transaction. No other ground has been urged in this appeal.

17. Thus, on the basis of above discussion, this Court does not find any illegality or material irregularity in the findings recorded by the learned Trial Court. The appeal is liable to be and is hereby dismissed.

18. A decree be drawn up accordingly.

Sd/-
(**Sachin Singh Rajput**)
JUDGE