

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12498 of 2014

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1. Saroj Sinha @most. Saroja Devi Wife of Late Ram Chandra Prasad Sinha.
 2. Suraj Kumar Sinha Son of Late Ram Chandra Prasad Sinha.
 3. Sandeep Kumar Sinha Son of Late Ram Chandra Prasad Sinha. All resident of village/Mohalla - Lohia Nagar, P.O. - Lohia Nagar, P.S. - Kankerbagh, Town AND District - Patna (Bihar).

.... Petitioner/s

Versus

Sri Manoj Kumar Son of Sri Sohan Ram. Resident of village - Haridashpur, P.O. - Khagaul, P.S. - Rupaspur, Town and District - Patna (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey, Adv.

For the Respondent/s : Mr. J.S. Arora, Adv.

Mr. Ashok Kumar Mishra, Adv.

Mr. Varun Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 05-11-2015 Heard Mr. D. Chaubey, the learned counsel for the petitioners and Mr. J.S. Arora, the learned counsel for the respondents.

Calling in question the legal acceptability of the impugned order by which the prayer of the defendant-petitioners for dismissal of the suit has been rejected, the present application under Article 227 of the Constitution of Indian has been filed.

The plaintiff filed the suit for specific performance of contract against the defendants on the basis that there was an

agreement for sale in between the plaintiff and the defendants for the suit property and the plaintiff also paid amount of Rs. 6,80000/- by way of advance out of consideration money but the defendants later on declined to execute the sale deed as per the terms of the agreement. The alternative relief in the suit was for refund of the advance amount paid by the plaintiff in the eventuality when the main relief with regard to the specific performance of contract could not be granted.

The defendant-petitioners filed a petition praying for dismissal of the suit on the basis that the defendant-petitioners in order to secure their anticipatory bail in the complaint case filed by the plaintiff against them had deposited Rs. 6,80000/- which was the advance money paid by the plaintiff to them upon direction by the court as a condition for grant of the bail. The prayer, therefore, was made by the defendants to dismiss the suit as the plaintiff had already got the alternative relief for refund of the advance money when the defendants deposited the said amount in pursuance to the court order. The learned court below after considering the facts and circumstances of the case and hearing the parties has turned down the prayer on behalf of the defendant-petitioners for dismissal of the suit on that basis.

Mr. Chaubey, the learned counsel for the petitioners



has submitted that the learned court below has misdirected itself in rejecting the prayer of the defendant-petitioners for dismissal of the suit. It has been emphasized by the learned counsel that once after the defendants have deposited the advance money received by them from the plaintiff there was no cause of action surviving to the plaintiff to pursue the suit and more so when the said amount was paid upon the order of the court while granting the prayer for bail to the petitioners. The learned counsel for the petitioners has also argued that there is absence of readiness and willingness of the plaintiff to perform his part of the contract and the limitation for filing the suit has also expired in view of the stipulations in the agreement for sale.

Mr. Arora, the learned counsel for the plaintiff-respondent, in reply, has supported the impugned order and has further submitted that the defendant-petitioners have never raised the issue of readiness and willingness of the plaintiff to perform his part of the contract or the issue of expiry of the period of limitation for filing the suit, in their petition filed before the learned court below and therefore they cannot be allowed to raise this issue for the first time at the revisional stage.

After considering the facts and circumstances of the case and the submissions on behalf of the parties, it is manifest

from the reliefs prayed in the plaint (Annexure-1) that the main relief has been for a decree for specific performance of contract in pursuance to the agreement for sale. The relief for refund of the advance money has been sought only when the main relief for specific performance of contract is not to be granted to the plaintiff, as prayed. As such, simply for the reason that the defendant-petitioners upon the order of the court have deposited the advance money paid to them by the plaintiff which was a condition for granting the bail to them, the suit cannot be dismissed as the cause of action for the main relief for a decree for specific performance of contract is still surviving. This Court does not find any error or illegality in the impugned order. Moreover, the issue of absence of readiness and willingness or bar of limitation has not been raised by the defendant-petitioners in this petition (Annexure-3) and the learned counsel for the opposite party has rightly submitted that this issue cannot be raised for the first time at the revisional stage for the purpose of assailing the impugned order.

The writ application being sans merit is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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