

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 49 of 2015**

- H. D. F. C. Ltd. Through : Constituted Attorney Alaska Towers, Shankar Nagar, P.S. Civil Lines, Raipur, Civil & Revenue District Raipur, Chhattisgarh

---- Applicant**Versus**

1. Puneet Ram Khunte, S/o Shri Kalap Ram Khunte Aged About 62 Years R/o 14, Near Sahyog Park, Palas Vihar, New Puraina Mahaveer Nagar, P.S. Rajendra Nagar, Raipur, Chhattisgarh
2. Smt. Tara Manikpuri W/o Shri Ayodhya Das Manikpuri Aged About 35 Years R/o 184, New Rajendra Nagar N.M.D.C. Colony, P.S. Rajendra Nagar, Raipur, Chhattisgarh
3. Ayodhya Das Manikpuri S/o Shri L.G. Manikpuri Aged About 37 Years R/o 184, New Rajendra Nagar N.M.D.C. Colony, P.S. Rajendra Nagar, Raipur, Chhattisgarh
4. State Of Chhattisgarh Through : The Collector, Raipur, Chhattisgarh

---- Respondents

For Applicant	:	Shri V.V.S.Murthy, Senior Advocate with Shri Mukesh Sharma, Advocate.
For Respondent No.1	:	Shri Anumeh Shrivastava, Advocate.
For Respondents No.2&3	:	None appears
For Respondent No.4	:	Shri R.K.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****02/12/2016**

This is the revision filed by the defendant No.3/H.D.F.C. Limited against the order dated 01.07.2014 passed by the 9th Civil Judge, Class-2, Raipur, in Civil Suit No. 60-A/2014, by which, the applicant's application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code, 1908') has been refused while fixing the case for plaintiff's evidence on 15.07.2014.

2. Brief facts of the case are that the plaintiff/respondent No.1 – Puneet Ram Khunte has instituted a suit on 20.04.2012 for declaration and injunction by submitting, inter alia, that the registered deed of sale executed by him on 18.11.2010 in favour of defendants No. 1 & 2 be declared as null and void as the terms and conditions stipulated in the agreement, which was executed on the same day, i.e., 18.11.2010 were not complied with. It was claimed further that the defendants be restrained from interfering in his peaceful possession.

3. The defendants, upon receiving the summons, have entered in the matter and have submitted their written statement. During trial, the defendant No.3/applicant has moved an application as per the provision prescribed under Order 7 Rule 11 of the Code, 1908, on 05.05.2014 for rejection of the plaint by submitting that the suit as framed is barred by law as per the provisions prescribed under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

4. The plaintiff/respondent No.1 has submitted his reply with regard to the aforesaid application and stated that while entertaining the application filed under Order 7 Rule 11 of the Code, 1908, the plaint averments alone are required to be seen. Therefore, the application deserves to be rejected.

5. The trial Court, upon hearing the parties, has rejected the said application vide its impugned order dated 01.07.2014 by observing that the suit as framed prima facie is maintainable and accordingly directed for fixing the case for plaintiff's evidence.

6. Mr. V.V.S. Murthy, learned Senior Counsel with Mr. Mukesh Sharma for the applicant submitted that the order impugned is not sustainable as the suit is

apparently barred by law as provided under Section 34 of the SARFAESI Act. By ignoring the ingredients of the said provisions, the trial Court has erred in rejecting the said application.

7. Shri Anumeh Shrivastava, learned counsel for the plaintiff/respondent No.1 submitted that while entertaining the application filed under Order 7 Rule 11 of the Code, 1908, the plaint averments alone are required to be examined, and therefore, the trial Court, while examining the same, has rightly rejected the said application. Therefore, the order impugned as passed by the trial Court does not require to be interfered.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. On going through the plaint averments, it is clear that the plaintiff has instituted the suit for declaration and injunction mainly on the ground that the registered deed of sale executed on 18.11.2010 be declared as null and void as the terms and conditions stipulated in the agreement dated 18.11.2010 have not been complied with by the defendants No. 1 & 2/purchasers. Since the trial Court has already framed the issues on 13.02.2013 while fixing the case for plaintiff's evidence, therefore, at this stage, instead of observing anything with regard to the maintainability of the suit, it is rather desirable to direct the trial Court to decide the suit as early as possible. Therefore, I direct the trial Court to decide the suit as early as possible, preferably, within a period of 6 months.

10. The parties may also be at liberty to make an application, as required under Order 14 Rule 5 of the Code, 1908, for framing any other issues. Parties are directed to appear before the trial Court on 4th January, 2017 and the trial Court shall decide the suit within a period of 6 months from that day.

11. Record of the lower Court be sent back forthwith.

12. With the above observation, the revision stands disposed of.

13. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani