

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 315 of 1999**

1. M.P. Housing Board through Chairman MP Housing Board Arera Colony, Bhopal.
2. MP Housing Board Division Durg M.P. through Estate Manager, Padmanabhpur, Tah and District Durg (MP) (now CG)

---- Appellants**Versus**

1. Smt. Kalyani Tripathi, W/o Shri Krishna Kant Tripathi, aged about 45 years, r/o LIG 8 Padmanabhpur Tah and District Durg (MP)(now CG)
2. Pramod Kumar Sahu s/o Shri S.R. Sahu, R/o shop No. 10, MIG Market, Padmanabhpur, PS Kotwali, PO Padmanabhpur, Durg, District Durg (CG)
3. Shri P.L. Deshpandey aged about 30 years r/o Santra Wadi, Badsahi Bidi, Tah and District Durg (MP) (now CG)

---- Respondents

For Appellants	:	Shri Sanjay Patel, Advocate
For Respondent 1	:	Shri Vimlesh Bajapi, Advocate
None for other respondents.		

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****05/01/2017**

1. By this First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (for short the CPC), the appellants/defendants D1 and D2 have challenged the legality and propriety of the part of the judgment dated 15.12.1998 passed in C.S. No. 15A/94 whereby and whereunder the learned court below has decreed the suit filed on behalf of respondent No.1 against the present appellants and other respondents. The court below directed the appellants to make allotment of the suit shop within 2 months in the name of plaintiff/ respondent No.1 in compliance of the contract executed by the parties. Further directed that the plaintiff/respondent No. 1 shall deposit the amount as per directions. The appellants are not challenging the other part of the judgment and decree as shown in para 28 (2).

2. Brief facts of the Civil Suit filed before the trial court are that the suit shop

i.e. shop no. 10 situated at MIG market Padmanabhpur, Durg was given to plaintiff/ respondent No.1 for running a General Store on licence contract. Subsequently, the appellants gave offer to the plaintiff/ respondent 1 to deposit one time rent and gave notice to deposit the amount mentioned. Notices were issued again and for non-compliance, the said shop was given to defendants D3 and D4. Against the said proceedings the plaintiff had filed the suit for cancellation of the contract in favour of defendants D3 and D4 and for possession of said suit shop. The defendants had filed their written statement and denied the pleadings of the plaint. The court below had framed issues and after affording opportunity of hearing to the parties to adduce evidence in the matter, passed the judgment and decree dated 15.12.1998, allowed the suit and directed for allotment of the said suit shop in the name of the plaintiff within 2 months by the appellants. The plaintiff too was directed to deposit the amount due. Defendants D3 and D4 were also directed to give the vacant possession of the said shop to the plaintiff within 2 months. Against the said judgment and decree the defendants D3 and D4 have not preferred any appeal. Only the defendants D1 and D2/ the present appellants preferred the appeal by filing the instant First Appeal. They have taken the ground that despite many notices as respondent No.1 has not complied to deposit money as offered for one time deposit, the appellants were within discretion to cancel the allotment and to re-allot the said suit shop to defendants D3 and D4. Hence, it is prayed that the appeal may be allowed and the said part of the judgment and decree be set aside.

3. I have heard learned counsel for the parties and perused the record of the Court below.

4. Learned counsel for the appellants would submit that as respondent No. 1 has not complied with the directions of the appellants issued under the provisions of rules and has not deposited one time amount as offered, the appellants were within their discretion to cancel the said allotment and re-allot the same to the defendants D3 and D4, hence, the appeal may be allowed and the said part of the judgment and decree may be set aside.

5. Learned counsel for respondent 1 had opposed the instant First Appeal

and the arguments advanced on behalf of the appellants and would submit that looking to the entire contents of Ex. D1, the licence agreement and Ex .P/1 and P/4 whereby the appellants offered for the sale of shop No.10, the suit shop by depositing the amount to respondent 1 and as respondent 1 was the present tenant, hence, offer for sale i.e. allotment on total value, respondent 1 is entitled for the said sale offered by the appellants vide memo Ex. P/1 and P/4 and in compliance of said offer respondent 1 deposited the part of the amount, with this, they have proceeded and intended to remain with the possession of the said suit shop under the terms and conditions and offer given by the appellants, hence, the trial Court had not committed any illegality or impropriety by allowing the suit of respondent 1. Therefore, there may not be any scope for interference with the judgment and decree passed by the court below in totality and prayed that the appeal may be dismissed and the judgment and decree passed by the trial Court may be affirmed.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence oral and documentary adduced before the trial Court.

7. Upon minute examination of the witnesses and the documents especially D/1, the licence agreement in favour of respondent 1, it appears that the offer was given to respondent 1 vide Ex.P/1 and P/4 and also Ex.P/3 whereby some amount is deposited towards the offer. In the considered view of this Court on the said basis, the trial Court had decreed the suit filed by respondent 1, therefore, this Court does not see any scope for interference with judgment and decree passed by the court below. Consequently, the instant First Appeal is devoid of substance. The same is dismissed as not maintainable. It is ordered that:

(1) The judgment and decree passed in C.S.No.15A/1994 dated 15.12.1998 is hereby affirmed.

(2) The present appeal filed by the appellants is hereby dismissed.

(3) The parties shall bear their own cost.

(4) Decree be drawn accordingly.

Sd/

(Chandra Bhushan Bajpai)
Judge