

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.221 of 2017

Girish Singh Thakur, S/o Shri Narayan Singh Thakur, aged about 54 years, Occupation Advocate, R/o Sattigudi Chowk, Kotra Road, Raigarh, Tahsil & District Raigarh (Chhattisgarh).

---- **Petitioner**

Versus

Deepak Agrawal, S/o Shri Indrasen Agrawal, aged about 30 years, Occupation-Business, R/o Vaishali Nagar, Usha Heights Phase-2, House No.102, Bilaspur, District Bilaspur (CG).

---- **Respondent**

For Petitioner : Mr. Vivek Tripathi, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

23.03.2017

1. Heard on admission.
2. This petition, under Article 227 of the Constitution of India, has been filed by the petitioner against order dated 24/12/2016 by which, the review petition filed by the petitioner against judgment and decree dated 04.03.2016 passed by First Additional District Judge, Raigarh in Civil Suit No.71-A/14 has been dismissed.
3. Learned counsel appearing for the petitioner/defendant submits that the Court below, while decreeing the suit has also directed for payment of an amount of Rs.3,25,000/- to the respondent/plaintiff towards deposit of earnest money. He submits that the Court below has committed apparent illegality and error in granting a decree for refund of security earnest money, which was not prayed by the

respondent/plaintiff herein in the said suit. He further submits that in view of the provisions of Section 22 of the Specific Relief Act as well as relevant provision of Order 2 Rule 2 of the Code of Civil Procedure, refund of amount could not be ordered without there being any specific claim in that regard.

4. This issue cannot be examined in the writ petition because there are specific pleadings and the Court below has considered the matter after examination of pleadings and evidence on record to come to the conclusion that the entire amount is liable to be paid to the plaintiff by the defendant. Learned trial Court in the impugned order has taken into consideration this argument and came to the conclusion that there is no apparent illegality or error.
5. The plaintiff/respondent herein had filed a suit for specific performance of contract in the matter of agreement of sale of the land in dispute. Though the Court below has passed a decree of specific performance on the basis of the agreement of sale, the amount is alleged to have been deposited by the defendant, therefore, in these circumstances, I am not inclined to interfere with the impugned order. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge