

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 34 of 2008**

*{Arising out of Judgment dated 29.09.2007 passed in Civil Suit No. 4-A/2006
(Instituted on 23.03.2001), by the learned 7th Additional District Judge, Raipur,
Chhattisgarh}*

Aman Singh Chandrakar Aged about 63 years, S/o Fakir Singh Chandrakar,
Prof. Chandrakar Pustak Bhandar, Vivekanand Ashram, Raipur, R/o 20, Shala
Marg, Choube Colony, Raipur. (Dead), Through LRs

- I. Indrapal Singh Chandrakar, S/o Late Amansingh Chandrakar, aged about 45
years, R/o 20, Sala Marg, Chobey Colony, Raipur, District Raipur, Chhattisgarh.
- II. Minakchhi Chandrakar Wd/o Late Amansingh Chandrakar, aged about 63 years,
R/o 20, Sala Marg, Chobey Colony, Raipur, District Raipur, Chhattisgarh.

---- Appellants**Versus**

Dr. Harshwardhan Tiwari S/o Late Pt. Ramgopal Tiwari, R/o Kanchanganga
Nagar, Phase II, Raipur, Tehsil and District Raipur, Presently residing at
Ravishankar Vishwavidyalaya Parisar, Raipur, Chhattisgarh.

---- Respondent

For Appellants	:	Ms. Sharmila Singhai, Advocate.
For Respondent	:	Shri Avinash Mishra, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****20/11/2017**

1. This appeal arises from a suit for specific performance of a contract for sale of
immovable property. Exercising discretion in terms of the provisions of the

Specific Relief Act, the Court below concluded that the Plaintiff was entitled only to a decree for return of advance. It quantified such amount due as at Rs. 7,24,000/- and granted a decree for return of advance with interest at the rate of 6% per annum.

2. We have heard the learned counsel for the Appellants-Defendant and the learned counsel for the Respondent-Plaintiff.
3. In this appeal by the Appellant-Defendant, the plea is that the Defendant has paid off the amount received by him and found by the Court below as advance. The case set up by the Defendant is that the amounts were actually borrowed and were returned from time to time. Thus, what was raised before the Court below by the Defendant was the plea of discharge against the advance shown in the contract for sale. So much so, the burden of proof of discharge rested squarely on the Defendant.
4. The suit was instituted in the year 2001. The Defendant did not produce any material alongwith the written statement to justify the plea of discharge. At a later point of time, may be after around 2 years or so, documents were attempted to be brought on record. Obviously, even if those documents are taken on record by the trial Court, they have to be proved in accordance with law to discharge the burden of proof as regards the plea of the Defendant as to payment of funds to the Plaintiff which would discharge the liability to return the advance.
5. Hearing the learned counsel for the Appellants and the learned counsel for the Respondent, we do not find that any fault can be attributed to the decision of the Court below in granting a decree for return of advance inasmuch as there was no legal evidence before the Court below which could be relied upon to uphold the plea of discharge. We also cannot find fault with the Court below for having passed the decree without waiting for the Defendant to place further materials on record. However, we are inclined to take the view that the Appellant-Defendant

could be extended an opportunity to adduce evidence by seeking admission of materials in relation to the alleged discharge and thereupon tender evidence in support of the plea of discharge, in accordance with law. The situation in hand is one created only because the Defendant did not do the needful in accordance with the provisions of the Civil Procedure Code within the time limit prescribed or even within a reasonable time which could be extended by the trial Court. On the whole, we are of the view that ends of justice would be satisfied if an order of remand is made giving opportunity to the Appellants-Defendant to seek reception of the documents and also to tender evidence before the Court below, however, on terms.

6. The suit was instituted in 2001. The advance amount as found by the Court below is Rs. 7,24,000/-. On a fair estimation, interest at the rate of 6% per annum for 16 years from suit till now would run to be an amount of more than Rs. 6,95,000/-. Bearing that in mind and to provide adequate cost compensation to the Respondent-Plaintiff while making this order of remand, we are of the view that ends of justice would be satisfied if the Appellant pays the Respondent-Plaintiff an amount of Rs. 1,50,000/- as costs to sustain this order of remand.
7. In the result, the impugned judgment and decree, to the extent it relates to the Defendant's plea of discharge, is set aside paving way for the Appellant-Defendant to seek reception of evidence and also to adduce further evidence before the Court below on the question of discharge on the basis of pleadings as they now stand, on the condition that the Appellant-Defendant pays Rs. 1,50,000/- to the Respondent-Plaintiff towards costs within a period of one month from the date of receipt of a copy of this judgment, failing which the benefit of this judgment will stand vacated and the decree and judgment would then stand confirmed automatically. The parties are directed to mark their appearance before the Court below on 2nd January, 2018. If this order of remand takes effect on the order of costs being satisfied, the trial Court will take up the

suit for evidence and disposal on out of turn basis and have the same disposed within an outer limit of three months from then. The appeal is ordered accordingly without entering on merits of the plea of the Appellant-Defendant as to discharge; however confirming all the other findings as contained in the impugned judgment.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE