

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 111 OF 2016**

Mehul Patel S/o Shri Kiran Patel, Aged About 40 Years R/o Chaubey Colony,
Raipur, Tahsil And District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Jayant Rao S/o Late Shri Rajesh Rao, Aged About 61 Years R/o Marathapara,
Near Peepal Tree, Near Residence Of Advocate Madhav Rao Gayakwad,
Dhamtari, District And Tahsil Dhamtari, Chhattisgarh
2. Collector, Dhamtari, District Dhamtari, Chhattisgarh

---- Respondents

For Appellant	: Mr. Prateek Sharma with Ms. Pragya Pandey, Adv.
For Respondent No. 1	: Mr. P.P. Sahu, Advocate
For Respondent No. 2/State	: Mr. R.K. Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****27/04/2017**

1. Heard on admission.
2. This miscellaneous appeal is preferred under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') against the order dated 28.9.2016 passed by the Additional District Judge, Dhamtari in Civil Suit No.61-A of 2016, whereby the plaintiff's application filed under Order 39 Rule 1 and 2 read with Section 151 of the CPC has been rejected.
3. The undisputed facts of the case are that the plaintiff Mehul Patel instituted a suit for specific performance of contract based upon an agreement to sale dated 20.10.2014 purported to have been executed by defendant No.1 Jayant Rao in his favour. As per the agreement, the suit property bearing Khasra No.603 admeasuring 2.670 hectare would require to be alienated at the rate of

Rs.7,51,000/- per acres by defendant No.1 Jayant Rao who has received an earnest amount of Rs.8,11,000/- as per the pleadings made in the plaint. It is pleaded further in the plaint that on 6.11.2014, a sum of Rs.4,00,000/- was paid further to the defendant No.1, thus, total sum of Rs.12,11,000/- was paid by the plaintiff. As per the terms and conditions stipulated in alleged agreement to sale, the registered deed of sale was required to be executed by 10.12.2014. However, despite issuance of notice for execution of registered deed of sale in accordance with the terms and conditions of the alleged agreement to sale, the same was not executed by the defendant. Therefore, the plaintiff has been constrained in filing the suit in the instant nature for specific performance of contract.

4. Alongwith the aforesaid claim, the plaintiff has moved an application for issuance of temporary injunction as required under Order 39 Rule 1 and 2 read with Section 151 of the CPC for restraining the defendant No.1 from alienating the property in question to someone else pending decision of the suit. The said application for temporary injunction was opposed by defendant No.1 by filing his reply.

5. During the course of the argument, the copy of alleged agreement to sale dated 20.10.2014 was shown by the parties. As per the said agreement, the registered deed of sale was required to be executed by 10.12.2014. Perusal of the record further shows that for the first time, a notice dated 19.10.2015 was issued by the plaintiff to defendant No.1 for execution of registered deed of sale. Prior to the issuance of the said notice, and even prior to the date i.e. 10.12.2014, when the registered deed of sale was required to be executed in pursuance to the alleged agreement was not issued by the plaintiff. The plaintiff, it appears had never approached the defendant No.1 for execution of registered deed of sale as per the terms and conditions stipulated in the alleged agreement and, in fact, only after passing of three years, the first notice was issued on

19.10.2015. The decree for specific performance of contract is a discretionary relief and the plaintiff is required to show his readiness and willingness from the date of the said agreement. Issuance of first notice after passing of three years would, however, show *prima facie* that the plaintiff was never interested to get the registered deed of sale executed in his favour as per the terms and conditions stipulated in the said agreement to sale.

6. Having considered the aforesaid facts and circumstances of the case, I do not find any *prima facie* case lies in favour of the plaintiff Mehul Patel so as to grant him temporary injunction by restraining defendant No.1 Jayant Rao from creating any third party interest with regard to the suit property pending decision of the suit. The trial Court has, thus rightly come to the conclusion that three essentials required for issuance of temporary injunction are not in favour of the plaintiff. Accordingly, the finding as recorded *prima facie* by the trial Court deserves to be and is hereby affirmed.

7. Consequently, the appeal being devoid of merits deserves to be and is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge