

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 57 of 2002**

- Smt.Geeta Devi, Proprietor, Giriraj Traders, Surajpur, District Surguja, CG through her special power of Attorney Ramavtar Agrawal S/o Dwarika Das Agrawal, aged about 40 years, R/o Surajpur, District Surguja (CG)

---- Petitioner**Versus**

1. The State Of Chhattisgarh, through Secretary, Forest Department, Raipur CG
2. Conservator of Forest & Ex-Officio General Manager, CG State Minor Forest Produce (T&D) Co-operative Federation Ltd. Surguja Circle, Ambikapur, Surguja (CG)
3. Mananging Director, Jila Vanopaj Sahkari Sangh Maryadit, Dakshin Surguja, Ambikapur
4. SDO, Forest Surajpur, District Surguja, Chhattisgarh

---- Respondent

For Petitioner	Mr AK Prasad, Advocate
For Respondent /State	Mr.Shashank Thakur, Govt. Advocate
For Respondent 2&3	Dr. NK Shukla, Senior Advocate with Mr. Vikram Sharma, Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****24/10/2018**

1. Heard.
2. The petitioner is aggrieved by the order -Annexure P/10, whereby, respondent Jila Vanopaj Sahkari Sangh Maryadit, South Sarguja, Ambikapur, have forfeited the security deposit of

Rs.93507.46 on account of petitioner's failure of lifting Tendu leaves of Umeshwarpur Society, for which, a purchase contract was executed between the parties on 17.4.2001.

3. During the Tendu leaves season of the year 2001, the petitioner was allotted one lot of Umeshwarpur Society for a sum of Rs.13,03,108/- payable in four equal installments of Rs.3,25,777/-. The payment of respective installments was to be made by 1/5/2001, 15/6/2001, 31/7/2001 and 17/9/2001 respectively. The petitioner made payment of first installment on 1/5/2001, however, it did not make payment of the remaining 3 installments nor lifted the stock of Tendu Leaves from the godown. The petitioner was directed to deposit the installments and lift the Tendu Leaves vide Annexure P/4 on 28/6/2001, to which, he replied vide Annexure P/5 raising grievance that he was not allowed to lift the Tendu Leaves as the godown was sealed on 18.7.2001 for the reason that the Forest Officers wanted to inspect the Tendu Leaves kept in the godown. Thus, according to the petitioner, he was not at fault for his failure to make payment of the installments because he did not lift the Tendu Leaves as the godown was sealed.
4. In the return filed by the respondents, it is stated that the godown was sealed for only 2 days i.e. 20th and 21st of July 2001, therefore, before and after these two days, the petitioner could have lifted the Tendu Leaves. It has also been stated that the petitioner was suffering from financial constraints, therefore, he did not lift the Tendu Leaves nor the respondents

were in a position to dispose the Tendu Leaves in favour of any other purchaser during subsistence of the contract with the petitioner, therefore, it has become necessary to invoke clause 6(c)(l) of the agreement to forfeit the security deposit so that the Tendu Leaves can be disposed of. The terms of the agreement clearly provide that in the event, the purchaser fails to deposit the installments, the Sangh can encash the bank guarantee to forfeit the security deposit to recover the amount.

5. It is thus apparent that the parties have bound themselves to become liable for encashment of the Bank Guarantee upon failure to deposit the installments and if a party to the agreement has invoked the clause of the agreement, the writ Court would not come to the rescue of the petitioner as it falls in the realm of adjudication as to who is responsible for committing breach of contract.
6. The writ petition *sans substance* is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

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