

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 55 of 2002****Reserved on : 08.08.2018****Delivered on : 06.09.2018**

Ratan Lal Sharma (Died) through Lrs.

- A. Smt. Tulsa Sharma, Wd/o Ratanlal Sharma, aged 58 years, Shivpara, Durg (C.G.)
- B. Smt. Indira Sharma, D/o Late Ratanlal Sharma, wife of Shri D.R. Sharma, aged 39 years, R/o Shivanagar, Wardha, M.S.
- C. Manish Sharma, S/o Ratan Lal Sharma, aged 33 years, R/o Shivpara, Durg (C.G.)
- D. Ashish Sharma, S/o Ratan Lal Sharma, aged 31 years, R/o Shivpara, Durg (C.G.)

---- Appellants**Versus**

- 1. Nathoo Lal Yadav, S/o Ramlal Yadav, aged 40 years, R/o Shankar Nagar, Durg, Second R/o Maithilipara, Durg (C.G.)
- 2. Shivalal S/o Baliram (Died) through Lrs.
 - A. Rukhmani Bai, aged about 50 years, W/o Shiv Lal
 - B. Kamlesh, aged 10 years, S/o Shiv Lal.
 - C. Mithilesh, aged 8 years, S/o Shiv Lal.
 - D. Ku. Komal, aged 12 years, D/o Shiv Lal
 - E. Tarkeshwar, aged 4 years, S/o Shiv Lal

All B to E are minor, through mother Rukhmani Bai, Natural Guardian, R/o Diprapara, behind Millpara, Durg (C.G.)

---- Respondents

For Appellants	:	Mr. H.B. Agrawal, Sr. Advocate with Mrs. Meera Jaiswal, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 23.11.2001 passed by 3rd Additional District Judge, Durg (C.G.) in Civil Suit No. 10-B/97, wherein the said court dismissed the suit for recovery of Rs. 71,000/- against respondents.
2. The suit was originally filed by Ratan Lal Sharma as plaintiff. It is alleged that original respondent No. 2 was constructing shop in Hatri Bazar, Durg who has named the construction as Gopal Complex and respondent No. 1 was his power of attorney holder. The original appellant paid Rs. 60,000/- to respondent No. 1 as advance on behalf of respondent No. 2 and executed an agreement dated 07.06.1994 for purchasing one shop area 165 sq.ft.
3. It was condition of the contract that if respondents will not perform the contract, they will pay additional sum of Rs. 11,000/- with advance money. The respondents did not give possession of shop, therefore, original appellant issued notice for returning the money, but it is not repaid.
4. Learned counsel for the appellants submits as under:-
 - (i) There is admission that respondent No. 1- Nathoo Lal received Rs. 60,000/- therefore, decree ought to have been passed under Order 12 Rule 6 of the Code of Civil Procedure, 1908.
 - (ii) The decree ought to have been passed in view of Section 65 of the Contract Act, 1872.
 - (iii) Evidence of any handwriting expert is not essential when there

is direct evidence of payment of advance money to respondent No. 1.

5. As per evidence of Ratan Lal (PW-1), it is established that respondent No.1- Nathoo Lal Yadav received Rs. 60,000/- from him against contract for purchasing one shop and document Ex.P-1 was executed by him, but they did not allot the shop to the original appellant and therefore, as per agreement, he filed a suit for repayment of money with additional sum of Rs. 11,000/- as damages.
6. The case of respondent No. 1 is plain denial which is meritless looking to the evidence adduced by appellant side.
7. The trial court also recorded finding (Para 16) that respondent -Nathoo Lal Yadav received Rs. 60,000/- from original appellant-Ratan Lal Sharma. Whether respondent No. 1 was power of attorney holder of respondent No. 2 is different issue, but the fact remains that respondent No. 1 received Rs. 60,000/- from the appellant side. Therefore, even if he is power of attorney holder of respondent No. 2, he is under obligation to repay the amount received by him. Finding of the trial court is self contradictory and not liable to be sustained and the same is hereby reversed. Respondent No. 1 is under obligation to repay the amount received by him.
8. Accordingly, the judgment and decree passed by the trial court is set aside allowing the appeal. The decree is passed in favour of the appellants and against respondent No. 1- Nathoo Lal Yadav on the following terms and conditions:-

- (i) Respondent No. 1- Nathoo Lal Yadav shall pay Rs. 60,000/- (Sixty Thousands) to the appellants within 30 days failing which 6% per annum interest shall be charged.
- (ii) Respondent No. 1 shall bear cost of the appellants throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge