

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 14 of 2016**

Vijay Kumar @ Uttra S/o Bharat Lal, Aged About 45 Years R/o Near Tarbahar Primary School, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh

---- Appellant**Versus**

Snehil Singh S/o Satish Kumar Singh, Aged About 37 Years R/o Kiran Tent House Tarbahar Bilaspur Tehsil And District Bilaspur, Chhattisgarh

---- Respondent

For Appellant	: Shri Shakti Raj Sinha, Advocate.
For Respondent	: Shri Vikash Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Judgment on Board****29/06/2018**

1. This appeal is by the defendant in a suit for specific performance of a contract for sale of immovable property. Under challenge in this appeal is the order by which the Court below dismissed the application to set aside the *ex parte* decree.
2. Heard the learned counsel for the Appellant and the learned counsel for the Respondent.
3. The learned counsel for the Appellant argued that the materials on record clearly show that there was borrowal of amounts from the Plaintiff and that the Defendant had repaid such amounts and settled the transaction with interest. He says that there is no ground to institute the suit from which this appeal arises. He submitted that the materials may tend to indicate that the notice of the suit was served on the wife of the Defendant, however that, this is a case which deserves to be permitted to go for trial having particular regard to the fact that in a suit for specific performance, it is within the discretionary jurisdiction of the Court below to grant or refuse the specific performance.

4. The learned counsel for the Respondent/Plaintiff argued that the application to set aside the *ex parte* decree was filed long after that decree was passed. He points out that the pleading of the Defendant did not inspire confidence in the trial Court and the *ex parte* decree is not liable to be set aside.

5. I have considered the relevant pleadings and materials in the light of the arguments. The *ex parte* judgment and decree has also been perused.

6. In fact, there is no finding or conclusion by the Court below while granting the *ex parte* decree, which would reflect the exercise of discretionary jurisdiction in relation to grant or dismissal of specific performance. Keeping aside that issue, it could be seen that the fairly long time lag between the *ex parte* decree and the application for setting aside the same itself gives sufficient material and room to infer, justifiably, that the Defendant's plea that his wife had not duly informed him stands with a ring of truth. That cannot be rejected on the scales of preponderance of probabilities. In the fitness of things, it is appropriate that the Defendant is given an opportunity to face trial however, on sufficient terms as to costs.

7. In the result, this appeal is allowed setting aside the impugned order and allowing the application under Order 9 Rule 13 of the Code of Civil Procedure, and consequentially setting aside the *ex parte* decree granted on 15.12.2003 by the trial Court; all this to be on the condition that the Appellant/Defendant shall pay the Respondent/Plaintiff an amount of Rs.20,000/- as costs within a period of four weeks from today by depositing such amount before the trial Court. If such amount is not deposited, the benefit of this judgment will recalled automatically and the *ex parte* decree will survive. The parties will mark their appearance before the trial Court on 30.07.2018.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE