

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 18 of 2003**

1. Rajendra Prasad S/o Sh. Mastram, Jati Teli, aged about 35 years, Occupation – Farmer, R/o Gram Lakhanpur, Tahsil Ambikapur, District Sarguja, Chhattisgarh, Through his father and next friend Sh. Mastram.....[Defendant No.1] **---- Appellant**

Versus

1. Gouri Narayan S/o Sh. Moti Sau, Jati Teli, aged about 40 years, Occupation – Farmer, R/o Gram Lakhanpur, Tahsil Ambikapur, District Sarguja, Chhattisgarh.....[Plaintiff]
2. State of Chhattisgarh through Collector, Surguja (C.G.) **---- Respondents**

For Petitioner	:	Shri Sunil Otwani, Advocate.
For State/ Respondent No.2	:	Shri Avinash Singh, P. L.
For Respondent No. 1	:	Shri Manoj Mishra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****24/08/18**

1. This is defendant's second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.').
2. Learned counsel for the appellant / defendant No. 1 would submit that the Courts below are absolutely unjustified in decreeing the suit of the plaintiff on perverse and untenable grounds as there is no evidence that the plaintiff is ready and willing to perform the contract and further unjustified in rejecting the application filed under Section 32(3) of C.P.C. and second appeal involves substantial question of law for determination.
3. I have heard learned counsel for the appellant.
4. In a suit for specific performance of contract filed by the respondent / plaintiff, the present defendant remained ex-parte and the trial Court granted ex-parte decree finding that there is agreement of sale by the defendant in

favour of the plaintiff and there is readiness and willingness on the part of the plaintiff to perform his part of contract which has been affirmed by the First Appellate Court. The finding of the trial Court with respect to agreement to sale and readiness and willingness on the part of plaintiff to perform his part of contract is a concurrent finding of fact based on material available on record.

5. So far as the second ground in rejection of application under Section 32(3) of the C.P.C. is concerned, the trial Court, by its reasoned and speaking order dated 22.08.1988, rejected the application after due enquiry on the said application which has been affirmed by the District Judge in Civil Revision No. 6-A/1985 decided on 27.07.1989 which is strictly in accordance with law and the said order having been affirmed, no such ground can be permitted to be raised in the second appeal. The concurrent finding recorded by the two Courts below is a finding of fact based on material available on record. I do not find any perversity or illegality in the second appeal.

6. Accordingly, the second appeal deserves to be and is hereby dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge