

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 28 of 2014**

- Arjundas Bajaj, S/o Shri Sheetal Das Bajaj, Aged About 46 Years, R/o Kashyap Colony, Bilaspur, Civil and Revenue District Bilaspur (C.G.)

---- Petitioner**Versus**

- Smt. Madhuri Gupta, W/o Late Girishchandra Gupta, R/o Mungelinaka, Kududand, Bilaspur, Civil and Revenue District Bilaspur (C.G.)

---- Respondent

For Appellant

Shri Sudeep Verma, Advocate

For Respondent

Shri C. D. Sharma, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Smt. Vimla Singh Kapoor****Order On Board****06/09/2018**

1. This is plaintiff's first appeal under Section 96 of the CPC assailing the judgment and decree passed by the trial Court refusing to pass decree for specific performance in favour of the appellant.
2. The suit property is a building situated at Mungelinaka, Bilaspur. An agreement was executed between the parties on 30.03.2006, wherein the defendant agreed to sell suit property to the plaintiff for sale consideration of Rs.6,75,000/-, out of which the defendant received advance cash amount of Rs.51,000/- on the

date of agreement. The parties agreed that the sale deed shall be executed within 6 months after getting evicted the two tenants, who were in possession of the building. However, when the defendant did not take interest in getting the tenants' vacated or executed the sale deed, the plaintiff served legal notice to the defendant on 24.01.2009 vide Annexure-P-2 requesting the defendant to execute the sale deed within 15 days. The defendant did not reply to the legal notice, therefore, the suit was filed on 02.12.2009.

3. According to the defendant, the agreement was got executed by misrepresentation and duress, as the defendant was working in the house of one Satish Relwani, who is a witness to the agreement and it was the said Satish Relwani who misrepresented the defendant saying that she is required to sign some papers for a bank transaction and on the said pretext, the defendant's signatures were obtained over the agreement.
4. In course of trial, the plaintiff examined himself as PW-1, his witness Rajkumar as PW-2 and Satish Relwani as PW-3, whereas the defendant did not examine any witness, as upon her failure to produce witnesses, the trial Court closed her right to lead evidence.
5. The trial Court has found that the defendant has executed the agreement and has received the advance of Rs.51,000/-, however, while deciding Issue No.2, the trial Court recorded a finding that plaintiff was not ready and willing to perform his part of the contract throughout the period, therefore, he is not entitled for a decree for specific performance.

6. Learned counsel for the appellant would argue that the finding about plaintiff's readiness and willingness recorded by the trial Court is perverse. He would submit that the defendant did not get the tenants evicted, therefore, the defendant was not in a position to deliver vacant possession of the house to the plaintiff and as such it was the defendant who was at fault and not the plaintiff.
7. Per contra, learned counsel for the respondent would argue that the plaintiff did not take any step for a period of almost 2 years and 9 months after execution of the agreement on 30.03.2006, because the legal notice was served on the defendant on 24.01.2009, therefore, the finding on readiness and willingness of the plaintiff has rightly been recorded, based on evidence and record, which needs no interference.
8. Having perused the pleadings and evidence available on record, we are satisfied that the trial Court's finding about lack of readiness and willingness on the part of the plaintiff throughout the period does not suffer from any perversity. The reasons on which we have reached to the conclusion are stated infra.
9. In his first communication addressed to the defendant, after execution of the agreement, in form of legal notice, the plaintiff stated that the defendant has not taken steps to evict the tenants and hand over the vacant possession of the suit house for which the plaintiff was waiting, therefore, the sale deed could not be executed. However, in para 7 of the legal notice, the plaintiff would state that he has come to know that the suit house is mortgaged with a bank and a civil litigation for recovery of loan is pending against the defendant, therefore, if the defendant needs

some amount for repayment of loan for obtaining No Encumbrance Certificate, the plaintiff is ready to pay the amount and the defendant may execute the sale deed thereafter. This part of the contents of legal notice would demonstrate the real reason as to why the plaintiff was not taking interest in execution of the sale deed. When this fact stated in the legal notice is conjointly read along with defendant's plea in the written statement that Satish Relwani had obtained her signatures on some bank transaction papers, it would appear that probably the plaintiff was aware through Satish Relwani from the very beginning that the subject property has been mortgaged by the defendant in a loan transaction and yet the agreement was executed. There was no stipulation in the agreement (Ex-P-11) that the defendant shall obtain a No Encumbrance Certificate before execution of the sale deed, however, in the legal notice, the plaintiff led more emphasis on obtainment of No Encumbrance Certificate by the defendant leaving aside the issue of eviction of the tenants, which was specifically mentioned in the agreement.

10. In addition to the above, the trial Court has rightly found that the plaintiff kept quiet for almost 2 years and 9 months after the agreement dated 30.03.2006 and did not take steps requesting the defendant for execution of the sale deed immediately after lapse of 6 months, within which the defendant was required to evict the tenants and execute the sale deed. The plaintiff has also not proved availability of funds and his earnest desire for execution of the sale deed by approaching the defendant in

presence of witnesses requesting her to execute the sale deed, instead the plaintiff required the defendant, by way of legal notice, to obtain No Encumbrance Certificate, which was never a stipulation in the sale agreement.

11. For all the above stated reasons, we are in full agreement with the finding recorded by the trial Court that the defendant has failed to prove his readiness and willingness throughout the period for getting the sale deed executed. The plaintiff's suit has rightly been dismissed by the trial Court.
12. The appeal has no substance. It deserves to be and is hereby dismissed.

Sd/-

Prashant Kumar Mishra
Judge

Sd/-

Vimla Singh Kapoor
Judge