

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 510 of 2000****Reserved on : 08.03.2019****Delivered on : 29.03.2019**

1. Rajendra Prasad Agrawal, S/o Ramlakhan Lal Agrawal, aged about 39 years, Occupation- Business.
2. Pawan Kumar Agrawal, S/o Ramlakhan Lal Agrawal, aged about 27 years.
3. Namita Kumari, D/o Ramlakhan Lal Agrawal, aged about 31 years.
4. Subhashani Devi, W/o Late Shri Ramlakhan Lal Agrawal, aged about 57 years.
5. Manorama Devi, W/o Kailash Prasad, aged 42 years.
6. Sarita Devi, W/o Shambhu Prasad, aged 34 years.

The appellant No. 1- Rajendra Prasad Agrawal is the Power of Attorney Holder of Appellants No. 2 to 6.

All R/o Dak Bungla, Daltenganj, P.S. Daltenganj, District- Palam (Bihar).

---- Appellants**Versus**

The State of Madhya Pradesh, through Collector Surguja (Ambikapur), M.P.

---- Respondent

For Appellants : Mr. B.P. Gupta, Advocate.

For State/ respondent : Mr. Ravish Verma, Government Advocate.

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 31.03.2000 passed by District Judge, Surguja (Ambikapur), M.P. (Now C.G.) in Civil Suit No. 41A/1999, wherein the said court dismissed the suit filed by the

appellants for specific performance of contract or in alternate, return of amount deposited regarding contract or compensation.

2. There was an auction for fuel wood on 20.04.1982 by the Forest Department, Government of Madhya Pradesh (Now C.G.) and bid of the appellants was accepted for 640 lots of fuel wood for Rs. 44,000/- and Rs. 11,000/- was paid as 1/4th of the bid on 20.04.1982. On 27.05.1983, the forest department directed the appellant to pay sale tax and other taxes and thereafter, the bid was cancelled. There was re-auction by the department, but the same was unsuccessful. On 17.04.1984, Divisional Forest Officer ordered the appellant to deposit Rs. 37,889/- thereafter, contract was renewed and money was deposited. A number of letters were written by the Divisional Forest Officer to Conservator of Forest for renewal of contract. On 28.02.1986, the contract was renewed and time was extended upto 31.05.1986. On 01.03.1986, the appellant was asked to deposit Rs. 1000/- as penalty and Rs. 11,200/- for rent of land over which the fuel wood was kept for the period of 27.05.1983 to 31.05.1986. The appellant deposited Rs. 11,200/- before inspection of the fuel wood and after inspection, it is reported that the fuel wood was burnt and only 418 lots of fuel wood was on the spot, therefore, the appellant was not in a position to collect 640 lots of fuel wood for which auction was held. On 02.06.1986, the Divisional Forest Officer again recommended for extension of time which was rejected on 30.06.1986 and on 02.07.1991, it was informed that bidder should go to the court for deciding the issue.

3. Learned counsel for the appellants submits as under:-
 - (i) As the fuel wood was not found to the tune of 640 lots, therefore, the respondent is liable to pay compensation or amount deposited by the appellants with interest.
 - (ii) That in any case, the trial court should have directed the refund of the amount deposited by the appellants towards purchased money damages, Sales Tax & rent etc., but the same is not done, therefore, finding of the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the appellants have not complied with the requirement of the auction, therefore, no relief can be granted to him as per law. The appellants have committed default and their contract was earlier terminated, therefore, the respondent is not liable to pay compensation or to refund the amount.
5. From the total evidence adduced by both side, it is established that after renewal of contract, time was extended upto 31.05.1986 for removal of 640 lots of fuel wood. It is also established by the appellants side that total amount deposited by the appellant is Rs. 61,089/-. It is also established that when lots were inspected, it was found that the fuel woods were burnt and only 418 lots of fuel wood was on the spot. As delivery of 640 lots of fuel wood for which the auction was held was not possible, the only course open for the present case is that the amount deposited by the appellants should be refunded to him with interest, therefore, finding arrived at by the trial

court that there is negligency on the part of the appellants in removal of 640 lots of fuel wood is not proper and the same is hereby set aside. The appellant is entitled for Rs. 61,089/- and simple interest of 6% from date of depositing the amount i.e. on 12.05.1986.

6. Accordingly, the appeal is allowed. The decree is passed in favour of the appellants and against the respondent on the following terms and conditions:-

- (i) The appeal is allowed. The respondent to pay Rs. 61,089/- (Sixty One Thousand and Eighty Nine) to the appellants with interest of 6% in the said amount from the date of depositing the amount i.e. on 12.05.1986.
- (ii) Parties to bear their own costs.
- (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