

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-8-2019

Delivered on 18-9-2019

FA No. 77 of 2002

1. Dr. P.K.Nigam s/o. R.P. Nigam, aged about 40 years.
2. Dr. Smt. Anjana Nigam w/o. Dr. P.K. Nigam, aged about 35 years.

Both residents of near Dutta Dry Cleaners, Katora Talab, Raipur (CG).

---- Appellants/plaintiffs

Versus

1. M.P.Grih Nirman Mandal, Raipur through Executive Engineer, M.P. Grih Nirman Mandal, Shanker Nagar, Raipur, MP (Now CG).
2. Estate Officer, M.P. Grih Nirman Mandal, Raipur

---- Respondent

For appellants : Mr. Kishore Bhaduri, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 26-2-2002 passed by 7th Additional District Judge, Raipur (CG) in Civil Suit No. 20-A/2001 wherein the said court dismissed the suit filed by the appellants/plaintiffs for specific performance of contract, interest, permanent injunction and compensation.

2. Respondent No.1/defendant M.P. Grih Nirman Mandal, Raipur constructed shops at Katora Talab, Raipur, M.P., (Now CG) and invited tenders for sale/allotment of the same. In pursuance of such offer made, the appellants/plaintiffs on 11-11-1995 submitted their offer for purchase of shop for Rs.2,36,058/-. An amount of Rs.20,000/- was deposited by them. The offer was highest one with regard to shop No.1 of the said respondent. Despite such offer, appellants/defendants were never allotted the shop No.1 at Katora Talab and made an advertisement afresh for allotment of the said shop. An intimation in wrong name was sent to respondent No.1 and the offer was turned down that is why suit was filed before the trial court which was dismissed after hearing the parties.

3. Learned counsel for the appellants submits as under.

- i) The offer price was highest and it ought to have been accepted within three months, therefore, respondent No.1 was under obligation to allot the shop in favour of the appellants.
- ii) Respondent No.1 failed to intimate regarding rejection of his offer within three months, therefore, finding of the trial court in this regard is not sustainable.
- lii) The trial court has not evaluated the

entire evidence in its true perspective, therefore, finding of the trial court is liable to be reversed.

He placed reliance in the matters of **Arosan Enterprises Ltd. v. Union of India (UOI) and others¹, State of Gujrat (Commissioner of Sales Tax, Ahmedabad)², Delhi Development Authority vs. Durga Chand Kaushish³ and State of Orissa and others vs. Mesco Steels Limited and another⁴.**

4. I have heard learned counsel for the appellants and perused the record of court below including the judgment and decree.

5. The first question for consideration of this court is whether respondent No.1 was under obligation to allot shop No.1 to highest bidder who are the appellants. From the record it appears that as per conditions No. 3 and 4 of the tender (Ex. P/1 and D/1), right was reserved in favour of respondent No.1 to cancel the offer and they are not required to show specific reason for the same. As per document Ex.D/3, shop No.1 to 12 are same in the quality and size. The offer of shop No.1 by the appellants was Rs.2,36,058/-. As per Ex.D/3 offer of shop No. 2 was Rs.2,62,500/-, offer of shop No. 3 was Rs.2,61,000/-, offer of shop No.4 was Rs.2,62,100/-,

¹ (1999) 9 SCC 449

² (1976) 3 SCC 500

³ (1973) 2 SCC 825

⁴ (2013) 4 SCC 340

offer of shop No.6 was Rs. 2,50,100/-, offer of shop No.7 was Rs.2,65,500/- and offer of shop No.9 was Rs.2,63,100/-. Looking to other higher offers of other shops which were similar to shop No.1, respondent No.1 decided that it would be better to go for re-auction. Since the right is reserved to respondent No.1, action of re-auction cannot be said to be arbitrary or any infringement of any terms of tender.

6. The second question for consideration of this court is whether the decision regarding re-auction was taken within three months as per terms of the tender. The date of closing of offer was 11-1-1995. As per Ex. D/3 decision was taken regarding offer of the appellant on 19-1-1995 i.e., after eight days of the period of closure of offer and as per document Ex.P/2 and P/20 information in this regard is supplied to appellants. It is not the case where no decision was taken within three months. From the document (Ex.P/10) it is clear that the appellants have admitted that they received letter dated 20-4-1995 from respondent No.1.

7. Looking to the evidence that the decision in this regard is taken within eight days and the appellants had been informed accordingly, the trial court opined that relief for allotment of shop No.1 to appellants cannot be granted to them. After re-assessing the entire evidence, this court has reason to record a contrary finding. Argument advanced on behalf of the appellants is not

sustainable and the case law cited on their behalf is clearly distinguishable to the facts and circumstances of the present case. The appeal is liable to be dismissed.

8. Accordingly, while dismissing the appeal decree is passed in favour of respondent No.1 and against appellants No. 1 and 2 as under:

- i) The appeal is dismissed with cost.
- ii) Parties to bear their own costs.
- iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju