

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.73 of 2006**

Vishaldas Vaishnav S/o Laxmandas Vaishnav Aged 69 Yrs. R/o Pisid
(Aamakhoda) Teh. Kasdol, Distt. Raipur

---- Appellant/Plaintiff

Versus

1. Jila Sahkari Bhumi Vikas Bank Maryadit, Raipur By – Manager, Jila Sahkari Bhumi Vikas Kasdol, Teh. Kasdol, Distt. Raipur
2. Sale Officer, Jila Sahkari Bhumi Vikas Bank Maryadit, Raipur
3. General Manager, Jila Sahkari Bhumi Vikas Bank Maryadit, Raipur

---- Respondents/Defendants

For Appellant/Plaintiff	:	Mr.Raja Sharma, Advocate
For Respondents/Defendants	:	Ms Anuja Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29.08.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff is as under:-

“Whether the Courts below were justified in dismissing the suit of the plaintiff for recovery of the amount of stamp duty and other expenses being the auction purchaser after setting aside of the auction by the Joint Registrar ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff herein was auction purchaser. He purchased the land under auction held by the defendant-Bank, which was ultimately set aside by the Joint Registrar, Co-operative Societies, Raipur on

2.7.1994 (Ex.P-18) and thereafter auction money of ₹ 40,000/ was paid to him on 31.7.96 and thereafter the plaintiff filed a suit for interest on the deposited amount and expenses incurred in registration etc. and litigation, which the trial Court declined to grant, which has been affirmed by the first appellate Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

3. Mr.Raja Sharma, learned counsel for the appellant/plaintiff, would submit that finding recorded by both the Courts below is perverse and contrary to the law, as such, the judgment and decree of both the Courts below deserve to be set aside.
4. On the other hand, Ms Anuja Sharma, learned counsel the respondents/defendants, would support the impugned judgment and decree.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
6. The land was auctioned in favour of the plaintiff and he deposited the amount, but ultimately auction was set aside by the Joint Registrar, Co-operative Societies, Raipur on 2.7.1994 and amount deposited was paid to him on 31.7.1996. Now the plaintiff has claimed interest and expenses in the suit. The trial Court relied upon Rule 66 (6) (ii) of the M.P. Co-operative Societies Rules, 1962 which states that

whenever the sale of any immovable property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser and accordingly, the amount has been returned to the plaintiff/purchaser. There is no provision to grant any interest in the aforesaid Rules. Neither interest nor expenses incurred in registration of deed etc. in Rules governing the auction, as such, finding so recorded by two Courts below is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The substantial question of law is answered in favour of the defendants and against the plaintiff.

7. Accordingly, the second appeal being without substance is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).
8. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-