

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 2-4-2019

Judgment delivered on 26-04-2019

FA No. 47 of 2003

- Manohar Rao Dumbhare, President, Maharashtra Swarnkar Samaj, Raipur Division, Registration No. 1392, r/o. Satii Bazar, Raipur (CG).

---- Appellant/plaintiff

Versus

1. Smt. Geeta Bai Dewangan, w/o. Shri Changanlal Dewangan.
2. Smt. Padma Bai Dewangan, w/o. Shri Krishna Kumar Dewangan.

Both residents of New Colony, Kushalpur, Raipur (CG).

---- Respondents/defendants

For appellant : Mr. Sachin Singh Rajput, Advocate

For respondents : Mr. Manay Nath Thakur, Advocate.

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/decreed dated 28-10-2002 passed by 4th Additional District Judge, Raipur (CG) in Civil Suit No.127-A/2001 wherein the said court decreed the suit for specific performance of contract for land bearing survey No. 232/6 and 233/6 area 0.049 hectares (5000 sq/ft) situated at village Bhatagaon, Patwari Halka No. 105, Tahsil and District Raipur (CG) on payment

of 6% interest per annum against balance of sale consideration and for awarding cost of the suit in favour of the appellant/plaintiff.

2) Appellant/plaintiff and respondents/defendants entered into agreement of sale of land in question on 10-12-1997 for cash consideration of Rs.90,000/-. The area in question is 5000 sq.ft., and rate of rent was fixed at Rs.18/- per sq.ft. Rs.15,000/- was paid as earnest monthly to the respondents/defendants. Further, Rs.20,000/- was paid on 11-2-1998 towards consideration amount. The respondents being sellers of the property in question were under obligation to obtain requisite permission under Urban Land Ceiling Act. As the sale was not executed, appellant filed a suit before the trial Court. While passing the decree, the trial court awarded interest @ 6% per annum against balance of sale consideration of Rs.55000/- and failed to award cost of the suit in favour of the appellant/plaintiff, that is why this appeal is filed by the appellant/plaintiff.

3) Learned counsel for the appellant would submit as under:

- i) The trial Court erred by giving finding that the delay in execution of sale deed was on the part of the appellant/plaintiff. This finding is based on no evidence, therefore, same is bad-in-law.
- ii) The impugned judgment/decreed to the extent to the interest @6% per annum against the balance amount of sale

consideration is perverse and same is not sustainable.

iii) No interest was awarded in favour of the appellant for deposited amount of Rs.35,000/-, therefore, decree to the extent to the interest and cost deserves to be quashed.

iv) The trial Court has not evaluated the oral and documentary evidence adduced by the appellant, therefore, finding of the trial court is liable to be set aside.

4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The first question for consideration of this court is whether the interest awarded @ 6% per annum against the balance of sale consideration is proper looking to the facts and circumstances of the case.

7) The trial Court opined that the parties entered into agreement on 10-12-1997 and sale was not executed upto year 2002 and in between value of land is increased because area is adjoining to capital of State i.e.,Raipur and looking to the increase of price of

land the trial Court awarded 6% interest per annum against balance amount of sale consideration. Finding of the trial court is based on change of circumstances which cannot be termed as improper. The respondents made averment in their written statement that if amount would have been received by them in the year 1997-1998, they would have received interest on it at prevailing rate and due to loss of interest they should be compensated. It means, respondents are willing to execute the sale deed in favour of the appellant after they are compensated with interest.

8) The trial court assessed the entire pleading and evidence and recorded finding that 6% interest per annum should be awarded against balance of sale consideration. This court has no reason to take contrary view to what is recorded by the trial Court. The trial court further opined that since the respondents sustained loss of interest during the period after agreement and during pendency of suit, they should not be burdened with cost of litigation. Finding of the trial court cannot also be termed as improper and this court has no reason to take contrary view to what is recorded by the trial court. The appellant is entitled for execution of sale deed after payment of interest @ 6% per annum. Looking to the factual matrix and legal aspect of the matter, finding of the trial court is not liable to be interfered with while invoking

jurisdiction of the appeal. The appeal is liable to be dismissed as argument advanced on behalf of the appellant is not sustainable.

9) Accordingly, decree is passed in favour of respondents and against the appellant 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