

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-5-2019

Judgment delivered on 16-05-2019

FA No. 157 of 2003

Smt. Teeja Bai Nahata w/o. Late Shri Udeyram Nahata, aged about 65 years, caste Jain, occupation Business, r/o. Halwani line, Rajnandgaon, Tahsil and District Rajnandgaonh.

---- Appellants/plaintiff

Versus

1. Giriraj Lodhi @ Dhaniram Lodhi, s/o. Shri Thanwar Lodhi, r/o. Khudmudi, P.O. Bakhat Rangkathera, Tahsil Dongargarh, Dist. Rajnandgaon (CG).
2. Rewalal Sinha, s/o. Ankalu Ram Sinha, caste Sinha, occupation Agriculture, r/o. Village Bilhari P.O. Gatapar, Tahsil Dongargarh, Dist. Rajnandgaon (CG).

---- Respondents/defendants

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

For respondents : Mr. Amiyakant Tiwari, 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 20-3-2003 passed by 1st Additional District Judge, Rajnandgaon (CG) in Civil Suit No. 5-B/2001 wherein the said court dismissed the suit

filed by the appellant against the respondent for recovery of Rs.68,200/-.

2) Appellant filed the suit on the basis of averment that both the respondents came to the shop of appellant's son and told that respondent No.1 is having 100 quintals of Soyabean with him which he wants to sell to the appellant. Rate of Soyabean was fixed @ Rs.650/- per quintal and agreement was made between the parties that respondent No.1 within one month bring Soyabean at Rajnandgaon and will deliver it to the appellant. Appellant paid a sum of Rs.40,000/- as an advance and remaining amount of Rs.25,000/- was to be paid at the time of delivery of Soyabean. Respondent No.2 stood as guarantor for the advance amount. Neither respondent No.1 brought Soyabean nor paid the advance amount to the appellant that is why suit was filed which was dismissed by the trial Court.

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

- i) Money was received by the respondent No.1 to the tune of Rs.40,000/- as per document Ex.P/2 which was executed by them and signed by them.
- ii) Notice was served on respondents, but they did not repay the amount that is why suit was filed.
- iii) Finding of the trial Court is not based on

evidence but it is based on imagination which is not liable to be sustained.

4) On the other hand, learned counsel for the respondents would submit that the finding of the trial court is based on proper marshalling of the evidence which is not liable to be interfered 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) Appellant side adduced evidence of Narendra (PW/1) and Sidhraj (PW/2) and produced documents Ex.P/1 to P/8. As against this, respondents' side adduced evidence of Rekhalal Sinha (DW/1). Narendra (PW/1) deposed before the trial court that there was an agreement of sale of 100 quintals of Soyabeen @ Rs.650/- per quintal and Rs.40,000/- was given to the respondent No.1 on surety of respondent No.2 . As per version of this witness, Neither Soyabeen was supplied nor advance amount was returned to the appellant. He further deposed that agreement was written by both respondents as per Ex.P/2. He further deposed that notice was served on both the respondents for payment of advance amount as per Ex.P/8, but the amount was not returned. Version of this witness is supported by version of Sidhraj (PW/2) in whose presence the document Ex.P/2 was written. It is clearly stated that both the respondents have signed in the agreement before him. In

rebuttal, Rekhalal denied the factum of sale of Soyabeen and receiving the advance amount, but version of this witness is plain denial which is merit-less. Version of this witness is not sufficient to discard the version of both witnesses of appellant and documents executed as per Ex.P/2 in which both respondents have signed and document is binding on them. The issue before the trial Court is limited as to whether the advance sum was paid or not for which both sides submitted their rival pleadings and evidence and no amount of evidence could be looked into apart from the pleading.

7) Looking to the finding of the trial court it appears that the trial court recorded a finding not on the basis of evidence but apart from evidence, therefore, finding of the trial Court is not liable to be sustained and same is hereby reversed. It is decided that respondent No. 1 and 2 received advance amount on behalf of agreement to the tune of Rs.40,000/- and they are liable to repay the said money with interest @ 6% per annum.

8) Accordingly, decree is passed in favour of appellant and against the respondents as under:

- (i) The appeal is allowed. Respondents 1 and 2 shall pay to appellant Rs. 40,000/- with interest @ 6% per annum from 8-10-1997 till realisation of the full amount.
- (ii) The respondents to bear the cost of litigation throughout of the appellant.

- (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