

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 115 of 2007

Reserved on : 24.07.2019

Delivered on : 30.08.2019

Smt. Shyama Bai, W/o Jagdish Prasad Sahu, Caste- Teli, aged about 46 years, Occupation- Housewife, R/o Amapara, Kanker, Tahsil & District-Kanker (C.G.)

---- Appellant

Versus

Rajendra Kumar Sahu, S/o Uday Ram Sahu, Caste- Teli, Proprietor-Bhagwati Engineering Workshop, Albelapara, Kanker, P.S., Tahsil & District-Kanker (C.G.)

---- Respondent

For Appellant : Mr. D.N. Prajapati, Advocate.

For Respondent : Mr. Parag Kotecha, 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 23.08.2007 passed by District Judge, North Bastar, Kanker (C.G.) in Civil Suit No. 2-A/2006, wherein the said court decreed the suit filed by the respondent/ plaintiff for specific performance of contract for the land recorded in Civil Station Sheet No. 1, Plot No. 2, area admeasuring 294 sq.mtr. or 3162 sq.ft and ordered that the respondent/ plaintiff shall pay Rs. 85,000/- to the appellant and again, to pay compound interest @ 12% from February, 1998 for execution of sale-deed in his favour. The cost of execution of the sale-deed shall be borne by the respondent.

2. As per the appellant, the parties entered into an agreement on 18.06.1997 (Ex. P/1) for selling the suit property as mentioned above and the respondent/ plaintiff paid Rs. 5,000/- in advance on the date of execution of the agreement. The property was agreed to sell for a cash consideration of Rs. 90,000/- and it is mentioned in the agreement that the remaining amount is to be paid in the month of January, 1998. The possession of the land was handed over to the respondent on the date of agreement and the respondent started his business in the said land after opening an engineering workshop. It is alleged on behalf of the respondent that he is always ready and willing to perform his part of contract, but the appellant did not perform her part of contract and cancelled the contract by notice dated 10.02.2003 (Ex.P/2) that is why the suit was filed by the respondent which was decreed by the trial court.
3. Learned counsel for the appellant submits as under:-
 - (i) The date of agreement is 18.06.1997. The sale-deed was to be executed upto January, 1998, therefore, the suit filed on 28.04.2003 is not within limitation.
 - (ii) The trial court erred in holding that the respondent was ready and willing to perform his part of contract because the suit was filed only after notice served by the appellant regarding cancellation of the agreement.
 - (iii) The trial court overlooked the statement of appellant and other witnesses, therefore, the finding arrived at by the trial court is liable to

be set aside.

4. Learned counsel for the appellant placed reliance in the matter of **Venkappa Gurappa Hosur Vs. Kasawwa, c/o Rangappa Kulgod**, reported in **AIR 1997 SC 2630**, **Gyaneshwar Vs. Smt. Moongabai @ Muneshwaribai & another**, reported in **2006 (1) M.P.H.T. 287**, **Smt. Nakubai Valu Dhokane (deceased by L.Rs.) Vs. Bhagwansingh Prakash Chandra**, reported in **AIR 2009 (NOC) 385 (Bom.)**, **Ammilal & another Vs. Kamla Bai**, reported in **2010 (2) M.P.H.T. 301** & **Rathnavathi & another Vs. Kavita Ganeshamdas**, reported in **2015 SAR (Civil) 130**.
5. On the other hand, learned counsel for the respondent filed cross-objection/ appeal under Order 41 Rule 22 of the Code of Civil Procedure, 1908, submits as under:-
 - (i) The land was handed over to the respondent on the date of agreement and he is running the engineering workshop in the said land and earning livelihood by the same engineering workshop, therefore, the finding of the trial court is just and proper.
 - (ii) The appellant moved an application to the Electricity Department for cutting the electricity of the respondent's workshop and due to disconnection, the respondent is not able to run the engineering workshop.
 - (iii) The cross-objection is filed for reversing the decree of compound interest @ 12% because the respondent is nowhere at fault, therefore, the interest cannot be imposed on him. The rest of the

finding of the trial court is not liable to be interfered with invoking jurisdiction of appeal.

6. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
7. First question for consideration before this Court is whether the respondent was willing to perform his part of contract. From pleading and evidence adduced before the trial court, it is clearly established that both the parties entered into an agreement on 18.06.1997 (Ex. P/1). It is also established that the land in question was handed over to the respondent/ plaintiff who installed the engineering workshop on the said land. It is also established that the appellant/ defendant assured the respondent for execution of sale-deed for many times, but actually she did not execute the sale-deed that is why the execution of sale-deed is delayed. The notice was issued to the respondent by the appellant for cancellation of the agreement on 10.02.2003 (Ex. P/2), thereafter, the suit was filed on 28.04.2003. If the appellant was willing to perform her part of contract, why she did not issue notice earlier to the respondent for execution of the sale-deed. The negative notice is served after lapse of time by the appellant shows that she was not willing to perform her part of contract, therefore, the trial court is right in holding that the respondent was willing to perform his part of contract because he is running his livelihood from the land in question after opening the engineering workshop and the appellant was not willing to perform her part of contract. When the respondent is not at fault, the appellant is under obligation to execute the sale-deed. The

trial court is right in holding that the respondent is entitled for execution of sale-deed for the property in question in his favour from the appellant.

8. Second question for consideration before this Court is whether the suit is time barred. In the present case, notice for cancellation of agreement was issued on 10.02.2003, therefore, the limitation starts from the date of notice of refusal to execute sale-deed. The suit was filed just after receiving the notice on 20.04.2003, therefore, it is not a case where limitation starts from some other date. The trial court has elaborately discussed this issue and this Court has no reason to record contrary finding. Accordingly, it is held that the suit is within limitation.
9. Third question for consideration before this Court, as raised in the cross-objection, is whether the compound interest granted by the trial court is proper. From the record, it is clear that the respondent is always ready and willing to perform his part of contract and it is the appellant who delayed in execution of sale-deed for which the respondent cannot be faulted with. When the respondent is not at fault, he cannot be charged for compound interest. The delay is caused due to inaction of the appellant, therefore, the respondent is not liable to pay compound interest for no fault of his part. That part of the decree is not sustainable and the same is hereby set aside. Argument advanced on behalf of the appellant is not sustainable. The case laws cited by learned counsel for the appellant are clearly distinguishable from the facts and circumstances of the present case.

In view of the above, the decree is liable to be modified allowing the application for cross-objection/ appeal while dismissing the appeal filed by the appellant.

10. Accordingly, the decree is modified on the following terms and condition:-

- (i) The appeal is dismissed.
- (ii) The respondent/ plaintiff to pay Rs. 85,000/- within two months as directed by the trial court to the appellant and thereafter, the appellant/ defendant shall execute the sale-deed in his favour for the land mentioned in Civil Station Sheet No. 1, Plot No. 2 area admeasuring 294 sq.mtr. or 3162 sq.ft situated at Kanker (C.G.). The respondent to bear cost of registration.
- (iii) Parties to bear their own costs.
- (iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge