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HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 11.04.2019****Judgment delivered on 21.06.2019****First Appeal No. 169 of 2014**

Shiris Kumar Gupta S/o Bhagwat Prasad Gupta, aged about 34 years, R/o village Arjunda, P.S. & Post Arjunda, Civil and Revenue District Balod, Chhattisgarh.

---- Appellant**Versus**

1. Keshav Prasad Sinha S/o Dauwaram Sinha, aged about 67 years.
2. Suresh Sinha S/o Keshavram Sinha, aged about 42 years.
Both R/o Village Baghmara P.S., Post and Tahsil Gundardehi, Civil and Revenue District Balod, Chhattisgarh.
3. State of Chhattisgarh through Collector Balod, P.S. & Post Balod, Civil and Revenue District Balod, Chhattisgarh.

---- Respondents

For Appellant	: Shri Manoj Paranjpe and Shri Bharat Sharma, Advocates
For Respondents No. 1 & 2	: Shri Avinash Chand Sahu, Advocate
For Respondent No.3/State	: Shri Siddharth Dubey, Dy. G.A.

Hon'ble Shri Prashant Kumar Mishra, Judge**Hon'ble Shri Parth Prateem Sahu, Judge****C A V JUDGMENT****Per Parth Prateem Sahu, Judge****21.06.2019**

1. Appellant/plaintiff by way of this first appeal under Section 96 of Civil Procedure Code, 1908 has challenged the legality, validity and propriety of impugned judgment and decree dated

12/09/2014 passed by learned District Judge, Balod, District Balod, Chhattisgarh in Civil Suit No.7-A of 2013 whereby learned trial Court dismissed the suit for specific performance of contract.

2. Facts of the case relevant in nutshell are that respondents No.1 and 2/defendants are owners of lands situated at Village Baghmara, Patwari Halka No.34, Tahsil Gundardehi, District Balod bearing Khasra Nos.127, 128/1, 128/2 measuring 0.36, 0.06, 0.18, total area of land is 0.60 hectare, which is situated on Gundardehi-Rajnandgaon Road (hereinafter referred to as 'disputed property').

3. As per the case of appellant/plaintiff, on 08/08/2011 he entered into an agreement (Ex. P-1) with respondents No.1 and 2/defendants to purchase property in dispute for a total consideration of Rs.15,50,000/- (Rupees Fifteen Lacs Fifty Thousand Only). On the said date, as per agreement, Rs.50,000/- (Rupees Fifty Thousand Only) has been paid as advance and rest of the amount is to be paid till 30/01/2012 and thereafter, respondents No.1 and 2/defendants have to execute registered sale deed in favour of appellant/plaintiff. Even after repeated requests made by appellant/plaintiff with respondents No.1 and 2/defendants, they have failed to execute sale deed in his favour, therefore, he has filed the suit for specific

performance of contract after lapse of period for performance of contract as mentioned in agreement to sale.

4. In plaint, appellant/plaintiff pleaded that he was ready and willing to perform his part of contract, but even after his best efforts, respondents No.1 and 2/defendants did not execute sale deed in his favour, therefore, direction be issued to respondents No.1 and 2/defendants to get the sale deed executed of property in dispute and provide possession after dispossession of respondents No.1 and 2/defendants. Appellant/plaintiff sought relief from trial Court that on failure of respondents No.1 and 2/defendants to comply the decree, sale deed be executed through Court and further sought relief of injunction restraining respondents No.1 and 2/defendants from creating third party interest or altering nature of the property.

5. Respondents No.1 and 2/defendants submitted written statement to the suit filed by appellant/plaintiff, in which, they have stated that there was partition between respondents No.1 and 2/defendants. The holdings of disputed property is also separated and recorded in two separate *Rin-Pustika* (Kisan-Kitab). They have specifically objected valid execution of sale agreement dated 08/08/2011 of property in dispute and pleaded that it was obtained by fraud with the help of one land broker, namely, Hariram. They have further pleaded that Hariram

provided them liquor and when they came under the influence of liquor, he called appellant/plaintiff and get their signatures on stamp paper. They admitted that appellant/plaintiff handed over Rs.50,000/- (Rupees Fifty Thousand Only) which was given by Bholaram Sen (DW-2) to wife of defendant No.1.

6. Respondents No.1 and 2/defendants through their Advocate within a short period of time of alleged execution of agreement had sent legal notice on 29/08/2011 and thereafter again on 03/12/2012 mentioning that signatures on the alleged agreement has been obtained by fraud.

7. Learned trial Court based on the pleadings made by respective parties framed as many as four issues for consideration including the issue with respect to execution of agreement by fraud and readiness and willingness of appellant/plaintiff to perform his part of contract as per agreement dated 08/08/2011.

8. Learned trial Court found proved that execution of agreement dated 08/08/2011 was by fraud and further that appellant/plaintiff failed to prove his readiness and willingness to perform his part of contract and dismissed the suit in its entirety.

9. Learned counsel appearing for appellant/plaintiff submits that learned trial Court without any evidence recorded a finding that signatures on agreement (Ex. P-1) was obtained by fraud.

He further submits that agreement to sell was executed in presence of two witnesses and respondents No.1 and 2/defendants were conscious and not under the influence of liquor. He also submits that appellant/plaintiff was ready and willing to perform his part of contract for payment of Rs.15,50,000/- (Rupees Fifteen Lacs Fifty Thousand Only). He lastly submits that finding recorded by learned trial Court that appellant/plaintiff failed to prove his readiness and willingness to perform his part of contract is perverse, therefore, the suit may be decreed in favour of appellant/plaintiff.

10. Learned counsel appearing for respondents No.1 and 2/defendants submits that appellant/plaintiff is a land broker. He further submits that on the date of execution of Ex. P-1 dated 08/08/2011, there was celebration of birth ceremony of child of respondent/defendant No.2. Respondents No.1 and 2/defendants consumed liquor. Subsequently, land broker, namely, Hariram working for appellant/plaintiff came to their house and again provided them liquor and thereafter called appellant/plaintiff who brought stamp paper with him and obtained signatures of respondents No.1 and 2/defendants when they were under the influence of liquor. He also submits that signatures over alleged agreement to sell (Ex. P-1) was obtained by fraud and execution of alleged agreement by fraud was objected by respondents No.1 and 2/defendants within few

days from the date of its alleged execution. They sent legal notice through Advocate narrating all facts in detail. He lastly submits that except pleading of readiness and willingness in the plaint, appellant/plaintiff failed to prove by reliable evidence his actual readiness and willingness to perform his part of contract.

11. Learned counsel for respondents No.1 and 2/defendants in support of his argument placed reliance on judgment passed by this Court in **First Appeal No.82 of 2013 (Sanjay Maheshwari v. Punaram Sahu and Others)** decided on **25/08/2017** and judgment passed by Hon'ble Supreme Court in the matter of **Kamal Kumar v. Premlata Joshi and Others**¹.

12. We have heard learned counsel appearing for parties and perused the record carefully.

13. Looking to the facts and circumstances as well as nature of suit we are dealing first with the question, whether learned trial Court has rightly held that appellant/plaintiff failed to prove his readiness and willingness to perform his part of contract?

14. It is a settled law that remedy for specific performance is an equitable remedy and is in the discretion of the Court. Discretion is to be exercised according to settled principles of law and not arbitrarily as enumerated under Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act').

¹ AIR 2019 SC 459

Under Section 20 of the Act, the Court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of plaintiff prior and subsequent to filing of suit along with other attending circumstances. Amount of consideration which he has to pay to defendant must of necessarily be proved to be available. Right from the date of execution till date of decree, he must prove that he is ready and has always been willing to perform his part of contract. As stated, the factum of his readiness and willingness to perform his part of contract is to be adjudged with reference to conduct of party and attending circumstances. The Court may infer from the facts and circumstances whether plaintiff was

ready and was always ready and willing to perform his part of contract.

15. Readiness and willingness by the party to perform his part of contract is one of the essential ingredients and requirement to get the decree for specific performance of contract through the Court. The Hon'ble Supreme Court in the matter of **I.S. Sikandar (Dead) by LRS. v. K. Subramani and Others**² held as under:-

“45. The learned Senior Counsel for the fifth defendant also placed strong reliance upon the judgment of this Court in *N. P. Thirugnnam v. R. Jagan Mohan Rao*, [(1995) 5 SCC 115] in support of the findings of the trial court on the above contentious issues wherein this Court has held that the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the original suit along with other attending circumstances and further the amount of consideration which he has to pay Defendants 1-4 must be proved by the plaintiff. Further, the plaintiff is required to prove the fact that right from the date of execution of the Agreement of Sale till the date of passing the decree he must prove that he is ready and has always been willing to perform his part of the contract as per the

² (2013) 15 SCC 27

agreement. Further, he rightly contended the same by placing reliance upon another judgment of this Court in *P. R. Deb and Associates v. Sunanda Roy*, [(1996) 4 SCC 423] wherein this Court held that : (SCC p. 429, para 7)

“7.....The plaintiff, in a suit for specific performance, must be ready and willing to carry out his part of the agreement at all material times.”

16. The Hon'ble Supreme Court in the matter of **Umabai and Another v. Nilkanth Dhondiba Chavan (Dead) by LRS. and Another**³ held as under:-

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.”

17. The Hon'ble Supreme Court in the matter of **Telikicherla**

³ (2005) 6 SCC 243

Sesibhushan (Dead) by Legal Representatives v. Kalli Raja Rao (Dead) by Legal Representatives and Others⁴ held as under:-

“8. Clause (c) of the Specific Relief Act, 1963 provides that specific performance of contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which he has been prevented or waived by the defendant. In the present case, as discussed above, due to the failure on the part of the appellant to repay the loan in terms of the agreement dated 10-5-1980 (Ext. A-1) and further considering the fact that not only the suit being OS No.208 of 1981 filed by the creditor Bank was decreed against the debtor but it attained finality, the courts below have committed no error of law in refusing to decree the suit of the appellant for specific performance of contract.”

18. Recently, Hon'ble Supreme Court in the matter of **Kamal Kumar** (supra) held as under:-

“10. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be

4 (2014) 15 SCC 743

gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

11. In our opinion, the aforementioned questions are part of the statutory requirements (See Sections 16 (c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and the forms 47/48 of Appendix A to C of the Code of Civil Procedure). These requirements have to be properly pleaded by the parties in their

respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”

19. Appellant/plaintiff in his pleading has only mentioned that he was ready and willing to perform his part of contract for payment of amount of Rs.15,00,000/- (Rupees Fifteen Lacs Only) (balance of total amount of Rs.15,50,000/-) to get the sale deed executed in his favour, but has not produced any cogent or reliable piece of evidence with respect to availability of funds with him. He has not produced any bank document or pass-book showing credit balance of required amount with him to prove that he was having funds in his credit balance for making payment to respondents No.1 and 2/defendants at the time of execution of sale deed (Ex. P-1).

20. Though there is pleading in the plaint that appellant/plaintiff is ready and willing to perform his part of contract, but he failed to substantiate this plea by adducing cogent evidence that he is having fund of Rs.15,00,000/- (Rupees Fifteen Lacs Only) at all relevant time, which is a huge amount to perform part of his contract. Appellant did not file any document and proved it in his evidence showing that he was having with him an amount of Rs.15,00,000/-. As in the instant

case part payment is of a very small amount comparing to the balance amount of Rs.15,00,000/-, therefore, the burden to prove availability of such a huge amount during the period i.e. the date on which agreement was executed till the last date on which the sale deed is to be executed was much heavy on the appellant in which he utterly failed.

21. In view of the above facts and circumstances of the case and law laid down by Hon'ble Supreme Court in aforementioned cases, we are of the considered opinion that learned trial Court has not committed any illegality or infirmity in recording a finding that appellant/plaintiff failed to prove his readiness and willingness to perform his part of contract.

22. Now the question arises that whether there was a valid contract or the respondents/defendants were mentally fit to enter into an agreement on 08/08/2011.

23. In the evidence of Shiris Kumar Gupta (PW-1), there is categorical admission that on the date of execution of Ex. P-1, there was function of birth ceremony of son of respondent/defendant No. 2 in the house of respondents No. 1 and 2/defendants.

24. Other witness Manish Kumar, brother of plaintiff (PW-3) in his evidence has shown his unawareness about consumption of liquor by respondents No. 1 and 2/defendants. He was a

witness to Ex. P-1 and said to have present before the Notary also, but his aforementioned evidence creates suspicion on the case of appellant/plaintiff with respect to execution of Ex. P-1 and further mental status of respondents No. 1 and 2/defendants at the time of execution of Ex. P-1 because he in his evidence has not denied the suggestion put to him with regard to intoxication of respondents No. 1 and 2/defendants in categorical terms.

25. In the case at hand also there is no mention of the necessity for selling of the property in Ex. P-1 which can also be inferred from the act of defendants that immediately they made effort to return the amount and also within few days, sent legal notice through Advocate mentioning their aforementioned attempt and refusal by the plaintiff and further pleaded that the plaintiff should take back the amount of Rs. 50,000/-.

26. Contrary to above evidence of plaintiff's witnesses, notice (Ex. P-2) was issued through Advocate by respondent No.1/defendant to plaintiff on 29/08/2011 i.e. within 20 days from the date of execution of Ex. P-1 clearly mentioning that signatures have been obtained when they were under the influence of liquor.

27. Keshavram (DW-1) in his evidence stated that respondents No.1 and 2/defendants were under the influence of

liquor and signatures on Ex. P-1 have been obtained by fraud.

28. Bholaram Sen (DW-2) stated that on the date of execution of agreement, respondents No. 1 and 2/defendants were under the influence of liquor and he objected the act of appellant/plaintiff with regard to deal of sale and purchase of land from respondents No.1 and 2/defendants when they were under the influence of liquor. He further stated that there was birth ceremony in the house of respondents No. 1 and 2/defendants and on that occasion, they consumed liquor.

29. Bholaram Sen (DW-2) is an independent witness and not relative of respondents No.1 and 2/defendants, but even after considerable cross-examination, this witness remained stands stead and not deviated from the statement recorded in chief.

30. Section 12 of the Indian Contract Act, 1872 defines 'sound mind' for the purpose of entering into contract, which reads as under :-

“12. What is a sound mind for the purposes of contracting.-A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may

make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.”

31. The illustration (b) of Section 12 of the Indian Contract Act, 1872 reads as under:-

“(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.”

32. The Hon'ble Supreme Court in the matter of **Sona Bala Bora and Others v. Jyotirindra Bhattacharjee**⁵ held as under:-

“20. It cannot be disputed that a contract of sale like any other contract would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872. Under Section 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person of unsound mind is thus not necessarily a lunatic. It is

5 (2005) 4 SCC 501

sufficient if the person is incapable of judging the consequences of his acts.

Black's Law Dictionary says:

"As a ground for voiding or annulling a contract or conveyance, insanity does not mean a total deprivation of reason, but an inability, from defect of perception, memory, and judgment, to do the act in question or to understand its nature and consequences."

33. In the case at hand undisputedly, the date on which Ex. P-1 has been said to be executed on the day when there was a celebration of birth ceremony of son of respondent/defendant No.2. Bholaram Sen (DW-2) in his evidence has specifically stated that respondents No.1 and 2/defendants consumed liquor and were under the influence of liquor, which shows that they were incapable of judging consequences of their act, they were unable to understand the rational of their judgment.

34. Though the consumption of liquor has not been proved by medical evidence but, the fact of respondents mental status on the date of execution of agreement to sale has to be considered on the basis of overall attending circumstances of the case and on the basis of preponderance of probabilities.

35. There is deference in manner of standard of prove in criminal cases and in civil cases. In criminal cases prosecution

has to prove its case up to the hilt, and if prosecution fails to do so, its benefit goes to accused. Whereas in civil cases evidence led by both the parties are to be weighed by Courts and then it is to be considered which version is more probable. In civil cases degree of prove required is not like criminal cases but, here preponderance of probabilities lying in favour of one of the parties is a touch stone to test as to who has succeeded to prove case in a particular way or to justify a particular inference.

36. In the instant case, the agreement was disputed within couple of days and it is also evident from the fact that when the plaintiff did not accept the refund of advance amount and returned the paper of agreement to sale to the respondents, then they have sent a legal notice through advocate on 29/08/2011 (Ex.P-2) i.e. within 20 days from the date of execution of Ex.P-1. In the notice also it has been specifically mentioned that on 08/08/2011 there was child birth celebration in the house of defendants and the signatures of defendants have been obtained when they were under influence of liquor.

37. Even Keshavram (DW-1) in his evidence stated that land brokers were continuously approaching respondents No. 1 and 2/defendants to sell disputed property but they were not interested to sell the land. Bholaram Sen (DW-2) also categorically stated in his evidence that there is no requirement

or necessity of respondents No.1 and 2/defendants to sell disputed property.

38. Looking to the entire evidence available on record, in our considered opinion the conduct of the defendants/respondents shows that the pleadings made by the defendants that on the date of execution of agreement to sale, they were not mentally fit to understand the consequence of their judgment and therefore, the defendants have proved their case on the basis of the preponderance of probabilities. We are having no hesitation in affirming the finding recorded by the learned trial Court that on the date of execution of sale agreement respondents/defendants were under influence of liquor.

Looking to the aforementioned documentary as well as oral evidence available on record, finding recorded by learned trial Court that on the date of execution of Ex. P-1, respondents No.1 and 2/defendants were under the influence of liquor cannot be said to be a wrong finding.

39. The other attending circumstances and conduct of the appellant can be inferred from perusal of Ex. P-1, which is an agreement to sale shows that in paragraph-2, it has been mentioned that the purchaser will get sale deed registered in his name or in name of any other person on 30/01/2012. The contents of agreement itself shows that appellant/plaintiff is not

a real purchaser of disputed property or he has not entered into an agreement to purchase the property solely for himself. It rather shows that he is engaged in sale and purchase of properties.

40. Evidence of R.K. Belchandan, Notary (PW-2) shows that appellant/plaintiff is engaged in sale and purchase of lands. In paragraph-6 of his deposition, he clearly stated that appellant/plaintiff had got the document prepared through him for purchase of other lands also. He admitted that some of the lands were registered in the name of appellant/plaintiff and appellant/ plaintiff got the sale deed of some land registered in the name of other persons.

41. Perusal of evidence of Bholaram Sen (DW-2) also in his deposition stated that appellant/plaintiff is involved in the business of sale and purchase of lands.

42. The Hon'ble Supreme Court in the matter of **N.P. Thirugnanam (Dead) by LRS v. Dr. R. Jagan Mohan Rao and Others**⁶ held as under :-

“6. In view of the aforesaid factual findings and of the legal position, the High Court has rightly concluded thus:

“We have no hesitation in recording the agreement with the finding of the learned

⁶ (1995) 5 SCC 115

Single Judge that the plaintiff has hopelessly failed and shown rather reluctance than readiness to perform his part of the contract. In the facts that are noticed in the judgment of the trial court, which are extracted by us as above, the only possible conclusion is that the plaintiff really was rather reluctant than willing to perform his part of the contract and was at no time ready with either money or resources to fulfil his part of the contract. The other circumstances which are noticed by the learned Single Judge and are detailed by him in the judgment go to show that the very idea of entering into an agreement with the first defendant alone when the plaintiff-appellant was already informed about the death of Dr. R. Surya Rao and the devolution of his interest upon the first defendant, his mother, his brothers and his sisters, was to somehow or other enter upon the property, but, the stipulated rent also was not paid by the plaintiff to the defendants. The trial court has noted that there was no legal necessity for the defendants to part with the suit property and held against the plaintiff that the very contract was speculative in nature and entered into by the plaintiff who has been dabbling in real estate transactions without the means to purchase a substantial immovable property like the suit property and we agree with the same."

43. Taking into consideration the aforementioned judgment, this Court in the matter of **Sanjay Maheshwari** (supra) held as under:-

“19. In other words, when the plaintiff is a broker or in real estate business and has failed to tender the balance sale consideration, as he was not finding potential buyers in the market, the decree for specific performance is not to be granted in favour of such plaintiff.”

44. From perusal of the overall facts and evidence available on record particularly evidence of (PW-2) who is an Advocate (Notary) and examined by plaintiff himself, clearly stated that the plaintiff is doing the business of purchase and sale of land. Perusal of contents of Ex.P-1 i.e. agreement to sale also show that either plaintiff will register the sale deed of property in his own name or in the name of other persons. From the above one thing is apparent that the plaintiff did not enter into an agreement for purchase of the lands in his own name exclusively, but is in business of real estate.

45. Relief of granting decree for specific performance of contract is a discretionary relief. Before granting the discretionary relief, number of factors are to be taken into consideration whether the substantial part of sale consideration has been paid as advance, purchaser has been put to

possession of property or purchaser is suffering monetary loss.

46. The Hon'ble Supreme Court in the matter of **Hemanta Mondal and Others v. Ganesh Chandra Naskar**⁷ held as under:-

“16. In the present case, it appears that possession was not given to the plaintiff at the time of execution of the agreement, nor the area of land agreed to be sold was clear, as such, it cannot be said that the plaintiff has done substantial acts or suffered losses due to expenditure in constructions, etc., in consequence of a contract capable of specific performance. The direction given by the High Court in the impugned order shows that the measurements of land actually agreed to be sold, are not final.

17. In the above facts and circumstances of the case, we are of the view that instead of affirming the decree of specific performance as modified by the High Court, it will be equitable, just and proper to direct the appellants to pay back the amount of Rs 60,000 accepted by the original defendant with interest @ 18% p.a to the respondent-plaintiff from 4-2-1992 till date, within a period of three months from today, failing which this appeal shall stand

⁷ (2016) 1 SCC 567

dismissed. We order accordingly. The amount of Rs 73,125 deposited by the plaintiff may also be withdrawn by him after the appellants pay or deposit the sum in favour of the plaintiff as directed above. The appeal stands disposed of.”

47. In the instant case, agreement was disputed within few days from its execution by respondents No.1 and 2/defendants and out of Rs.15,50,000/- (Rupees Fifteen Lacs Fifty Thousand Only), only Rs.50,000/- (Rupees Fifty Thousand Only) has been paid as advance, possession was not handed over to the purchaser and thereby the purchaser has not made any investment in land in dispute causing financial loss to him. Defendants made efforts to return back the advance amount within few days, but plaintiff refused to accept.

48. Considering overall facts and circumstances of the case in view of the evidence available on record, we are of the considered view that plaintiff failed to make out a case calling interference in the impugned judgment and decree. There is no illegality or infirmity in the impugned judgment and decree passed by learned trial Court in dismissing the suit of appellant/plaintiff.

49. Perusal of the order-sheet dated 12/09/2014 would show that the learned trial Court granted an opportunity to the plaintiff before passing the judgment to amend his plaint and to seek

the relief of refund of advance amount as per provisions of Section 22(2) of the Act of 1963 which was refused by the plaintiff. In view of the above though plaintiff proved and there is also an admission of defendants that on the date of execution of Ex.P-1 Rs.50,000/- has been given in advance even then appellant/plaintiff is not entitled for relief to get the refund of Rs.50,000/- (advance amount).

50. In view of aforementioned discussions and settled principles of law, the appeal being devoid of any substance which is liable to be and is hereby dismissed.

51. Decree be drawn up accordingly.

52. No order as to costs.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Parth Prateem Sahu)
Judge