

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 22 of 2005****Reserved on : 30.04.2019****Delivered on : 25.06.2019**

Santosh Kumar Tiwari, S/o Kedarnath Tiwari, Proprietor "Sai Food Company" Vijay Complex, Camp No. 2, Shop No. 2, Bhilai, District- Durg (C.G.)

---- Appellant**Versus**

Ashok Kumar Agrawal, S/o Late Narayan Prasad Agrawal, aged about 37 years, Sole Proprietor, "Maruti Trading Company", R/o Jute Mill Road, Raigarh, Tahsil & District- Raigarh (C.G.)

---- Respondent

For Appellant	:	Mr. A.K. Athaley, Advocate.
For respondent	:	Mr. Sourabh Sharma & Mr. Tarkeshwar Nande, Advocates.

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 26.10.2004 passed by Second Additional District Judge, Raigarh (C.G.) in Civil Suit No. 17B/2002, wherein the said court decreed the suit filed by the respondent for a sum of Rs. 50,000/- with interest.
2. The present appellant/ defendant is doing business of wholesale of fruits in the name and style of Sai Food Company having its office at Vijay Complex, Bhilai, District- Durg (C.G.). On 18.04.2002, the

respondent/ plaintiff sent a Bank Draft No. 151068 dated 18.04.2002 worth Rs. 50,000/- to the appellant for supply of mango, grapes etc. It is alleged by the respondent that despite receiving the bank draft, the present appellant neither sent the fruits nor refunded the money. The respondent sent a notice dated 17.08.2002 to the appellant. As per version of the appellant, the draft was sent by one Rakesh Kumar Shukla who is fruit merchant at Raigarh and used to purchase fruits from him and he had already supplied the fruits to him. Rakesh Kumar Shukla was not made party, therefore, suit ought to have dismissed for want of proper parties.

3. Learned counsel for the appellant submits as under:-

- (i) Passing of decree only on the basis of bank draft is not proper.
- (ii) The trial court erred in rejecting testimony of Rakesh Kumar Shukla without any reasonable cause, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits that as per Ex.P/13, the bank draft was issued in favour of Santosh Kumar Tiwari to the tune of Rs. 50,000/- and the amount was delivered for supplying of grapes and mango, but nothing was supplied against the amount of bank draft. The appellant has not supplied fruits, therefore, he is under obligation to return the said amount.
5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. From evidence of the respondent, it is established that the bank draft

was issued in favour of the appellant to the tune of Rs. 50,000/- and he received the said amount. The appellant is basing his defence that he is having transaction with one Rakesh Kumar Shukla and fruits were supplied to Rakesh Kumar Shukla, but from evidence of Rakesh Kumar Shukla (DW-2), it is not clear as to what quantity of fruit was supplied to him when bank draft was issued by the respondent in favour of the appellant, the appellant was under obligation to supply fruits to the respondent not to any other person.

7. The trial court has elaborately discussed the entire evidence and recorded finding that it is the appellant who received the bank draft issued by the respondent and the appellant has not supplied any fruit against the bank draft, therefore, appellant is under obligation to refund the amount. After reassessing the entire evidence, this Court has no reason to record contrary finding.
8. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) The appellant to bear cost of the respondent throughout.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge