

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 01 of 2019**

Roshanlal Agrawal, S/o Shri K.K. Agrawal, Aged About 38 Years,
R/o C/002/S.S. Enclave, next to S.S. Plaza, Power House Road,
Tahsil, Korba, Chhattisgarh.

---- Appellant**Versus**

Smt. Anita Agrawal, W/o Shri Ashok Agrawal, Aged About 47
Years, Occupation Business, R/o P/34/B Jain Road, Krantinagar,
Bilaspur, Chhattisgarh.

---- Respondent

For Appellant : Shri P.K.C Tiwari learned Senior Counsel along
with Shri Shashi Bhushan Tiwari and Shri Virendra
Verma, Advocate.
For Respondent : Shri Mateen Siddiqui along with Shri Ashutosh
Mishra, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****20.02.2019**

1. This Miscellaneous Appeal has been preferred by the plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') questioning the legality and propriety of the order dated 19.11.2018 passed by learned 2nd Additional District Judge, Korba (C.G.) in Civil Suit No.2-A/2018 whereby, the application filed by the plaintiff under Order 39 Rules 1 & 2 of the C.P.C. has been rejected.

2. Shri Tiwari learned counsel for the appellant submits that the order impugned as passed by the trial Court disbelieving the alleged oral agreement made in the month of May, 2013 has erred in rejecting

the said application. According to him, the plaintiff was initially put in possession over the property in question on rent under the rent agreement dated 01.11.2012 and was running a hotel business and, thereafter another rent agreement was executed on 25.03.2014. However, in the month of May 2013, it was assured by the defendant to alienate the property in question in his favour for a consideration of Rs.2 Crores and 21 Lakhs and pursuance thereof a sum of Rs.1 Crore and 80 Lakhs was paid on 05.08.2017. Without considering all the material facts in its proper manner, the trial Court has erred in rejecting the said application.

3. On the other hand, Shri Siddiqui learned counsel for the respondent, while supporting the order impugned submits that no agreement as such was ever executed orally in the month of May, 2013 and the entire case is completely based upon the false plea, therefore, plaintiff is not entitled to get the discretionary relief as provided under the Specific Relief Act, 1963. He submits further that prior to institution of the suit, an application was made by the plaintiff on 22.03.2018 before the Rent Controlling Authority, Korba (C.G.) seeking execution of rent agreement, which itself shows that no agreement was ever executed orally in May 2013, as contended by the plaintiff. He submits further that for eviction of the premises in question, an appropriate application required under Section 12 of the Chhattisgarh Rent Control Act, 2011 has been made by the defendant before the Rent Controlling Authority, Korba (C.G.). The order impugned is, therefore, not liable to be interfered.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. A suit for specific performance of contract was made by the plaintiff on 16.08.2018 alleging inter alia, that in May 2013, the defendant has assured him orally to alienate the property in question situated at Transport Nagar, Korba for a consideration of Rs.2 Crores and 21 Lakhs and has obtained a sum of Rs.1 Crore and 80 Lakhs on 05.08.2017. According to the plaintiff, the substantial amount has been deposited by him in defendant's bank account in pursuance to the alleged oral agreement, however, all of a sudden, he (defendant) approached the Rent Controlling Authority by moving an application for his eviction. The plaintiff is, therefore, under the apprehension that he may be evicted by the defendant and in the said event, it would cause an irreparable loss to him. However, from a bare perusal of the record, as reflected from para 18 of the written statement, the plaintiff himself has moved an application before the Rent Controlling Authority on 22.03.2018, prior to institution of the suit, seeking execution of rent agreement from the defendant. The conduct of the plaintiff as such would reveal prima facie that no oral agreement, as alleged by the plaintiff, was ever made.

6. That apart, a suit for specific performance of contract has been filed on 16.08.2018, i.e., after passing of more than 5 years of the alleged oral agreement. As such, it appears prima facie that plaintiff was never ready and willing to get the deed of sale executed in his favour else, he would have insisted for the execution of the registered deed of sale itself, instead of execution of rent agreement on 25.03.14

7. Besides, an application was made by the defendant on 05.09.2018 under Section 12 of the Chhattisgarh Rent Control Act, 2011 before the Rent Controlling Authority, Korba (C.G.) for obtaining the vacant possession of the suit premises from the plaintiff. The

plaintiff is, thus, adopting the due process of law in order to get the suit premises evicted instead of obtaining the same, forcefully from the plaintiff. In any case, there is no allegation in the plaint that defendant is trying to get the suit premises from the plaintiff, forcefully. After considering all these material facts, the trial Court has rightly come to the conclusion that three essentials required for issuance of temporary injunction are not in favour of the plaintiff. Consequently, the findings so recorded prima facie as such do not required to be interfered.

8. In view of the foregoing discussions, I do not find any substance in this Appeal. The Appeal being devoid of merits is accordingly, dismissed at the motion stage itself.

9. It is made clear that the trial Court shall not be influenced by any of the observations of mine while deciding the suit on merits. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge