

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No.01 of 2021****Reserved on 12.04.2021**
Pronounced on 08.06.2021

- Dr. Snehil Diwan, S/o Shri Sushildhar Diwan, Aged about 33 years, R/o Palash – 88, Rajkishore Nagar, Bilaspur, Tehsil and District Bilaspur (C.G.) Presently at Magarpara, side lane of Mahendra showroom House of Mr. Shekhar Mudliyar, Bilaspur, Tehsil and District Bilaspur (C.G.)

---- Appellant/Plaintiff**Versus**

- Sudesh Chandra, S/o Shri Harish Chandra Khatik, aged about 54 years, R/o Jaimata Di Bhawan, Gali No.3, Kashyap Colony, Bilaspur, Tehsil and District Bilaspur (C.G.)

---- Respondent/Defendant

For Appellant	:Shri Prateek Sharma appears along with Shri Ravindra Sharma, Advocates.
For Respondent	:Shri Ajay Kumar Dwivedi, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Order**

1. This Miscellaneous Appeal has been preferred by the Plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 16.12.2020 passed in Civil Suit No.(A)/12/2020 whereby the learned trial Court has rejected his application filed under Order 39 Rule 1 & 2 of CPC seeking grant of temporary injunction. The parties to this appeal shall be referred hereinafter as per their description before the Court below.
2. Briefly stated the facts of the case are that the Plaintiff instituted a suit claiming specific performance of contract and injunction

submitting, inter alia, that vide agreement to sale dated 13.11.2017, the Defendant has agreed to alienate the land in question being part of Kh.No.148/3 admeasuring 4000 sq.ft. situated at village Lingiyadih, Tahsil and District Bilaspur at the rate of Rs.1,900/- per sq.ft., i.e., for a total consideration of Rs.76,00,000/-. It is pleaded by the Plaintiff that in pursuance of the alleged agreement to sale, he paid him a sum of Rs.5,00,000/- through cheque of Chhattisgarh Gramin Bank, dated 14.11.2017, while Rs.10,00,000/- through another cheque of the said bank on 22.01.2018 and registered deed of sale was required to be executed within the period of six months from the date of its diversion. It is pleaded further that despite the diversion of the land in question, made on 31.01.2019, neither the information of it was provided to him by the Defendant nor has executed the registered deed of sale in pursuance of the alleged agreement and, instead the Defendant has deliberately kept it in abeyance on one pretext or the other despite issuance of the several notices, though the Plaintiff was always ready and willing to perform his part of the contract. The Plaintiff has, therefore, been constrained to institute the suit in the instant nature on 14.01.2020.

3. Along with the aforesaid claim, an application enumerated under Order 39 Rule 1 & 2 read with Section 151 of CPC has been made by the Plaintiff while reiterating the contentions made in the plaint seeking issuance of temporary injunction restraining the Defendant from alienating the property in

question pending decision of the suit else it would cause an irreparable loss to him.

4. In reply to the aforesaid application, it is stated by the Defendant that the Plaintiff was aware of the diversion of the land in question, yet has not shown his readiness and willingness for its purchase within the period of six months from the date of its diversion and, instead was searching for a customer so as to get the sale deed executed in his favour directly in order to get the undue monetary benefits. It is contested further, while referring to clause 12 of the alleged agreement, that in case of occurrence of any dispute with regard to the property in question, then in the said event, the vendor has to refund the entire amount whatever has been received, to him (purchaser), therefore, no irreparable loss is going to be caused to him. The application seeking temporary injunction is, therefore, liable to be rejected.
5. After considering the prima facie materials led by the parties, it was observed by the trial Court while taking note of the essential terms and conditions as stipulated in the alleged agreement to sale, that the Plaintiff was aware of the diversion of the land in question. It observed further that since the notice has been issued by the Plaintiff for the first time only after nine months of the alleged diversion, and since there is a restitution clause provided under clause 12 of the alleged agreement for refund of the entire amount if taken by the vendor (Defendant) to the purchaser (Plaintiff), therefore, no irreparable loss could

have been caused to the Plaintiff. As a consequence of it, the trial Court has refused to grant him temporary injunction, as prayed for, which has been impugned by way of this appeal.

6. Shri Sharma, learned counsel appearing for the Appellant/Plaintiff submits that the finding of the Court below holding that the Plaintiff was aware with regard to the alleged diversion of the land in question, made on 31.01.2019, is apparently contrary to law as the Plaintiff came to know about it for the first time only on 17.10.2019 when the certified copy of the same was delivered to him. It is contended further that since the considerable amount of Rs.15,00,000/- has already been paid to the Defendant in pursuance of the alleged agreement to sale, therefore, in such circumstances, the Court below ought to have protected the valuable interest of the Plaintiff while restraining the Defendant from creating any third party interest in relation to the property in question pending decision of the suit.
7. On the other hand, Shri Ajay Kumar Dwivedi, learned counsel appearing for the Respondent/Defendant has supported the order impugned as passed by the trial Court.
8. I have heard learned counsel appearing for the parties and perused the entire relevant papers annexed with the memo of appeal.

9. Plaintiff's claim for specific performance of contract is based upon the alleged agreement to sale dated 13.11.2017, which was executed under certain terms and conditions in his favour by the Defendant, agreeing to alienate the land in question held by him, at the rate of Rs.1,900/- per sq.ft., who undisputedly received an amount of Rs.5,00,000/- from him on 14.11.2017 while a sum of Rs.10,00,000/- on 22.1.2018, both through cheques. According to the terms and conditions stipulated in the alleged agreement to sale, the registered deed of sale with regard to the land in question was required to be executed within the period of six months from the date of its diversion, which is required to be carried out by the Plaintiff at his own cost in the name of vendor/Defendant in view of clause 15 of the alleged agreement. It, however, appears to be carried out by the vendor/Defendant in a proceeding, which was registered as Revenue Case No.1423/A-2/2017-18 wherein the Sub-Divisional Officer (Revenue), Bilaspur, has passed the diversion order on 31.01.2019. Although the Plaintiff has stated in his claim that he was not aware of the alleged order of diversion, but looking to the clause 5 of the alleged agreement, which provides for the execution of the sale within the period of six months from the date of its diversion, it is difficult to observe at this stage in absence of any prima facie cogent and reliable evidence led by him (Plaintiff) that he was not aware of it. That apart, a person, like the Plaintiff, who has paid considerable amount of Rs.15,00,000/- in pursuance of the alleged agreement knowing fully that the registered deed of sale is to

be executed within the stipulated period of six months from its diversion would not have made any efforts to know about it even after passing of more than the considerable period, particularly, when the responsibility was cast upon him for carrying out its diversion by virtue of clause 15 of the alleged agreement at his own cost. It, therefore, appears prima facie that the Plaintiff was aware of the alleged diversion made on 31.03.2019, yet the Plaintiff has failed to make an effort for its execution within the said stipulated period, as provided therein under clause 5 of the alleged agreement to sale dated 13.11.2017.

10. Be that as it may, the entire amount of consideration as paid by the Plaintiff has been safeguarded by incorporating the clause 12 in the alleged agreement, which unequivocally provides for its refund immediately in case of occurrence of any dispute with regard to the property in question.
11. Considering the facts and circumstances of the case, considering further the terms and conditions as stipulated, specifically in clauses 5, 12 & 15 of the alleged agreement to sale dated 13.11.2017, vis-a-vis, the prima facie observations of the Court below that the Plaintiff was aware of the alleged diversion order dated 31.01.2019 as passed by the Sub-Divisional Officer (Revenue), Bilaspur, yet notice was issued by him for the first time on 12.09.2019, i.e., much beyond the period of six months from the date of its diversion, I do not find any infirmity in the order impugned as passed by the Court

below refusing to grant him temporary injunction as prayed for.

12. Consequently, the appeal, being devoid of merits, is accordingly dismissed. No order as to costs.
13. Before parting with the matter, it is made clear that I have not entered into the merits of the case and the trial Court would not be influenced by any of the observations of mine while deciding the suit on merits.

Sd/-
(Sanjay S. Agrawal)
Judge