

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 179 of 2018**

Kanhaiya S/o Daulatram Motwani Aged About 39 Years Profession Business, R/o Sindhipara, Ward No.4, Bemetara, District Bemetara, Chhattisgarh (Plaintiff).

---- Appellant(s)**Versus**

1. Ramlal S/o Khorbahra Satnami Aged About 67 Years Profession Agriculture, R/o Bhoinabhatha, Post Bawamohtara, Tehsil and District Bemetara, Chhattisgarh.
2. State of Chhattisgarh Through the District Magistrate, Bemetara, District Bemetara, Chhattisgarh (Defendants).

---- Defendant (s)

For Appellant-Plaintiff	:	Shri Akshaya Uppal, Advocate.
For respondent No.1-Defendant	:	Shri Viprasen Agrawal, Advocate.
For Respondent No.2	:	Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Hon'ble Smt. Justice Rajani Dubey, JJ

Judgment on Board**Per, P. Sam Koshy, Judge****25.10.2021**

1. With the consent of the parties, the matter was heard finally at motion stage.
2. Aggrieved by the judgment and decree passed by the District Judge, Bemetara dated 15.12.2017 in Civil Suit No.1-A/2014, the present appeal under Section 96 of Code of Civil Procedure has been filed. Vide the impugned judgment, the court below has dismissed/rejected the suit for specific performance of contract filed by the appellant/plaintiff.
3. Brief facts relevant for the disposal of the present appeal is that the appellant/plaintiff entered into an agreement with the respondent No.1-defendant on 22.11.2012 for the sale of land situated at Khasra No.835/1 for a sale consideration of Rs.12,93,750/-. The property exclusively belonged to respondent No.1. In terms of the agreement entered into between the parties, an earnest money/advance of an amount of

Rs.60,000/-was paid by the appellant to the defendant No.1. The balance amount was to be paid at the time of execution of the sale deed. As per agreement, the sale deed was got to be registered by payment of balance amount of sale consideration within a period of one month i.e. 30 days. The appellant/plaintiff thereafter contends that inspite of repeated request the respondent No.1 avoided execution of the sale deed and therefore the appellant-plaintiff was compelled to file a suit for specific performance of the contract for execution of the agreement dated 22.11.2012. The Suit was registered as Civil Suit No.1-A/2014.

4. After pleadings were complete, the court below vide impugned judgment and decree dismissed the suit. The dismissal has been on the ground that the appellant/plaintiff has failed to meet the requirement as is otherwise envisaged under Section 16(c) of the Specific Relief Act. The court found that the appellant has failed to discharge his responsibility and liability establishing his readiness and willingness to perform the essential terms of the agreement entered into between the parties so far as his part is concerned. It is this judgment and decree which is under challenge in the present appeal.
5. The contention of the appellant is that the findings by the court below on the aspect of readiness and willingness is contrary to the evidence on record, particularly the deposition of the plaintiff and the witnesses examined in support of plaintiff's evidence. According to the appellant, there has been averment made by the plaintiff as well as by the other witnesses categorically stating that the appellant/plaintiff has been repeatedly approaching the respondent No.1/defendant for executing the sale deed in terms of the agreement entered into between the parties. That, it was the defendant i.e. respondent No.1 who was always avoiding the request made by the plaintiff. Therefore, the court below should have appreciated the evidence of the plaintiff and the supporting witnesses and

ought to have allowed the suit and should have directed the respondent-defendant to execute the contract at the earliest. Thus, prayed for allowing the appeal, setting aside the judgment and decree passed by the court below.

6. Per contra, the counsel appearing for the respondent No.1-defendant drew the attention of the court to the agreement dated 22.11.2012 entered into between the parties and submitted that in terms of the agreement the sale deed had to be executed within the stipulated period agreed upon, which was 30 days. It was further contention of the respondent No.1-defendant that there has been a total failure on the part of the appellant/plaintiff in discharging the liability in terms of the agreement that of paying the balance amount payable to the defendant No.1 and in getting the sale deed registered. It was also the contention of the counsel for the defendant No.1 that there is an evidence on the other hand led by the defendant before the court below by which it can be safely concluded that the appellant infact has failed to discharge his part of the agreement and when the respondent No.1-defendant has approached the appellant-plaintiff for the balance of amount, the plaintiff paid the respondent No.1 another meager amount of Rs.10,000/- and further avoided of getting the property registered in his name.
7. According to respondent No.1, since inception there was no preparedness, readiness or willingness on the part of the appellant/plaintiff, therefore, the court below has rightly dismissed the suit and as such there is no scope of interference left for this court and the appeal should be rejected.
8. Having head the contentions put forth on either side and on perusal of records, if we peruse the evidence which has led on either side, and compare the findings of fact given by the court below, admittedly the statement on behalf of the plaintiff were as vague as it could be with no specific details whatsoever provided showing preparedness, readiness and

willingness on his part for execution of the contract. Having perused the evidence, we find that evidence is missing of details of the readiness so far as arranging of sale consideration i.e. an amount of Rs.12,33,750/-, the balance amount payable to the defendant for getting the property registered in favour of the plaintiff. There is no bank details and documents adduced as evidence. Neither has the plaintiff been able to show with the aid of any document that he was infact having the requisite finance available with him for discharge of his part of the contract. Further, from the perusal of evidence it is also reflected that there is an admission on the part of the appellant/plaintiff that when the respondent No.1-defendant had approached him for the balance of amount, the appellant/plaintiff has paid him a further amount of Rs.10,000/-, which in other word, goes to show that the appellant could not arrange more money towards sale consideration and which also goes against the appellant/plaintiff so far as his inability to show his readiness and willingness.

9. In the given factual backdrop and which has rightly and duly been considered by the court below in the course of deciding the suit and in passing the impugned judgment and decree, this court does not find any perversity or a contrary finding so as to reach to a different conclusion than what has been arrived at by the court below.
10. Thus, for all the aforesaid reasons, we are of the considered opinion that the appellant has failed to establish a case warranting interference to the impugned judgment and decree. The First Appeal therefore being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshiy)
Judge

Sd/-
(Rajani Dubey)
Judge