

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.217 of 1994

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 24.03.1994 and 06.04.1994 respectively passed by the learned 1st Additional District Judge, Cuttack in Money Appeal No.6 of 1991 setting aside the judgment and decree dated 09.04.1991 and 27.04.1991 respectively passed by the learned Munsif, 1st Court, Cuttack in Money Suit No.602 of 1988.

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Cuttack Development Authority, Appellant
represented by its Secretary

-versus-

Ajoy Mohanty & Others *Respondents*

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant - Mr. Dayananda Mohapatra,
(Advocate)

For Respondents - Mr.A.K. Ray, S. Ray, S. Dey
A.Mohanty & S.P. Das
(Advocates)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 14.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, ‘the Code’), has assailed the judgment and decree dated 24.03.1994 and 06.04.1994 respectively passed by the learned 1st Additional District Judge, Cuttack in Money Appeal No.6 of 1991.

The First Appellate Court, in that Appeal filed by the Respondent No.1 under section 96 of the Code in challenging the judgment and decree dated 09.04.1991 and 27.04.1991 respectively passed by the learned Munsif, 1st Court, Cuttack in Money Suit No.602 of 1988, has set aside the judgment and decree passed in the suit, which had been dismissed by the Trial Court and thereunder has decreed the suit of the Respondent No.1 (Plaintiff) directing the Appellant (Defendant No.1) to pay a sum of Rs.2500/- with interest @ 10% pendentelite and future to the Respondent No.1 (Plaintiff).

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that he made an application to the Defendants for allotment of 'C' category of plot at Markatnagar Sector-6 of Bidanasi Project of Cuttack Development Authority, which was known as Nutan Cuttack Unayan Prakaalpa. Along with the application, the Plaintiff has deposited a sum of Rs.10,000/- by a Bank Draft drawn in favour of the Defendant No.1 and it was submitted in the Office of the Defendant No.1 on 25.12.1985, which was duly acknowledged. The Plaintiff then changed his mind and made another application on 04.01.1986, which was sent under Certificate of Posting to the Defendant No.1 whereby he expressed for withdrawal of his application and not to pursue the same any more. Thereunder, he also sought for refund of the entire amount of Rs.10,000/- from the Defendants. This was not responded by the Defendants. It is stated that the Plaintiff then personally went and handed over the copies of the withdrawal applications dated 04.01.1986, 05.02.1986 and 08.06.1986 in the Office

of the Defendant No.1. But, then the Defendants, accepting the withdrawal application filed by the Plaintiff, in going to refund the amount, have deducted a sum of Rs.25008/- from the initial deposit of Rs.10,000/-. So, the suit has been filed.

4. The Defendants, in their written statement, have submitted that the Plaintiff, having received a sum of Rs.7,500/- without any objection after the Defendants deducted a sum of Rs.2500/- from his initial deposit of Rs.10,000/-, cannot raise any question as the said refund. It is stated that the allotment order had already been issued in favour of the Plaintiff on 17.03.1986 and it had been received by his wife on 18.03.1986. So, that being the position, the withdrawal application having been received after that order of allotment, the Plaintiff is not entitled to get back the full amount. It is further stated that by a Resolution in the meeting of the Authority, it had been decided that in case the withdrawal application is received after the order of allotment, a sum equivalent to 25% of the initial deposit would be deducted and this deduction of Rs.2500/-, in case of the Appellant is, therefore, in consonance with the said Resolution.

5. On the above rival pleadings, the Trial Court, in total, has framed seven issues. In answering the issues, the Trial Court having gone through the evidence on record, has come to a conclusion that the Plaintiff having applied for withdrawal of his application after the passing of the order of allotment of plot in his favour and it being within the Authority of the Defendants as per the rules, rightly there has been deduction of a sum of Rs.2500/-. In that view of the matter, the Trial Court dismissed the suit.

The First Appellate Court, being moved by the unsuccessful Plaintiff, has formulated the following points for their answer:-

“Whether the Plaintiff-Appellant applied for withdrawal of the application and refund of the amount prior to allotment of ‘C’ category of plot?; and

Whether the Respondents have any right to forfeit or deduct 25% of the deposited money of the Appellant which the Appellant has deposited for the house plot?”

The answers to the aforesaid points having finally been returned in favour of the Plaintiff, the suit has been decreed.

6. The present Appeal has been admitted to answer the following substantial questions of law:-

“Whether under the facts and circumstances of the case, the lower appellate court has correctly analysed certificate of posting, Exts.3/b and 4/b?; and

Whether findings of the lower appellate court are contrary to the evidence on record and are based on surmises or conjectures?”

7. Heard Mr. Dayananda Mohapatra, learned counsel for the Appellant. According to him, the First Appellate Court should not have placed reliance upon Exts.3/b and 4/b in coming to conclude that the Plaintiff's application for withdrawal had been duly received on those occasions by the Defendant No.1. He submitted that the First Appellate Court ought not to have gone to say that the application for withdrawal had been received by the Defendant No.1 under Certificate of Posting and the ultimate conclusion arrived at by the First Appellate Court that the Plaintiff has sent the application before the order of allotment has thus gone wrong. He further submitted that when the Authority is permitted under the Rule to make such provision as to deduction of

reasonable amount from the initial deposit while accepting the withdrawal keeping in view the difficulties/inconvenience and loss sustained on account of late filing of the withdrawal application after the allotment, the First Appellate Court has wrong in saying that as the Brochure (Ext.1) does not contain any such specific provision, the deduction is not proper.

None appeared on behalf of the Respondents despite due opportunities.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

9. Admittedly, the Plaintiff had applied for allotment of 'C' category of plot at Markatnagar Sector-6 of Bidanasi Project of Cuttack Development Authority, which was known as Nutan Cuttack Unayan Prakalpa by making an application on 30.12.1985 and for the purpose, he had deposited a sum of Rs.10,000/- in shape of Bank Draft, which had been acknowledged by the Defendants by granting receipt on 31.12.1985.

The Plaintiff, having been examined as P.W.1, has deposed on oath that some time after the application, he having changed his mind, submitted an application on 04.01.1986 expressing his desire not to pursue the said application for allotment. In that letter, he prayed for refund of the amount deposited initially. He further stated to have sent another letter on 05.02.1986. The allotment is said to have been passed on 17.03.1986, which is said to have been communicated to the wife of the Plaintiff on 18.03.1986. The receipt of order of allotment by the wife of the Plaintiff has been proved through document (Ext.B). The Plaintiff has proved Exts.3 & 4 in support of his dispatch of the letter of

withdrawal to the Defendants. On the face of the evidence adduced by P.Ws.2 and 3 as also on going through these documents, the First Appellate Court, having taken a view by differing with the reasons assigned by the Trial court as is seen from the judgment that the Plaintiff had communicated the Defendants about his desire not to press the application for allotment of the plot of land prior to the passing of the order of allotment; this Court finds no such reason or justification to overturn the same.

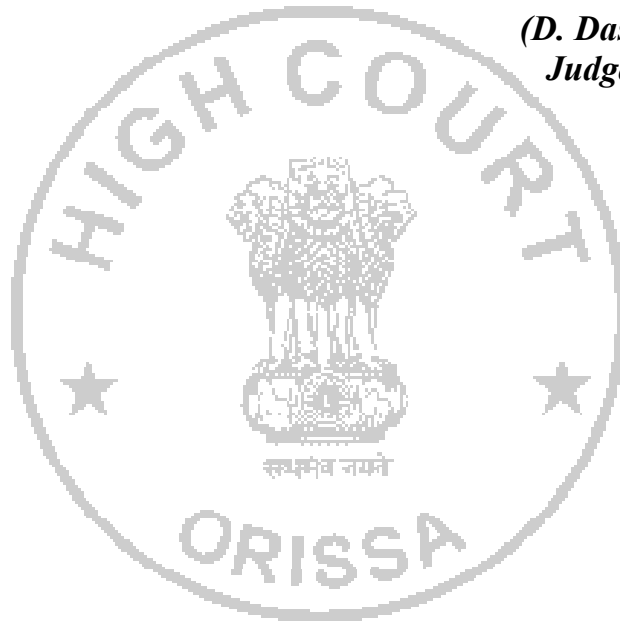
The Defendant No.1 has proved the proceeding of the meeting of the Authority, i.e., Ext.E. It is said that on that basis, the deduction from the initial deposit of the Plaintiff has been made. Be that as it may, in floating the scheme for allotment of residential plots, the Authority had issued Brochure (Ext.1). In the Brochure, there is no such stipulation as regards the deduction from the initial deposit in case an applicant withdraws after order of allotment, which no doubt is a material one as to forfeiture and thus was not within the knowledge of the Plaintiff and it is also not shown that such stipulation later on brought into force was duly informed. The Plaintiff, having accepted the terms and conditions indicated in the said Brochure, when had made the application and then wanted its withdrawal, the First Appellate Court is found to be right in taking a view that by a subsequent Resolution, the Authority cannot forfeit a sum equivalent to 25% of the initial deposit. The above non-refund of Rs.2500/- to the Plaintiff amounts to forfeiture of a part of the initial deposit and for that when the Resolution being passed behind the back of the Plaintiff had not been communicated to him before tendering the application or before submission of the withdrawal application and also when it was not even so remotely hinted in the Brochure, the suit of the Plaintiff has been rightly decreed holding him entitled to get back a

sum of Rs.2500/-, which was not refunded to him from out of the initial deposit.

The substantial questions of law being accordingly answered, the judgment and decree passed by the First Appellate Court are hereby confirmed.

10. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.

*(D. Dash),
Judge.*



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