

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.438 of 2022

In

SECOND APPEAL No.429 of 2021

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Bhushan Kumar Singh S/o-Bindeshwari Prasad Singh, Village-Jalalpur, P.S.-Rupaspur, P.O.-Sahay Nagar (Dhanaut), Danapur. Present Address-Ram Nagri More, Above HDFC Bank ATM, Ashiana Digha Main Road, P.S.-Rajiv Nagar, P.O.-Ashiana Nagar, Patna-800025.

... .. Appellant/s

Versus

1. Anamika W/o-Sri Vijay Kumar, R/o-Village Tethi, P.O.-Silhourih, P.S.-Marhowrah, District-Saran. Present Address-Flat No.-103, Manmohan Palace, Akashvani Road, P.S.-Shastri Nagar, Khajpura, Patna-800014.
2. M/s Vision Land Pvt. Ltd. through its Managing Director, Vision Rupak Mall, Rupak Cinema Campus, Bari Path, Patna - 800004.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raj Nandan Prasad, Advocate
	:	Mr. Vishesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Shekhar Singh, Sr. Advocate
	:	Mr. Sumit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 06.08.2025

Heard learned counsel for the appellant and the learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed under Section 58 of RERA Act against the impugned judgment dated 10.08.2021 passed in Bihar Real Estate Appellate Tribunal in Appeal no. 06 of 2021 by the Learned Chairman, Real Estate Appellate Tribunal, Patna whereby the learned REAT, Patna has awarded compensation in favour of the answering respondents (the appellant therein) along with the litigation cost of Rs. 50,000/- and has further directed for compliance of the order



within 60 days with a direction to make the respondents liable for payment of default interest @ 12% S.I. p.a. till the payment is made.

3. The brief facts of the case is that the Respondents instituted a Complain case in RERA, Patna bearing RERA AO Complain case no-133 of 2019, C/C-538 of 2019 whereby and where she claimed for possession of Flat No- 309 in “Vision Galaxy apartment” of super built-up area 933 sq.ft. Before filling the Complain petition the matter was already being settled by the Hon'ble High Court in Cr. Misc. No-57911 of 2018 in the light of the compromise between the parties. The learned RERA Court denied her prayer for execution of sale deed in her favour but granted Compensation amount of Rs. 82,000/- (75,000/- + 7,000/-). The order of the learned RERA Court was complied by the Appellant but the Respondents preferred an Appeal in Real Estate Appellate Tribunal where she claimed for Possession of Flats and enhanced amount of compensation. The REAT, Patna passed an order dated 10.08.2021 in which the appellant was ordered to pay an amount of Rs. 2,50,000/-.

4. Learned counsel for the appellant has submitted that the impugned judgment is not sustainable in the



eye of law or on facts. Appellate Tribunal has failed to applied its judicial mind and erroneously passed the judgment. He further submitted that the Learned Chairman below failed to recognize that the instant case is barred by doctrine of estoppel and also failed to recognize that this Court in Cr. Misc No-57911 of 2018 has already passed orders that no claim and counter claim can arise in the instant case. The Learned Chairman failed to recognize the fact that amount claimed by the respondents were indicated in cash and that has never been paid by the respondents. He further submitted that the respondents failed to establish direct proof for payment of consideration amount.

4.i. He further submitted that the petitioner presented two independent witnesses in the Appellate Tribunal who were willing to testify the irregular conduct of the respondents but the learned Chairman below never allowed their testimony. The Learned Chairman failed to acknowledge that the Appellant complied with order of RERA and submitted a Demand draft which was denied by the Respondents. The Learned Chairman failed to acknowledge the fact that the Husband of Respondent No. 1 was acting as an agent of the Flat rather than a valid purchaser. For that forged documents



(tripartite agreement) were submitted before the learned Court below and relying on the same the court below passed the judgment dated 10.08.2021 which is bad in law.

5. Learned counsel for the respondents submitted that the present appellant did not prefer any appeal rather he agreed to pay the principal amount for which he submitted the Demand Draft No. 008806 dated 07.01.2019 in compliance of the order dated 28.10.2020 (paragraph no. 7 of counter affidavit filed on behalf of respondent no. 1) so, the same attain finality and the appellant cannot question the aforesaid findings in the Second Appeal. He further submitted that the present appellant is now questioning the order of the learned Appellant Tribunal through the Second Appeal on account of the fact that a compromise was entered into between the parties in the anticipatory bail matter of the present appellant bearing Criminal Miscellaneous Case No. 57911 of 2018 disposed off vide order dated 11.01.2019. It is further submitted that the said issue has been decided as point no.-1 by the learned Adjudicating Officer vide order dated 28.10.2018 and against the said finding the appellant had not preferred any appeal before the tribunal and now he cannot raise the said issue anymore in the Second Appeal.



5.i. He further submitted that the appellant is not able to point-out any substantial question of law involved in the Second Appeal. There is also concurrent findings by the learned Adjudicating Authority as well as by the learned Appellate Tribunal. It is settled proposition that the scope of Second Appeal under section 100 of the Code of Civil Procedure (hereinafter referred as CPC) are well settled and as per Section 100 of the CPC, the finding of fact cannot be disturbed. He relied on the case of ***SLP (C) No. 19182 of 2022, Rabindranath Panigrahi versus Surendra Sahu (2025 INSC 333)*** in which the Hon'ble Supreme Court reiterated the principles in paragraph No. 6 and 7 of the judgment.

“6 The principles governing the scope of Second Appeal under Section 100 CPC are well-settled. To state that, under Section 100 CPC a High Court is not to disturb findings of fact, would be now like stating the obvious. [See: Santosh Hazari v. Purushottam Tiwari(2001) 3 SCC 179, Gurdev Kaur v. Kaki(2007) 1 SCC 546; State Bank of India v. S.N. Goyal(2008) 8 SCC 9215; and Suresh Lataruji Ramteke v. Sau. Sumanbai Pandurang Petkar2023 SCC Online SC 1210] Yet recently, this Court lamented that despite numerous judgments spelling out the scope of this power, the High Court repeatedly falls in error. [See: Jaichand v. Sahnulal 2024 SCC Online SC 3864] The present is another such case.

“7 In the present case, the questions as framed by the High Court, in our view, do not meet the criteria to be substantial



questions of law. For a question to be substantial, reference can be made to the discussion made in, amongst a host of other”

6. Having heard the learned counsel for both the parties and on perusal of the materials on record, it is crystal clear that in the present case the findings are based upon appreciation of evidence on record. There is no perversity or unreasonableness in the said finding. It need not require to restate the reasoning given by Appellate Court which are all well discussed. The first Appellate Court is a final fact finding authority and in absence of demonstrated perversity in its finding, interference by this Court is not warranted. A concurrent finding of facts based on evidence can not be disturbed in an appeal under Section 100 of the CPC.

7. As per sub-section (3) of Section 100 of CPC “in an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal”. Moreover, in the present appeal no substantial question of law has been formulated in the memorandum of appeal. In my considered opinion also no substantial question of law arise in this case which is required to be determined by this Court.

8. Considering the findings of both the courts



below, I am not inclined to interfere with the concurrent findings of the learned Tribunal. It is quite apparent that the order of Real Estate Appellate Tribunal and Real Estate Regulatory Authority are covered by the findings of the facts and no question of law much less substantial question of law arises for consideration.

9. Accordingly, this appeal is disposed off.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	14.07.2025
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