

04.04.2025
SI No.7
Court No.8
(gc)

**FA 99 of 2024
CAN 1 of 2024**

**Smt. Sumati Kabiraj
Vs.
Smt. Purnima Ghosh**

Mr. Probal Kumar Mukherjee, Sr. Adv.,
Mrs. Shohini Chakrabarty
...for the Appellant.
Mr. Amitabha Ghosh
...for the Respondent.

1. The appeal is arising out of an order passed by the learned Civil Judge, Senior Division, 1st Court, Barasat in a suit for specific performance. The suit was decreed in part ex parte. The learned Civil Judge directed return of a sum of Rs.2.80 lakhs to the plaintiff by the defendant along with interest. The plaintiff is aggrieved by the said judgment.
2. Mr. Probal Kumar Mukherjee, learned Senior Counsel appearing on behalf of the appellant/plaintiff has submitted the learned Civil Judge has completely misconstrued the alleged agreement, that is, Exhibit-2 and has directed return of the aforesaid sum on a complete misreading of the agreement as well as misunderstanding that the said amount was in relation to 50% amount of the price of the motor pump to be installed at the ground floor.
3. The learned Counsel for the respondent/defendant has opposed the prayer. It

is submitted that the plaintiff was unable to prove that the agreement, that is, Exhibit-2 is an agreement for sale. The learned Counsel has raised objection with regard to the decree being passed ex parte and the direction to refund the sum of Rs.2.80 lakhs.

4. It appears that the plaintiff has filed a suit for specific performance of the agreement. Initially, the said agreement was impounded and after the plaintiff had deposited the deficit stamp duty, it was received in evidence. The plaintiff claimed specific performance on the basis of the said agreement wherefrom it appears that the defendant had agreed to sell the suit property and receive the earnest money and even delivery of possession in favour of the plaintiff.
5. The learned Senior Counsel appearing on behalf of the plaintiff has submitted that the suit was filed for registration of the said agreement for sale in favour of the plaintiff and the defendant by that time has received the entire sale consideration and delivered the possession in favour of the plaintiff. The defendant, however, in the appeal has contended that the said agreement on which the plaintiff has relied upon is not the agreement for sale. It is vague and uncertain. The defendant had never agreed to sell the suit property. However, we find that in deciding the

matter, the learned Civil Judge has overlooked the recitals in the said agreement in which it has been categorically stated that the defendant has received a sum of Rs.2.80 lakhs on different dates for sale of 455 sq.ft.(ground floor). The said agreement also contains recitals with regard to the obligation to bear 50% of the cost of installation of the pump.

6. On such consideration, the decree is set aside.
7. The suit is required to be heard afresh and all endeavours should be made to dispose of the suit as expeditiously as possible.
8. Accordingly, the appeal and the connected application are disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)