

GAHC010085002022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/17/2022

MANGAL SARKAR
S/O LATE HIRALAL SARKAR
RESIDENT OF BARPETA ROAD TOWN WARD NO. 3, BARPETA ROAD,
MAUZA GOBARDHANA, DIST BARPETA, ASSAM 781315

VERSUS

MADAN SARKAR
S/O MONOHAR SARKAR
RESIDENT OF BARPETA ROAD TOWN WARD NO. 3, BARPETA ROAD,
MAUZA GOBARDHANA, DIST BARPETA, ASSAM 781315

Advocate for the Petitioner : MR. A BISWAS

Advocate for the Respondent : MR. S P CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

25.01.2023

Heard Mr. A. Biswas, learned counsel for the appellant. Also heard Mr. S. P. Choudhury, learned counsel for the sole respondent.

This is an appeal under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree dated 03.02.2022 passed by the learned Civil Judge, Barpeta in Title Suit No. 33/2016.

Appeal is admitted for hearing.

The basic grievance raised in the present appeal by the appellant is regarding the imposition of 7% interest upon the sum of Rs.68,00,000/- to be refunded by the plaintiff/appellant to the defendant/respondent under the decree.

The plaintiff suit was in fact was decreed by a declaration that the plaintiff is entitled to Specific Performance of Contract of the agreement dated 14.08.2015 and pay Rs. 68,00,000/- to the defendants and entitled to recovery of possession of the suit premises from the defendant on repayment of the entire advance amount. The learned appellate court below came to a conclusion, while decreeing the suit that the plaintiff through his witness has been able to prove that they were ready and willing to repay the balance amount to the defendant under the agreement dated 14.08.2015, but the defendant respondent did not received the same, however, the learned appellate Court below went ahead to award an interest of Rs. 7% against the plaintiff, while refunding the said amount.

As the execution case is pending for the execution of decree of recovery of possession and refund of money, this Court at this stage is not inclined to stay the entire execution procedure. At this stage, Mr. S. P. Choudhury, learned counsel for the respondent submits that they will not pursue the execution of award of 7% interest.

In that view of the matter, though this appeal is admitted, no record is called for at this stage inasmuch as determination of award of interest is only the subject matter of the present appeal. However, this Court may call the LCR at the proper stage.

Accordingly it is provided that no execution proceeding is allowed to proceed in respect of simple interest @ 7% on the decretal amount of Rs. 68,00,000/-.

As parties are duly represented, no formal notice need be issued.

List this matter for Hearing in its own turn.

JUDGE

Comparing Assistant