IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA

AT CHANDIGARH.

CIVIL APPELLATE SIDE.

REGULAR SECOND APPEAL No. 3407 OF 2001.

M/S East India Cotton Mfg. Co. Limited, 17 H Industrial Area NIT Faridabad through its General Manager(Finance) Sh. S.K. Gupta.

.. Appellant-Plaintiff

Versus

1. Haryana Urban Development Authority Faridabad (Service may be effected through its Administrator, Sector 12 Faridabad)

2. The Estate Officer, Haryana Urban Development Authority Faridabad.

3. M/S Agro Fab, 15/1 Mile Stone, Mathura Road Faridabad through its Directors.

(Respondent No. 3 is exparte vide Order dated 17.10.2002 passed by the Hon'ble Mr. Justice J.S. Narang)

...Respondents.

Regular Second Appeal from the Order of the Court of Shri R.K.Khanagwal, Additional District Judge, Faridabad, dated 24.3.2001 affirming (with no order as to costs) that of Mrs Shashi Bala Chauhan, Civil Judge (Jr. Division), Faridabad, dated 11.9.98 dismissing the suit of the plaintiff with no order as to costs.

Claim :- Suit for declaration with consequential relief of Permanent Injunction.

Claim In Appeal :- For setting aside the Order of Lower Appellate Court.

Dated The 14th July 2003

PRESENT

THE HON'BLE MR JUSTICE VINEY MITTAL.

For the Appellant :- Shri P.K. Mutneja, Advocate.

For the Respondent :- Shri Arshvinder Singh Advocate for respondents No. 1 and 2.

....Judgment...

R.S.A. No. 3407 of 2001

JUDGMENT

The plaintiff is in appeal before this Court. He filed a suit for declaration with consequential relief of permanent injunction. It was claimed by him that he was a tenant of defendant No.3, M/s Agro Fab. at the rate of Rs.2500/- per month. The plaintiff further claimed that an order dated February 22, 1995 had been passed by defendant No.2, the Estate Officer, Haryana Urban Development Authority, Faridabad whereby the plot in question had been resumed. The plaintiff claimed that in fact, he was never granted any hearing before passing the aforesaid order. He claimed that the aforesaid order was bad and illegal and, therefore, the same was liable to be set aside. The plaintiff has also stated that defendant No.2 was not legally competent to create a demand for additional price, as no basis for demand of additional price whatsoever was communicated by defendant No.2 to defendant No.3.

The suit was contested by defendants No.1 and 2. They claimed that the civil Court had no jurisdiction to deal with the matter in view of Section 50(2) of the Haryana Urban Development Authority Act, 1977 (for short, the Act). The order of resumption dated February 22, 1995

was also defended by them on the ground that defendant No.3 had been served with nine registered notices, but defendant No.3 had deliberately not made the payment of the amount due towards the HUDA authorities. It was further claimed that the plaintiff was also aware of the proceedings, but he had also not bothered to attend the office of defendant No.2. Accordingly, neither the plaintiff nor defendant No.3 had bothered to respond to the notices issued by the HUDA authorities.

The learned trial Court dismissed the suit filed by the plaintiff. It was held that since defendant No.3 had chosen not to respond to the various notices issued by the HUDA authorities, therefore, the plaintiff had no cause of action to defend the aforesaid non-payment by defendant No.3.

The matter was taken up in appeal. The learned first appellate Court also up-held all the findings recorded by the learned trial Court. The appeal filed by the plaintiff was dismissed.

At the outset, it may be relevant to notice that under the provisions of Section 50(2) of the Act, the jurisdiction of the civil Court was barred. Although a specific objection was taken by defendants No.1 and 2, in

their written statement, but the learned trial Court decided the aforesaid issue in favour of the plaintiff by holding that the defendants did not press the same at the time of arguments. The aforesaid observations made by the learned trial Court are erroneous on the face of it. If there was a specific bar created by a statute to the jurisdiction of the civil Court, then the same was liable to be decided by the Courts on merits. Any concession given by defendants No.1 and 2 could not have been taken into consideration to give the aforesaid findings in favour of the plaintiffs. A concession could not have conferred jurisdiction in a court, where it had none.

On merits also, nothing has been shown that the findings recorded by the learned Courts below are erroneous in any manner or are contrary to the record. A categorical finding of fact has been recorded that inspite of registered notices issued to defendant No.3, he had chosen not to defend the proceedings. A further finding has been recorded that the aforesaid resumption proceedings were well within the knowledge of the plaintiff. Thus, neither the plaintiff nor defendant No.3 had ever chosen to make the payment of the amount, as had been demanded by defendant No.2. Because of the aforesaid findings of fact and also because of the fact that the civil Court had no jurisdiction to deal with the matter, I do not find any merit in the present appeal.

No question of law, much less any substantial question of law arises, in the present case.

Before parting with this order, it is made clear that the plaintiff would have such remedies, as are available to him in law to challenge the resumption order. The dismissal of the present suit would not bar any such remedy.

No merit. Dismissed.

July 14, 2003
Pages :- 5
Costs :- 15/-
Copies :-
Ty By;- Navnesh
Ex By;-

sd/- VINEY MITTAL
JUDGE

TRUE COPY

SUPERVISOR COPY BRANCH.

(TO BE Referred to The Reporter)