

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 26.11.2010

+ **RSA No. 140/2010**

DURGA PARSHAD

.....Appellant
Through: Mr.V.Shukla, Advocate.

Versus

GHAZIABAD DEVELOPMENT AUTHORITY

.....Respondent
Through: Nemo.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This second appeal has impugned the judgment and decree dated 29.3.2010 which had endorsed the finding of the trial judge dated 25.7.2009 thereby dismissing the suit of the plaintiff. The plaintiff Durga Parshad had filed a suit for recovery of Rs.36,000/-. It was alleged that a scheme had been floated by the defendant i.e. Ghaziabad Development Authority (GDA) in the year 1989; plaintiff applied for a plot on 28.07.1989; in terms thereof he deposited a sum of Rs.11,220/-; he was declared an unsuccessful allottee; he was assured that a new scheme will be floated as such he deposited another sum of Rs.1140/- under the new scheme on 24.07.1990. On 18.4.2002 he addressed a letter to the defendant seeking refund of his money; on 25.4.2002 this demand was reiterated. He thereafter approached the District Consumer Forum

who vide its communication dated 16.11.2005 advised him to approach the civil court. Thereafter, suit was filed.

2. Defendant contested the suit. Written statement was filed wherein it was stated that the unsuccessful candidates were required to contact the Oriental Bank of Commerce (OBC) for their refund. Proceedings before the District Consumer Forum had been dismissed for want of jurisdiction.

3. Defendant was thereafter proceeded ex-parte. Ex-parte evidence by way of affidavit had been led. The suit of the plaintiff was dismissed on the ground that the plaintiff had filed a suit in the year 2006 to recover money which had been deposited by him in the year 1990; suit being barred by limitation was dismissed.

4. The first appellate court endorsed the finding of the trial judge i.e. of dismissal of the suit but for different reasons. Applying the provisions of Article 22 of the Indian Limitation Act, 1963 (hereinafter referred to as 'the said Act') it was held that the suit was within time. Para 9 of the impugned judgment stated that the amount had been deposited by the plaintiff as per his case on 24.7.1990; he had however not filed any documentary proof to substantiate this averment. Clause 9.60 of the Application Form/Brochure had also been adverted to which clearly stated that unsuccessful candidates like the complainant should contact the Manager of the OBC personally or by post for refund of their registration amount and not the GDA.

5. Written statement filed before the trial judge by the GDA who stated that the plaintiff should have contacted the OBC in terms of clause 9.60 of the application form for return of its registration amount as all unsuccessful candidates were required

to do so. For reasons best known, the plaintiff however, did not implead the OBC as a party.

6. This is a second appellate court. Arguments have been addressed on the maintainability. Learned counsel for the appellant has submitted that the provisions of Order 1 Rule 10 of the Code of the Civil Procedure (hereinafter referred to as 'the Code') permits a party to add or strike out a party at any stage of proceedings; non-joinder of a necessary party would not necessarily defeat the suit; for this proposition reliance has been placed upon a judgment of Bombay High Court reported in 2005 (5) RCR (Civil) 247 Devchand Constructions vs. Board of Trustees of the Port of Mormugao & Anr. It is submitted that the judgment of the court below non-suiting the plaintiff only on this count was an arbitrary and erroneous exercise of its discretion.

7. The arguments addressed before this court are without any merit. The plaintiff had applied for allotment of a plot in the GDA in terms of his application form/brochure Clause 9.60 (undisputedly) stated that the unsuccessful allottees may get their refund from the OBC where they had deposited the said amount. This had been specifically averred by the GDA in its written statement; it stated that the OBC was the necessary party. In spite of this the plaintiff chose not to implead the OBC. There is also not a single averment in the pleadings that any communication had been sent by the plaintiff to the OBC claiming its refund. The first appellate court had also noted that not a single document had been placed on record by the plaintiff to substantiate his submission that he had deposited a sum of Rs.11,220/- in cash vide application no.34156 dated 28.7.1989.

8. Order 1 Rule 9 of the Code reads as follows:

Order 1 Rule 9. Mis-joinder and non-joinder – No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
[Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

9. In the instant case, the OBC was a necessary party; absence of such a party would have made the decree ineffectual; it would have remained a paper decree only. The money had to be recovered by the plaintiff from the OBC and not from the GDA as was clear from clause 9.60 of the application form. No question of law, much less any substantial question of law has arisen; the appeal is dismissed in limine.

INDERMEET KAUR, J.

NOVEMBER 26, 2010

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