

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.14/2013 and CM No.1249/2013 (Stay)**

Decided on : 20th September, 2013

PREM BHUTANI & ORS. Appellant
Through: Mr. Lalit Kumar, Advocate.

Versus

SUBHASH BHUTANI Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 09.11.2012 in RCA No.162/2010 by virtue of which the first appellate court has set aside the order of the learned trial court dated 23.10.2010, and recommended the matter to the trial court.

2. I have heard the learned counsel for the appellant.

3. As a matter of fact, the present regular second appeal is not maintainable as Section 100 CPC lays down that the second appeal is maintainable against only a decree passed by the first appellate court when

there is a substantial question of law involved. In the instant case, there is no decree passed against the appellant and accordingly on the basis of the said reasoning itself, the present regular second appeal could be dismissed at the threshold. However, as the learned counsel for the appellant has taken more 45 minutes in advancing his submissions and submitted that the substantial questions of law are involved in the matter, therefore, I feel it appropriate to deal with the said submissions. Before dealing with the same, it may be pertinent to give a brief background of the case.

4. The appellants filed a suit being CS No.178/2010 for declaration and permanent injunction against the respondent. In the prayer clause, the appellants had prayed that the relinquishment deed dated 19.02.2004 purported to have been executed by the appellants in favour of the respondent, be declared as null and void and that the respondent be permanently restrained from entering into any collaboration agreement. In para 11 of the plaint, so far as the cause of action clause is concerned, it was averred as under:

“11. That the cause of action to file the present suit arose when the defendant signed the undertaking dated 19.02.2004, cause of action also

arose when the plaintiffs handed over the premises in question to the defendant with the limited right, cause of action further arose on 10.02.2010. When the defendant entered into collaboration with a builder and handed over the possession of the suit premises to the builder. It again arose on 18.02.2010 when the plaintiffs served a legal notice upon the defendant. It again and lastly arose when the defendant instead of complying with the terms of legal notice, sent the false and vague reply to the same. The cause of action still subsists in favour of the plaintiffs and against the defendant.”

5. The learned trial court after calling for the written statement, framed following two issues in the matter which were decided against the plaintiff:

- “ 1. Whether suit is time barred? OPP
- 2. Whether suit is not maintainable in view of the facts disclosed by defendant? OPP”

6. Vide order dated 23.10.2010, the learned trial court disposed of the application under Order 39 Rules 1 & 2 CPC filed on behalf of the plaintiffs and rejected the same, but so far as the preliminary issue no.1 with regard to the suit being barred by time is concerned, it was held by the trial court that the suit was barred by time because the suit for declaration has to be filed within a period of three years as provided under Article 58 of the Schedule of the Limitation Act, 1963 while as admittedly the suit was filed beyond the period of three years. The period of limitation in the

present case would be reckoned from 19.02.2004, as alleged in para 11 of the plaint. If the cause of action accrued to the appellant on 19.02.2004, then the period of limitation would start from the next date i.e. 20.02.2004 and would expire on 19.02.2007. Admittedly, the suit was filed on 01.06.2010 and, therefore, the same on the face of it was barred by limitation.

7. The learned counsel for the appellant has contended that the cause of action to sue arose in favour of the appellant on 10.02.2010 as the respondent had purportedly entered into a collaboration agreement with a builder and handed over the possession of the suit premises to the builder and, therefore, the period of limitation is to be reckoned from 10.02.2010 and if that be the case, the suit of the appellant was within time.

8. The learned counsel for the appellant also contended that the case of the appellant is covered by Article 113 of the Schedule of the Limitation Act, 1963 which clearly lays down the period of limitation where no such period is prescribed under the Schedule of the Limitation Act, 1963 to be a period of three years which is to be calculated from the date when the right to sue accrues. Therefore, it is sought to be urged that since the right to sue

accrued to the appellants on 10.02.2010, accordingly the suit is within limitation period as per the date of filing.

9. The learned counsel for the appellants, in support of his case, has placed reliance on i) Mst.Rukhmabai v. Lala Laxminarayan and Ors; AIR 1960 SC 335, ii) Smt.Neelam Kumari and Anr. v. U.P.Financial Corporation; AIR 2009 Uttarakhand 5 and iii) C.Natarajan v. Ashim Bai & Anr.;AIR 2008 SC 363.

10. I have gone through all the three judgments.

11. No doubt, in these judgments the court has clearly laid down that in a case where a right to sue accrues to a party for seeking a declaration or seeking a permanent injunction would accrue only when the right is threatened, but in none of these cases factual matrix is similar to the facts of the present case where the appellant himself is disclosing in the plaint that the cause of action accrued to him on a particular date. Once the appellants themselves aver that the cause of action to file the present suit arose in their favour on 19.02.2004 that is the first starting point for calculating the period of limitation and the said period is to be reckoned

from the date next to the said date when the cause of action has accrued, meaning thereby that the period of limitation of three years is to be reckoned in the present case from 20.02.2004.

12. Further reference in this regard can be made to Section 9 of the Limitation Act, 1963 which clearly lays down that once the period of limitation starts then no subsequent fact or event can stop the period of limitation. Accordingly, once the averment is made by the appellant in the plaint, as stated hereinabove, the period of limitation of three years commenced from 20.02.2004 and ended on 19.02.2007. Admittedly, the suit has been filed in the year 2010 and the trial court as well as the first appellate court have rightly held the suit to be barred by time. The trial court has dealt elaborately with the contention of the learned counsel for the appellants by a reasoned order. I do not find any reason to disagree with the said reasons given by the trial court. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

SEPTEMBER 20, 2013/dm