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

+ RSA No. 125/2013

% 27th March, 2014

SH. ISHWAR DAYAL Appellant
Through Ms. Priti Srivastava, Mr. Deepak Malik,
Advocates

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed under Section 100 CPC, 1908 impugning the judgment of the first appellate court dated 12.2.2013 by which the first appellate court allowed the appeal of the respondent/defendant and dismissed the suit which was filed by the appellant/plaintiff seeking directions to the respondent/defendant to allot an alternative flat of the nature of flat no. 14-C, Second Floor, Pocket-8 & 9, Sector-25, Rohini, Delhi.

2. The facts of the case are that the appellant/plaintiff had got himself registered with the respondent/defendant for allotment of a Janta Flat in Rohini in the year 1996 and was issued a registration vide no. 39453. Plaintiff was allotted a flat no. 14-C, Second Floor, Pocket-8 & 9, Sector-25, Rohini, Delhi on 15.4.2004. The respondent/defendant sent a demand letter to the plaintiff on 15.4.2004 to deposit the requisite amount and also submit the necessary documents, but, the appellant/plaintiff did not do so. As per the respondent/defendant, last date of payment of the initial deposit was 12.9.2004 alongwith interest for the delayed period, and failing which the allotment was to be cancelled automatically. The respondent/defendant pleaded that before issuing of a cancellation letter on 31.1.2005, a show cause notice dated 28.12.2004 was given to the appellant/plaintiff. The appellant/plaintiff responded by asking a duplicate copy of the allotment letter of 15.4.2004 on the ground that the allotment letter was lost on account of unfortunate demise of a close relative Sh. Mohar Singh and another close relative Smt. Ramwati falling seriously ill in July 2004. Appellant/plaintiff relied upon a FIR dated 6.1.2005 which was annexed with the reply to the show cause notice on 7.1.2005 and by which the appellant/plaintiff claimed a duplicate copy of the allotment letter.

3. The first appellate court has set aside the findings of the trial court and has held that the case of the appellant/plaintiff lacks credibility because the story of the loss of the registration slip/allotment letter dated 15.4.2004 was stated for the first time only in the FIR dated 6.1.2005 and which is after a show cause notice dated 28.12.2004 was sent by the respondent/defendant. The first appellate court accordingly held that the appellant/plaintiff was guilty of not complying with the demand-cum-allotment letter of 15.4.2004 even till the extended date of 12.9.2004 for payment along with interest, and that the FIR was only a convenient document to justify the reply to show cause notice dated 28.12.2004 sent by the respondent/defendant. The first appellate court has also referred to contradictions in the pleadings and the depositions of the witnesses of the appellant/plaintiff. The relevant paras of the judgment of the first appellate court are paras 14 to 18 of the impugned judgment, and which read as under :

14. The admitted facts before the Ld. Trial Court were that the plaintiff had been allotted Janta Flat No. 14-C, 2nd Floor, Pocket 8 & 9, Rohini, Delhi on 05.04.2004 in pursuance of the allotment of Janta Flats in Rohini, Delhi under JHRS Scheme vide registration no. 39453, that as per the terms of the demand-cum-allotment letter the plaintiff had to make the payment and furnish the documents on or before 14.06.2004 but, however, the plaintiff did not make the payment and the allotment of the said flat in his favour had been cancelled by the DDA vide letter dated

31.01.2005/02.02.2005 but before that the defendant/DDA had received a letter dated 07.01.2005 from the plaintiff.

15. The reason assigned by the plaintiff for not depositing the demanded amount and the documents within the stipulated period was that his relatives had died at two different times due to which he had misplaced the demand letter and remained under shock and grief. The receipt of the demand letter has been accepted in the plaint and also in the affidavit Ex. PW-1/X. Very interestingly enough, in their affidavits Ex. PW-2/A and Ex. PW-3/X, PW-2 and PW-3 have also deposed that the defendant had sent a demand letter to the plaintiff to deposit the relevant amount but the demand letter had been misplaced somewhere by the plaintiff due to his nearest relative's death. However, in his cross-examination PW-1 has denied that the allotment-cum-demand letter dated 15.04.2004 had ever been received by him. When he was confronted with para 4 of his affidavit regarding mentioning of this fact, his reply was that the demand-cum allotment letter had been received at his house by some family member but the same was not received by him. In his further cross-examination PW-1 stated that he was not aware regarding the receipt of the demand letter till the time notice was sent by the DDA in April, 2005. He, however, admitted that vide letter dated 31.01.2005/02.02.2005 he was intimated regarding the automatic cancellation of the allotment for non-payment of the demanded amount within the stipulated period and also that a show cause notice was sent by the DDA which had been received by him. He stated that he had sent a reply to the show cause notice to the DDA vide reply dated 07.01.2005. He further stated that after receiving show cause notice dated 28.12.2004 from the DDA, he had come to know that the demand letter had been lost and then he lodged a complaint in respect of missing/loss of the original demand letter at PS- New Delhi Railway Station on 06.01.2005. He further admitted that in response to his letter dated 07.01.2005, he received the cancellation of the allotment vide letter dated 31.01.2005/02.02.2005. No reply/representation had been sent to

the DDA in response to the cancellation letter dated 31.01.2005/02.02.2005.

16. Thus, in his cross-examination the plaintiff narrated altogether a different story which was totally contradictory to his case made in the plaint and the affidavit Ex.PW-1/X. The stand taken by the plaintiff in his cross examination also pulled down his case that he had lost the original allotment-cum-demand letter due to the death of his near relative Sh. Mohar Singh or that despite his best efforts, he could not search the said demand letter and thereafter again a shock surrounded him due to the death of his another relative Smt. Ramwati. When the factum regarding the receipt of the demand-cum-allotment letter had not come to his notice prior to the receipt of the show cause notice dated 28.12.2004, the said demise of his two near relatives had lost significance so far as the present case was concerned. But, however, the Ld. Trial court placed undue and misplaced reliance on this fact which in the facts and circumstances of the case discussed above was not at all warranted. Therefore, there was every reason to believe that the plaintiff had applied for issuance of duplicate demand letter (acknowledgment Ex.PW-1/E) on 07.01.2005 only after receipt of the show cause notice dated 28.12.2004 from the defendant/DDA. The said acknowledgment Ex.PW-1/E did not reflect or show that the plaintiff had misplaced the original demand-cum-allotment letter and could not deposit the amount within the stipulated period due to demise of his two relatives. How could the trial court come to the conclusion that prior to the cancellation of the said flat, it was within the knowledge of the defendant/DDA that the plaintiff had misplaced the demand letter and was also willing to pay the required charges or that the contention of the plaintiff that he had inadvertently misplaced the demand-cum-allotment letter did not seem to be improbable.

17. According to the Ld. Trial Court the above stated contention made by the plaintiff had been substantiated by the FIR Ex.PW-1/D. The said FIR was lodged at PS-NDLS on 06.01.2005. It was stated in the FIR/police report that on that date the plaintiff

had come to the railway station/platform to see off his relative and the certificate of registration no. 39453 in respect of flat no. 14-C, Sector-25, Pocket 8 & 9, 2nd floor had fallen down there.

18. Thus, the most improbable and highly unbelievable facts were concocted by the plaintiff by lodging the said police report on 06.01.2005 (Ex. PW-1/D) but, however the Ld. Trial court placed a heavy reliance on such a bogus police report lodged by the plaintiff." (underlining added)

4. I completely agree with the aforesaid findings and conclusions of the first appellate court and it is clear that appellant deliberately, either because he had no finances or for some other reason, did not make payments under the demand-cum-allotment letter dated 15.4.2004 even within the extended time along with interest and created a false story for the first time by filing an FIR dated 6.1.2005 of having lost the registration slip allegedly on account of demise/ill health of close relatives and which was just a false basis to create a response to the show cause notice dated 28.12.2004 issued by the respondent/defendant.

5. A second appeal under Section 100 CPC lies only if there arises a substantial question of law. The aforesaid facts show that no question of law, much less a substantial question of law arises for this appeal to be entertained. The first appellate court was perfectly justified in setting aside the judgment of the trial court and dismissing the suit of the appellant.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

MARCH 27, 2014
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