

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Regular Second Appeal No.3022 of 2012 (O&M)
Date of Decision: December 08, 2015

Haryana Urban Development Authority and another

...Appellants

Versus

Shyam Sunder Mangla

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.D. Bawa, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8091-C of 2012

Prayer in this application is for condonation of delay of 45 days
in filing the appeal.

The reason assigned for the delay is that the decision with
regard to the filing of the appeal had gone through various channels where
the validity or otherwise of the judgment to be impugned had been
considered and in this process, there occurred certain delay. Once a decision
was taken to file an appeal, the counsel was engaged and on preparation of
the grounds of appeal, the present appeal has been filed, which has resulted
in delay of 45 days in filing the same.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the Estate Officer, Haryana Urban
Development Authority, Faridabad, the delay having been reasonably
explained, the present application is allowed.

Delay of 45 days in filing the appeal stands condoned.

RSA No.3022 of 2012

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Faridabad, dated 15.11.2010, whereby the suit for declaration to the effect that the order of resumption dated 03.07.2001 and the subsequent order dated 19.03.2002 passed in appeal and further demand raised by the appellants-defendants is null and void, arbitrary, unconstitutional and the same are liable to be quashed and set aside, has been decreed and the appellants-defendants held entitled to charge interest at the rate of 15% per annum, against which the appeal preferred by the appellants-defendants has been dismissed by the learned District Judge, Faridabad, on 05.01.2012 modifying the relief entitling the appellants-defendants to charge interest at the rate of 18% per annum.

2. It is the contention of learned counsel for the appellants that in the light of Section 50 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'HUDA Act'), the Civil Court did not have any jurisdiction as the same is barred. Reliance has also been placed upon the judgment of this Court passed in *Regular Second Appeal No.2317 of 2009* titled as *The Estate Officer and another Versus Parveen Kumar*, decided on 17.09.2009. His further submission is that the respondent-plaintiff has not filed any replication to the written statement, which has been filed by the appellants-defendants stating that the notices, which have been sent to him having been received by him amounts to admission that the notices sent under Section 17 of the HUDA Act has been duly received by him and, therefore, the findings recorded by the Courts below that the principles of natural justice stand violated as he has not been given due opportunity of being heard as the notices were not served on him, cannot

sustain.

3. An assertion has also been made by learned counsel for the appellants that in the light of the judgment of the Supreme Court in the case of *Secretary, Bhubaneswar Development Authority Versus Susanta Kumar Mishra 2009(2) R.C.R. (Civil) 423*, the appellants-defendants are entitled to charge compound interest as the respondent-plaintiff was required to pay the amount of instalments along with interest on delayed payment, which would become the principal amount for the subsequent instalment and would be added up to the same. Prayer has, thus, been made for setting aside the impugned judgments and decree by allowing the present appeal and dismissing the suit of the respondent-plaintiff.

4. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but cannot accept his submissions.

5. The first illegality, which has been pointed out in the impugned judgments passed by the Courts below, is that the jurisdiction of the Civil Court is barred under Section 50 of the HUDA Act. This argument of the counsel for the appellants could have been accepted, had it not been the settled preposition in law that if the impugned action/order is found to be or based upon violation of the mandatory provisions of law and the principles of natural justice having not been followed, the Civil Court would have jurisdiction. The position stands amply settled by the various judgments of the Supreme Court as also this Court, however, reference may be made to the judgment of this Court passed in case titled as *The Estate Officer, HUDA, Sector 12, Faridabad Versus Smt. Pritam Kaur 2009(2) R.C.R. (Civil) 524* and the *Haryana Urban Development Authority and another*

Versus Om Parkash Sharma, 2010 (Supplement) Civil Court Cases 396 (P&H) and Supreme Court in Dhruv Green Field Ltd. Versus Hukam Singh 2002(3) R.C.R. (Civil) 690.

6. This exception which has been carved out granting the jurisdiction to the Civil Court would be dependent upon the second question, as has been raised by the counsel for the appellants i.e. whether the mandatory provisions of Section 17 of the HUDA Act have been complied with by the appellants-defendants while passing the order of resumption dated 03.07.2001 passed by the Estate Officer, HUDA, Faridabad. Section 17 of the HUDA Act primarily deals with the process which is mandated to be followed by the competent authority and therein various stages have been provided and on each stage, a show cause notice is also mandated to be served upon the allottee. It may be that the appellants-defendants would have issued notices to the respondent-plaintiff but the question which requires to be determined is whether the said notices were ever served upon him or not. In this regard, it may be noted that the respondent-plaintiff, in his affidavit Exhibit PW-1/A, has categorically mentioned that the statutory notices which are mandated under Section 17, were not served upon him and, therefore, he was not provided any opportunity of being heard. Dhan Raj-Clerk had appeared as DW-1 on behalf of the appellants-defendants and deposed about sending the notices under Sections 17(1), 17(3) and 17(4) of the HUDA Act to the respondent-plaintiff but in his cross-examination, he has admitted that he has no record to show that the said notices were sent through registered post. He has admitted that he did not have any document from which he could say as to when the registered letters were sent nor does he has any

proof regarding acknowledgment of receipt of these registered letters sent to the respondent-plaintiff. In the absence of any proof with regard to the service of the notices upon the respondent-plaintiff, it cannot be said that he has been granted reasonable opportunity to put forth his assertions, thus, depriving him of valuable right of personal hearing and opportunity to defend himself resulting in violation of the principles of natural justice. The order dated 03.07.2001 passed by the Estate Officer resuming the site in question, therefore, being violative of the basic principles of natural justice and having been in violation of the mandatory provisions of the statute is a nullity, thus, conferring the jurisdiction on the Civil Court. It may be added here that the order passed by the Appellate Authority in an appeal preferred by the respondent-plaintiff also, therefore, cannot hold the field and would not validate such an order. The findings, thus, recorded by the Courts below on this count and on appreciation of the pleadings and the evidence brought on record, cannot be faulted with.

7. The judgment relied upon by learned counsel for the appellants in the case of *Estate Officer and another Versus Parveen Kumar* would not be of any help to the cause espoused by the appellants as on page 8 of the said judgment, the Court has observed as follows:-

“In the present case, there is not even an iota of allegation that the order passed by the Authorities under the Act is a nullity. It is not stated to be in violation of the principles of natural justice. The same is proved to have been passed after granting of opportunity of hearing to the plaintiff-respondent. Therefore, the trial Court could not have exercised jurisdiction over the matter as if it is an Appellate Authority”.

A perusal of the above would show that the ratio of the said judgment would be supporting the cause of the respondent-plaintiff

conferring jurisdiction on the Civil Court.

8. As regards the contention of learned counsel for the appellants with regard to the entitlement of the appellants to charge compound interest, suffice it to say that the allotment letter does not contain such a clause, what is provided for is charging of interest at the rate of 18% per annum on the delayed period of deposit of instalment. Learned counsel for the appellants has made an effort to dispel this contention by referring to clause 5 of the allotment letter but the said clause does not say that compound interest would be charged. The assumption of powers on the part of the respondent-plaintiff on the basis of the said clause is beyond the statutory entitlement and authority conferred upon the respondent-plaintiff as the counsel for the appellants, when specifically put a question to show any provision under the statute or the regulations entitling the appellants to charge compound interest, could not produce such a provision nor could he referred to it. He states that it is a contract by which the parties are bound but this could be accepted where a contract is not contrary to the statutory provisions, specially when the authority which is an appellant before this Court is a creation of the statute and is governed by the statutory provisions and regulations framed thereunder. The argument of learned counsel for the appellants is, thus, misconceived. The judgment on which reliance has been placed by learned counsel for the appellants in the case of *Secretary, Bhubaneswar Development Authority's case (supra)* was one where the terms and conditions of the agreement, by and large, stated and had the effect that it would amount to enabling compound interest to be charged, however, the said judgment would not be applicable to the case in hand as nothing has come on record which would indicate as to whether there was

any statutory authority conferred upon the appellants before Supreme Court which entitled it to charge the same as in the present case, as stated above, the counsel has not been able to point out any provision of the statute which gives authority to the appellants to charge compound interest.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.8092-C of 2012, stands disposed of as infructuous.

December 08, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE