

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

RSA No. 2408 of 2015 (O&M)

Decided on: 28.5.2015.

The Estate Officer, Union Territory, Chandigarh

... Appellant

Versus

Narinder Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Kapil Kakkar, Additional Standing Counsel,
for the appellant-Union Administration.

K.C.PURI.J.

CM No. 6316-C of 2015

There is delay of 52 days in filing the appeal. The same stands condoned on the grounds mentioned in the application. The application stands allowed.

Main case

The Estate Officer, Union Territory, Chandigarh has directed this appeal against the judgment and decree dated 18.12.2014 passed by Sh. Atul Kasana, Additional District Judge, Chandigarh vide which the appeal preferred by the defendant appellant against the judgment and decree dated 7.11.2013 passed by Sh. Rajneesh Kumar, Additional Civil Judge (Senior Division), Chandigarh was dismissed.

Briefly stated, Narinder Kumar plaintiff filed suit for declaration and permanent injunction. The facts as gathered from the record are that plaintiff Narinder Kumar is holder of valid hawker

licence No.805, Registration No.801, Site No.13, in Sector 40 Chandigarh. The Chandigarh Administration floated a scheme for allotment of built up booth to the persons having valid hawker licence vide notification dated 7.3.1991 called as allotment/transfer of built up booth in any sector on lease/hire purchase basis in Chandigarh. A screening committee was constituted, so as to declare the eligible candidates under the rules for allotment of built up booths. The said screening committee prepared a list of eligible candidates and then the licensing officer under the hand cart bye -laws issued a letter dated 18.3.1991 directing the plaintiff to deposit Rs.3000/- with the Chairman, Chandigarh Housing Board, Chandigarh as earnest money against the constructions of booths in different Rehri Markets which the plaintiff deposited vide demand draft dated 25.3.1991 and the competent officer issued him a provisional identity card for allotment of booth. The defendant no.1 constructed the booths in the year 2007 and also constituted a New Screening Committee in the year 2007. As per the directions of the New Screening Committee, the plaintiff submitted the application form. However, the Screening Committee instead of allotting the built up booth to the plaintiff, declared the plaintiff ineligible and rejected his claim, which is illegal, arbitrary and not sustainable in the eyes of law as once the plaintiff was declared eligible for allotment of booth by the screening committee constituted in 1991 and he had deposited the earnest money as well, the New Screening Committee cannot declare him ineligible or reject his claim.

There is no evidence, which could prove that the plaintiff was not doing his business in Rehri Market. He had explained to the screening committee that on the day of survey, he was not well and after opening the shop had gone to the doctor for taking treatment but still it rejected his claim and the impugned order dated 7.11.2005 is liable to be set aside. It was further averred that plaintiff preferred an appeal against the impugned order before the Chief Administrator, however the same was dismissed vide order dated 7.5.2008 against which he preferred a revision before the Advisor to the Administrator, which was also dismissed on the ground that the said authority can hear appeal against the order passed by the competent authority cancelling the lease of booth and the scope of the provision under the Rule are very limited. Hence, the suit.

Upon notice, the defendant no.1 filed written statement taking preliminary objections that no notice U/s 80 CPC has been served before filing the suit, the plaintiff has not come to the court with clean hands, suit is not maintainable. It was admitted that plaintiff was granted hawker licence and was also issued provisional identity card and that a scheme was floated for allotment/transfer of built up booths in any sector on lease/hire purchase basis in Chandigarh Rules 1991. On merits, it was pleaded that the plaintiff though applied for allotment of booth, deposited a sum of Rs.3000/- as earnest money, was issued provisional identity card but he was not found working at the time of survey conducted by the screening committee and thus, did not

fulfill the requirements for allotment of booth, therefore, his case was rightly rejected by the screening committee. It was further pleaded that plaintiff had preferred an appeal against the order of rejection, which was dismissed, whereupon he filed a revision as well, which was also dismissed. Rest of the averments made in the plaint were denied being wrong and a prayer for dismissal of the suit was made.

Defendant no.2 filed written statement, wherein it was admitted that it had accepted a sum of Rs.3000/- from the plaintiff on behalf of the Estate Office as per their letter dated 7.2.1991. Rest of the averments were denied for want of knowledge.

From the pleadings of the parties following issues were framed:-

1 Whether the order passed by defendant no.1 vide memo dated 7.11.2007 is null and void and liable to be set aside and the plaintiff is entitled for allotment of the built up booth in question? OPP

2 If issue No.1 is proved, whether the plaintiff is entitled for relief of permanent injunction restraining the defendant no.1 from dispossessing the plaintiff from the site in question? OPP

3 Whether the present suit is not maintainable? OPD

4 Whether the plaintiff has no cause of action to file the present suit? OPD

5 Relief.

In order to prove his case, the plaintiff stepped into the witness box as PW-1 and examined PW-2 Mohinderjit Singh, PW-3 Harpal Singh, PW-4 Satish Kumar and closed the evidence.

In rebuttal, the defendants examined DW-1 Keshav Chander, Superintendent, Estate Officer, UT, Chandigarh and closed the evidence.

After appraisal of the evidence, the trial Court decided issues No.1 to 4 in favour of the plaintiff and against the defendant. Consequently, suit of the plaintiff was decreed vide judgment and decree dated 7.11.2013 passed by Sh. Rajneesh Kumar, Additional Civil Judge (Senior Division), Chandigarh.

Feeling dis-satisfied with the aforesaid judgment and decree dated 7.11.2013, the defendant appellant filed first appeal before the lower appellate Court. Vide judgment and decree dated 18.12.2014 passed by Sh. Atul Kasana, Additional District Judge, Chandigarh the appeal was dismissed.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 7.11.2013 and 18.12.2014, the defendant appellant has filed the present regular second appeal.

The appellant in para No.9 of grounds of appeal has mentioned that following substantial questions of law are involved:-

- (i) Whether merely on account of deposit of earnest money, the plaintiff/respondent can claim the allotment of built up booth?

(ii) Whether the respondent is entitled to the allotment of booth in view of the given circumstances?

(iii) Whether the judgments and decrees of the Courts below are based on the surmises and conjectures?

Learned counsel for the appellant has submitted that by mere depositing the earnest money, the plaintiff is not vested with any right to have allotment of the booth. It is submitted that survey was conducted and in that survey, plaintiff was not found present. It is the prerogative of the Estate Office to allot the booth or not. Videography was conducted and the plaintiff was not found working.

I have considered the submissions made by learned counsel for the appellant but do not find any force in that submission.

The regular second appeal lies only if substantial question of law has arisen. In the present case, admittedly, the plaintiff was issued hawker licence No.805, Registration No.801, site No.13 in Sector 40, Chandigarh. The stand taken by the Union Administration is that at the time of survey, the plaintiff was not found carrying on business of hawker. According to the case of Union Territory, the videographer was examined but that videography cassette has not been placed on the court file. It is also not disputed that plaintiff submitted earnest money of Rs.3000/- in compliance to the said scheme.

Abruptly, the plaintiff was held not entitled for the allotment of booth without issuing him any show cause notice. No doubt, mere deposit of

earnest money does not vest any right but in the present case, there are other circumstances which tilt in favour of the plaintiff. The licence of hawker has been issued in his name. The plaintiff has deposited the earnest money. The videography has not been produced. Even if, for the sake of arguments, it is presumed that at the time of survey, plaintiff was not present, in that case without hearing him, his case for allotment of booth cannot be rejected. So, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. Consequently, the appeal stands dismissed.

28.5.2015.
SN

(K.C.PURI)
JUDGE