

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

+ **R.S.A. No.222/2014 & C.M. No.13952/2014**

Decided on : 12th March, 2015

MS. MONA DEVI Appellant
Through: Mr. S.C. Rana, Advocate.

Versus

NEW DELHI MUNICIPAL COUNCIL Respondent
Through: Mr. V. Tyagi for Mr. Arjun Pant,
Advocate.

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 28.5.2014 passed by the learned Additional District Judge in R.C.A. No.39/2014 titled *Mona Devi vs. NDMC* upholding the judgment and decree dated 2.2.2012 passed by the learned Civil Judge, West Delhi.

2. Before dealing with the submissions made by the learned counsel for the appellant and which are stated to be constituting substantial question of law, it may be pertinent here to give brief background of the case.

3. The present appellant filed a suit bearing No.273/07 in the year 2007 against NDMC alleging that she has a license granted by the respondent for the purpose of selling fruits by way of hawking in NDMC area near Bank of Baroda Building, Parliament Street, Janpath, Connaught Place, New Delhi. It was alleged by her that she could not go to the Azardpur market for the purpose of purchasing fruits on account of her old age and disability and, therefore, vide her letter dated 25.10.2005, she had requested the respondent to allow her to change her business from selling uncut fruits to readymade small garments like, handkerchiefs, socks, undergarments & T-shirts, etc. The prayer in the suit was that the respondent and their agents, servants, legal heirs, etc. be restrained from creating any hindrance in carrying on the business of the appellant from selling the aforesaid garments.

4. The respondent contested the suit of the appellant/plaintiff. It raised various objections including the one under Order VII Rule 11 CPC on merits. It took the stand that the appellant had a license for the purpose of selling uncut fruits while as instead of selling the same, she had changed the nature of her business to selling undergarments, socks,

handkerchiefs, etc., and therefore, the license was cancelled during the pendency of the suit on 16.3.2010.

5. The appellant filed an application seeking amendment in the plaint challenging the cancellation so as to incorporate the pleadings with regard to the cancellation of her license also; however, that application for amendment was rejected by the trial court. An appeal taken against the said order rejecting his application seeking amendment of the plaint was also unsuccessful. Consequently, the court vide order dated 2.2.2012 came to a conclusion that the suit of the appellant had become infructuous on account of cancellation of the license. While dealing with the plea of cancellation of license on 16.3.2010, it was observed by the court that even if the amendment is allowed and the said order of cancellation dated 16.3.2010 is set aside even then the license gets extended only upto 31.3.2011 because the licenses are issued on year to year basis. Accordingly, the court considered the plea of cancellation of license being illegal as otiose.

6. The appellant feeling aggrieved by the aforesaid judgment dated 2.2.2012, filed an appeal bearing No.39/2014 titled *Mona Devi vs. NDMC*. The said appeal was also dismissed while taking note of the fact

that the nature of business from uncut fruits to selling of garments could not have been changed on the basis of alleged oral permission purported to have been granted by the officials of the respondent. Accordingly, the appeal was also dismissed on 28.5.2014.

7. Still feeling dissatisfied, the present regular second appeal has been filed. The second appeal is entertainable according to section 100 only if any substantial question of law is arising.

8. The contention of the learned counsel for the appellant is that according to Section 339 sub-section (3) of NDMC Act, 1994, before a license is cancelled, a show cause notice ought to have been issued to the appellant in terms of the proviso (a) to sub-clause (iii) of Section 339. Since this has not been done and the license has been cancelled on 16.3.2010, this raises a substantial question of law.

9. I do not agree with this contention of the learned counsel for the appellant. Before any question of law or for that matter any substantial question of law is considered to be arising from an appeal, there must be a foundation in the suit itself. In the instant case, when the plaint was filed by the appellant/plaintiff, her only case was that the respondent be restrained from creating any obstruction in her running a business of

selling garments. Obviously, the aforesaid obstruction which the appellant was getting from the side of the respondent, was perhaps on account of the fact that she had changed her nature of business from selling uncut fruits to garments. At that point of time, there was no question of license having been cancelled notwithstanding the fact that the license was being renewed on yearly basis. It is only when the pleadings of the suit were completed and the respondent had taken a plea that the appellant was not entitled to relief of permanent injunction on account of the fact that she had unilaterally changed her business, for which the license was granted, to other business of selling garments that too during the pendency itself, as she did not revert to her old business, they cancelled the same. The appellant made a vain effort of making an amendment in the plaint challenging that cancellation which was also rejected. Therefore, this plea that her license was cancelled without issuance of show cause notice, has no foundation and cannot be said to raise a question of law in the present appeal. It at best gave rise to a fresh cause of action as and when the same was done entitling the appellant/plaintiff to assail the same before appropriate forum if she would have been so advised. Having missed the bus, today she cannot

contend in the present appeal that this plea be taken as a substantial question of law and the matter be examined. This plea has no foundation in the plaint and accordingly, it cannot be entertained.

10. Apart from this, there is no other question of law much less any substantial question of law involved in the instant matter and accordingly, the appeal is dismissed.

V.K. SHALI, J.

MARCH 12, 2015
‘AA’