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

+ **Date of Decision: 28.08.2015**

% **RSA 342/2014 & C.M. No.18713/2014**

DDA

..... Appellant

Through: Mr. Sanjeev Rajpal, Advocate

versus

CENTRAL TIMBER TRADERS

..... Respondent

Through: Mr. Jagjit Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. Admit. The following substantial question of law is framed:

“Whether the suit filed by the respondent/plaintiff was barred by limitation?”

2. I have heard the final arguments of learned counsels with their consent at this stage itself, and I proceed to dispose of the appeal.

3. The respondent/plaintiff had filed the Suit No.658/2006 in the Court of the Civil Judge, Delhi to seek the reliefs of declaration, perpetual injunction and mandatory injunction against the appellant/defendant/DDA. The undisputed facts are that the respondent/plaintiff was carrying on its timber business at Pul Mithai, Queens Road, Delhi on a land leased from the

Northern Railways. In the wake of Asian Games in 1982, the said timber market – where the respondent/plaintiff was also carrying on business, was sought to be shifted to Kirti Nagar Warehousing Scheme by making allotment of an alternate plots. The respondent/plaintiff was, accordingly, shifted.

4. It appears that a dispute arose with regard to the rate that the appellant/DDA sought to charge the respondent for the alternative plot allotment. The case of the respondent was that the other similarly situated timber traders, who had been shifted from Pul Mithai, had been charged the lease premium @ Rs.191 per sq mtr, whereas in the case of the respondent/plaintiff, the same was sought to be charged @ Rs.1327 per sq mtr.

5. In this background, after issuance of the statutory notice under section 53B of the Delhi Development Authority Act (the Act), the respondent/plaintiff filed the suit in question on 27.02.1998. One of the defences raised by the appellant/defendant was that the suit was barred by limitation. This is the only issue which has been sought to be raised in the present appeal.

6. On the basis of the pleadings, the issues were framed by the Trial Court on 02.11.1999. The issue of limitation was framed as issue no.1A. The premise for raising the said objection of limitation by the DDA was that the DDA had raised its demand against the respondent/plaintiff demanding payment of lease premium @ Rs.1327 as early as on 02.02.1991. According to the appellant/defendant, the cause of action arose on 02.02.1991 and the respondent/plaintiff could have filed the suit for declaration in respect of the

said demand – claiming that the same is illegal, within a period of three years i.e. by 01.02.1994. The plaintiff had claimed that it had issued notice under section 53B of the Act on 02.02.1992, 25.07.1992 and 13.03.1997. The plaintiff also stated that on 13.03.1997, it had deposited Rs.27,000/- towards the demand raised by the appellant/defendant. The plaintiff claimed that the cause of action had to be counted from the date of deposit of the premium amount of Rs.27,000/-, i.e. 13.03.1997, which was also the date when the last legal notice was issued.

7. The Trial Court decided the issue of limitation against the plaintiff. The Trial Court also found that the suit had not been filed within six months of the issuance of notice under section 53B of the Act and thus on two counts, the suit was dismissed. However, I may observe that on merits, the finding returned by the Trial Court was in favour of the plaintiff, thereby holding that the demand raised by the appellant/defendant @ Rs.1327 per sq mtr was illegal, and that the lease premium chargeable from the respondent/plaintiff was Rs.191 per sq mtr, as had been charged in the case of other similarly situated persons.

8. The respondent preferred the first appeal, which has been allowed by the impugned judgment dated 19.07.2014 passed by the learned ADJ-05 (Central Dist) Tis Hazari in RCA No.9/2008. The First Appellate Court has reversed the finding of the Trial Court on both the issues, as aforesaid. As already noticed herein above, the appellant has raised only the issue of limitation in the present second appeal.

9. The First Appellate Court while reversing the finding of the Trial Court held that since the plaintiff is in possession of the suit property and the

demand for payment raised by the defendant is a continuing demand, the cause of action was also a continuing cause of action. The First Appellate Court observed that even after the filing of the suit – which was filed on 27.02.1998, a policy decision has been taken by the DDA on 17.01.2003 (approved on 03.02.2003). By this decision, the defendant/DDA decided to charge the plaintiff @ Rs.1327 per sq mtr. They also decided to charge interest @ 18% from the date of possession till 31.03.2002, and for the period thereafter @ 12.5%. The First Appellate Court held that every fresh demand - whereby the plaintiff was asked to pay at a higher rate than Rs.191 per sq mtr, gave a fresh cause of action to the plaintiff. The defendant/DDA had not taken steps to evict the plaintiff for non-payment of lease premium, and demand of the defendant was continuing.

10. The submission of counsel for the appellant is that there was no justification to reverse the finding returned by the Trial Court on the aspect of limitation, by the First Appellate Court. If the respondent/plaintiff was aggrieved by the demand as raised by the appellant/defendant as early as on 02.02.1991, he should have sought a declaration in respect thereof within three years of the said demand being raised. The plaintiff was barred from questioning the said demand after the expiry of three years from the issuance of the said demand. It is also argued that, in fact, the defendant/appellant had a continuing right to act on its notice dated 02.02.1991. The said continuing right of the defendant did not give a corresponding continuing right, or cause of action to the plaintiff to assail the said demand as and when the plaintiff desired.

11. Having heard learned counsels and perused the decisions of the Trial

Court as well as the First Appellate Court, I am inclined to agree with the reasoning adopted by the First Appellate Court that the suit was not barred by limitation. As noticed by the First Appellate Court, the respondent/plaintiff was placed in possession of the alternatively allotted plot and the plaintiff was in use and enjoyment thereof. The defendant had raised its demand @ Rs.1327 per sq mtr on 02.02.1991. If the respondent/plaintiff did not comply with the said demand, it was open to the appellant/defendant to take action premised on the said demand. If action had so been taken, the right of the plaintiff to contest the said action – including on the ground that the demand itself was illegal, could not have been denied merely because the action may have been initiated after more than three years of the demand being raised.

12. Since the demand itself was outstanding and a continuing one, the right to assail the same was also a continuing one. The position may have been different if: either the plaintiff was not put in possession, and was not put in possession on account of the demand not being met, and the plaintiff not initiating action within three years of the demand being raised. The position would also have been different if, premised on the impugned demand of 02.02.1991, the defendant had actually initiated and completed taking of action and the plaintiff had not assailed the action taken by the appellant/defendant for over three years. However, in the present case, apart from raising the demand on 02.02.1991, the defendant did not act upon it. As noticed by the First Appellate Court, even after the filing of the suit on 27.02.1998, the DDA again sought to take a fresh policy decision on 17.01.2003 (approved on 03.02.2003) to charge the plaintiff @ Rs.1327 per

sq mtr along with interest @ 18% p.a. for a certain period, and @ 12.5% thereafter. Not only the cause of action in respect of the demand dated 02.02.1991 was continuing, the said demand for Rs.1327 per sq mtr along with interest certainly gave a fresh cause of action to the plaintiff.

13. Learned counsel for the respondent has also submitted that the Trial Court erred in assuming that the deposit of Rs.27,000/- made by the respondent on 13.03.1997 was made by the plaintiff on its own, and that the same had not been accepted by the appellant/defendant. It is pointed out that, at no stage, the defendant returned the said amount and even the witness of the defendant/appellant did not claim that the said amount had not been accepted. Since the partial payment had been made by the respondent/plaintiff on 13.03.1997 while issuing notice under section 53B, that too gave a cause of action to the plaintiff to prefer the suit.

14. Accordingly, the aforesaid substantial question of law is answered in favour of the respondent and against the appellant. The appeal is dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J

AUGUST 28, 2015

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