

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

+ **RSA No. 275/2016**

% **19th September, 2016**

DR. S.C. JAIN Appellant

Through: Mr. Amit Jain, Advocate.

versus

UNIT TRUST OF INDIA & ANR. Respondents

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 34179/2016 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 34178/2016 (delay of 17 days in re-filing the appeal)

For the reasons stated in the application, delay of 17 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No. 275/2016

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff impugning the

concurrent Judgments of the courts below; of the Trial Court dated 27.1.2006 and the First Appellate Court dated 8.3.2016; by which the suit filed by the appellant/plaintiff for mandatory injunction to the respondent no.1/defendant no.1/Unit Trust of India to deliver 2000 units of Mastergain 92 Scheme has been dismissed.

2. The facts of the case are that the appellant/plaintiff purchased 5100 units of the Mastergain 92 Scheme of the respondent no.1/defendant no.1 on 1.5.1993 and sent the same to the Registrar of the respondent no.1 i.e the respondent no.2/defendant no.2 for transfer of 5100 units in the appellant's/plaintiff's name. Appellant/plaintiff only received 3100 units transferred in his name and has therefore filed the suit on the ground that the disputed 2000 units be transferred in his name by seeking a mandatory injunction against the respondents/defendants.

3. In my opinion, this second appeal is bereft of merits and the courts below have rightly dismissed the suit because of two main reasons. The first reason is that the suit was barred by limitation and the second reason is that the necessary parties being the transferees of the 2000 units have not been made as defendants in the suit.

4(i) So far as the issue of limitation is concerned, the courts below have rightly held the suit filed on 20.1.2005 was beyond limitation inasmuch as the

admitted position is that the appellant/plaintiff was informed by the respondent no.1/defendant no.1 vide its Letter dated 11.11.1998 that 2000 disputed units in fact stood transferred to third persons. Once the appellant came to know of this fact, the suit had to be filed within three years from 11.11.1998. The suit was however filed only on 20.1.2005.

(ii) The related issue is that whether the appellant/plaintiff can get benefit of Section 14 of the Limitation Act, 1963 during the pendency of proceedings before the consumer forum which were filed by the appellant/plaintiff and were dismissed by the Judgment of the Consumer Forum dated 18.8.2004. It is seen in this regard that the complaint before the consumer forum was filed in May, 2002 and was dismissed on 18.8.2004, and therefore, the appellant/plaintiff can at best seek exemption of two years and four months for being added to the limitation period of 3 years, and therefore, the suit for which cause of action arose for recovery of 2000 units on 11.11.1998 could have been at best filed till **31.3.2004**, but the suit admittedly was filed only on 20.1.2005, and has therefore been rightly dismissed as barred by limitation.

5. It is relevant to note that one of the objections raised by the present respondents to the complaint filed before the consumer forum was that the appellant/plaintiff despite having full knowledge of the names and addresses of the transferees with details of certificates of disputed 2000 units did not make

the transferees as parties to the complaint in the consumer forum. This is so even in the present suit and admittedly appellant/plaintiff has not impleaded the transferees of the 2000 units of Mastergain 92 certificates as defendants in the suit, and therefore, one of the reasons rightly given by the trial court for dismissing of the suit is that the necessary parties being the transferees of the Mastergain 92 certificates were not made as defendants to the suit.

6. It is therefore clear that the courts below have rightly dismissed the suit on the ground of limitation and also non-joinder of necessary parties. There is therefore no merit in this second appeal as no substantial question of law arises, and therefore, this Regular Second Appeal is dismissed.

CM No. 34177/2016 (U/o XLI Rule 27 CPC)

7. This application is for taking on record the additional evidence which is in the form of Letters dated 27.10.2000 and 13.6.2002 issued by the respondent no.2/defendant no.2 to the appellant/plaintiff. Reliance is placed upon these letters to show some confusion at the end of the respondents/defendants with respect to disputed 2000 units of Mastergain 92 certificates. In these letters it is stated that 2000 units of Mastergain 92 certificates were not received by the respondent no.2. In my opinion, however these facts are immaterial for the reason that the letters relied upon by the appellant will not change the factum of limitation commencing from 11.11.1998

when the appellant/plaintiff knew that the disputed 2000 units of Mastergain 92 certificates having been transferred to third parties. Section 9 of the Limitation Act provides that limitation once commences no subsequent disability or inability to institute a suit stops the limitation period. At best, appellant/plaintiff was entitled to the benefit of Section 14 of the Limitation Act, and even if the said benefit is given, the suit is/was barred by limitation. There is therefore no merit in this application and which is accordingly dismissed.

SEPTEMBER 19, 2016
ib

VALMIKI J. MEHTA, J