

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5697 of 2017

Date of Decision.06.03.2018

Rajiv Kamboj and another

.....Appellants

Vs

Municipal Council, Kartarpur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ish Puneet Singh, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is in regular second appeal against the dismissal of the suit claiming relief of declaration and injunction which has been upheld by the lower Appellate Court.

The appellant-plaintiff instituted the suit seeking declaration that the order regarding sanctioning of plan pertaining to house No.3987 Baradari Gate Imli Wali Gali, Near Rama Krishna Mandir, Kartarpur, District Jalandhar for construction of shops/market by demolishing House No.3987 being illegal and void with consequential relief of permanent injunction restraining the defendants their agents, attorneys, nominees, assignees etc. from converting the residential building to a commercial market, on the premise that the plaintiffs are resident of House No.3980 in the same gali whereas the Municipal Council, Kartarpur in collusion with defendant Nos.2 and 3 sanctioned the building plan for converting the same into commercial market. The plaintiff along with other residents had filed CWP No.9854 of 2015 which was disposed of on the statement of Executive Officer, M.C., Kartarpur that the M.C. had sanctioned the plan

and thereafter, the present suit was filed on 24.07.2015.

The aforementioned suit was contested by defendant No.1 on the ground that the plan was sanctioned as per the Bye-laws and Rules framed by the Local Government whereas plaintiff No.2 attorney of plaintiff No.1 was also running the shop in front of the shop constructed by defendant No.2 and 3. Even the construction of shop of plaintiff No.1 was without sanctioned plan and for that criminal complaint under Section 195 (2A) of the Punjab Municipal Act, 1911 was pending adjudication before the Judicial Magistrate 1st Class, Jalandhar. Defendant No.2 and 3 filed the written statement and the stand taken was in the same lines as the one taken by defendant No.1.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to get relief of declaration, as prayed for? OPP*
- 2. Whether the plaintiffs are entitled to get relief of permanent injunction as prayed for? OPP*
- 3. Whether proper court fee has been affixed on plaint/ OPD*
- 4. Whether this suit is not maintainable? OPD*
- 5. Whether plaintiff has not come to the court with clean hands, if so its effect? OPD*
- 6. Whether site plan attached with plaint is wrong and incorrect? OPD*
- 7. Relief.”*

The plaintiffs despite availing many opportunities did not lead evidence, therefore, the trial Court by invoking the provisions of Order 17 Rule 3 CPC dismissed the suit. The appeal preferred before the lower

Appellate Court also met with the same fate.

Mr. Ish Puneet Singh, learned counsel appearing on behalf of the appellant submitted that the issues in the aforementioned case were framed on 06.10.2015 and thereafter, only ten opportunities were given. The explanation given in the grounds of appeal was sufficient for the Courts below to grant one opportunity. The Courts below ought not to have applied the ratio decidendi culled out by the Hon'ble Supreme Court in *M/s Shiv Cotex vs. Tirgun Auto Plast P. Ltd. and others 2011(4) RCR (Civil) 807* in strict sense, thus, urges that if one opportunity is given to lead evidence within reasonable period, subject to any condition which this court may deem fit, the appellant-plaintiff would lead evidence.

I have heard learned counsel for the appellant and appraised the paper book. The aforementioned writ petition was disposed of on the statement of Executive Officer, Municipal Council that construction raised by defendant No.2 was as per the sanctioned plan. It is in this background, the plaintiff instituted the suit yet did not come forward to lead evidence, for, there was a specific stand in the written statement that the construction raised by plaintiff No.1 was without sanctioned plan and was facing the criminal prosecution as per the provisions of Section 195(2A) of the Punjab Municipal Act, 1911. Basically, the plaintiffs were not able to digest the competition whereby the shops had been set up by defendant Nos.2 and 3. Rather they could have accepted the aforementioned factual aspect that it would entail the healthy competition amongst the shop keepers with regard to quality and cost of the material. However, I am of the view that explanation given in the memorandum of appeal is not sufficient to grant an opportunity to lead evidence. The application of the ratio applied by the

Courts below in **M/s Shiv Cotex's case** (supra) does not call for any interference.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No