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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5368 of 2018 (O&M)
Date of Decision: 26.09.2018

Haryana Urban Development Authority (now Haryana Sehri Vikas Pradhikaran) and another
......Appellants

Vs

M/s Indication Instruments Limited
....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Arvind Seth, Advocate
for the appellants.

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RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below decreeing the suit of the plaintiff.

[2]. Brief facts of the case are that plaintiff filed a suit for recovery of Rs.8,50,000/- along with interest on the ground that the plaintiff was a registered Company under the Companies Act. Plaintiff was involved in manufacturing of Dash Board and other instruments and was running a plant in the Industrial Area, Faridabad. With the passage of time, plaintiff-Company required more space for research and development and for corporate

office in order to keep the technology up to date. Defendants advertised for the allotment of plots in Sector 20-B Faridabad. Plaintiff applied for land in Sector 20-B, Faridabad for research and development work. Plaintiff was told to deposit an amount of Rs.20,72,000/- as earnest money along with the application. The needful was done by the plaintiffs in terms of deposit of the aforesaid amount vide DD No.186638 dated 09.11.2004 of Canara Bank. The payment was duly acknowledged by defendant No.1 and the same was encashed. Plaintiff through its Chairman was interviewed on 22.11.2004, but no final decision was taken in respect of allotment of land in favour of the plaintiff. On 09.09.2005, defendant No.2 informed the plaintiff in respect of taking undertaking from the plaintiff i.e. to undertake to pay costs of land as current rate of allotment as fixed by the Authority. Plaintiff complied with the undertaking. Thereafter, plaintiff was told that Chief Administrator has revised the rate of industrial plot of Sectors 20-A and 20-B Faridabad to the tune of of Rs.5625/- per sq. mtr, whereas it was Rs.5180/- per sq. mtr. The affidavit was given by the Managing Director agreeing to the aforesaid rate and accordingly vide memo dated 27.07.2006 issued by the Estate Officer, HUDA, rates were revised and thereafter plaintiff made the difference of payment of revised rates and an amount of Rs.1,78,000/- towards difference was deposited on 04.03.2006 which was duly acknowledged by defendant No.1. Again the Chairman of the plaintiff-Company was sought to be interviewed vide memo dated 20.12.2005 and thereafter a letter dated 06.01.2006 was sent to the plaintiff regarding postponement of interview. Another notice was issued to the plaintiff for second interview on 21.07.2006, but the plaintiff was surprised to know that instead of allotting the plot, defendant No.2 returned the earnest money of Rs.22,50,000/- without interest from 09.11.2004 to 03.10.2006. The efforts made by the plaintiff towards payment of interest by the defendant remained unfruitful. Thereafter plaintiff was involved in communication with the defendants in respect of payment of interest.

[3]. A consumer complaint was filed at District Consumer Disputes Redressal Forum, Faridabad and the same was decided in favour of the plaintiff, but the State Consumer Disputes Redressal Commission (for short 'the State Commission") in its judgment dated 08.08.2012 reversed the same on the ground that the plaintiff does not fall under the provisions of consumer redressal forum, and is not the consumer. The State Commission vide its order gave liberty to the plaintiff to file a civil suit. The civil suit came to be filed on 08.10.2012 after the order dated 08.08.2012 passed by the

State Commission. The following entitlement was projected by the plaintiff before the trial Court:-

a)	On the amount of Rs.20,72,000/- from 09.11.2004 to 03.10.2006	Rs.7,72,757/-
	On the amount of Rs.1,78,000/- from 04.03.2006 to 03.10.2006	Rs.12,523/-
		Rs.4,85,280/-
	On the amount of Rs.4,85,280/- from 04.10.2006 to 30.09.2012	Rs.3,49,250/-
		Rs.8,34,530/-

[4]. The trial Court decreed the suit vide judgment and decree dated 03.02.2016 and the defendants were directed to pay interest on the amount of Rs.20,72,000/- w.e.f. 09.11.2004 to 03.10.2006 and on the amount of Rs.1,78,000/- w.e.f. 04.03.2006 till 03.10.2006 @ 9% per annum. The judgment and decree passed by the trial Court was upheld by the lower Appellate Court while dismissing the appeal vide judgment and decree dated 01.05.2018.

[5]. Learned counsel for the appellants submitted that the suit itself was barred by limitation. Even though the plea of limitation was not raised as a defence in the written statement as well as during course of arguments before the Courts below, still the plea can be taken at the stage of Regular Second Appeal as the plea of limitation is a legal plea.

[6]. Learned counsel further submitted that in respect of cause of action which accrued to the plaintiff in the year 2006,

the suit was filed only on 08.10.2012. He further submitted that as per bilateral condition between the parties, the appellants were not entitled to pay interest on the earnest money.

[7]. Having considered the arguments raised by learned counsel for the appellants, I am not in agreement with him. Firstly, the suit came to be filed only after exhausting remedy before the State Commission, where the appeal filed by the defendants against the judgment of the District Consumer Redressal Forum was allowed. While allowing the appeal by the State Commission vide its judgment dated 08.08.2012, a liberty was granted to the plaintiff to file a civil suit. Accordingly, a civil suit was filed on 08.10.2012. Plea of limitation is a mixed question of law and facts.

[8]. Secondly, no such ground was taken in the written statement, nor any issue was framed by the trial Court to that effect. No evidence was led by the defendants. At the stage of Regular Second Appeal, the said arguments cannot be entertained particularly when the plaintiff was relegated to the remedy of civil suit by State Commission vide judgment dated 08.08.2012. The appellants cannot earn interest on the earnest money deposited by the prospective buyers. The finding of fact recorded by both the Courts below while decreeing the suit cannot be interfered with. The plea taken by the appellants for

the first time in Regular Second Appeal cannot be accepted.

[9]. The attempt made by learned counsel for the appellants to address arguments on the basis of ***Azad Singh Gulia vs. Bhai Ram and another, 2016(2) PLR 703*** cannot be appreciated as the facts involved in the said case were totally different than the one involved in the present case. The proposition involved in the aforecited case was the delay in filing the original suit and the case was decided at the threshold of Order 7 Rule 11 CPC with reference to Section 3 of the Limitation Act. The suit was filed beyond the period of three years and it was held that the limitation does not apply to the original jurisdiction of civil suit. In the present case, the cause of action accrued to the plaintiff on the date, when the plaintiff was relegated by the State Commission. Moreover, the plea of limitation on the aforesaid aspect would remain a mix question of law and facts.

[10]. Since the objection was not taken in the written statement, nor any issue was struck, and neither any evidence was led by the defendants, therefore, the plea of limitation for the first time at the stage of Regular Second Appeal cannot be entertained. As regards, bilateral obligation arising out of the parties, the defendants did not lead any evidence in this regard, nor any such point was deliberated with reference to any

material on record.

[11]. In view of aforesaid, the findings recorded by the Courts below are the result of appreciation of facts. No re-appreciation of evidence can be done in the Regular Second Appeal and no question of law worth cognizance is involved in the present appeal. The appeal is accordingly dismissed in *limine*.

September 26, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No