

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

% **Date of decision: 10th August, 2018.**

+ **RSA 114/2018**

RAMESH CHAND JAIN **Appellant**

Through: Mr. Rajeev Chhetri, Ms. Meenakshi
Rawat and Mr. Rajesh Chhetri, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR **Respondents**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs No.32159/2018 & 32160/2018 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RSA 114/2018 & CMs No.32158/2018 (for stay), 32161/2018 & 32162/2018 (both for condonation of delays of 47 days in filing and 40 days in re-filing the appeal)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 5th January, 2018 in RCA No.1164/2016 of the Court of Senior Civil Judge (Central)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 20th September, 2011 in Suit No.192/2011 (Case ID No.02401C323112003) of the Court of Civil Judge, Delhi] of dismissal of the suit filed by the appellant/plaintiff for mandatory injunction against the respondents/defendants to allot an industrial plot under the re-location scheme of the respondent No.1.

4. The counsel for the appellant/plaintiff has been heard.

5. The appellant/plaintiff instituted the suit, from which this appeal arises, pleading (i) that the appellant/plaintiff was running a factory for manufacturing PVC Foot Wear under the name and style of 'Saraswati Plastic' at Plot No.232, Main Road, Ram Pura, Delhi; (ii) that due to sealing of factories in residential and non-conforming area of NCT of Delhi, the said factory was closed/shifted on 15th February, 2000; (iii) that the appellant/plaintiff, as per the scheme of the government to allot industrial plots in lieu of the displaced factories, moved an application on 23rd December, 1996 for allotment of industrial plot and also filed various documents viz. (a) rent receipt; (b) affidavit; (c) photocopy of PVC Association Registration for membership; (d) profit and loss account along with balance sheet; and, (e) photocopy of acknowledgement of the office of Income Tax along with Certificate of Income Tax; (iv) that the said application of the appellant/plaintiff was considered by the Commissioner of Industries and the allotment was denied and the application rejected; (v) that the appellant/plaintiff filed an appeal against the said order, which too was dismissed reasoning that "no documentary evidence of the establishment of industry before 19th April, 1996 had been filed"; (vi) that as per the statement made by the Minister for Industries & Power, Delhi, Income Tax Return or proof of Delhi Vidyut Board Misuse Commission was enough for allotment of an industrial plot; (vii) that there was no condition of submission of documents showing establishment of industry; and, (viii) that yet another appeal was filed by the appellant/plaintiff but the same was also dismissed. Hence, the suit impugning the rejection of the application of the

appellant/plaintiff for allotment of a factory site and for a direction for allotment of industrial plot.

6. The respondents/defendants contested the suit, *inter alia* pleading (a) that the scheme for relocation of industries functioning in residential/non-conforming areas, to conforming use zones, was being implemented in compliance of the orders of the Hon'ble Supreme Court of India from time to time; (b) that the eligibility under the said scheme was that the applicant unit should be located in residential/non-conforming area and should be in existence prior to 19th April, 1996 i.e. the date of the order of the Supreme Court; (c) that to prove the existence of the unit before the cut-off date, the appellant/plaintiff was requested to produce the prescribed government documents as detailed in the scheme; (d) that all the applicants who were able to produce the said documents were declared eligible under the scheme; (e) that the case of the appellant/plaintiff was however not recommended as he did not furnish any of the documents; (f) that for the same reason, two successive appeals were also dismissed by the Appellate Committees constituted for the said purpose; (g) that the Income Tax Return submitted by the appellant/plaintiff did not show that the unit was engaged in manufacturing activities.

7. On the pleadings aforesaid, the following issues were framed in the suit on 20th January, 2003:

- “1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in view of the non-giving of notice by the plaintiff under Section 80 CPC? OPD
3. Relief.”

8. The Suit Court dismissed the suit, reasoning (i) that a perusal of the prescribed application form for allotment under the scheme and the guidelines therefor setting out the eligibility criteria showed that the applicants were required to furnish the certificate of incorporation of the unit, rent receipt, balance sheet, proper nomenclature of the machinery installed, industrial power load requirement, number of workers employed, proof of financial status; (ii) that a perusal of the Income Tax Return of the appellant/plaintiff for the year 1995-1996 showed that the same was submitted on 31st August, 1997 with the Income Tax Office at Jind, Haryana and the tax thereon also paid after making the application for allotment of industrial plot on 23rd December, 1996; (iii) that therefrom it appeared that the appellant/plaintiff, at the time of applying under the relocation scheme had not furnished any proof of payment of income tax; (iv) that the appellant/plaintiff had not furnished any proof of carrying on any industrial activity in a non-conforming area prior to 1996; (v) that certificate of membership of PVC Association was dated 11th March, 1996 but the same did not show that the unit was operative and functional prior to 19th April, 1996; (vi) that the appellant/plaintiff had thus failed to prove his eligibility under the scheme.

9. The First Appellate Court dismissed the appeal preferred by the appellant/plaintiff, reasoning (a) that though it was the contention of the counsel for the appellant/plaintiff that the Suit Court had not considered certain documents but the counsel for the appellant/plaintiff was unable to point out any document which had been proved and which showed the carrying on of any industrial activity by the appellant/plaintiff prior to 19th

April, 1996; (b) that it was the case of the respondents/defendants that the rent receipt filed by the appellant/plaintiff was not genuine and inspite thereof, the appellant/plaintiff had failed to examine the landlord, to indeed show that any premises in non-conforming/residential area was in the tenancy of the appellant/plaintiff; (c) that it was the case of the appellant/plaintiff that he was running the factory since 1995 but the appellant/plaintiff failed to file any documents whatsoever to show the establishment or running of a factory; (d) that the Income Tax Returns of the appellant/plaintiff also did not prove establishment or running of a factory prior to 19th April, 1996; (e) that the appellant/plaintiff, by filing two successive appeals against the decision of the appropriate authority of rejection of his application, had already availed of the procedure prescribed under the scheme for dealing with the application and the appellant/plaintiff in the suit also had failed to claim the relief of declaration; (f) that it was the contention of the counsel for the appellant/plaintiff himself that the scheme under which he had applied had closed long back; if that was so, then the appeal was infructuous.

10. The argument of the counsel for the appellant/plaintiff is the same i.e. that the Suit Court and the First Appellate Court have not considered some of the documents. However, on enquiry, as to which documents have not been considered, the counsel for the appellant/plaintiff states that he has not filed those documents before this Court and seeks adjournment.

11. Once the appellant/plaintiff has filed an appeal and has got the same listed for admission, there is no reason why the documents which the appellant/plaintiff seeks to rely upon for the purpose of admission should not

be placed before the Court. Listing of the appeals again and again for admission leads to waste of time of the Court inasmuch as considerable time is taken in reading the paper book to appreciate the contentions of the counsel.

12. The counsel for the appellant/plaintiff, on enquiry, as to which documents have not been appreciated, has pointed out only two documents i.e. a telephone bill and the balance sheet. However, on enquiry, as to how a telephone bill and a balance sheet constitute manufacturing activity, no answer is forthcoming. I have enquired from the counsel for the appellant/plaintiff, whether not having a telephone connection is no presumption of the same being for manufacturing activity and whether not income, even if any of the appellant/plaintiff for the period prior to 19th April, 1996, could not be presumed to be from manufacturing activity.

13. The counsel for the appellant/plaintiff agrees.

14. Not only does no substantial question of law arises in this Second Appeal but even otherwise the appeal is meritless.

15. Dismissed.

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RAJIV SAHAI ENDLAW, J.

AUGUST 10, 2018

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