

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) RSA-265-2016(O&M)

Sh.K.S. Basi(since deceased) through his legal heirs

...Appellants

Versus

Punjab Small Industries & Export Corporation Ltd. and another

...Respondents

(2) RSA-3071-2016(O&M)

Punjab Small Industries & Export Corporation Ltd.

...Appellant

Versus

M/s Shree Ganesh Oil & Soap Mills and another

...Respondents

Date of Decision:-8.7.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Harsh Bunger, Advocate
for the appellants in RSA-265-2016 and
for respondent No.2 in RSA-3071-2016.

Mr.Sanjeev Sharma, Advocate
for the appellant in RSA-3071-2016 and
for the respondent No.1 in RSA-265-2016.

Mr.Vinod Gupta, Advocate
for the respondent No.2 in RSA-265-2016 and
for the respondent No.1 in RSA-3071-2016.

H.S. MADAAN, J.

By this order, I shall dispose of two RSAs i.e. RSA-265-2016(O&M) filed on behalf of appellant Sh.K.S. Basi since dead now represented by his legal representatives and RSA-3071-2016(O&M) filed on behalf of appellant – Punjab Small Industries & Export Corporation Limited, Chandigarh.

Briefly stated, facts of the case are that plaintiff – M/s Shree Ganesh Oil and Soap Mills, Bathinda through its proprietor Sh.Jagdish Rai Gupta had brought a suit against defendants i.e. Punjab Small Industries and Export Corporation Ltd. through its Managing Director, Chandigarh and Sh.K.S. Bassi, resident of Bathinda seeking a declaration that the plaintiff is allottee and in possession of Industrial Plot measuring 6000 sq. yards No.A-6, Industrial Focal Point, Dabwali Road, Bathinda (hereinafter referred to the plot in suit) vide allotment letter dated 18.5.1981 and that allotment of that plot by defendant No.1 in favour of defendant No.2 is illegal, void, arbitrary and not binding upon the rights of the plaintiff, further craving for cancellation of order dated 16.2.1987 and grant of permanent injunction restraining the defendants from dispossessing the plaintiff from such industrial sheds/plot in suit.

As per the version of the plaintiff, it was allotted plot in suit, earlier having No.A-1 but subsequently it was given plot No.A-6; that the allotment had been made vide letter dated 18.5.1981 for a

sum of Rs.2,34,000/-; that the plaintiff had deposited a sum of Rs.1,000/- on 2.9.1978, which was acknowledged vide letter dated 10.10.1978; that the plaintiff had deposited a sum of Rs.40,900/-, Rs.3,900/- and Rs.2,000/- at the asking of defendant – Corporation and the latter had issued possession letter to the plaintiff on 10.6.1981 and had in fact delivered the physical possession to the plaintiff on 6.4.1981, however due to disturbed conditions in the State of Punjab, the plaintiff could not start the business in the allotted plot; that on 30.11.1992 on public advertisement by the defendant – corporation, the plaintiff approached the defendant – corporation for deposit of the remaining charges along with interest but it refused to accede to the request of the plaintiff and threatened to allot the plot to some other person; that the plaintiff through its counsel had served a registered notice upon defendant No.1 on 30.11.1992 but to no effect. According to the plaintiff, the cancellation/resumption order dated 16.2.1987 passed by defendant No.1 against the plaintiff and allotment of that very plot made by defendant No.1 in favour of defendant No.2 vide letter dated 27.7.1990 are illegal, void, arbitrary and beyond jurisdiction for the reason that no opportunity of being heard had been provided by the defendant – corporation to the plaintiff before doing so. According to the plaintiff, when defendants threatened to dispossess the plaintiff from the plot in question, it filed the present suit.

On notice, both the defendants appeared and filed separate written statements contesting the suit. In the written statement filed by defendant No.1, it has taken up various legal objections to wit that since the allotment of plot in question had been cancelled on 16.2.1987 and thereafter the plot was resumed by defendant No.1 on 20.7.1989, therefore suit for declaration and permanent injunction was not maintainable; that the plaintiff had not approached the Court with clean hands and had concealed material facts from it; that the suit was barred by limitation since allotment of plot in question was cancelled on 16.2.1987 and the plot was resumed on 20.7.1989, whereas the suit was brought on 3.4.1993 much beyond the period of limitation, as such was time barred. On merits, the answering defendant admitted that the plot in question had been allotted to the plaintiff and it had deposited Rs.42,900/- and Rs.3,900/- and further that the plaintiff was asked to take possession vide letter dated 10.6.1981, however the plaintiff failed to take physical possession of the plot. It was denied that the physical possession of the plot was delivered to the plaintiff. According to such defendant, the plaintiff had failed to pay installments as agreed and to raise construction in the plot. The answering defendant further submitted that a show cause notice was issued to the plaintiff on 7.5.1985 asking it to explain as to why the allotment of the plot should not be cancelled, however, the plaintiff did not reply to the

said notice; that the answering defendant had issued reminders to the plaintiff on 11.10.1985 and 18.8.1986 but that failed to elicit any response from the plaintiff and the plaintiff did not fulfil the conditions as mentioned in the allotment letter, therefore vide letter dated 16.2.1987 allotment of the plot in question was cancelled; that even after cancellation of allotment vide letter No.2391 dated 9.8.1988 and vide letter No.16728 dated 31.3.1989, the said plot was again offered to the plaintiff as a special concession, however, the said offer was not accepted by the plaintiff, therefore vide letter dated 20.7.1989, the plot in question was resumed by the answering defendant. It was denied that plaintiff on 30.11.1992 on public advertisement by the answering defendant again approached the latter to deposit the remaining charges with interest and the answering defendant refused to accept the request of the plaintiff. With respect to the legal notice dated 30.11.1992, it was contended that since the allotment was cancelled and the plot was resumed, there was no necessity to reply to the notice, nevertheless a detailed reply was sent on 15.2.1993 through Advocate of the answering defendant. It was further submitted by the answering defendant that it had refunded a sum of Rs.22,400/- vide cheque No.824512 dated 4.3.1991 being earnest money after deducting 10% of the cost of the plot, thereafter the answering defendant allotted the plot to defendant No.2, who had deposited the entire amount of plot and lease deed

was executed in his favour; that the physical possession was also handed over to defendant No.2. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

In the separate written statement filed on behalf of defendant No.2, he has also taken up various legal objections and has taken up the stand, which is similar to the one put forward by defendant No.1 in its written statement. According to such defendant, after resumption of the plot in question, defendant No.1 invited fresh applications for allotment and the answering defendant had submitted an application in that regard and defendant No.1 allotted plots No.A-6 and A-7 to him vide letter dated 27.7.1990 and the total area of these plots being 12000 sq. yards and after the allotment, 30% of the total price of each plot had been deposited by him; that defendant No.1 had also delivered possession of the plot to him on 30.10.1990, as such, the plaintiff has no right, interest or concern with the plot in question. In the end, such defendant also craved for dismissal of the suit.

The plaintiff had filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff was allotted an Industrial plot at Focal

point Dabwali Road, Bathinda? OPP.

1-A Whether the cancellation order dated 16.2.1987 of plot No.A-6 by defendant No.1 of the said plot of the plaintiff is illegal, void and not binding upon the plaintiff? OPP.

1-B Whether the allotment of industrial plot No.A-6 by defendant No.1 in favour of the defendant No.2 is illegal, void and not binding upon the plaintiff ? OPP.

2. If issue No.1 is proved, whether the plaintiff is entitled for declaration as prayed for? OPP.

3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the suit is filed within the time? OPD.

6. Relief.

In order to prove its case, the plaintiff had examined Sh.Jagdish Kumar Gupta as PW1 and Sh.Davinder Kumar as PW2.

On the other hand, the defendants had examined Sh.Amarjit Singh, Senior Assistant PSIEC as DW1 and Cap.K.J.S. Ghuman as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1, 1-A and 2 against the plaintiff and in favour of the defendants, issue No.3 against the plaintiff and in favour of the defendants, issue No.4 in favour of the plaintiff and

against the defendant, issue No.1-B against the plaintiff and in favour of the defendants, issue No.5 against the plaintiff and in favour of the defendants. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 7.12.2011.

The plaintiff was aggrieved by the said judgment and decree and it had filed an appeal before the Court of District Judge, Bathinda, which was assigned to Additional District Judge, Bathinda, who vide judgment and decree dated 27.7.2015 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff to the effect that plaintiff is allottee in possession of industrial plot No.A-6 measuring 6000 sq. yards, Industrial Focal Point, Dabwali Road, Bathinda vide allotment letter dated 18.5.1981 and further re-allotment of the said plot by defendant No.1 in favour of defendant No.2 is illegal and cancellation order dated 16.2.1987 is void and illegal and the plaintiff shall be bound to pay the remaining payment of the said plot to defendant No.1 as per the terms and conditions of the allotment letter and in addition to that suit of the plaintiff for permanent injunction was decreed restraining the defendants from dispossessing the plaintiff from plot No.A-6 except in due course of law.

Now it was turn of the defendants to feel dissatisfied and they had filed separate regular second appeals before this Court, notice of which was issued to the respondents/plaintiffs, who

appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgment and decree passed by learned Additional District Judge, Bathinda are not sustainable and are bound to be set aside.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very Act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

The limitation for filing of suit for declaration is three years when the right to sue first accrues. In the present case right to sue accrued to the plaintiff when allotment of the plot was cancelled vide order dated 16.2.1987 or say on 20.7.1989 when the plot in question was resumed by the defendant – corporation on failure of the plaintiff to accept the offer by the corporation as a special concession vide letter No.2391 dated 9.8.1988 and vide letter No.16728 dated 31.3.1989. The plaintiff could file the suit maximum within three years of resumption of the plot say up to 20.7.1992 but the suit has been filed much later i.e. on 3.4.1993, which is clearly

time barred. The plaintiff is trying to avoid the hurdle of limitation by adopting various means, firstly saying that there is no evidence that the notices had in fact been sent to the plaintiff by defendant No.1 - Corporation. I do not find any merit in this contention. Defendant No.1 is a corporation and not an individual. An individual may indulge in mischief of forgery, fabrication or making misrepresentation for small gains but it cannot be said of a corporation, which has been constituted vide a statute. The actions and acts of such type of organization are presumed to be duly performed. Therefore, it is taken that normal course of conduct had been followed, which means that notices purported to have been sent to plaintiff by Punjab Small Industries & Export Corporation Ltd. were in fact sent and there is a presumption under Section 114 of the Evidence Act that those were duly received by the plaintiff. It is not the case of the plaintiff that its address given in the notices in question is wrong or that the office of the plaintiff was closed during the relevant period. Section 114 of the Indian Evidence Act clearly provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Therefore, onus was upon the plaintiff to show that those notices had in fact been not received by it. The plaintiff could very well have

proved those facts by examining the official of post office concerned in that regard but that was not so done. Therefore, the approach of lower Appellate Court in disbelieving the plea taken on behalf of defendant No.1 - corporation that notices had in fact been sent, was not proper under the circumstances. It is an admitted case of the parties that the amount agreed between the parties had not been deposited by the plaintiff in the form of installments as per schedule agreed. The plea taken by the plaintiff that it could not do so on account of the disturbed conditions in the State of Punjab at the relevant time is least convincing. The plaintiff is not shown to have made any effort to contact office of defendant No.1 - corporation submitting any written request for extension of time for payment of installments. Had it done so, it would definitely have come to about the action being proposed or taken against it on account of non-deposit of the installment amounts. The plaintiff is trying to take advantage of its own wrong, firstly not depositing the installment amounts within time for unconvincing, keeping quiet and then shifting the burden to defendant No.1 - corporation that proper procedure was not followed in cancelling the allotment/lease. If the plaintiff did not respond despite issuance of repeated notices to, it then defendant No.1 - corporation could not be faulted for cancellation of the allotment, resumption of the plot and its re-allotment to some other person. The plaintiff is trying to take

advantage of the fact that it had sent a registered notice dated 30.11.1992 through its counsel to defendant – corporation. Such type of notice can certainly not extend the period of limitation. Even if for a moment, it is taken that the plaintiff had come to know about resumption of the plot on 30.11.1992 and wants that the Court to count the period of limitation from the date of knowledge, then the suit should have been filed immediately without waiting for further time. Even otherwise, the version of the plaintiff that it came to know about cancellation of allotment and resumption of plot on 30.11.1992 does not seem to be plausible and satisfactory plea. The trial Court considering the facts and circumstances of the case in correct perspective and after proper appraisal of the evidence adduced by the parties and correct interpretation of law had rejected the claim of the plaintiff. However, Additional District Judge, Bathinda without proper application of mind reversed the detailed and well reasoned judgment of the trial Court, which was without any justifiable reason. He has completely misinterpreted the law on the subject while coming to the conclusion that suit was within limitation. The reasoning given by him is highly unsatisfactory. He has misread the evidence while coming to the conclusion that possession of plot is with the plaintiff, arriving at the conclusion that show cause notices, which were sent as per registered letters, however no postal receipts were proved in evidence amounted to non-compliance of the legal

requirements. Even if for a moment, it is taken that proper procedure was not followed by defendant No.1 - corporation and order of resumption is not legal and valid but that was required to be challenged within period of limitation. Earlier law that limitation does not apply to a void order no longer holds good. Even a void order is required to be challenged and got set aside within period of limitation, otherwise it remains as such. The Court cannot allow a litigant to avoid the rigors of limitation on flimsy grounds just coming up with a plea that he was not aware of the order and came to know about it some time before filing of the suit. Here facts and circumstances of the case clearly go to show that such plea of plaintiff lacks merit and the suit is barred by limitation. The defendant – corporation having sent repeated notices to the plaintiff without plaintiff responding to any one of them, on account of failure of the plaintiff to deposit the installments as per schedule, the allotment was rightly cancelled and plot resumed and no fault can be found with the same. The plaintiff was definitely not entitled to a decree for declaration or permanent injunction. Even if, it is taken that possession was given by defendant No.1 - corporation to plaintiff, it was in the form of a vacant land. The law is well settled that possession goes with title. After resumption of the plot, plaintiff had no right to retain its possession. It is not the case of the plaintiff that it had enclosed the plot with a boundary wall and had raised any

construction there or was otherwise using it for storage of material etc. On the other hand, the version of the defendant No.2, who was allotted the plot after resumption is that he is in established possession of the plot.

Learned counsel for the plaintiff tried to bring the case of the plaintiff within Sections 64 and 65 of the Limitation Act.

Section 64 deals with possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed, providing limitation for 12 years and time from which period begins to run from the date of dispossession. Here the plaintiff claims himself to be in possession and denies that it has been dispossessed. Therefore, limitation of 12 years is not available to it under this provision.

Section 65 deals with case of adverse possession providing limitation of 12 years for possession of immovable property or any interest therein based on title. That certainly is not the case of the plaintiff here.

The judgment and decree passed by the trial Court are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge, Bathinda. That wrong is being undone by acceptance of the present appeals.

Resultantly, the judgment and decree passed by

Additional District Judge, Bathinda are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored.

The appeals stand allowed accordingly with costs.

8.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No