

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 148 OF 2022

SREYANSKUMAR AMARCHAND JAIN

VERSUS

MAHARASHTRA INDUSTRIAL DEVELOPMENT
CORPORATION THRO. REGI. OFFICER, LATUR

...
Advocate for Appellants : Mr. B.N. Patil
h/f. Mr. Ingale Vivekanand V.
Advocate for Respondents : Mr. S.S. Dande

CORAM : R.M. JOSHI, J.

DATE : 19th April, 2023

PER COURT :

1. This appeal is against the concurrent findings recorded by the Trial Court and First Appellate Court in RCS No. 264/2010 and RCA No. 76/2013, whereby, the suit of plaintiff was dismissed.

2. In brief the case of the plaintiff before the Trial Court can be narrated as under :

Plaintiff filed suit for declaration in respect of notice dated 26.11.1985, canceling the allotment of plot by defendant MIDC and for perpetual injunction restraining the defendant from obstructing the

peaceful possession of the plaintiff over the suit plot. There is no dispute about the fact that there was an agreement of lease entered between the parties on 08.04.1982. The condition of lease is that the construction should be carried out on the plot within period of two years. It is the case of the plaintiff that for his personal reasons the construction could not be done. Consequently, defendant issued notice dated 26.11.1985, whereby, the allotment of the plot of the plaintiff was canceled and he was called upon to evict therefrom and to give possession of the suit plot to the defendant. It is alleged that the notice issued is against the process of law and not binding on the plaintiff. It is also claimed that no opportunity was given to the plaintiff for extension of period for construction. With these averments suit came to be filed.

3. Defendant opposed the said contentions by filing written statement and the tenability of the suit was also challenged. It is the case of defendant that plaintiff had filed RCS No. 553/1985 for injunction simplicitor which suit came to be dismissed in default. Thereafter, another suit was filed bearing RCS No. 491/1998 on the same cause of action, which was withdrawn by the plaintiff. It is stated by the defendant that since the plaintiff has failed to comply with the

essential conditions with this agreement, the notice issued against the plaintiff was legal.

4. Plaintiff and defendants lead evidence in respect of their respective contentions. Learned Trial Court dismissed the suit with observation that the suit is not within limitation and plaintiff has failed to show that the notice in question is illegal. The said finding of the Trial Court was framed by the First Appellate Court in the Appeal.

5. Learned counsel for the plaintiff states that the suit could not have been dismissed on the ground of limitation, as it is the continuous cause of action. He further takes this Court to the findings recorded by the Trial Court and submits that the Trial Court has failed to consider the fact that the plaintiff requests for extension of the period for construction is turned down by the defendant. It is also submitted that the burden was on the defendant to prove that the notice in question is issued after compliance of necessary procedure prescribed by law.

6. Learned counsel for the defendant supports the impugned judgment.

7. There are concurrent findings recorded by Courts below to the extent that the plaintiff has failed to prove that notice dated 26.11.1985 is illegal. Since the plaintiff has filed the suit seeking declaration to that extent, the initial burden is on the plaintiff to substantiate his case. Perusal of the evidence of the plaintiff indicates that there is no dispute about the fact of receipt of notice issued from defendant. It seems that without there-being any pleadings to the extent of challenge to the said notice on various technical ground, such submissions were sought to be made before the Trial Court which were rightly rejected.

8. From the admitted facts as they appear from the record, MIDC has allotted the suit plot to the plaintiff and the agreement was executed between the parties on 08.04.1982. There is further no dispute about the fact that there was a condition in the said lease for the construction of the plot within a period of two years. Plaintiff does not dispute that no construction was carried out within limit prescribed. There is no challenge in the suit about authority of MIDC to issue notice in question. In view of admitted fact that the condition of construction is not complied, apparently, the validity of the notice impugned cannot be challenged on this ground by the plaintiff. Apart

from this, to discharge initial burden it was necessary for plaintiff to show that the notice in question was issued without compliance with the provisions of law. First of all, there are no specific pleadings taken in the plaint and, therefore, on the basis of the oral submissions it cannot be held that notice in question is illegal.

9. There is no denial to the fact that plaintiff after the receipt of the notice had filed suit bearing RCS No. 553/1985, which came to be dismissed for want of prosecution. The second suit bearing RCS No. 491/1988 and Writ Petition filed before this Court were withdrawn by the plaintiff. This indicate that there was number of opportunities available for plaintiff to seek permission to carry out construction but nothing is seen to have been done in that regard. Regarding limitation for filing suit, submission of the learned counsel for the plaintiff that there is continuous cause of action does not deserve acceptance as the cause of action for filing the suit was complete from the date of issuance of notice and receipt thereof by the plaintiff. Thus, the finding recorded by the Trial Court about the suit being barred by limitation cannot be faulted.

10. In order to sustain the present appeal, it is incumbent on the part of Appellant / plaintiff to show that there involves substantial

question of law. After considering the judgments impugned and material placed on record, this Court finds no perversity in the findings recorded by both Courts below. Since no substantial question of law involved herein, there is no question of interference in impugned judgments.

11. Hence, appeal stands dismissed with costs.

[R.M. JOSHI, J.]

SPChauhan