

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143+221

RSA-94-2024 (O&M)
Date of decision: 25.11.2024

THE CHIEF ADMINISTRATOR (COMMISSIONER,
MUNICIPAL CORPORATION) CHANDIGARH & ANR.

..Appellants

Versus

M/S EIDER INFOTECH LTD.

..Respondent

2. RSA-97-2024 (O&M)

THE CHIEF ADMINISTRATOR (COMMISSIONER,
MUNICIPAL CORPORATION) CHANDIGARH & ANR.

..Appellants

Versus

M/S EIDER PW1 COMMUNICATIONS LTD.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manbir Singh Batth, Advocate for the appellants.

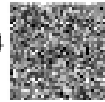
Mr. C.S. Pasricha, Advocate
and Mr. Sushil K. Bhardwaj, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

CM-10683-C-2024 in RSA-97-2024 & CM-10694-C-2024 in RSA-94-2024

1. Allowed as prayed for.
2. Certified copy of order dated 03.01.2002 passed in CWP-19669-2001, order dated 23.01.2004 passed in RA-4-2004, order dated 24.01.2002 passed in CWP-1484-2002 and order dated 16.01.2004 passed in RA-3-2004, are taken on record.

3. CMs stand disposed of.



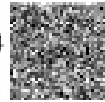
Main case

4. With the consent of learned counsel representing the parties, two connected regular second appeals shall stand disposed of by this common order.

5. After having heard learned counsel representing the parties, this Court is of the opinion that the matter is required to be remitted back to the First Appellate Court for fresh decision on the question as to ‘whether the suit was filed within the period of limitation or not?’

6. The relevant facts in brief are required to be noticed.

7. The Chandigarh Administration auctioned site No.705 and 706, which was purchased by Sh. Satish Bhatia and Sh. Sunil Uppal, respectively. After payment of 25% of the consideration amount, the allotment letters were issued to the highest bidders. Subsequently, both the sites were transferred on friendly basis in favour of M/s Eider Telecom Ltd and M/s Eider Infotech Ltd. Till October, 1998, in both the cases, Rs.39.25 lacs, each, were deposited. Ultimately, on account of failure to pay the remaining price after issuing show cause notice, the allotment of site was cancelled vide order dated 21.09.2000, while forfeiting 10% of the price. Statutory appeal filed before the Appellate Authority was dismissed, against which, two writ petitions were filed, which were dismissed on 03.01.2002 and 24.01.2002. In both the cases, review petitions were filed, which were again dismissed on 16.01.2004 and 23.01.2004. Thereafter, the plaintiffs filed complaints in State Consumer Disputes Redressal Commission, Chandigarh (in short ‘SCDRC’), which were dismissed, however, in appeal, the National Consumer Disputes Redressal Commission (in short ‘NCDRC’), remitted the



matter back to the SCDRC for fresh decision. On 14.05.2012, the plaintiffs in both the cases withdrew the complaints with liberty to avail alternative remedy. Subsequently, the plaintiffs filed two suits for recovery of the balance amount after adjusting forfeited amount on 11.05.2015. The trial Court dismissed both the suits, however, the First Appellate Court has allowed both the appeals by calculating the period of limitation from 14.05.2012, the date when the SCDRC permitted the plaintiffs to withdraw the complaints with liberty to avail alternative remedy.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

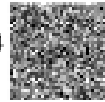
9. Learned counsel representing the appellant submits that even if the period spent in litigation before SCDRC and NCDRC is required to be excluded while calculating the limitation as provided under Section 14 of the Limitation Act, 1963 (in short '1963 Act'), still the both the suits were filed beyond the prescribed period of limitation. He submits that the First Appellate Court has erred in calculating the limitation period from 14.05.2012, the date of order passed by the SCDRC, which is not correct.

10. Per contra, learned counsel representing the respondent submits that the period spent in SCDRC and NCDRC is required to be excluded and the limitation for filing the suit for recovery would arise only after the permission was granted by the SCDRC on 14.05.2012.

11. Section 14 of the 1963 Act, reads as under:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the



defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

12. It is evident from careful reading of Section 14 of 1963 Act that the statute provides for exclusion of time of proceedings bonafide in Court without jurisdiction while computing period of limitation for any suit. Thus, the First Appellate Court has erred in calculating the period of limitation, however, this Court has recorded the facts on the basis of averments made by the learned counsel representing the appellant, which are seriously contested by learned counsel representing the respondent.

13. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is set aside with a request to the First Appellate Court



to decide the issue of limitation afresh after considering the documents brought on the file.

14. The parties through their counsel are directed to appear before the First Appellate Court on 09.12.2024.

15. The First Appellate Court is requested to make sincere endeavour for disposal of the appeals within a period of two months from 09.12.2024.

16. Accordingly, both the appeals are disposed of.

17. All the pending miscellaneous applications, if any, are also disposed of.

November 25th, 2024

(ANIL KSHETARPAL)
JUDGE

By
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No