



RSA-722-2023 (O&M)

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

**RSA-722-2023 (O&M)
Date of Decision : 14.01.2025**

M/s D.S.Sanitary & Hardware Store

..... Appellant

Versus

Haryana Urban Development Authority

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Munfaid Khan, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)**CM-2774-C-2023**

Prayer in the present application filed under Section 151 of the Code of Civil Procedure, is for condonation of delay of 43 days in re-filing the accompanying appeal.

Heard.

For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 43 days in re-filing the accompanying appeal is condoned.

CM-2775-C-2023

Prayer in the present application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 07 days in filing the accompanying appeal.

Heard.



For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 07 days in filing the accompanying appeal is condoned.

RSA-722-2023 (O&M)

This is plaintiff's appeal against the judgment and decree dated 15.09.2022, passed by the Court of learned Additional District Judge, Faridabad, dismissing the appeal filed by the appellant-plaintiff against the judgment and decree dated 12.07.2017, passed by the Court of learned Civil Judge (Junior Division), Faridabad, vide which the suit filed by the appellant-plaintiff for mandatory injunction with consequential relief of permanent injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (M/s D.S.Sanitary & Hardware Store) filed a suit for mandatory injunction restraining the defendant (Haryana Urban Development Authority) from interfering into the peaceful possession of the plaintiff and smooth running of its business in shop-booth No.14 measuring 35.75 square yards situated at Shopping Centre, Sector 28, HUDA Market, Faridabad (hereinafter referred to as 'the suit property') and from dispossessing the plaintiff or demolishing the suit property or alienating the same. The case set up by the plaintiff was that the suit property was owned and possessed by Vijaypal Chaprana and Vedpal Chaprana, brothers of the proprietor of the plaintiff Satpal Chaprana and that they had handed over the possession of the disputed property to Satpal Chaprana for the last many years and he had been



running his business therein. The suit property was stated to be originally owned by one Sushila Devi to whom it had been allotted by the respondent vide allotment letter dated 30.11.1988. She appointed one Bir Singh as her general power of attorney who further sold the disputed property to the brothers of Satpal Chaprana. All relevant papers were signed. After purchasing the disputed property, the brothers of Satpal Chaprana handed over the actual and physical possession of the disputed property to Satpal Chaprana and he had been running the business in the said property ever since then. Upon an application having been moved by the brothers of the plaintiff for knowing the outstanding amount qua the suit property, the defendant, instead of supplying the details, started threatening the plaintiff to vacate the disputed property. It was averred that the disputed property had been illegally resumed vide order dated 20.01.1998 and subsequently, notice under Section 18 (1) of the Haryana Urban Development Authority Act, 1977 (for short 'the HUDA Act') was issued in the name of the allottee. Under the circumstances, the suit was filed.

4. The suit was opposed by the defendant. Certain preliminary objections regarding maintainability, locus-standi, cause of action etc. were raised. It was also averred that the disputed property had been resumed on 20.01.1998 and the allottee had also been informed as regards the said resumption. It was also averred that the possession of the suit property had to be taken and sealing had to be done for which the proceedings had been initiated. On merits also, a similar stand was taken.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for ? OPP



- 1-A Whether the plaintiff is entitled to a decree of mandatory injunction as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi and no cause of action to file the present suit ? OPD
4. Whether the plaintiff has filed the present suit only to harass and to humiliate the defendant ? OPD
5. Relief.
6. Parties led their respective evidence.
7. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.
8. I have heard learned counsel for the appellant and have also perused the record which was duly summoned.
9. Learned counsel for the appellant submits that the judgments passed by the Courts below are not sustainable as the plaintiff is in possession of the suit property. He further submits that despite cogent evidence having been led to prove his case, the Courts below non-suited the plaintiff.
10. I have considered the submissions made by learned counsel for the appellant. The first and foremost issue is that the appellant-plaintiff has not placed on record any document to show as to how he came into possession of the suit property. It has also not been shown as to whether he was a licensee or a transferee or a lessee. Further, no document was produced on record to show the ownership and possession of the brothers of the plaintiff namely Vijay Pal Chaprana and Vedpal Chaprana over the suit property. Admittedly, allotment



of the suit property was made in favour of one Sushila Devi. As per the record produced by the defendant, a sum of ₹6,58,900/- was outstanding as on 20.01.1998 and many notices Ex.D1 to Ex.D3 were issued but the outstanding amount was not paid. Ultimately, the property was resumed vide order dated 20.01.1998. It also came on record that an appeal had also been filed against the resumption order by the power of attorney holder of Sushila Devi which was also dismissed in default on 14.05.1998 (Ex.D5). The suit property was never transferred in favour of the plaintiff. The resumption order had attained finality. The plaintiff was not able to prove that his brothers were the owners in possession of the suit property and was also not able to produce any document to show his ownership or possession over the suit property. Hence, the Courts below did not commit any illegality in rejecting his claim. This Court has no hesitation in holding that the suit filed by the plaintiff was totally frivolous and was, therefore, rightly rejected by the Courts below. No occasion at all arises for interfering in the concurrent findings of facts recorded by both the Courts below.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

14.01.2025
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No