

St. Soldier Limited Vs. Pushpinder Kumar

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Court : Punjab and Haryana

Decided On : Sep-11-2015

Judge : K. Kannan

Appeal No. : RSA No. 6108 of 2014 (O&M)

Appellant : St. Soldier Limited

Respondent : Pushpinder Kumar

Judgement :

1. Delay of 2 days in filing the appeal is condoned.
2. The plaintiff's suit was for declaration that a demand made by the defendant who was a developer of a colony to pay the plaintiff at a particular rate per marla as the external development charges. The contention by the plaintiff was that under the provisions of the Punjab Apartment and Property Regulation Act, 1995, the liability for payment of external development charges was only on the developer of a colony and there had been no contract any point of time to incur the expenditure by the apartment owner. The trial Court dismissed the suit but in the appeal, the Appellate Court made reference to a statutory provision contained under Section 5 of the Act of 1995 and also made reference to judgment of the District Court, though not binding, as, persuasive that the developer cannot recover it from the apartment owner which is against the Act. I asked the counsel whether there was any contractual obligation between the plaintiff and the

defendant for allowing for such a recovery to be made by the coloniser from the owner, the counsel would only state that this is a statutory obligation which the colonizer suffers and he has right to recover it from every apartment owner. The counsel would make an assumption that such a right must be available because the coloniser cannot be expected to incur any expenditure on his own account for a property which he has developed and handed over to various apartments owners. There is a difference between the internal development charges and external development charges. Internal development charges are invariably charges incurred by the coloniser himself for the erection of apartments making provision for park or playground within the area or other facilities like water, lift and security staff etc. On the other hand, external development charges as it is normally understood is creation of necessary infrastructure provided by the local authorities allowing for existence of public roads to reach the property, provision for lights, sewerage etc. The development charge is invariably collected on the basis of existence incurred by the authority and the statute provides that no colony will be erected unless it is sanctioned and all infrastructure is provided. The provisions are meant for the benefit of apartment owners and casts an obligation on coloniser that he will not enter upon any property to make construction or development unless he subjects himself to the statutory regulations of incurring expenditure for development of infrastructure. If such liability which is statutory in nature were to be transferred to an apartment owner, there ought to be specific contract between the coloniser and an apartment owner making possible a recovery which is in the nature of indemnity for a coloniser. I have not been shown through any particular clause which is the most crucial thing in this case. If the Appellate Court has anchored its reasoning to a statutory provision casting an obligation only on the coloniser, it cannot be expected that an appeal could be filed even without reference to any specific contractual obligations. There is no such reference either in grounds or in the arguments and the counsel would only ask for time to furnish the necessary information. I do not think any such information is necessary on a point which is squarely met with by the decisions of the Courts below and if appropriate information is not already available on the file or in the grounds, I will not find any particular reason to accommodate a plea to fish out the information of what is not already placed before the Court.

3. There is no substantial question arises for consideration in favour of the defendant appellant. The second appeal is dismissed.

Appeal dismissed.

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