

Karamvir Singh Vs. D.D.A.

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Court : Delhi

Decided On : Mar-10-2008

Reported in : 148(2008)DLT498

Judge : S. Ravindra Bhat, J.

Acts : Delhi Development Authority Act, 1957 - Sections 53, 53B and 53B(1);
Code of Civil Procedure (CPC) - Sections 80

Appeal No. : IA No. 5573/07 in CS(OS) 1467/2002

Appellant : Karamvir Singh

Respondent : D.D.A.

Advocate for Pet/Ap. : R.P. Bansal, Sr. Adv.,; B.S. Saini,; Prabhat Ranjan and

Judgement :

ORDER

'Taking into consideration the nature of the averments made in the writ petition as well as in the counter affidavit filed by the respondent No. 4, I am on the considered view that disputed question of facts are involved which can not be decided except by adducing evidence. I am thus of the view that parties should be relegated to the civil suit for determining the controversy raised in the petition. Writ petition is dismissed with liberty to the petitioner to approach the civil court.

No. 4968/CM 2001 and 1454 of 2002

Interim order dt. 7.5.2001 shall continue to ensure for the benefit of the petitioner for a period of two weeks in order to enable the petitioner to seek remedy before Civil Court. Applications stand disposed off. dusty.

Sd/-

Sanjay Kishan Kaul, J.

August 14, 2002

3. The plaintiff, therefore, filed the present suit on 13.9.2002. The defendants i.e. the DDA, Delhi Jal Board and Govt of NCT of Delhi entered appearance after summons and objected to the maintainability of the proceedings. The DDA in its written statement objected to maintainability of the suit on the ground that mandatory notice under Section 53(B) of the DDA had not been issued by/or on behalf of the plaintiff. It is averred that the suit, therefore, is not maintainable and should be rejected. This Court had by its previous order formulated a preliminary issue regarding the maintainability vis-a-vis with Section 53(B).

4. Section 53(B) of the Delhi Development Authority Act reads as follows:

53B. Notice to be given of suits.--(1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in Sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing contained in Sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.

5. It is contended by Mr. B.B. Sharma, learned Counsel for the applicant/DDA that the mandatory nature of the provision precludes the plaintiff from maintaining the suit except after compliance with the provision. It was contended that at no stage did the plaintiff issue or cause to be issued any notice under Section 53(B). On the other hand, the plaintiff after disposal of the writ petition on 14.8.2002 waited beyond the period of two weeks granted by the court and filed the present suit on 13.9.2002. Learned Counsel relied upon the decisions of this Court reported as *Ram Dulari v. Delhi Development Authority and Ors.* : 59(1995)DLT262 in support of the contention that the terms of Section 53(B) are mandatory and that since the plaintiff has not complied with the said provision, the plaint has to be rejected and consequently the same is not maintainable.

6. Mr. R.P. Bansal, learned Counsel for the plaintiff emphasized that show-cause notice was issued in the writ petition, when it was disposed of on 14.8.2002. According to the counsel, the object of issuing notice under Section 53(B) is to make the concerned statutory authority aware about the nature of the dispute, so as to enable it to take appropriate steps to resolve the issues or otherwise take measures to avoid the dispute. If this objective were to be kept in mind the fact that notice was issued in the writ petition, it was sufficient compliance with Section 53(B).

7. Learned Counsel relied upon the decision of this Court in *Nehru Place Hotels v. DDA* 1991 RLR 389. In that case the plaintiff had filed a suit after previously approaching the Court in a writ petition which was permitted to be withdrawn with liberty to file a civil suit. The plaintiff had, like in the present case, not issued a notice under Section 53(B). The defendant had raised an identical issue as to the maintainability of the suit on the ground that notice under Section 53(B) had not

been issued. The Court after considering the various previous rulings including the judgments of the Supreme Court in *State Bank of Patiala v. Geeta Iron and Brass Works Ltd.* : [1978]1SCR746 , *Ghanshyam Dass v. Dominion of India* : [1984]3SCR229 and other judgments on the point, (such as *N. Parmeshwara v. State* : AIR1986 Mad126 where the plaintiff had filed the suit after withdrawing a writ petition which had sought reliefs but without issuing notice) the court held that the suit could not be rejected. It was held by the Court in the *Nehru Place Hotels* case as follows:

It is to be emphasized that the reliefs sought in this suit were the same reliefs as were sought in the W.P. And the said reliefs were strongly opposed by the defendants in the W.P. And are being again strongly opposed in this suit and the application. So, the defendants were well aware about the cause of action and the facts on the basis of which the plaintiff had sought the reliefs in the W.P. And were also aware that permission has been granted to the plaintiff to take appropriate legal proceedings while the writ petition was dismissed as withdrawn and thus, it cannot be said in the present case that the defendants have been taken unaware and had not been given opportunity by the plaintiff to consider the case of the plaintiff in order to avert the legal proceedings. No useful purpose would have been served by the plaintiff serving a notice giving the same facts and the cause of action to the defendants because the defendants were not obviously going to concede the claim of the plaintiff which was strongly opposed in the W.P. By the defendants. So, in the present case, it must be held that service of the notice in the W.P. amounted to strict compliance with the provisions of Section 53(B) of the Act. Hence, I need not give any opinion with regard to the alternate contention raised before me that the suit of the plaintiff is covered by the exception in Section 53(B)(1).

8. This Court has considered the contentions of the parties. Undoubtedly, the plaintiff did not issue notice under Section 53(B). As is evident from a plain reading of the provision, the only exception carved out is contained in Section 53(B)(3) where the Court can relieve the litigant from the necessity of issuing a notice if injunctive relief is sought. The mandatory nature of this provision was emphasized by the Court in the two judgments relied upon by the applicant/defendant i.e. *Ram*

Dulari and R.K. Aneja. The Court in those decisions no doubt took into consideration the other decisions of the Supreme Court on the issue of Section 80 of the CPC.

9. A careful reading of the aforesaid two judgments discloses that the question as to what would be the fate of a case filed after the plaintiff approaches the writ Court, but is permitted to withdraw the proceeding and granted liberty to file suit as a civil action, was never in issue before the court. That issue was actually addressed in *Nehru Place Hotels*, where the Court had to directly decide whether such a suit, after withdrawal of the writ petition (but without a previous notice under Section 53(B)) would be maintainable. The Court gave a perceptive interpretation to Section 53(B) and held that indeed the suit would be maintainable because objective of issuing notice is to enable the authorities to examine the claim of the litigant and settle it if possible, rather than to institute legal proceedings. The decisions in *Ram Dulari* and *R.K. Aneja*, however, proceeded on a textual interpretation of Section 53(B); moreover, the previous decision in *Nehru Place Hotels* appears to have escaped the notice of the court in both those judgments.

10. Having considered the decisions in the above cases, this Court is of the opinion that the decision in *Nehru Place Hotels* is most appropriate to the present case and approximates the facts of this case. The reasons, particularly contained in para 24 extracted above also commends to this Court. It is not as if the DDA or the other defendants were unaware about the plaintiff's grievance; they were parties to the writ petition which was disposed of on 14.8.2002 permitting the present plaintiff to file a suit.

11. In this view of the matter, the court is of the opinion that the suit is maintainable. The Preliminary issue is answered accordingly. is No. 5573/07 is, therefore, disposed of in the above terms.