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C.A.No. 154 OF 1997

ITEM No.104

Court No. 9

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 154 of 1997

BIHARI LAL Appellant (s)

VERSUS

PRASHASAK, MUNICIPAL COUNCIL, GOHAD & ORS. Respondent (s)

(With office report)

Date : 23/07/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAV V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. S.K. Bagga,Sr.Adv.
Mr. Seeraj Bagga,Adv.
Ms. Sureshta Bagga,Adv.

For Respondent (s)Mr. S.S. Khanduja,Adv.
Mr. B.K. Satija,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties from 12.30 p.m. to 12.55 p.m.

The civil appeal is dismissed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 154 OF 1997

Bihari Lal ...Appellant(s)

Versus

Prashasak, Municipal Council, Gohad & Ors. ...Respondent(s)

O R D E R

This appeal is filed by the original plaintiff. His suit was dismissed by the trial court and the decree of the trial court was reversed by the first appellate court. The High Court reversed the decree and judgement of the first appellate court and dismissed the suit. The appellant filed a suit seeking a decree of mandatory injunction in his favour against the respondent alleging that the Board of Revenue had given direction to the Municipal Council to consider the case of the appellant, whether the permission granted in respect of the building was within the area belonging to the appellant. The Municipal Council did not comply with the said order and in the circumstances, the appellant served a notice on it on 23rd April, 1980 under Section 319(1) of the Madhya Pradesh

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Municipalities Act, 1961 (for short, 'the Act'). The suit was filed on 1st April, 1981. According to the appellant, the cause of action for filing the suit arose firstly on 29th April, 1975 when permission was revoked; secondly on 15th November, 1978; and lastly on 23rd April, 1980 when notice under Section 319(1) of the Act was served on the Municipal Council. Under Section 319(2) of the Act, a suit has to be instituted within a period of eight months. Admittedly, the suit was not instituted within the said period. The second appeal was admitted in the High Court on the following two substantial questions of law, viz., (1) whether the suit was barred by time; and (2) whether the suit was barred and the civil court could not take cognizance of the suit under Section 318 of the Act. The High Court, as is evident from paragraphs (7) and (8), has in great detail discussed the first substantial question of law, namely, limitation. On behalf of the appellant, it was urged before the High Court that the suit being one for declaration, it could be filed within a period of three years and it was filed within the said period from the date of service of notice on the Municipal Council, therefore, it was not barred by limitation.

The plaint averments do not show that the suit was one for declaration. It was mainly concerned with regard to the grant of permission and even the relief claimed was for a decree of mandatory injunction.

Having regard to the averments made in the plaint and looking to the cause of action, the High Court, in our view, was right in holding that the suit was barred by time. In view of the recording of finding on the first question of law, the High Court did not think it necessary to go into

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the second question and, in our view, the High Court was right in doing so. Having regard to the facts of the case, we do not find any good or valid ground to interfere with the impugned judgement. Consequently, the civil appeal is dismissed.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
July 23, 2003.