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C.A.No. 6210 OF 1997

ITEM No.105

Court No. 9

SECTION IVA

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. 6210 of 1997

B.J. SHANTHARAJ Appellant(s)

VERSUS

DEFENCE COLONY COOP.HSNG. SOCIETY LTD. Respondent (s)

(With appln(s). for exemption from filing O.T. and office report)

Date : 02/09/2003 This Appeal was called on for hearing today.

CORAM :

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

For Appellant (s)Mr. E.X. Joseph,Sr.Adv.
Mr. E.J. Varshese,Adv.
Mr. T.M. Ranganathan,Adv.
for Mr. M.M. Kashyap,Adv. (N/P)

For Respondent (s)Mr. S. Balakrishnan,Sr.Adv.
Ms. Revathy Raghavan,Adv.
Mr. Abhay Kumar,Adv.
Ms. Prachi,Adv.

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

Permission is granted to file the Vakalatnama on behalf of the appellant within three weeks.

Heard learned counsel for the parties from 2.25 p.m. to 2.55 p.m.

The civil appeal is dismissed.

No order as to 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. 6210 of 1997

B.J. Shantharaj ...Appellant(s)

Versus

Defence Colony Coop. Hsng. Society Ltd. ...Respondent(s)

O R D E R

Heard the learned counsel for the parties.

This appeal is filed by the defendant challenging the validity and correctness of the judgement passed by the High Court in a regular first appeal.

The plaintiff [respondent herein] filed a suit to declare that the sale deed executed in favour of the appellant herein on 2nd January, 1976 in respect of the suit property was illegal, void, without jurisdiction and, therefore, it is not binding on the plaintiff. In that view of the matter, he sought for cancellation of the same. In the suit, I.A. No.1 was filed purporting to be under Sections 5 and 14 of the Limitation Act, 1963. The learned trial judge dismissed the said application holding that there was inordinate delay in filing the suit and time spent in other litigation before the Cooperative Societies

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authority or in the further proceedings pursuant to the order passed by the Deputy Registrar, Cooperative Societies, could not be excluded. Consequently, the suit was also dismissed. The respondent took up the matter to the High Court in appeal. By the impugned judgement, the High Court, considering the facts and circumstances of the case and in the light of the previous litigation between the parties that were pending before the Deputy Registrar, Cooperative Societies, before the Karnataka Appellate Tribunal and before the High Court, took the view that the trial court ought not to have dismissed the suit. On the other hand, the time spent by the respondent-Society bonafidely litigating before other fora should have been excluded for the purpose of reckoning the period of limitation within which the suit ought to have been filed.

In doing so, the learned Judge, as can be seen from paragraphs 32 to 35 of the impugned judgement, has considered the relevant material and concluded that the delay of eight years and forty five days in filing the suit should have been properly taken note of by the trial court in view of the earlier litigation before other fora.

Looking to the reasons recorded and the discretion exercised by the High Court in the impugned judgement, we do not think it is appropriate to interfere with the said judgement when the learned Judge of the High Court has remanded the suit with certain directions to dispose of the same within a given time. Under the circumstances, we find no merit in the appeal. Consequently, the civil appeal is dismissed but with no order as to costs.

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Having regard to the fact that the suit was filed in the year 1987, we direct the trial court to dispose of the suit within a period of six months from the date of receipt of the copy of this order.

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

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

New Delhi,
September 02, 2003.