India Navigation Company Vs Haryana State Industrial Development Corporation

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 30, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100, 20
Specific Relief Act, 1963 â€" Section 34, 41
Supreme Court Rules, 1956 â€" Order 23 Rule 6
Transfer of Property Act, 1882 â€" Section 19, 21

Citation: AIR 2006 P&H 29 : (2006) 2 CivCC 122 : (2006) 142 PLR 358 : (2006) 1 RCR(Civil) 714

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Sudeep Mahajan, for the Appellant; Akshay Bhan, for the Respondent

Final Decision: Allowed

Judgement

M.M. Kumar, J.
This is plaintiffs appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") challenging

concurrent findings of fact recorded by both the Courts below holding that the plaintiff-appellant was not entitled to a declaration declaring letter

dated 6.3.1991 issued by the defendant-respondent as illegal, arbitrary, nonest and void ab initio etc. It is appropriate to mention that by the

aforementioned communication, the defendant-respondent has withdrawn the Provisional Letter of Allotment (for brevity, "the PLA") Ex.PW5/99

dated 6.3.1991 by recording reason that the plaintiff-appellant has failed to complete the formalities envisaged in the PLA within a period of 180

days from the date of issuance of the PLA. It has been found that the formalities regarding registration with the Director, Small Scale Industries is

dated 12.1.1990 which was one week after the expiry of 180 days. It was also observed that one month extension sought by the plaintiff-appellant

was granted on 28.2.1990 by requiring the plaintiff-appellant to pay the enhanced price of Rs.595/- per square metre as against the original a price

of Rs.256/- per square metre. The aforementioned enhanced price was to be charged in accordance with the conditions of the PLA, namely,

condition No. 6 read with proviso to condition No. 5. Certain observations were also made with regard to the formality of obtaining loan to meet

the total cost of the project. It has also been observed by the defendant-respondent that the plaintiff-appellant was granted opportunity of hearing

on 25.2.1991 by the Managing Director, Haryana State Industrial Development Corporation at Chandigarh (for brevity, "HSIDC"). The

contention raised by the plaintiff-appellant at the time of personal hearing that the project of Magnetic Compasses would be accommodated within

the sanctioned loan amount was not considered adequate and the aforementioned contention was rejected. It was also held that the project on the

plot measuring 2000 square metres could be accommodated in the sanctioned loan amount of Rs. 2,50,000/- was also held to be insufficient to

cover the project because the cost of the project worked out was to be Rs.12 lacs. A number of other observations were made in support of the

order withdrawing the PLA.

2. The case of the plaintiff-appellant as disclosed before the Courts below is that the defendant-respondent invited applications for allotment of

plots in industrial estate known as Udyog Vihar, Gurgaon in the year 1988 and the plaintiff-appellant applied for a plot measuring 4000 square

metres. He submitted a bank draft dated 29.3.1988 for an amount of Rs. 70,000/- towards payment of 10% costs of a plot measuring 4000

square metres. A PLA was issued requiring the plaintiff-appellant to accept the allotment within the stipulated period of 35 days and he was to

complete the specified formalities within a period of 180 days from the date of issuance of PLA. The aforementioned interpretation with regard to

180 days adopted by the defendant-respondent was challenged by the plaintiff-appellant because it was asserted that there was no such condition

mentioned in the PLA, Ex.PW5/17 dated 5.7.1989. It was further asserted that the plaintiff-appellant was asked to deposit Rs.500/- as extension

fee in accordance with the proviso to condition No. 5 of the PLA. Some correspondence between the plaintiff-appellant and the defendant-

respondent took-place, whereby the plaintiff-appellant sent reminders and requested the defendant-respondents for issuance of a final letter of

allotment culminating into delivery of possession. However, the defendant-respondent withdrew the PLA on 6.3.1991 and also finally refused to

accede to the request of the plaintiff-appellant.

3. The case of the defendant-respondent before the Courts below has been that the plaintiff-appellant is neither owner nor in possession of the suit

property as the PLA does not confer any legal right on him. Raising a preliminary objection that suit for declaration and permanent injunction itself

would not be maintainable, it was urged that the suit was time barred and the plaintiff-appellant was estopped by his own act and conduct from

filing the suit. It was further alleged that the plaintiff-appellant did not approach the Court with clean hands and suit was bad for non-joinder and

mis-joinder of the parties. On merits, it was denied that complete project report was ever submitted and that the plaintiff-appellant had ever

intimated to the defendant-respondent with regard to receipt of orders worth Rs.70 lacs or further orders of Rs.27 lacs from the Ministry of

Defence. Further case of the defendant-respondent is that the PLA for allotment of 2000 square metres plot was only provisional subject to

fulfillment of certain terms and conditions as envisaged therein. There was no final contract between the parties merely on the communication of the

PLA.

4. Both the Courts below decided the pivotal issue against the plaintiff-appellant, namely, as to when the period of 180 days started to run. The

lower Appellate Court quoted the relevant clause and interpreted the same by observing as under:-

The aforesaid language is quite clear and it does not have any ambiguity. It can not be said that the period of 180 days was to commence after

expiry of the initial period of 35 days which was given for conveying acceptance. The period of 180 days for completion of the formalities was to

commence from the date of issuance of the letter and this period was not to commence after the passing of 35 days of the date of issuance of this

letter. I have no reason to say that this language admits of any other interpretation than that is given to it by the defendant. On the failure of the

defendant to comply with the formalities within the stipulated time, the plaintiff was within its right to claim price at the relevant rate. As the plaintiff

did not agree to the same, the withdrawal of the letter of allotment vide letter dated 6.3.1991 is not illegal.

5. Both the Courts below have also found that sanctioned amount of Rs. 2,50,000/-was wholly insufficient to install the project and view of the

defendant-respondent in that regard has been accepted. The learned lower Appellate Court has highlighted this aspect in para 12 of its judgment

which reads as under:-

Allotment of plots were made by the defendant only to persons who were genuinely interested in setting up industrial units. Defendant was not to

allot plots to speculators who invest in property for getting high returns on escalation of prices after setting up of Industries Centre. The loan of Rs.

2,50,000/- alone was agreed to be given by Syndicate Bank and this amount was wholly insufficient to cover the project. The original cost of the

unit which was Rs. 37 lacs has been reduced to Rs.10 lacs. Reduction in area from 4000 metre to 2000 metre would not reduce the costs of the

project to 1/4th. This also was rightly taken by the defendant to show that the plaintiff was not genuinely interested in setting up of a Unit.

6. Mr. Sudeep Mahajan, learned counsel for the plaintiff-appellant has argued that the interpretation preferred by the Courts below on Clause 5 of

the PLA by counting the period of 180 days from the date of issuance of PLA (5.7.1989) is absolutely unwarranted. A perusal of the clause itself

shows that the offer was required to be accepted within a period of 35 days and the PLA was to be valid in that case for a period of 180 days

which period was applicable to the plaintiff-appellant. Learned counsel has argued that if the period of 180 days is counted from the expiry of 35

days for acceptance of PLA, then he had completed all the formalities within the further stipulated period of 180 days as the registration with the

Director, Small Scale Industries, Gurgaon was communicated on 13.1.1990. It is claimed that the plaintiff-appellant had submitted all the papers

duly completed in compliance of Clause 5 of the PLA within 180 days by excluding the initial period of 35 days. The acceptance of PLA was

communicated on 15.7.1989 by Ex. PW5/18 and with regard to the financial arrangements, a communication was sent on 28.7.1989 Ex.PW5/19.

The following schedule has been relied upon by the plaintiff-appellant:-

(a) Date of issue of PLA 5.7.89 to 31 7.89 = 26 days

(b) Last date for letter of 9.8.89 = 9 days

acceptance

(c) ""180 "" days reckoned 10.8.89 to 31.8.89 = 22 days

after expiry of 35 days

September, 89 = 30 days

October, 89 = 31 days

November, 89 = 30 days

December, 89 = 31 days

January 12, 1990 = 12 days

156 days

7. Mr. Mahajan, learned counsel has further argued by referring to Ex.PW5/26 that a clarification with regard to registration of the unit was sought

from the defendant-respondent because as per Clause 3(i) of the PLA, the unit was required to be registered with the District Industries Centre

concerned as a medium scale unit and letter of intent was to be obtained from DGTD/Government of India. However, the plaintiff-appellant sought

clarification from the defendant-respondent that once the costs of the plant and machinery is less than Rs.35 lacs, then should it be registered under

the medium scale industry as per condition No. 3 (i) of PLA. Although, no clarification was given, yet the registration offered by the plaintiff-

appellant was accepted as emerged from Ex.PW5/99 dated 6.3.1991. Learned counsel has argued that there was some ambiguity with regard to

registration of the proposed unit with the authority as specified in condition No. 3(i) of the PLA. According to the learned counsel, in such a

situation, the period of 180 days should be construed by applying the principle of "contra proferentem" as laid down by the Supreme Court in the

cases of Central Bank of India Ltd. Vs. Hartford Fire Insurance Co. Ltd., and General Assurance Society Ltd. Vs. Chandumull Jain and Another,

. Learned counsel has also placed reliance on another judgment of the Supreme Court in the case of United India Insurance Co. Ltd. Vs.

Pushpalaya Printers, . He has also pointed out that the principle of "contra proferentem" has been applied by the Supreme Court to contracts,

other than the insurance contracts in the case of State of Maharashtra Vs. Dr. M.N. Kaul (Deceased by his Legal Representatives) and Another, .

8. Mr. Mahajan has then argued that the time has to be taken as essence of contract only when the vendee is guilty of gross violation. According to

the learned counsel, the same principle would apply to the facts of the present case as has been held by the Supreme Court in the case of Smt.

Swarnam Ramachandran and Another Vs. Aravacode Chakungal Jayapalan, . Learned counsel has then argued that whenever the period is to run

from the date of issuance of letter, then the defendant-respondent has indicated in various other communications expressly and the omission in the

PLA by incorporation any such condition is intentional so as to make the period of 180 days to run after the expiry of period of 35 days. In this

regard he has drawn my attention to Clause 3 of letter dated 6.4.1989 Ex.PW5/13. On that account also, learned counsel states that the period of

180 days would start running after expiry of 35 days. Learned counsel has also pointed out that principle of "strict construction" should be applied

and with the application of aforementioned principle, the plaintiff-appellant is bound to succeed because the period of 180 clays would commence

after the expiry of period of 35 days given for acceptance of PLA. On the aforementioned proposition, learned counsel has placed reliance on

another judgment of the Supreme Court in the case of M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board

and others, . Learned counsel has also submitted that the PLA and the conditions mentioned in Clause 5 thereof would become functional only

when within 35 days, the acceptance is communicated and for that reason also period of 180 days should run after the expiry of period of 35 days

or from the date of receipt of acceptance. In support of his aforementioned submission, learned counsel has"placed reliance on Clause 3 of Ex.

PW5/13. The aforementioned Clause 3 reads as under:

3. On receipt of acceptance, provisional letter of allotment (PLA) will be issued, valid for 180 days. During this period the following steps must be

taken:-

i) Obtain SSI registration/DGTD Registration/LOI from Government of India/ Approval from competent authority for implementation of the

Project.

ii) Approval of the building plans from the District Town Planner.

iii) Sanction of loans from HFC/Banks/Financial Institution.

In self-financed projects, satisfactory evidence of own capital, list of machinery alongwith quotations and sources of procurement and details of

mode of implementation may be given within 90 days from the date of issue of.PLA.

9. Substantiating his argument further, learned counsel has pointed out that after the expiry of 35 days stipulated for acceptance of PLA, various

steps within 180 days were required to be taken i.e. to obtain SSI registration/DGTD Registration, letter of intent from Government of

India/approvals from competent authority for approval of project etc. etc.

10. Referring to the communication Ex.PW5/46, learned counsel has argued that in an effort to grant extension for the so called delay beyond 180

days no offer was ever made to allot the plot at the prevailing market price i.e. Rs.595/- per square metre because letter dated 28.2.1990

Ex.PW5/46 proves that the documents submitted by the plaintiff-appellant were under scrutiny and the plaintiff-appellant was to come back to the

defendant-respondent in due course of time which never happened. Therefore, there was no offer made to the plaintiff-appellant at the enhanced

prevalent rate which was quoted to be Rs. 595/- per square metre.

11. Mr. Mahajan, has then argued that the suit u/s 41(h) of the Specific Relief Act, 1963 (for brevity, "the Act") would be maintainable because

there is no alternative efficacious remedy except to approach a civil court by seeking the relief of declaration and permanent injunction. In support

of his submission, learned counsel has placed reliance on a Division Bench judgment of Allahabad High Court in the case of Vinod Kumar Anand

v. Dr. A.D. Sharma and Ors. 1989 All.L.J. 417 and a Division Bench judgment of Calcutta High Court in the case of Sailen Seth Vs. Steel

Authority of India Ltd. and Others, . According to the learned counsel, the opinion expressed by the learned Civil Judge on issue No. 4, therefore,

has to be negatived and the suit of the plaintiff-appellant must be considered to be maintainable.... Mr. Mahajan has also argued that the plaintiff-

appellant has sought a declaration with regard to the letter of cancellation Ex.PW5/99 on the ground that it is illegal, arbitrary, ultra vires and void

ab initio. According to the learned counsel, there was a concluded contract and the same was binding on the defendant-respondent.

12. Mr. Akshay Bhan, learned counsel for the defendant-respondent has argued that a declaratory suit is not maintainable u/s 34 of the Act in the

absence of any tangible and vested rights which might have accrued to the plaintiff-appellant. Referring to the provisions of Section 34 read with

Section 41(h) of the Act, learned counsel has argued that once the two courts have found that the plaintiff-appellant did not fulfill certain conditions

of the PLA, no tangible right could be said to have vested in the plaintiff-appellant seeking a declaration of his legal character or any legal rights. In

support of his submission, learned counsel has placed reliance on a judgment of this Court in the case of Dass Mal v. Union of India (1955) 57

P.L.R. 425. He has also placed reliance on another Division Bench judgment of this Court in the case of Vinay Pal Singh v. Vijay Kumar Singh

1998 (3) R.C.R.198. Learned counsel ha: then argued that in any case, the plaintiff-appellant has no cause of action in the absence of any vested

rights or accrued rights because the existence of such a right was dependable on fulfillment of such conditions. For the aforementioned proposition,

learned counsel has placed reliance on a judgment of the Supreme Court in the case of State of Haryana Vs. State of Punjab and Another, .

13. Referring to merits of the case, it has been pointed out that there are concurrent findings of facts recorded by both the Courts below which

should not be interfered with in exercise of jurisdiction u/s 100 of the Code. Learned Counsel has also pointed out that once it is conceded that a

concluded contract comes into being on acceptance of PLA, then merely declaratory suit would not be maintainable because then either the suit for

specific performance or any other suit may be competent. In support of his submission, learned counsel has placed reliance on a Single Bench

judgment of Kerala High Court in the case of Alikunju Ibrahimkutty v. Abdul Khathirukunju and Ors. 2002(3) R.C.R. 486.

14. It has also been submitted that interpretation given to PLA by the Courts below is not open to any interference by this Court in exercise of

jurisdiction u/s 100 of the Code. According to the learned counsel, the period of 180 days has to commence from the date of issuance of PLA and

not from the date when the period of 35 days fixed for communicating acceptance was to end.

15. For the sake of clarity the issue raised in the instant appeal can be discussed and decided under the following legal heads:-

(A) In the facts and circumstances of this case would a suit for declaration with consequential relief of permanent injunction is maintainable?

(B) What is the true construction of relevant clauses of the provisional letter of allotment dated 5.7.1989 (Ex.PW5/17).

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RE: QUESTION "A"

The trial Court on the issue of maintainability of the suit has held that the suit was not maintainable. There were four issues framed by the trial Court

which were connected with the question of maintainability of the suit. After deleting the superfluous issue the trial Court held that the plaintiff-

appellant was neither owner nor in possession of the plot and therefore there was no actionable claim. It was further pointed out that the plaintiff

did not file the suit for enforcement of agreement. The trial Court further held that there were no pre-existing right nor any declaration with regard

to a legal character was sought by the plaintiff-appellant which might have been denied by the defendant-respondent. Therefore, it held that the suit

of the plaintiff-appellant was not maintainable and was barred u/s 41(h) of the Specific Relief Act, 1963 (for brevity "the 1963 Act").

However, the issue has not been touched by the lower Appellate Court although in para 5 of the judgment, it has been noticed that the trial Court

recorded the finding about the non-maintainability of the suit u/s 41(h) of the 1963 Act. However, the issue has been raised by the defendant-

respondent once again before this Court.

It would be appropriate to advert to Sections 34 and 41(h) of the 1963 Act. A perusal of Section 34 would reveal that any person claiming title to

legal character or to any right as to any property is entitled to institute a suit against any other person who is denying or interested in denying his

right or title to such proceedings. The use of expression "any right as to any property" is very wide because it shows that it is not necessary for the

plaintiff to claim any right in the property and it would be enough if the right he claimed is related to the property in question. It is also evident that a

right as to property signifies that there is a existing right of the plaintiff to any particular property. A declaration of such a right must be an existing

one and it does not need necessarily be a vested right. The logical corollary would thus be that a person having contingent right in the property may

also sue for a declaration. It is different matter that the Court in its discretion may refuse to make such a declaration by concluding that the claim

made was too remote and that the declaration given would be ineffectual. Therefore, the question would be one of discretion rather than

jurisdiction and maintain- ability of the suit.

Similarly, a perusal of Section 41(h) of 1963 Act would show that injunction cannot be granted when equally efficacious relief could be obtained

by any other usual mode of proceedings which might have been available to the plaintiff-appellant except filing the suit for declaration.

16. In the present case, the plaintiff-appellant had filed a suit for declaration with consequential relief of permanent injunction with a prayer to the

effect that the letter dated 6.3.1991 withdrawing the provisional letter of allotment was wholly illegal, arbitrary, non-est and the same has no effect

on the right of the plaintiff-appellant. It was further claimed that an injunction may be issued directing the defendant-respondent to issue final letter

of allotment, delivery of possession and conveyance deed of plot Nos. 117-118 Udyog Vihar, Phase IV, Gurgaon on payment of Rs,250/- sq.

mts. of the balance sale consideration. The consequent relief of permanent injunction restraining the defendant-respondent from allotting the afore-

mentioned plot to anyone else except the plaintiff as well has been sought. Firstly, a declaration has been sought with regard to letter dated

6.3.1991 (Ex.PW5/99). Such a declaration within the meaning of Section 34 of the 1963 Act would obviously be maintainable because the

expression "of any right of any property" would not necessarily mean a vested right alone. It would include any right relating to a property which

may also be contingent right. The question of vested and contingent interest has been considered by the Supreme Court by referring to Sections 19

and 21 of the Transfer of Property Act, 1882 in the case of Usha Subbarao Vs. B.E. Vishveswariah and others, . It has been held that the

contingent interest would be the one which is to take effect and would be created in the property in favour of a person on the happening of a

specified uncertain event or a specified uncertain event is not to happen then such a person acquires a contingent interest in the property. Such

contingent interest in the property can also be made subject matter of a declaration in a declaratory suit within the meaning of Section 34 of 1963

Act. Secondly, the suit is not merely for a declaration but it includes many other reliefs like permanent injunction, issuance of directions for

allotment of plot as has been named in the plaint etc. etc. Thirdly, the policy of the law is to discourage the tendency of exclusion of jurisdiction of

the civil court with regard to maintainability of the suit rather than encourage the same. Fourthly, it is well settled that for ascertaining the nature of

the claim made in the suit the whole plaint shall be read instead of reading the relief clause alone. In this regard, reliance may be placed on a

judgment of the Supreme Court in the case of Corporation of the City of Bangalore Vs. M. Papaiah and Another, . The observations of the

Supreme Court in this regard read as under:-

It is well established that for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion and the plaint in the

present case does not leave any manner of doubt that the suit has been filed for establishing the title of the plaintiifs and on that basis getting an

injunction against the appeitant-corporation. The Court fee payable on the plaint has also to be assessed accordingly. It follows that the appellant''s

objection that the suit is not maintainable has to be rejected.

17. In the area of service matter a suit for declaration that an employee continued to be in service with consequential relief of reinstatement and

arrears of salary would be maintainable. The Supreme Court in the case of State of M.P. Vs. Mangilal Sharma, .

18. has observed that a mere declaration that an employee continued to be in service of the State Government with relief of reinstatement, arrears

of salary and consequential benefits might be maintainable but the consequential relief of arrears of salary etc. cannot be inferred in the absence of a

decree passed by the Court to that effect. When the matter was taken in execution no relief with regard to arrears of salary was granted and the

same was upheld by the Supreme Court by observing as under:-

A declaratory decree merely declares the right of the decree-holder vis-a-vis the judgment debtor and does not in terms direct the judgment

debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears

of salary the executing Court could not issue any process for the purpose as that would be going outside or beyond the decree. The respondent as

a decree holder was free to seek his remedy for arrears of salary in the suit for declaration. The executing Court has no jurisdiction to direct

payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree. It is not that if in

a suit for declaration where the plaintiff is able to seek further relief he must seek that relief though he may not be in need of that further relief. In the

present suit the plaintiff while seeking relief of declaration would certainly have asked for other reliefs like the reinstatement, arrears of salary and

consequential benefits. He was, however, satisfied with a relief of declaration knowing that the Government would honour the decree and would

reinstatement him. We will therefore, assume that the suit for mere declaration filed by the respondent-plaintiff was maintainable, as the question of

maintainability of the suit is not in issue before us

(emphasis added)

19. When the afore-mentioned principles are kept in view it is not possible to accept the view taken by the trial Court that the suit filed by the

plaintiff-appellant for declaration was not maintainable. The suit was for declaration to the effect that the letter dated 6.3.1991 (Ex.PW5/99) was

wholly illegal, arbitrary and nonest etc. and it did not adversely effect the rights of the plaintiff-appellant. It was further prayed that direction be

issued to the defendant-respondent holding that the plaintiff-appellant was entitled to final letter of allotment, delivery of possession, conveyance

deed of plot No. 117-118 Udyog Vihar, Phase IV, Gurgaon on the payment of Rs. 250/- sq. mtrs. of the balance sale consideration.

Consequential relief of permanent injunction restraining defendant-respondent from allotting the afore-mentioned plot to any other person was also

claimed. It is obvious that such a suit would be maintainable and there is nothing in Sections 34 and 41(h) of the 1963 Act which may be construed

as prohibition to the maintainability of the suit.

20. The argument of the learned counsel for the defendant-respondent based on the judgment of this Court in the case of Dass Mall (supra) and

other judgments would not require any detailed consideration. In the case of Doss Mall (supra) a suit for mere declaration was filed in respect of a

right in which the plaintiff had no valid or subsisting interest at the time of filing the suit. The aforementioned view taken by the learned Single Judge

of this Court in the year 1955 would not apply to the facts of the present case because the plaintiff-appellant has not merely sought a declaration

but he has prayed for a number of other reliefs as noticed above. Even otherwise the view expressed by the learned Single Judge in Dass Mat''s

case (supra) would not hold the filed as in very case of removal from service of a government employee there could be no existing right at the time

of filing of suit. However, as the afore-mentioned question since does not arise, 1 refrain from expressing any opinion on the issue. Similarly, the

view of the Supreme Court in the case of State of Haryana (supra) would have no ppplication to the controversy raised in the instant case because

in that case their Lordships have considereu the import of expression ''cause of action'' and its application to the concept envisaged by Article 131

in inter-state units. It has further been held that merely because the phrase "cause of action" has been used in Order 23 Rule 6(a) of the Supreme

Court Rules, 1956, it would not necessarily mean that the principles enunciated in the context of Section 20 of the Code were to be imported.

Even otherwise nothing has been pointed out with regard to Section 34 of the 1963 Act which is in fact applicable to the facts of the present case.

Therefore, there is no merit in the contention based on the afore-mentioned judgment. Similar is the position with regard to the judgment of Vijay

Pal Singh''s case (supra). In fact it deals with the suit for declaration of title which has been held to be not barred so long as the plaintiff right to

such property is subsisting one. The aforementioned judgment also does not support the argument raised by the learned counsel for the defendant-

respondents that suit of the plaintiff-appellant was not maintainable.

21. In view of the above, the answer to question "A" has to be in the affirmative and it is decided accordingly

RE: QUESTION "B"

The interpretation of Clause 4 of PLA would depend upon various surrounding circumstances. Few facts may first be noticed. The plaintiff-

appellant had applied for a plot measuring 4000 sq. metres in response to the invitation for allotment of industrial plots at the Industrial Estate

Udyog Vihar, Gurgaon, which was issued in the year 1988. On 29.8.1988 the plaintiff-appellant submitted a bank draft dated 29.8.1988 for an

amount of Rs. 80,000/- being 10 percent of the cost of plot measuring 400 sq. mtrs. The applicant was considered and on 6.4.1989 the plaintiff-

appellant was informed that a plot measuring half acre in size was reserved for the proposed project of the plaintiff-appellant. According to Clause

5 of the letter dated 6.4.1989 the defendant-respondents advised the plaintiff-appellant to convey acceptance to the proposal of half acre of plot

and it also required the plaintiff-appellant to send an amount of Rs. 17,500/- through Bank draft. In the event of no response from the plaintiff-

appellant within 30 days from the date of issuance of that letter then the offer was to be considered ro have lapsed. Alongwith the aforementioned

letter certain terms and conditions for allotment of industrial plot were also sent. According to the recital on the receipt of acceptance, the

defendant-respondents were to issue PLA which was to remain valid for 180 days. It was further stipulated that within the afore-mentioned period

of 180 days, the following steps were to be taken:

On receipt of acceptance, provisional letter of allotment (PLA) will be issued, valid for 180 days. During this period, the following steps must be

taken:

i) obtain SSI registration/DGTD registration/LOI from Government of India/ Approvals from competent authority for implementation of the

project,

ii) Approval of the building plans from the District Town Planner"

iii) Sanction of loans from HFC/Banks/Institutions.

In self financed projects, satisfactory evidence of own capital, list of machinery alongwith quotations and sources of procurement and details of

mode of implementation may be given within 90 days from the date of issue of PLA.

22. In response to the afore-mentioned proposal the plaintiff-appellant sent its acceptance alongwith an assurance that demand draft of Rs.

17,5007- was to be sent. The afore-mentioned letter has been placed on record as Ex.PW5/14. On 5.5.1989 the plaintiff-appellant has sent a

demand draft of Rs.17,5007- to the defendant-respondent with a promise that another 15 per cent of the cost of the land so calculated would be

deposited at the time of allotment. The aforementioned letter has been placed on record as Ex. PW5/15. The letter was duly received by the

defendant-respondent and the same has been exhibited on record. The provisional letter of allotment (PLA) dated 5.7.1989 was issued only

thereafter which is Ex.PW5/17. A number of conditions are required to be fulfilled before issuance of final allotment letter in favour of the plaintiff-

appellant. Some of those conditions as envisaged by Clause 3 read as under:

i) Registration with the General Manager of the Distt. Industries Centre concerned (for medium Scale Unit, registration/letter of intent from the

Director General Technical Devl. (DGTD/Govt. of India,

ii) Approval of drawings of the unit from the Senior Town Planner/Divisional Town Planner concerned; copy of the zoning plan of the plot required

for the preparation of detailed drawings may be obtained from the office of DTP concerned.

iii) Arrangement of finances by getting the loan required to meet the cost of land, building and machinery sanctioned from Haryana Financial

Corporation/any scheduled bank/State and All India Financial Institutions.

Or

iv) Cost of plant and machinery to be installed alongwith quotations.

23. The plaintiff-appellant was required to sent the acceptance of the conditions of PLA as per Clause 5. The afore-mentioned clause requires to

be interpreted and the same reads as under:

In case, your acceptance is received within 35 days as above, this PLA shall be valid for a period of 90 days in case the project is under self

financing and 180 days in case you propose to raise loan from HFC/Banks/All India Financial Institutions. You are required to furnish us proof of

having completed the required formalities listed in para 3 to the satisfaction of the Corporation where the unit is under self financing, you are also

required to deposit security equivalent to 10 per cent of the cost of the land, which will be refundable on implementation of the project and unit

going into production within two years from the date of issue of allotment letter failing which this amount of security will, stand forfeited. The

security shall also stand forfeited if the construction is not started within three months.

Provided that the corporation may at its absolute discretion extend the validity of PLA on payment of the requisite extension fee.

24. The first question which needs determination is whether there is any ambiguity in Clauses 4 and 5 of the PLA so as to imply any other tool of

construction then the golden principles of construction, namely, that the plain language of the document should be given effect. It is also well settled

that the principles of statutory interpretation are not to be applied to the documents which are not drawn by the experts. A perusal of Clause 4

talks of submission of acceptance to the conditions of PLA and also required the plaintiff-appellant to confirm to the defendant-respondent

whether the project was to be financed from its own resources. A period of 35 days from the date of issuance of that letter was fixed. There was

no recital with regard to a case where a party was to raise loan from Haryana Financial Corporation/Banks/All India Financial Institutions. In

Clause 5, it was stipulated that in case the acceptance made by the plaintiff-appellant is received within 35 days as mentioned in Clause 4, then the

above PLA was to remain valid for a period of 90 days in the case of-project which was to be self-financed and 180 days in case a loan was to

be raised from the Financial Institutions. The proviso appended to Clause 5 further postulated that the Corporation would be at its discretion to

extend the validity of the PLA on payment of a requisite extension fee. It is further appropriate to mention that according to Clause 3(i) of the PLA

registration with the General Manager of the District Industries Centre concerned (for medium scale unit) register/letter of intent from the Director

General Technical Development (D.G.T.D.) Government of India was required. The defendant-respondent accepted the registration with the

General Manager Small Scale Unit. The reasons for acceptance of certification from the competent authority of Small Scale Industries was that the

costs of Project had been reduced which was below 35 lacs and it was covered by Small Scale Industries. The language of Clause 5 is plain that in

case acceptance has been received within 35 days the PLA was to remain valid for a period of 90/180 days depending on the nature of the

finances availed by an entrepreneur. It is also evident that the period of 180 days has not been kept so sacrosanct as to refuse grant of extension

beyond 90/180 days. The defendant-respondent by the proviso has reserved the right to extend the validity of the PLA after accepting extension

fee. Once the language is plain and by virtue of proviso the period of 180 days is not sacrosanct, then the principles with regard to the strict

construction, contra-proferentum or ejusdem generis could not be applied. The expression "this PLA shall be valid for 90 days -180 days" would

clearly show that the PLA was valid for 180 days which would necessarily mean from the date of issuance of the PLA.

25. On 2.1.1990 the plaintiff-appellant wrote a detailed letter to the defendant-respondent (Ex.PW5/26) stating that all the conditions given in

Clause 3 of the PLA have been completed except the registration from the General Manager Gurgaon District Industries Centre was awaited

which was expected to reach within a week. It would be apposite to refer to the portion of the aforementioned letter, which reads as under:-

1. Application has been submitted to the General Manager of Gurgaon District Industries Centre vide our letter No.INC:ND:89:740 dated

5.12.1989. Registration number is expected to be obtained within a week.

2. Drawings for building on Plot No. 117-118 have been approved by the Senior Town Planner, Gurgaon vide their letter No. 4156 STP

(G)/PAS dated 22.12.89 (photo copy enclosed).

3. Arrangements have been made for financing through Syndicate Bank, 2-A/3 Asaf Ali Road, New Delhi-110002. A photo copy of their letter

No. 735/9000/KB/89 of 20.12.89 is enclosed as Annexure ''A''. Balance amount of the project is to be met through promoter''s contribution and

through HSIDC deferred payment facility as shown at Annexure B.

Registration No. issued on 12.1.90 as under:-

No. dated 12.1.90.

4. List of plant and machinery to be installed is enclosed as Annexure C.

26. The District Industries Centre, Gurgaon eventually communicated to the plaintiff-appellant that the Unit was registered as a Small Scale

Industries Unit by District Industries Centre, Gurgaon vide registration No.05026148 dated 2.1.1990. A communication to that effect was sent on

13.1.1990 Ex.PW5/32. If the period of 180 days is to be counted from 15.7.1989 then it will come to an end on 11.1.1990 (for July-16 days, for

August-31 days, for September-30 days for October-31 days, for November-30 days for December-31 days and for January-11 days Grand

total 180 days). When the plaintiff-appellant communicated to the defendant-respondent about the completion of all the formalities except the

registration on 2.1.1990 (Ex.P5/26) then on that very date in fact the only surviving formality of registration of the Unit had also been completed

but the time was consumed in the transit. In any case, the plaintiff-appellant had communicated all the formalities on 13.1.1990 as is evident from

Ex.PW5/32. The delay is very meager, which is only in days. Can it be said that such a delay would be considered so serious as to invite

conjectural comments from the lower Appellate Court that the plaintiff-appellant was not a serious entrepreneur and that he was indulging in

speculative business of purchasing the plots so that he may sell it in the open market. There was no room for making such comments by the learned

lower Appellate Court against the plaintiff-appellant who has pursued his project with complete sincerity and with utmost zeal.

27. I am of the view that firstly the delay of few days should not be taken as fatal to the tremendous effort made by a entrepreneur like the plaintiff-

appellant. The record shows that the plaintiff-appellant through its Chief Executive Shri J.C. Khanna has been to pillar to post to establish his unit.

No imaginary comments could have been made by the learned lower Appellate Court had he taken the pain of glancing through the record. For the

sake of argument, even if, it is accepted that the delay has occurred by days then by virtue of proviso to Clause 5 the period of 180 days cannot

be considered sacrosanct as to admit of no delay. By necessary implications the proviso had made a room for granting relaxation at least of few

days.

28. The other reason adopted by the impugned order dated 6.3.1991 Ex.PW5/99 is also not sustainable because there is no condition in the PLA

that finances up to particular level are to be sanctioned by the Bank. I am further of the view that in such an eventuality the proper course for the

defendant-respondent was to advise the plaintiff-appellant for arranging better finances rather then rejecting the case by putting forward the excuse

of expiry of 180 days and the one that the adequate finances have not been arranged.

29. For all the reasons stated above the findings of both the Courts below are set aside on the issues of delay in submission of letter showing

completion of formalities. The appeal is allowed with costs. The order Ex.P\V5/99 dated 6.3.1991 is set aside. The defendant-respondent is

directed to allot to the plaintiff-appellant a plot measuring half an acre in Udyog Vihar, Gurgaon. It is made clear that if the plot of half an acre is

not available, then the plot with variation of 500 sq. yards in the Industrial Estate shall be allotted to the plaintiff-appellant at the rate of Rs. 595/-

per sq. metre which is the rate "that could have been charged after delay of 180 days. The needful shall be done within three months from today.

The plaintiff-appellant is entitled to costs which is determined at Rs. 20,0007-