

SUPREME COURT OF INDIA

Mahanagarpalika

Vs.

Sureshbhai Bhanubhai Thakkar

C.A.No.1328 of 2009

(B.N. Agrawal and G.S. Singhvi JJ.)

27.02.2009

ORDER

Delay condoned.

Leave granted.

1. The predecessor of the plaintiffs-respondents filed Special Civil Suit No.204 of 1990 for recovery of Rs.2,03,300/- with interest @ 18&percent; from the date of notice i.e. 20th August, 1988. He also prayed for grant of a declaration that the defendant-Mahanagarpalika, Bhavnagar (appellant herein) is bound to allot shop No.40-I to him at the upset price. After 13 years of the institution of suit, the evidence of the plaintiffs-respondents was closed on 6.1.2003 and the case was adjourned to 21.2.2003 for the evidence of the defendant-appellant. As no witness was produced on that day, the trial Court closed the evidence of the defendant-appellant. The suit was decreed on 31.3.2003. When the matter was taken to the High Court in first appeal, the same was dismissed summarily.

2. We have heard learned counsel for the parties. In our view, in the facts and circumstances of the case, the trial Court was not justified in closing the evidence of the defendant and passing a decree in favour of the plaintiffs-respondents only on the ground that the High Court had required it to expedite disposal of the suit. The trial Court should have, after taking note of the fact that the plaintiffs had taken long time to adduce their evidence, given further opportunity to the defendant-appellant to adduce evidence and then decided the matter. Its failure to do so has resulted in miscarriage of justice.

3. While dismissing the first appeal, the High Court observed that in-spite of sufficient opportunity having been given, the appellant did not adduce evidence in support of its case. This must be treated as clearly erroneous because it is an undisputed fact that only one opportunity was given to defendant-appellant to adduce evidence.

4. For the reasons stated above, the appeal is allowed, the impugned orders are set aside and the trial Court is directed to decide the suit afresh in accordance with law after giving opportunity to defendant-appellant to adduce evidence.