

+FAO(OS) 82/2009 & CM No.3458/2009, CM No.5489/2009& 5490/2009

Reserved on : April 23rd, 2009

Pronounced on : May 13th, 2009

MAHESH GUPTA

..... Appellant

Through

Mr. Chetan Sharma, Sr. Adv. with
Mr. S.K.Tiwari and Ms.Rajeshwari
Hariharan, Advocates.

versus

RANJIT SINGH & ORS.

..... Respondents

Through

Mr. Mohan Vidhani and Mr. Rahul,
Advocates for respondents No.1 to 3.
Mr. M.K.Miglani, Advocate for
respondent No.4.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

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VALMIKI J. MEHTA, J

1. The present appeal challenges the order dated 16.2.2009 of the learned Single Judge whereby the learned Single Judge has returned the plaint for presentation to the court of appropriate pecuniary jurisdiction by

upholding the preliminary objection as to the non-maintainability of the suit before the court on the ground of lack of pecuniary jurisdiction.

2. It is worthwhile at this stage to reproduce the relevant para 29 of the plaint which pertains to the valuation of the suit for pecuniary jurisdiction and which runs as under:-

“ a) For an order of permanent injunction restraining Defendants; this is valued for Court fee and jurisdiction at Rs.200/- and the Court fee of Rs.20/- is affixed thereon.

b) For an order of permanent injunction restraining Defendants from passing off, this relief is valued for purposes of Court fee and jurisdiction at Rs.200/- and Court fee of Rs.20/- is affixed thereon.

c) For an order of delivery up, this relief is valued for purpose of Court fee and jurisdiction at Rs.200/- and Court fee of Rs.20/- is affixed thereon.

d) For an order of rendition of amounts; this relief is tentatively valued for purposes of Court fee and jurisdiction at Rs.1000/- and Court fee of Rs.150/- is affixed; the Plaintiff undertakes to pay such additional Court fee as would be found due when the actual account is rendered and ascertained by this Hon’ble Court.

e) The rest of the prayers are incapable of valuation, and, therefore, do not attract Court fee.

Thus, the suit is valued for purposes of Court fee and jurisdiction at Rs.20,10,000/- and appropriate Court fee of Rs.22,500 is paid thereon.”

3. The above paragraph with respect to valuation of the suit for the

purposes of Court fee and jurisdiction pertains to a suit filed by the appellant/plaintiff seeking reliefs of injunctions, rendition of account and delivery of offending material on account of the defendants allegedly selling cabinets for water purifier which the plaintiff claims is, inter alia, infringing the registered design of the plaintiff.

4. In view of the averments of the appellant in paragraph 29 of the plaint reproduced above, the learned Single Judge has given the following finding:-

“Where the total value of the suit is Rs.1600/- a plaintiff does not have liberty to affix a higher Court fee on the suit so as to bring it within the jurisdiction of the Court he prefers. A suit for the value of Rs.1600/- for the purpose of jurisdiction has to be tried by Civil Judge and has to be filed before the Civil Judge. The plaintiff after valuing the suit at Rs.1600/- could not have paid Court fee on Rs.20,10,000/- and filed the suit before High Court. If this kind of valuation of a suit is allowed then it would result into forum shopping and a person in total disregard of Suit Valuation Act affix Court fee at any amount, pay Court fee of the Court where he wants to get his suit tried i.e. before Civil Judge or before Additional District Judge or before the High Court (since all the three have original jurisdiction) and get his matter fixed before that Court. Section 15 of CPC then becomes redundant and the legislative mandate that suit shall be instituted in lowest

grade Court competent to try it shall stand nullified”.

5. We find no fault with the reasoning of the learned Single Judge. A plaint in a suit when the same fixes the value of the different causes of action and reliefs claimed thereon for the purposes of pecuniary jurisdiction, the total value for the purposes of pecuniary jurisdiction would be the sum total of the values resulting from the addition of the valuation of the causes of action. This is the effect of reading Section 17 of the Court Fees Act, 1870 and Section 8 of the Suits Valuation Act, 1887. Once that is done, the plaintiff cannot thereafter arbitrarily state that the pecuniary jurisdiction is a wholly different figure than the sum total of the valuations of the different causes of action. Clearly, the suit, therefore, could not have been filed before this court in the exercise of original civil jurisdiction as pecuniary valuation of the suit was only Rs.1600 i.e. less than Rs.20 lakhs when the valuation required for instituting a suit in the original side of this court is a valuation in excess of Rs.20 lakhs.

6. In the present appeal, the plaintiff having realized his mistake has now filed in this appeal an application being CM no.5490/2009 seeking amendment of the plaint. By the amendment sought, the plaintiff seeks to amend sub-para (a) of para 29 of the suit from “ For an order of permanent injunction restraining Defendants, this is valued for Court Fee and

jurisdiction at Rs.200/- and the Court fee of Rs.20/- is affixed thereon”, which was originally stated to “For an order of permanent injunction restraining Defendants, this is valued for Court Fee and jurisdiction at Rs.20,08,600/- and the Court fee of Rs.22,310/- is affixed thereon”. Therefore, the appellant/plaintiff seeks to amend the plaint by enhancement of the valuation of the relief of permanent injunction originally fixed by him at Rs.200/- to Rs.20,08,600/-

7. The issue therefore is, can this application for amendment be allowed. It is trite that the court which does not have jurisdiction to try the matter would have no jurisdiction to pass any orders which affect the rights of the parties. The orders which are passed by a court which has no jurisdiction to determine the matter, are without jurisdiction and, therefore, of no effect and purport. The Court therefore which does not have pecuniary jurisdiction cannot pass any orders allowing an application seeking amendment of a plaint to bring the suit plaint within the pecuniary jurisdiction of a Court.

8. We at this stage refer to three judgments of different learned Single Judges of this court reported as **ANIL GOEL VS. SARDARI LAL 75 (1998) DLT 641 & RAKESH CHOPRA VS. TAXALI 1999 RLR (NOTE) 83 and HANS RAJ KALRA VS. KISHAN KALRA ILR 1976(2) DELHI 745.** These judgments hold that a court which does not

have pecuniary jurisdiction to try a suit does not have the power to allow an application for amendment of the plaint so as to bring the suit within the pecuniary jurisdiction of this court. In all these cases, the learned Single Judges of this Court refused to entertain applications for amendment of the plaint whereby the plaint was sought to be amended to bring the suit within the pecuniary jurisdiction of suits to be filed in this court in the exercise of its original ordinary civil jurisdiction. We respectfully agree with the views expressed in the judgments of *Anil Goel*, *Rakesh Chopra* and *Hans Raj Kalra's* (supra) cases.

9. The counsel for the appellant has placed reliance on the judgment of learned Single Judge of this court in the case of **DEV PHARMACY VS. NOVA INTERNATIONAL 2003 (27) PTC 395 (Del)**. The facts of the said case are clearly distinguishable in as much as in the said case, the plaintiff had valued his relief of rendition of accounts in one place at Rs.200/- and thereafter again at another place at Rs.20,1,000/-- i.e., the valuation was fixed with respect to relief of rendition of accounts twice, once at Rs.200/- and also again at Rs.20,01,000/-. It is in those circumstances that the court allowed the application for amendment of the plaint. In the present case, however, it is not that the plaintiff has valued any of the reliefs claimed at a value exceeding Rs.20 lakhs, but, after valuing

each cause of action and its related relief at a particular value of Rs.200/-or Rs.1000/- (totaling Rs.1600/-) has thereafter only stated “Thus, the suit is valued for the purposes of Court fee and jurisdiction at Rs.20,10,000/- and appropriate Court fee of Rs.22,500/- is paid thereon”. Therefore, it is not as if a particular cause of action and co-related relief is additionally valued at a higher figure then Rs.200/- or Rs.1000/- as already earlier given in the preceding sub-paras of para 29 of the plaint. Another judgment relied upon by the plaintiff is in the case of **Jagdish Singh Vs. Daljit Singh 1980 RLR 546.** We find that the judgment does not at all deal with the issue as to whether a court which does not have jurisdiction can allow the amendment of the plaint. In the said case, the issue was with regard to whether appropriate court fee was paid on the valuation which was Rs.80,000/- in that case. For the sake of completion it may be stated that in the narration of facts in the judgment it was mentioned that originally the plaintiff had not valued the suit for the purposes of jurisdiction and the application was therefore filed to fix the value for the purposes of jurisdiction and which was allowed on account of the fact that there was no opposition of the defendant to that application. The case in **Jagdish Singh**, therefore, is not a judgment laying down the ratio that amendment can be allowed by court which does not have jurisdiction to entertain the suit.

10. We may note that the application for amendment may have been considered by us differently if it was the contention of the appellant/plaintiff that there was a typographical or any clerical error while typing the different sub-paras of para 29 of the plaint and in fact and reality the appellant/plaintiff had intended jurisdiction originally itself to be over Rs.20 lakhs with respect to either any or the cumulative effect of different sub-paras of para 29 of the plaint. In such a case, it would be a case of the court having jurisdiction but on account of typographical or clerical mistake the valuation for the purposes of pecuniary jurisdiction would have been stated at a figure which would be less than the figure for the pecuniary jurisdiction required for filing a suit in this court. However, by the amendment, the plaintiff only wants to deliberately increase the valuation or injunction of its para 29 (a) from Rs.200/- to Rs.20,08,600/-

11. During the course of hearing of the appeal, the counsel for the appellant/plaintiff contended that the appellant will be caused grave prejudice if the order returning the plaint is sustained in as much as considerable evidence has already been recorded in the suit and, there was also an order of injunction against the respondents/defendants by the consent of the counsel for the parties. Taking into account the considerable time invested by this court in this suit, we have decided to suo moto exercise our

powers under Section 24(1) read with Section 24(5) of the Code of Civil Procedure, 1908 and instead of the order returning the plaint as passed by the learned Single Judge, we modify the order of the learned Single Judge and direct that, in the facts of the case, the suit itself be transferred to the competent court of civil jurisdiction. The effect of exercising of powers under Section 24 CPC would mean that the suit would be taken up by the transferee court from the stage at which it was pending before the impugned order dated 16.2.2009 was passed. The learned counsel for the respondents has stated that the respondents wanted to move an application for vacation of the interim order of injunction, but, which he did not do in as much as the matter was heard on the aspect of the lack of pecuniary jurisdiction of the court. Therefore, while directing the transfer of the suit, we further order that the interim order of injunction operating against the respondent in the suit will continue only till the date when the matter is taken up on the first date by the concerned Civil Judge. The Civil Judge will decide afresh the issue of grant or denial of an ad interim/ex-parte injunction on the first date and he will also decide expeditiously, and preferably within four weeks from the first hearing, the injunction application as filed by the plaintiff in the suit. The learned Single Judge should take up the issue of granting or denying of injunction (ex parte/ad interim or pendent lite) entirely uninfluenced by the

any observations of this court or the fact that earlier an injunction order was passed by the consent of the parties.

12. Accordingly, the present appeal along with all pending applications are disposed of with the direction that the order of the learned Single Judge holding that this court does not have pecuniary jurisdiction is upheld, but, we direct that the suit itself be transferred to the competent court of civil jurisdiction with the further directions with respect to injunction as stated in para 11 above. The parties to appear before the learned District and Sessions Judge on 25.5.2009 for marking the suit to an appropriate Court. Ordered accordingly.

VALMIKI J. MEHTA, J

MUKUL MUDGAL, J

MAY 13th, 2009
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