

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CS(OS)No.1307/2006

%16.01.2009

Date of decision:16th January, 2009

SMT. TARAN JEET KAUR Plaintiff

Through: Mr. Rajeev Awasthi, Advocate

Versus

SHRI G.S. BHATIA & OTHERS Defendants

Through: Mr. Mukesh M. Goel, Advocate
for the defendants No. 1&2
Ms. Ruchi Kohli & Ms. P. Jain,
Advocates for the defendant No.3

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether 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

RAJIV SAHAI ENDLAW, J.

1. Issues No.1 as under framed on 22nd August, 2008 and ordered
to be treated as a preliminary issue, falls for adjudication.

“1. Whether this court has no pecuniary
jurisdiction to try the present suit and whether
the suit is liable to be returned to the plaintiff?
OPD”

2. The suit is for the relief of specific performance of agreement
to sell and purchase dated 9th September, 2005. As per the
averments in the plaint, the said agreement was for a total sale
consideration of Rs.16,40,000/- out of which the plaintiff claims to

have paid part sale consideration of Rs.3,57,000/- prior to the institution of the suit. The plaintiff, besides the relief of specific performance claimed in prayer paras (a) & (b) also claims alternate relief in prayer para (c) of the plaint. In the light of the arguments addressed by the counsel for the plaintiff, it is deemed expedient to set out herein below the prayer paragraph (c) of the plaint.

“In the event this Hon’ble Court comes to the conclusion that specifically performance cannot be decreed then and only then in alternative of specific performance this Hon’ble Court may be pleased to grant a decree of damages to the plaintiff to the tune of Rs.8,60,000/- being the difference between today’s value of Rs.25,00,000/- and agreed price of Rs.16,40,000/- and the refund of part payment of Rs.3,57,000/- along with interest @ 24% per annum or such higher some as this Hon’ble Court may deem fit and property against the defendant jointly and severally. The plaintiff undertakes to pay agreed fee on the amount so awarded in favour of the plaintiff;”

3. The plaintiff has in the plaint, in para 16 thereof relating to the valuation stated as under:-

“16. That the suit is valued for the purpose of the court fee and jurisdiction for Rs.21,00,000/- on which the advoloram court fee is affixed by the plaintiff.”

4. The suit besides against the defendants No.1&2 as agreement sellers was also instituted against the defendant No.3 Allahabad Bank. It is the pleading of the plaintiff that the plaintiff after the agreement to sell and after paying advance sale consideration to the defendants No.1&2 learnt that the title documents of the property agreed to be sold had been deposited by the defendants No.1&2 with the defendant No.3 bank by way of equitable mortgage and against which the plaintiff had learnt, a sum of Rs.9,35,000/- was outstanding. The plaintiff in the plaint expressed willingness to pay the said monies directly to the defendant No.3 Allahabad Bank.

5. In this regard, it may also be stated that the summons of the suit were ordered to be issued to the defendants on 14th June, 2006 and vide ex parte order of that date the defendants were restrained from alienating, parting with possession and or creating any third party rights in the property. On the next date i.e. 19th September, 2006 though the counsel for the defendants No.1&2 and the counsel for the defendant No.3 appeared but the defendants No.1&2 had neither filed any written statement nor applied for extension of time for filing the same; on the statement of the counsel for the plaintiff on that date that the plaintiff was prepared to discharge the liability of the bank, this court allowed the plaintiff to discharge the liability of the defendant No.3 bank on account of mortgage of suit property on behalf of defendants No.1&2 by depositing the amount due with the defendant No.3 bank. The amount so deposited was ordered to be subject to adjustment against sale consideration. In order dated 9th January, 2007, it is recorded that the counsel for the plaintiff submitted that the plaintiff had deposited a sum of Rs.9.27 lacs with the defendant No.3 bank. In the order dated 10th December, 2007 it is recorded that the counsel for the defendant No.3 bank stated that an amount of Rs.20,966/- was further due as on 12th October, 2007. The counsel for the plaintiff sought liberty to pay the amount without prejudice to rights and contentions of the plaintiff and the court permitted the said amount also to be paid and further ordered the defendant No.3 to deposit the title documents of the property in this court. The said title documents being the original sale deed of the property in favour of defendants No.1&2 have since been deposited by the defendant No.3 bank in this court and the defendant No.3 bank having been left with no interest in the suit has vide order dated 18th December, 2008 been ordered to be deleted from the array of defendants and it has been further

ordered that the title deeds shall remain on record and shall not be released to any party without express order of this court.

6. The defendant No.3 on being served with the summons of the suit filed a written statement dated 8th September, 2006 in which in preliminary submissions and objections in para 7 it was stated that the plaintiff has not properly valued the suit for the purposes of court fees and the suit was liable to be dismissed on this short ground alone. Similarly, in para 16 of the reply on merits also, the said preliminary objection was repeated.

7. The defendants No.1&2 filed a written statement dated 27th September, 2006. In said written statement in preliminary objection No.2 it was stated that the agreement to sell of which specific performance was claimed being for a sum of Rs.16,40,000/-, and the minimum pecuniary jurisdiction of this court being in excess of Rs.20 lac, this court had no jurisdiction to try and entertain the suit and the valuation of Rs.21 lac given by the plaintiff was without any basis and reason. The said plea was reiterated in reply to para 16 of the plaint also. The written statement though filed on 27th September, 2006, for the reason of delay in filing the same, was finally ordered to be taken on record only vide order dated 10th December, 2007. Be that as it may, the plaintiff, from the written statement of defendant No.3 and defendants No.1&2, immediately after the institution of the suit, had notice of the objection as to the pecuniary jurisdiction of this court.

8. After the written statement of the defendants No.1&2 was ordered to be taken on record, the plaintiff was granted permission to file replication within four weeks of 10th December, 2007. The plaintiff sought adjournment on 29th February, 2008 & 7th May, 2008 and the replication was ultimately filed on 20th May, 2008 to the written statement of the defendants No.1&2. In response to the preliminary objection of the defendants No.1&2 with respect to the pecuniary jurisdiction of this court, the plaintiff pleaded that though the sale consideration was Rs.16,40,000/- but apart from that, because of non performance by the defendants No.1&2 of their part of obligation, defendants have caused the financial loss to the plaintiff who has cleared the debts by way of paying interest to the borrowers and the plaintiff has also made payments to contractor for the purpose of renovation of the said house after the agreement to sell and upon assurance of the defendants that they will hand over the possession by 15th October, 2005; it was also pleaded that “apart from this the plaintiff has also prayed for damages”.

9. With respect to the aforesaid plea of the plaintiff in replication, it may be stated that though the plaintiff in para 10 of the plaint pleaded financial loss owing to breach by the defendants No.1&2 of their part of the agreement but neither was the amount thereof specified, nor in the prayer paragraph of the plaint, any relief for recovery of compensation in addition to the relief of specific performance was claimed. Only the relief of damages in alternative to the relief of specific performance was claimed. In the replication also the plaintiff did not specify as to what were the damages suffered by her on account of breach by the defendants and which the plaintiff was claiming in addition to the relief of

specific performance. It may also be noted that even at the stage of arguments the counsel for the plaintiff has not relied upon the said plea in the replication. It may also be recorded that no documents evidencing the said losses have been filed.

10. It was in the aforesaid state of pleadings that the preliminary issue aforesaid was framed. As aforesaid, the reliefs claimed in the plaint are only two i.e. of specific performance of the agreement of sale of immovable property and in the alternative for damages.

11. The relief of specific performance is prescribed under Section 7(X) of the Court Fees Act to be valued at the sale consideration as set out in the agreement. The said sale consideration is Rs.16,40,000/-.

12. The alternative relief claimed only in the event of the plaintiff being found not entitled to the relief of specific performance is for recovery of damages of Rs.8,60,000/- being the difference in the value of the property on the date of institution of the suit i.e. Rs.25 lacs and the agreed price of the property Rs.16,40,000/-. The plaintiff has also claimed the refund of part sale consideration of Rs.3,57,000/- paid to the defendants. The total of damages of Rs.8,60,000/- and refund claim of Rs.3,57,000/- is Rs.12,17,000/-. The said relief is to be valued advaluram. Thus, it will be seen that both, the relief of specific performance as well as the relief of recovery of damages and refund of sale consideration paid, claimed in the alternative are both below Rs.20 lacs which was at the time of

institution of suit and still is the minimum pecuniary jurisdiction of this court. The figure of Rs.21 lac at which the suit was valued is nowhere to be found in the plaint except in the paragraph relating to valuation and is not co-relatable to the averments in the plaint.

13. Section 15 of the CPC mandates that every suit shall be instituted in the court of the lowest grade competent to try the suit. The court of the lowest grade competent to try the suit was/is the court of the District judge Delhi. Section 21 of the CPC may also be noticed. The same inter-alia provides that no objection as to the competence of a court with reference to pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and, in all cases where issues are settled at or before such settlement. Both sets of defendants in the present case i.e. defendants No.1&2 as well as the defendant No.3, took the objection as to pecuniary jurisdiction at the earliest possible opportunity and which thus has to be adjudicated.

14. It is not as if this court lacks jurisdiction to try suits, the valuation whereof is less than Rs.20 lacs. The object of Section 15 is that courts of higher grades shall not be over burdened with suits. The plaintiff in the present case in spite of being informed soon after the institution of the suit as to the objection aforesaid has persisted in pursuing the suit before this court. Arguments on the preliminary issues were heard on 21st November, 2008. Though the hearing was concluded on that date but on the request of the counsel for the plaintiff the matter was adjourned to 15th December,

2008. On 15th December, 2008 there was a request for adjournment on behalf of the plaintiff. The counsel for the plaintiff made his further submissions on 18th December, 2008.

15. The contention of the counsel for the plaintiff is that there is no bar to the plaintiff valuing the suit at more than that prescribed in law. The other submission made on 18th December, 2008 was that on a reading of prayer paragraph '(c)' in the plaint as set out herein above, the damages claimed were in fact of 25 lacs and thus this court is the court of minimum pecuniary jurisdiction. However, the said submission is totally contrary to the paragraph set out herein above where Rs.8,60,000/- only as difference between the prevalent price and the agreed price have been claimed as damages, besides the relief of refund of Rs.3,57,000/-.

16. As far as the first submission (Supra) is concerned, as aforesaid, it is not as if the court of a grade higher than minimum competent to try the suit, lacks jurisdiction to try the suit. However, once the legislature has mandated that the suit "shall be instituted" in the court of the lowest grade competent to try, the same has to be adhered to. As far as the plea of the plaintiff being entitled to value at more than prescribed is concerned, the same also does not find favour with me. Once the law has prescribed valuation to be done in a manner, valuation has to be done in that manner only and in no other. If the same was permitted, it will lead to a situation of chaos where people would indulge in forum shopping and which ought not to be encouraged. Wherever the legislature in its wisdom deemed it appropriate to leave the discretion as to valuation to the plaintiff,

the legislature has provided so, as in suits for injunction, which as per the discretion of the plaintiff and subject to appropriate valuation can be instituted in either of the three levels of courts in Delhi i.e. in the court of the Civil Judge or Additional District Judge or this court. However, the legislature has in relation to specific performance as well as in relation to recovery of monies, provided the formula for valuation and if as per the said valuation, the court of the lowest/minimum jurisdiction competent to try the suit is the court of the District Judge, the plaintiff cannot be permitted to over value so as to bring the suit to this court. Permitting the plaintiff to do so would be vesting discretion in the plaintiff and which the legislature has not provided for.

17. A similar question arose in **Smt. Nandita Bose Vs. Ratan Lal Nahata** 1987 (3) SCC 705. The plaintiff in that case had let out his flat in Calcutta on a monthly rent of Rs.1400/-. The plaintiff after determination of tenancy of the tenant sued for possession and for recovery of arrears of rent of Rs.11200/- and of Rs.78,000/- by way of mesne profits. The total valuation for the three reliefs i.e. for the purposes of possession, recovery of arrears of rent of Rs.11200/- and recovery of mesne profits of Rs.78,000/- being Rs.1,06,000/-, the suit was instituted in the High Court of Calcutta which could entertain suits for the valuation of in excess of Rs.1,00,000/-. The Calcutta High Court however held that the plaintiff was not entitled to claim mesne profits of Rs.78,000/- @ Rs.7,800/- per month but was entitled to mesne profits @ Rs.1400/- per month only. The claim of Rs.78,000/- was thus found to be untenable and the total valuation on the basis of mesne profits @Rs.1400/- per month being of less than Rs.1 lacs, the plaint was returned to be filed in the court

of minimum pecuniary jurisdiction. The plaintiff in that case took up the matter to the apex court.

The apex court held that:-

“Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiff’s valuation in his plaint determine the court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over valuing or grossly under valuing the suit. The court always has the jurisdiction to prevent the abuse of the process of law. Under Order 7 Rule 10 of the code the plaint can be returned at any stage of the suit for presentation to the court in which the suit should have been instituted”

Having held so, the apex court however found that the question whether the plaintiff in that case would be entitled to mesne profits at Rs.1400/- or @ Rs.7,800/- per month as claimed was not free from doubt. Thus in the facts of that case it was held that till that question was adjudicated, the plaint could not be returned and in the facts of that case it could not be said that the plaintiff had dishonestly and intentionally inflated the value of the suit in order to invite the jurisdiction of a particular court which has no jurisdiction otherwise.

18. This court also in **Narinder Kumar Vs. Sun Shine Roadways** 1999 Rajdhani Law Reporter 201 upon finding the relief for possession being over valued or valued in excess of as provided in law ordered the plaint to be returned holding that a party cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive material and or objective standards of valuation of the relief appearing on the face of the

plaint or where the court can reasonably value the relief correctly on certain definite and positive material available before the court to fix the value for purposes of jurisdiction and the plaintiff cannot be permitted to put an arbitrary value so as to bring the suit within the jurisdiction of this court.

19. This court again in **Trans Asia Auto and General Finance Ltd. Vs. Dharmendar Kumar** 2001 VII AD (Delhi) 598 returned the plaint where though the reliefs claimed were of the value of less than Rs.5 lac, the then minimum pecuniary jurisdiction of this court, the suit was valued at more than Rs.5 lac.

20. The matter arising for determination therefore in this case is not res integra. The valuation as per the reliefs claimed and alternative relief claimed in the plaint is of less than Rs. 20 lac; merely because the plaintiff in the mandatory valuation paragraph in the plaint values the suit at more than Rs.20 lac and pays court fee thereon will not make this court the court of minimum pecuniary jurisdiction to try the suit. In relation to the provisions of Order 7 Rule 11 of the CPC it has been held that the reading of the plaint has to be meaningful. On a meaningful reading of the plaint in the present case, the valuation of the suit at Rs.21 lacs is found to be exaggerated and arbitrary. The correct valuation for the higher of the two alternative reliefs claimed being of Rs.16,40,000/-, there is no option but to order the return of the plaint for filing in the court of appropriate pecuniary jurisdiction, if so, desired by the plaintiff. It is ordered accordingly.

21. However, as aforesaid, monies have been paid by the plaintiff to the erstwhile defendant No.3 bank in pursuance to the orders made when the suit was pending before this court. The title deeds of the suit property also stand deposited in this court by the said bank. Provision has to be made for the same. If the plaintiff files the returned plaint in the court of the appropriate jurisdiction, it is directed that the file of this suit be also on requisition being received from that court, be sent to that court, since proceedings till the framing of issues have already been undertaken. The sale deed aforesaid lying deposited on this file shall then be released to whosoever is found entitled thereto by such court. The plaintiff shall then also have the benefit of the monies paid to the bank in pursuance to the orders made herein. However, if the plaintiff does not file the returned plaint in the court of appropriate jurisdiction, in such case, the sale deed be retained on the present file for a period of three years from today and if no requisition for this file at the instance of the plaintiff is received from any court till then, thereafter the sale deed is ordered to be returned to the defendants No.1&2.

22. The preliminary issue is thus decided in favour of the defendants and against the plaintiff. The plaint be returned to the plaintiff under Order 7 Rule 10 of the CPC in accordance with law.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**January 16, 2009
PP**