

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

+ **RFA No.224/2011**

% **2nd September, 2011**

SURESH JAIN Appellant

Through: Mr. V.P.Rana, Adv.

VERSUS

SUNIL KUMAR Respondent

Through: Ms. Ashwani Goel, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal is to the impugned order of the Trial Court dated 11.1.2011, and by which order, the Trial Court allowed the application of the respondent/defendant under Order 7 Rule 11 CPC and rejected the plaint as being barred by Order 2 Rule 2 CPC. As per the provision of Order 2 Rule 2 CPC, no person can file a subsequent suit for a relief, if, an earlier suit on the basis of the same cause of action was filed however therein the relief which has been claimed in the subsequent suit is not claimed. The provision of Order 2 Rule 2 CPC only bars filing of a fresh suit on the basis of the cause of action alleged in the

earlier suit/plaint and the provision of Order 2 Rule 2 CPC does not bar filing of a fresh suit on a different cause of action. A cause of action is a complete bundle of facts required to be averred and proved in order to get the relief in the suit. One cause of action may have certain common ingredients/facts with other cause of action, however, because of such common facts, it cannot mean that necessarily both the causes of action will be identical. A cause of action is identical if all the averments in the earlier suit/plaint which are required to be made for claiming the relief, are also the identical facts which are alleged in the subsequent/second suit. If certain ingredients in the second suit for pleading the cause of action in the second suit which is based on different cause of action, are not averred in the earlier suit/plaint then the provision of order 2 Rule 2 CPC cannot apply.

2. The facts are that the appellant/plaintiff filed the subject suit on the averments that he was the owner of a piece of land admeasuring 1000 sq. yards situated in Khasra No. 56/3, Village Mundka, Delhi and which was purchased by him vide registered sale deed dated 6.8.1987. The plaintiff is dealing in the business of trading of metal and scrap and grinding of zinc and ash and for which purpose, plaintiff had installed a number of machines in the premises. One Sh. Mandeep Singh Batra in collusion with the defendant, who was posted as a Sub-Inspector at Police Station Nangloi, on the basis of forged and fabricated documents laid a false claim to the property and to give vacant possession of the suit property, the defendant removed the

installed machines and the raw material lying in the factory on 5.4.2008, 8.4.2008, 11.4.2008. Being the investigating officer, the defendant was to deposit all the machines and the raw material seized from the plaintiff in the Police Station, but they were not deposited. Even small items and tools lifted from the factory do not find mention in the list of seized articles. The subject suit therefore came to be filed by the appellant/plaintiff for the loss of raw material for Rs.24,50,891/- and Rs.1 lac spent on the reinstallation of the machines. The plaintiff filed the present suit restricting his claim to Rs.20 lacs.

3. The appellant/plaintiff had earlier filed a suit in which, the appellant/plaintiff had sought the relief of declaration and injunction and had sought damages calculated at Rs.50,000/- per month against the defendant herein on account of loss of earnings caused due to removal of machines which had rendered the plaintiff jobless. In this earlier suit filed for loss of earnings, the appellant/plaintiff had not laid out the cause of action of the misappropriation of the articles which is the cause of action in the present suit.

4. The Trial Court by the impugned judgment while allowing the application under Order 7 Rule 11 CPC and holding the present suit to be barred under Order 2 Rule 2 CPC has made the following observations:-

“8. In the present case even though the plaintiff had filed photo copies of the plaint and documents filed in the previous suit pending before the Hon’ble High Court, as

required learned counsel for defendant had also filed the certified copy of the plaint of the previous suit pending before the Hon'ble High Court to enable this court to compare it with the pleadings in the present suit so as to arrive at a conclusion as to the identity of causes of action between the two suits. As stated above it was the case of the plaintiff that he was illegally dispossessed from the suit property by the defendant in collusion with one Shri Mandeep Singh Batra on the alleged complaint of Shri Mandeep Singh Batra that he was owner of the suit property. To give the vacant possession of suit property, the defendant got the raw material and machinery installed in the suit property by the plaintiff illegally removed on 5.4.2008; 8.4.2008 and 11.4.2008. For the said causes of action which allegedly accrued in favor of plaintiff, the plaintiff filed a suit for declaration, injunction and damages against Shri Mandeep Singh Batra, Commissioner of Delhi Police, defendant herein and Shri Manish Jain. Admittedly, the said suit bearing no.1611/08 was filed prior to the present suit. In the said suit, the plaintiff claimed in para-16 and 17 of plaint that when the plaintiff reached the suit property, it was revealed: **"That the police was removing the machinery with the help of crane. On plaintiff's intervention and hue and cry police went away carrying some machinery which were already removed by them from the factory."** Further in para-26 of said suit No.1611/08, it was alleged: **"That since 5.4.2008, Officers of police have removed the machinery/raw material including electricity meters installed therein from the suit property in connivance with defendant no.2(Shri Mandeep Singh Batra) and/or at his instance. Plaintiff has been deprived of his income and has suffered in the hands of defendant Nos.1, 2 & 3. He has suffered losses since he is unable to earn his livelihood...."** The said fact was again reiterated in para-27 of the said suit. Further in para-30 (d), the plaintiff claimed Rs.2,00,000/- towards damages/loss @ Rs.50,000/- per month from April 2008 i.e., till filing of the suit suffered by the plaintiff on account of removal of machinery/raw material from the suit property illegally and unauthorizedly.

9. It is relevant to note that alongwith the plaint filed before the Hon'ble High Court, the plaintiff had also annexed numerous documents to support his case which also

included seizure memo pertaining to machinery and raw material seized by the Investigating Officer i.e. defendant in the present case. Contrary to the pleadings and documents filed before the Hon'ble High Court, it was claimed by the plaintiff in the present suit that he had no knowledge of the alleged misappropriation of machines and raw material by the defendant when he had filed the earlier suit. The perusal of the plaint and documents filed in Suit No.1611/08, certified copies of which had been filed by the defendant reveal that the plaintiff was already aware of the list of articles (seizure memo) prepared by the defendant which according to him did not include some machinery, tools and raw material which were alleged to have been misappropriated by the defendant. It is also relevant to note that in the written submissions placed on record by the plaintiff in support of his arguments was submitted that the copies of seizure memos filed by the plaintiff in the earlier suit were the copies which were given by the police to the other co-owners of the land in question and not to the plaintiff and the plaintiff had only chosen out in on record before the Hon'ble High Court to show that defendant was involved in illegal activities. In my considered opinion, the said admission of the plaintiff is enough to nail him and hold him liable to face the consequences for omission of a relief which he ought to have and could have claimed in the earlier suit filed before the Hon'ble High Court, which relief is the subject matter of the suit.

11. To determine if the causes of action in both the suits was same or not, it is pertinent to examine the plaints of both the suits. As claimed by the plaintiff himself, causes of action in both the suits arose on 5.4.2008; 8.4.2008 and 11.4.2008, when according to plaintiff the defendant illegally removed the already installed machines and the raw material lying in the factory/suit property alleged to be belonging to the plaintiff. In **OM PRAKASH SRIVASTAVA VS. UNION OF INDIA, V (2006) SLT 655**, the identity of causes of action. The court observed that:

"The rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion, when question arises as to whether cause of action in the subsequent suit is identical with that in the first

suit is whether the same evidence will maintain both actions." (underlining is mine)

In view of the aforesaid conclusions of the Trial Court, the Trial Court rejected the plaint under Order 2 Rule 2 CPC.

5. In my opinion, a cause of action is a complete bundle of facts which are required for a plaintiff to aver and prove before a suit can be decreed in favour of the plaintiff. It is not mandatory upon the plaintiff to include all causes of action in one suit, and the mandate is only to include all reliefs which arise from one cause of action. The mere fact that there may be commonality of facts and certain ingredients would not mean that cause of action in two cases would be identical. There may be similarity to a considerable extent however, if the second suit is based on separate cause of action, it cannot be said that the second suit is barred by Order 2 Rule 2 CPC. In the present case, the admitted position which arises from reading of the plaint in the subject suit and the plaint filed in the earlier suit that is in the earlier suit, no cause of action was pleaded/alleged with respect to misappropriation of the articles and which is the cause of action in the subject suit. The cause of action in the earlier suit was with respect to the loss of earnings on account of wrongly having removed the machinery and the articles of the appellant/plaintiff. The trial court has rightly referred to the ratio in the case of ***Om Prakash Srivastava (supra)*** but has misdirected itself in applying the same to the facts of the present case. As observed in the case of ***Om Prakash Srivastava (supra)*** though the

transaction may be the same yet the causes of action may be different. The evidence in the earlier suit of loss of earnings will not be the evidence in the subject suit for misappropriation and hence the cause of action in the present suit is not the same cause of action of the earlier suit.

6. Learned counsel for the appellant relied upon ***Smt. Amarjit Kaur & Ors. vs. Satnam Kaur & Ors. 2009(156) DLT 544*** in support of his arguments. There is no quarrel to the proposition of law as laid out in this judgment and a host of other judgments under Order 2 Rule 2 CPC, but the issue is the applicability of this law to the facts of each case. Of course, on the basis of one cause of action, all reliefs have to be claimed, but, the issue in all cases where Order 2 Rule 2 CPC is sought to be invoked, is really also an issue of fact as to whether the cause of action alleged in the second suit is identical to the cause of action alleged in the first suit. If complete cause of action alleged in the second suit i.e. complete set of facts to make the complete cause of action in the second suit are not found in the earlier suit/plaint, it cannot be said the second suit becomes barred by Order 2 Rule 2 CPC.

7. Learned counsel for the respondent/defendant sought to argue that the seizure memos with respect to the machinery and articles were mentioned in the earlier suit and therefore the appellant/plaintiff ought to have claimed relief in the earlier suit for misappropriation of articles.

In my opinion, the argument as raised by counsel for the respondent is misconceived because there is no mandate of law to join all causes of action together and the only mandate is to join all the reliefs which are claimed on the basis of one cause of action. If the causes of action are separate, then there is no mandate of Order 2 Rule 2 CPC to combine all causes of action. I have already held that the cause of action in the earlier suit was of loss of earnings and cause of action in the present suit is the cause of action with respect to misappropriation of articles by the defendant which were not deposited in the Police Station.

8. In view of the above, the impugned judgment holding the suit to be barred under Order 2 Rule 2 CPC is set aside. The Trial Court will now proceed to hear and dispose of the suit in accordance with law. Parties to appear before the Districts and Sessions Judge, Delhi on 29.9.2011 and on which date the Districts and Sessions Judge will mark the suit to a competent Court for disposal in accordance with law. The appeal is allowed and disposed of accordingly.

September 02, 2011
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VALMIKI J. MEHTA, J.