

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

+ FAO 152/2012

% Judgment delivered on: 09.04.2012

JAI RAJ

..... Appellant
Through : Mr. Praveen Chauhan along with
Mr. Shashwat Kumar, Advocates

versus

JAI GOPAL

..... Respondent
Through : None

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

CM No. 6203/2012 (exemption)

Exemption as prayed is allowed, subject to just exceptions.

Application stands disposed of.

FAO No. 152/2012

1. This appeal has been filed against impugned order dated 17.01.2012 passed by the learned ADJ, Delhi whereby application of the appellant under Order 7 Rule 11 CPC has been dismissed.

2. Briefly, the facts of the case are as under:-

The respondent herein i.e. plaintiff before the learned trial court has filed a suit for possession and mesne profits in respect of property bearing No. 107, Sunehri Bagh, Co-operative Group Housing Society Ltd., Plot No.

15, Sector-13, Rohini, Delhi-110085 against the appellant herein i.e. defendant before the learned trial court. The respondent/plaintiff had valued the said suit for the relief of possession as Rs. 27000/- P.M. x 12. In the said suit, appellant/defendant had filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on the ground that the suit of the respondent/plaintiff was not properly valued as per Section 8 of the Suit Valuation Act, 1987 for the purposes of jurisdiction and court fees has not been paid as per Section 7 of the Court Fee Act, 1870 by the respondent for the relief of decree of possession of suit property. In the said application, appellant/defendant had alleged that the market value of the said property is Rs. 1 crore or more as per market value and as per circle rate of the locality as such the court has no pecuniary jurisdiction to deal with the case. The respondent/plaintiff did not file reply to the said application and the matter was orally argued on 19.07.2011 and thereafter it was adjourned for pronouncement of order to 26.07.2011. Thereafter, it was adjourned to 2-3 dates for some clarification and ultimately on 06.08.2011 the counsel for respondent/plaintiff sought leave of the court for moving an appropriate application for amendment of the suit and thereafter the respondent/plaintiff had moved an application under Order 6 Rule 17 CPC for amendment of the plaint along with additional court fee of Rs. 15,300/-. Thereupon the court wherein the said suit was pending was abolished and the case was transferred before another learned ADJ, Delhi. The case was listed there on 02.01.2012 and again it was adjourned to 17.01.2012. On 17.01.2012, the learned ADJ allowed the application of respondent/plaintiff under Order 6 Rule 17 CPC and also disposed of the application of the appellant under Order 7 Rule 11

CPC by composite order dated 17.01.2012, the relevant portion of which is as under:-

“
.....
.....

Despite calls none appeared on behalf of the defendant. In such circumstances, application of the defendant under Order 7 Rule 11 of CPC and application of the plaintiff under Order 6 Rule 17 of CPC both are disposed of with direction that since the plaintiff has already affixed the court fee in accordance with the fresh valuation, therefore application under Order 6 Rule 17 of CPC is allowed and amended plaint be taken on record. Additional court fees filed by the plaintiff is also taken on record and the reader is directed to verify the court fee subject to valuation of the suit.

Amended plaint has already been filed and the same be taken on record, however, if the defendant has any objection on the court fee that the same shall be subject matter of adjudication and be decided at the appropriate stage at trial. Defendant shall file written statement to the amended plaint within two weeks from today with advance copy to plaintiff. Now to come up for admission denial of document and framing of issues on 19.03.2012.”

3. Aggrieved with the aforesaid order, present appeal is filed.
4. Learned counsel for the appellant has contended that by the application under Order 7 Rule 11 of CPC, the appellant has raised the objection that the court had no pecuniary jurisdiction to deal with the matter

as the market value of the property was more than 1 crore.

It is contended that the suit filed before the learned ADJ is beyond the pecuniary jurisdiction of the court and as such the application of the appellant under Order 7 Rule 11 CPC ought to have been allowed. It is also contended that even after amendment, the suit has not been properly valued for the purposes of court fee and jurisdiction.

5. I have considered the submissions made and perused the material on record.

6. Earlier, the respondent/plaintiff had valued the suit as under:-

“15. That the Court fees for the purpose of jurisdiction is as under:

For possession

Court fee

Rs. 27000/- P.M.x12 Rs. 32,400/- Rs.5620-00

For Mesne Profit:

Rs. 1,00,000/-

Rs. 3360-00

Total: Rs. 8980-00

The plaintiff undertakes to pay any more court fees on the Mesne Profit as and when directed by this Hon’ble Court.”

7. Thereafter, an amendment application under Order 6 Rule 17 was moved in order to meet the objection of the appellant/defendant and to avoid the delay in disposal of suit, the respondent/plaintiff had sought leave of the court to amend Para 15 of the suit and the said application was allowed and

the earlier Para 15 of plaint reproduced above was amended as under:-

“15. That the suit for the purpose of jurisdiction and court fees is as under:

For the relief of possession the suit is valued at Rs. 19,00,000/- and on which the proper court fees is being paid.

For Mesne Profit:

Rs.1,00,000/- on which a court fees of Rs.3,360/- is being affixed.

The Plaintiff also undertakes to pay any more court fees on the mesne Profit or otherwise as and when directed by this Hon'ble Court.”

8. Learned counsel for appellant/defendant has contended that if the suit property is valued as per the circle rates of the area, the value is above Rs. 19 lakhs. It may be noticed that the appellant/defendant did not file reply to the amendment application of the respondent/plaintiff. Even when both the applications were argued, i.e. application of the appellant/defendant under Order 7 Rule 11 CPC and application under Order 6 Rule 17 of CPC of respondent/plaintiff, no one had appeared on behalf of appellant/defendant. To meet the objections of the appellant/defendant, the respondent/plaintiff has already amended the suit for the purposes of jurisdiction and court fee and has also paid the additional court fee on it. The learned counsel for appellant/defendant has failed to point out as to how the valuation of Rs. 19 lakhs for the purposes of jurisdiction is wrong. Learned counsel has stated that as per circle rates of the said area, the value of suit property is much more. However, the learned counsel has failed to place on record the circle

rates of the area. No material is placed on record before the learned trial court as well as before this court in this regard. Further the learned ADJ has disposed of the application of appellant/defendant with the direction to the appellant/defendant that if he has any objection in this regard, the same shall be the subject matter of adjudication and shall be decided at the appropriate stage of the trial. The defendant has yet to file the written statement. He can very well take that objection in the written statement.

In view of above discussion, no illegality is seen in the impugned order.

The appeal stands dismissed.

CM No. 6202/2012 (stay)

In view of the order on the main appeal, no further orders are required on this application.

The same stands disposed of accordingly.

VEENA BIRBAL, J

APRIL 09, 2012

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