

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

Reserved on: 18.07.2013  
Pronounced on: 28.11.2013

+ **FAO(OS) 64/2013, C.M. APPL. 1784/2013 (for stay)**

NARENDAR SINGH AND ORS. .... Appellants  
Through: Mr. Viraj. R. Datar with Mr.  
Chetan Lokur and Mr. Vikram Pradeep,  
Advocates.

versus

THE INDIAN INSTITUTE OF ARCHITECTS

..... Respondent  
Through: Mr. K.R. Chawla, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The appellant claims to be aggrieved by an order rejecting his application for rejection of the Plaintiff's plaint. The appellant shall be hereafter referred to as such or the defendant; the Plaintiff shall be referred to as the plaintiff.

2. In 1999, the plaintiff filed a suit against the present Appellant seeking, *inter alia*, recovery of the plot bearing No. 4, Institutional Area, Lodhi Road, New Delhi before the Delhi High Court, as CS (OS) No. 1918/1999 ("the suit property"). The Plaintiff had valued the suit property at ₹ 10 lakhs. On 17.06.2003, the pecuniary jurisdiction of the Delhi District Courts was increased and the suit was transferred to the Learned Additional District Judge, Tis Hazari Courts, where the

proceedings continued from the stage at which they were transferred. By then, issues too had been framed.

3. On the basis of the admission of PW-1, during cross-examination that the suit property was valued at ₹ 1 crore when the suit had been filed, and ₹ 15 crore on the date of cross-examination, i.e. 27.07.2009, the Learned District Judge, by order dated 22.09.2009 returned the plaint under Order VII, Rule 10 of the CPC.

4. The Plaintiff filed I.A. No. 5779/2010 before this Court requesting that the original plaint be taken on record, and that the matter be proceeded with from the stage at which the Learned District Judge had heard it. A learned Single Judge granted the relief, and in an *ex parte* order dated 03.05.2010, took the original plaint on record as requested by the plaintiff. Subsequently, the Learned Single Judge by an order dated 20.5.2010 held that since the plaint was returned by the Additional District Judge at the time of final arguments, the suit would be heard by this Court from that stage, and not *de novo*.

5. The Appellant/ defendant then filed an application, IA No. 8469/2010 under Order VII Rule 11(c) CPC, seeking rejection of the plaint stating that the Plaintiff had valued the suit property at the original amount, despite an admission during cross-examination and the order of the Learned District Judge, and thus, paid insufficient Court Fees. The appellant subsequently also urged that the suit must be proceeded with *de novo* and not from the stage of final arguments – this argument being raised in the rejoinder and in oral submissions before the learned Single Judge, but not in the original application under Order VII CPC.

6. The learned Single Judge in an order dated 20.09.2011 disposed off the application noting that the Plaintiff had, subject to confirmation by the Registry, paid the additional Court Fees based on a valuation of the suit property at ₹ 1 crore, and thus, the application was devoid of any merit. However, the learned Single Judge specifically excluded two questions from consideration: *first*, whether the suit property was correctly valued at ₹ 1 crore, or as the Appellants claimed, ₹ 15 crore; and *secondly*, whether the suit was to be tried *de novo*. The Single Judge did not rule on either as they were not raised directly in the application itself, but subsequently, and thus, liberty to raise these contentions by way of separate applications was granted to the Appellant.

7. In these circumstances, the Appellant filed yet another application, I.A. No. 15914/ 2011, seeking recall of the order dated 20.05.2010, arguing essentially that the matter must be treated as *de novo* and that the Court must not take the matter up from where the learned District Judge had returned the plaint. In the alternative, the Appellant sought rejection of the plaint under Order VII, Rule 7(b), CPC. This application was converted to a review petition by an order of the Court dated 12.10.2011, and was numbered R.A. No. 604/2011.

8. The Review was partly allowed: *first*, the learned Single Judge modified the order dated 20.05.2010 to the extent of removing the words “*for final arguments*”, but nonetheless allowed for the matter and the file to be brought up on record to the Court; and *secondly*, the Appellant’s contention on rejection under Order VII, Rule 11(b) was

not decided, with liberty given – at the Appellant’s request – to raise that plea subsequently.

9. Consequently, the Appellant filed I.A. No. 1399/2012 agitating the question of rejection for improper valuation of the suit; he claimed that the property was valued at ₹ 15 crore, and that the valuation must be judged as against the time for representation of the suit. This application was dismissed with costs of ₹ 35,000/- on the ground that it was an abuse of process of court, seeking to raise questions previously dismissed by the court.

10. The Appellant today question this order of the Learned Single Judge. He urges that he had agitated the same issues in I.A. No. 8469/2010 but that all contentions urged had not been decided and liberty was granted. It is argued that the observations about abuse of process by the appellant, made in the impugned order, while deciding IA No. 1399/2012 was unwarranted, as is evident from the order dated 20.09.2011, pursuant to I.A. No. 8469/2010. Counsel highlighted that the appellant repeatedly urged that the plaintiff had failed to correct valuation and failed to affix the proper court fees. In the circumstances, there was no proper suit on the file of the court. It was argued that once the plaint was returned, to be presented in the proper Court, it was obligatory for the plaintiff to amend the valuation clause in the suit, indicate the proper suit valuation as on the date of fresh presentation, and pay the requisite court fee. If these steps are not taken, there is no valid proceeding in the eye of law. It was pointed out that the order disposing off I.A. No. 8469/2010 stated that the averments and contentions were “*devoid of any merit*”; yet it

granted the Appellant liberty to bring forth two questions in subsequent applications, i.e. the question of whether the suit is to be heard *de novo* and second as to the valuation of the suit property at ₹. 15 crores.

11. The appellant relied on the decisions reported as *Vogel Media International GmbH and Anr. v. Jasu Shah and Ors.*, 115 (2004) DLT 679, *Sri Amar Chand Inani v. Union of India*, 1973 (1) SCC 115, and *Hanamanthappa and Another v. Chandrashekharappa and Others*, AIR 1997 SC 1307 to urge that return of plaint for want of jurisdiction and its re-presentation could not result in continuation of the proceedings; they had to commence *de-novo*.

12. It was next urged that the impugned order was also in error of law, because the learned Single Judge failed to notice that the requirement of having to value the suit and pay the requisite court fee was as of the date of filing it in the court of competent jurisdiction and not the date of original filing. Counsel urged that this is the natural and logical consequence flowing from an order under Order VIII Rule 10, and not a strained interpretation which would result in the plaint being returned because of improper valuation and improper court fee and yet the plaintiff being allowed to continue on the basis of the old or some fanciful valuation without any correlation to the admissions made by him.

13. The plaintiff on the other hand, urges that so far as the question of valuation is concerned, there can be no doubt that the requisite fee on Rs. ₹1 crore was paid. Highlighting that the appellant has managed to thwart a decree for possession without any semblance of title, for

nearly two decades, learned counsel argued that the statement elicited in cross-examination about the property being over ₹ 1 crore, or being ₹ 15 crore, cannot be binding, particularly since the proper and competent court has been approached. It was stressed that there is no finding about the value being in excess of ₹ 15 crores.

14. Counsel submitted that the appellant is estopped from questioning the legal basis of the proceeding in this case. It was argued that when the application was presented and the suit directed to be taken on record, the appellant did not register any protest. The orders dated 03.05.2010 and 20.05.2010 had become final and there was no question of the parties being required to lead evidence all over again. Counsel submitted that the plaintiff's argument is a classic case of dilatory tactics, since there is no dispute that the issues in this case had been settled and all evidence led.

15. It is evident from the above discussion that the plaintiff filed the suit in this case in 1999. During the course of evidence, an admission was made that the suit property was over ₹ 1 crore. This led to the plaint being returned, with liberty to its being filed here. The interesting, and crucial, feature of this case is that originally the suit had been filed in this court. It was, consequent upon a general order raising the pecuniary limits of jurisdiction, transferred to the Additional District Judge. After that stage, issues were framed and evidence too was led. Then, the plaint was returned. The orders dated 03.05.2010 and 20.05.2010 do not indicate the source of power, and the plaintiff had merely filed interlocutory proceedings. At that stage, there was no pending cause before this court. The appellant argues

convincingly that such orders did not preclude him from questioning the filing as being improper.

16. There is no doubt that the provisions of Order VII Rule 10 CPC state that upon a plaint being returned on the ground of lack of pecuniary jurisdiction, for the specific reason of improper valuation and payment of court fee, the plaintiff is under an obligation to correct the inadequacy and approach the competent court. In *Vogel Media International*, (supra), a Single Judge of this Court noted that

*“7. ....this Rule nowhere provides that on return of the plaint and its representation in the competent Court, earlier proceedings taken in the suit can be deemed to have been continued.....”*

Similarly, in *Amar Chand Inani* (supra), the Supreme Court had disagreed with the appellant’s argument that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper court was a continuation of the suit filed in the Karnal Court. Again, in *Hanamanthappa* (supra), the Supreme Court noted that “[i]n substance, it is a suit filed afresh ...”

17. This court further notices that in the previous application IA No. 8469/2010, the Appellant in paragraph 2 stated: *“That, however, till date the Plaintiff has failed to correct the valuation of the suit as per its own admission and in any case in terms of the judgment and order dated 22.9.2009. Furthermore, in any case the Plaintiff has failed to affix appropriate court fee on such revised valuation.”* The plea was repeated in paragraph 6 of the Appellant’s rejoinder in that application, noting that the law mandates valuation at the time of re-

presentation of the suit after its return under Order VII, Rule 10, and not the date of original filing. Additionally, as the Appellant points out itself in the appeal memorandum in the current proceedings, the question of starting the proceedings *de novo* was also urged in paragraph 6 of the rejoinder, although this does not find mention in the original IA.

18. The order of the Learned Single Judge, in its relevant part, reads follows:

*“During the course of arguments on this application, it was contended by the learned counsel for the defendants that since the plaint was returned and was re-presented before this Court, the suit ought to be tried as a fresh suit instead of taking it up from the stage of final arguments in terms of the order dated 20.05.2010. The defendant may file an appropriate application in this regard since no such plea has been taken in the application under consideration. The learned counsel for the plaintiff states that this is also his contention that the plaintiff has to value at Rs.15 crores which was the market value of the suit property at the time the plaint was presented to this Court. Since this plea has not been taken specifically in the application under consideration, the plaintiff will be at liberty to take this plea by way of an appropriate application.”*

19. Thus, on a perusal of the history of the case and the order of the Learned Single Judge, it is apparent that the two contentions currently before the Court on appeal, in I.A. No. 1399/2012, were not discussed by the Learned Single Judge earlier in disposing off I.A. No. 8469/2010. Therefore, the observations in the impugned order, and

the costs imposed on the appellant, that the *same* issues raised previously were raised again in the present proceedings is not merited.

20. Two questions arise: whether the proceedings before this Court, as called up by the orders of the Learned Single Judge dated 03.05.2010 and 20.05.2010, must be *de novo* or from an advanced stage; and *secondly*, whether the valuation of the suit property must be done at the time of the re-presentation of the plaint.

21. On the first question, the Appellant in this case argues that the return of the plaint under Order VII, Rule 10 mandates a fresh filing of a new plaint, thus requiring proceedings to begin *de novo*. As noticed above, the authorities of this court and the Supreme Court suggest that the return of a plaint under Order VII, Rule 10 – whether for want of territorial or pecuniary jurisdiction – *ends* those proceedings, thus requiring fresh proceedings to be filed before the Competent Court. However, the Supreme Court has in a later decision, having regard to the facts of the case, upheld the High Court’s direction that the suit be continued from the stage of its being returned by the previous court. Thus, in *Joginder Tuli v. S.L. Bhatia and Anr.*, 1997 (1) SCC 502 it was held that:

*“5.....Under these circumstances, the original order passed by the High Court directing the District Judge to proceed from the stage at which the suit stood transferred to the District Court appears to be correct in the circumstances. Normally, when the plaint is directed to be returned for presentation to the proper Court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that state at which*

*the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”*

It would thus be apparent that there is no universal or invariable rule mandating that once a plaint is returned under Order VII Rule 10 CPC, the proceedings before the competent court have to continue *de novo*.

22. The other question requiring an examination is of the effect of the order of the learned Single Judge calling for the records and posting the matter for final arguments. Although several cases have permitted a transfer under Section 24, these cases have involved instances where the plaint was presented before the competent court, but due to an amendment to the pecuniary jurisdiction of the courts, the matter was to be transferred to the High Court; as opposed to the filing of a suit before a court which was – at the time of such filing – not competent. Indeed, this distinction is supported by the judgment in *Harshad Chiman Lal Modi v. DLF Universal Ltd and Another*, AIR 2006 SC 646, especially paragraph 11.

23. These cases apart, in *Pushpa Kapal v. Shiv Kumar*, 35 (1998) DLT 187, the plaint was returned by the Trial court for re-presentation to the District Judge. Before re-presenting the suit to the District Judge, however, an application under Section 24 read with Section 151, CPC was made to the High Court for transfer of the plaint to prevent unnecessary hardship inherent in the rehearing of the entire matter *de novo*; in *Rail Chand v. Atal Chand and Others*, 13 (1977) DLT 153, the suit was not tried afresh, but that was because instead of

returning the plaint, the High Court ordered the transfer of the matter to the Commercial Sub-Judge.

24. The question also arose before the Court in *Vogel (supra)*, where it was held that the suit must be tried afresh, but the Court noted that cases where the “10.....order of transferring the suit from the Trial Court to the District Court came to be passed not by the Civil Court for the District Court but by the High Court....” were justified, as the High Court operates “by virtue of its inherent power as well as the express powers as contained in Section 24” (paragraph 10). Indeed, in *Vogel*, on which the Appellants rely heavily, it was held that the suit be tried afresh because the order of transfer came from the District Judge, and not the High Court; the powers of the former in this matter being limited. Equally, the Court noted that in that case “no transfer of the suit was envisaged by the order dated 30.4.2004” (paragraph 11). The relevant question then becomes whether the Learned Single Judge in this case intended to transfer the suit under Section 24, in the absence of an application made by the Plaintiff herein under that Section. Indeed, in *Vogel (supra)*, the Court noted that “this Court might call for the record of the said suit for its perusal in connection with the suit which might be instituted on the representation of the plaint”, but that “is a different matter”.

25. In this case, the Learned Single Judge in the present case did not invoke the provisions of Section 24. In fact, the I.A. 5779 of 2010 is an “application for re-filing the plaint”, and it notes that “the plaintiff is re-filing the original plaint before this Hon’ble Court”. It is, therefore, questionable as to what the precise basis for assuming

jurisdiction is in this case, and whether the order of the Learned Single Judge can be taken to be an exercise of inherent powers under Section 151, despite the presence of a specific provision under Section 24, for transferring the matter up to the High Court.

26. In a similar case, *Hawkins Cookers Ltd. v. Citizen Metal Industries (India)*, 133 (2006) DLT 281, the District Judge “sent” the file to the High Court upon a finding that the case fell within the pecuniary jurisdiction of the High Court; just as the Plaintiff in this case requested the court to call up the file from the Learned District Judge. Although the Court recognized that:

*“2.(iv).....the return of the plaint for want of jurisdiction whether pecuniary or territorial cannot be equated to the transfer of the suit or proceeding either by virtue of Section 24 of the CPC.....”*

The court then concluded as follows:

*“6.....In several cases where suits have been transferred from the High Court to the District Court the plaintiffs have, after succeeding in an upward revision of the valuation of the suit, approached the Court under Section 24 of the CPC. This section contemplates the filing of an application by the parties desirous of a transfer, or of its own motion..... It is, therefore, for the High Court to decide what action has to be adopted. To set all controversies at rest, I assume jurisdiction under Section 24 and hold and direct that the suit stands transferred to this Court by Order of this Court itself.”* (paragraph 6).

27. This precise reasoning may be applied to this case to hold that the proceedings must not begin *de novo*. The apparent difficulty is that the orders of the learned Single Judge, of May, 2010 do not

allude to Section 24. Further, as noted in *Ramesh Chand Bharadwaja v. Ram Prakash Sharma*, 44 (1991) DLT 528, once the plaint is returned, there is no suit pending before the subordinate Court for Section 24 to become operative. In *Hawkins Cookers (supra)*, there was a plaint existing before the lower court, as was also the case in *Aviat Chemicals Pvt. Ltd. and Anr. v. Magna Laboratories (Gujarat) Pvt. Ltd. and Anr.*, 127 (2006) DLT 300, where the Court noted that Section 24 could not be used when “*the proceedings in the suit have fully and finally terminated and the Court below has become functus officio*” (paragraph 10). Nevertheless, the Court noted that in cases such as the present one, where the provisions of Section 24 do not seem to apply, the inherent power of the Court under Section 151 are apposite as “[i]t will be a travesty of justice if the proceedings have to commence de novo” (paragraph 16-7). It was also earlier held that:

“15.....It may be noticed that some of the suits are stated to be fixed for hearing while in others evidence has been recorded, still some other suits are pending at initial stages. Now this Court alone would have the pecuniary jurisdiction to entertain and decide the suits because of the orders passed by the trial Court. In the event the plaints are taken back by the plaintiffs and are represented in the registry of this Court for de novo trial it would but naturally result in further delay and prejudice to parties. There would be expeditious disposal of the suits, if suits are permitted to be transferred, in the sense that all the proceedings so far lawfully taken by the court of competent jurisdiction would be protected and not treated as having invalidated in law. It is difficult to accept the reasoning that loss of pecuniary jurisdiction before a Court whether by virtue of operation of law or by act of the parties covered by an

*order of the Court should be permitted to vest parties with different consequences in law, particularly when one of such consequences could be adverse to the very system of expeditious disposal of suits.*

*16. The argument raised on behalf of the respondents that loss of jurisdiction as a result of amendment would necessarily have to be construed as no suits or proceedings are pending before the trial Court, is without any merit. I have already noticed that the provisions of Section 24 and Order 7 cover a different domain and there is no conflict between these provisions. The provisions of Section 151 would come to the aid of the Court, as no Code can possibly make provisions so as to meet every situation which may arise during the pendency of the suit. It is a situation where inherent jurisdiction of this Court would come to the aid and supply the vacuum. The inherent jurisdiction of the Court would normally be exercised in the interest of justice and for attainment of object of expeditious disposal of suits. May be it is the creation of the applicants themselves that the Court has lost pecuniary jurisdiction and the applications under Order 7 Rule 10 and 10(A) are pending or that the order has been passed for return of plaint but the plaint as a matter of fact has not been returned to the plaintiffs as of today. Thereafter interim orders in the present petitions were passed in favor of the petitioners. In these circumstances, it is difficult for this Court to hold that there is no suit or proceedings in the suit, pending before the trial Court. The Legislature in its wisdom has worded the language of Section 24 in wide terms by empowering the High Court to transfer any suit or appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it. In other words, the meaning of the word "such or other proceedings pending in any court" cannot be restricted or construed so as to exclude the proceedings as contemplated under Order 7 Rule 10, 10(A) of the Act.*

*17. The present are the cases which have been filed by the plaintiffs in the Court of Competent jurisdiction. However, earlier they were transferred to the District Courts in view of the notification and now the district courts have lost pecuniary jurisdiction as a result of the order of the Court at the behest of the parties. The interim orders, undertakings have continued for years together. In some cases evidence has been recorded. It will be travesty of justice if the proceedings have to commence de novo right from the stage of filing a written statement as the plaintiff would be returned only plaint, to be presented before the court of competent jurisdiction there is nothing in the provisions of Order 7 Rule 10 which on its plain reading or by necessary implication be construed as a bar to maintainability of a petition under Section 24 of the Code.....”*

28. It is held, on the basis of the above reasoning, and the line of decisions following *Joginder Tuli (supra)* and *Aviat Chemicals (supra)*, the proceedings in the present case do not have to commence *de novo*, but from the stage they were in the court of the Additional District Judge.

29. The next question, i.e. valuation of the suit, need not detain the Court. The plaintiff had valued the suit originally at over ₹ 5 lakh and filed it in this court. The valuation for pecuniary jurisdiction purposes through a general notification led to the matter being sent to the District Court. When, during the trial an admission was made about the value of the suit property being ₹ 1 crore, the Trial court returned the plaint for filing before this court. Though the plaintiff's evidence does suggest that in reply to a query, its witness stated that the property was worth ₹ 15 crores, the court has to read that admission in

the context of the overall circumstances. Having conceded that the valuation was over ₹ 1 crore, which was the reason for the suit being returned, the plaintiff cannot be now asked to value it upwards merely because of the further admission. There is no finding that the fresh exercise of valuation is improper. The appellant has repeatedly impugned the valuation; however, there is no material in support of the allegations. In these circumstances, it is held that the plaint before this court cannot be said to be undervalued.

30. For the above reasons, the court finds no reason to interfere with the impugned order of the learned Single Judge. The appeal is, therefore, dismissed.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**NAJMI WAZIRI**  
**(JUDGE)**

**NOVEMBER 28, 2013**