

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

% *Judgment pronounced on: September 24, 2013*

+ **CM(M) No.577/2012**

LALITA AWASTHI Petitioner
Through Mr.Santosh Kumar, Adv. with
Mr.Madhurendra Sharma, Adv.

versus

VIDYA DEVI & ORS Respondents
Through Ms.Anjali Chopra, Adv. for R-1.
Mr.Desh Deepak Tyagi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has assailed the order dated 28th March, 2012 whereby the application filed by the petitioner for treating the suit, being Suit No.29/2011 in continuation of the old suit and hearing the said suit from the stage of final arguments and adjudicate upon the remaining issues framed in Suit No.770/2007 was dismissed.

2. The petitioner filed a suit for recovery of possession as well as injunction against the respondents/defendants (Suit No. 770/1993).

Circumstances that led to the suit are as follows:

- i. That petitioner is the owner of property “MIG DDA Flat bearing No.3, Pkt D Phase II, Mayur Vihar, Delhi, situated on 2nd floor” (hereinafter referred to as the ‘said property’) having purchased the same from Shri Ashok Kumar Kaushal and all relevant documents were executed in favor of petitioner and same is duly registered.

- ii. Due to some urgent need of money the petitioner approached Shri Rakesh Chopra (respondent No.5) for a sum of Rs. 1,00,000/- against a mortgage of the said property and handed over the documents thereof. Thereafter when the petitioner went to Shri Rakesh Chopra to recover the property papers, he refused to return them and thereafter transferred the suit property in the name of respondent no. 1 by way of fabricated and forged documents.
 - iii. Thereafter the respondents by force and illegal means evicted the petitioner from the suit property following which many FIRs were filled and the respondent was taken in police custody on account of committing forgery. Also stated, that due to the pressures exerted by the respondents, the petitioner was compelled to stay in a tenanted premises. Upon request of the petitioner to hand over the possession of the suit property, the respondents threatened to sell off the same so that the petitioner cannot recover possession thereof. Hence the suit was filed.
3. By order dated 4th May, 1999, the learned Civil Judge framed six issues.
4. The petitioner examined 11 witnesses in support of her case including herself. On other hand, the respondent No.1 examined herself in support of her case. The other respondents did not lead any evidence. The matter was put up for final arguments on 27th August, 2010 and it was again put up on 4th September, 2010 and during the course of arguments, the Court treated issue No.1 as preliminary issue.

5. On 7th September, 2010, the said preliminary issue No.1 about the pecuniary jurisdiction was decided against the petitioner holding that the suit had to be valued at least at ₹5,00,000/- for the relief of possession and directed the petitioner to pay the deficient court fee on 21st September, 2010. The issue No.1 reads as under:

“1. Whether the suit property valued for the purpose of Court fee and jurisdiction.”

6. The petitioner thereafter filed an application under Section 24 read with section 151 CPC for transfer of suit from Civil Court to the Court of Additional District Judge for contesting the suit on merit. The said transfer petition, being M-68/2010, was listed for hearing on 15th September, 2010, 29th September, 2010 and 11th November, 2010. In the meanwhile, the petitioner filed an application before the Civil Judge under Order VII, Rule 10A read with Section 151 CPC for transfer of suit to the Court of District Judge who is having the pecuniary jurisdiction. By order dated 27th November, 2010 the civil Judge returned the plaint in accordance with rules so prescribed. It was stated in the order that the application under Order VII, Rule 10A was permitted to be withdrawn as application under Section 24 was pending. On 6th December, 2012 the learned District Judge held that since the suit is not pending before the learned Civil Judge, the application under Section 24 CPC was being dismissed as redundant. The same was partly allowed with the direction to return the plaint after obtaining the certified copies of the same and after necessary endorsements as per rules.

7. The learned District Judge on 18th March, 2011 directed the petitioner to serve all the respondents. The application moved by the petitioner seeking the relief of treating the suit in continuation of old suit and hearing the suit from the stage of final arguments and to adjudicate upon the

remaining issues framed in suit prior to return of the suit. The said application was dismissed by the impugned order dated 28th March, 2012. In the order it was held that the present suit was treated fresh suit and to be tried denovo as the suit had been returned by the court of Civil Court within the meaning of Order VII, Rule 10 CPC. The said impugned order dated 28th March, 2012 has been challenged by the petitioner. It is not denied by the respondents' counsel that the evidence in the matter was already concluded and the matter was fixed for final hearing from time to time and during the course of arguments, the court had decided to take the issue No.1 as preliminary issue.

8. The main concern of the petitioner in the present petition is that the denovo proceedings could not have been started by the succeeding court culminating into unnecessary delay in the disposal.

9. I have heard the learned counsel for both the parties. It appears from the material placed on record that the learned trial court has rejected the application of the petitioner where the prayer was made as mentioned above inter alia on the basis of three decisions referred in paras 14 to 16 of the impugned order. The details of the same are given as under:

“i) In Vogel Media International GMBH and Anr. v. Jasu Shah & Ors., 115 (2004) DLT 679, after relying the judgment passed by their lordship of Supreme Court had come to the conclusion that :

(i) The suit which is instituted on the representation of the plaint in the competent court after its return by the Court which lacked the jurisdiction is a freshly instituted suit within the meaning of the provisions of the Code of Civil Procedure and shall be governed by the provision of Order VII Rule 10 and 10A. Such a suit will be tried denove in accordance with the provisions of the Code.

(ii) Any proceedings taken up and orders made in the suit during its pendency before the court which lacked necessary jurisdiction come to an end, as soon as, the order for the return of the plaint is made by the said court.

(iii) If the plaintiff on the return of the suit, consider it necessary that any interim protection granted to him under the orders of the court which lacked jurisdiction should be continued, he must approach the competent court with a fresh application for grant of such a relief and it will be for the said court to consider the application on its merits.

(iv) The return of the plaint for want of jurisdiction whether pecuniary or territorial cannot be equated to the transfer of the suit or proceedings either by virtue of Section 24, CPC or owing, to any other statutory change.

ii) In *Amar Chand Inani Vs. Union of India*, 1973 (1) SCC 313 and judgment passed by their lordship of High Court in case *Vogel Media International GMBH and Anr. Vs. Jasu Shah & Ors.*, 115 (2004) DLT 679, it is crystal clear that the present suit has to be treated as fresh suit and shall be tried *denovo*, as the suit has been returned by the court of learned Civil Judge within the meaning of Order 7 Rule 10 of CPC. Accordingly, this Court has come to the conclusion in the light of the above said two judgments, that the judgment passed by their lordship of High Court of Delhi in case *State of Rajasthan and Anr. Vs. M/s. Jain Tube Company Ltd.*, 2011 VI AD (Delhi) 159, relied upon by the learned counsel for the plaintiff is of no help for the plaintiff. This court do not find any force in the submissions made by the learned counsel for the plaintiff.

iii) In *Amar Chand Inani Vs. Union of India*, 1973 (1) SCC 313 and their lordship of High Court in case *Vogel Media International GMBH and Anr. Vs. Jasu Shah & Ors.*, 115 (2004) DLT 679, have distinguished the cases of transfer and return and since the present case has not been received by way of transfer, so in the present case, *denovo* trial is required to be done in the light of the above said judgments passed by their

lordship of Hon'ble Supreme Court of India and Hon'ble Delhi High Court.”

10. Learned counsel for the petitioner states that the said decisions referred by the other side are distinguishable in view of the facts of the present case. He states that in those cases the matters were at the initial stage. However, in the present case, the matter was at the stage of final argument which is the undisputed fact between the parties. The said argument of the learned counsel for the petitioner has not been denied by the learned counsel for the respondents. The petitioner's counsel also states that each case depends upon its own circumstances. Therefore, the facts in the present matter are materially different and a grave hardship would be caused if the order passed by the learned trial court would be sustained. He further states that it is undisputed fact that when the application under Order VII, Rule 10A was decided, the petitioner's application under Section 24 CPC for transfer of the suit from the Civil Court to the Court of District Judge was pending which was not allowed as the application under Order VII, Rule 10A CPC by that time had already been decided. Had the application under Section 24 CPC been decided prior to the decision of application under Order VII, Rule 10A then under the said circumstances, the matter ought to have been tried from the same stage i.e. final arguments.

11. In support of his submissions, he has referred to the decision in the case of *Joginder Tuli vs. S.L. Bhatia and Another*, (1997) 1 SCC 502, wherein the Supreme Court in para 5 under similar circumstances had laid down law that 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 the said case since the evidence was already adduced by the parties, the matter was tried accordingly. In the said case the High Court had

directed to proceed from the stage at which the suit stood transferred. The Supreme Court held that there was no illegality in the order passed by the High Court warranting interference. The appeal filed against the order of the High Court was dismissed.

12. In the similar situation, in the case of ***Gursharan Singh vs. Bharat Petroleum Corporation Ltd.***, CS(OS) No.3768A/1991, decided on 23rd December, 2011, this Court has taken the same view in para 27 of the judgment which reads as under:

“27. This Court has heard the learned counsel for the parties in detail on this aspect also. In Sunil Dutt (Supra) this Court had held that the High Court under Section 24 of CPC has powers to call any suit from the lower Court to itself. In exercising powers under Section 24 of the Code of Civil Procedure, the High Court withdraws the suit from the civil Court and entertains the same and in such a case, it will not be a case of return of plaint where the power is exercised under Section 24 of the Code of Civil Procedure. In the instant case relied on by the respondent no.1 after the trial was over and the case was at the stage of arguments, relying on the statement of one witness deposing that the suit property was Rs.30 lakhs and because Civil Judge could try the suits only up to pecuniary jurisdiction of Rs.3 lakhs, therefore, the District Judge had forwarded the same to the High Court on the original side. After the case was received on the original side, a plea was taken on behalf of the defendant that the plaint has been returned under Order 7 Rule 10 of the Code of Civil Procedure, therefore, de-novo trial was claimed by the defendant. This plea was repelled by the Court holding that when the power is exercised under Section 24 of Code of Civil Procedure then it is not a case of return of plaint and the defendant could CS(OS) 3768 A of 1991 Page 16 of 21 not ask for de-novo trial. It was also held that a judgment or an order can be set aside on the ground of lack of pecuniary jurisdiction only if it has resulted into a failure or miscarriage of justice. Since the case was at the stage of final arguments and evidence of both the parties had already been recorded it was held that no prejudice would be caused to the defendant, if the suit is continued at the level it was received and, therefore, the case continued from the stage at which it was received in the High Court.”

13. In the judgment of ***Mahesh Gupta vs. Ranjit Singh***, AIR 2010 Delhi 4, in para 11 the Division Bench after taking into consideration the entire facts and circumstances of the case, decided to *suo motu* exercise their 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, modified his order and directed the suit to be transferred to the competent court of civil jurisdiction.

14. In another case of ***Aviat Chemicals Pvt. Ltd. & Anr. vs. Magna Laboratories (Gujarat) Pvt. Ltd. & Anr.***, AIR 2006 Delhi 115, the similar view was taken as taken in the case of ***Mahesh Gupta*** (supra). Para 6 of the said judgment reads as under:

“6. Before I proceed to discuss merit of the contentions raised by the parties in the present petition, an important fact needs to be noticed. In the case of Vogel Media International GmbH and Anr. v. Jasu Shah and Ors., 2005 (30) PTC 51 (Del) learned single Judge of this Court had taken the view that upon return of a plaint as contemplated under Order 7 Rule 10 only the plaint is returned to the plaintiff and trial would have to commence de novo and the interim orders passed even by the court of competent jurisdiction would cease to operate upon return of the plaint. It is commonly conceded at the bar that an appeal against this judgment is pending before the Division Bench of this Court and is not fixed for final hearing. Particularly when the matter is subjudice before the Division Bench, it is neither necessary nor required of this Court to examine the principles enunciated in the said judgment in the present transfer petitions. Suffice it to say that the judgment would not have a direct bearing on the matter in controversy in the present petitions on the established canone of ratio decendi. In fact in paragraph 10 of the judgment, it has been noticed by the court that the petitioners in that case had not filed any petition under Section 24(5) of the Code for transfer of the suits. In these circumstances it was made clear to the parties

that this Court would not in any be examining the merit or otherwise of the contentions raised by them on the strength of the judgment of the court in Jasu Shah's case.”

15. After having considered all the judgments referred in the impugned order as well as referred above and from the entire gamut of the case, there is no doubt that in normal case when the matter is at the initial stage of the proceedings and the suit is transferred under the provisions of Order VII, Rule 10 CPC then the suit has to be treated as fresh suit and shall be tried *denovo* as the plaint had been returned by the Court. However, in the present case the following are the peculiar facts:

- (i) There was bonafide on the part of the petitioner as the petitioner filed an application under Section 24 CPC before the competent jurisdiction.
- (ii) Both the parties had already adduced the evidence and the matter was fixed for final arguments.
- (iii) The petitioner had already examined 11 witnesses and the respondents are aware about the entire case of the petitioner.

16. The purpose of the law is to expedite the conclusion of the proceedings and not to scuttle the same and in the interest of justice, the case be tried from the final stage. If the impugned order is applied the suit proceedings would be retrograde rather than progressive. There must be harmonious and constructive interpretation of provisions of procedural laws and it is necessary for the Court to adopt an approach that would satisfy the twin objective. The impugned order would cause serious injustice to the petitioner if the case is tried from inception. The learned trial court has not considered the present case from the said angle as mentioned above. Therefore, the impugned order dated 28th March, 2012 passed by the

Additional District Judge, East District, Karkardooma Courts, Delhi, in Suit No.29/2011 is set aside.

17. The application of the petitioner seeking relief for treating the suit in question in continuation of the old suit from the stage of final arguments is accordingly allowed.

18. The petition is disposed of.

19. No costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 24, 2013