

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

+ **C.R.P.No.91/2014 & C.M.No.12474/2013(Stay)**

% **28th November, 2014**

DR. JETHANAND JETHWANI AND ANR. Petitioners

Through: Mr.Abinash Kumar Mishra,
Advocate.

VERSUS

SH. ASHOK KRIPLANI AND ANR. Respondents

Through: Ms.Reena Jain Malhotra, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 1 & 2 in the suit seeking setting aside of the judgment of the first appellate court dated 17.4.2013 by which the first appellate court held that the courts at Delhi have territorial jurisdiction to adjudicate upon the matter. The judgment of the trial court dated 20.12.2011 was set aside which returned the plaint for presentation to the proper court at Kota in Rajasthan.

2. The subject suit is a very peculiar suit to say the least. Plaintiffs in the suit, and the respondents herein, are husband and wife and the husband/respondent no.1 is an Advocate. The subject suit is a suit for compensation/damages for Rs.2,35,000/-. Compensation/damages are claimed on the ground that the petitioners/defendant nos.1 & 2 are guilty of tort. Let us see the plaint to examine what is the tort which is alleged by the respondents/plaintiffs against the petitioners/defendant nos.1 & 2. Besides that I note that conveniently the respondents/plaintiffs have not filed any court fee claiming that they are indigent persons.

3(i) A reading of the plaint makes a very curious reading. I have endeavoured my best to understand the plaint as much as possible, and what is understood from the plaint is that three causes of action are pleaded in the plaint to claim damages. The first cause of action is on the ground that in a civil suit filed by the respondents/plaintiffs in the court at Delhi for a property situated at Kota in Rajasthan, since the notices which were issued by the court through registered post were got opened and after reading the same, the same were returned, a cause of action for damages arises. The notice with respect to the first cause of action is alleged to be dated 24.7.2003. Suit itself was filed on 02.1.2008.

(ii) The second cause of action which is alleged is with respect to a second date i.e 12.12.2004, again which pertains to sending of the registered notices in the same suit stated above filed by the respondents/plaintiffs, and which notices were received back as the defendant nos.1 & 2/petitioners were not available, and according to the respondents/plaintiffs, this amounts to avoidance of receipt of notices, and therefore an actionable tort.

(iii) Besides the petitioners who are the defendant nos. 1 & 2 in the suit, defendant no.5 in the suit was the post-master of Jalawar Road Post Office at Kota in Rajasthan. The third cause of action which is alleged is that on 23.10.2007, the respondents/plaintiffs sent a notice to the defendant no.3 in the suit, one Mr.Gordhanlal Jethwani in a consumer complaint case and which notice was torn open and then stapled and contained the endorsement of the defendant no.3 “not receiving the notices”. Therefore, non-receipt of notice in the consumer complaint case by the defendant no.3 in the suit was again alleged to be an actionable tort.

4. The aforesaid causes of action are stated as per the paras nos. 3 to 5 of the plaint, and which paras read as under:-

“ 3. That, it is in this context that the plaintiff sent a letter by courier M/s Super Speed, Kota at no.3730 dated 24/07/2003, to the defendant no.2 of Kota, but that was torn open on the back (rear) side by the same and after reading the contents was returned back to the courier. On hard pressing

the courier, the delivery boy has given his comments so, on the ill-fated envelope, itself.

4. That, on 12/12/2004, the plaintiff again on behalf of his wife sent two regd. Letters at nos. 3672 and 3673 from Karol Bagh Post Office, New Delhi to the addressees of Kota, defendant 2 & 3, but both were received back torn open on the back (rear) side with the comments that the addressees were not available. As one of the addressee, Mr.Gordanlal Jethwani works outside Kota city, it is presumed that his legal heir, deendant no.4, may have done the stated act. These two letters were containing notice of motion pertaining to High Court of Rajasthan and were so marked on the top of letters. This they could not do without the blessing of defendant no.1, a Senior RAS officer and the wife of the addressee, Mr.Jethanad Jethwani and in collusion with local postman, of the defendant no.5. The original copies of these letters are with Sr. Superintendent of Post Office, New Delhi for enquiry which was never exchanged with the plaintiff.

That the comments of the fact of torn open letters were written by the plaintiff on the acknowledgment slip of the Shankar Road Post Office, New Delhi-60.

5. That, again on 23/10/2007 the plaintiff sent a notice to the defendant no.3 by speed post, the same has come back again torn open and then stapled but stating that the defendant no.3 does not take the letter inspite of going there at the place of delivery or informing him number of times. The comments of torn open were written on the acknowledgement slip of the post office, Rajinder Nagar.”

5. Para no.2 of the plaint consolidates the causes of action and this para no. 2 of the plaint reads as under:-

“ 2. That, the plaintiff is GPA of the defendant no.6 and is representing her in her various suits and appeals in various courts in India. The damages are two fold, one on tearing open the registered letters, reading them and then not receiving them, second on the avoidance of summoning process in various suits to delay the delivery of justice to the defendant no.6.”

6. A reading of para no.2 of the plaint shows that the damages claimed are two fold, one for tearing open the registered letters, reading them and not

receiving them, and the second cause of action is for avoiding of the summoning process to delay the delivery of justice.

7. In my opinion, no cause of action in law, much less for claiming huge damages of Rs.2,35,000/-, arises in favour of the respondents/plaintiffs and against the petitioners/defendant nos. 1 & 2 by virtue of the subject suit.

8. The subject suit is totally frivolous and an abuse of the process of the law to say the least. Surely if notices in a suit are not received or they are manipulated by opening them, reading them and then returning them back, there would arise the consequence of, at best, any costs which the court may impose upon the defendants in the suit for not receiving the summons or avoiding to receive the summons and therefore delaying the suit. Therefore, any alleged illegal act with respect to opening of registered covers containing the summons does not in the opinion of this Court create any legal cause of action to claim that there is an actionable tort, and that a cause of action arises for claiming damages of Rs.2,35,000/-.

9. Even with respect to the third cause of action which is stated to arise on 23.10.2007 as per para no.5 of the plaint against the post office on similar lines with respect to the two causes of action in para nos. 3 and 4 of the plaint, and which averments in para 5 of the plaint are with respect to

delaying the consumer complaint case filed by the respondents/plaintiffs in the consumer court no legal cause of action for tort arises. Consumer complaint case has already been decided in which the respondents herein were granted a nominal compensation. Therefore, once the consumer complaint case by the consumer court is itself decided by giving nominal compensation, it is not understood how a suit can be filed, that too in a civil court against the post-master for delaying the sending of notices. Even assuming there was some fault on the part of the post-master in delaying the sending of notices or in any manner causing delay in disposal of the consumer complaint case, this would have been an aspect with respect to awarding of costs in consumer complaint case and nothing further.

10. At this stage, it is required to be noted that the main suit of the respondents/plaintiffs and with respect to which legal proceedings the causes of action arise as pleaded in the present suit is alleged in para nos. 3 and 4 of the plaint as stated above, was in fact rejected by the trial court for lacking territorial jurisdiction by the order dated 10.8.2011 of the learned ADJ. The order of the learned ADJ was taken in appeal to this Court in FAO No.24/2012, and which was dismissed by the learned Single Judge of this Court vide order dated 16.1.2012. Further challenge by the respondents/plaintiffs to the order dated 16.1.2012 passed in FAO *C.R.PNo.91/2014*

No.24/2012, by filing of an SLP by the respondents herein/plaintiffs, was also rejected by the Supreme Court on 01.10.2012. Therefore, even the original suit proceedings which were filed by the respondents/plaintiffs and the sending of notices which are pleaded to have given a cause of action of tort for the present suit to have been filed, that suit itself was not maintainable and the plaint in the suit was returned because the relief with respect to immovable property in that suit was situated at Kota in Rajasthan and therefore the suit was misconceived in Delhi.

11(i) Learned counsel for the petitioners/defendant nos. 1 & 2 also rightly argues that there is a gross mis-match and mis-joinder of causes of action because the cause of the action as per para no.5 in the plaint cannot in any manner be related to causes of action in para nos. 3 & 4 in the plaint inasmuch as the averments in paras 3 & 4 of the plaint pertained to the notices sent in the suit for partition etc in which suit the plaint was returned in terms of the order dated 10.8.2011 and the averments with respect to para 5 of the plaint are for a totally separate judicial proceeding before the consumer forum. Therefore, the cause of action with respect to the notice in consumer complaint case referred in para no.5 of the plaint has no common question of law and fact with respect to the causes of action in para nos. 3 & 4 of the plaint.

(ii) In fact, the learned counsel for the petitioners/defendant nos. 1 & 2 is right in arguing that a suit cannot be filed in January 2008 for alleged causes of action dated 24.7.2003 and 12.12.2004. Even assuming that cause of action arises in law, though actually no cause of action arises in law on account of the alleged manipulation in avoiding to receive the court notices or opening the registered covers and thereafter re-sealing them, suit qua alleged causes of action of 2003 & 2004 cannot be filed on 2.1.2008.

12. A reading of the aforesaid shows that the following position emerges on record:-

(i) The respondents/plaintiffs filed a non-maintainable suit for partition, damages etc. with respect to a property situated at Kota in Rajasthan and the plaint in that suit was returned in terms of the order dated 10.8.2011 of an ADJ, Delhi and which order has been sustained right till the Supreme Court.

(ii) In such a suit even for the sake of arguments, if notices were avoided to be received by the petitioners/defendant nos. 1 & 2, since the suit itself has been held to be not maintainable, no cause of action for damages can arise with respect to non receipt or avoidance of notices in a non-maintainable suit.

(iii) Mere avoidance to receive the summons/notices of a suit, will be an aspect which will be considered by the civil court for awarding costs at the time of disposal of the suit, but as per such facts no actionable tort arises merely because of any alleged manipulation in delaying and receiving of the notices/summons by opening the registered covers containing the notices/summons and thereafter again re-sealing the same.

(iv) There is quite clearly a mis-joinder of the causes of action because the cause of action of alleged non-receipt of notices in the civil suit is totally independent than as compared to the alleged cause of action with respect to not receiving of notices in the consumer complaint case. No common questions of law and fact arise with respect to separate proceedings in which separate notices are issued.

(v) Suit based upon causes of action with respect to the alleged tort of non-receipt of notices dated 24.7.2003 and 12.12.2004 would be barred by limitation since the suit questioning the same has been filed only on 02.1.2008 i.e after four and a half years so far as the date of 24.7.2003 is concerned and roughly about three years and 20 days so far as the date of 12.12.2004 is concerned.

13. In view of the above, clearly the subject suit is and was only a harassment tactic by the respondents/plaintiffs upon the petitioners/defendant nos. 1 & 2 as no legal cause of action arose. Even if a legal cause of action arose assuming in Delhi as held by the court below, the plaint was clearly barred by limitation. So far as the averments and causes of action as per para nos. 3 & 4 of the plaint are concerned, the same are also barred by virtue of the principles contained in Order II Rule 2 CPC as the cause of action can only be for costs in those legal proceedings and not for a false suit on 'tort'. So far as para no.5 of the plaint is concerned, inasmuch as the same pertained to a consumer complaint case which came to an end by awarding a nominal compensation/damages to the respondents/plaintiffs, thus the issue with respect to para no.5 of the subject plaint/suit will at best be an issue of costs in that consumer complaint case and not for filing of a suit alleging 'tort'.

14. A right to approach the courts of law i.e an access to justice, has to be exercised in some *prima facie* reasonable manner. Once the subject suit is *ex facie* a frivolous and a *malafide* and a baseless suit, it becomes clear that the respondents/plaintiffs are accessing the legal procedure only for abusing the process of the law and the courts. Though the impugned judgment only deals with the aspect of territorial jurisdiction, since the application which

has been disposed of by the impugned judgment was under Order VII Rule 11 CPC wherein the issues of non-arising of cause of action etc etc were stated, I have therefore decided the subject application under Order VII Rule 11 CPC by the present judgment.

15. In view of the above, this petition is allowed and the suit of the respondents/plaintiffs will stand dismissed inasmuch as no legal cause of action arises. Even assuming any cause of action arose, not only there was a mis-joinder of causes of action, but also the cause of action with respect to para nos. 3 & 4 of the plaint made the suit clearly barred by limitation qua such alleged causes of action. Also, issues with respect to claiming damages for alleged delay in a consumer complaint case caused by the post-master has no ingredient of a legal cause of action for damages to be claimed besides the aspect that the claim being barred by the principle of constructive *res judicata*, inasmuch as, at best, the issue would have been awarding of costs in the consumer complaint case.

16. Therefore there was no reason why a suit for compensation/damages of Rs.2,35,000/- should have been filed by the respondents/plaintiffs against the petitioners/defendant nos. 1 & 2 and the other defendants in this case and

that too noting that no court fee was paid in the suit because the respondents/plaintiffs claimed themselves to be indigent persons.

17. The petition is allowed and the suit of the respondents/plaintiffs is dismissed in terms of the aforesaid observations with costs of Rs.25,000/- payable by the respondents/plaintiffs to the petitioner/defendant nos. 1 & 2. Costs shall be paid within a period of six weeks from today.

VALMIKI J. MEHTA, J

NOVEMBER 28, 2014
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