

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

Date of decision: 14th July, 2014.

+ **FAO(OS) 427/2013 & C.M.No.14794/2013 (stay)**

DR. ZUBAIR UL ABIDIN & ORS

..... Appellants

Through: Mr. M.A. Niyazi, Adv. with Ms.
Anamika Niyazi, Mr. Manish Kumar,
Advs.

Versus

SAMEENA ABIDIN @ SAMEENA KHAN

..... Respondent

Through: Mr. M. Tariam Siddiqui, Adv. with
Mr. Aman Usman, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 17th July, 2013 of the learned Single Judge of this Court exercising ordinary original civil jurisdiction in CS(OS) No.918/2012 filed by the respondent/plaintiff, of dismissal of the application filed by the appellants/defendants under Order VII Rule 11 of the Code of Civil Procedure (CPC), 1908. Notice of the appeal was issued. We have heard the counsel for the parties.

2. The respondent/plaintiff filed the suit from which this appeal arises for the reliefs of (i) declaration that the Talaqnama dated 15th February, 2012 is

null and void and non-est in the eyes of law; (ii) permanent injunction restraining the appellants/defendants from selling, alienating and/or creating third party rights in the matrimonial house i.e. Flat No.705, 7th Floor, Saba Apartment D-3, Sector 44, Noida, U.P. and from dispossessing the respondent/plaintiff therefrom; (iii) permanent injunction restraining the appellants/defendants from misusing the writings, photographs and videos of the respondent/plaintiff in their possession; and, (iv) for damages/compensation for ruining the life of the respondent/plaintiff.

3. The appellants/defendants applied under Order VII Rule 11 of the CPC for rejection of the plaint contending that though the respondent/plaintiff, in the body of the plaint, had sought the relief of recovery of damages to the tune of Rs.5 crores but in the prayer paragraph had not mentioned the amount of the damages claimed, to overcome the objection of the court fees; that the respondent/plaintiff having not paid the *ad valorem* court fees on the damages claimed of Rs.5 crores, the plaint was liable to be returned/rejected.

4. The learned Single Judge has dismissed the said application of the appellants/defendants under Order VII Rule 11 CPC, observing/holding:

(i) that the respondent/plaintiff having chosen not to claim

damages of Rs.5 crores in the relief paragraph, may not ultimately be able to claim damages; reliance was placed on ***Chief Inspector of Stamps Vs. Indu Prabha Vachaspati*** (1998) 9 SCC 157 laying down that valuation for the purposes of court fees depends upon the prayer in the plaint;

(ii) that the main relief sought by the respondent/plaintiff was of declaration qua the Talaqnama—it was not the case of the appellants/defendants that the said relief was barred by law and thus the suit qua the said relief had to continue;

(iii) that a part of the plaint could not be rejected; reliance in this regard was placed on ***Roop Lal Sathi Vs. Nachhattar Singh*** AIR 1982 SC 1559; a plaint could be rejected as a whole and not in part.

5. An order of dismissal of an application under Order VII Rule 11 of the CPC is not appealable under Order XLIII of the CPC. As far as the maintainability of appeal thereagainst under Section 10 of the Delhi High Court Act, 1966, which permits an appeal against a ‘judgment’ is concerned, the Supreme Court in ***Shah Babulal Khimji Vs. Jayaben D. Kania*** (1981) 4 SCC 8 held that where the Trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of

the suit, e.g. bar of jurisdiction, res judicata, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the Trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds; it was thus held that such an order even though it keeps the suit alive decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a 'judgment' so as to be appealable to a larger Bench. To the same effect is the judgment of the Division Bench of this Court in ***Jyotika Kumar Vs. Anil Soni*** 156 (2009) DLT 685 and SLP CC No.10698/2009 whereagainst was dismissed *in limine* on 11th May, 2009.

6. Notwithstanding the aforesaid, what is peculiar about the order impugned in this appeal is that though it dismisses the application of the appellants/defendants under Order VII Rule 11 of the CPC, it does not decide the objection on which the appellants/defendants sought rejection of the plaint against the respondent/plaintiff. It merely defers the decision thereon. We thus enquired from the counsel for the appellants/defendants, as

to how this appeal is maintainable.

7. However, before the counsel for the appellants/defendants could respond, the counsel for the respondent/plaintiff informed, that after the impugned order, vide order dated 29th January, 2014 in the suit, issues have been framed and the Issue No.2 framed as under:

“Whether the plaintiff is entitled to relief of damages? If so, of what amount? OPP”

A copy of the said order is handed over in the Court. No issue has been framed on the objection of the appellants/defendants of valuation of the suit for the relief of damages or on the aspect of payment of court fees thereon. On the contrary, the order records the contention of the counsel for the appellants/defendants that the aforesaid Issue No.2 does not arise. However, the learned Single Judge has disregarded the said objection for the reason of the application under Order VII Rule 11 of the CPC having been dismissed vide the order impugned therein and has recorded as under:

“The Court while dismissing the application of defendants had held that it is obvious that on account of nature of pleadings, the plaintiff may not ultimately be able to claim damages. The Court has not rejected the plaint in respect of the said claim but has held that ultimately this may be a ground to deny the plaintiff the relief of damages. Issue No.2, that has been cast today, take care of this aspect and leaves the issue open to defendant to agitate at the time of final disposal of the

suit that the relief of damages may not be available to the plaintiff on account of inadequate pleadings.

Learned counsel for the defendants submits that the plaintiff cannot be granted this relief as he has not paid the court fees and defendant has already preferred an appeal against the order dismissing the application under Order VII Rule 11. In terms of Order 7 Rule 11(c) CPC where relief claimed is properly valued but the plaint is insufficiently stamped then the plaint can be rejected only if the plaintiff on being required, fails to pay the requisite court fee within the prescribed time. This plea of the defendants is without any merit.”

8. We enquired from the counsel for the respondent/plaintiff, as to how the question of payment of court fees can be deferred to the stage of final adjudication and as to how the claim of the respondent/plaintiff for damages can be put to trial and the payment of court fees thereon be deferred and be directed to be paid only if the plaintiff succeeds in such claim. We further enquired from the counsel for the respondent/plaintiff, whether not, if the same was permitted, the plaintiff in each and every suit for recovery of money would contend that the payment of court fees thereon be deferred to the final stage, with the plaintiff being liable to pay court fees only if succeeds and escaping such payment, if were to be unsuccessful in his claim.

9. Needless to state, no answer was forthcoming. The counsel for the respondent/plaintiff on the contrary referred to ***Roop Lal Sathi Vs.***

Nachhattar Singh AIR 1982 SC 1559, *Chief Inspector of Stamps Vs. Indu Prabha Vachaspati* (1998) 9 SCC 157, *Vigneswara Coop. Housing Society Ltd. Vs. K. Balachandramouli* (2005) 13 SCC 506 and *Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V. Fortune Express* AIR 2006 SC 1828 but could not explain the relevancy thereof to the question raised by us. He however contended that the appellants/defendants having not challenged the order dated 29th January, 2014, the same cannot be made the basis for deciding this appeal.

10. In our opinion, the question of payment of court fees cannot be deferred to the stage of final decision unless entails any factual adjudication in trial. The Division Bench of this Court, in *Sahara India Airlines Limited Vs. R.A. Singh* MANU/DE/0527/1997, while setting aside an order of the Single Judge granting exemption to the plaintiff in a suit for recovery of damages from payment of court fees and directing that in case the plaintiff succeeded, court fees will be deducted from the decretal amount, held (i) that Section 4 of the Court Fees Act, 1870 as applied to Delhi puts a complete embargo on the power of the Court to proceed upon with or act upon a document of any kind including a plaint in the suit unless it bears the prescribed court fees; (ii) though Order VII Rule 11 of the CPC empowers

the Court to, in cases of grave injustice or hardship, extend time for payment of court fees, but neither the Court Fees Act nor the CPC empower the Court to grant exemption from payment of prescribed court fees; (iii) the law also does not provide for deferment of payment of court fees till the decision of the suit and recovery thereof from the decretal amount; (iv) if the plaintiff is unable to pay the court fees, the only course available is to apply to sue as an indigent person; (v) else, a suit cannot be tried without payment of court fees; even the proviso to Order VII Rule 11 of the CPC does not permit deferment of payment of court fees till the decision of the suit.

The Division Bench further held an appeal under Section 10 of the Delhi High Court Act to be maintainable against the order of the learned Single Judge of deferring the payment of court fees till the decision of the suit.

11. We may in this regard also notice, the addition of Sub-Rule (3) to Rule 1 of Order IV of the CPC vide the CPC Amendment Act of the year 2002. The same provides that the plaint shall not be deemed to be duly instituted unless it complies with the requirements of Sub-Rules (1) and (2) of Rule 1. Sub-Rule (2) requires a plaint to comply with Order VI and Order VII. Rule 11 of Order VII as aforesaid, itself provides that where the plaint is written

upon paper insufficiently stamped and the plaintiff, on being required to supply the requisite stamp paper fails to do so, the plaint shall be rejected. Thus, as per the newly added Sub-Rule (3) of Rule 1 of Order IV, there can be no due institution of a suit without proper court fees being paid. If there is no institution of the suit qua one of the reliefs, the question of putting the same to trial does not arise.

12. The fact of the matter remains that the appellants/defendants sought rejection of the plaint on the ground, of the suit insofar as for the relief of damages having been not valued at all for the purposes of court fees and the appropriate court fees having not been paid thereon but the learned Single Judge refused to decide the same. The said refusal of the learned Single Judge to decide the ground urged for rejection of the plaint coupled with the deferment, vide subsequent order dated 29th January, 2014, of decision on the said aspect till the time of final adjudication, and which will result in the claim of the respondent/plaintiff for damages being put to trial without appropriate court fees being paid thereon, in our view is sufficient for the appellants/defendants to raise a grievance thereagainst in this appeal. Rule 11 of Order VII of CPC in Clause (b) thereof makes, “where the relief claimed is undervalued and the plaintiff, on being required by the Court to

correct the valuation within a time to be fixed by the Court, fails to do so” a ground for rejection of the plaint. The purport thereof is that the relief which is not properly valued for the purposes of court fees be not put to trial and should be rejected at the threshold only. The said right of a defendant to have the said relief rejected cannot be taken away by deferring a decision thereon to the stage of final adjudication.

13. The respondent/plaintiff, though in para 30 of the plaint has pleaded as under:

“30. That the plaintiff is victim of acts of cruelty and atrocities inflicted on her by her husband and her in laws. The predicament and suffering to which the plaintiff has been subjected to by the defendants has created a feeling of worthlessness in her and adversely affected her confidence. The defendants have virtually made her an object of ridicule. That in the desperate circumstances, having been forsaken by the defendants and having lost everything status, dignity and peace, the plaintiff is filing the present suit for declaration, permanent injunction and damages amount to Rupees Five Crores against the defendants.”

but in para 32 dealing with valuation has pleaded as under:

“32. That the value of the suit for the purpose of pecuniary jurisdiction of this Hon’ble Court and for the purpose of declaration is fixed at Rs.21,00,000/-; for the purpose of Permanent Injunction is fixed at Rs.200/- each. That the court fees for the relief of declaration is 22,840/-; for the relief of Permanent Injunction is Rs.20/- each. That total Ad-valorem Court Fee of Rs.23,000/- has been affixed accordingly. The

plaintiff undertakes to pay the required court fee for damages according to the relief granted to the plaintiff.”

and the prayer in the prayer paragraph in this respect is as under:

“d. Pass a decree for damages/compensation, against the defendants for ruining the life of the plaintiff (being a young girl of 24 years).”

14. It is thus obvious that neither has the respondent/plaintiff quantified the damages/compensation claimed from the appellants/defendants nor valued the suit for the purposes of the relief of damages/compensation.

15. The claim for damages is not such qua which enquiry is to be held nor are the damages claimed such as to which accounts are to be taken under the orders of the Court. It is for the respondent/plaintiff to quantify the damages claimed and prove the entitlement thereto. It was thus incumbent upon the respondent/plaintiff to quantify the damages/compensation for recovery of which the suit was filed and in the absence thereof, no enquiry into the claim for damages can be conducted. Similarly, if the respondent/plaintiff presses the claim for damages, the respondent/plaintiff is also required to value the same for the purposes of court fees and jurisdiction and which has also not been done. The counsel for the respondent/plaintiff does not controvert that *ad-valorem* court fees is payable on the damages so claimed.

16. As far as the reasoning given by the learned Single Judge, of rejection of the plaint in part being not permissible, the said principle came into existence to prevent dissection of pleadings into several parts and examination of whether each of them disclosed a cause of action and to prevent rejection of the plaint in the entirety even though only some of the reliefs claimed were barred and the others were maintainable. The said principle, in our view cannot be invoked to compel trial, also of the relief claimed which is otherwise barred by any law or which has not been valued for the purposes of court fees or jurisdiction or on which no court fees has been paid and rejection of plaint qua which relief does not affect the continuance of suit qua other reliefs which need to be put to trial. The said principle, in our opinion cannot compel putting to trial of the suit qua a segregable relief and qua which there is no properly constituted suit also before the Court. Reference to the newly added Sub-Rule (3) supra of Order IV Rule 1 is apposite in this respect also. It also cannot be lost sight of that the Courts today are overburdened and putting to trial of a relief claimed which ought to have been rejected at the threshold, is always at the cost of trial of other deserving cases. The evidence required to be led on the claim for damages/compensation would be entirely different from the evidence

required qua the other reliefs claimed in the plaint and we see no reason to allow evidence to be recorded on the claim which otherwise ought to have been rejected. The Supreme Court in ***Abdul Gafur Vs. State of Uttarakhand*** (2008) 10 SCC 97 and the Division Bench of this Court in ***P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Mittal*** 166 (2010) DLT 84 have held that if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue or defend and implausible, the Court should exercise its power and should not allow it to create an illusion and should not permit it to go to trial. The Supreme Court in ***T. Arivandandam Vs. T.V. Satyapal*** (1977) 4 SCC 467 and in ***Liverpool and London S.P. and I Association Ltd.*** supra and in ***ITC Limited Vs. Debts Recovery Appellate Tribunal*** (1998) 2 SCC 70 has held that proceedings of which there is no possibility of success and/or which are deadwood and are doomed should be shot down at the earliest stage and ought not to be permitted to clog the resources of the Court and at the cost of other deserving matters requiring the attention of the Courts and should not be allowed to be used as a device to harass. The Courts from time to time in such situations have also invoked the provisions of Order VI Rule 17 of the CPC and instead of rejecting a part of the plaint have been directing the plaintiff to amend the

plaint by deleting the part of the pleadings and the relief qua which the suit is not maintainable. We are therefore of the view that the respondent/plaintiff, without appropriately valuating the suit for the relief of recovery of damages/compensation claimed and without quantifying the damages/compensation claimed and paying appropriate court fees thereon is not entitled to have the claim for damages/compensation adjudicated.

17. The counsel for the respondent/plaintiff, after the close of hearing, has filed a list of citations with copies of the judgment, referring to:

(I) *Shah Babulal Khimji Vs. Jayaben D. Kania* AIR 1981 SC 1786. Reliance is placed on para 121 of the judgment to contend that this appeal is not maintainable. We are unable to agree. Para 121 of the judgment deals with an order on an application under Order VII Rule 11 of the CPC directing the plaintiff to pay additional court fees. The said order was held to a 'judgment' but appealable only at the instance of the plaintiff. The defendant was held to be not entitled to appeal for the reason of having no locus, payment of court fees being a matter between the plaintiff and the government. We fail to see as to how the same helps the respondent/plaintiff. In the present case, the grievance of the appellants/defendants is that the learned Single Judge

has failed to pass an order directing payment of court fees.

(II) ***Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V. Fortune Express*** AIR 2006 SC 1828. Reliance is placed on para 11 of the judgment. However para 11 is concerned with disclosure of cause of action. It is not the case of the appellants/defendants that the plaint in the present case does not disclose a cause of action for the relief of recovery of damages/compensation. The contention is that the said relief has not been valued and no court fees have been paid thereon. The reliance on this judgment is thus misconceived.

(III) ***Smt. Tara Devi Vs. Sri Thakur Radha Krishna Maharaj*** AIR 1987 SC 2085(1). Reliance is placed on paras 3&4 of the judgment which deal with valuation of the suit for the relief of declaration. Here, as aforesaid, we are concerned with the respondent/plaintiff having not valued the relief of recovery of damages/compensation and having not paid court fees thereon. The reliance on this judgment is also misconceived;

(IV) ***M/s. Commercial Aviation and Travel Company Vs. Mrs. Vimla Pannalal*** AIR 1988 SC 1636 reliance is placed on paras 8&9 of the judgment which deals with valuation of a suit for the relief of

accounts. The relief claimed by the respondent/plaintiff in the present case is not for accounts but for recovery of damages/compensation. The reliance on this judgment is also misconceived; and

- (V) *Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner* AIR 2004 SC 1801. Reliance is placed on paras 13, 15, 17, 18 & 20 of this judgment to contend that partial rejection of the plaint is not permissible. As observed by us hereinabove, what is not permissible is dissection, segregation, inversion of the language of various paragraphs of the plaint as was the position in this judgment. The position herein is entirely different. The relief claimed of recovery of damages/compensation, for rejection of which the appellants/defendants had applied, is distinct from the other reliefs claimed in the plaint and the adjudication of which other reliefs would remain unaffected, even if the relief claimed of recovery of damages/compensation is rejected.

18. We therefore allow the appeal. However, since an opportunity has not been given to the respondent/plaintiff as yet to quantify the damages sought to be recovered and to value the suit properly for the same and to pay appropriate court fees thereon which is necessarily required to be given, we

grant fifteen days' time to the respondent/plaintiff to so amend the plaint and to pay appropriate court fees thereon. Needless to state that if the same is not done, the relief claimed for recovery of damages/compensation and the issue framed thereon shall stand deleted.

19. We refrain from imposing any costs on the respondent/plaintiff.

20. The appeal is disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JULY 14, 2014

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