

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

+ **Office Reference No.1/2014**

% **14th October, 2014**

COURT ON ITS OWN MOTION Petitioner

Through: None.

VERSUS

RAMBIR SINGH Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This is a reference under Section 113 of the Code of Civil Procedure, 1908 (CPC) made by the Additional District Judge-05 (West Distt.) (Delhi) vide his order dated 7.9.2010 passed in MCA no.19/2010 referring the following questions for the opinion of the High Court:-

“1. Whether all types of appeals arising from the suits having value of less than Rs.500/- decided by Civil Judges and Addl. Senior Civil Judges are to be heard by Senior Civil Judge alone on the basis of notification no.170(sic 171)/Gaz./XXI-C.6 dated 16.05.1935 amended by notification no.53/Gaz./XXI-C.6 dated 23.02.1940 or it should be heard by District Judge or Addl. District Judge.

2. If only Senior Civil Judge is competent to hear such appeals then whether the appeal arising in such suits decided by the court of Addl. Senior Civil Judge should go to court of District Judge or it can be heard by Senior Civil Judge as the powers of Senior Civil Judge and Addl. Senior Civil Judge are equal.

3. Whether the appeal arising from the suit of such nature in which one of the party is a government body should be heard and decided by the Senior Civil Judge or such matter be dealt with by Addl. District Judge.”

2. The essential and the main question which requires consideration for answering this reference is that if an appeal is filed against an order passed by an Additional Senior Civil Judge deciding an application under Order XXXIX Rules 1 and 2 of the CPC in a suit which is valued for pecuniary jurisdiction at less than an amount of Rs.500/-, then, whether that appeal is to be heard by the District Judge (DJ) or the Additional District Judge (ADJ) or the same can be heard and decided even by a Senior Civil Judge.

3. The question arises because the posts and powers of an Additional Senior Civil Judge are the same as that of a Senior Civil Judge, and since an Additional Senior Civil Judge has original jurisdiction to decide the suits upto a pecuniary jurisdiction of Rs.3 lacs, including obviously, therefore suits having pecuniary jurisdiction upto the value of Rs.500/- (now which amount is revised to Rs.1000/-, as given below), thus, can a Senior Civil

Judge decide or sit in appeal over orders/decrees passed by an Additional Senior Civil Judge in a civil suit having pecuniary jurisdiction upto Rs.500/-.

4. The issues and questions which arise are because of the notifications issued under Section 39(3) of the Punjab Courts Act, 1918 (hereinafter referred to as 'the Act') as per which the Senior Civil Judge is the appellate authority for orders or decrees passed by Civil Judges where the pecuniary jurisdiction of the suit is not presently above Rs.1,000/-.

5. The district courts in Delhi are governed by the Act as applicable to Delhi. The Act provides for the pecuniary jurisdiction of courts with respect to the original suits which are filed, and depending on the pecuniary valuation that whether the suits should be filed in the court of DJ/ADJ or in the court of the Subordinate Judge now designated as Civil Judge.

6. Appointment of DJs and ADJs are referred to in Sections 20 and 21 of the Act and appointment of the Subordinate Judges, now Civil Judges, is referred to in Section 22 of the Act.

7. Appellate provisions with respect to decrees and orders passed by the Subordinate Judges/Civil Judges are contained in Section 39 which provides

for filing of the first appeal; and Section 41 which provides for filing of the second appeal. These relevant Sections 20, 21, 22, 25, 26, 38,39 and 41 of the Act read as under:-

“20. District Judges—The State Government shall appoint as many person as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district: Provided that the same person may, if the State Government thinks fit, be appointed to be District Judge of two or more districts.

21. Additional District Judges—(1) The State Government in consultation with the High Court, may also appoint Additional District Judge to exercise jurisdiction in one or more Courts of the District Judges.

(2) Additional District Judges shall have jurisdiction to deal with and dispose of such cases only as the High Court, by general or special order, may direct them to deal with and dispose of or as the District Judge of the District may make over to them for being dealt with and disposed of:

Provided that the case pending with the Additional District Judges immediately before the extension of the Punjab Courts (Amendment) Act, 1963 to the Union Territory of Delhi, shall be deemed to be cases so directed to be dealt with or disposed of by the High Court or so made over to them by the District Judge of the District as the case may be.

(3) While dealing with and disposing of the cases referred in subsection (2) an Additional District Judge shall be deemed to be the Court of the District Judge.

22. Subordinate Judges-(1) The Chief Commissioner may after consultation with the High Court fix the number of Subordinate Judges to be appointed.

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25. Original jurisdiction of District Judge in suits—Except as otherwise provided by any enactment for the time being in force, the court of the District Judge shall have jurisdiction (in every original civil suit the value of which does not exceed rupees twenty lakhs)

26. Pecuniary limits of jurisdiction of subordinate Judges—(Subject to the limit specified in Section 25 the jurisdiction) to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge, shall be determined by the High Court either by including him in a class or otherwise as it thinks fit.

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38. Appeals from District Judges or Additional Judges—(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or [Additional District Judge] exercising original jurisdiction shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an (Additional District Judge) in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

39. Appeals from Subordinate Judges—(1) Save as aforesaid, as appeal from a decree or order of a Subordinate Judge shall lie:

(a) to the District Judge—

(i) Where the decree or order was made before the extension of the Punjab Courts (Amendment) Act, 1963 to the Union Territory of Delhi and the value of the original suit in which the decree or order was made did not exceed five thousand rupees, or

(ii) Where the decree or order is made after the extension of the Punjab Courts (Amendment) Act, 1963 to the Union Territory of Delhi and the value of the original suit in which the decree or order is made does not exceed ten thousand rupees, or

(iii) where the decree or order is made after the commencement of the Delhi High Court (Amendment) Act, 1991 and the value of the

original suit in which the decree or order is made does not exceed rupees one lakh; or

(iv) where the decree or order is made after the commencement of the Delhi High Court (Amendment) Act, 2003 and the value of the original suit, in which the decree or order is made does not exceed rupees three lakh; and

(b) to the High Court in any other case.

(2) subject to the provisions of sub-section 2A, an appeal to the Court or the District Judge shall be heard by the District Judge or by an Additional District Judge.

(2A) An Additional District Judge shall hear only such appeals as the High Court, by general or special order may direct or as the District Judge of the District may make over to him.

(3) The High Court may by notification direct that appeals lying to the district Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purpose of all appeals so preferred.

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41. Second appeals—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

(a) the decision being contrary to law or to some custom or usage having the force of law :

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of his section:

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) Repealed by Section 2B of Punjab Act 6 of 1941.”

8. Though ordinarily, first appeal against the order of a Civil Judge will lie to the District Judge with respect to the suit whose pecuniary jurisdiction is up to Rs.3 lacs, however as per Section 39(1) of the Act, powers are vested upon the High Court to designate the appellate court, and accordingly the High Court has issued a notification dated 11.8.2000 (which has been published in the gazette on 9.11.2010) that with respect to orders/decrees passed in suits having pecuniary value upto Rs.1,000/-, the first appeal against such orders/decrees lie not to the DJ/ADJ but to the Court of the Senior Civil Judge. This notification reads as under:-

“The notification No. 442/Gaz./VI.E.2(a)2000 is as under:-

“In exercise of the powers conferred by sub section (3) of section 39 of the Punjab Courts Act, 1918 (Punjab Act 6 of 1918) as extended to the National Capital Territory of Delhi, and in supersession of Notification No.300/Gaz./VI.E.2(a)/2000 dated, the 26th May, 2000, Hon’ble the Chief Justice and Hon’ble Judges of this Court have been pleased to direct that within the local limits of each Civil District, appeals lying to the District Court from decrees or orders passed by any Civil Judge,

- a) In a Money suit of value not exceeding Rs. 1,000/-,
- b) In a land suit of a value not exceeding Rs. 250/-,
- c) In a unclassified suit of a value not exceeding Rs.500/-

may be preferred to the Senior Civil Judge of the concerned civil district exercising the jurisdiction within such Civil District, with effect from the date the said officer assumes charge.

The Hon'ble the Chief Justice and Hon'ble Judges are further pleased to direct that the Court of such Senior Civil Judge shall be deemed to be a District Court for the purpose of all such appeals preferred to it.”

9. Vide notification of the same date i.e 11th August, 2000, published in the gazette on 9th November, 2010, similar appellate powers were also vested upon the Additional Senior Civil Judges.

10. Therefore, a conjoint reading of Section 39 with its sub-Section (3), and the notifications dated 11.8.2000 which have been published in the gazette on 9.11.2010, shows that with respect to suits whose pecuniary jurisdiction is upto an amount of Rs.1,000/-, then though ordinarily and if there was no notification under Section 39(3) of the Act, the first appeal would have to be filed before the DJ/ADJ in view of Section 39(1) of the Act, but in view of the issuance of the notifications dated 11.8.2010 (these are successor notifications of the original notification dated 16.5.1935 bearing no.170/Gaz./XXI-C.6 as issued for the territories of Delhi and in which the pecuniary value was Rs.500/-) first appeals against the decrees and orders passed by the Subordinate Judges/Civil Judges will lie before the Senior Civil Judges/Additional Senior Civil Judges, and not to the DJ/ADJs.

11. It bears note that though appellate powers as stated above have been vested in the courts of the Senior Civil Judges/Senior Subordinate Judges with respect to orders and decrees passed in the suits upto the value of Rs.1,000/-, however, the courts of the Senior Civil Judges/Additional Senior Civil Judges continue to have original jurisdiction as per the relevant provisions of the Punjab Courts Act with respect to all suits upto a pecuniary jurisdiction of Rs.3 lacs, including obviously the suits having pecuniary jurisdiction upto the value of Rs.1,000/-. Putting it differently though the court of the Senior Civil Judges/Additional Senior Civil Judges are the first appellate court with respect to orders and decrees passed by the courts of Civil Judges by virtue of Section 39(3) of the Act and the extant notifications dated 11.8.2000, yet these courts can and continue to have original jurisdiction to decide suits having value upto Rs.1000/-.

12. In the reference order, the ADJ has rightly raised a question as to which would be the appellate court when a Senior Civil Judge/Additional Senior Civil Judge deals with a suit whose pecuniary jurisdiction is only upto Rs.1,000/- inasmuch as the court of Senior Civil Judge or the Additional Senior Civil Judge itself is also the appellate court with respect to decrees and orders in the suits having pecuniary value upto Rs.1,000/-.

Putting it in other words, the ADJ in the reference has impliedly questioned as to how the courts of the Senior Civil Judges/Additional Senior Civil Judges can be at the same point of time be the court of the original jurisdiction hearing suits upto Rs.1,000/- and also become appellate courts with respect to the same suits in which decrees and orders are passed in the suits upto the valuation of Rs.1,000/-.

13. Though the question which is raised may seem to be complex, really, the answer is very simple, because, Section 39 of the Act specifically provides that against orders and decrees passed by all Civil Judges/Subordinate Judges (and which expression would include also the Senior Civil Judges/Additional Senior Civil Judges under the Act) appeal lies to the court of the District Judge. District Judge of course has the power thereafter to distribute work to the ADJs by virtue of Section 34 of the Act read with Section 39(2) and (2A) of the Act. It is relevant to note that when we see the notifications issued under Section 39(3), it is found that under these notifications appeals lie to Senior Civil Judges only from an order of a Civil Judge i.e these notifications do not pertain to appeals from orders or decrees passed by Senior Civil Judges or Additional Senior Civil Judges.

14. To complete the narration, I would like to refer to the provisions being Section 3 of the CPC and which is to be read with Section 41 of the Act (already reproduced above), and which provision reads as under:-

“Section 3. Subordination of Courts.- For the purpose of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.”

15. Section 3 CPC clearly provides that in the hierarchy of courts the court of the DJ is below the High Court and the court of the Civil Judge is below the High Court and the court of DJ. Under Section 96 CPC, first appeal lies to the designated court and the designated court in Delhi for filing of first appeal from an order/decreed of a Civil Judge/Senior Civil Judge/Additional Senior Civil Judge is the court of the DJ as per Section 39 of the Act and for a second appeal, it is the High Court under Section 41 of the Act.

16. A conjoint reading of Section 39(3), Section 39(1)(2) and (2A) of the Act and Sections 3 and 96 of CPC shows that once an order or decree is passed by a Civil Judge, then, a first appeal will lie to the court of the DJ/ADJ or by the Senior Civil Judge or the Additional Senior Civil Judge where pecuniary value of the suit does not exceed Rs.1,000/-, and where the

power of the first Appellate Court is exercised by the court of the Senior Civil Judge/Additional Senior Civil Judge, then by virtue of Section 39(1)(b), the further appeal will lie to the High Court, and which further appeal will be a second appeal by virtue of Section 41 of the Act.

17. In view of the aforesaid discussion, the following conclusions emerge:-

(i) The Civil Courts at Delhi, were originally the Civil Courts under the jurisdiction of High Court of Punjab, and in view of notifications issued under Section 39(3) of the Act (being the notification dated 16.5.1935 as stated above with respect to suits whose pecuniary jurisdiction was upto Rs.500/- and now Rs.1,000/- by virtue of the extant notification dated 11.8.2000) appeals which are to be filed from decrees and orders passed by Civil Judges in suits having pecuniary jurisdiction upto Rs.1,000/-, have to be filed before the courts of Senior Civil Judge/Additional Senior Civil Judge and not to the Court of the DJ/ADJ.

(ii) If the first appeal is heard by the court of the Senior Civil Judge/Additional Senior Civil Judge, the second appeal against the order or decree passed by the Senior Civil Judge/Additional Senior Civil Judge will

lie to the High Court by virtue of Section 39(1)(b) read with Section 41 of the Act.

(iii) Where the Senior Civil Judges pass orders/decrees in suits having pecuniary jurisdiction upto Rs.1,000/-, then, since the original court and the appellate court cannot be the same, court of the Senior Civil Judge/Additional Senior Civil Judge, therefore, against decrees and orders passed by the Senior Civil Judges/Additional Senior Civil Judges in suits having pecuniary jurisdiction upto Rs.1000/-, the first appeal against the orders/decrees passed by the Senior Civil Judge/Additional Senior Civil Judge will lie to the court of the DJ/ADJ in view of Section 39(1),(2) and (2A) read with Section 34 of the Act.

18. So far as the third query of what would be the position if one party to a suit is a Government body is concerned, the answer is that since there is no such classification which is created by any Act including the Punjab Courts Act, 1918 with respect to such suits, and hence there cannot be any separate court for filing and hearing of appeals filed against decrees or orders in the suit having pecuniary jurisdiction upto Rs.1000/-. Thus, where one of the parties is a Government body the appellate forums with respect to decrees or orders passed by the concerned court will be the same

i.e either the court of the Senior Civil Judges/Additional Senior Civil Judges or the court of the DJ/ADJ as stated above.

19. Reference made by the ADJ vide his order dated 7.9.2010 in MCA No.19/2010 titled as ***Rambir Singh Vs. Slum and JJ Department MCD*** read with the letter of the ADJ dated 8.9.2010 is answered accordingly as stated in paras 17 and 18 above.

VALMIKI J. MEHTA, J

OCTOBER 14, 2014

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