

Court No. - 10

Case :- MATTERS UNDER ARTICLE 227 No. - 7529 of 2023

Petitioner :- Sandeep Parashar

Respondent :- Rao Mohd. Naim Khan And 2 Others

Counsel for Petitioner :- Chetan Chatterjee

Counsel for Respondent :- Ram Kishore Pandey

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Chetan Chatterjee, learned counsel for the petitioner and Sri Ram Kishore Pandey, learned counsel for the respondents.
2. The petitioner is defendant in S.C.C. Suit which is at the stage of cross examination of PW-1. During the pendency of the suit, an application was moved by the defendant-petitioner, purported to be under Order 7 Rule 10 read with Section 151 CPC stating that there being a registered agreement of tenancy in between the parties which contains the rate of rent, the plaintiff has wrongly valued the suit on the basis of alleged oral statement as if the rent was enhanced orally to Rs.5,000/- per month. The application was to the effect that if the recitals contained in the registered agreement are taken into consideration, the suit would be valued towards the lower side and, in that event, it would be cognizable by Judge, Small Causes Court, however, it has been wrongly filed before the District Judge, Saharanpur, which has been transferred to Additional District Judge, Court No.11, Saharanpur and, therefore, the plaint be returned to the proper court.
3. Sri Chetan Chatterjee, learned counsel submits that as per the provisions of Code of Civil Procedure, 1908, the suit has to be filed before the court having lowest pecuniary limits of jurisdiction and, therefore, rejection of the application by the order impugned dated 11.05.2023 is illegal. He further submits that the court below has decided the application as if it was deciding an issue of suit valuation which was not the case before the court.
4. Sri Pandey, learned counsel for the plaintiff-respondents, on the other hand, submits that identical application was rejected on an earlier occasion by order dated 14.03.2022. He further submits that the suit has been valued on the basis of averments contained in the plaint and if the contention of the petitioner is accepted, that would amount to final adjudication of the rate of rent which is yet to be decided by the J.S.C.C. at the time of writing final judgment.

5. Having heard the learned counsel for the parties, I find that the application 33-C was comprehensively based upon the plea of valuation by placing reliance upon the registered agreement. The prayer to return the plaint was also referable to the valuation made and if the Court has considered the entire contents of the application and examined the arguments of the defendant-petitioner on that line, it cannot be said that the adjudication has been made as the court was deciding an issue/point with regard to valuation of the suit.

6. In so far as the submission of Sri Chatterjee that the suit should have been filed before the J.S.C.C. on the basis of recitals contained in the registered agreement, I find that a suit is valued as per the averments contained in the plaint. Though in a regular civil suit, apart from other issues, the issues with regard to valuation of suit and payment of court fees are normally framed and decided as preliminary issues, on the other hand, in a suit cognizable by Judge Small Cause Courts, by virtue of Order 50 CPC, Order XIV (Settlement of Issue) has been excluded from the zone of consideration of J.S.C.C. and, therefore, no such issues are framed during the course of trial of the suit.

7. Nevertheless, points for determination, equivalent to issues, are certainly framed by J.S.C.C. at the time of writing of judgment and one of the issues/points involved in the present case is rate of rent. While deciding the said point, the court shall certainly consider the registered agreement as well as the statement of the plaintiff contained in the plaint in the light of evidence produced.

8. The Court cannot prejudge the controversy with regard to rate of rent and, therefore, rejection of the application of the petitioner is found to be justified. However, considering the fact that rate of rent being an important aspect of the suit itself, rejection of the application 33-C would not come in the way of the defendant-petitioner to argue before the Additional District Judge, the valuation of the suit at the time of final hearing and necessary consequences shall arise at that time.

9. In so far as the rejection of the earlier application is concerned, the same has no relevance as, by the earlier application, the defendant-petitioner had sought permission from the court for production of the plaintiff-respondent for the purposes of recording his statement under Order 10 Rule 2 CPC and, at that time, there was no such application as moved later on by the petitioner in the form of application 33-C.

10. The petition stands **disposed of** with the aforesaid observations and with a direction to the trial court to decide the suit within **next six months**.

Order Date :- 28.10.2023
AKShukla/-