

Reserved

Neutral Citation No. - 2024:AHC-LKO:83147

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 4682 of 2024

Petitioner :- M/S Kandarp Construction India (Pvt.) Ltd. Thru.
Director Jitendra Ojha And 2 Others

Respondent :- Sri Brijesh Pathak

Counsel for Petitioner :- Brijesh Kumar, Rakshit Raj Singh,
Utkarsh Srivastava

Counsel for Respondent :- Sanjeev Singh

Hon'ble Pankaj Bhatia,J.

1. The writ petition in question has been filed challenging the order dated 23.9.2024 whereby the application No. C-14 filed by the appellant in Civil Appeal No.63 of 2024 for deciding the issue of valuation for the purpose of jurisdiction was rejected and the appellate court passed an order that all the issues including the issue of valuation shall be considered at the time of final hearing of the appeal.
2. The facts, in brief, are that the plaintiff, the respondent herein, filed a suit seeking decree for specific performance of the registered Agreement to Sell dated 19.09.1995 in respect of the immovable property before the court of Civil Judge (Senior Division), Lucknow in which the court fees was paid in deficit and subsequently the deficiency of the court fees was made good and the suit was registered as a Regular Suit.
3. It is necessary to note the reliefs sought in the suit, the first being execution of the sale deed in pursuance to the registered agreement to sell, the second being a decree of injunction restraining the defendants from interfering in the possession of the

plaintiff to the suit, and the third being for directing the defendant not to create any third party right.

4. For the purpose of valuation, the suit was valued at Rs.15.00 lacs (Fifteen lacs) for the purpose of relief (a), the court fees of Rs.1,12,907.50 was paid and for the relief (b), the court fees of Rs.500/- was paid. A specific pleading to that effect was made in para 36 of the plaint. The defendants put in appearance and filed their written statement in respect of the pleadings contained in para 36 of the plaint, following was recorded in the written statement :

"Regarding paragraph 36 (thirty six) of the plaint in suit, the valuation of this suit and the court fees paid are not contested, but, the suit is not maintainable and is liable to be dismissed with costs."

5. It also bears from the record that the petitioners no. 2 & 3 herein, contested the suit by filing a separate written statement and the petitioner no.1 filed a separate written statement along with a counter claim claiming that the entire suit property was purchased by the petitioner no.1 from the petitioner no.3 by means of the registered sale deed dated 26.06.2014. He also sought a decree for possession in respect of a portion of the property in possession of the plaintiff and valued his suit (as pleaded in the counter claim) at Rs.20,14,500/-. The said claim of the petitioner no.1 was also contested by the petitioner no.2 and 3 by filing separate written statements. The plaintiff / opposite party filed replication to the written statement as well as to the counter claim as setup by the petitioner no.1 wherein averments contained in the written statement and the counter claim were denied. The suit came to be decided by means of the judgment dated 07.03.2018.

6. It is relevant to notice that after the exchange of the pleadings, as many as thirteen issues were framed with regard to valuation of the suit and for the counter claim, issue no. 6 & 11 were framed. While deciding the issue no.6, which was "whether the plaintiff has undervalued the suit", the trial court decided the issue in favour of the plaintiff and against the defendant. While deciding the issue no.11 which was "whether the counter claim has been undervalued", the trial court once again decided the same issue in favour of the counter claimant and against the plaintiff. After the decision was rendered by the trial court, an appeal was filed which was registered as Regular Civil Appeal No.63 of 2014 (Annexure no.7). The Civil Appeal was valued by the defendant at Rs.15,00,000/- (Fifteen lacs). The following was recorded in the memo of the appeal :

Valuation of the Suit :	
(A) For Specific Performance	: Rs.15,00,000.00
(B) For Permanent Injunction	: Not valued
Total Valuation	: Rs.15,00,000.00
Court Fees Paid	: Rs.1,13,410.00
Valuation of First Civil Appeal	: Rs.15,00,000.00
Court Fees Paid	: Rs.1,14,410.00

7. One the grounds taken in the appeal was that the trial court has erred in failing to consider that the suit for injunction was not valued and it was the duty of the trial court to have directed the plaintiff to put valuation in respect of the relief for perpetual injunction in the suit. The other grounds need not detain this court as the appeal is pending consideration.

8. During the pendency of the appeal, an application was filed by the appellant, which was numbered as C-14 with the prayer that in view of the fact that the plaintiff had not valued the suit for perpetual injunction, directions be issued to rectify/clarify the

valuation setup by the plaintiff for the reliefs of permanent injunction for the effective adjudication of the present suit, otherwise the defendant shall suffer irreparably. The said application was opposed by the plaintiff and the impugned order came to be passed by the appellate court recording that all the issues including the issues raised shall be considered and decided when the appeal is finally decided.

9. It is essential to notice that in the application filed by the plaintiff, no pleadings were made that on account of improper valuation, as claimed by the appellant, the jurisdiction of the suit or the appellate court would get adversely affected. The said application is on record as Annexure no.6 to the petition.
10. While arguing the present petition, the counsel for the petitioner Sri Brijesh Kumar Saxena assisted by Sri Utkarsh Srivastava and Mr. Rakshit Raj Singh argues that the manner in which the suit was valued was contrary to the statutory provisions contained in the Suits Valuation Act, 1887 inasmuch as the suit has to be valued for all the reliefs claimed and for the purpose of jurisdiction, it would be the aggregate valuation of the suit for different reliefs, which will be the valuation for the purpose of adjudication of the suit as well as the appeal. He further argues that if the plaintiff had valued the suit for permanent injunction, even on the same amounts i.e. Rs.15,00,000/-(Fifteen lacs), the amount on which the relief no.(a) was premised, taking the aggregate value, the valuation of the suit would go to Rs.30,00,000/- (Thirty lacs) and thus, the appellate court would have no jurisdiction to hear the appeal as under the statutory provisions, the first appeal up to an amount of Rs.25,00,000/- can

be heard by the District Judge in a District Court in the State of U.P.

11. He, thus, argues that the issue raised by the petitioner in the application would go to the jurisdiction of the appellate court to hear the appeal and thus, it was incumbent upon the appellate court to have decided the said issue as was raised and the appellate court has erred in not exercising the said discretion and adjourning the matter for decision along with the merits. He further argues that the order impugned passed by the trial court goes to the jurisdiction and thus, it is open for this court to exercise of power under Article 227 to rectify the errors committed by the appellate court.
12. Reliance is placed upon the judgment of this court in the case of ***Sohan Lal Sah vs. Smt. Aruna Sah, 1971 SCC Online All 85: 1972 All LJ 41***, wherein the High Court applying and following the earlier judgments in the cases of **Shidappa Venkatrao Jadhav vs. Rachappa Subrao Jadhav (1912)14 Bom. L.R. 757; Konna Panikar vs. Karunakara and others (1892) 16 ILR 328; and Neelakandhan Nambudripad vs. Tirunilai Ananthakrishna Ayyar and others (1906) 30 ILR 61**, held that if the Suit relates to two or more cause of action or two or more reliefs based upon the same cause of action, the aggregate value of the reliefs claimed will determine the valuation of the suit for the purpose of jurisdiction of the suit as well as the appeal.
13. He further relies on the judgment of this court in the case of ***Pitam Singh and another vs. Bishun Narain and others; AIR 1931 Oudh 58*** and specifically relies on para 7 & 8 of the said judgment which records that general rule is that the value fixed by the plaintiff in his plaint must prima-facie be the basis for the

determination of the forum of the suit or appeal arising out of it, however, the position is different if it is found that the plaintiff has deliberately undervalued or overvalued his claim with the object of having the suit tried or appeal heard by a court which would not have jurisdiction to try the suit.

14. He further relies upon the judgment of this court in the case of ***Mohd. Mushtaq vs. Mt. Baqridan and others; AIR 1952 All 413***, it is not understandable as to how and what issue was decided by the said judgment in paragraph 3 & 4, relied upon by the counsel for the petitioner. Thus, according to me, the same has no relevance.
15. He next relies upon the judgment in the case of ***Arjun Ram Kesari vs. Sheo Charan Ram; AIR 1976 Pat. 141*** and places emphasis on paragraph 2 and 13 of the said judgment, however, no precedent is laid down in either of the two paragraphs. He further places reliance on the judgment of the Supreme Court in the case of ***Surya Dev Rai vs. Ram Chander Rai (2003) 6 SCC 675*** to impress that the power under Article 227 can be exercised in cases occasioning grave injustice or failure of justice. The said judgment has been overruled to a limited extent in the case of ***Radhey Shyam and another vs. Chhabi Nath and others; (2015) 5 SCC 423*** only in respect of the jurisdiction between Article 226 and 227 of the Constitution of India. He thus argues, that the impugned order needs to be quashed.
16. Sri M. C. Chaturvedi, learned Senior Advocate assisted by Sri Sanjeev Singh and Sri Vineet Pandey appear for the respondents strongly oppose petition by arguing that unless this court finds perversity in the order impugned, no interference is called for under Article 227 of the Constitution of India. Reliance is placed

on the judgment of the Supreme Court in the case of ***Garment Craft vs. Prakash Chand Goel (2022) 4 SCC 181***. It was further argued that the argument advanced by the petitioner has no foundation either in the pleading of the application filed before the Civil Appellate Court in the application No.C-14 and thus, cannot be argued. It is further argued that in para 36 of the written statement, the defendant appellant has specifically admitted the pleading with regard to the valuation of the suit and the court fees paid and once the same was not contested, the issue as being tried to be raised is also barred by section 21(2) of the CPC as well as by virtue of Section 12 of the Court Fees Act and Section 11 of the Suit Valuation Act. Reliance is also placed upon the judgment of the Supreme Court in the case of ***Bharat Bhushan Gupta vs. Pratap Narain Verma; (2022) 8 SCC 333***.

17. In the light of the said, it is submitted that the writ petition is nothing but an attempt to delay the proceedings, as such deserves to be dismissed. It is further prayed that suitable direction should be issued by this court to hear and decide the appeal expeditiously.
18. In the light of the arguments raised, it is essential to consider the provisions of Suits Valuation Act and the provisions of the CPC specifically section 21(2).
19. The Suits Valuation Act was enacted in the year 1887 to prescribe for mode of valuing certain suits for the purpose of determining the jurisdiction of the courts with respect thereto. Section 4 of the said Act is as under :

"4. Valuation of relief in certain suits relating to land.- Suits mentioned in paragraphs (iv) (a), (iv-A), (iv-B), (v), (v-A), (v-B), (vi), (vi-A), (viii) and (x)(d) of Section 7 and

Articles 17, 18 and 19 of Schedule II of the Court Fees Act, 1870, as in force for the time being in the Uttar Pradesh, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by, or the title to which is affected by the relief sought, or of the amount involved in or affected by, or the title to which is affected by the relief sought and such value shall in the case of land be deemed to be the value as determinable in accordance with the rules framed under Section 3."

20. Section 7 of the Court Fees Act, 1870 referred to in Section 4 of the Suits Valuation Act specifically Section 7(x), which is relevant for the present case is quoted herein below:

7. Computation of fees payable in certain suits for money-

(i).....

.....

(x) In suits for specific performance :

(a) of a contract of sale - according to the amount of the consideration ;

(b) of contract of mortgage - according to the amount agreed to be secured ;

(c) of a contract of lease-according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award-according to the amount or value of the property in dispute, and such value shall be the market-value which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be.

21. It is also essential to notice the specific mandate of Section 11 of the Suits Valuation Act, which is quoted herein below :

11. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.-

(1) Notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless-

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued, or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1) but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of the appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues, for trial; or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of India, and shall come into force on the first day of July, 1887."

22. On a plain reading of the Section 4 of the Suits Valuation Act, it is evident that for the purposes of valuation of a suit, prescription as contained in the Court Fees Act would be the value for the purpose of jurisdiction which is market value of the property involved or affected by it.
23. In the present case, it is necessary to note the mandate of Section 11(1)(b) of the Suits Valuation Act which places restriction with regard to objection taken in respect of over-valuation or under-valuation of a suit or appeal, is restricted to be entertained by a appellate court unless the objection was taken in the court of first instance or before the hearing at which issues were framed and recorded or in the lower appellate court in the memorandum of appeal to that court (as contained in clause-a) or if the appellate court is satisfied that the suit or appeal was over-valued, or under-valued and the over-valuation or the under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merit.
24. In the present case, as recorded earlier in the pleading specifically in the written statement paragraph 36, there was no contest with regard to valuation, in fact the valuation was admitted. The pleadings required for invoking the mandate of Section 11(1) of the Court Fees Act are clearly absent in the application No. C-14 filed by the appellant. In the absence of any specific pleadings, it is clear that the jurisdiction of the appellate court cannot be invoked as restriction placed under clause (a)(b) of Section 11 are specific. In any event, the appellate court has not decided the issue and has directed the issue to be decided at the time of hearing.
25. It is well settled that the exercise of power under Article 227 is for correcting the errors, in this case no decision whatsoever has been

taken by the appellate court in respect of the issues raised in the application No.6-14 and has left the same to be decided along with the appeal. The said mode of decision making cannot be faulted warranting interference under Article 227 as it is the discretion of the appellate court to decide the appeal in the manner, the appellate court feels appropriate. In the absence of any material prescribed under section 11(1)(a)(b), it was eitherways not open for the plaintiff to insist upon the decision as a preliminary issue.

26. In view of the reasoning recorded above, I do not see any reason to exercise my discretion under Article 227 to set aside the order as prayed. The matter is remanded to the appellate court to decide the Regular Civil Appeal No.63 of 2024 with all expedition without giving any unnecessary adjournment to any of the parties preferably within a period of six months.

27. The writ petition stands **dismissed** with the said observations.

Order Date :- December 11th, 2024.

VNP/-

[Pankaj Bhatia, J.]