HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISIION PETITION No.1929 OF 2014

O R D E R:

The defendant in O.S.No.15 of 2013 on the file of the Court of VI Additional District and Sessions Judge-cum-Labour Court, Godavarikhani is the revision petitioner.

2. This revision calls in question the order dated 12.03.2014 passed by the said Court dismissing I.A.No.322/2013 filed by the defendant/petitioner herein under the provisions of Order VII Rule 11 (b) of the Code of Civil Procedure (for brevity' 'the Code').

3. The circumstances, in nutshell, leading to the filing of the present revision are as *infra* :

3.1. The respondent herein instituted O.S.No.15/2013 for declaration and injunction.

3.2. The defendant/petitioner herein filed a written statement, resisting the suit. In the said suit, the defendant/petitioner herein filed I.A.322/2013 under the provisions of Order 7 Rule 11 (b) of the Code for rejection of the plaint on the ground that the plaintiff did not properly value the suit for payment of court fee.

3.3. Plaintiff/respondent herein filed a counter, resisting the said application filed by the petitioner herein. The learned VI Additional District and Sessions Judge, Godavarikhani, by way of order dated 12.03.2014, dismissed the said I.A.No.322/2013.

4. Challenging the said order passed by the learned District Judge, the present revision has been filed by the defendant.

5. Heard Sri K.Vivek Reddy, learned counsel for the petitioner and Sri B.Nalin Kumar, learned counsel for the respondent apart from perusing the material available before the Court.

6. It is contended by the learned counsel for the petitioner that the order under revision is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VII Rule 7 (b) of the Code. It is further contended that the grounds taken in the affidavit filed in support of the application were not properly considered by the Court below and had the contents of the affidavit been considered in a proper manner, the order impugned would not have emanated. It is further submitted by the learned counsel for the petitioner that the order impugned is also opposed to the very spirit and object of the provisions of Section 34 of the Specific Relief Act, 1963 and Section 24 (d) of the A.P. Court Fees and Suits Valuation Act, 1956 (for brevity 'Court Fees Act'). It is further argued by the learned counsel that since the plaintiff improperly valued the suit, the Court below is under an obligation to reject the plaint.

To bolster his submissions and contentions, the learned counsel for the petitioner places strong reliance on the Judgments in ***M.A.JABHAR v. THE STATE OF ANDHRA PRADESH***[1], ***STATE OF A.P AND OTHERS v. V.NARENDER REDDY***[2] ***and CHIRALA RATE PAYERS AND CIVIC AMENITIES ASSOCIATION v. CHIRALA MUNICIPALITY***[3].

7. On the contrary, it is vehemently contended by the learned counsel for the respondent that the very I.A filed by the petitioner herein is not maintainable and that the respondent herein would not get any monitory benefits and that exact value cannot be determined, as such, the plaintiff is correct in notionally valuing the suit at Rs.11,00,000/- for payment of court fee. It is further submitted by the learned counsel that the learned District Judge assigned cogent and convincing reasons for rejecting the application and in the absence of any perversity and jurisdictional error the petitioner herein is not entitled for any relief from this Court under Article 227 of the Constitution of India. It is nextly

contended by the learned counsel that the value of the relief sought by the plaintiff company cannot be estimated now.

In support of his submissions and contentions, the learned counsel for the respondent takes the support of the judgment reported in ***THE SATTENAPALLI PANCHAYAT BOARD v. YEKKALA LAKSHMI KANTAM AND OTHERS[4].***

8. The material available before this Court vividly discloses that the respondent herein instituted suit, O.S.15/2013, on the file of the Court of the VI Additional District and Sessions Judge against the petitioner herein for the following relief:

> "It is therefore prayed that this Hon'ble'ble Court may be pleased to pass a decree in favour of plaintiff as under:
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> 1. To declare that the Plaintiff is entitled for the excavation quantities as per bench wise rates along with eligible diesel, actual consumption of explosives as indicated in the Work Order No.7600001590 dated 06.01.2009 for Dump No.1, 3 and Internal Dump and holds good as issued by the defendant in respect of the work already executed and balance work to be executed by the plaintiff.
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> 2. To declare tht the Plaintiff is entitled for the bench wise rates as per the Work Order No.7600001590 dated 06.01.2009 in respect of the quantity dumped in the Dump No.2 as per the instructions of defendant, pending finalization of new rate as the dump is out of the scope of the Work Order.
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> 3. Restraining the defendant from terminating the contract awarded to the Plaintiff vide Work Order No.7600001590 dated 06.01.2009 by means of permanent injunction.
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> 4. Restraining the defendant from taking over the work site which was handed over to the Plaintiff vide Letter dated 09.03.2009 either fully or partly by means of permanent injunction.
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> 5. Costs of the suit to be awarded.

> 6. Any other relief to which the plaintiff is found to be entitled may also be awarded."

9. The defendant/petitioner herein filed a written statement, opposing the reliefs sought by the plaintiff/respondent herein. A reading of the relevant portion set out in the plaint clearly shows that the plaintiff/respondent herein is seeking a declaration that it is entitled for the excavation quantities as per the bench wise rates along with eligible diesel, actual consumption of explosives as indicated in the work order No.7600001590 dated 06.01.2009 for Dump Nos.1, 3 and internal dump and also for a declaration that the plaintiff is entitled for the bench wise rates as per the said work order in respect of the quantity dumped in the Dump No.2.

10. As per the affidavit filed in support of the present application in I.A.No.322 of 2013, it is the case of the defendant/petitioner herein that the respondent/plaintiff herein did not properly value the suit for the purpose of Court fee and even according to the document i.e., letter dated 18.07.2013, the amount due shown by the plaintiff is Rs.134.30 crores as on 01.07.2013 including the interest and the plaintiff also reiterated the same vide letter dated 29.07.2013 and 28.08.2013. It is also the contention of the learned counsel for the petitioner that the Court below did not properly consider the impact of the provisions of the Specific Relief Act, 1963 and the A.P. Court Fee and Suit Valuation Act, 1956 and various authoritative pronouncements on the subject matter.

11. The provisions of law which are germane and relevant for the purpose of adjudicating the issue in the present revision are Order VII Rule 11 of the Code of Civil Procedure. Order VII Rule 11 of the Code of Civil Procedure reads as under:

> "**Order VII Rule 11.** Rejection of plaint— The plaint shall be rejected in the following cases:—
> (a) where it does not disclose a cause of action;
> (b) 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;
> (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
> (d) where the suit appears from the statement in the plaint to be barred by any law :
> [144] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

12. A reading of the above provision of law manifestly shows that the Court is empowered to reject the plaint when it is not properly valued and when no proper Court fee is paid. It is also a settled proposition of law that this power to reject the plaint is required to be exercised with great caution, care and circumspection.

13. The provisions of the Court Fees Act are also required to be noted in this connection. Section 11 of the said legislation imposes an obligation on the Court, before ordering the plaint to be registered, to decide on the allegations contained in the plaint and on the materials furnished by the plaintiff and the proper fee payable thereon. Sub-section (2) of Section 11 enables the defendant in the suit to plead that the subject matter of the suit has not been properly valued or the fee paid is not sufficient.

Sub-section (2) further stipulates in categorical terms that all questions arising on such pleas shall be heard and decided before hearing of the suit. Sub-section (2) of Section 11 further stipulates that if the Court decides that the subject matter of the suit is not properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the subject matter of the suit shall be valued in accordance with the Court's decision and the deficit fee shall be paid and in the event of failure to comply with the same, the same enables the Court to reject the plaint.

14. According to Section 24 of Court Fees Act when a prayer is for a declaration and for possession of the property, the fee shall be computed on the market value of the movable property or three fourths of the market value of the immovable property or on rupees three hundred, whichever is higher and when a prayer is for declaration and for consequential injunction and the relief sought is with reference to any immovable property, the fee shall be computed on one half of the market value of the property or on rupees three hundred, whichever is higher and according to Sub-section (d) of Section 24 in other cases, whether the subject matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher. According to sub-Section (1) of Section 32 of the Court Fees Act, in the case of suits for accounts, fee shall be computed on the amount estimated in the plaint and according to sub-section (2) of Section 32 where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid. Sub Section (3) of Section 32 stipulates that where in any suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount and Sub-section (4) plays on that whether or not a decree is passed under sub-section (2) or (3) the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

15. The issue in the present revision is also required to be examined in the light of the judgments cited by the learned advocates. In the case of ***M.A.JABHAR*** *(supra 1),* a Division Bench of this Court while dealing with the provisions of the Court Fee Act at the last paragraph of the

judgment held as under:

> "From the cases cited by the learned Counsel for the appellant-plaintiff, we find that the various High Courts though accepting the view that the relief has to be valued on the basis of the injury or loss that the plaintiff was trying to be relieved of or the advantage that he would gain, had refused to interfere in the valuation made by the plaintiff on the ground that in the particular cases there was nothing to show that the valuation made by the plaintiff was arbitrary or grossly inadequate. It can also be seen that when there are no specified provisions empowering the Court to go behind the valuation made by the plaintiff and enquire as to the proper valuation that should be made, the Courts were reluctant to interfere. But the provisions of section 24 (d) of the Act are very clear and empower the Court to value the relief claimed by the plaintiff. We are in full agreement with the principles laid down by our High Court that the relief sought by the plaintiff has to be valued, on the basis of the advantage he would gain or the injury or loss he would avoid. Applying that test, from the plaint it is clear that the plaintiff had sought for a declaration that the demand of Rs.60,500 made against him by the Government is illegal. In case the demand made by the Government is allowed to stand, he will suffer an injury or loss to the extent of Rs.60,500. There is no suggestion anywhere in the plaint or during the course of arguments that the Government will not be in a position to recover the whole of the amount from the plaintiff. The valuation put by the plaintiff is grossly inadequate and the plaintiff will have to value the reliefs prayed for by him at Rs.60,500. He will make good the deficit Court-fee here and in the Court below within four weeks from the date of this order. The appeal will be posted for final hearing after the deficit Court-fee is paid by the plaintiff."

16. In the case of ***STATE OF A.P AND OTHERS*** *(supra 2),* another Division Bench of this Court at paragraphs 6 and 7, held as under:

> "6. Now let us see the distraint orders which were passed against the plaintiffs. In Exs.A29 and A30 which are distraint notices, specific demands have been made. It is also not denied that when the plaintiffs gave notice under Section 80 CPC they also knew how much amount is being sought to be recovered from them. Therefore, the plaintiffs could not

have said that they could not value the distraint notices. The suit had to be valued at the amount for which a disadvantage had to be suffered by the plaintiffs. In the plaint, the plaintiffs also claimed the following two reliefs:

(1) Set aside the notice dated 16-5-1991 issued by the 7th defendant under the Revenue Recovery Act.

(2) Mandatory injunction directing the defendants to make good the amounts kept in deposit by the plaintiffs pertaining the Huzurnagar, Kodad and Miryalaguda arrack groups of Nalgonda district.

As a matter of fact the first relief mentioned above was to the effect that defendants should not recover an amount of Rs. 1,88,06,826/- and the second relief was as a matter of fact regarding recovery of the amounts deposited by the plaintiffs with the defendants. Both these amounts were known to the plaintiffs. The learned Additional Advocate-General submits that it is settled law that the plaintiffs had to value the suit on the basis of the advantage sought to be obtained or the loss to be averted. He referred to a Division Bench judgment of this Court reported in Jabbar v. State of A.P., 1969 An.WR 411. The facts of that case reveal that, a suit was laid for declaration that the demand of Rs. 60,500/- as abkari arrears by the government was illegal. An injunction was also sought restraining the government from taking proceedings to recover the said arrears. The plaintiff valued the relief at Rs. 5,100/- and paid the Court fee under Section 24(d) of the Court fee Act. Objection was taken that the relief was not properly valued under Section 24(d) of the Andhra Pradesh Court Fee and Suits Valuation Act and the suit ought to have been valued at Rs. 60,500/- and Court fee should have been paid on it. This objection was considered by the Division Bench. While interpreting the provisions of Section 24(d) the High Court went into the judgments passed earlier and finally came to the following conclusion:

"From the cases cited by the learned Counsel for the appellant-plaintiff, we find that the various High Courts though accepting the view that the relief has to be valued on the basis of the injury or loss that the plaintiff was trying to be relieved of or the advantage that he would gain, had refused to interfere in the valuation made by the plaintiff on the ground that in the particular cases there was nothing to show that the valuation made by the plaintiff was arbitrary or grossly inadequate. It can also be seen that when there are no specified provisions empowering the Court to go behind the valuation made by the plaintiff and enquire as to the proper valuation that should be made, the Courts were

> reluctant to interfere. But the provisions of Section 24(d) of the Act are very clear and empower the Court to value the relief claimed by the plaintiff. We are in full agreement with the principles laid down by our High Court that the relief sought by the plaintiff has to be valued on the basis of the advantage he would again or the injury or loss he would avoid. Applying that test, from the plaint it is clear that the plaintiff had sought for a declaration that the demand of Rs. 60,500/-made against him by the Government is illegal. In case the demand made by the Government is allowed to stand, he will suffer an injury or loss to the extent of Rs. 60,500. There is no suggestion anywhere in the plaint or during the course of arguments that the Government will not be in a position to recover the whole of the amount from the plaintiff. The valuation put by the plaintiff is grossly inadequate and the plaintiff will have to value the reliefs prayed for by him at Rs. 60,500. He will make good the deficit Court fee here and in the Court below within four weeks from the date of this order. The appeal will be posted for final hearing after the deficit Court fee is paid by the plaintiff."
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> 7. In our view, the present suit was not properly valued. The relief (2) which has been referred to herein above was as a matter of fact a relief for recovery of the deposits made by the plaintiff whereas relief (1) was in effect a relief which could have granted the advantage of Rs. 1,88,06,826/- to the plaintiffs if the suit was decreed."

17. In the case of ***CHIRALA RATE PAYERS AND CIVIC AMENITIES ASSOCIATION*** (supra 3), this Court while dealing with an issue touching the house tax assessment, held at paragraph 14, held as under:

> "14. Having regard to the authoritative pronouncements as aforementioned, and having regard to the fact that the members of the petitioner-Association have been served with the demand notices to a tune of Rs. 31,86,412/- which is the amount the plaintiff would avoid the liability, it is held that the relief sought by the plaintiff-Association has to be valued on the basis of the advantage they would gain or the injury or loss the respondent-Municipality would be restrained, if the suit is decreed. Admittedly, if the suit is decreed, the plaintiff-Association would gain Rs. 31,86,412/- and the Municipality will suffer an injury or loss to the extent of Rs. 31,86,412/-. Therefore, I am of the opinion that no illegality is discernible in the order passed by the trial court as affirmed by the lower

appellate court warranting interference by this court."

18. In the case of ***SATTENAPALLI PANCHAYAT BOARD*** *(supra 4),* this Court at paragraphs 6 and 7, held as under:

> "6. The Gram Panchayat has preferred the second appeal while the tenants have filed the cross-objections.
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> While the appeal has been numbered without any objection, as regards the cross-objections the cross-objectors on the amount of difference between the revised taxes and the previously existing house taxes which comes to Rs. 40348.08 paise. This objection is raised on the basis of the judgment of this Court reported in Jabbar v. State of Andhra Pradesh. (1969) 1 AWR 411. That was a case in which the plaintiff filed a suit for declaration that the auction of a particular property held for the recovery of certain excise arrears, was void and of no effect and that the demand made by the defendant for the payment of a sum of Rs. 60500 /- alleged to be due by the plaintiff is illegal, and for an injunction restraining the defendant from attempting to enforce the said demand as a Government demand. The Bench held that in such a case " the relief sought by the plaintiff has to be valued on the basis of the advantage he would gain or the injury or loss he would avoid. Applying the test, from the plaint it is clear that the plaintiff had sought for a declaration that the demand of Rs. 60,5000 /- made against him by the Government is illegal. In case the demand made by the Government is allowed to stand, he will suffer an injury or loss to the extent of Rs. 60,5000 /-. The valuation put by the plaintiff is grossly in-adequate and the plaintiff will have to value the reliefs prayed for by him at Rs. 60,5000 /-.
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> 7. Thus the Bench directed that the value for the purpose of payment of Court-fee in a suit of declaration covered by Section 24(d) of the Act is the basis of the advantage that the plaintiff would gain or the injury or loss that he would suffer. The present suit out of which this second appeal arises is not a suit to avoid any particular demand made against the plaintiffs. It is a suit for a declaration that the general revision of house taxes made by the Gram Panchayat is illegal and void for failure to comply with the statutory requirements. It is not intended to restrain the defendant from demanding and collecting a particular sum, but it is for a general declaration. Therefore there is no particular advantage the plaintiffs would gain or particular injury or loss they would be avoiding under the decree itself. Even after the plaintiffs succeed the defendant may still, revised the taxes in accordance with law

> and thereafter make a demand. At the stage at which the suit was filed there was no demand made against any of the plaintiffs. The principle of the above decision therefore does not apply to this case. I therefore hold that the plaintiffs are not therefore liable to pay court-fee valuing the appeal at the difference in the revised taxes and the existing taxes i.e., on Rs. 40,348.08 paise."

19. A reading of the relevant provisions of the Court Fees Act candidly demonstrates that the plaintiff is obligated to value the suit correctly and in accordance with the above referred provisions of the statute. In the event of failure to do so, the Court is equally obligated under the provisions of the said legislation and also under the provisions of Order VII Rule 11 to reject the plaint. But the said power to reject under Order VII Rule 11 is required to be exercised very sparingly and after thoroughly examining the issue involved in the suit by taking into consideration the relevant provisions of the Code of Civil Procedure and the Court Fees Act.

20. In the instant case, though the defendant/petitioner herein urged a number of grounds and referred to the various correspondences made by the plaintiff with the defendant Company, the learned District Judge did neither refer to the same nor the learned Judge considered and answered the said aspects. A perusal of the impugned order also clearly makes it manifest that the learned District Judge had absolutely no occasion to examine the issue in the light of the principles laid down in the above referred judgments. In the definite opinion of this Court, the Consideration of the issue undertaken by the learned Judge is not on proper lines. Since there is a serious dispute with regard to the valuation of the suit and as it has great amount of impact on the maintainability of the very suit itself, in the definite opinion of this court, the learned District Judge ought to have considered the relevant provisions of the Court Fee Act and the principles laid down by the Court on the issues raised. Therefore, this Court is of the opinion that this matter requires fresh consideration by the learned Judge in the light of the principles laid down in the above authoritative pronouncements

and the relevant provision of law.

21. For the aforesaid reasons, revision is allowed, setting aside the order dated 12.03.2014 passed in I.A.NO.322/2013 inn O.S.No.15/2013, on the file of the VI Additional District and Sessions Judge-cum-Labour Court and I.A.No.322/2013 in O.S.No.15/2013 is remitted back to the Court below for consideration afresh after giving opportunity to all the stake holders, without being influenced by any of the observations made either in the impugned order or in the present order. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:09.02.2015
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HON'BLE SRI JUSTICE A.V.SESHA SAI

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CRP.No.1929 of 2014

Date :09.02.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISIION PETITION No.1929 OF 2014

Date :09.02.2015

Between:

The Singareni Collieries Co. Ltd.,
Kothagudem Colleries, Khammam District,
Andhra Pradesh – 507 101,
Represented by its Chairman & Managing Director.

… Petitioner

and

M/s. NCC Limited (Formerly Nagarjuna Construction
Company Limited), having its Registered Office
at "NCC HOUSE", Madhapur, represented by its
Project Manager and Special Power of
Attorney Holder, Sri N.S.Prakasa Rao.

… Respondent

[1] AIR 1969 An WR 411

[2] 2003 (4) ALD 345 (DB)

[3] 2007 (4) ALD 458

[4] AIR 1973 A.P 156 (V 60C 44)