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

\+   **CM(M) 144/2015 and CM No.3110/2015 (Stay)**

%   Reserved on: 23rd February, 2015
Decided on: 18th March, 2015

PRAVESH MIGLANI ..... Petitioner
Through: Mr. S.K.Bhaduri and Ms. Kirti Parmar, Advocates.

versus

PUNAM ANAND KUMAR ..... Respondent
Through: Mr. Naveen K. Chaoudhary, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Respondent/plaintiff filed a suit for ejectment, recovery of money of Rs.36,767/-, use and occupation charges/mesne profit and interest against the Petitioner/defendant. In the plaint it was pleaded that late Mrs.Veena Paintal had let out the premises to the Petitioner/Defendant for residential purposes at monthly rent of Rs.55,00/- vide Lease Deed dated 29th June, 2000 for a period of 11 months which expired on 31st May, 2001 and thereafter there was no renewal of the Lease Deed though the rent was being paid from month to month basis. Mrs.Veena Paintal terminated the tenancy of the Petitioner/Defendant in respect of the said premises by virtue of the legal notice dated 10th November, 2001 however, the Petitioner failed to vacate the premises. Mrs.Veena Paintal filed a suit for ejectment against the Petitioner/Defendant which was decided in favour of Mrs.Veena Paintal vide judgment dated 19th September, 2009. In an appeal filed by the Petitioner the said judgment of the learned Civil Judge was set aside and the suit was

dismissed on the ground that the notice of termination of tenancy dated 10th November, 2001 could not be proved. Mrs.Veena Paintal again issued a legal notice dated 24th February, 2010 however, despite the said notice the Petitioner/Defendant failed to vacate the premises. Before Mrs.Veena Paintal could initiate proceedings she passed away on 4th April, 2010. In terms of the registered Will dated 6th October, 2006 of Mrs.Veena Paintal, the Plaintiff/Respondent herein became the sole and exclusive owner of the premises and thus filed the suit. To avoid any complication before filing the suit, the Respondent/Plaintiff issued a fresh legal notice dated 6th May, 2010 to the Petitioner/Defendant who still failed to vacate the premises.

2. In the suit filed by the Respondent/Plaintiff, following prayers were made:

> *"(a) Pass a Decree of Ejectment of defendant from the said Premises, that is portion of basement area measuring 600 (six hundred) square feet, in the rear building of property bearing No.71, Paschimi Marg, Vasant Vihar, New Delhi-110057, as more particularly shown as shaded and delineated in Red in the site plan annexed hereto as Annexure 'A'.*
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> *(b) Pass a Decree of Rs.36,767/- (Rupees Thirty Six Thousand Seven Hundreds Sixty Seven only) from September 2009 to May 26, 2010 @ Rs.5,500/- (Rupees Five Thousand Five Hundred only) per month along with interest @18% (eighteen percent) per annum from the due date till realization of the entire amount;*
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> *(c) Pass a Decree in favour of the plaintiff and against the defendant for payment of use and occupation charges of Rs.10,000/- (Rupees Ten Thousand only) by defendant to the plaintiff in respect of the said*

Premises from May 27, 2010 upto May 31, 2010, along with the interest @ 8% (eighteen percent) per annum;

(d) *Pass a Decree in favour of the plaintiff and against the defendant of damages/mesne profits from June 1, 2010 @ Rs.100/- (Rupees One Hundred only) per sq. ft. per month, which works out to @ Rs.60,000/- (Rupees Sixty Thousand only) per month, or at such higher rate/amount as may be determined with reference to the market rent in respect of the said premises prevailing from time to time, till the date the defendant hands over vacant peaceful physical possession of the said premises to the plaintiff.*

(e) *Grant Interest @ 18% (eighteen percent) per annum, in favour of the plaintiff and against the defendant, w.e.f May 27, 2010, pendent elite and future on the amount of damages/mesne profit determined by the Hon'ble Court, as payable by the defendant from the respective due dates upto payment in full;*

(f) *Pass a Decree of Perpetual Injunction in favour of the plaintiff and against the defendant restraining the Defendant and his agents, officers and employees from in any manner transferring, alienating, parting with possession of and/or otherwise creating third party rights/interest in respect of the said Premises or any part thereof;*

(g) *Grant costs of the Suit; and*

(h) *Grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the facts and in the circumstances of the case."*

3. In para-22 of the suit the Respondent/Plaintiff valued the relief as under:

> "22. *The plaintiff values the relief of Ejectment at Rs.66,000/- (Rupees Sixty Six Thousand only) being 12 (twelve) times the monthly rent payable for the said Premises immediately before the termination of the tenancy of the defendant. Appropriate Court fees of Rs.3,030/- (Rupees Three Thousand Thirty only) on this relief is being paid. Plaintiff values the relief of recovery of money at Rs.36,767/- (Rupees Thirty Six Thousand Seven Hundred Sixty Seven only). Appropriate Court fees of Rs.2,540/- (Rupees Two Thousand Five Hundred Forty only) on this relief is being paid. Plaintiff values the relief of use and occupation charges from May 27, 2010 upto May 31, 2010, at Rs.10,000/- (Rupees Ten Thousand only). Appropriate Court fees of Rs.1,126/- (Rupees One Thousand One Hundred Twenty Six only) on this relief is being paid. The plaintiff values the relief of injunction at Rs.3,35,000/- (Rupees Three Lakhs Thirty Five Thousand only). Appropriate Court fees of Rs.5,619/- (Rupees Five Thousand Six Hundred Nineteen only) on this relief is being paid. The Plaintiff accordingly values the suit for the purposes of jurisdiction at Rs.4,47,767/- (Rupees Four Lakhs Forty Seven Thousand Seven Hundred Sixty Seven only). The Plaintiff undertakes to pay such additional Court Fee on the amount of use and occupation charges/mesne profits as and when decreed."*

4. The Petitioner/Defendant in the written statement took a preliminary objection that the Respondent/plaintiff has not been able to show how the value of relief of injunction has been fixed at Rs.3,35,000/- thereby taking out the suit from the Court of lowest pecuniary jurisdiction being the competent Court. Relying on Section 15 of CPC it was stated that the suit was not maintainable and it ought to have been filed in the Court of competent jurisdiction of the lowest grade to try it. Despite this preliminary

objection no issue regarding maintainability of the suit in respect of pecuniary jurisdiction was framed and thus the Petitioner/Defendant filed an application under Order 14 Rule 5 CPC on which the following additional issue was framed:

> *"Whether this Court lacks pecuniary jurisdiction over the present matter? OPD"*

5. Learned counsel for the Petitioner by way of an application under Section 151 CPC sought disposal of this issue as the preliminary issue stating that the same goes to the root of the matter. Vide the impugned order dated 10th December, 2014 the learned ADJ dismissed the application and held that the issue of pecuniary jurisdiction cannot be decided as a preliminary issue as it has bearing on the claim of mesne profits/damages. Hence the present petition.

6. Learned counsel for the petitioner submits that there is no dispute with regard to the valuation of Rs. 66,000/- qua the relief of ejectment or the recovery of money of Rs.36,767/- for the user charges from 27th May, 2010 to 31st May, 2010. However, the dispute relates to the valuation of Respondent/Plaintiff with regard to the relief of injunction @ Rs.3,35,000/- whereby the suit was finally valued for the purposes of jurisdiction at Rs.4,47,767/-. It is stated that as per Section 15 CPC a suit has to be filed in the Court of lowest grade competent to try it, thus the respondent in order to curtail a right of appeal to the petitioner increased the valuation arbitrarily. Since the issue relates to the pecuniary jurisdiction of the Court to try the case it ought to be decided as a preliminary issue. Reliance is placed on *Sujir Keshav Nayak vs. Sujir Ganesh Nayak, AIR 1992 SC 1526; Dr. Om*

Prakash Rawal vs. Mr.Justice Amrit Lal Bahri, AIR 1994 HP 27; Mahesh Gupta vs. Ranjit Singh and others, I.A. No.45/2009 in CS (OS) No.1574/2007 decided on 16th February, 2009 and *Suryapal Singh vs. Sudha Tomar, AIR 2014 MP 23*.

7. Learned counsel for the Respondent states that the issue being based both on facts and law, the same will have to be decided after the evidence is led. Further the said additional issue framed on 19th December, 2011 is a redundant issue as a decree for possession in favour of the Plaintiff/Respondent and against the Petitioner/Defendant qua the suit property has already been passed under Order 12 Rule 6 CPC. It is further stated that the Petitioner/Defendant had earlier moved an application under Order 7 Rule 11 CPC on the same ground which was dismissed by the learned Trial Court and the appeal against the said order was also dismissed as withdrawn. Learned counsel for the Respondent relies upon the decision in *Shakuntala Rani vs. Rajesh Bhatt (Deceased) through LRs., 80 (1999) DLT 98*.

8. I have heard learned counsel for the parties. The short issue before this Court is whether this additional issue is required to be decided as a preliminary issue or at the end of the trial. The learned Additional District Judge vide the impugned order dated 10th December, 2014 held that the issue of pecuniary jurisdiction cannot be decided as preliminary issue as it has bearing on the claim of mesne profit and damages and thus evidence is required to be led by the parties and dismissed the application of the Petitioner.

9. Order 14 Rule 2 CPC provides as under:

"Order XIV Rule 2. Court to pronounce judgment on all issues.- *(1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

10. The Supreme Court in <u>*Sujir Keshav Nayak*</u> (Supra) held:

"3. The question however is if the disclosure of valuation is in absolute discretion or option of the Plaintiff or it can be objected to by the Defendants and adjudicated upon by the Court, and if so in what cases. It was left open in Chettiar's case (supra). Provisions of Central and State Act have already been extracted earlier. Sub-section (2) of Section 36 of Kerala Act amply safeguards the interest of revenue. Similar provisions exist in Central Act. But under Code of Civil Procedure plaint is liable to be rejected under Order 7 Rule 11 if it is under-valued. How to reconcile the two provisions the one leaving it to absolute discretion of Plaintiff to value the suit as he considers proper and the other to reject a plaint if it is under valued. For this it is necessary to examine the scheme disclosed in the Code of Civil Procedure relating to filing of suit. Section 15 of Code of Civil Procedure (hereinafter referred to as Code of Civil

Procedure) provides that any suit shall be instituted in the court of the lowest grade competent to try it. What is a court of lowest grade and for what nature of suit has been determined and regulated by State enactments. Competency refers to jurisdiction territorial or pecuniary of limited or unlimited limits. In courts of limited pecuniary jurisdiction valuation assumes great importance. A Plaintiff may over or undervalue the suit for purposes of avoiding a court of a particular grade. In the former the plaint may be returned under 0.7 Rule 10 for presentation in proper court but in latter it is liable to be rejected. Since undervaluation goes to the root of maintainability of the suit a Defendant is entitled to raise the objection irrespective of the nature of the suit. That is why this Court in Abdul Hamid Shamsi v. Abdul Majid and Ors., 1988 (2) SCC 575 while upholding the right of the Plaintiff to value the suit for accounting according to his own estimate held that he "has not been given the absolute right or option to place any valuation whatever in such relief. "But that was a case of limited pecuniary jurisdiction in which the Defendant could object as arbitrary undervaluation could result in rejection of the plaint. Such right should be denied in suits of unlimited jurisdiction for more than one reasons. A Defendant cannot, as observed by the Privy Council in R.S. Jadhav Desai v. S.V. Jadhav Desai,1918 P.C. 188, is entitled to use it as a weapon to non suit the Plaintiff. Then, by very nature of the suit a Defendant is, normally, interested in delaying its adjudication which at times may frustrate the very purpose of the suit. Further, the provisions in Central Act and State enactments ensure that interest to State may not suffer by providing that no decree shall be passed or executed unless the court fee is paid on difference between the valuations disclosed and amount for which the suit is decreed. In Mennakshi Sundaram Chettiar v. Venkatachalam Chettiar, 1980 (1) SCC 616 it was observed that even though in suit for accounting the loss of revenue is ensured by statutory provision yet a Plaintiff has a duty to give a fair estimate of the amount for which he sues. Reason for it obviously was *insistence on being honest and just when approaching a court of law. The observation was made because of the duty cast on court by O.7 Rule 11 of Code of Civil Procedure. But there is no indication if the suit was filed in a court of limited pecuniary jurisdiction. It can thus be resolved that in suits for accounting or for dissolution of partnership and accounting filed in courts of limited pecuniary jurisdiction the Plaintiff must take every care to disclose valuation which is not arbitrary as the plaint is liable to be rejected on objection of the Defendant. But in suit of such nature filed before courts of unlimited jurisdiction the valuation disclosed by the "Plaintiff may be accepted as correct. This however does not mean that the courts power to examine the correctness of valuation is taken away. If on perusal of plaint the court is prima facie satisfied that the Plaintiff has not been fair and valued the suit or relief arbitrarily it is not precluded from directing the Plaintiff to value in property and pay court fee on it. In Tara Devi v. Sri. Thakur Radha Krishna Maharaj, 1987 (4) SCC 69 this Court observed. "It is now well settled by the decisions of this Court in Sethappa Chettiar v. Ramanathan Chettiar and Meenakshisundaram Chettiar v. Venkatachalam Chettiar that in a suit for declaration with consequential relief falling under Section 7(iv) (c) of the Court Fees Act, 1870, the Plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted it is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation in arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same". "But the Defendant has no right to raise such objection nor the court should dwelve into the matter after filing of written statement on evidence. The law on this aspect, thus should be taken to be as under:*

(1) Where the question of court fee is linked with jurisdiction a Defendant has a right to raise objection and the court should decide it as a preliminary issue.

(2) But in those cases where the suit is filed in court of unlimited jurisdiction the valuation disclosed by the Plaintiff or payment of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.

(3) This does not preclude the court even in suit filed in court of unlimited jurisdiction from examining if the valuation, on averments in plaint, is arbitrary."

11. The grievance of the petitioner in the present case is qua overvaluation qua the relief of injunction and not undervaluation. In *Sujir Keshav Nayak (supra)* the Supreme Court was dealing with a case of undervaluation and noted that if on examination the valuation is found to be arbitrarily, the plaint is liable to be returned whereas in case of undervaluation the same is liable to be rejected thus going to the root of the matter. Whether an issue can be decided as a preliminary issue or not was dealt with by the Supreme Court in *Ramesh B. Desai & Ors. Vs. Bipin Vadilal Mehta & Ors. (2006) 5 SCC 638* and it was held-

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

"Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit."

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."

12. The Court in which the suit was instituted had the pecuniary jurisdiction from above Rs.3 lakhs to Rs. 20 lakhs. The pecuniary jurisdiction has to be seen as per the averments in the plaint at the time of filing of the suit and not subsequent event as alleged by the Petitioner that since the judgment and decree qua possession has already been passed in favour of the Respondent the relief of injunction has become inconsequential. Undoubtedly Section 15 CPC provides that a suit shall be instituted in the Court of lowest grade competent to try it however as per Section 7(iv) of the Court Fees Act, the plaintiff has the right to value the relief of injunction as he deems fit subject to the same being neither arbitrary

nor fanciful. Whether the valuation for the relief of injunction is arbitrary or fanciful is a question of fact and thus cannot be decided as a preliminary issue. Further the respondent in the suit not only prays for injunction but also mesne profit and damages which were not quantified and for which it was stated that the court fees will be paid later on, this additional issue cannot be decided without leading evidence. The issue of court fees and pecuniary jurisdiction of the learned Trial Court being a mixed question of fact and law, the learned Trial Court rightly held that the issue cannot be decided as a preliminary issue. I find not merit in the present petition.

13. The petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 18, 2015
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