

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 2 of 2015**

Santosh Rakhecha, S/o Shri Pratapchand Rakhecha, Aged about 55 years, R/o Dukandar, Sadar Bazar, Dhamtari, District Dhamtari (C.G.)
.....defendant

---- Applicant**Versus**

Chatur Ram, S/o Shri Sukhram Sahu, Aged about 44 Years, R/o Village Khartuli, Tahsil and District Dhamtari (C.G.)..... **Plaintiff**

--- Respondent

For Applicant: Mr. Jitendra Pali, Advocate.

For Respondent: Mr. Adil Minhaj, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****15/06/2016**

(1) Invoking revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (for short 'CPC'), applicant/defendant has filed this revision petition questioning the impugned order dated 10.10.2014 by which his application under Order 7 Rule 11 (b) of the CPC has been rejected by trial Court.

(2) Respondent/plaintiff filed a suit for permanent injunction stating *inter alia* that the applicant/defendant is Financier from whom he has got a Tractor financed amounting to Rs.1,70,000/- and applicant/defendant has demanded and taken his Registration

Certificates of Tractor & motorcycle and the documents of his land as a security. The respondent/plaintiff has made payment of the Rs.1,70,000/- to the applicant/defendant but still the document is not being returned; and on the contrary more money has been demanded by the applicant/defendant and, therefore, applicant/defendant be restrained from keeping and using his title documents.

(3) Applicant/defendant filed his written statement before the trial Court and denied the plaint averments and also took a specific plea in para 11 of written statement that valuation of the suit property is Rs.1,70,000/- and the suit ought to have been valued as per Section 7(iv)(c) of the Suits Valuation Act, 1887 and, thus the suit filed by the plaintiff/respondent is under valued.

(4) Thereafter, on 13.12.2014, the trial Court has framed an issue as to whether sufficient court fee has been paid or not.

(5) Applicant/defendant has filed application under Order 7 Rule 11 (b) of the CPC on 28.06.2014 stating *inter alia* that the suit is under valued, therefore, it is barred by Order 7 Rule (11)(b) of the CPC and suit is liable to be rejected, which is suitably replied by respondent/plaintiff.

(6) The trial Court, by its impugned order dated 10.10.2014, rejected the said application holding that no relief of recovery of Rs.1,70,000/- or any other relief in this regard has been sought for

except using and keeping the title documents of the plaintiff by the defendants and, therefore, valuation of the suit is legal & proper.

(7) Learned counsel appearing for the applicant/defendant in sum & substance would submit that respondent/plaintiff has indirectly claimed the consequential relief of recovery of documents and hence the value of the said documents would be the value of the suit and the respondent/plaintiff has undervalued the suit and, therefore, the respondent/plaintiff ought to have valued the suit at Rs.1,70,000/-.

(8) Per contra, learned counsel appearing for the respondent/plaintiff would submit that the only relief claimed is restraining the defendant from keeping and using the valid title documents of the plaintiff. He would further submit that entire amount of Rs.1,70,000/- has already been paid to the defendant but still the documents are not being returned to him, therefore, revision deserves to be dismissed.

(9) I have heard learned counsel appearing for the parties and have gone through the material available on record with utmost circumspection.

(10) Order 7 Rule 11 (b) CPC reads as under:-

“11. **Rejection of plaint.** –The plaint shall be rejected in the following cases:-

(a) xxx xxx xxxx;

(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) xxx xxx xxxx;

(d) xxx xxx xxxx;

(e) xxx xxx xxxx;

(f) xxx xxx xxxx;

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers 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 from correcting the valuation or supplying the requisite stamp-papers, 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.”

(11) From the perusal of the aforesaid provisions, it is clear that first part of the Order 7 Rule 11(b) is “where the relief claimed is undervalued; and second part thereof is “on being required by the court to correct the valuation within a time to be fixed by the Court, plaintiff fails to do so.

(12) Way back, the Supreme Court in the matter of M/s. Commercial Aviation and Travel Company and others Vs.

Vimla Pannalal¹, while considering the provisions contained in Order 7 Rule 11(b) of the CPC as under:-

“9. In this connection, we may refer to the provision of Order VII, Rule 11 (b) of the Code of Civil Procedure, which provides, inter alia, that the plaint shall be rejected where the relief claimed is under-valued 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. It is manifestly clear from the provision of Order VII, Rule 11(b) that a court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected.”

(13) Likewise, in the matter of **A. Nawab John and others Vs. V.N. Subramaniam**², the Supreme Court considered the requirement of Order 7 Rule 11 (b) CPC and held as under:-

“33. Order 7 Rule 11 CPC requires a plaint to be rejected, inter alia, where the relief claimed is undervalued and/or the plaint is written on a paper insufficiently stamped, and, in either case, the plaintiff fails to either correct the valuation and/or pay the requisite court fee by supplying the stamp paper within the time fixed by the court.”

1 (1988) 3 SCC 423

2 (2012) 7 SCC 738

(14) The full Bench of High Court of Madhya Pradesh in the matter of **Subhash Chand Jain Vs. The Chairman, M.P. Electricity Board and others**³ has held that allegations in the plaint, including the substantive relief claimed must be the basis for settling the court-fee payable by the plaintiff. Paragraph seven of the report states as under:-

“7. Settled legal position seems to be that plaint has to be read as a whole. Allegations in the plaint including the substantive relief claimed must be the basis for settling the court-fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of court for looking at the substance of the relief asked for. The nature of suit under Section 7(iv) is such where the Legislature could not lay down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and the reliefs, Court has to intervene. While doing so, concept of real money value forms intergral part of court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of court-fee by drafting the plaint in such a way that results in under-valuation of the plaint and the relief, it will be a case of arbitrary and unreasonable under-valuation which Court is bound to correct.”

(15) In the matter of Virendra Kumar Shukla Vs. UCO Bank & Anr. ⁴, the proposition of law laid down in **Subhash Chand Jain** (supra) has been followed with approval by Chhattisgarh High Court.

(16) In the present case, the trial Court has clearly held that no

³ AIR 2001 MP 88

⁴ AIR 2006 CG 104

relief of recovery of money has been claimed and for the suit for permanent injunction, proper court fee has been paid and, therefore, none of condition precedent for invoking Order 7 Rule 11 (b) are itself not satisfied as it has not been held by the trial Court that suit is undervalued and plaintiff has failed to correct it within the time fixed by the Court. Thus, the condition precedent for invoking Order 7 Rule 11 CPC are not satisfied. Therefore, I do not find any jurisdictional error in the impugned order warranting interference by this Court in exercise of its revisional jurisdiction under Section 115 of the CPC .

(17) Accordingly, the revision fails and is hereby dismissed.

(18) Record of the trial Court be sent back forthwith.

(19) However, the trial Court is directed to decide the civil suit expeditiously preferably within a period of six months from the date of receipt of copy of this order keeping in view the fact that the said suit is pending before the trial Court since 3.1.2014.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-