

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.954 OF 2015
IN
SUIT NO.182 OF 2012
ALONGWITH

NOTICE OF MOTION (L) NO.3642 OF 2015

...
Smt. Manju Narendra Gupta & Anr. ...Applicants

vs.

...
Meenakshi Ashok Patil & Ors. ...Respondents

...
Mr. Vishesh Kalra i/bVidhi Partners for the Appellants.
Mr. Atul S. Tungare for the Respondent Nos.1 to 5.
...

CORAM : A.S.OKA &
A.A. SAYED, JJ.

DATED : 26 JULY 2016

ORAL JUDGMENT: *(Per A.S.Oka, J.)*

On 8 July 2016, this Court passed an order after hearing the learned Counsel appearing for the first to fifth Respondents (Original Plaintiffs) that if the delay is condoned, the Appeal will be immediately taken up for final disposal at the admission stage. Accordingly, after condoning the delay by passing a separate order, we have taken up the Appeal for final disposal.

2. The Appellants are the original fourth and fifth Defendants. Initially the first to fifth Respondents instituted the suit in the City Civil Court, Dindoshi Branch, Mumbai. A Notice of Motion was taken out by the first Appellant before the City Civil Court praying for return of the plaint on the ground that the said Court had no pecuniary jurisdiction to entertain the suit. The said prayer was not granted by the learned Judge of the City Civil Court. Therefore, the present first Appellant preferred Civil Revision Application No.76 of 2011 in this Court.

3. Learned single Judge of this Court by judgment and order dated 10 October 2011 allowed the said Civil Revision Application by holding that the first to fifth Respondents have not correctly valued the suit property and if the suit is properly valued, the City Civil Court will not have the jurisdiction to entertain the suit. Therefore, the learned single Judge directed that the plaint be returned to first to fifth Respondents for presenting the same to proper Court. The said order has become final.

4. On 2 November 2011, the first to fifth Respondents lodged the plaint in this Court by amending the valuation and after paying the maximum court fees of Rs.3 lakhs. On 15 October 2012, the Appellants filed the written statement. We must note here that when the plaint was returned for presentation to proper Court, the evidence of the side of the original

Plaintiffs was already recorded. On 22 December 2014, when the suit was listed before the learned single Judge, the learned Counsel appearing for the Appellants pointed out that further written statement has been filed by the Appellants and therefore additional issues based on the further written statement will have to be framed. The learned single Judge observed that the Appellants could not have filed any further written statement. In the impugned order dated 25 February 2015, the learned single Judge recorded the statement of the Counsel for the Appellants that there is no specific order permitting them to file further written statement. In paragraph (2) of the impugned order, the learned single Judge held that there was no question of the Appellants filing any further written statement. In paragraph (3), the learned single Judge held thus:

“3. Normally when the plaint is directed to be returned for presentation to the proper court, technically it will have to start from the beginning. But in this case evidence of the Plaintiffs is already concluded and the Plaintiffs have closed their case. The Defendant Nos.4 & 5 have also filed their evidence in examination-in-chief. Therefore, I am inclined to proceed from that stage at which the suit is transferred. That would also help the matter proceeding faster. I find support for this stand from the judgment of the Apex Court in the matter of Joginder Tuli Vs.S.L.Bhatia & Anr.¹

¹ (1997) 1 Supreme Court Cases 502

5. Learned Counsel appearing for the Appellants submitted that there was no reason to deny the permission to the Appellants to file further written statement, especially when the further written statement was on record. He submitted that the decision relied upon by the learned single Judge in the case of **Joginder Tuli vs. S.L.Bhatia & Anr.**² will not apply to the facts of the present case. He invited our attention to the decision of the Apex Court in the case of **Oil and Natural Gas Corporation Ltd. v/s. Modern Construction and Company**³. He submitted that the law is well settled. The evidence recorded by the Court having no jurisdiction cannot be relied upon. Lastly, the learned Counsel for the Appellants relying upon the decision of the learned single Judge of this Court in the case of **Vishnu Horticultural Pvt.Ltd. and anr. v/s. Shampiyani Viniyard Ltd. and ors.**⁴, urged that the decision in the case of **Joginder Tuli** has been explained. He submitted that the learned single Judge will have to record the evidence afresh.

6. Learned Counsel appearing for the first to fifth Respondents (original Plaintiffs) relied upon the decision of the Apex Court in the case of **Joginder Tuli**. He submitted that the entire evidence on the side of the Plaintiffs was already recorded before the plaint was returned. He urged that the learned

² (1997) 1 Supreme Court Cases 502

³ (2014) 1 SCC 648

⁴ 2010 (2) Mh.L.J. 244

single Judge was right in holding that the suit will proceed from the stage at which when the suit was returned by the City Civil Court.

7. We have carefully considered the submissions. By the first part of the impugned order, the learned single Judge declined to permit the Appellants to file further written statement. We must note here that as recorded in paragraph 1 of the impugned order, the learned single Judge never granted any permission to the Appellants to file further written statement. Even after accepting that further written statement was filed by them without seeking leave of the Court, at no stage the Appellants made a proper application before the learned single Judge for taking the further written statement on record. In fact, the learned single Judge noted that before the City Civil Court, an affidavit in lieu of examination-in-chief was already filed by the Appellants. In our view, the learned single Judge is right in holding that the Appellants could not have filed further written statement. In any case, there was never any application made by the Appellants for seeking permission for filing further written statement.

8. Now we come to the second part of the order in terms of paragraph (3). On this aspect, it will be necessary to make a reference to the decision of the Apex Court in the case of Oil and Natural Gas Corporation Limited (supra) The Appeal before the Apex Court arose out of the orders passed

in Execution Application. One of the issues to be canvassed before the Apex Court was as regards the evidence recorded by a Court having no jurisdiction before the return of plaint. In paragraph 14, the Apex Court considered its earlier decision in the case of Joginer Tuli v/s. S.L.Bhatia (supra). After considering the said decision as well as other decisions, in paragraph 17 the Apex Court held thus:-

“ 16. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of [Section 14](#) of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.”

(underline supplied)

9. Thus, the clear pronouncement of law by the Apex Court is that after presentation of the returned plaint before the Court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is required to be conducted de novo even if it stood concluded before the Court having no jurisdiction to try the suit.

10. In the case of Joginder Tuli, the Apex Court in paragraph (5) held thus:

“5. Shri Mohan, learned counsel for the appellant, contended that in the written statement, the appellant has raised the issue of territorial jurisdiction of the Court and also the valuation in that behalf. He also stated in the written statement that he is entitled to the counter-claim for the improvement effected thereunder. When we directed the learned counsel to produce the issue framed by the trial Court by our order dated September 16, 1996, Shri Mohan has now fairly stated that no issue of counter-claim had been framed by the trial Court. It is also admitted position that he did not pay any court fee on the counter-claim. He sought permission to pay the court fee on the counter-claim and direction to frame the issue and to proceed with the trial. We are afraid that we cannot give that direction. Once he has not paid the court fee within the time prescribed, necessarily, it is barred by limitation. Therefore, at this distance of time, he cannot be allowed to pay the court fee in this regard. Under these circumstances, the original order passed by the High Court directing the District Judge to proceed from the stage at which the suit stood transferred to the District Court appears to be correct in the circumstances. Normally, when the plaint is directed to be returned for presentation to the proper Court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that state at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

11. Learned single Judge in the case of Vishnu Horticultural Pvt.Ltd. had an occasion to consider the decision of the Apex Court in the case of Joginder Tuli. Paragraphs (12) & (13) of the said decision of the learned single Judge read thus:

“12. Reliance placed by Mr Dani, learned counsel for the respondent-plaintiff on the decision in Joginder Tuli Vs. S.C.Bhatia, (1997) 1 Supreme Court Cases 502, in my opinion, does not carry the case any further. He relied upon the observations made in the judgment stating that “when the plaint is directed to be returned for presentation to the proper court, perhaps, it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the High Court directed to proceed from the stage at which the suit was transferred”. The basic difference needs to be noticed. In that case, the suit, when filed, was within the territorial jurisdiction of the Court and it was properly entertained. In view of the amendment in the plaint, during the pendency of the suit, however, the plaint was returned for presentation to the proper court taking into account the pecuniary jurisdiction of the court. Such is not the situation in the present case.

13. The law is now clear. When a plaint is returned for presentation to the proper court and is presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint is presented in that court. In other words, after the plaint is presented in the proper Court, it cannot be treated as continuation of the proceedings of the court which had no jurisdiction, but a suit would commence from the stage of its institution on the date when the plaint would be presented to the proper court. In substance, it is a suit filed afresh subject to the

limitation, pecuniary jurisdiction, and payment of the court fee. Such a suit cannot be dismissed on the ground that the plaintiff made averments in the plaint, which did not find place in the original plaint presented before the court which had no jurisdiction to entertain the same or which returned the plaint. Similarly a written statement also cannot be rejected on the ground that the defendant made averments in the written statement, which did not find place in the original written statement filed in the suit before it was returned. It is not always necessary either for the plaintiff or for the defendant to seek amendment of the plaint/written statement under Order VI rule 17 of CPC. In short, where, in any suit, after the defendant has appeared, the plaint is returned and it is presented in the appropriate court the suit will have to be treated as a fresh suit and it can proceed in accordance with the law from the stage of its presentation subject to the provisions contained in Rule 10-A of Order VII of C. P. C.

12. The said decision of the learned single Judge is consistent with the law laid down by the Apex Court in the case of Oil and Natural Gas Corporation Limited.

13. In the case of Joginder Tuli, the Apex Court reiterated the law that when the plaint is directed to be returned for presentation to proper Court, a suit has to commence from the beginning. It is only in the peculiar facts of the case that the Apex Court did not interfere. Therefore, in our considered view, the direction contained in paragraph (3) of the judgment and order dated 25 February 2015 will have to be set aside. To that extent the Appeal must succeed and we pass the following order:

ORDER

- (i) The direction contained in paragraph (3) of the impugned order dated 25 February 2015 is hereby set aside;
- (ii) There shall be de novo trial of the suit filed by the first to fifth Respondents.
- (iii) Consequently, the directions contained in paragraphs (4) & (5) stand modified;
- (iv) We make it clear that the impugned order stands confirmed as far as what held in paragraph (2) thereof is concerned;
- (v) The Appeal is partly allowed on the above terms.
- (vi) Pending Notice of Motion for interim relief does not survive and the same is disposed of.

(A.A. SAYED, J.)

(A.S.OKA, J.)