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

Judgment delivered on: 03.10.2016

+ FAO (OS) 103/2016 & CM No.11340/2016

HOTEL QUEEN ROAD PRIVATE LIMITED Petitioner

versus

GULSHAN RAI (NOW DECEASED) THR LRS AND ANR Respondents

+ FAO (OS) 104/2016 & CM No.11342/2016

HOTEL QUEEN ROAD PRIVATE LIMITED Petitioner

versus

KANWAL KANT CHAGTI & ANR Respondents

+ FAO (OS) 105/2016 & CM No.11344/2016

HOTEL QUEEN ROAD PRIVATE LIMITED Petitioner

versus

SUDHARSHAN DHOOP PRIVATE LIMITED AND ANR Respondents

+ FAO (OS) 106/2016 & CM No.11357/2016

HOTEL QUEEN ROAD PRIVATE LIMITED Petitioner

versus

UPPER INDIA TRADING CO (DELHI) PVT LTD & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Jayant Mehta, Mr Kush Sharma, Ms Radhika Arora and Ms
Suveni Bhagat.

For the Respondent No.1: Mr Amardeep Singh and Mr Ambuj Saraswati.
For the Respondent No.2: Ms Dobashree Saha.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. These four appeals arise out of the common order dated 03.03.2016 passed by a learned single Judge of this Court whereby the applications filed by the appellant/defendant in four suits (CS (OS) 822/2011, 823/2011, 824/2011 and 3057/2011) for the consolidation of the said suits with the suit filed by the appellant being CS(OS) 161/2012 have been rejected. The plaintiffs in the said suits of 2011 are arrayed as defendants along with 25 other defendants in the suit filed by the appellant being CS (OS) 161/2012.

2. The learned single Judge after examining the memo of parties in the suits and the prayers made therein, came to the conclusion that the four suits of 2011 could not be consolidated with the appellant's/plaintiff's suit of 2012. The learned single Judge was of the opinion that the suits could not be consolidated merely because some issues would be common in the four suits on the one hand and the suit of 2012 on the other. The learned single Judge was of the view that if the consolidation were to be directed, this would cause grave prejudice to the plaintiffs in the four suits of 2011 inasmuch as their suits are simple suits for recovery of monies on the ground of the plaintiffs therein having allegedly granted loans to the defendants/appellant therein and that the suits would unnecessarily get entangled with various other unrelated issues of CS(OS) 161/2012 which has as many as 25 other defendants. The learned single Judge also noted that the facts of the each case will have to be examined separately with respect to the plea of consolidation

and that consolidation should not be directed if it would cause unnecessary prejudice and delay in deciding the suits filed by certain plaintiffs which have a limited scope. It was observed by the learned single Judge that the plaintiffs in the suits of 2011 are only seeking recovery of monies which they allegedly advanced to the present appellant. On the other hand, the suit filed by the present appellant being CS(OS) 161/2012 has many other defendants and several other issues.

3. The learned counsel for the appellant argued that identity of parties is only one of the relevant factors which needs to be gone into while considering a plea for consolidation of suits. He submitted that the issues sought to be raised in the four suits of 2011 are completely subsumed by the issues which would arise in the appellant's suit of 2012 and therefore if the suits were not consolidated, it would lead to multiplicity of proceedings and possibility of conflicting decisions and may also result in delay of the proceedings as each suit would be tried separately.

4. The learned counsel for the appellant referred to the following decisions:-

- (i) **Chitivalasa Jute Mills vs. Jaypee Rewa Cement: (2004) 3 SCC 85;**
- (ii) **S.C. Jain vs. Bindeshwari Devi: 1997 (42) DRJ 239; and**
- (iii) **Shijo Antony & Others vs. Sebastian Joseph & others: (2009) 2 KLJ 446.**

5. The first decision is of the Supreme Court. The second decision is by a learned single Judge of this Court and the third decision is by a learned single Judge of the High Court of Kerala. The two single Judge decisions have been cited for the sake of persuasive value.

6. Insofar as the Supreme Court decision is concerned, the learned counsel referred to paragraphs 9 and 12 thereof in support of his pleas. Paragraphs 9 and 12 of the said decision read as under:-

“9. On the facts averred in the two complaints filed by the two parties before two different courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a Division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions, i.e., the supply of jute bags between the period 07.01.1992 and 31.12.1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.

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12. The two suits ought not to be tried separately. Once the suit at Rewa has reached the Court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The Trial Court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence

twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the Trial Court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the Court at Visakhapatnam.”

7. It will be immediately seen on going through the above extracts that there are clear distinguishing features between the Supreme Court decision and the case at hand. There, the parties were substantially the same as noted in the very first sentence of paragraph 9. Here the parties in the suits of 2011 and the suit of 2012 are, by no stretch of imagination, substantially the same because there are 25 other defendants, who are not common to the said sets of suits. The issues arising for decision are also not substantially common. Although the learned counsel for the appellant argued that the issues which would arise in the suits of 2011 are completely subsumed by the issues which arise for decision in the suit of 2012, this would still not lead to the conclusion that the issues are substantially common because the majority of the issues in the suit of 2012 are not common with the issues in the suits of 2011 even if the suits of 2011 are considered to be subsumed in this suit of 2012. That would leave a large penumbral region in which there is no commonality of issues. Therefore, in our view, the decision of the Supreme Court and the principles which are laid down by the Supreme Court, in no way, come to the aid of the appellant in the facts of the present case.

8. Insofar as the decision of the learned single Judge of this Court is concerned in the case of *S.C. Jain (supra)*, there too, we do not find anything which would come to the aid of the appellant. This is, of course, de hors the consideration that the decision of the learned single Judge of this Court is not binding on a Division Bench. Paragraph 6 of the said decision in *S.C. Jain (supra)* noted that the object

behind consolidation is to avoid multiplicity of suits or proceedings, to eliminate chances of conflicting decisions on the same point, to prevent delay and to avoid unnecessary costs and expenses. Looked at from the perspective of the plaintiff in the four suits of 2011, consolidation of their suits which are simple recovery of money suits would result in delay of decisions in their suits if the consolidation were to be allowed with the suit of 2012 because of there being many other issues which are not common with the suits of 2011. An example given in the said decision in *S.C. Jain (supra)* was cited before us by the learned counsel for the appellant and the same has been set out in paragraph 9.1 of the said decision. The example was that two suits with different parties on the same subject matter under the same circumstances had been considered and the suits were consolidated. This was the decision in the case of *Dharam Dass vs Dharam Dass: AIR 1917 Allahabad 336 (DB)*. Here, the facts are entirely different. The subject matter is not the same and the circumstances and the reliefs sought are also not the same. The decision of the Kerala High Court in *Shijo Antony (supra)* also does not help the appellant's case for consolidation.

9. In these circumstances, we feel that the discretion exercised by the learned Single Judge is not without any reason. The same does not call for any interference on our part. We, however, make it clear that any observations that may have been made by the learned Single Judge in the impugned order or by us in this order would not, in any way, prejudice either party in the trial of the respective suits.

10. The appeals are dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

OCTOBER 03, 2016/ns

ASHUTOSH KUMAR, J