

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

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Date of decision: 28th March, 2017

+ CS(COMM) No.231/2017, IA No.3901/2017 (under Order XXXIX Rules 1&2 CPC), IA No.3902/2017 (for exemption) and IA No.3903/2017 (for condonation of 327 days delay in refilling).

LAXMI NARAYAN

..... Plaintiff

Through: Mr. N.L. Singh, Adv.

versus

NAVNEET & ORS

..... Defendant

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has sued for a) specific performance of an Agreement of Sale of one room set on the ground floor of property bearing No.1954, Gali Neela Wali, Gali Arya Samaj, Bazar Sita Ram, Delhi-110006 for a sale consideration of Rs.4,50,000/-; and, b) for permanent injunction restraining the defendants from selling or transferring the said one room set agreed to be sold to the plaintiff to anyone else and from dispossessing the plaintiff therefrom.

2. The suit for the relief of specific performance of an agreement, for the purposes of court fees, as per Section 7(x) of the Court Fees Act, 1870 is to be valued according to the amount of the consideration and the valuation thereof for the purpose of jurisdiction, as per Section 8 of the Suits Valuation Act, 1887, is to be the same as for the purpose of court fees. Thus the valuation of the suit for the relief of specific performance of the Agreement of Sale, for the purpose of court fees and jurisdiction is

Rs.4,50,000/-.

3. Para no.12 of the plaint with respect to valuation of the reliefs claimed therein, is however as under:

“12. That the value of the suit for the purposes of jurisdiction is more than Rs.1 crore (Rs.2,30,40,000) as the cause of action is based on a Collaboration Agreement for construction of the property bearing No.1954, Gali Neela Wali, Bazar Sita Ram, Delhi-110006. However, for the purpose of relief prayed the value is Rs.4,50,000/- being the value of one room set on the Ground Floor of the said property (i.e. the suit property) on which the court-fee of Rs.6,737/- and for the purpose of relief of permanent injunction the value is Rs.130/- on which the court-fee of Rs.13/- is paid and, thus, the total court-fee of Rs.6,750/- is attached.”

4. Owing to the aforesaid, the suit has been instituted in this Court whose minimum original civil pecuniary jurisdiction, as per Section 5 of the Delhi High Court Act, 1966, exceeds Rs.2 crores.

5. I have already noticed above that the valuation for the relief of specific performance of an agreement, for purposes of court fees and jurisdiction has to be the same. The plaintiff here has however valued the relief of specific performance for purposes of jurisdiction at Rs.2,30,40,000/- and for court fees at Rs.4,50,000/-. If this suit, for the relief of specific performance, for purposes of jurisdiction had been valued at Rs.4,50,000/- as required by law, the suit should have been instituted in the Court of the District Judge.

6. The plaintiff did indeed file the suit before the Court of the District

Judge only but the learned Additional District Judge (ADJ) to whom the suit was marked vide order dated 18th January, 2016 returned the plaint to the plaintiff observing / holding as under:

“18.01.2016

Fresh suit has been received by way of assignment. It be checked and registered as per rules.

Present: Sh. N.L. Singh Advocate for the plaintiff.

At the very outset, Ld. Counsel for the plaintiff admits that the dispute in question relates to a **Collaboration Agreement dated 17.01.2013** in respect of property bearing **No.1954, Gali Neela Wali, Bazar Sita Ram, Delhi-110006** for construction of **ground floor plus four floors**, the minimum Circle Rates of which area as per the notified circle rates is Rs.90,000/- per square meter and hence the Specified Value as calculated in terms of **Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015** of all the five floors proposed to be constructed as per the agreement would be more than Rs. One Crore. He further submits that since the question with regard to the maintainability of the suit in view of the **Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015** has arisen, hence he has instructions to seek an return of plaint along with the Court Fees and original documents with liberty to file the same before the court of competent jurisdiction on similar grounds without prejudice to the rights and contentions of the plaintiff on merits. The statement of the Ld. Counsel for the plaintiff is recorded separately in this regard.

I have considered the submissions and the statement made by the Ld. Counsel for the plaintiff, in view of which the present plaint along with the Court Fees and original documents are directed to be returned to

the Ld. Counsel for the plaintiff with liberty to file the same before the court of competent jurisdiction on similar grounds without prejudice to the rights and contentions of the plaintiff on merits. Further, on request of the Ld. Counsel, he is exempted from filing the certified copies of the documents and is permitted to file the attested copies of the same at the time of its return. Certificate of return be issued as per rules.

File be consigned to Record Room thereafter."

[emphasis in original]

7. The plaintiff, after taking back the plaint, has instituted the suit in this Court.

8. The property, of agreement of sale of one room set on the ground floor wherein the plaintiff is seeking specific performance, was constructed / reconstructed under a Collaboration Agreement between the owner thereof namely one Smt. Babita (since deceased and whose legal representatives are defendants no.1 to 4) and a builder Sat Prakash impleaded as defendant no.5. The plaintiff is neither seeking specific performance of said Collaboration Agreement nor can so seek, being a non-party thereto. However the Collaboration Agreement contains a clause of Agreement to Sell one room flat on ground floor to plaintiff. The plaintiff has no claim to remaining property constructed under the Collaboration Agreement save the one room set agreed to be sold to him. The plaint also does not raise any dispute with respect to the Collaboration Agreement. It is rather the case of the plaintiff that the construction under the Collaboration Agreement was completed long back and the plaintiff has also been put into possession of the one room flat agreed to be sold to him.

9. I have thus enquired from the counsel for plaintiff, how can he value the suit for relief of specific performance, differently for purposes of court fees and jurisdiction.

10. The counsel for plaintiff states that the plaintiff has nothing to do with Collaboration Agreement save to the extent of Agreement to Sell contained therein of one room flat on ground floor to plaintiff. He thus states that the plaintiff is not required to pay court fees on value of entire property subject matter of Collaboration Agreement. He also states that though the order aforesaid of the Ld. ADJ records that he withdrew the suit but in fact the Ld. ADJ made him do so. He draws attention to para 13 of the plaint as under:

“13. That earlier a Civil suit No.18/2016 was filed on behalf of plaintiff against all the defendants titled Laxmi Narain ..v.. Navneet & Ors. before Hon’ble District Judge, Central District, Tis Hazari Courts, Delhi and the same was assigned to the court of Ms. Kamini Lau, A.D.J. Delhi and at the time of admission of the said suit the court was pleased to return the said plaint with the liberty to file the said suit before this Hon’ble court, on the plea that it was a commercial matter and comes within the purview of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015. The said order and plaint are attached. However, no other similar suit has been filed by or on behalf of the plaintiff either in this Hon’ble court or before any other court except the present suit.”

11. I may notice that a similar view expressed by the same Ld. ADJ was set aside vide judgment dated 5th May, 2016 in RFA No.76/2016 titled ***Mukesh Kumar Gupta Vs. Rajneesh Gupta***. The learned ADJ therein also had held that since the value of the property in accordance with the circle

rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act) was in excess of Rs.1 crore, even though the Agreement to Sell for specific performance for which the suit was filed was for a consideration within the pecuniary jurisdiction of the learned ADJ, the suit was not entertainable. It was held by this Court:

“9. Another reason given by the learned ADJ, of two separate suits being not maintainable and had been filed to create pecuniary jurisdiction of the Court of the learned ADJ which otherwise had no jurisdiction as per the value of the property in accordance with the circle rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, is also contrary to law.

- A. The valuation for the purpose of court fees of a suit for specific performance of a contract of sale, as per Section 7(x)(a) of the Court Fees Act, 1870, is to be according to the amount of the consideration. Such consideration is the consideration agreed in the contract for sale of which specific performance is claimed.
- B. The valuation of the suit for purposes of jurisdiction, as per Section 8 of the Suits Valuation Act, 1887, is to be the same as the value for the purpose of Court Fee.
- C. It is not understandable as to how the learned ADJ held that the valuation had to be in accordance with the circle rates.
- D. Circle rates have been notified by the Government of NCT of Delhi (GNCTD) in exercise of the powers under the Indian Stamp Act, 1899 read with the Delhi Stamp (Prevention of Under - valuation of Instruments) Rules, 2007 and for the

purpose of guidance of the Sub-Registrars to whom the documents / instruments of transfer of property are presented for registration, to ensure that stamp duty in accordance with law is paid thereon. The same have no relevance to the valuation of suits for the purpose of jurisdiction or to the payment of court fees thereon. The said circle rates also, vide order reported as *Manu Narang Vs. The Lieutenant Governor, Government of National Capital Territory of Delhi* MANU/DE/4234/2015 and *Amit Gupta Vs. Government of NCT of Delhi* MANU/DE/0841/2016 have been held to be only presumptive, open to rebuttal.

- E. Again, the learned ADJ has not even bothered to state what the circle rate of the property agreed to be sold was.
- F. The invocation by the learned ADJ of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is also entirely misconceived. Though Section 2(1)(c) (vii) of the said Act brings a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce within the definition of a commercial dispute but Section 6 thereof defines the jurisdiction of commercial court as over suits of specified value; Section 12 (1)(c) defines the specified value of subject matter of commercial dispute in a suit where the relief sought relates to immovable property or to a right therein as the market value of the immovable property. The said Act does not otherwise deal with valuation of the suits for the purpose of jurisdiction or court fees payable thereon and in my view the valuation of a suit for specific performance of an agreement of sale even if relating to immovable property used

exclusively in trade or commerce, for the purpose of court fees and jurisdiction will continue to be governed by the provisions of the Court Fees Act and the Suits Valuation Act as aforesaid and only those commercial disputes relating to immovable property will be triable by the Commercial Courts the consideration for sale of which property is in excess of the specified value.

- G. Moreover, as aforesaid once even for the purpose of payment of stamp duty, the circle rates only raise a presumption which is rebuttable, the question of the learned ADJ dismissing the suit without giving any opportunity of hearing to the appellants / plaintiffs to rebut the presumption does not arise.”

12. I repeat, in the present case, the suit claim was not for enforcement of any Collaboration Agreement. It was only an averment in the plaint that the property, a one room set on the ground floor wherein was agreed to be sold to the plaintiff, had been developed / constructed under a Collaboration Agreement. An agreement purchaser of a one room set on the ground floor of the property comprising of ground plus four floors cannot be directed to value the suit as per the valuation of the entire property. Also, it is not understandable as to how the learned ADJ has referred to the Commercial Courts Act. Though Section 2(1)(c)(vii) of the Commercial Courts Act prescribes disputes arising out of “agreements relating to immovable property used exclusively in trade or commerce” but the learned ADJ in the order aforesaid has not held the property to be exclusively for trade or commerce purpose.

13. Reference in this regard may also be made to *Soni Dave Vs. Trans*

Asian Industries Expositions Pvt. Ltd. AIR 2016 Delhi 186.

14. The suit thus is below the minimum pecuniary original civil jurisdiction of this Court.

15. Even though the plaintiff has to suffer the return of plaint a second time but the mandate of law has to be abided by.

16. The plaint be returned to the plaintiff along with court fees stamp with liberty to present before the Court of appropriate pecuniary jurisdiction.

RAJIV SAHAI ENDLAW, J

MARCH 28, 2017

‘gsr’..

[corrected & released on 12th April, 2017]