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

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Date of decision: 07.03.2017

+ CM(M) 645/2015 and CM No. 12404/2015 (stay)

MURTI DEVI

..... Petitioner

Through Mr.Sunil Sabharwal and Mr.Rahul
Sabharwal, Advocates.

versus

RAMESH PRAKASH & ANR.

..... Respondents

Through Respondent No.1-in-person.
Mr.Rajat Duhan, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 31.03.2015.
2. The present proceedings have a needless chequered history revolving around a simple issue of court fees payable by the plaintiff/respondent No.1 on the plaint.
3. Respondent No.1/plaintiff filed the present suit for possession and permanent injunction. It was stated that in May 2003, he purchased the suit property. The consideration was agreed to be Rs.10 lakhs. However on the day of the sale transaction, the defendant/respondent No.2 requested respondent No.1 to allow her to live in the said property. Hence,

on 17.06.2003 a rent agreement was executed between respondents No. 1 and 2.

4. Respondent No.2 in her written statement took a preliminary objection regarding valuation of the suit which according to the said respondent should have been Rs.10 lakhs, the alleged consideration paid by respondent No.1.

5. On 10.08.2005, the trial court framed issues. One of the issues framed was that the suit is not valued properly for the purpose of court fees and jurisdiction. In 2006 an application was moved by respondent No. 1 under Order 1 Rule 10 CPC for impleadment of petitioner as defendant No. 2 on the ground that respondent No. 2 had allegedly sold the property in question to the petitioner and handed over possession in part performance to the petitioner. The application was allowed on 16.09.2006.

6. The trial court while hearing an application filed by respondent No.1 under Order 39 Rules 1 and 2 CPC came to the conclusion that the plaintiff/respondent No.1 has valued the suit at Rs.12,000/- whereas the valuation of the present suit for the purpose of jurisdiction of court would be Rs.10 lakhs because this is the amount paid by respondent No.1 to respondent No. 2 for the purchase of the property. It also noted the submission of the learned counsel for respondent No. 1 that an opportunity be given to amend the clause. The stay application was kept pending.

7. Respondent No. 1 thereafter moved an application under Order 6 Rule 17 CPC seeking to value the suit for the purpose of jurisdiction @ Rs. 10 lakhs but for the purpose of court fee @ Rs.12,000/- being the

annual rent of the suit property @ Rs.1,000/- per month. The trial court by its order dated 18.01.2010 dismissed the said application under Order 6 Rule 17 CPC.

8. Thereafter, the petitioner moved an application under Order 14 Rule 2 CPC. The said application was heard on 12.07.2013. The trial court held that from the point of view of the plaintiff, the plaintiff had sought possession of the suit property from his tenant who was the previous owner. Essentially the suit was between a landlord and tenant and as per the Court Fees Act, the court fee in a suit for recovery of immovable property from a tenant is determined on the basis of the amount of rent of the immovable property payable for the year next before the date of presenting the plaint. Hence, it concluded that the suit had to be valued at the rent of one year and the plaintiff has correctly valued the suit for the purpose of court fees and jurisdiction. It also noted that the order dismissing the application under Order 6 Rule 17 CPC was an attempt by respondent No.1 to correct the error on the directions of the court which had also been wrongly dismissed. The court hence, noted that it is inclined to review the order dated 29.09.2007, 25.01.2007 and 25.01.2008 whereby the application under Order 6 Rule 17 CPC was dismissed but before reviewing the same, the court would like to hear the parties.

9. Against the said order dated 12.07.2013, the petitioner filed a petition before this court being CM(M) 837/2013. As no final order was passed and the parties were to be heard before reviewing the said order, the petition was dismissed.

10. By the impugned order the trial court has clarified the order dated 12.07.2013. It noted various earlier orders passed by the trial court on

various stages. The court concluded that in the earlier orders dated 25.01.2008 and 18.01.2010, this court has observed that the suit is not properly valued by the plaintiff and therefore, the application under Order 39 Rules 1 and 2 CPC filed by the plaintiff was kept pending and the application filed by the plaintiff under Order 6 Rule 17 CPC was dismissed. As the impugned order has been passed on an application filed by the petitioner under Order 14 Rule 2 CPC, the court held that the argument of the petitioner that disposal of the said application had to be subject to previous orders does not hold any merit.

11. I have heard learned counsel for the parties.

12. Respondent No.1 has appeared in person and states that this court may take a decision in the interest of justice as his counsel is not available. Counsel for respondent No. 2 submits that he supports the case of the petitioner.

13. In my opinion, there are no reasons to differ with the findings recorded by the trial court. The initial observations were made by the trial court in its order dated 25.01.2008 while disposing of an application under Order 39 Rules 1 & 2 CPC. The observations were that the plaintiff was obliged to value its suit for jurisdiction at Rs.10,00,000/- i.e. the value of the property. The application was kept pending. These were observations which cannot be said to be binding at the time of adjudication of the suit. Similarly, while disposing of the application under Order 6 Rule 17 CPC, on 18.01.2010 the court had merely followed the earlier order.

14. The court had framed issues on 10.08.2005. Issue No. 2 reads as follows:-

“2. Whether the suit of the pltf is not properly valued for the purposes of court fees and jurisdiction? OPD”

15. Order 14 Rule 2 CPC reads as follows:-

“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.”

16. Hence, it is clear that it was the petitioner who moved an application under Order 14 Rule 2 CPC for adjudication of the aforesaid issues and for postponement of settlement of other issues. He cannot now take a turn and say that while adjudicating upon these issues, the court was bound by the observations made at the time of hearing of the application under Order 39 Rules 1 and 2 CPC or at the time of disposal of the application under Order 6 Rule 17 CPC. These are passing observations which were necessarily prima facie in the nature. They cannot bind the parties at the time of final adjudication of the suit.

17. The Supreme Court in *State of Assam vs. Bank Upatyaka D.U.Karmachari Sanstha*, (2009) 5 SCC 694 held as follows:-

“21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing. ”

18. Hence, the trial court while passing the impugned order was not bound by the passing observations on valuation stated in the plaint while dealing with applications under Order 39 Rule 1 & 2 CPC or Order 6 Rule 17 CPC.

19. In view of the above, there are no grounds to interfere in the impugned order. The petition is dismissed.

20. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

MARCH 07, 2017/rb