

\$~27

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

+ **TR.P.(C.) 150/2017**

SUCHITA KAUR

..... Petitioner

Through: Mr. Jagjit Singh & Mr. Preet Singh,
Advs.

Versus

VIPIN KAPOOR

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

08.09.2017

CM No.32723/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

TR.P.(C.) 150/2017 & CM No.32724/2017 (for condonation of 2 days delay in re -filing)

3. This petition under Section 24 of the Code of Civil Procedure, 1908 (CPC) seeks transfer to this Court of Civil Suit No.174/2014 of the Court of Shri Anil Kumar, Additional District Judge (ADJ) (South-East), Saket Courts, New Delhi instituted by the respondent No.1 Vipin Kapoor for recovery of Rs.19.5 lacs from the petitioner and in which suit the petitioner has made a counter-claim *inter-alia* for recovery of Rs.2.01 crores.

4. The matter has had a chequered history. Upon the counter-claim being made, the petitioner first filed a transfer petition being TR. P.(C) No.10/2014 in this Court but which was withdrawn on 27th January, 2015 to move the concerned Court.

5. The petitioner thereafter obtained orders from the concerned Court for transfer of the suit and the counter-claim to this Court and which was allowed and the suit and counter-claim registered as CS(OS) 489/2016 and CC No.63/2016 respectively of this Court.
6. The said CS(OS) 489/2016 and CC No.63/2016 came up before this Court on 14th December, 2016 when, observing that the procedure followed by the concerned District Judge (South) of transferring the suit to this Court was un-known to law, the two were returned to the Court of ADJ-05 (South), Saket Courts, New Delhi.
7. The entire proceedings have been misconceived.
8. The Proviso to Order VIII Rule 6A of the CPC provides that the value of the counter-claim should not exceed the pecuniary limits of the jurisdiction of the Court in which the counter-claim was being made.
9. Notwithstanding the same, the counter-claim exceeding the pecuniary jurisdiction of the learned ADJ was entertained and orders aforesaid maintained.
10. As per law, the counter-claim made by the petitioner has to be returned by the Court in which it has been presented and the petitioner is required to file a separate suit before the Court of appropriate jurisdiction.
11. The counsel for the petitioner states that he has taken back the counter-claim and sought to file the same in this Court but the Registry did not accept the same.
12. The counsel however is unable to show any document or name any officer of the Registry who so refused. Without the same, no action with respect thereto can be taken.

13. Only after the claim filed as a counter-claim is instituted in this Court as a suit will the question arise, whether the two proceedings are to be consolidated.

14. This petition is misconceived and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2017

‘R’..