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

\+ C.R.P. No.170/2017

SUNIL KHANNA & ORS ..... Petitioners

Through: Mr. Tarun Diwan, Adv.

versus

DHANENDER KUMAR JAIN & ORS ..... Respondents

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**<u>O R D E R</u>**

% **08.08.2017**

**<u>CM No.28096/2017 (for exemption)</u>.**

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

**<u>C.R.P. No.170/2017 & CM No.28095/2017 (for stay)</u>.**

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 18th April, 2017 in S. No.3408/16/14 of the Court of Additional District Judge-01 (East), Karkardooma Courts, Delhi) of dismissal of the application filed by the petitioners / defendants no.1 to 4 under Order VII Rule 11 of the CPC.

4. Rejection of the plaint was sought on the ground of the relief claimed therein having not been properly valued for the purposes of court fees and jurisdiction.

5. The respondents no.1&2 / plaintiffs had earlier filed the suit for the relief of recovery of possession of immovable property and for declaration and permanent injunction valuing the property at Rs.14,00,000/-. It appears that on objections of valuation being taken, a report was sought from the

Sub Divisional Magistrate (SDM) of the area who reported the value to be Rs.4,69,88,700/-. The respondents no.1&2 / plaintiffs filed an application under Order VII Rule 10 of the CPC for return of the plaint for presentation in the Court of appropriate jurisdiction, pleading the value to be about Rs.1,90,00,000/-.

6. I may mention that at that time, the maximum limit of pecuniary jurisdiction of the District Judge was Rs.20,00,000/-.

7. The respondents no.1&2 / plaintiffs have thereafter presented the plaint in this Court, valuing the property at about Rs.1,58,00,000/-. Upon enhancement in the minimum pecuniary jurisdiction of this Court, the suit has been transferred to the District Judge.

8. It is the contention of the counsel for the petitioners / defendants no.1 to 4 that owing to the report of valuation by the SDM received in the earlier suit, the Court of the District Judge where the suit is now pending does not have jurisdiction inasmuch as the maximum pecuniary jurisdiction of the District Judge now is Rs.2,00,00,000/- and as per the report of the SDM, the valuation is of Rs.4,69,88,700/-. Alternatively, it is argued that in any case the respondents no.1&2 / plaintiffs in the application aforesaid under Order VII Rule 10 of the CPC in the earlier suit and had themselves given the value at about Rs.1,90,00,000/- and have now arbitrarily reduced it to Rs.1,58,00,000/-.

9. On enquiry, the counsel for the petitioners / defendants no.1 to 4 states that in the suit earlier filed, the report of the SDM was called at the initial stage only.

10. Thus, in the suit earlier filed, there is no occasion for the Court to return a finding on the valuation, i.e. whether it was Rs.4,69,88,700/- as reported by SDM or Rs.1,90,00,000/- as pleaded by the respondents no.1&2/plaintiffs inasmuch as the respondents no.1&2 / plaintiffs themselves took back the suit for filing in Court of appropriate jurisdiction.

11. The Division Bench of this Court in ***Amit Gupta Vs. NCT of Delhi*** (2016) 229 DLT 385 and ***Manu Narang Vs. LG, NCT of Delhi*** 2015 SCC OnLine 14395 has held that the value in terms of circle rates, only raises a presumption and which is rebuttable.

12. The counsel for the petitioners / defendants no.1 to 4, on enquiry, states that the SDM in the report aforesaid had given the valuation, at circle rates of at Rs.1,90,00,000/- and at market rates at over Rs.4,69,88,700/-.

13. In the aforesaid state of law, it cannot be said that the aspect of valuation is such on which the plaint can be rejected. Even otherwise, in the event of valuation, after trial, being found to be Rs.1,90,00,000/-, the respondents no.1&2 / plaintiffs can pay additional court fee and the jurisdiction would remain of ADJ only. Merely because the respondents no.1&2 / plaintiffs while withdrawing plaint in earlier suit stated valuation to be Rs.1,90,00,000/- would not bind them. There can be no estoppel on the aspect of valuation.

14. Thus no error in the impugned order, requiring interference, is made out.

15. The counsel for the petitioners / defendants no.1 to 4 has next argued that the respondents no.1&2 / plaintiffs, in the plaint subsequently presented, have made changes and which was not permissible after taking back the

plaint for presentation in the Court of appropriate jurisdiction. It is argued that the plaint should have been filed as it is and changes should have been made after obtaining the leave of the Court.

16. This cannot be a ground for rejection of the plaint. At best, the petitioners / defendants no.1 to 4 can take an objection in this context before the Suit Court.

17. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 08, 2017**
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