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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.01.2017

FAO(OS) 383/2016

U.N. BHARDWAJ

..... Appellant

versus

Y.N. BHARDWAJ & ORS

..... Respondents

AND

FAO(OS) 384/2016

U.N. BHARDWAJ

..... Appellant

versus

Y.N. BHARDWAJ & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant

: Mr Anunaya Mehta

For the Respondent Nos.2,3,4&5

: Mr B.S. Mann with Mr Vishal Maan

Respondent no.1

: Mr Y.N. Bhardwaj (in person)

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)

CM 48148/2016 in FAO(OS) 383/2016

CM 48195/2016 in FAO(OS) 384/2016

Exemption is allowed subject to all just exceptions.

FAO(OS) 383/2016 & CM 48149/2016
FAO(OS) 384/2016 & CM 48196/2016

1. These appeals arise out of the common order dated 02.12.2016 in two civil suits which have been consolidated for the purposes of recording of evidence by virtue of an order dated 28.02.2011. The suits were originally filed in 2005 and numbered as CS(OS) 641/2005 and CS(OS) 642/2005. Originally the suits were valued at Rs. 1 crore each for the purposes of jurisdiction. Because of the increase in the pecuniary jurisdiction of the District Court and the lower limit of the pecuniary jurisdiction of the original side of this court being raised to Rs. 2 crore, the said suits were transferred to the District Court at Saket and they were re-numbered as CS15/2015 and CS16/2015. In the meanwhile, applications under Order 6 Rule 17 CPC to amend the plaint in the two suits had already been filed before this court. Those applications came up for hearing before the District and Sessions Judge (South) at Saket, New Delhi, and the same were disposed of by the order dated 04.10.2016 whereby the amendment applications were allowed increasing the valuation of the suit to Rs. 10 crore each. Consequently, upon the applications being allowed, it became apparent to the District Court that it would not have pecuniary jurisdiction to try the suits. As a result, it was directed by the Order dated 04.10.2016 that as the suits were now valued for the purposes of jurisdiction at Rs. 10 crore and were beyond the pecuniary

jurisdiction of the District Court, the same be placed before the High Court for further direction and the date of 17.10.2016 was fixed for the appearance of the parties.

2. Initially the matter was placed before the Registrar and Joint Registrar and ultimately it was placed before court on 02.12.2016 when the learned Single Judge took up the hearing of both the suits and passed the impugned common order dated 02.12.2016.

3. The learned counsel for the appellant had placed reliance on two decisions of learned Single Judges of this court reported as **Ziff-Davis Inc. v. Dr. J.K. Jain & Ors.;** 2006(32) PTC 86 (Del) and **Hawkins Cookers Limited v. Citizen Metal Industries (India);** 2006(33) PTC 387 (Del). It was contended that in similar circumstances in these decisions the learned Single Judges had exercised powers under Section 24 CPC and had withdrawn the suits from the District Court to be tried by the original side of this court. Despite the said decisions having been placed before the learned Single Judge, by virtue of the impugned order, the learned Single Judge directed that the case files be returned to the District Court from where they had been received but gave liberty to the parties to move an appropriate application in the meanwhile under Section 24 CPC. According to the

learned counsel for the appellant this is contrary to the view taken by the learned Single Judges in the above mentioned cases and would cause unnecessary delay in the suit proceedings. The learned counsel for the respondents in CS(OS) 641/2005 are all present. They have no difficulty with the ratio of the decisions in *Ziff-Davis Inc.(supra)* and *Hawkins Cookers Limited (supra)* being applied to this case also. There are some other respondents in CS(OS) 642/2005 who are not before us but we see no impediment in disposing of the present appeals in their absence. This is so because the power under Section 24 CPC can be exercised *suo motu* without notice to the parties. Section 24 CPC reads as under:-

“24. General Power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) Withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

4. Sub-section (1) of Section 24 itself makes it clear that the power of withdrawal or transfer of suits can be exercised by, inter alia, the High Court on the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard. The same power can be exercised by the High Court (or the District Court as the case may be) of its own motion and without such notice to the parties. It appears that the learned Single Judge has not noticed this *suo motu* power which the court has. The direction given by the District Judge on 04.10.2016 was not one in exercise of the power of transfer under Section 24 but merely of placing

these case files before the High Court for exercising its power under Section 24 of the CPC.

5. We note that in *Ziff-Davis Inc.* (*supra*) a learned Single Judge of this court had observed as under:-

“9. The orders passed by the District Judge thus, in my considered view, must be read as orders to place the matters back before the High Court which again acquires jurisdiction in view of the amendment made by the plaintiff to the plaint. It is at this stage, when such a date is fixed for the parties to appear before the High Court, the High Court when it proceeds with the matter can exercise powers under Section 24 of the Code and thus proceed with the matter from the stage which the matter had reached by that date. This reasoning is also supported by the fact that even the trial Court was required to continue the proceedings from the stage it had reached in the High Court by reason of transfer of the matter to the trial Court and the High Court again starts the matter from where it had left or in addition some steps have been taken by the trial Court.

10. In view of the aforesaid, I am of the considered view that it is open to the District Judge to fix a date for appearance of the parties before the High Court and at that stage the High Court could exercise powers under Section 24 of the Code to continue with the proceedings from the stage it reached by that date instead of starting the proceeding de novo.”

(underlining added)

6. In *Hawkins Cookers Limited* (*supra*) the view taken by the learned Single Judge of this Court was as under:-

“6. I find it impossible to accept the argument that the filing of a Suit in a competent Court must be rendered void and nugatory only because of procedural changes made by the High Court.

In several cases where Suits have been transferred from the High Court to the District Court the plaintiffs have, after succeeding in an upward revision of the valuation of the Suit, approached the Court under Section 24 of the CPC. This Section contemplates the filing of an application by the parties desirous of a transfer, or of its own motion. The Orders of the District Judge are merely to the effect that the file should be sent or transmitted to this Court. It is, therefore, for the High Court to decide what action has to be adopted. To set all controversies at rest, I assume jurisdiction under Section 24 and hold and direct that the Suit stands transferred to this Court by Orders of this Court itself.”

(underlining added)

7. We have examined these decisions carefully and we fully endorse the views taken by the learned Single Judges in the above two cases.

8. Consequently, we hold that the learned Single Judge ought to have taken a decision with regard to his assumption of jurisdiction under Section 24. Unfortunately, he has not done so. We set aside the impugned order and direct, in exercise of the power under Section 24 of the CPC, that the said suits stand withdrawn to this court. The said suits be listed before the learned Single Judge for further proceeding on 19.01.2017.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

JANUARY 02, 2017

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