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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 889/2017 & CM No.29701/2017 (for stay)
MANAS SETH Petitioner

Through: Mr. Amarjeet Singh Sahni, Adv.

Versus

SUNIL KUMAR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.08.2017

CM No.29702/2017 (for exemption)

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

CM(M) 889/2017 & CM No.29701/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 25th July, 2017 in Civil Suit No.13794/2016 of the Court of Additional District Judge (ADJ), Motor Accident Claims Tribunal-01 (West), Tis Hazari Courts, Delhi] rejecting the contention of the petitioner / plaintiff, of the respondent/defendant having not paid appropriate court fees on the counterclaim preferred in the suit filed by the petitioner / plaintiff.
4. The counsel for the petitioner / plaintiff has been heard.
5. The objection of the petitioner / plaintiff which has not been accepted, though was without filing any application, in the nature of a plea under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) and the remedy for denial whereof is by way of a Revision Petition under Section 115 of the CPC. Once a remedy is provided in the CPC, Article 227 of the Constitution of India cannot be invoked. Reference can be made to

Sadhana Lodh Vs. National Insurance Co. Ltd. (2003) 3 SCC 524.

6. Though the petition is liable to be rejected on this ground but has also been considered on merit.

7. The petitioner / plaintiff instituted the suit from which this petition arises, for recovery of a principal amount of Rs.7 lacs with interest, on the basis of cheques and loan documents claimed to have been signed and issued by the respondent / defendant.

8. The respondent / defendant contested the suit by filing a written statement along with a counterclaim. In the counterclaim, a declaration was sought that the seven cheques and the loan agreement relying whereon the suit had been filed were illegal, manipulated, not enforceable in law and null and void and for cancellation thereof.

9. The plea of the petitioner / plaintiff which has not been accepted was that the respondent / defendant should have valued the relief of declaration claimed in the counterclaim on the value of the documents and the cheques i.e. at Rs.7 lacs and paid appropriate court fees thereon. The counterclaim was valued by the respondent / defendant for the purpose of court fees and jurisdiction at Rs.200/- and court fees paid accordingly.

10. The learned ADJ, in the impugned order, has reasoned that the relief of declaration claimed fell within the meaning of Article 17 of the Schedule II of the Court Fees Act, 1870 and not in Section 7(iv)(c) thereof.

11. The counsel for the petitioner / plaintiff has relied on ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh*** (2010) 12 SCC 112.

12. As far as ***Suhrid Singh @ Sardool Singh*** supra is concerned, the same is admittedly in the context of a suit for declaration of a document qua

immovable property and for recovery of possession of the immovable property and would not apply to the factual scenario of the subject suit.

13. I have enquired from the counsel for the petitioner / plaintiff, whether not the defence in the written statement of the respondent / defendant to the plaint is the same as the counterclaim.

14. The counsel for the petitioner / plaintiff confirms.

15. The said defence of the respondent / defendant to the claim of the petitioner / plaintiff is in any case required to be adjudicated and the petitioner / plaintiff would be entitled to a decree against the respondent / defendant only if the said defence of the respondent / defendant is negated. It thus appears that the outcome of the counterclaim would have no relevance to the decision in the suit as the decision has to be the same.

16. Though the counsel for the petitioner / plaintiff agrees but states that since the respondent / defendant has filed a counterclaim and the same has been entertained, the respondent / defendant is liable to pay appropriate court fees thereon.

17. There can be no dispute with the aforesaid proposition.

18. Per Section 7(iv)(c) of the Court Fees Act, in a suit to obtain a declaratory decree or order where consequential relief is prayed, the plaintiff is required to state the amount at which he values the relief sought.

19. Per Section 8 of the Suits Valuation Act, 1887, the valuation of the suit for the purpose of jurisdiction has to be the same.

20. Though the Courts, in relation to reliefs of declaration and permanent injunction claimed with respect to electricity bills have held that petitioner / plaintiff has to value the suit for the purpose of court fees and jurisdiction

at the quantum of the bill and not arbitrarily at a value below that (see *Sarjwan Singh Vs. Delhi Vidyut Board* 2004 (75) DRJ 400), but in the present case I am of the view that since it is the petitioner / plaintiff who is before the Court for recovery of the monies on the basis of the same documents and qua which documents the petitioner / plaintiff will have to satisfy the Court of the consideration therefor, no case for requiring the respondent / defendant also to pay court fees on the relief of declaration claimed is called for, no relief of permanent injunction having been claimed by the respondent / defendant.

21. No ground for interfering with the order of the ADJ is thus made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 21, 2017

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