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2018.05.15 17:32
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integrity of this document
Chandigarh

wages paid to the labour who remained idle and employed on the premises of the defendant/Company for executing the order of the defendant worth Rs..11,91,250/- (payable amount to the tune of Rs.14,03,250/-) i.e. Rs.1,20,000/- towards quotation amount, Rs.4,43,250/- towards wages paid to the expert workers detained in the premises of defendant/petitioner, Rs.8,40,000/- on account of loss suffered by the respondent/plaintiff due to his engagement with the defendant/petitioner during the period out of which defendant/petitioner has paid a sum of Rs.2,12,000/- upto 01.09.2009 and the remaining amount came to be Rs.11,91,250/-. Mandatory injunction was also prayed, directing the defendant/petitioner to pay the aforesaid amount to the plaintiff along with interest @ 18% per annum from due date till final realization of the amount.

[3]. An application under Order 7 Rule 11 CPC was filed by the defendant/petitioner. Paras No.2, 3 and 4 of the application reads as under:-

“2. That the plaintiff has filed the above titled suit for declaration that he is entitled to Rs.11,91,250/- and claimed the same by way of mandatory injunction, without paying ad-valorem court fee. The relief claimed by the plaintiff is totally false and frivolous, which is liable to be dismissed and can be claimed only by way of recovery and not by way of mandatory injunction. So, the suit for mandatory injunction is not maintainable

and this is the reason that the plaintiff has not paid the ad-valorem court fee on the relief claimed.

3. That the plaintiffs failed to comply with the mandatory provisions as contained in Order 7 Rule 11 of CPC.

4. That it is in the interest of justice that for the reasons stated above, the suit filed by the plaintiff being not maintainable, may please be dismissed and rejected.”

[4]. The aforesaid application was contested by the plaintiff.

[5]. Civil Judge Junior Division, Ambala vide order dated 20.07.2015 decided the aforesaid application. Paras No.5 and 6 of the aforesaid order reads as under:-

“5. It transpires that the present suit has been filed by the respondent/plaintiff for declaration coupled with the relief of mandatory injunction directing the defendant to pay Rs.11,91,250/- along with to pay interest @ 18% per annum. It is worth to mention here that Section 7 of the Court fee Act, 1870 is quite explicit with respect to the computation of fee payable in certain suits. As per Section 7(iv), in the suit for declaratory decree and consequential relief, the court fee is to be computed on the amount stated by the plaintiff at which he values the relief sought. The plaintiff has stated the amount of Rs.11,91,250/- in the plaint due against the defendant and accordingly, plaintiff is liable to pay the ad-valorem court fee.

6. Thus, keeping in view the aforesaid provisions, the

respondent/plaintiff is directed to make good the deficient court fee required to be affixed on the plaint within a period of three months from the date of this order, failing which the plaint shall be deemed to be rejected. Accordingly, the present application is disposed of.”

[6]. Perusal of the aforesaid order would show that though the application under Order 7 Rule 11 CPC was allowed on the ground of deficient Court fee, but plaintiff was directed to make good the deficient Court fee within a period of three months from the date of said order, failing which the plaint was to be rejected on deemed fiction. Thereafter, plaintiff proceeded to make good the deficiency in Court fee.

[7]. Order dated 12.04.2016 passed by the trial Court would show that no PW was present. Adjournment was sought by learned counsel for the plaintiff and the same was allowed. The case was adjourned to 24.05.2016 for cross examination of the deferred PW 1 as well as for the remaining evidence of the plaintiff at own responsibility. At that stage, learned counsel for the plaintiff stated at bar that first issue with respect to limitation be considered. The case was adjourned to 24.05.2016 for consideration on the issue of limitation.

[8]. Perusal of the aforesaid order dated 12.04.2016 gives some different connotation as to why the plaintiff would ask for

consideration of first issue as preliminary issue, rather the defendant took up the issue for considering the same to be preliminary issue as per impugned order.

[9]. Be that as it may, this Court proceeded to consider the impugned order dated 11.08.2016 passed by Civil Judge Junior Division, Ambala, vide which preliminary issue has been decided in favour of the plaintiff.

[10]. Learned counsel for the petitioner refers to Order 4 Rule 1 CPC and contended that the suit has to be tested on legal parameters in respect of limitation and the same is not to be affected by the order dated 20.07.2015 as the same was only in respect of making good the deficiency in Court fee. The question of limitation is unfettered and the same has to be appreciated, as requirement of Order 4 Rule 1 CPC is mandatory in nature. The date of institution of the suit has to be reckoned when the plaint presented in its form with the requisite Court fee. At the time of making good the requisite Court fee, the limitation for filing the civil suit had already expired.

[11]. Learned counsel relied upon order dated 10.09.2015 passed in CR No.5866 of 2013 titled Sukhpreet Kaur Vs. Shamsher Singh and contended that *bona fide* error in calculating the Court fee payable on the suit is different than the limitation with which the suit was to be filed. The discretion

under Section 149 CPC can be invoked to save insufficiency of payment of Court fee to operate against the law of limitation only if there was a sufficient cause for non-payment of adequate Court fee. Section 151 CPC would not be applicable in case of express provision under Civil Procedure Code prescribing the manner of exercise of power in a given situation. Reference can be made to **Ramji Gupta and another Vs. Gopi Krishan Aggarwal (D) and others, 2013(2) RCR (Civil) 898.**

[12]. The issue of Court fee may be the subject matter between the Court and the plaintiff for which Order 7 Rule 11 CPC can be looked into, but limitation would give rise to actionable right to defendant to agitate the issue with reference to mandatory compliance of Order 4 Rule 1 CPC.

[13]. Learned counsel further relied upon **Bhakti Hari Nayak and others Vs. Vidyawati Gupta and others, AIR 2005 Calcutta 145** and contended that a plaint in terms of Order 4 Rule 1(3) CPC shall not be deemed to be duly instituted unless it complied with the requirement specified in Sub Rules (1) and (2). Sub Rule (2) requires compliance with Order 4 and Order 6 which contain the requirement of supporting the plaint by an affidavit. The cogent reading of these provisions makes it clear that the plaint which has been filed without compliance with the requirement of Order 6 shall not be deemed to be duly instituted

a suit. The consideration of deeming clause would create a legal fiction.

[14]. On the other hand, learned counsel for the respondent submitted that in the application under Order 7 Rule 11 CPC, three prayers were made i.e. firstly on the basis of inadequacy of Court fee, secondly that the plaintiff has failed to comply with the mandatory provisions as contained in Order 7 Rule 11 CPC and thirdly, the suit filed by the plaintiff was not maintainable. By referring to aforesaid grounds, learned counsel submitted that plea with regard to limitation was covered under second and third ground and the decision given on the said application was only in respect of ground No.1 i.e. deficiency in Court fee for which period of three months was given in order to make good the same. So far as other two grounds are concerned, the plea was not adverted to by the order dated 20.07.2015.

[15]. Learned counsel referred to **Sri Rathnavarmaraja Vs. Smt. Vimla, 1961 AIR (SC) 1299** and **P.K. Palanisamy Vs. N. Arumugham and another, 2010(1) RCR (Civil) 129** and contended that the issue of Court fee is preliminary issue between the plaintiff and the Court. Once the said issue is decided by the trial Court, it is not opened for the defendant to rake up the issue in appeal or before superior Court. Learned counsel further submitted that the plaint cannot be rejected

outrightly on the ground of deficient Court fee. According to Section 4 of Court fee Act, time has to be granted to the plaintiff to make good the deficiency in Court fee. Grant of time for making good the deficiency in Court fee is one issue and computation of limitation after making good the deficiency in Court fee is another issue. Order 4 Rule 1 CPC operates in different fields. Even though under Order 7 Rule 11 CPC, ground of limitation could have been set up for rejection of plaint along with ground of Court fee. The reading of para Nos.3 and 4 of the application, may have given the said impression, but ultimately, the trial Court took the cognizance on the issue in respect of deficient Court fee. The issue of limitation cannot be decided on the basis of time granted by the trial Court to make good the deficiency in Court fee.

[16]. The ratio laid down in **Sukhpreet Kaur's case (supra)** would apply in the present case. The ratio laid down in **Sri Rathnavarmaraja's case (supra)** and **P.K. Palanisamy's case (supra)** are not attracted in the present case inasmuch as that question of limitation was not to be effected with the grant of permission for making good the deficiency in Court fee. The plaint has to be tested on legal parameters of Order 4 Rule 1 CPC. Even though, the application under Order 7 Rule 11 CPC was a composite application, but the Court did not take notice of

other grounds except the ground in respect of deficient Court fee.

[17]. After due deliberation, I am of the view that impugned order dated 11.08.2016 passed by Civil Judge Junior Division, Ambala deserves to be set aside. The suit filed by the plaintiff has not satisfied the ingredients of Order 4 Rule 1 CPC and the suit on the date of making good the deficiency in Court fee is found to be beyond limitation.

[18]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 11.08.2016 passed by Civil Judge Junior Division, Ambala is set aside. Normal consequences to follow.

May 14, 2018.

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No