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

+ **TR.P.(C.) 57/2019**

JANAK DATWANI

..... Petitioner

Through: Mr Abhimanyu Mahajan, Mr
Sarbhak Mehrotra and Ms
Anubha Goel, Advocates.

versus

C N A EXPORTS PVT LTD & ORS Respondents

Through: Mr Suresh Singh, Advocate for
R-1 and R-2.
Mr Naveen Kumar Choudhary,
Advocate for R-5.
Mr Saurabh Seth and Mr
Alabhya Dhamija, Advocates
for R-7.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.07.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 24 of the Code of Civil Procedure, 1908 (hereafter 'the Code'), *inter alia*, praying that the suit bearing CS No.57826/2016 (earlier numbered CS(OS) 1113/2007 captioned *Janak Datwani v. CNA Exports Pvt. Ltd.*) in the court of Additional District Judge, Patiala House be transferred to this Court.

2. The said suit was initially filed before this Court in the year

2007 and was transferred to the District Court by an order dated 18.01.2016, on account of the enhancement of pecuniary jurisdiction.

3. Before the District Court, the petitioner filed an application under Order VI Rule 17 of the Code, seeking to amend Paragraph 27 of the plaint, which related to valuation of the suit — the petitioner sought to enhance the valuation of the suit.

4. The said application was allowed by an order dated 02.04.2019. Simultaneously, the court also directed that the plaint be returned in order for it to be instituted before a court of competent jurisdiction. The court further directed the parties to appear before the Registrar General of this Court on 16.05.2019.

5. Thereafter, the petitioner filed the present petition, *inter alia*, praying that the suit be transferred to this Court. Undisputedly, in a normal case, if a court ceases to have jurisdiction to entertain a suit, the correct course is to return the plaint to enable the party to present the same in a court of competent jurisdiction. However, this Court has carved out an exception in cases where the suit is to be presented to the court, where it was initially filed. There is no dispute that this Court had the jurisdiction to hear the case, when the suit was instituted. The transfer to the District Court was solely on the ground of enhancement of pecuniary jurisdiction. This Court has held that in such cases, the procedure to be followed by the District Court ceasing to have jurisdiction on account of amendment in the value, is to have the matter placed before this Court. The said view was expressed by the Coordinate Bench of this Court in ***Ziff-Davis Inc. v. Dr. J. K. Jain***

& Ors.: 2006 (32) PTC 86 (Del.). In the said decision, this Court had also noted that the earlier decision of this Court in ***Aviat Chemicals Pvt. Ltd. v. Magna Laboratories (Gujarat) Pvt. Ltd.: AIR (2006) Del 115***, wherein it was held that even in cases where a plaint had been returned under Order VII Rule 10 of the Code, the Court can still exercise powers under Section 24 of the Code so that the file is brought before this Court and the matter starts from the position where it was left. The relevant extract of the said decision of this Court in ***Ziff-Davis Inc. (supra)***, is set out below:-

“6. In my considered view, in a normal situation if a Court ceases to have pecuniary jurisdiction, the plaint ought to be returned to be presented before the competent Court. However, the facts in the in present case and in such other similar cases are peculiar arising from a situation where the plaint is originally presented before a competent jurisdiction, but is transferred on account of increase of pecuniary jurisdiction of that Court and thereafter has to actually continue in the same Court where it was originally pending. The transfer has taken place in pursuance to notification issued in this behalf increasing the pecuniary jurisdiction and stating that the suits ought to be transferred to the trial Court. In the past when such pecuniary jurisdiction has been increased, some category of cases have been retained while other categories of cases have been transferred. The notification in this regard was issued in the year 2003 where probate matters and certain arbitration matters were sought to be retained irrespective of their pecuniary jurisdiction. The object of such transfer is only to place the matter before the Court which has now acquired pecuniary jurisdiction in pursuance to the amendment.

7. It is no doubt true that Section 24 of the Code applies to the Court of equivalent jurisdiction or a Court subordinate thereto. However, procedures are only hand- maiden of justice and a learned Single Judge of this Court recently had an opportunity to deal with such a situation arising from similar facts in Transfer Petition No. C- 9/2005 titled *Aviat Chemicals Pvt. Ltd. and Anr. v. Magna Laboratories (Gujarat) Pvt. Ltd. and Anr.* decided on 29.05.2005. It was held that even where the plaint has been returned under Order 7 Rule 10 of the Code, power could be still exercised by the Court under Section 24 of the Code so that the file is brought before the Court and the matter starts from the position where it was left. Such power can be exercised including under Section 151 CPC. In this behalf para 16 of the Judgment may be referred to which is as under:

“16. The argument raised on behalf of the respondents that loss of jurisdiction as a result of amendment would necessarily have to be construed as no suits or proceedings are pending before the trial Court, is without any merit. I have already noticed that the provisions of Section 24 and Order 7 cover a different domain and there is no conflict between these provisions. The provisions of Section 151 would come to the aid of the Court, as no Code can possibly make provisions so as to meet every situation which may arise during the pendency of the suit. It is a situation where inherent jurisdiction of this Court would come to the aid and supply the vacuum. The inherent jurisdiction of the Court would normally be exercised in the interest of justice and for attainment of object of expeditious disposal of suits. May be it is the creation of the applicants them- selves that the Court has lost pecuniary jurisdiction and the

applications under Order 7 Rule 10 and 10 (A) are pending or that the order has been passed for return of plaint but the plaint as a matter of fact has not been returned to the plaintiffs as of today, thereafter interim orders in the present petitions were passed in favor of the petitioners. In these circumstances, it is difficult for this Court to hold that there is no suit or proceedings in the suit, pending before the trial Court. The Legislature in its wisdom has worded the language of Section 24 in wide terms by empowering the High Court to transfer any suit or appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it. In other words, the meaning of the word "such or other proceedings pending in any Court" cannot be restricted or construed so as to exclude the proceedings as contemplated under Order 7 Rule 10, 10 (A) of the Act."

8. 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."

6. The said decision is also referred to by the Division Bench of this Court in *U. N. Bhardwaj v. Y. N. Bhardwaj & Ors.: 2017 (161) DRJ 337*.

7. In view of the above, this Court is of the view that the learned ADJ ought to have, after having allowed the application under Order VI Rule 17 of the Code for amendment of the plaint for enhancement of the valuation, directed that the matter be placed before this Court.

8. Considering the earlier decisions of this Court, this Court is of the view that it is not denuded of its powers under Section 24 of the Code notwithstanding that a direction has been issued to return the plaint.

9. The learned counsel appearing for respondent no.2 (Mr. Anand Datwani) states that since the plaint was not amended within a period of fifteen days and remains un-amended, the petitioner has lost his right to do so. He states that in this view, the suit filed by the petitioner need not be transferred to this Court. The aforesaid contention is unpersuasive. The petitioner is unable to amend the plaint as the petitioner has filed the present petition. Further, the contention advanced by respondent no.2 is self-defeating. Plainly, if the amendment is ineffective then the very order returning the plaint cannot be sustained. In any view of the matter, this Court is of the view that such procedural technicalities ought not to come in the way of an expeditious disposal of an action which is properly instituted.

10. In view of the above, this petition is allowed. The suit in question (CS No.57826/2016 captioned '*Janak Datwani v. CNA*

Exports Pvt. Ltd.’) is withdrawn to be tried in this Court. It is directed that the concerned records of the said suit be placed before the Joint Registrar for further proceedings on 22.08.2019.

11. The suit shall proceed from the same stage as obtaining on 02.04.2019.

JULY 25, 2019
MK

VIBHU BAKHRU, J

