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

Date of Decision:- 10.12.2021

+ **TR.P.(C.) 9/2020**

MITA SAHA

..... Petitioner

Through Mr. Jugal Wadhwa and Mr. Raghav
Goyal, Advs.

versus

DR KABITA MAZUMDAR & ORS

..... Respondents

Through: Mr. Prosenjeet Banerjee, Mr. Tarang
Gupa and Ms. Shreya Singhal, Advs.
for R-1&2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 2056/2020 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

TR.P.(C.) 9/2020

3. The petitioner who is the plaintiff in suit being CS 9551/2016 pending before the Additional District Judge-06, (hereinafter referred to as ADJ) South East District, Saket Courts, Delhi, seeks transfer of the said suit to this Court.
4. Learned counsel for the petitioner submits that the aforesaid suit wherein the petitioner has prayed for declaration, joint possession, partition and permanent injunction was initially filed before this Court

in the year 2016 and the pecuniary valuation thereof, was stated to be Rs.1,40,00,000/-. The suit came to be transferred to the Court of the Ld. District Judge after the enhancement of the pecuniary jurisdiction of the District Court.

5. However, after the suit was transferred to the District Court, upon an application being moved by respondents no.1 and 2 who are defendants in the suit, an order came to be passed by Ld. ADJ on 13.09.2019 holding therein that on the basis of the averments made in the plaint, the pecuniary valuation of the suit was Rs.2,40,00,000/-. The matter was thereafter adjourned to enable the learned counsel for the petitioner to obtain instructions as to whether the petitioner was inclined to exercise the option available under Order VII Rule 10A of the Civil Procedure Code, 1908 (hereinafter referred to as CPC), for return of the plaint.
6. At this stage, the petitioner realising, that on account of the order passed by the Ld. ADJ on 13.09.2019 holding the pecuniary valuation of the suit as being more than Rs.2,00,00,000/-, it is only this Court which would have the necessary original jurisdiction to try the suit. She, therefore, preferred the present transfer petition in which notice was issued on 20.01.2020. On the said date, learned counsel for the respondent no.1, 2 and 5 had duly accepted notice but till date, no reply has been filed by any of the respondents. The matter was thereafter repeatedly adjourned to await the service of respondent no. 4 who was, as noted in the last order, eventually served *dasti*.
7. Today, when the petition is taken up for disposal, even though no counter affidavit has been filed by any of the respondents, learned

counsel for the respondent nos. 1 & 2 and 5 seek to oppose the petition by contending that the petitioner could have not approached this Court at this stage when the Ld. ADJ had already passed an order holding therein that since the pecuniary valuation of the suit was more than Rs.2,00,00,000/-, the plaint was required to be returned for filing in the Court having necessary pecuniary jurisdiction and therefore, there was no pending suit before the Ld. ADJ of which the transfer is being sought. By placing reliance on the order dated 30.11.2019, learned counsel for the respondents no. 1 and 2 submit that while dismissing the petitioner's application seeking review of its earlier order dated 13.09.2019, the Ld. ADJ had clearly observed that the plaint was required to be returned. They, therefore contend that merely because the Court, instead of returning the plaint on the same date, had adjourned the matter for instructions as to whether the petitioner desired to exercise the option under Order VIII Rule 10A CPC, would not change the position that the plaint had already been directed to be returned. They, therefore seek dismissal of the petition.

8. On the other hand, learned counsel for the petitioner submits that merely because the learned ADJ had come to a conclusion that the pecuniary valuation being beyond the jurisdiction of the District Court, the plaint was required to be returned to the petitioner/plaintiff, could not imply that there was no suit pending before the Ld. ADJ on the date of filing of the present petition. He further submits that the petitioner has already deposited the deficient court fees in terms of the order dated 13.09.2019 and therefore prays that the suit be transferred to this Court. By placing reliance on a decision of this Court in *Aviat*

Chemicals Pvt. Ltd. & Anr. & Magna Laboratories (Gujrat) Pvt. Ltd. & ANR. 127 (2006) Delhi Law Times 300, he submits that as long as the plaint has in fact not been returned to the plaintiff, this Court would have the jurisdiction under Section 24, CPC to direct the transfer of any suit if the same is found to be in the interest of justice. He, therefore, prays that the suit preferred by the petitioner almost six years ago be transferred to this Court without any further delay.

9. Having considered the submissions of learned counsel for the parties, I find absolutely no merit in the objections raised by the respondents. The respondents' plea that the plaint was already returned to the petitioner is contrary to the record. A perusal of the orders dated 13.09.2019 and 30.11.2019 clearly show that, though undoubtedly, the Ld. ADJ had come to a conclusion that the suit had been incorrectly valued as the same was required to be valued at Rs.2,40,00,000/-, the plaint was still not returned to the petitioner. More so, even this order was based on an application moved by respondents no.1 & 2 who continue to enjoy the subject property to the exclusion of the petitioner. In the light of this factual position, the respondents' plea that there was no existing suit before the Ld. ADJ on the date of filing of the present petition cannot be accepted.
10. Even otherwise, in my considered view, the power under section 24, CPC has to be exercised in such a manner so as to further the cause of justice. The petitioner who is claiming partition of the suit property has been already waiting for the last 6 years and therefore interest of justice demands that the suit be transferred in order to avoid any further delay in adjudication of her claim. In this regard, reference

may be made to the observations in paras 16 and 17 of *Aviat (supra)* which read 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 themselves 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 favour 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.

17. The present are the cases which have been filed by the plaintiffs in the Court of Competent jurisdiction. However,

earlier they were transferred to the District Courts in view of the notification and now the district courts have lost pecuniary jurisdiction as a result of the order of the Court at the behest of the parties. The interim orders, undertakings have continued for years together. In some cases evidence has been recorded. It will be travesty of justice if the proceedings have to commence de novo right from the stage of filing a written statement as the plaintiff would be returned only plaint, to be presented before the Court of competent jurisdiction there is nothing in the provisions of Order 7 Rule 10 which on its plain reading or by necessary implication be construed as a bar to maintainability of a petition under Section 24 of the Code. These circumstances examined in light of the predicated principles of law adjunct with the fact that no prejudice would be caused to the respondents if the suits are permitted to be transferred by itself would be sufficient ground for ordering the transfer of the suits if other ingredients of Section 24 are satisfied and such an order is demanded in the interest of justice.”

11. For the aforesaid reasons, the Transfer petition is allowed and the suit being CS 9551/2016 pending before the Additional District Judge-06, (ADJ) South East District, Saket Courts, Delhi is ordered to be transferred to this Court and tried in accordance with law.
12. Upon transfer, the suit will be listed before the concerned Joint Registrar for further proceedings on 20.01.2022.

(REKHA PALLI)
JUDGE

DECEMBER 10, 2021

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