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

Date of Decision: 22.03.2021

+ **CM(M) 175/2021 & CM No.8259/2021**

GURMEET SINGH SETHI Petitioner
Through Mr.Prateek Chadha, Mr.Rajeev
Chauhan, Advs.

versus

HARSHARAN KAUR BATRA Respondent
Through Mr.Prashant Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner seeking setting aside of the judgment and order dated 06.07.2019 passed by the learned Additional District Judge-03, North District in Suit, being CS No. 2014 of 2016 titled *Harsharan Kaur Batra v. Gurmeet Singh Sethi*, on the ground of it having been passed by a Court which had no territorial jurisdiction to entertain the Suit.

2. The above referred Suit was partially decreed by the learned Trial Court exercising power under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

3. On the respondent filing an Execution Petition, being Ex. No. 64 of 2020, the learned Trial Court noticed that the suit property in fact fell within the jurisdiction of North-West District and therefore, vide its order dated 15.02.2020, transferred the Execution Petition to that Court.

4. Based on this order, the petitioner has challenged the decree itself before this Court contending that once the learned Executing Court is of the opinion that the suit property lay within the jurisdiction of North-West District, the decree itself has been passed by a Court which lacked territorial jurisdiction to entertain the Suit and therefore, is a nullity.

5. In support of his claim, the learned counsel for the petitioner has placed reliance on the judgments of the Supreme Court in ***Kiran Singh & Ors. v. Chaman Paswan & Ors.***, AIR 1954 SC 340 and ***Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd.***, (2019) 17 SCC 82.

6. On the other hand, the learned counsel for the respondent, placing reliance on Section 21 of the Code, submits that an objection to a decree on account of lack of territorial jurisdiction cannot be raised unless such objection has been taken in the Suit at the earliest possible opportunity and at least before the framing of issues. He submits that in the present case, no such objection was taken by the petitioner before the learned Trial Court and in fact, even in this petition there is no consequent failure of justice pleaded by the petitioner.

7. Placing reliance on the judgment of the Supreme Court in ***Mantoo Sarkar v. Oriental Insurance Co. Ltd. & Ors.***, (2009) 2 SCC 244, and of this Court in ***Rehmania Academy of Sciences, Mathura v. Shri B.B.D Bhargava & Ors.***, 2011 IV AD (DELHI) 579, the learned counsel for the respondent submits that it is only the lack of subject matter jurisdiction that may render a decree a nullity; otherwise the party complaining must prove prejudice having been caused to it.

8. I have considered the submissions made by the learned counsels for the parties.

9. Section 21 of the Code reads as under:

“21. Objections to jurisdiction- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.”

10. A reading of the same would clearly show that an objection as to the place of suing cannot be entertained by any Appellate or Revisional Court unless such objection was taken in the Suit at the earliest possible opportunity and in any case, before the issues were settled, and unless there has been a consequent failure of justice.

11. The Supreme Court in *Mantoo Sarkar* (supra) examined the principles of Section 21 of the Code and held that a distinction must be made between jurisdiction with regard to the subject matter of the Suit and that of territorial and peculiar jurisdiction. Whereas in the case falling within the former category, the judgment would be a nullity, in the latter it would not be.

12. This Court also in *Rehmania Academy of Sciences, Mathura* (supra) examined the law in relation to Section 21 of the Code and previous decision of the Supreme Court thereon and observed that in order that an objection to the place of suing being entertained by an Appellate Court or a Revisional Court, the fulfilment of the following conditions is necessary:

- (i) The objection was taken in the Court of first instance;
- (ii) It was taken at the earliest possible opportunity and in any case, before the issues were settled;
- (iii) There has been a consequent failure of justice;
- (iv) All the above three conditions must co-exist.

13. In **Kiran Singh** (supra), in fact, the Supreme Court had taken cognizance of Section 21 of the Code and held as under:

“7. Section 11 enacts that notwithstanding anything in section 578 of the Code of Civil Procedure an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in – and deservedly – for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a

consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.”

(Emphasis supplied)

14. The Supreme Court therefore, held that the decree passed by a Court which otherwise lacks territorial jurisdiction, would not be liable to be reversed purely on the technical ground unless it has resulted in failure of justice.

15. In ***Hindustan Zinc Ltd.*** (supra), the Court was in fact, considering whether an Arbitration Award passed by an Arbitral Tribunal which was improperly constituted, could be sustained.

16. In the present case, as noted hereinabove, the only reason for challenge to the Impugned judgment and decree is the order dated 15.02.2021 passed by the learned Executing Court, observing that due to the location of the suit property, the Court at North-West District would have the territorial jurisdiction. The petitioner does not therefore, plead any prejudice having been caused to him by the

impugned decree having been passed by the Court at the North District.

17. Be that as it may, it is noted that Delhi has very peculiar problem of its own where the jurisdiction of various districts for criminal and civil cases is dependent on different notifications and these kinds of issues are seen to be arising in numerous cases. Therefore, to set aside a decree only on this ground, may not be proper.

18. While dismissing the present petition, it is felt necessary to direct the learned Registrar General of this Court to advise the District Courts in Delhi to publish on their website the demarcation of various areas which fall within their criminal and civil jurisdiction so as to avoid similar situation arising in future cases.

19. A copy of this order shall be supplied to the learned Registrar General of this Court for ensuring the necessary instructions to be issued.

20. The petition is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 22, 2021/Arya/P