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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + CM(M) 768/2022, CM APPL. 33980/2022 and CM APPL. 33981/2022

HARMINDER SINGH SURI Petitioner
 Through: Mr. Preet Jeet Singh and Mr. Gurjeet Singh, Advs.

versus

AMRIK SINGH SURI Respondent
 Through: Mr. Ashok Chhabra and Ms. Shefali Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
03.08.2022

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1. This petition under Article 227 of the Constitution of India assails the order dated 4th July 2022 passed by the learned Additional District Judge (“the learned ADJ”) on an application under Order VII Rule 10¹ preferred by the petitioner, as the defendant before the learned ADJ, in Civ. DJ 9500/2016 (*Amrik Singh Suri v. Harminder Singh Suri*).

2. At the outset, it is important to note the prayer in the application of the petitioner, under Order VII Rule 10¹ of the Code of Civil

¹ 10. **Return of plaint.** –

(1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation. – For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.



Procedure, 1908 (CPC), which reads thus:

“It is, therefore, most respectfully prayed that the Hon'ble Court may graciously be pleased to either firstly frame a Preliminary Issue with regard to the valuation of the suit for the purpose of court fees and jurisdiction and also suit being within the pecuniary jurisdiction of the Hon'ble Court and adjudicate upon same and/or to hear and adjudicate upon the present application straightway and thereupon direct return of plaint to Plaintiff as per law.

Any other or further relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case be passed in favour of the Defendant and against the Plaintiff.”

3. The impugned order dated 4th July 2022 clearly adjudicates only the prayer for return of the plaint under Order VII Rule 10¹ of the CPC. In fact, the application of the petitioner, having been preferred under Order VII Rule 10¹ of the CPC, should strictly have been limited only to the prayer of return of the plaint.

4. Nonetheless, as the application also invokes Section 151 of the CPC, and contains an alternate prayer that a preliminary issue be framed with regard to valuation of the suit for purposes of court fee and jurisdiction as well as whether the suit was amenable to the pecuniary jurisdiction of the learned ADJ, it is clarified that the impugned order is being treated as an order limited to the prayer for return of the suit under Order VII Rule 10¹ of the CPC, and its justifiability being examined in that regard. The alternate prayer contained in the petitioner's application, “that the Hon'ble Court may

(2) **Procedure on returning plaint.** – On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.



graciously be pleased to either firstly frame a Preliminary Issue with regard to the valuation of the suit for the purpose of court fees and jurisdiction and also suit being within the pecuniary jurisdiction of the Hon'ble Court and adjudicate upon same” is not being decided by the learned ADJ and this Court, too, expresses no opinion in that regard. It shall be open for the petitioner to urge the said prayer by way of a separate application before the learned ADJ and, if the petitioner chooses to do so, the learned ADJ shall adjudicate on the said prayer in accordance with law. No opinion is being expressed regarding the merits of the said prayer.

5. Adverting, now, to the decision of the learned ADJ to reject the petitioner's prayer for return of the suit instituted by the respondent under Order VII Rule 10¹ of the CPC, having perused the material on record and heard Mr. Preet Jeet Singh at length, this Court does not find any justifiable cause to interfere with the impugned order, in exercise of the jurisdiction vested in it by Article 227 of the Constitution of India.

6. Given the limited peripheries of the dispute, no detailed allusion to facts is necessary. A brief recital would suffice.

7. Civ DJ 9500/2016 was instituted by the respondent against the petitioner, seeking possession of the property situated at B-2/60, Janak Puri, New Delhi (hereinafter “the suit property”) as well as damages of ₹ 3,15,000/-. In the plaint, the respondent valued the suit property



for the purposes of court fee and jurisdiction at ₹ 36,00,000/- and for damages of ₹ 3,15,000/-. *Ad valorem* court fees were also paid on the said valuation.

8. The suit was instituted on 27th February 2009. On 7th December 2015, the respondent filed an application in the aforesaid suit under Order VI Rule 17 of the CPC, seeking to amend the plaint. In the said application, the respondent contended that the suit property had been incorrectly valued in the plaint and that the correct valuation of the suit property was ₹ 2,75,00,000/- as on 31st March 2009. As such, the respondent sought liberty to amend the plaint with respect to the valuation of the suit property.

9. The suit was initially instituted by the respondent before the learned ADJ. At that time, the pecuniary jurisdiction of the learned ADJ was limited to ₹ 20,00,000/-. As such, the suit was returned by the learned ADJ on 3rd January 2009 to the respondent for being presented before the competent forum.

10. The suit was, accordingly, re-filed before this Court on 19th February 2009, and numbered CS. (OS) 545 of 2009. During the pendency of the said proceedings before this Court, the respondent moved the aforementioned application under Order VI Rule 17 of the CPC, seeking to amend the suit and enhance the pecuniary value of the suit property, as originally mentioned in the plaint.

11. Consequent on enhancement of pecuniary jurisdiction of Trial



Courts to ₹ 2,00,00,000 w.e.f. 26th October 2015, *vide* notification dated 6th November 2015, this Court, *vide* the following order dated 15th December 2015, transferred the suit to the learned ADJ:

“The plaintiff filed the suit for recovery of possession and recovery of ₹ 3,15,000/- towards damages for use and occupation and for mesne profits and for determination of future mesne profits. The valuation of the suit is ₹ 39,15,000/. In view of Section 4 of the Delhi High Court (Amendment) Act, 2015 and the order passed on 24th November, 2015, the suit is transferred to the jurisdiction of District Judge (West), Tis Hazari Courts. Parties to appear before the concerned Court on 15th February, 2016.”

12. Be it noted, on 15th December 2015, when this Court directed transfer of the suit to the learned ADJ, the application under Order VI Rule 17 of the CPC already stood filed by the respondent. Despite the fact that the application stood filed, this Court directed the matter to be taken up before the learned District Court, within whose pecuniary jurisdiction it lay.

13. The matter, thereafter, has been taken up by the learned ADJ and is presently pending before her.

14. During the pendency of the present proceedings before the learned ADJ, consequent to the transfer of the proceedings by this Court on 15th December 2015, the petitioner, as the defendant in the suit, filed an application under Order VI Rule 10 of the CPC on 13th May 2022, seeking that the suit be returned as it was outside the pecuniary jurisdiction of the learned ADJ. In making the request, the



petitioner relied on the averment contained in the Order VI Rule 17 application of the respondent, to the effect that the valuation of the suit was incorrect, and, on that basis, seeking to amend the suit and enhance the value of the suit property to ₹ 2,75,00,000/- as on 31st March 2009.

15. Said application stands rejected by the learned ADJ by the impugned order dated 4th July 2022. Aggrieved thereby, the petitioner has invoked the jurisdiction vested in this Court by Article 227 of the Constitution of India.

16. The reasoning of the learned ADJ is contained in the following passages of the impugned order:

“13. I have heard the submissions made and carefully perused the record and citation relied upon by the parties. It is a settled law that it is the nature of the relief claimed in the plaint which is decisive of the question of the suit valuation. In the present case, the plaintiff has filed the present suit seeking the relief of possession against the defendant alleging himself to be the owner of the suit property and the defendant to be a permissive user in the same. However, in his own wisdom, he has sought a decree of possession against the defendant and not the relief of mandatory injunction. Although, in such pleadings, the claim of relief of mandatory injunction is not unknown to the legal process, however, since, in the present suit, the plaintiff has not come to the court with a suit for mandatory injunction and has rather filed a suit for possession, law has to be considered accordingly and it cannot be said that in the present case, the market value of the suit property is irrelevant.

14. Paragraph 7 of the plaint contains the valuation clause wherein the value of the suit for the purposes of court fees for the relief of possession is fixed at Rs. 36 lakhs while the value



of the suit for the purposes of damages is fixed at Rs. 3,15,000/- making the total valuation of the suit as Rs. 39,15,000/-. Ad valorem court fees on this amount has been accordingly paid. The defendant filed his written statement wherein in reply to para no. 9 on merits, it is submitted that the current market value of the suit property is more than one crore. It is also alleged that in terms of Delhi Stamps (Prevention of Under valuation of Instruments) Rules, 2007 as notified and applicable in Delhi relating to the valuation of Delhi properties for the purposes of levy of stamp duty, the valuation of suit property comes to Rs. 83 lakhs and accordingly, the suit is not valued properly for the purposes of court fees and jurisdiction.

15. It is also well known that earlier the pecuniary jurisdiction of this court was Rs.20,00,000/- which was enhanced to Rs. 2 crores w. e. f. 26.10.2015 vide notification dated 06.11.2015. The present suit was pending after re-filing from 2009 and suddenly after enhancement of the jurisdiction of District courts, an application for amendment was filed by the plaintiff under Order VI Rule 17 CPC dated 07.12.2015 requesting for permission to amend the plaint for increasing the value of the suit for the Relief of Possession to Rs. 2 crores. This application appears to be nothing but a desperate attempt of the plaintiff to ensure that the suit continues to be proceeded/tried before Hon'ble High Court of Delhi and is not actually transferred to District courts. However, this application was never considered by Hon'ble High Court of Delhi before transferring the matter to this court vide order dated 05.12.2015. It is also apparent on record that despite filing of this application by the plaintiff and supply of its copy to the defendant, this application was never pressed by either of the parties at any earlier stage. Even as on date, the plaintiff does not want to press this application under Order 6 Rule 17 CPC. While filing the application under Order 6 Rule 17 CPC, the plaintiff did not support the same with any document on the basis of which he was claiming that the market value of the suit property on the date of filing of the suit was Rs. 2 crores. Defendant, on the other hand, had alleged in his written statement that the valuation of the suit property was at the max Rs. 83 lakhs at the time of filing of the suit. The valuation report being relied upon by him has been filed at a much later date.



16. Considering the overall facts of the case, I am of the opinion that there is no unambiguous admission of the plaintiff that the market value of the suit property was Rs. 2 crores at the time of filing of the suit. Whatever admission is contained in the application under Order VI Rule 17 CPC dated 07.12.2015 is clearly a motivated admission made in the desperate attempt to ensure retaining of the suit before Hon' ble High Court of Delhi. Even otherwise, the plaintiff has not pressed his application under Order 6 Rule 17 CPC and accordingly, I do not deem it appropriate to return the suit holding that on account of categorical admission of the plaintiff regarding the valuation of the suit property, the suit is beyond the pecuniary jurisdiction of this court as alleged by the defendant in the application under consideration. For the reasons given above, I find no merit in the application under consideration. The same is accordingly, dismissed.

17. The pending application of the plaintiff under Order VI Rule 17 CPC dated 07.12.2015 is also dismissed being not pressed.”

17. Mr. Singh, learned Counsel for the petitioner, submits that the learned ADJ fell into patent error by refusing to take cognizance of the admission in the application under Order VI Rule 17 of the CPC of the respondent, to the effect that the actual valuation of the suit property was ₹ 2,75,00,000/- as on 31st March 2009. Once such an admission had been placed on record in the Order VI Rule 17 application filed by the respondent, which was accompanied by an affidavit, Mr. Singh submits that it could not have been lightly ignored by the learned ADJ, irrespective of whether the application was pressed or abandoned. The respondent, he submits, could not be permitted to blow hot and cold.

18. Mr. Singh also faults the learned ADJ for having returned contradictory findings in the impugned order as, at one stage, she



observes that there was no categorical admission, by the respondent, that the value of the suit property was valued at ₹ 2,75,00,000/- as on 31st March 2009 and, at another, that the admission was motivated. Mr. Singh submits that there could either be an admission or no admission, but not both.

19. Mr. Singh also seeks to draw an analogy from Order XII Rule 6 of the CPC to contend that, even if the application under Order VI Rule 17 of the CPC had been abandoned by the respondent, the content of the admission contained in the application could not have been ignored, while examining the petitioner's application under Order VII Rule 10¹ of the CPC.

20. Having heard Mr. Singh at length and perused the impugned order, I confess that I do not find that a case for interference with the decision of the learned ADJ, within the jurisdiction vested in this Court by Article 227 of the Constitution of India, exists.

21. It is well settled that, in adjudicating an application under Order VII Rule 10¹ of the CPC, the Court is only empowered to proceed to examine the contents of the plaint and the assertions and asseverations contained therein. Assertions contained outside the plaint cannot be looked into, while adjudicating on an application under Order VII Rule 10 or under Order VII Rule 11 of the CPC.² Assertions contained in the written statement filed by the defendant are also

² Refer *Salem Bhai v. State of Maharashtra*, (2003) 1 SCC 557, *Raptakos Brett & Co. Ltd. Ganesh Property*, (1998) 7 SCC 184, *Mayar (H.K.) Ltd. v. Vessel M. V. Fortune Express*, (2006) 3 SCC 100



equally immaterial, though, on their basis, the defendant may well require the Court to frame an issue and, thereby, have his grievance adjudicated by following the said route. The scope of examination under Order VII Rule 10¹ and under Order VII Rule 11 of the CPC, however, it is well settled, is limited to the assertions in the plaint.

22. If the plaint had been amended, the assertion in the amended plaint could have been taken into account. As matters stand, however, the application of the respondent under Order VI Rule 17 of the CPC was not pressed by it. In fact, the impugned order concludes by dismissing the said application as not pressed. The petitioner does not assail the impugned order to that extent. It would be paradoxical for the Court to hold, on the one hand, that the application was dismissed as not pressed and, on the other, that the assertions contained in the application could be looked into, while adjudicating the petitioner's application under Order VII Rule 10¹ of the CPC.

23. What was before the learned ADJ was the original plaint. It has not been amended till date. The petitioner may have all its misgivings against the manner in which the suit property has been valued in the plaint, but those misgivings have to form subject matter of separate proceedings. The application of the petitioner under Order VII Rule 10¹ of the CPC could be examined only on the basis of assertions contained in the plaint which, till date, remain unamended.

24. In view thereof, as the plaint values the suit property at ₹ 36,00,000/ , and the said valuation continues to be the valuation of the



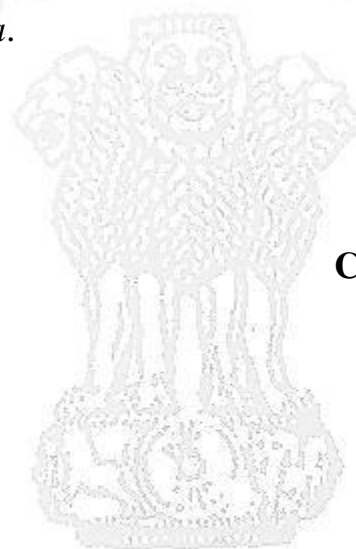
plaint on record, unamended till date, no fault can be found with the learned ADJ in rejecting the petitioner's application under Order VII Rule 10¹ of the CPC.

25. For the aforesaid reasons, this petition is bereft of merit and is accordingly dismissed *in limine*. Miscellaneous applications also stand disposed of.

26. This dismissal is, however, subject to the caveat already recorded in para 6 *supra*.

AUGUST 3, 2022
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C.HARI SHANKAR, J



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