

15.6.2023
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Ct. no. 652
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C.O. 1159 of 2018

Smt. Suparna Ghosh
Vs.
Rakesh Kumar Gupta & Ors.

Mr. Sounak Bhattacharya
Mr. Saunak Mondal
Mr. Abhirup Halder
Mr. Anirban Saha Roy ... for the petitioner

Mr. Gopal Chandra Ghosh
Mr. Rajkrishna Mondalfor the opposite parties

This is an application under Article 227 of the Constitution of India assailing the order dated 28th March, 2018 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24 parganas in Title Suit no. 14 of 2016.

The petitioner contended that the petitioner as plaintiff filed aforesaid suit for a declaration that the suit property absolutely belongs to the plaintiff and the defendant No. 1 has no right, title, interest or possession and also for permanent injunction. After receipt of the summons, the defendant/opposite parties herein filed an application praying for transfer of the suit to a different court alleging that the learned trial Judge does not have territorial or pecuniary jurisdiction. The learned trial Judge by an order dated 25.02.2016, was pleased to dismiss the said application with the observation that

the valuation of the present suit comes under the purview of Section 7(IV)(b) of the West Bengal Court Fees Act, 1970 and according to this provision, the suit can be filed by the plaintiff on the basis of his own valuation.

Being aggrieved by the said order, a civil revisional application being C.O. 943 of 2016 was preferred before this court and this court upon hearing the parties, was pleased to dismiss the Revisional application on 06.06.2016 upon holding that the objection raised by the defendant with regard to the jurisdiction of the court, is rejected and the order of the trial court is upheld. The defendant/opposite party no. 1 filed an application on 15.3.2016 under Section 11 of the West Bengal Court Fees Act, 1970 inter alia praying for an order for determining the correct valuation of the suit with a direction to pay appropriate court fees. Said application came up for hearing before the court below and by an order dated 20th December, 2016, the court below was pleased to reject the said application of the defendant under Section 11 of the Court Fees act. The defendant/opposite party no. 1 herein challenging said order dated 20th December, 2016, preferred Civil Revisional application being C.O. 51 of 2017. Petitioner herein challenging the later part of the same order dated 20.12.2016 preferred Civil Revision being C.O 76 of 2017. The said two applications came up for hearing

before this court and this court, while disposing of the said Revisional applications, was pleased to observe that

“in view of reliefs that have been claimed and the fact that the plaintiff seeks an adjudication not only as to the shop room but also as to the persons entitled to manage the business, the nature of the declaration sought is somewhat larger than to merely protect the plaintiff’s possession of the shoproom. Since the stock-in-trade has been included in the schedule to the plaint and the reliefs claimed cover such schedule, the valuation under Section 7(IV)(b) of the West Bengal Court Fees Act, 1970 may be erroneous. In all fairness, it must be recorded that the plaintiff has not sought to resist a direction for an inquiry being undertaken.”

Accordingly, this court in that judgment modified the order dated 20th December, 2016 and disposed of the said two applications by requesting the trial court to undertake an enquiry to assess the appropriate court fees that ought to be paid by the plaintiff.

On the basis of said order, the defendant/opposite party no. 1 filed an application on 16.2.2018, praying for appointment of a valuation commissioner to assess the valuation of stock-in-trade and valuation of the suit and to submit a report. The plaintiff/petitioner herein filed a written objection against the said application contending that it is well settled by the judicial decision reported in AIR 1954 Cal 753 that where there is no objective standard, the valuation by the plaintiff should be accepted and where the subject matter has no market value, the court fees has to be paid according to the amount at which the relief sought is valued in the plaint. He further contended when the plaintiff has filed a suit for declaration that the deed is void and also for some

consequential relief for setting aside the deed, Section 7(IV)(b) of the West Bengal Court Fees Act, 1970 will attract. When the suit is for declaration and consequential relief it is open to the plaintiff to value his claim and it is the amount at which he has valued the relief sought for the purpose of court fees that determines the value for jurisdiction and not vice versa.

However, learned court below by the impugned order, was pleased to hold that the High court has requested him to enquire about the actual court fees which is required to be paid by the plaintiff and to comply the said order an enquiry is required in respect of the property and for which valuation commissioner is required to be appointed and accordingly court below allowed the defendant's prayer for appointment of valuation commissioner.

Being aggrieved by the order, learned counsel for the petitioner submits herein that the court below acted illegally and with material irregularity by appointing the valuation commissioner for the purpose of assessing the valuation of stock-in-trade in the business. Learned court below failed to appreciate that the instant suit is a suit for declaration and injunction and the same has to be assessed under the provision of Section 7(IV)(b) of the West Bengal Court Fees Act, 1970 and as such the plaintiff can put his own valuation. Learned trial Judge in exercise of his jurisdiction acted illegally and with

material irregularity by relying the balance sheet and the auditors report without appreciating that those stock-in-trade which were mentioned in the balance sheet and in the auditors report, are no more in existence when the suit was filed and he ought to have held that there is no objective standard for determination of the valuation of the stock-in-trade on the date of filing the suit. In fact, the payment of court fees is a matter between the plaintiff and the court and the defendant has no manner of right to agitate the said issue before the court below. Accordingly, there is no necessity for appointment of valuation commissioner for the purpose of assessing the valuation of the stock-in-trade for the purpose of determining the valuation in the present suit. Accordingly, he has prayed for setting aside the order.

Learned counsel for the petitioner, in this context, relied upon a judgement of this court in ***Chhatu Lal Shaw Vs. Panchanan Shaw & Ors.*** reported in **AIR 1953 Cal 755.**

Learned counsel for the opposite party however referred the order passed by this court in C.O. 51 of 2017 and contended that this court has clearly directed the court below for appointment of valuation commissioner and as such the court below has rightly appointed valuer so that valuation of the stock-in-trade can be assessed. He further pointed out that in their written statement they have categorically stated that the

suit has not been properly valued. He pointed out that the plaintiff has filed annexure with the injunction application where he has stated about entire stock-in-trade and as such the suit clearly does not fall within 7(IV)(b) or Section 7(iv)(c) of the West Bengal Court Fees Act, 1970 and the court fees are required to be paid by the plaintiff on the basis of actual valuation of the stock-in-trade, which would be assessed by the valuation commissioner.

I have perused the submissions made by both the parties. Section 7(IV)(b) and (c) of the West Bengal Court Fees Act, 1970 states that in suits seeking declaratory decree and consequential relief and/or to obtain an injunction, the court fee will have to be paid according to the amount at which the relief sought is valued in the plaint. Section 11 deals with the enquiry as to valuation of the suit where in the opinion of the court, it appears that the subject matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such enquiry as it thinks fit for such purpose.

It is not a debatable issue that when the suit is filed for declaration with consequential relief in the form of permanent injunction, it is open for the plaintiff to give his own valuation. Where there is an objective standard for valuing the relief, the court has the right to amend

the valuation and if there is no objective standard for valuing the relief the plaintiffs own valuation will remain.

However on perusal of the order impugned, it appears that while disposing the application being C.O. 51 of 2017 along with C.O 76 of 2017 this court requested the trial court “to undertake an enquiry to assess the appropriate court fees that ought to be paid by the plaintiff”.

Such request in my opinion, does not imply that court is not required to consider whether 7(IV) (b) of the West Bengal Court Fees Act, 1970 applies in this context or not. In my opinion aforesaid request of court to undertake an enquiry to assess the appropriate court fee, has to be read with the court’s observation made in previous paragraph where it has held that the valuation under section 7 (iv)(b) of the Act of 1970 may be erroneous. By using the term “may be erroneous” what the court wanted to convey by saying “to undertake an enquiry to assess the appropriate court fees that ought to be paid by the plaintiff” is to ascertain first whether Section 7 (iv)(b)(c) is applicable in the present context or not and if the court finds that section 7 (iv)(b) is not applicable, only then he will go for other option.

Further it is apparent from the fact that initially court below held that 7(IV)(b) of the West Bengal Court Fees Act, 1970 is applicable in the present case. In the order impugned it is not explained the reason for his

departure from the earlier observation. Accordingly, the court below ought to have interpreted the order of this court that he is to ascertain first as to whether section 7(IV)(b) of the West Bengal Court Fees Act, 1970 applies in the present context or not and if he satisfies that 7(IV)(b) of the West Bengal Court Fees Act, 1970 has got no application and that the suit has been wrongly valued, only then he should opt for Section 11 of the Act for revision of the valuation and for determination of the correct valuation, either by appointment of valuer or by making such enquiry as it thinks fit for such purpose.

In my opinion in the present context, the court below has misunderstood the purport of the order dated 18.1.2018 passed in C.O. 51 of 2017 and being swayed away by the term “enquiry” has come to an erroneous conclusion.

In view of above, C.O. 1159 of 2018 is hereby allowed. The order impugned dated 28.3.2018 is hereby set aside. Learned court below is directed to ascertain first with reason as to whether 7(IV)(b)/(c) of the West Bengal Court Fees Act, 1970 has got any application in the present context or not. Once he will be satisfied that 7(IV)(b) and (c) of the West Bengal Court Fees Act, 1970 has got no application in the present context in view of available materials, then only he will go for Section 11 of the said act. In my opinion this is the purport of the order which was wanted to be conveyed by the co-

ordinate Bench of this court while disposing of C.O. 51 of 2017

The court below will ascertain the issue of valuation of the suit as well as the issue of court fees afresh and without being influenced by any observation made by this judgment or any previous judgment passed by this court and will determine the issue within a period of twelve weeks from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)