

30.11.2023
sayandeep
Sl. No. 02
Ct. No. 04

FAT 225 of 2022
with
CAN 1 of 2022

J.P. Bohra & Co. Pvt. Ltd.
-Versus-
Sourav Roy (Mira Roy since deceased)

Mr. Debjit Mukherjee
Mr. Anirban Das
.....for the appellant

Mr. Tanmoy Mukherjee
Mr. Sounak Bhattacharya
Mr. Sayantan Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Saunak Mandal
.....for the respondent

It is a sordid state of affair that the learned Judge of the court below proceeded to reject the plaint solely on the ground that the requisite court fees leviable on the valuation shown for the relief have not been put in whereas the time to put in the deficit court fees was extended by the learned Judge himself and by an order No. 4 dated 16th February, 2016, the learned Judge held that the deficit court fees have been put in which is sufficient.

The act of the Court should not cause harm to the other. The Court should go by the preceding orders passed in a proceedings before it embarks its journey on the peripheral of the order VII Rule 11 of the Code of Civil Procedure. It is undeniable that non-deposit of the requisite court fees is one of the ground

enshrined under Order VII Rule 11 of the Code for rejection of the plaint (see the order VII Rule 11(c)). Any order passed invoking the aforesaid provision is to be tested on the basis of the antecedents of the proceedings and the orders passed in course thereof and the Court should not surreptitiously jumped into a conclusion which is mutually destructive and inconsistent with the earlier orders passed therein. We have no hesitation in our mind that the moment recourse under Order VII Rule 11(c) of the Code is resorted by the Trial Court preceded by an observation that the court fees has not been paid as per the Rule, it is immaterial whether any other observations in a preceding paragraphs recorded by learned Judge have any relevance.

Mr. Mukherjee, learned advocate appearing for the opposite party vociferously submits that the twin observations made in the impugned order No. 19 dated 1st August, 2019 would reveal that the Court was also conscious that the plaintiff/appellant was not interested in proceeding with the suit which invites the consequence of dismissal of the suit for default and, therefore, the Court must construe the order in such perspective.

We are unable to agree with the aforesaid perception derived by the learned counsel for the opposite parties that it is in effect the dismissal of the suit for default for non-taking a steps and not a

rejection of the plaint. The ultimate decision clenches an issue and conveys an unequivocal intention of the learned Judge that because of the non-payment of the court fees, the plaint is rejected which cannot be said to be beyond the conceivable jurisdiction vested upon the Court under the Code of Civil Procedure.

A further plea is sought to be taken that subsequent to the impugned order, an application under Section 151 of the Code was taken out to recall the said order which was dismissed by the Trial Court. We have given to understand that the said order was also assailed before this Court in a revisional jurisdiction and a plea was taken by the opposite party that it is not a revisable order but an appealable one and, therefore, the appellant was compelled to withdraw the same.

Be that as it may, we are not concerned with the aforesaid aspect as the instant appeal is confined to an order No. 19 dated 1st August, 2019 by which the Trial Court rejected the plaint on the ground that the deficit court fee was not put in. As indicated above, by an order No. 4 dated 16th February, 2016, the deficit court fees was deposited by the appellant and there is no hesitation in our mind that the learned Judge while passing the impugned order overlooked the same.

Since the observations leading to an ultimate decision is contrary to record, we can not sustain the said order. Accordingly, the order No. 19 dated 1st

August, 2019 is hereby set aside. The plaint is restored to its original file and number.

The appeal is allowed.

The Trial Court is requested to proceed with the proceedings as expeditiously as possible.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)