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

% Date of decision: 29th November, 2023

+ **FAO 11/2022 & CM APPL. 1849/2022**

SATISH MOHAN AGARWAL Appellant

Through: Mr. Pankaj Gupta and Mrs.
Rimpy Gupta, Advs.

versus

SANJEEV KUAMR ARORA & ORS. Respondents

Through: Mr. Rajiv Bajaj, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA (ORAL)

FACTUAL BACKGROUND:

1. This is an appeal filed by the appellant, who was the plaintiff, before the learned Trial Court, preferred under Order XLIII Rule 1 (a) of the Civil Procedure Code, 1908¹ assailing the order dated 22.11.2021 passed by the learned ADJ-09, Central, Tis Hazari Courts, Delhi, whereby the plaint has been directed to be returned under Order VII Rule 10 CPC for presentation before the appropriate Court having 'pecuniary jurisdiction'.

2. Shorn of unnecessary details, the plaintiff along with respondent Nos. 5 & 6 filed a Civil Suit bearing No. 18108/2016 titled as 'Satish Mohan Aggarwal v. Sanjeev Kumar Arora & Ors' claiming that he along with respondent Nos. 5 & 6 in the present appeal viz.

¹ CPC



(defendant Nos. 5 & 6 in the suit) were co-owners of property bearing Nos. 1595 to 1600 situated at Main Bazar, Pahar Ganj, Delhi- 110055 measuring 346 Sqr. Yards (hereinafter referred to as 'suit property').

3. Admittedly, the said property was sold to respondent Nos. 1 to 4 viz. (defendant No. 1 to 4 in the main suit) for a total consideration of Rs.262.50 lakhs. It is the version of the appellant / plaintiff that there was a pre-condition that the suit property would be get vacated from the occupants, and additionally since the property was mortgaged with State Bank of Patiala on account of financial assistance taken by the aforesaid vendors/co-owners, the vendee / buyers shall satisfy the claim of the bank, and accordingly, all six sale deeds were executed in favour of the vendee/respondents no. 1 to 4/defendants no. 1 to 4.

4. In a nutshell, the grievance of the appellant / plaintiff was that the vendee did not honour their part of commitment. The suit was filed by the appellant / plaintiff seeking a prayer that the sale deeds be *declared null and void with a consequential relief of seeking possession of the property as also seeking damages*. On service of summons for settlement of issues, the respondent Nos. 1 to 4 (Vendee), along with their written statement, also filed an application under Order VII Rule 11 CPC raising some preliminary objections. Reply was filed by the appellant / plaintiff and the application was opposed.

5. On consideration of the plaint, and application filed by the respondents/defendants no. 1 to 4, besides the reply filed by the plaintiff/appellant, learned Trial Court passed the impugned order



dated 22.11.2021. It would be relevant to extract the operative portion of the impugned order which reads as follows:-

“I have gone through the plaint, application, its reply, material on record and submissions forwarded by Ld. Counsel for the parties.

The prayer sought by the plaintiff is as follows:-

- (a) Pass a decree of cancellation thereby cancelling the Sale Transaction entered between the parties in respect to the immovable property bearing property NO. 1595 to 1600 situated at Main Bazar Pahar Ganj, New Delhi- 110055 built upon freehold land admeasuring 346 sq.yards., consequentially declaring the Sale Deeds and Rectification Deed executed between the parties as detailed in para no. 6 above as null and void with further consequential reliefs/directions to the parties to reverse/return the benefits/fruits received/enjoyed by the) respective party under the said Sale Transaction including the directions to defendants no. 1 to 4 to hand over the possession of the above property;
- (b) Pass a decree for recovery in favour of the plaintiff and against defendants no. 1 to 4 for recovery of Rs.10 lakhs as compensation and damages;
- (c) Grant pendent-lite and future interest @18% on above sum of Rs.10 lakhs.
- (d) Award cost of the suit; and
- (e) Pass such further order (s) considered just, fit and property in the facts and circumstances of the case in favour of the plaintiff.

The plaintiff is seeking recovery of possession of the suit property. Even as per the plaintiff, the value of the suit property is Rs.262.50 lakhs i.e. more than Rs.2 crores. So, as per Suit Valuation Act, for the purposes of recovery of possession of immovable property, the suit should have been valued on the value of that immovable property i.e. suit property and the ad-volerm court fee Should have been paid (as plaintiff or other vendors are out of possession of suit property).

So, this makes the valuation of the suit above Rs.262.50 lakhs. Now the pecuniary jurisdiction of this court is Rs.2 crores, so this suit is beyond the pecuniary jurisdiction.

So, instead of rejecting the plaint u/o.7 rule 11 CPC, due to non-payment of requisite court fees, it is more appropriate that the



plaint should be returned u/o.7 rule 10 CPC for presentation before appropriate court of pecuniary jurisdiction.

Hence, the plaint is returned u/o.7 rule 10 CPC. It is informed to the plaintiff that the appropriate court for pecuniary jurisdiction to present the plaint, after return, is Hon'ble High Court of Delhi.”

6. Assailing the aforesaid order, the learned counsel for the appellant referred to the decision in the case of **Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors.**² and drew attention of this Court to the following observations:-

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.

8. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for

² (2010) 12 SCC 112



declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

7. *Per contra*, learned counsel for the respondents / vendee referred to the provision of Order VII Rule 10A CPC ³ and it was urged that the only remedy open to the appellant is to move a fresh application before the learned Trial Court for proceedings as per the aforesaid provision, and then institute a fresh suit before this Court for *de novo* proceedings/trial.

8. Learned counsel for the appellant / plaintiff, however, urged that the appellant does not wish to pursue the course of action in accordance with Order VII Rule 10A CPC⁴ after lapse of more than

³ Instituted by Act 104 of 1976, Section 57 w.e.f. 01.02.1997

⁴ **10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return**

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.



eight long years. He vehemently urged that initially the suit was filed in the High Court but because of modification in the pecuniary jurisdiction, the suit was not entertained at the threshold and the suit along with other likewise matters owing to change in the pecuniary jurisdiction, were transferred to the District Court for trial as per law. It was urged by the learned counsel for the appellant / plaintiff that the appellant/plaintiff is ready and willing to pay requisite Court Fees on the value of the property in question, and thus, the matter may instead be retained by this Court in exercise of powers under Section 24 of the CPC⁵. He invited reference to decisions of this Court in **Ziff-Davis Inc. V. Dr. J. K. Jain & Ors.**⁶; **Maresh Gupta V. Ranjit Singh & Ors.**⁷ and **Janak Datwani V. C. N. A. Exports Pvt. Ltd. and Others**⁸. Learned counsel for the respondents in all fairness had no objection to such plea.

9. Admittedly, there is no dispute that this matter was initially filed on the original side of this Court but owing to the legal disposition whereby the pecuniary jurisdiction of this Court was increased, all the pending matters including the instant one automatically transferred to the District Courts. The digitized LCR reveals that this suit was filed on 22.01.2015 registered as CS(OS) no.

⁵ **Section 24. General power of transfer and withdrawal.** (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, *or of its own motion without such notice*, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

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⁶ 2005 SCC OnLine Del 1451.

⁷ 2009 (110) DRJ 646 (DB).



197/2015 and the pleadings were completed by the parties but it was transferred to the court of District Judge, Central District, Tis Hazari Courts, Delhi on account of enhancement of pecuniary jurisdiction of the High Court of Delhi vide order dated 22.01.2016

10. In the cited case *Ziff-Davis Inc. V. Dr. J. K. Jain & Ors.*, (*Supra*) it was held by learned Single Judge, (as his lordship of the Supreme Court was then) as under:-

“6. In my considered view, in a normal situation if a Court ceases to have pecuniary jurisdiction, the plaint ought to be returned to be presented before the competent Court. **However, the facts in the in present case and in such other similar cases are peculiar arising from a situation where the plaint is originally presented before a competent jurisdiction, but is transferred on account of increase of pecuniary jurisdiction of that Court and thereafter has to actually continue in the same Court where it was originally pending.** The transfer has taken place in pursuance to notification issued in this behalf increasing the pecuniary jurisdiction and stating that the suits ought to be transferred to the trial Court. In the past when such pecuniary jurisdiction has been increased, some category of cases have been retained while other categories of cases have been transferred. The notification in this regard was issued in the year 2003 where probate matters and certain arbitration matters were sought to be retained irrespective of their pecuniary jurisdiction. The object of such transfer is only to place the matter before the Court which has now acquired pecuniary jurisdiction in pursuance to the amendment.

7. It is no doubt true that Section 24 of the Code applies to the Court of equivalent jurisdiction or a Court subordinate thereto. However, procedures are only hand-maiden of justice and a learned Single Judge of this Court recently had an opportunity to deal with such a situation arising from similar facts in **Transfer Petition No. C-9/2005 titled Aviat Chemicals Pvt. Ltd. v. Magna Laboratories (Gujarat) Pvt. Ltd. decided on 29.05.2005.** It was held that even where the plaint has been returned under Order 7 Rule 10 of the Code, power could be still exercised by the Court under Section 24 of the Code so that the file is brought before the Court and the matter starts from the position where

⁸ 2019 SCC OnLine Del 9349.



it was left. Such power can be exercised including under Section 151 CPC. In this behalf para 16 of the Judgment may be referred to which is 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 plaintiff's 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”.”

11. Avoiding a long academic discussion, the same disposition wherein the matter was transferred back to this Court for trial as per the law, was considered and allowed in the cited case of ***Mahesh Gupta V. Ranjit Singh & Ors. (Supra)*** and ***Janak Datwani V. C. N. A. Exports Pvt. Ltd. and Others (Supra)***. What is of significance is



that the same issue came to be addressed before the Division Bench of this Court in **Narender Singh and Ors V. The Indian Institute of Architects**⁹ wherein it was observed as under:-

“21. On the first question, the Appellant in this case argues that the return of the plaint under Order VII, Rule 10 mandates a fresh filing of a new plaint, thus requiring proceedings to begin de novo. As noticed above, the authorities of this court and the Supreme Court suggest that the return of a plaint under Order VII, Rule 10 - whether for want of territorial or pecuniary jurisdiction - ends those proceedings, thus requiring fresh proceedings to be filed before the Competent Court. However, the Supreme Court has in a later decision, having regard to the facts of the case, **upheld the High Court's direction that the suit be continued from the stage of its being returned by the previous court.** Thus, in **Joginder Tuli v. S.L. Bhatia**, (1997) 1 SCC 502 it was held that:

“5.....Under these circumstances, the original order passed by the High Court directing the District Judge to proceed from the stage at which the suit stood transferred to the District Court appears to be correct in the circumstances. Normally, when the plaint is directed to be returned for presentation to the proper Court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that state at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

It would thus be apparent that there is no universal or invariable rule mandating that once a plaint is returned under Order VII Rule 10 CPC, the proceedings before the competent court have to continue de novo.

22. The other question requiring an examination is of the effect of the order of the learned Single Judge calling for the records and posting the matter for final arguments. Although several cases have permitted a transfer under Section 24, these cases have involved instances where the plaint was presented before the competent court, but due to an amendment to the pecuniary jurisdiction of the courts, the matter was to be transferred to the High Court; as opposed to the filing of a suit before a court which was - at the time

⁹ 2013 SCC OnLine Del 4810



of such filing - not competent. Indeed, this distinction is supported by the judgment in *Harshad Chiman Lal Modi v. DLF Universal Ltd*, AIR 2006 SC 646, especially paragraph 11.

23. These cases apart, in **Pushpa Kapal v. Shiv Kumar**, 35 (1998) DLT 187, the plaint was returned by the Trial court for re-representation to the District Judge. Before re-presenting the suit to the District Judge, however, an application under Section 24 read with Section 151, CPC was made to the High Court for transfer of the plaint to prevent unnecessary hardship inherent in the rehearing of the entire matter de novo; in **Rail Chand v. Atal Chand**, 13 (1977) DLT 153, the suit was not tried afresh, but that was because instead of returning the plaint, the High Court ordered the transfer of the matter to the Commercial Sub-Judge.

24. The question also arose before the Court in **Vogel (supra)**, where it was held that the suit must be tried afresh, but the Court noted that cases where the “10.....order of transferring the suit from the Trial Court to the District Court came to be passed not by the Civil Court for the District Court but by the High Court....” were justified, as the High Court operates “by virtue of its inherent power as well as the express powers as contained in Section 24” (paragraph 10). Indeed, in *Vogel*, on which the Appellants rely heavily, it was held that the suit be tried afresh because the order of transfer came from the District Judge, and not the High Court; the powers of the former in this matter being limited. Equally, the Court noted that in that case “no transfer of the suit was envisaged by the order dated 30.4.2004” (paragraph 11). The relevant question then becomes whether the Learned Single Judge in this case intended to transfer the suit under Section 24, in the absence of an application made by the Plaintiff herein under that Section. Indeed, in *Vogel (supra)*, the Court noted that “this Court might call for the record of the said suit for its perusal in connection with the suit which might be instituted on the representation of the plaint”, but that “is a different matter”.

FINAL ORDER/DIRECTIONS:

12. In the light of the aforementioned pronouncement in law by this Court, since the learned counsel for the appellant/ plaintiff states at the Bar that the appellant/ plaintiff is ready and willing to fill up the deficiency in the payment of Court Fees on valuation of the property as per the sale deed covered by the six Sale Deeds, which manifestly



is above Rs. 2 cores, the instant suit is transferred to this Court. Thus, the impugned order dated 22.11.2021 passed by the learned ADJ-09, Central, Tis Hazari Courts, Delhi, is hereby set aside.

13. Resultantly, the Civil Suit bearing No. 18108/2016 is hereby withdrawn from the learned Trial Court and same is transferred to this Court so as to proceed with the matter in accordance with law from the stage it was ordered to be returned by the learned Trial Court. However, this shall be subject to appellant/ plaintiff filling up the deficiency in the payment of Court fees as per valuation contemplated by the Court Fees Act, 1870, and subject to just exceptions under the law, to be ultimately considered by the Competent Court on the original side. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

14. The appeal is accordingly disposed of. The present matter be placed for consideration before Hon'ble the Acting Chief Justice on 11th December, 2023 for assignment of the matter to the competent court on the original side of the High Court of Delhi. The digital record of this case be sent forthwith.

15. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 29, 2023/ss