



2023:DHC:8733



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

Date of decision: 05.12.2023

+ TR.P.(C.) 143/2023 & CM APPL. 45845/2023
NEELAM PHAUGAT

..... Petitioner

Through: Mr.S.C. Phogat, Adv.

versus

SAROJ BALA SAHRAWAT DESEASED THR LRS & ORS.

..... Respondents

Through: Mr.Suhail Sehgal, Mr.Prashant
Drolia & Mr.Nikhil Singla,
Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed seeking transfer of the Civil Suit, being CS DJ/577613/2016, titled as ***Saroj Bala Sehrawat v. Neelam Phaugat & Anr.*** along with the Counter Claim filed by the petitioner herein in the said Suit, from the Court of the learned Additional District Judge, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') to this Court.

2. The above Suit had been filed by the respondent no.1 before this Court, *inter alia*, praying for a decree of partition and permanent injunction with respect to the properties left

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TR.P.(C.) 143/2023



behind by late Col. Balbir Singh Sahrawat. In the said Suit the petitioner has filed a Counter Claim.

3. Due to an increase in the pecuniary jurisdiction of this Court, the Suit was transferred to the District Court at the North-West District, vide order dated 08.12.2015 of this Court.

4. Though the learned counsel for the petitioner submits that the transfer of the Suit itself was wrong inasmuch as the counter claim fell within the pecuniary jurisdiction of this Court, as the above said order is not in challenge in the present petition, this Court does not deem it appropriate to consider the merit of the said submission.

5. It appears from the record that on transfer of the Suit, an issue was raised on the maintainability of the Counter Claim in the said Suit, on grounds other than lack of pecuniary jurisdiction of the learned Trial Court; and the arguments on the said issue were heard over a period of time by the learned Trial Court. On 01.06.2023, the learned Trial Court passed the following order:-

“During the course of submissions on the maintainability of the counter claim, the counsel for the defendant no. 1 stated that he be given time to separate the counter claim from the suit and to file the same before the court of appropriate jurisdiction.

The defendant no. 1 is at liberty to do the needful for the same.

*The suit be put up on **18.08.2023** for settlement of issues.”*

6. Aggrieved of the said order, the petitioner challenged the



2023:DHC:8733



same before this Court by way of petitions under Article 227 of the Constitution of India, being CM (M) 1249/2023 and 1260/2023, both titled ***Neelam Phaugat v. Saroj Bala Sahrawat (Since Deceased) Through LRs & Anr.***. The said petitions were, however, withdrawn by the petitioner on 17.08.2023. This Court passed the following order in the above petitions on 17.08.2023:-

- “1. These petitions filed under Article 227 of the Constitution of India impugns the order dated 01.06.2023 passed by ADJ (North West), District Court Rohini ('Trial Court'), in Misc. 48/2017, titled as **Neelam Phaugat v. Saroj Hala Sehrawat & Anr.**, CS DJ No. 577613/2016.*
- 2. After some arguments, learned counsel for the Petitioner seeks liberty to withdraw these petitions to avail his statutory remedy.*
- 3. The learned counsel for Respondent No.1 who appears on advance service states that the impugned order is a consent order. He states that the counter claim filed by the Petitioner herein was not maintainable in the same suit and for this reason the Petitioner agreed to withdraw the same.*
- 4. The learned counsel for the Respondent No.1 is at liberty to raise the said objection before the competent Court if and when the Petitioner impugns the order dated 01.06.2023.*
- 5. It is clarified that this Court has not examined the merits of the submissions of the Respondent and all rights and contentions of the parties are reserved.*
- 6. With the aforesaid observations, the present petition is dismissed as withdrawn.*
- 7. Pending applications stand disposed of.”*

7. The petitioner has now filed the present petition stating

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Signing Date: 08.12.2023

12:55:24

TR.P.(C.) 143/2023

Page 3 of 5



2023:DHC:8733



that as the valuation of the Counter Claim is more than the pecuniary jurisdiction of the learned Trial Court, the Suit along with the Counter Claim should be transferred to this Court.

8. On the other hand, the learned counsel for the respondent no.1 maintains that the Counter Claim itself is not maintainable in the Suit and that the Suit should not be transferred only on the account of the Counter-Claim having been filed wrongly in the said Suit.

9. The learned counsel for the petitioner, relying upon various judgments, tried to contend that the Counter Claim is maintainable in the said Suit. In my opinion, however, this Court, in the present petition, is not to determine the maintainability of the Counter Claim in the Suit filed by the respondent no.1 and/or the validity of the order dated 01.06.2023 passed in the said Suit by the learned Trial Court.

10. As is evident from the above, on 01.06.2023, the petitioner herein was given liberty to separate the Counter Claim from the Suit and to file the same before the Court of appropriate jurisdiction. Though the petitioner challenged the said order by way of petitions under Article 227 of the Constitution of India before this Court, the same stand withdrawn on 17.08.2023. Therefore, presently, the very maintainability of the Counter Claim in the Suit filed by the respondent no.1 is in question before the learned Trial Court and till such issue is determined by the learned Trial Court, the Suit cannot be transferred to this Court only due to the Counter-

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Signing Date: 08.12.2023

12:55:24

TR.P.(C.) 143/2023

Page 4 of 5



2023:DHC:8733



claim having been filed by the petitioner in the said Suit. In case the counter claim is found to be not maintainable in the Suit, there would be no cause left to transfer the Suit to this Court. The petitioner cannot be allowed to achieve indirectly what he could not achieve directly, that is, have a declaration on the maintainability of the counter claim in the Suit, in the present petition.

11. Accordingly, I find no merit in the present petition. The same is dismissed. The pending application also stands dismissed. There shall be no orders as to costs.

NAVIN CHAWLA, J

DECEMBER 5, 2023/rv/AS

Click here to check corrigendum, if any

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TR.P.(C.) 143/2023

Page 5 of 5