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

Date of decision: 05.12.2023

\+ CM(M) 1746/2023 and CM APPL. 55504/2023

CHANDER MOHAN SETHI ..... Petitioner

Through: Mr. Jagmohan Bansiwal and Mr. Kapil Lalwani, Advocates

versus

SUNEJA CARD EMPORIUM PVT. LTD ..... Respondent

Through: Mr. Kapil Sankhla, Mr. Akhilesh Aggarwal, Mr. Robin Baisoya and Ms. Fagun Sharma and Mr. Hanish Phogat, Advs.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 12.10.2023 passed by the Additional District Judge-07, Central, Tis Hazari Courts, Delhi in civil suit bearing no. 411/2020, titled as ***M/S Suneja Cards Emporium Pvt. Ltd. vs. Chander Mohan Sethi*** ('Trial Court') whereby the application filed by the Petitioner under Order VII Rule 10 & 10A read with section 151 of Civil Procedure Code, 1908 ('CPC') was dismissed by the Trial Court.

1.1. The Petitioner is the original defendant and the Respondent is the original plaintiff before the Trial Court

1.2. The Civil Suit has been filed by the Respondent seeking a decree for recovery of possession of property situated at ground floor being Shop M.C No. 2409, Ward No. V. Main Road, Chawri Bazaar, Delhi-1 10006 since 2010 ('Suit Property'), for arrears of rent and recovery of damages and for permanent injunction restraining the Petitioner from parting with the possession or creating third party interest in the said suit property.

2. Learned counsel for the Petitioner states that on a bare perusal of the plaint and especially paragraph '32' therein, it is evident that the relief of possession at Rs 10,00,000/- has been fixed excessively in order to bring the suit within the pecuniary jurisdiction of the District Judge.

2.1. He states that the Trial Court failed to appreciate that even in the absence of any such objection being raised in the written statement, the Trial Court ought to have accepted the objections raised by the Petitioner herein and rejected the aforesaid civil suit filed by the Respondent.

2.2. He states that the bar of Section 21 of CPC is not attracted in the facts of this case.

2.3. He states that since the Trial Court does not have the requisite pecuniary jurisdiction, therefore, the Petitioner herein is not liable to comply with the order dated 10.07.2023 passed by the Trial Court in an application filed by the Respondent under Order XV-A read with Section 151 of CPC wherein the Trial Court directed the Petitioner to deposit a sum of Rs. 50,000/- per month in the Court with effect from 01.12.2020 upto 30.07.2023 within eight (8) weeks from the date of the said order passed (10.07.2023) and also directed to deposit Rs.50,000/- in the Court on every 7th day of the English calendar month commencing from 07.08.2023.

3. In reply, learned counsel for the Respondent states that the Petitioner has not complied with the direction passed by the Trial Court vide order dated 10.07.2023 for payment of use and occupation charges at Rs. 50,000/- per month and has instead sought to browbeat the Trial Court as is evident from the proceedings dated 02.11.2023.

4. This Court has considered the submissions of the counsel for the parties and perused the record.

5. It is not disputed by the Petitioner that no plea regarding lack of pecuniary jurisdiction of the Trial Court was taken in the written statement filed on 05.02.2021. Moreover, issues in the aforesaid civil suit already stand framed on 30.07.2022 by the Trial Court and no issue as regards the lack of peculiarly jurisdiction of the Trial Court has been framed. Thus, in the facts of this case admittedly no objection to the pecuniary jurisdiction of the Trial Court was taken at the stage of framing of issues.

6. It is the settled position of law that as per Section 21(1) of CPC, the objection to the pecuniary jurisdiction has to be raised at the first instance and prior to the framing of issues; failing which the said objection is deemed to have been waived.

7. Section 21 of CPC deals with the objections to the pecuniary jurisdiction and reads as under:-

> ***"21. Objections to jurisdiction.-*** *(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court* ***unless*** *such objection was taken in the Court of first instance at the earliest possible opportunity* ***and in all cases where issues are settled at or before such settlement****, and unless there has been a consequent failure of justice.*
> *(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such*

settlement, and unless there has been a consequent failure of justice.
(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

(Emphasis Supplied)

7.1. In this regard, it would be appropriate to refer to the judgement passed by the Supreme Court in the case of ***Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. and Anr.**, **(2005) 7 SCC 791*** wherein the Supreme Court reiterating the aforesaid settled position of law with regards to the Section 21 of CPC held as under:

" 30. We are unable to uphold the contention. The jurisdiction of a Court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. ***So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage.*** *Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."*

('Emphasis Supplied')

7.2. Similarly, it would be relevant to refer to the judgement passed by the Coordinate Bench of this Court in ***Shri Shyam Sunder Kalra vs. Shri Ravinder Kumar Jain & Anr**, **2012 SCC OnLine Del 5464*** whereby, in para 10 it was held as under:

"10. ***Also, it is settled law in terms of Section 21 of CPC that all objections as to territorial jurisdiction or pecuniary jurisdiction, have to be taken in a suit before framing of issues, and if not taken, such objections are waived i.e. issues of pecuniary and territorial jurisdiction do not go to the root of the matter*** *unlike the issue of lack of inherent jurisdiction or the lack of subject matter jurisdiction, when a decree cannot be passed by the Court lacking the subject matter/inherent jurisdiction".*

(Emphasis Supplied)

8. The Trial Court in the impugned order dated 12.10.2023 has correctly appreciated the law and dismissed the application filed by the Petitioner herein. The relevant portion of the order reads as under: -

> *"No plea regarding pecuniary jurisdiction was taken in the written statement. Issues have already been framed and matter is listed for plaintiff's evidence. It is also pertinent to mention herein that the Court vide order dated 04.05.2022, allowed the application filed by the plaintiff under Order XV-A read with Section 151 CPC and directed the defendant to deposit an amount of Rs.1500/-, which order was challenged by the plaintiff before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court has directed this Court to reconsider the application filed by the plaintiff under Order XV-A read with Section 151 CPC in view of law laid down in* ***Raghubir Rai vs. Prem Lata & Anr. FAO (OS) 597/2013 & CM No. 20723/2013*** *and thereafter vide order dated 10.07.2023, this Court had directed the defendant to deposit Rs.50,000/- per month in the Court with effect from 01.12.2020 upto 30.07.2023 within eight weeks and also directed to deposit Rs.50,000/- in the Court on every 7th day of the English calendar month commencing from 07.08.2023. Thereafter, present application was filed by the defendant. Section 21 of CPC.*
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> *XXX XXX XXX*
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> *Admittedly, in the present case no such objection has been taken in the written statement and the present application has been filed only after settlement of issues. Section 21 CPC provides that the objections to the pecuniary jurisdiction has to be taken by the party at the earliest possible opportunity before the Court at first instance and cannot be permitted to be taken after the settlement of the issues. Accordingly, application is dismissed."*

(Emphasis Supplied)

9. This Court finds that the order passed by the Trial Court does not suffer from any infirmity or error, which would warrant any interference or correction by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

10. In fact, a perusal of the record shows that the Petitioner herein is unwilling to comply with the order dated 10.07.2023 passed by the Trial Court under Order XV-A CPC and it appears to the Court that multiple

applications have been filed to somehow non-suit the Respondent. This Court on the last date of hearing had called upon the Petitioner to comply with the said order, however, the counsel for the Petitioner has stated that the Petitioner is unwilling to do so. It is therefore, evident that this petition is a modus to not comply with the binding directions and is therefore an abuse of process.

11. This Court also finds from a perusal of the Trial Court's order dated 02.11.2023 that the Petitioner herein has exhibited lack of regard for the authority of Court and has been disrespectful to the presiding Judge. It is apparent that the Petitioner is seeking to browbeat the presiding Judge as the order passed is not favourable to him. This Court finds this conduct of the Petitioner is unacceptable and he is cautioned against such conduct.

12. For the aforesaid reasons, this petition is completely devoid of merit and is accordingly dismissed.

13. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 5, 2023/*rhc/ms*

Click here to check corrigendum, if any

Signature Not Verified
Digitally Signed
By:Rashmi Dabas
Signing Date:06.12.2023
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