IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4930-2022 (O&M)
Reserved on: 02.05.2024
Date of decision: 16.05.2024

ARCHIAN FOODS PVT. LTD. ..Petitioner

Versus

M/S R.R. BEVERAGES AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Sr. Advocate
with Mr. Himanshu Sharma, Advocate
and Mr. Akshat Dalal, Advocate
for the petitioner.

Mr. Rajesh Kumar Moudgil, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 The present revision petition involves the significant issue with respect to the requirement of the plaintiff to pay *ad valorem* Court fee on the amount of Rs.50,00,000/- i.e. the suit value for the purpose of jurisdiction. The Commercial Court has held that valuation of the plaintiff's suit for the purpose of deciding jurisdiction has been made at Rs.50,00,000/-, therefore, *ad valorem* Court fee is payable on the assessed amount.

1.2 In order to comprehend the issues involved in the present case, para No.57, 58 and the prayers made in the plaint by the plaintiff are reproduced below:-

> *"57. That for the purpose of pecuniary classification, contemplated under the Commercial Courts Act, the subject matter of the suit is being assessed as having value of more than Rupees 50 Lakhs.*
> *58. That for the purpose of suit valuation, in the contest of Court-fee, it is submitted that the substantial relief*

sought in the present suit is in the nature of prohibitory and mandatory injunctions. Thus, in the light of conjoint reading of Section 8 of Suit-valuation Act and Section 7 of the Court Fees Act, the suit in the contest of court-fee is valued strictly for the reliefs claimed. Thus, appropriate Court fee of Rs.200, besides Rs.20 for uncertain amount of damages is being affixed along with the present plaint.

PRAYER:-

i. A decree for permanent prohibitory injunction restraining the defendants, their directors, executives, partners, officers, servants, agents, other allied entities or any other person acting for or on their behalf from using, manufacturing, selling, offering for sale, exporting, marketing, advertising and/or using, in any manner whatsoever, directly or indirectly, in relation to any beverage product and/or any other allied and cognate goods or otherwise, under the trademark 'LAHERI', or any other phonetically similar name and/or identical or deceptively similar mark to the Plaintiff's trademark 'LAHORI' which may be nearly identical or deceptively similar to the mark of the plaintiff, or doing any other thing or undertaking any other activity, amounting to infringement and/or passing off the Plaintiff's Trade Marks;

ii. A decree for permanent prohibitory injunction restraining the defendants, their directors, executives, partners, officers, servants, agents from using, manufacturing, selling, offering for sale, export, marketing, advertising and/or using, any identical and deceptively similar trade mark, label, package, carton, dress or bottles or from doing any other thing or undertaking any other activity, amounting to passing off and/or infringement of the plaintiff's Trade Marks.

iii. A decree for permanent mandatory injunction against the defendants, their directors, executives, partners, officers, servants, agents to require and mandate them jointly and/or

severally to act in accordance with law with regard to their trade policies and practices and to desist from illegal and unfair malpractices in the nature of infringement and passing off action qua the trade mark and trade dress of the plaintiff.

iv. A decree for recovery of damages on per day basis for such amount to the extent of Rs.10,000/- per day or such other amount as Hon'ble Court may deem fit and proper.

v. An order for costs of the proceedings.

vi. Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

1.3 For better comprehension, Section 7 of the Court Fees Act, 1870 (hereinafter referred to as the '1870 Act') is extracted hereunder:-

> "***7. Computation of fees payable in certain suits.***— *The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—*
>
> ***for money.***— *(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)— according to the amount claimed.*
>
> ***for maintenance and annuities.***— *(ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:*
>
> ***for other movable property having a market-value.***— *(iii) In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;*
>
> *(iv) In suits—*
>
> ***for movable property of no market-value.***— *(a) for movable property where the subjectmatter has no market-value, as, for instance, in the case of documents relating to title,*
>
> ***to enforce a right to share in joint family property.***— *(b) to enforce the right to share in any property on the ground that it is joint family property,*
>
> ***for a declaratory decree and consequential relief.***— *(c) to obtain a declaratory decree or order, where consequential relief is prayed,*
>
> ***for an injunction.***— *(d) to obtain an injunction,*
>
> ***for easements.***— *(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and*
>
> ***for accounts.***— *(f) for accounts—*
>
> *according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:*
>
> *In all such suits the plaintiff shall state the amount at which he values the relief sought 1 ***:*
>
> ***for possession of land, houses and gardens.***— *(v) In suits for the possession of land, houses and gardens— according to the value of the subject-matter; and such value shall be deemed to be— where the subject-matter is land, and—*
>
> *(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,*
>
> *or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled—*
>
> *ten times the revenue so payable:*
>
> *(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to*

Government, or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently—

five times the revenue so payable:

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefrom— the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land:

***Proviso as to Bombay Presidency.—** Provided that, in the 1 territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—*

(1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government —a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted— a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted;

Explanation.—The word "estate", as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

***for houses and gardens.—** (e) Where the subject-matter is a house or garden according to the market-value of the house or garden:*

***to enforce a right of pre-emption.—** (vi) In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed:*

***for interest of assignee of land revenue.—** (vii) In suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint;*

to set aside an attachment.— *(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached: Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.*
to redeem.— *(ix) In suits against a mortgagee for the recovery of the property mortgaged,*
to foreclose.— *and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—*

according to the principal money expressed to be secured by the instrument of mortgage:
for specific performance.— *(x) In suits for specific performance—*

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured:

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term :

(d) of an award—according to the amount or value of the property in dispute:
between landlord and tenant.— *(xi) In the following suits between landlord and tenant:-*

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of [immovable property] from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent— according to the amount of the rent of the [immovable property] to which the suit refers, payable for the year next before the date of presenting the plaint."

1.4 From the reading of the impugned order, it is evident that the Court has held that the plaintiff has alleged that the cause of action for the first time arose in December, 2021, whereas, the present suit was filed on 16.05.2022. He has claimed damages at the rate of Rs.10,000/- per day.

Moreover, he has assessed the value of suit for more than Rs.50,00,000/-. Hence, he is liable to pay the Court fees as per Section 7(i) of the 1870 Act.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 The learned Senior counsel representing the petitioner has submitted that the suit falls under Section 7(iv) of the 1870 Act. Hence, the petitioner is entitled to disclose separate valuation for the purpose of jurisdiction and Court fees. In the aforesaid suit, the plaintiff was not required to disclose the same valuation for the purpose of Court fee and Jurisdiction. The learned counsel further submits that the plaintiff has not filed the suit claiming damages with respect to the period prior to the institution of the suit. He submits that primarily the suit has been filed for grant of decree of prohibitory injunction restraining the defendants from using the same or similar trademark in order to pass off its products under deceptively similar trademark as that of the plaintiff and recovery of damages on a per day basis has been sought only during the pendency of the suit. Hence, the Court fees under Section 7(i) of the 1870 Act is not payable.

2.3 Per contra, the learned counsel representing the respondents while referring to Section 8 of the Commercial Courts Act, 2015 (hereinafter referred to as the "2015 Act") submits that no revision petition is maintainable against any interlocutory order of a Commercial Court while placing reliance on ***Arun Kumar Goyal Vs. Payal Aggarwal 2013 (4), R.C.R. (Civil) 93***. He further submits that the plaintiff has itself valued the suit at Rs.50,00,000/-, therefore, the Court fees is payable on the aforesaid valuation. He placed his reliance on ***State of Punjab and others Vs. Dev***

Brat Sharma, Civil Appeal No.2064-2022, decided on 16.03.2022.

3. Discussion by this Court:-

3.1 The trial Court has relied upon ***Dev Brat Sharma's case (supra)***, which in the facts of this case is not applicable because the plaintiff has not claimed any quantified amount. The petitioner has only claimed the amount during the pendency of the suit, therefore, Article 1 of the schedule and Section 7 of the 1870 Act will not be applicable.

3.2 First of all, in view of Section 8 of the 2015 Act, the objection of the learned counsel representing the respondents regarding the maintainability of the revision petition, is required to be examined. The aforesaid Section reads as under:-

> *"8. **Bar against revision application or petition against an interlocutory order**- Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of Commercial Court."*

3.3 The same issue has been examined by a Division Bench of Delhi High Court in ***Black diamond Track Parts Pvt. Ltd. and others Vs. Black Diamond Motors Pvt. Ltd. CM(M) No.132 and 5689 of 2021, decided on 10.08.2021***. The Division Bench has held as under:-

> *"11. Thus, the question No.(i) aforesaid is answered by holding that the petition under Article 227 of the Constitution of India to the High Court with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court has not been and could not have been affected in any manner whatsoever by Section 8 of the Commercial Courts Act. The use of the word "petition" in Section 8 is not and could not have been with reference to a petition under Article 227 of the Constitution and is with reference to a revision application/revision petition only."*

3.4 In substance, the Division Bench has held that the expression 'revision application or petition' used in the Act does not include the constitutional jurisdiction of the High Court. It signifies that the powers of the High Courts to issue a writ of certiorari to a Civil Court and power of superintendence conferred under Article 227 of the Constitution are not abridged or restricted by the Act. This Court concurs with the Division Bench's view.

3.5 The next objection of the learned counsel representing the respondents is with reference to the judgment passed in ***Arun Kumar Goyal's case (Supra)***, in which the revision petition was filed by the defendant after his application before the trial Court for directing the plaintiff to fix *ad valorem* Court fee on the plaint was dismissed. The Court while relying upon a Full Bench judgment of this Court in ***M/s Arjan Motors Vs. Girdhara Singh and another 1978 PLJ 36***, held that no revision is maintainable, however, the aforesaid case, the defendant had challenged the correctness of an order by which application for direction to the plaintiff has dismissed. Basic judgment is in ***Ratnavermaraju Vs. Smt. Vimla AIR 1961 (SC)*** *1299*. However, the facts in this case, are different. The plaintiff has filed the revision petition challenging the trial Court's order directing him to pay *ad valorem* Court fee. Hence, the aforesaid judgments are not applicable to the facts of the present case.

3.6 On plain reading of Section 7(i) of the 1870 Act, and a copy of the plaint, it becomes evident that the suit filed by the plaintiff is not for money or for recovery of damages or compensation. In this case, the amount of damages has not been sought with respect to period prior to the date of the filing of the suit but is only restricted to the period when the suit is pending.

3.7 On the other hand, clause (iv) of Section 7 enlists different kinds of suits including a declarative decree and consequential relief including injunction. Even the suit filed for accounts is included in Section 7(iv). In this case, primarily, the suit has been filed to grant prohibitory injunction restraining the defendants from passing of his goods as plaintiff's manufactured goods. Moreover, the attention of the Court has not been drawn to any provision which provides for requirement to pay *ad valorem* Court fees on the amount of damages or compensation claimed for the period during the pendency of the litigation. The aforementioned relief would come within the ambit of expression 'consequential relief' as provided in Order XX Rule 12 of the Code of Civil Procedure, 1908 read with Section 7(iv)(c) of the 1870 Act. The reliance placed by the learned counsel representing the respondents on ***Dev Brat Sharma's case (supra)***, is also misplaced because in the aforesaid case, the suit was filed for recovery of Rs.20,00,000/- as damages, allegedly suffered by the plaintiff on account of denying the status of freedom fighter by the defendants and also for loss of reputation on account of non-issuance of certificate of freedom fighter. In that context, the Supreme Court in para 19 of the aforesaid judgment held that sub-clause (i) of Section 7 of the 1870 Act refers to the money suits which include suits for damages, compensation, maintenance, annuity or other sum payable periodically where the fees payable would be according to the amount claimed. However, in para 25, the Supreme Court held that it is permissible for the plaintiff to value his suit for the purpose of payment of Court fees separately from the value for the purpose of jurisdiction because clause (iv) gives liberty to the plaintiff to give separate valuation for the relief sought.

3.8 The opinion formed by this Court is supported by the judgment passed in ***Harish Chand Vs. Som Nath and others, 2013(1) R.C.R. (Civil)***

367, wherein, it was held as under:-

> *"9. Plaintiff's version is that defendants were licensees in the suit property under the plaintiff and their license stands terminated. Consequently, the plaintiff is entitled to seek relief of mandatory injunction against the defendants and is, therefore, not required to pay ad valorem court fee on market value of the suit property, which is payable in a simple suit for possession of the suit property. As regards mesne profits, the plaintiff has not claimed any amount of mesne profits for the period prior to filing of the suit. The plaintiff has claimed mesne profits since the date of filing of suit, for which separate court fee is not payable."*

3.9 Similarly, in ***Naranjan Singh Vs. Kartar Singh and others, 2002(1) PLR 151***, after relying upon the Supreme Court judgment, the Bench held as under:-

> *"7. A claim of mesne profits is in essence a claim for damages or compensation. There is a substantial difference between mesne profits, antecedents to the suit which may be always approximately valued as they have already accrued due during a definite period and mesne profits subsequent to the suit which at the date of plaint must be treated as uncertainable because it depends upon an uncertain element, namely, the period of time which would intervene between the date of the institution of the suit and the date of recovery of possession under the decree. The first category is governed by clause i) of Section 7 of Court Fee Act and ad-valorem court fee is payable thereon whereas second category is governed by Section 11 of the Court Fee Act. For past mesne profits i.e. upto the date of filing of the suit, one can assess his claim by affixing a notional damages he has suffered, on the basis of rent etc. which the property adjoining the property in dispute is fetching whereas for future, it is difficult to assess the same.*
> *8. This issue came up for consideration before Hon'ble Apex in **Gopalakrishna Pillai and others v. Meenakshi Ayal & others, AIR 1967 SC 155** wherein it has authoritatively laid down as under:*
>
> > *With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of Order 7 Rule 1 and 2 and Order 7 Rule 7 of the Code of Civil Procedure and Section of the Court Fee Act, the plaintiff must plead this cause of action, specifically claim a decree for the past mesne profits, value the claim approximately and pay court fee thereon. With regard to future mesne*

> *profits, the plaintiff has no cause of action on the date of institution of the suit and it is not possible for him to plead this cause of action or to value it or to pay court fee thereon at the time of institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of Order XX Rule 12 apply. But in a suit to which the provisions of Order XX Rule 12 apply, the Court has a discretionary power to pass a decree directing an enquiry into the future mesne profits and the Court may grant this general relief though it is not specifically asked for in plaint, xx xx xx"*

> *9. In view of the aforesaid law laid down by Apex Court, plaintiff is required to claim past mesne profits by valuing the claim approximately and pay court fee thereon. So far as future mesne profits are concerned, a fixed court fee as provided under Section 11 of the Court Fee Act shall be payable."*

3.10 In this case, the plaintiff has not sought recovery of Rs.50,00,000/- as damages. It has only valued the suit for the purposes of pecuniary classification and jurisdiction. However, in para 28, the plaintiff has clarified that in the context of Court fees, the value of the suit is Rs.200/- according to which the Court fees has been paid.

4. Decision:-

4.1 Consequently, the impugned order passed by the Commercial Court is set aside while allowing the revision petition.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

May 16th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No