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

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Judgment delivered on: 25.07.2024

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CS(COMM) 551/2024

PURSHOTTAM LAL TANDON

.....Plaintiff

Through: Mr. Vikas Tiwari, Mr. Faisal M. Khan,
Mr. Kumar Dheeraj, Ms. Arushi
Rathore and Ms. Aditi Lekhi, Advs.

versus

M/S CITY SUPER MARKET & ORS

.....Defendants

Through: Mr. Alishan Naquee, Ms. Rupal
Bhatia and Mr. Iman Naqui, Advs. for
D-1
Mr. Mohit Paul, Ms. Rangoli Seth,
Ms. Sanjleena Lal and Ms. Pallavi
Chatterjee, Advs. for D-3

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)****I.A. 10928/2024 (under Order VI Rule 17 read with Section 151 seeking amendment in the plaint filed by plaintiff)**

1. The suit was originally filed by the plaintiff seeking following relief:

“(A) A decree of ejectment / recovery of possession, in respect to entire ground floor shop area in the property No. G-11 (Market) NDSE, Part - 1, New Delhi - 110019 shown in colour red in plan produced with the plaint, bounded on North by-Road, South by - Lane & Lawn, East by – Property No. G-12 and West by-Property No.G-10, in favour of



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plaintiff and against the defendants No.1 and 2, liable jointly and severally.

(B) A decree for money in the sum of Rs. 38,99,000/- against defendant no.2 along with interest pendent-lite and future @12% per annum.

(C) A decree of declaration thereby declaring that the monthly lease held by Sardar Naranjan Singh / Sardar Amrik Singh under plaintiff in May, 1965, in respect to ground floor shop premises (G-11 (Market).NDSE, Part-1, New Delhi-110019) stood impliedly surrendered by acceptance and grant of new lease in favour of defendant no.2 w.e.f. 21.04.1998 / 15.06.1998 onwards.

(D) A decree of Perpetual Injunction restraining defendant no.2 from making any payment to defendant no.1 until vacation of suit property (G-11 (Market), NDSE, Part-1, New Delhi 110019) or accepting fresh terms with plaintiff for continuing use and occupation of suit property.

(E) A decree directing defendant no.2 to pay use and occupation charges against defendant no.2, pendent-lite and future, in accordance with provisions of Order 20 Rule 12 CPC in favour of plaintiff and defendant no.2.

(F) A decree of mandatory injunction directing defendant no. 1 to pay to plaintiff or deposit in the Hon'ble Court the amount of unadjusted advance available with it against account of damage/mense profits against defendant no.2 along with restraining defendant no.1 from appropriating the same in any manner."

2. During the pendency of the suit, an objection was raised with regard to the maintainability of present suit against defendant no. 1 on the ground that the rent with regard to the suit property is below Rs.3,500/-, therefore, the suit is not maintainable in view of the bar contained in the Delhi Rent Control Act,



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3. The learned counsel for the plaintiff invites the attention of the Court to the order dated 15.05.2023 to contend that because of the aforesaid objection a request was made before the Court to delete the defendant no.1 from the array of parties and accordingly, the defendant no.1 was deleted from the array of parties. Further, the prayers made in paras (A), (C), (D) and (F) of the prayer clause against the defendant no.1 were also withdrawn.

4. However, insofar as the relief against defendant no. 2 is concerned, the learned counsel for the plaintiff had submitted that the plaintiff will still be pressing his claims in prayer (B) and (E) against the defendant no.2, as the claims against the said defendant no.2 arise under the agreement dated 01.07.2009 admitted by the defendant no. 2. Accordingly, the permission was sought by the plaintiff to file an application under Order VI Rule 17 CPC.

5. It is in this backdrop that the present application has been filed. Along with the application, an amended memo of parties has been filed deleting the name of defendant no. 1 whose name was deleted from the array of parties *vide* order dated 15.05.2023. As per amended memo of parties, the original defendant no. 2 is now defendant no. 1. The original plaintiff had also expired and since his LRs have been impleaded *vide* order dated 07.02.2022, therefore, the two sons of the original plaintiff are now the plaintiffs in the suit. The amended memo of parties is taken on record.

6. The learned counsel for the plaintiffs submits that by way of present amendment application the plaintiffs are seeking to substitute the following prayer:

"27. PRAYER:

In circumstances above stated, it is, respectfully prayed that this



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Hon'ble Court, be pleased to pass:

a) A decree of ejectment, directing the Defendant No. 01 to remove all kinds of advertisement boards, neon sign boards, electronic boards, and all kind of signboards of whatsoever nature from the facade, and/ or exterior of the shop/ building in property No.G-11 (Market) NDSE, Part - 1, New Delhi -110019;

b) A decree for money in the sum of Rs.38,99,000/- against defendant no.1 along with interest pendent-lite and future @12% per annum;

c) A decree directing defendant no.1 to pay use and occupation charges pendent-lite and future, in accordance with provisions of Order XX Rule 12 CPC in favour of plaintiff and defendant no.2;

7. The learned counsel for the plaintiffs submits that in terms of the aforesaid agreement the defendant no. 1 was allowed to put hoardings on the facade of the suit property owned by the plaintiffs as a licensee against consideration.

8. By amending the plaint, the plaintiffs confine their claim to the removal of hoardings and recovery of consideration from the defendant no. 1 which was agreed under the aforesaid agreement. Accordingly, the plaintiffs seek to amend various paragraphs of the plaint viz., the paragraphs related to valuation, cause of action and Court Fee and consequent amendment in the prayer clause.

9. The learned counsel further submits that the suit is at the preliminary stage and even the issues have not yet been framed. He therefore, urges the Court to allow the present application.

10. *Per contra* the learned counsel for the defendant no. 1 submits that the reliefs sought by way of amendment are barred by limitation. He further



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submits that by way of amendment the prayer now being sought will change the nature of the suit itself. He therefore, contends that the present application be dismissed.

11. I have heard the learned counsel for the plaintiffs, as well as, the learned counsel for the defendant no.1 and perused the record.

12. It is not in dispute that the suit is at the preliminary stage and the issues have not been framed. Insofar as the objection with regard to proposed reliefs sought to be inserted not being within limitation, suffice it to say that the limitation is a mixed question of law and fact. Further, the objection of limitation as well as other objections as available under law can be taken by the defendant no. 1 at the time of filing written statement to the amended plaint.

13. In regard to the contention that by allowing the amendment, the nature of the suit will change, noticeably the original plaint not only contains the factual foundation for the reliefs now being sought but even the prayers sought to be substituted are substantially the same as original prayers.

14. In view of the above, the present application deserves to be allowed. Ordered accordingly.

15. The amended plaint is taken on record.

16. The application stands disposed of.

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17. The defendant no.1 may file written statement to the amended plaint in accordance with law.

18. At the outset, it must be noted that by virtue of amendment the reliefs now being sought by the plaintiffs have been valued at an amount which is not within the pecuniary jurisdiction of this Court. Therefore, the question which



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confronts this Court is whether the plaint is to be returned or the suit has to be transferred.

19. At this stage apt would it be to extract the relevant provisions from the Civil Procedure Code, 1908 (hereinafter 'the Code') to find an answer to the above question. Section 24 of the Code provides for the power of the High Court or the District Court to transfer or withdraw any suit, appeal or other proceedings pending before it to any court subordinate to it and competent to try or dispose of the same. The relevant part of the provision reads as under:

“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

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.



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(5) A suit or proceeding may be transferred under this Section from a Court which has no jurisdiction to try it.”

20. The provision under which plaint can be returned is contained under Order VII Rule 10 of the Code, which reads as under:

“10. Return of plaint.—(1) Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]”

21. The learned counsel for the plaintiffs has invited the attention of the Court to the decision of this Court in ***Aviat Chemicals Pvt. Ltd. & Anr. vs. Magna Laboratories (Gujarat) Pvt. Ltd. & Anr. ILR (2005) II Delhi 571*** wherein a coordinate bench of this Court in somewhat similar situation had opined that while allowing amendment once the Court comes to the conclusion that the Court does not have the pecuniary jurisdiction to entertain the subject matter of the suit, the appropriate course is to transfer the suit by invoking the provision of Section 24(5) of the Code. The Court also observed that the purpose of Order VII Rule 10 is otherwise limited, as it comes into play only for the purposes of return of a plaint where the court is of the opinion that the suit should have been instituted in another court, which is not a situation in the present case. Relevant paras of the judgment read thus:

“4. The facts of the case and the order dated 15.09.2004 passed by the Trial Court indicates that the court directed the



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*return of the plaint to the plaintiff, as the matter was outside the jurisdiction of the court when the plaintiff took adjournment. The provisions of Order VII Rule 10 now provides a more specified procedure by incorporation of Rule 10A of Order VII in relation to return of plaint. **There cannot be any dispute to the fact that the court below has lost pecuniary jurisdiction to entertain and decide the suit as a result of the amendment claimed by the plaintiff. What arguments plaintiff could raise in regard to return of the plaint is hardly a matter of substance. The purpose of filing of the present petition is to avoid the order of return of plaint in contemplation with the provisions of Order VII Rule 10 and to pray before the court that the entire file may be transferred to this Court so as to avoid any automatic or by operation of procedure, vacation of the interim injunction granted by the Court. Section 24 Sub-section (5) does contemplate transfer of a case where the court has no jurisdiction to entertain and decide the suit. The provision vests power with the court, which has no jurisdiction to try it, for transferring the case. The purpose of Order VII Rule 10 is limited as it comes into play only for the purposes of return of a plaint where the court is of the opinion that the suit should have been instituted in another court. Of course, the applicant has the liberty to file an application upon intimation by the court in terms of Order VII Rule 10A(2).***

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*10. The principles enunciated above have been reiterated with approval by the Supreme Court in its subsequent judgment and have been consistently followed by the High Court. Judicial discretion is to be exercised and provision of a statute of the Code are to be interpreted in a manner which would further the cause of justice rather than the one which would frustrate the same. The entire scheme underlining the code is intended to do substantial justice and decide the suits expeditiously. **The provisions of Section 24(5) are intended to transfer a suit where it is being tried or is pending at any***



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stage before a Court of no jurisdiction. The provisions of Order, 7 Rule 10 are to deal with a situation where the Court normally, initially or even after representation of a plaintiff has no pecuniary jurisdiction and such plaintiff ought to be filed in some other Court. Both these provisions are to be construed harmoniously and they are not destructive of each other. Merely because the Court has lost pecuniary jurisdiction and proceedings under Order, 7 Rule 10 or 10(a) are pending before the Court per se will not oust the jurisdiction of the Court to pass an order Section 24 of the Code..... May be, the provisions of Section 24 on the one hand and order, 7 Rule 10 and 10(a) on the other of the Code may not be read together or applied to the facts of the case to the suit at one and the same domain. Normally, both these powers would fall in the domain of different jurisdictions. As already noticed, these are the two different courses open to the courts at the relevant time and they could be applied to the facts of a case keeping in view element of prejudice, adherence to the law of procedure, equity and attainment of ends of justice. Once suit and/or any other proceedings are pending before a trial Court, at any stage, the powers of this Court under Section 24 could be invoked and cases transferred to this Court from the courts having no jurisdiction. Resorting to the provisions of Section 24, despite passing of an order, would per se not tantamount to lack of jurisdiction. Recourse to one prescribed mode under the law of procedure would not bring into play the doctrine of no jurisdiction as none has a vested right in procedure, particularly when no prejudice is suffered by such a party.

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13. The rules of procedure are hand-made to achieve the ends of justice to adopt a micro-cosam approach to the language of these provisions, which otherwise do not imply mandatory character, would amount to frustrating the very object of procedural law. The purpose is to expedite the



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conclusion of the proceedings and not to scuttle the same. The process of justice dispensation demands effective participation as well as expeditious disposal. If the suits are permitted to commence de novo as a result of inevitable presentation of plaint before this Court, it would be retrograde rather than progressive. Enforcement of procedural law with rigorous accuracy would not be congenial to administration of justice if it defeats the very object of procedural law.

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19. *For the reasons afore-stated all the petitions under Section 24 of the Code of Civil Procedure filed by the petitioners are allowed, the suits in question are ordered to be transferred to this Court and tried in accordance with law. However, in the facts and circumstances of the case, parties are left to bear their own costs.*

(emphasis supplied)

22. Another decision of this Court to which reference was made by the learned counsel for the plaintiffs is the decision in ***Shri Rail Chand vs. Shri Atal Chand and Others, 1977 SCC OnLine Del 66*** wherein this Court was dealing with a situation where due to change in pecuniary jurisdiction on account of amendment in the Delhi High Court Act, 1966, the Commercial Judge therein at the time when the case was ready for final hearing decided a preliminary issue of jurisdiction and ordered the case to be sent to the District Judge for transfer to a competent court. In this factual backdrop it was held as under:

“3. In the present case, the question of jurisdiction was determined as a preliminary issue after the entire suit was ready for arguments. This has led the trial court to pass the impugned order dated 16th October, 1976, whereby it did not return the plaint, but ordered the file to be placed before the District Judge for transferring the same to a competent court.



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It is urged by the petitioner that the Commercial Sub Judge had no option but to return the plaint. It is urged by the respondents that the order passed in the present case is a perfectly correct order because the entire proceedings were over and a mere return of the plaint would cause grave hardship. I am much impressed by this argument and although I find that the Commercial Sub Judge was not empowered to direct the placing of the file before the District Judge for passing an order of transfer, I find that case cannot be satisfactorily disposed of by merely rejecting the plaint. This in fact will mean that the entire evidence will have to be re-recorded. The suit had been pending for a period of ten years and there was a long trial. It would not be in the interest of justice if the plaint was returned and the case had to be tried all over again before an Additional District Judge.

4. I have been referred to a Division Bench judgment of the Allahabad High Court reported as Sahu Nand Ram v. Mussammat Hira Devi, 1973 I.C. 495 (3), in which case a suit was tried and then it was found at very late stage that the suit should have been tried in another district. The Court held that this was a fit case where the High Court should exercise its power of transfer. Accordingly, the High Court set aside the order returning the plaint and instead transferred the suit to the Court that had rejected the plaint. The High Court rejected a suggestion that the plaint should first be filed before a Subordinate Judge in Meerut and then be transferred back to some court in Moradabad district. In fact, the Court in essence transferred the case from Meerut district where it had never been filed to Moradabad district where it had been pending for some time. I think, a somewhat similar order should be passed in this case. Accordingly, I think the proper order in this case is that although the plaint had to be returned because of lack of jurisdiction, instead of directing the return of the plaint, I order the transfer of the entire suit from the court of the Commercial Sub Judge to the court of the District Judge. In this connection, the provisions of Section 24 of the Code of Civil Procedure as amended by the Act of 1976 are useful.



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Section 24(5) as it now stands says:—

“A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

This is a new power which can be most usefully exercised in this case. Hence, although the Commercial Sub Judge did not have jurisdiction to try the suit, this is a suitable case which should be transferred under Section 24 of the Code from the Court of Commercial Sub Judge to the Court of the District Judge. I further hold that the District Judge may send it to any other Additional District Judge, if he so desires.”

(emphasis supplied)

23. From the reading of above two decisions cited by the learned Counsel for the plaintiffs it is luminously clear that the provision of Section 24(5) of the Code can be resorted to for transferring the suit where the Court has lost the jurisdiction either on account of amendment to the plaint being allowed or by an operation of a statutory provision.

24. Suffice to state in the present case this Court has lost the pecuniary jurisdiction pursuant to an amendment of plaint being allowed, therefore, power can be exercised by this Court in terms of Section 24(5) of the Code to transfer the suit itself.

25. Another aspect which needs to be noted here that the present suit was filed in the year 2015 and was registered as an ordinary suit and later on, i.e. in the year 2024, the same was re-numbered as a commercial suit. It is apposite to mention that number of proceedings have taken place in the present suit since 2015, therefore, for this reason also it will not be appropriate to return the plaint as the same will lead to *de novo* proceedings [***Lalita Awasthi vs.***



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Vidya Devi & Ors., 2013 SCC OnLine Del 3821].

26. Insofar as the reliance placed by the learned counsel for the defendant no. 1 on the decision of High Court of Kerala in ***T.K. Sreedharan vs. P.S. Job, 1968 SCC OnLine Ker 107*** is concerned, the said decision is not applicable to the facts of the present case inasmuch as the said decision is of the year 1968. At that time, Section 24(5) was not there on the statute book as the same was inserted in the year 1976 and came into effect from 01.02.1977, which now bestows power upon the High Court or the District Court to transfer a suit, appeal or proceedings in case it lacks jurisdiction to try it. Thus, the High Court of Kerala, did not have the benefit of Section 24(5) of the Code, and therefore, it had to resort to Order VII Rule 10 of the Code which provides for return of plaint.

27. In view of the aforesaid discussion, the present suit deserves to be transferred to the Court having appropriate pecuniary jurisdiction to entertain the same by exercising the power vested under Section 24(5) of the Code. Accordingly, the Registry is directed to transfer the suit to the Principal District Judge, South East District, Saket, New Delhi for being assigned to the appropriate Court in accordance with rules. The parties are directed to appear before the Principal District Judge, South East District, on 21.08.2024.

VIKAS MAHAJAN, J

JULY 25, 2024/N.S. ASWAL