
(2009) 12 DEL CK 0399

In the Delhi High Court

Case No : F.A.O. (OS) No. 593 of 2009 and C.M. No. 17134 of 2009

Amrit Agencies Pvt. Limited

APPELLANT

Vs

Nu Tech Security Printers

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2009) 12 DEL CK 0399

Hon'ble Judges : Vikramajit Sen, J; Sunil Gaur, J

Bench : Division Bench

Advocate : Anil Kher and Shashi Shekhar, for the Appellant; J.S. Bakshi and S.S. Sobti, for the Respondent

Final Decision : Disposed Off

Judgement

Sunil Gaur, J.—The rejection of Appellant/Defendant's application u/s 24 of the CPC is under challenge in this appeal.

2. Four suits for recovery of money were filed by M/s. Nu Tech Securities Printers and M/s. K.L. Shroff against the Appellant/ Defendant and M/s. Ram Agency and Others pertaining to paper supplied and printing carried out in respect of lottery tickets of Government of Nagaland. Due to change of pecuniary jurisdiction, three out of these four suits, whose details are noted in para 2 of the impugned order, i.e., (b) to (d), were transferred to the District Courts and there the recording of evidence was completed and now, these three suits are listed for final disposal. Whereas, in the fourth suit pending in this Court i.e. C.S. (OS) No. 408/1989, the recording of evidence is yet to begin.

3. The three reasons, which had weighed with the learned Single Judge to decline Appellant's application u/s 24 of the CPC deserves to be noted with approval and they are as under:

(i) that the evidence in all the three suits pending before the Additional District Judges has already been recorded and now they are fixed for final disposal on

27th October, 2009 and 11th November, 2009 before Ms. Shail Jain, Additional District Judge for final arguments and third suit is listed on 4th November, 2009 before Shri Dinesh Bhatt, Additional District Judge, Delhi for final disposal; on the other hand, in the suit pending in High Court the evidence is yet to be record.

(ii) It is not denied by the parties that although some of the parties are common, however the cause of action and documents involved in the four suits relate to different transactions. Therefore, in my considered view the suits pending in the District Court can be decided as per their own merits. At this stage, the said prayer cannot be granted.

(iii) As far as the present suit is concerned, learned Counsel for Defendant No. 3 to 7 has argued that the plaintiff has not produced the evidence in time, therefore, it is all the more feasible that the suits mentioned above as (b) to (d) may be withdrawn from the Court and consolidated and be considered with the present suit. I do not agree with the contention of Defendant No. 3 to 7 even as it appears from the record, since the present application filed by the Defendant No. 3 to 7 is pending for the last more than three years, therefore, none of the parties has taken any care to proceed further in the matter on merit.

4. Learned senior counsel for the Appellant has drawn our attention to an initial interim order of 15th November, 1991, passed by the learned Single Judge directing that all these four suits be listed together on the next date of hearing and the pleadings be completed before they are listed. In any case, this interim order does not consolidate these four suits and admittedly change of pecuniary jurisdiction took place much thereafter. Our attention has been also drawn by learned senior counsel for the Appellant to an interim order of 11th July, 2008, whereby the learned Single Judge while entertaining Appellant's application u/s 24 of the CPC had permitted the concerned trial courts in the three suits pending before them, to hear the final arguments but had restrained them from pronouncing the judgment. What has been urged on behalf of the Appellant is that despite numerous opportunities and imposition of costs, Respondent/plaintiff is not proceeding with the suit in question i.e. C.S. (OS) No. 408/1989 and now the next date before the concerned Registrar for recording of evidence is in March, 2010. It has been stressed by learned senior counsel for the Appellant that the basis of his claim and the liability of the Defendants in all these four suits is the same and to avoid conflicting decisions, it would be in the interest of justice to have them decided by one Court. This is controverted by learned Counsel for the Respondent who asserts that all these four suits are based on distinct cause of action and arise out of separate transactions between separate entities and the amounts claimed are on the basis of different invoices.

5. It is also pointed out by learned Counsel for the Respondent that the change in the pecuniary jurisdiction, which led to the transfer of three suits to the District Courts, took place on 12th November, 2003 and the Appellant/Defendant ought to have filed the application u/s 24 of the CPC then, but Appellant has deliberately filed the same in the year 2006 with the sole objective of delaying

early conclusion of the proceedings in these three suits. However, it has been asserted that without any demur the suit proceedings in the three suits had reached the stage of final arguments, about three years ago i.e. on 16th December, 2006 and at that stage, present application has been filed to delay the final decision in these three pending suits.

6. After having heard learned Counsel for parties and upon perusal of the record of this case, it becomes quite evident that Appellant/Defendant with a sole objective of delaying the disposal of the four suits had filed the present application u/s 24 of the CPC before the learned Single Judge, when the remaining three suits had reached the final stage in the District Courts. By securing an interim order from the learned Single Judge, Appellant/Defendant has managed to successfully delay for nearly three years the disposal of the three suits, which were at ripe stage in the District Courts. All that we can say is, it is indeed unfortunate.

7. The aforementioned three reasons put forth by the learned Single Judge to dismiss the Appellant's application u/s 24 of the CPC are cogent and weighty. Though, learned Single Judge has been lenient in dismissing Appellant/Defendant's application u/s 24 of CPC without costs, but we find that not only the application u/s 24 of CPC was misconceived, but this appeal too is misconceived. Consequently, this appeal and the pending application are dismissed with costs, which is quantified at Rs. 20,000/-.

8. Before parting with this order, we would like to ensure that the three suits, which are pending before the District Courts are decided expeditiously and the hearing of the suit pending before the learned Single Judge is also expedited. We are informed that in C.S. (OS) No. 408/1989, the date fixed before the concerned Registrar for recording the evidence is in March, 2010. The concerned Registrar is directed to prepone the date of recording of evidence from March, 2010 to January, 2010. The concerned Additional District Judges, before whom remaining three suits are pending, being Suit No. 409/1989 titled as NuTech Security Printers v. Ram Agency and Ors. Suit No. 405/1989 titled as K.L. Shroff v. Ram Agency and Ors.; and Suit No. 407/1989 titled as K.L. Shroff v. Shanti Agency and Ors. are also directed to expeditiously decide the same, preferably within three months of the dates already fixed in these suits. Summoned record be sent back forthwith. Registry to ensure compliance of this order within two weeks.

9. This appeal stands disposed of, with directions as aforesaid.