(2006) 01 DEL CK 0132

In the Delhi High Court

Case No : CS (OS) No. 689 of 2004

Bharat Sanchar Nigam Ltd. APPELLANT

Vs

All India Bharat Sanchar Nigam Executives'' Association (Regd.) and Others RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 15
Court Fees Act, 1870 — Section 7
Suits Valuation Act, 1887 — Section 8

Citation : (2006) 87 DRJ 401

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : R.V. Sinha, for the Appellant; D.S. Chaudhary and Ajay Chaudhary, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—The plaintiff filed a suit for permanent and mandatory injunction on the premise that it is a limited company incorporated under the provisions of the Companies Act, 1956. The plaintiff has been providing public utility services in the form of telephone/mobile services to the public of the country. The office of the Chief General Manager is responsible for maintenance work of telecom in the States of U.P., Uttranchal, Rajasthan, J&K, Punjab, Himachal Pradesh, Haryana and administration of various staff in different categories in the Northern Telecom Circle. The plaintiff came into existence on 1.10.2000 and nearly 3.5 lakhs employees working in the erstwhile Deptt. of Telecom Services and Deptt. of Telecom Operations were transferred on deemed deputation to the company. It is the case of the plaintiff that the members of the defendant association are its employees and are entitled to the benefits strictly in adherence to the DPE Guidelines as mentioned in the letter issued by the plaintiff. As per condition No. 3(vii) of the plaintiff''s letter dated 29.4.2004, the defendants are completely refrained from creating disaffection or dis-satisfaction amongst the employees of the plaintiff or undermine discipline or anyway lowering the prestige or image of the plaintiff. As per condition 3(viii) of the plaintiff''s letter dated 29.4.2004, they have to restrain from agitational approach such as resorting to strike and/or practices or conduct, which is likely to result in or result in cessation or substantial retardation of work and also to coercion or physical duress.

2. The defendants served a notice dated 21.6.2004 whereby they threatened for launching dharna and indefinite hunger strike at the office of CGMM(NTR), Kidwai Bhawan, New Delhi on 21.6.2004 at 1000 hours and further postponed the date of the aforesaid dharna and indefinite hunger strike vide their letter dated 21.6.2004 for 2nd July, 2004. Vide its letter dated 15.6.2004, the defendants were informed by the plaintiff of their service condition and were asked to refrain from such activities and maintain cordial and peaceful relationship and not to disturb the work of the organisation. The defendants refused to listen to the said letter and vide their letter dated 18.6.2004 showed complete ignorance of the presence of the officials of other organisations. Faced with this situation, the plaintiff filed the present suit with the following prayers:-

(i) pass a decree of permanent injunction in favor of plaintiff and against the defendant No. 1, its office bearers, including the defendants No. 2 and 3, members, sympathisers and associates restraining them from resorting to strike, rallies, dharnas, demonstrations, gherao or any other unwarranted activities in and around the office premises of the plaintiff at Statesman House, Barakhamba Road, New Delhi, Kidwai Bhawan, Janpath, New Delhi or any other office premises of the plaintiff in Delhi and also in or before the residential premises of the officers of BSNL;

(ii) Pass decree of mandatory injunction in favor of plaintiff and against the defendant No. 1, its office bearers, including the defendants No. 2 and 3, its office bears, members, sympathisers and associates commanding them not to interfere in the ingress and exit of the officers, staff or public in and from the office of the plaintiff, including the residential premises of the officers of the plaintiff and further command them not to interfere into the day-to-day administrative and technical functioning of the plaintiff and its officers;

(iii) may pass any further order(s) as be deemed just and proper to meet the ends of justice.

3. The suit was contested by the defendants who filed detailed written statement and took various preliminary objections. One of the basic preliminary objections taken by the defendants was that the plaintiff is liable to pay court fee on Rs. 25 lacs as it cannot value the suit differently for the purposes of court fee and jurisdiction particularly in the facts and circumstances of the case. It was also stated that the present suit has become infructuous inasmuch as the cause of action which has arisen on 21st June, 2004 was postponed to 2nd July, 2004 and even that stage has passed. As such, the suit has been rendered inconsequential.

Objection in regard to mis-joinder of parties was also taken. On merits, it was stated that they have the right to take recourse to such remedies and the notice issued by the defendants was in accordance with law.

4. During the course of hearing and when the matter was listed for framing of issues, learned counsel appearing for the defendants contended that the plaint of the plaintiff is liable to be rejected under Order 7 Rule 11 of the CPC as the plaintiff has not paid the requisite court fee on the plaint despite a specific objection being taken by the defendants in that regard. Further, it was argued that the plaint is liable to be rejected at this stage itself and suit of the plaintiff is liable to be dismissed.

5. There is no doubt that a defendant to a suit can raise an objection as contemplated under the provisions of Order 7 Rule 11 of the CPC without controverting the facts as stated in the plaint. If on the bare reading of the plaint as it stands, the plaintiff''s suit is barred by the provisions of law or appropriate court fee has not been affixed on the plaint, the plaint of the plaintiff would be liable to be rejected under Order 7 Rule 11 of the CPC. In order to examine, the merit of this contention, it is necessary that in addition to the facts stated by the plaintiff in the plaint as afore-noticed, reference may be made to the paragraphs in relation to the cause of action and court fee as stated in the plaint. Paragraph Nos. 21 and 23 of the plaint reads as under:-

21. That the cause of action has arisen on 21.6.2004, when the defendants, vide their letter dated 21.6.2004, threatened dharna/demonstrations contrary to the policy of the plaintiff and further on 21.6.2004 when the defendants postponed their threatened action to 2nd July, 2004. The cause of action is continuing. The suit is within limitation. There is no delay or latches on the part of the plaintiff.

23. That the suit for the purposes of pecuniary jurisdiction is valued above Rs. 25 lakhs and for the purposes of court fee for permanent and mandatory injunction the suit has got fixed value of Rs.200/- each and accordingly fixed court fee of Rs. 20/- each i.e. Rs. 40/- for permanent injunction and mandatory injunction has been affixed on the plaint.

6. From the bare reading of the paragraphs in relation to fixing the valuation of the suit for the purposes of court fee and jurisdiction, it is clear that the plaintiff has valued the suit for the purposes of pecuniary jurisdiction of the court at Rs. 25 lacs but for the purposes of payment of court fee, the suit has been valued at Rs. 200/- on which the court fee of Rs. 20/- for each relief prayed, has been affixed on the plaint. This affixation of court fee ex facie appears to be arbitrary as there is no basis for fixation of the suit for pecuniary jurisdiction at Rs. 25 lacs and if that value is true, then the court fee would have to be paid on the same amount as plaintiff, normally and except for the exceptions provided under law, cannot affix fixed court fee on the plaint.

7. The learned counsel appearing for the plaintiff while relying upon a Full Bench judgment of this court in the case of Smt. Sheila Devi and Ors v. Sh. Kishan Lal

Kalra and Ors. (1974) 2 Delhi 491 contended that the plaintiff has a discretion to mention the valuation of the suit as he may like and may claim such reliefs as he desires and the court would not interfere with such valuation of the plaintiff. In this regard, he also relied upon a Division Bench judgment of this court in the case of Shakuntala Rani (Smt.) Vs. Sh. Rajesh Bhatt (deceased) through LRs., Reliance was also placed upon the judgment of the Supreme Court in the case of Ram Narain Prasad and Another Vs. Atul Chander Mitra and Others, to further argue that the court fee is to be computed on the basis of the averment made and relief sought in the plaint and not on the basis of the written statement.

8. The law enunciated by the courts in the above judgments can hardly be a matter of legal controversy. What has to be seen is that in the light of the well-enunciated principles of law whether the plaintiff has correctly valued the suit for the purposes of court fee and jurisdiction? Fixation of value of suit is in the discretion of the plaintiff but once he exercises such discretion on bonafide belief, he is obliged to pay the court fee in accordance with the provisions of the Court Fees Act, 1870 and Schedule attached thereto. At this stage, it will be appropriate to refer to a recent judgment of this court in the case of Fox Software Tech. Ltd. v. Siltap Chemicals Ltd. {IA No. 2581/2004 in CS(OS) 1747/2003} decided on 25th August, 2005, on this issue wherein the judgments of the Supreme Court and the High Courts including Full Bench judgment of this court and the judgment of the Punjab and Haryana High Court relating to the same issue, were discussed at great length:-

According to the defendant, the plaintiff was thus aware of the definite amount due from the defendant to the plaintiff which have been specifically referred to by the plaintiff in the afore referred paragraphs and as such the plaintiff ought to have paid the court fee on the sums which were definitely falls due as claimed by the plaintiff at the time of institution of the suit. The plaintiff could not have valued the suit whimsically and arbitrarily to avoid the payment of advalorem court fee in accordance with the provisions of law. For this purpose, he relied upon the judgments of the Supreme Court in Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, and Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar, , while learned counsel for plaintiff contended that the suit had been correctly valued for the purposes of court fee and jurisdiction as the amount claimed by the plaintiff would be dependent upon the true and correct rendition of accounts and upon determination of such amount, the plaintiff would estimate the court fee amount and as such the plaint cannot be rejected and the plaintiff cannot suffer on the sum mentioned in the plaint which is a mere reference and he relied upon the judgment of the Division Bench of this Court in the case of Commercial Aviation T.Co. v. H.L. Malhotra 1986 RLR 362. Section 7(i)(iv)(f) of the Court Fees Act provides for suits relating to amounts. It provides that the amount if payable under this act in such case would have to be according to the amount at which the relief sought is to be valued in the plaint by the plaintiff. It is the obligation of the plaintiff to state the amount at which he values the relief sought. Article 17 of Schedule II of the Act under Clause (i)(iv) states that every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided by this Act, the Court fee payable would be Rs.10/-.

The effect of both these provisions is that plaintiff has to show that it is not possible to ascertain the amount at the time of institution of the suit and then value the suit in terms of these provisions and pay the requisite court fee if not known at least of Rs.10/-. The real question that arises for consideration is whether the discretion given to the plaintiff is based on a definite criteria and it was not possible to ascertain the exact amount due to the plaintiff and recoverable at the time of institution of the suit. The estimation of the sum due would obviously dependent upon lack of exact determination. The plaintiff would be required to say in unambiguous language the ingredients of the above provisions as well as furnish an undertaking to the Court that on determination of the amount, the plaintiff would pay the requisite Court fee. The legislature commends nothing vainly and a good interpretation should be preferred over the bad interpretation, which would result in not further frustrating the cause of justice. A plaintiff must give definite reasons why the relief claimed by him is not capable of being computed in terms of exact money and should also support his estimation by some prudent principles to determine the valuation even for the purposes of jurisdiction. In the absence of such basic requirements, the exercise of such discretion by the plaintiff would normally will have to be termed as arbitrary. It is difficult to define qua quamodo of exercise of discretion by the plaintiff in its definite terms. But it could safely be stated in certain terms that exercise of such discretion has to be bonafide and within the prescribed norms of law. In the case of Minakshisunderam Chettiar (supra) the Supreme Court held as under :-

In the suit for accounts, the plaintiff is required to state the amount at which he values the relief sought. In suits for accounts it is not possible for the plaintiff to estimate correctly the amount which he may be entitled to, for, when the plaintiff asks for accounting regarding the management by a power of attorney agent, he might not know the state of affairs of the defendants'' management and the amount to which he would be entitled to on accounting. But it is necessary that the amount at which he values the relief sought for should be a reasonable estimate.

If on the materials available before it the court is satisfied that the value of relief as estimated by the plaintiff in a suit for accounts is undervalued the plaint is liable to be rejected under Order 7 Rule 11(b). It is Therefore necessary that the plaintiff should take care that the valuation is adequate and reasonable taking into account the circumstances of the case. In coming to the conclusion that the suit is undervalued the court will have to take into account that in a suit for accounts, the plaintiff is not obliged to state the exact amount which would result after the taking of the accounts. If he cannot estimate the exact amount, he can put a tentative valuation upon the suit for accounts which is adequate and reasonable. The plaintiff cannot arbitrarily and deliberately undervalue the relief.

A Full Bench of this Court in the case of Purshottam Dass and Others Vs. Har Narain and Another, while accepting the right of the plaintiff to value its suits contemplated u/s 7(iv) of the Act but obviously subject to the limitation stated therein, it was further held that the question has to be determined on the basis of the allegations made in the plaint and the prayer made therein. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. In the case of Anil Rishi Vs. Gurbaksh Singh, the Court while looking into the substance of the plaint had directed the plaintiff to pay the court fee on the value reflected on the document in a suit for declaration and that such document was liable to be cancelled being result of a fraud and misrepresentation.

On the correct analysis of the judgments of the above court, it is clear that right of the plaintiff to value a suit for the purposes of court fee and jurisdiction and grant of relief cannot be absolutely arbitrary, unfounded and unreliable to the contents of the plaint. If the plaintiff oust to give some definite measures and sums in the plaint which according to the plaintiff are recoverable from the defendant, then defendant cannot be permitted to turn back to plead that the sum cannot be determined at the time of institution of the suit. In the case of H.L. Malhotra (supra), the Division Bench itself had relied upon the judgment of the Supreme Court in Minakshisunderam Chettiar (supra) and held that the plaintiff is entitled to value the suit for the purposes of court fee at fixed value and for the purposes of jurisdiction, he can fix an estimated value which he thinks may be found due. This preposition of law can hardly be disputed. But what has to be seen is whether this judgment has any application to the present case. In the paragraph of the judgment above referred, the plaintiff had categorically stated that Commission would have worked out to about Rs.4 crores which was becoming payable immediately. Further more, it is stated that the defendant was supposed to make payment of Rs.40 lacs approximately to the plaintiff. This was apart from the commission from the Government orders from Orrisa cyclone victims. Thereafter it is stated that sum of Rs.42 lacs was payable in relation to the matters of CWC orders. While referred to the meeting dated 23rd March, 2001, it is stated by the plaintiff that in the meeting he was told that the amount of approximately Rs.40 lacs was due and payable as commission and would be released only if the documents were signed. In face of these definite averments, it cannot be said that plaintiff was incapable of computing the figure exactly due to the plaintiff at the time of institution of the suit. Admittedly, the arrangement of commission between the parties cancelled on 23rd March, 2001 which is stated to be cause of action in favor of the plaintiff and against the defendant and by that time all transactions were known to the plaintiff and he was entitled to as per his own case 25% in terms of the commission agreement. The figures mentioned by the plaintiff in the plaint clearly show that plaintiff has actually claimed a sum of Rs.4 crores (para 19) + Rs.40 lacs (para 21) and another Rs.40 lacs (para 23). Thus the plaintiff ought to have paid court fee on these sums or on Rs.6 crores which have been estimated by him without giving any details. The estimation arrived at by the plaintiff appears to be without any basis and the plaintiff has taken recourse to complete arbitrariness in availing of the benefit available to him under the provisions of the Court Fees Act. Lack of bonafides on the part of the plaintiff would cloud this right available to the plaintiff and the Court would be compelled to examine the content of the plaint and require the plaintiff to pay the requisite ad valorem court fee on the actual amounts claimed in the suit. In view of the above discussions, I would allow the application of the defendant partly and in terms of provision to Order 7 Rule 11 CPC would grant an opportunity to the plaintiff to value the suit correctly as afore noticed and pay the ad valorem court fee there upon within four weeks from the date of pronouncement of this order. The application is accordingly disposed of.

In the event, the plaintiff fails to comply with the conditions of this order, its plaint shall be liable to be rejected in terms of these provisions.

9. In the light of the above principles, now it will be proper to revert to the facts of the present case. The plaintiff has stated pecuniary value of the suit for the purposes of jurisdiction at Rs. 25 lacs. How could it fix the value of suit for the purposes of payment of court fee at Rs.200/- is the basic question?

10. Section 7 of the Court Fees Act, 1870 provides for computation of fees payable in suits. u/s 7(iv)(d), to obtain an injunction, the plaintiff shall state the amount at which relief sought is valued and u/s 8 of the Suits Valuation Act, 1887, the plaintiff is obliged to value the suit for the purposes of court fee and jurisdiction identically except for the exceptions provided u/s 7 of the Court Fees Act, 1870. According to the plaintiff, in terms of Section 7(iv)(d), it has stated the amount at which it has valued the reliefs sought. The prayed relief is that of prohibitory and mandatory injunction. What are the basis for causing an exception in deference to the statutory provisions of the Suits Valuation Act, 1887 or the Court Fees Act, 1870, requires consideration. According to the plaintiff, it has valued the suit in terms of Section 7(iv)(d) read with entry 17(vi) of Schedule II of the Court Fees Act as applicable to Delhi. Clause (vi) of entry 17 of Schedule II of Court Fees Act states that in ''every other suit where it is not possible to estimate at a money-value the subject matter in dispute, and which is not otherwise provided for by this Act'', the plaintiff could pay the fixed court fee of Rs. 13/-. This argument besides being mis-conceived is also without any basis. It is the contention based upon mis-construction of law. The proposition so formulated is hardly applicable to the facts of the present case. There is no question that it is not possible to estimate at a money value the subject matter in dispute. The plaintiff in its own wisdom has valued the subject matter of the suit at Rs. 25 lacs. There is no averment in the entire plaint that the plaintiff cannot value the suit on some reasonable or rational basis. The definite expression used in paragraph No. 23 of the plaint leaves no doubt in the mind of the court that the differentiation stated by the plaintiff in valuation of the suit for

the purposes of jurisdiction and court fee is arbitrary, is an attempt to avoid the payment of ad valorem court fee and has no rational basis in law. It was certainly in the discretion of the plaintiff to value this suit. Once it has valued the suit, it is obliged to pay the ad valorem court fee upon such valuation unless the case of the plaintiff falls in one of the specified exceptions. Certainly the case of the plaintiff does not fall in any of the carved exceptions in the above provisions of law. In fact, the plaintiff has taken the luxury of fixing the value of the suit for the purposes of pecuniary jurisdiction at Rs. 25 lacs. Thus, it is obliged to pay the ad valorem court fee on that amount. Any other interpretation would, in fact, be contrary to the specific provisions of the above Statutes and would also be encouraging the intent of persons, like the plaintiff, of forum shopping. Nobody can be permitted to exercise a discretion in such an arbitrary manner which is even opposed to public policy. In normal course, the plaintiff would be obliged to institute the suit in the court of lowest grade competent to try it in terms of Section 15 of the CPC. The exceptions to this rule are founded on the plaintiff''s intention to value his suit for the purposes of pecuniary jurisdiction at a higher amount which in the present case is Rs. 25 lacs. But for that averment the plaintiff would not have been able to institute the present suit in this court.

11. In the light of the judgment of this court in the case of Wockhardt Veterinary Ltd. v. Raj Medicos and Anr. 1998 VI AD (DELHI) 1 and the various judgments afore-referred, in the opinion of the court, the plaint of the plaintiff would be liable to be rejected for want of payment of appropriate court fee in accordance with law. However, the plaintiff would be entitled to an opportunity to pay the ad valorem court fee and make up the deficiency thereto before the plaint is rejected under Order 7 Rule 11 of the CPC.

12. Consequently, the plaintiff is granted two weeks'' time to make up the deficiency in payment of ad valorem court fee, the suit being valued at Rs. 25 lacs for the purposes of court fee and jurisdiction.

