
(2018) 09 CAL CK 0006
In the Calcutta High Court
Case No : Civil Order No. 2665 of 2018

Dayal Cotspin Limited

APPELLANT

Vs

Atlantic Projects Limited And Another

RESPONDENT

Date of Decision : 05-09-2018

Acts Referred:

West Bengal Court Fees Act, 1970 — Section 7(4)(b), 7(i), 7(iv)(a), 7(iv)(b), 10, 11

Citation : (2018) 09 CAL CK 0006

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Pratyush Patwari, Hiranmay Bhattacharya, Lalratan Mondal,
Subhasish Pal

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J.

1. The principal defendant in a declaratory suit has filed the present revisional application against an order whereby the petitioner's application

under Section 11 of the West Bengal Court Fees Act, 1970 (hereinafter referred to as 'the 1970 Act') was rejected. The said suit was filed for

the following reliefs:

a) for a declaration that nothing is due and payable by the plaintiff to the defendant no.1 on account of business deal for the period between

29/11/2012 and 09/09/2013 and/or for any period whatsoever.

b) for a further declaration that the defendant no. 1 is abided by the deed of settlement 27/11/2013 executed by its authorized agent and representative

the proforma defendant No. 2.

c) for permanent injunction restraining the defendant No. 1 from acting upon its

Advocate's letter dated 27/10/2014.

d) for all costs of the suit.

e) for such other relief or reliefs to which the plaintiff is entitled to get under the law and equity.

2. The contention of the petitioner in the said application was that the Trial Court was to hold an enquiry under Section 11 of the 1970 Act to ascertain

the proper valuation of the suit. It was alleged by the petitioner that, since the plaintiff/opposite party no. 1 had categorically stated that the defendant

had claimed the sum of Rs. 16,60,25,449/- (Rupees Sixteen Crore Sixty Lakh Twenty Five Thousand Four Hundred Forty Nine) along with interest at

the rate of 18 per cent per annum and the plaintiff sought to avoid such payment by filing the suit, full court fees on the said amount ought to be paid

by the plaintiff.

3. Learned counsel for the petitioner, by relying on the averments made in the plaint, submitted that the entire suit was designed to restrain the

defendant no. 1/petitioner from acting upon its advocate's letter dated October 27, 2014, which carried the claim of the aforesaid sum as well as

contained a threat of suit in default of payment.

4. In this context learned counsel cites a judgment reported at (1977) 2 CLJ 258 [Messrs. Hind Wire Industries Ltd. vs. Uttar Pradesh State

Electricity Board & Anr.] wherein it was held by a Division Bench of this Court, inter alia, that since a decree for declaration that the defendant was

not entitled to enforce a bank guarantee executed between the parties to the suit and to realize the amount covered by the said bank guarantee was

prayed for, the germane issue was as to whether the valuation of the relief claimed was validly revised by the Court. It was held that the suit came

within the purview of Section 7(4)(b) of the 1970 Act, and as such, although the plaintiff was entitled to put his own valuation, he could not put any

arbitrary valuation of his own. It was further held that valuation was to be determined on the basis of the plaintiff's pleading and with reference to

the relief claimed by the plaintiff.

5. Learned counsel for the petitioner next cites a judgment reported at (2005) 2 CHN 648 [Manthan Brand Band Services Pvt. Ltd. vs. C.K.T.

Communications Pvt. Ltd.] , where a learned Single Judge of this Court held that it was clear from the plaint that the plaintiff alleged that the cause of

action arose when, in spite of receipt of sum of Rs.85,850/- (Rupees Eighty Five Thousand Eight Hundred Fifty) the defendants demanded a further

sum of Rs.24 lakh (Rupees Twenty Four Lakh) per annum from the plaintiffs and threatened to disconnect the transmission of the plaintiff's

channel. It was held that, on the basis of the averments made in the plaint, the suit should have been valued at least Rs.24 lakh (Rupees Twenty Four

Lakh).

6. As such, learned counsel for the petitioner submitted that the impugned order ought to be set aside and an enquiry under Section 11 of the 1970 Act

directed.

7. It is further submitted on behalf of the petitioner that the procedure where insufficient court fee was filed on a plaint, was prescribed in Section 10

of the 1970 Act. It is submitted that the said section provides that, on the date fixed for appearance of the opposite party or as soon as may be

thereafter, the Court should record a finding whether sufficient Court fee was paid. In view of such provision, it is submitted, it was the incumbent

duty of the Court to hold an enquiry under Section 11 of the 1970 Act immediately upon the discrepancy in Court fees being pointed out.

8. Learned counsel for the plaintiff/opposite party no. 1, on the other hand, argued that the suit was not a money suit and as such could not be

governed by Section 7(i) of the 1970 Act. It is submitted that on a plain reading of the plaint, it was evident that the suit fell within the purview of

Section 7(iv)(a) of the 1970 Act. In such view of the matter, the plaintiff was entitled to value the suit according to the amount on which the relief

sought was valued in the plaint.

9. It is further submitted that since the plaintiff alleged that there were no dues from the plaintiff on the basis of a settlement arrived at between the

parties, the defendant could not, in any event, claim any money from the plaintiff. As such, since the basis of the plaint case was that no dues

whatsoever were owed by the plaintiff to the defendant no. 1, the suit could not be valued in terms of the sum as claimed by the principal defendant.

10. In this regard learned counsel for the opposite party no. 1 places reliance on various averments made in the plaint, in particular paragraph nos. 3, 6

and 7.

11. It is further submitted by learned counsel for the opposite party no. 1 that

the facts of the cited judgments were entirely different from the present case; thus the ratio laid down in the said cases were not applicable herein.

12. In view of the contention in the present revision being limited to the petitioner and opposite party no. 1, service on the proforma defendant/opposite party no.2 is deemed unnecessary.

13. Upon hearing both sides and going through the relevant provisions and the averments made in the plaint, it is evident that the present suit is

covered by Section 7(iv)(b) of the 1970 Act. Even if the suit was covered by Sub-Section (a) of Section 7(iv), the statute provides that the suit has to

be valued according to the amount at which the relief sought is valued in the plaint, subject to the provisions of Section 11â???. It is further stipulated that

in all such suits the plaintiff shall state the amount at which he values the relief sought.

14. Section 11 of the 1970 Act provides that if the Court is of the opinion that the subject- matter of any suit has been wrongly valued, it may revise

the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

15. It is clear from the plaint of the present suit that the entire scope of the suit was denial of the plaintiff as to the plaintiffâ??s liability to pay a

quantified amount of Rs. 16,60,25,449/- (Rupees Sixteen Crore Sixty Lakh Twenty Five Thousand Four Hundred Forty Nine), as is evident from the

paragraph no. 8 of the plaint. The cause of action of the suit was primarily an advocateâ??s letter issued by the defendant no.1/petitioner claiming

such sum of money and threatening to take legal action in default.

16. In the suit, the plaintiff claimed a negative declaration, that nothing was due and payable by the plaintiff to the defendant no. 1 on account of

business deal for the period between November 29, 2012 and September 9, 2013 and/or for any period whatsoever, which, taken in the context of the

plaint, referred to the sum of money as indicated hereinabove. A further declaration was sought as to the defendant no. 1 being bound by a deed of

settlement allegedly executed on November 27, 2013 and permanent injunction was sought restraining the defendant no. 1 from acting upon this

advocateâ??s letter dated October 27, 2014.

17. In effect, the scope of the suit was a negative money claim of sorts. What the plaintiff prayed for in the suit related entirely to a money claim of

the defendant no. 1, for a quantified amount. As such, an objective standard was available on the face of the plaint itself, which was a mirror image of

a money claim, or a money claim in reverse. The plaintiff sought to negate and obviate the money claim of the defendant no. 1 for a specified amount.

Such money claim, if directly made, would be covered by Section 7(i) of the 1970 Act. As such, in the present case, although the suit is governed by

Section 7(iv)(b) of the 1970 Act, by dint of the last portion of the said provision, the valuation of the same is subject to the provisions of Section 11 of

the said Act. Since the claim in the suit is relatable, although in a negative way, to a money claim in so far as the suit tried to avoid such a claim, it

would be justified if the valuation of the suit was enquired into and/or revised to bring it in consonance with the amount quantified in the plaint.

18. In view of such quantification being found from the plaint itself, being Rs. 16,60,25,449/- (Rupees Sixteen Crore Sixty Lakh Twenty Five Thousand

Four Hundred Forty Nine) , it was obvious that the plaintiff had to value the suit on the same footing as a money suit. In fact, if a person claiming

money due to him would have to pay court fees on the amount claimed, it would be all the more justifiable for a person seeking to avoid such a claim

to pay equivalent court fees.

19. As far as the provision of Section 10 of the 1970 Act is concerned, the same provides that the Court is to record a finding whether sufficient court

fee has been paid on the date fixed for the appearance of the opposite party, or as soon as may be thereafter, and an outer limit of delivery of

judgment is stipulated in the said provision for coming to such a finding. The outer limit cannot be a determinant of the time when such finding has to

be arrived at. Since an application was made specifically by the defendant no. 1/ petitioner for assessment of proper valuation and court fees, it was

incumbent upon the Court to hear out such an application and to arrive at a proper finding as to the proper valuation of the suit. The argument of the

opposite party no. 1, that the application could be relegated to the hearing stage, is not acceptable since, when an application is already on record at

the behest of the defendant no. 1/petitioner for the said purpose, the Court ought not to unnecessarily relegated it to the hearing of the suit instead of

adjudicating the same immediately.

20. Furthermore, the Trial Court did not give any reason whatsoever for rejection

of the application in question in the impugned order. Such

non-recording of reasons has furnished an additional ground for setting aside the said order.

21. In the circumstances, C.O. No. 2665 of 2018 is allowed on contest, thereby setting aside the impugned order and directing the Court below to

re-hear the application of the defendant no.1/petitioner under Section 11 of the Court Fees Act, 1970 and to dispose of the same within one month

from the date of communication of this order to the Court below, in the light of the observations made hereinabove.

22. There will be no order as to costs.

23. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.