
(1991) 05 AHC CK 0046
In the Allahabad High Court
Case No : F.A.F.O. No. 163 of 1991

Governing Council of Kayastha Pathshala, Prayag and others	APPELLANT
Vs	
Ram Chandra Srivastava and others	RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, 80, 92

Citation : AIR 1992 All 158

Hon'ble Judges : N.N. Mithal, J;G.D. Dubey, J

Bench : Division Bench

Advocate : K.M. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Mithal, J.—The instant First Appeal from Order is directed against an order dated 9-1-1991 passed by the trial court directing the return of the plaint to the plaintiff for being presented before the appropriate court.

2. It will perhaps be best, in view of the question at issue, to relate what it is that the dispute was all about, A suit purporting to be one under S. 92 of the C.P.C. was instituted in the court of Civil Judge and without first obtaining necessary permission of the Advocate General or leave of the Court. Later, realising that such a suit can only be filed in the court of the District Judge, an application was moved on 17-2-1990 praying for return of the plaint for being presented in the proper Court as it had been filed in the wrong court, the Court allowed the application despite appellants objection against return of the plaint on the plea that the plaint deserved to be rejected and, therefore, cannot be ordered to be returned for presentation to another Court. Alternative submission also was that even if Order VII, Rule 10 be applicable, the plaint still should be rejected as the plaint was defective and both the Rules 10 and 11 of Order VII should be applied together.

In the light of the above Sri K.M. Sinha for appellants has vehemently urged that

the course adopted by the trial court in directing the return of plaint for being presented in an appropriate court was erroneous and in the circumstances of the case the court ought to have rejected the plaint under Order 7, Rule 11 rather than proceed under Order 7 Rule 10 of the Code.

3. Having heard the learned counsel for the appellant at length we are of the opinion that the submission of the appellants has no merit. Before we proceed to discuss the merits of the present case it will be relevant to have before us relevant provisions which are subject of discussion here. The relevant portion of Rule 10 is as under:--

"10. Return of Plaint.

(1)..... 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....."

Similarly the relevant portion of Rule 11 of Order 7 of the Code is in the following terms :

"11. Rejection of plaint.

The plaint shall be rejected in the following cases :

(a) Where it does not disclose a cause of action :

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Whether the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) Whether the suit appears from the statement in the plaint to be barred by any law:

Provided"

4. A plain reading of the two provisions will therefore indicate that they apply in different circumstances. Rule 10 can be applied at any stage of the suit but Rule 11 shall apply only at a stage when the Court has occasion to consider the contents of the plaint. Rule 10 pre-supposes the existence of another Court which is competent to entertain the suit after the plaint is returned, but this is not an essential condition for passing an order under Rule 11.

5. The argument which was pressed with some vehemence by Sri Sinha was that Rules 10 and 11 should have been applied together because in this case apart from the difficulty of jurisdiction the plaint also suffered from another serious legal flaw as the same had been filed without obtaining necessary sanction either from the Advocate General or from the court. He, therefore, urged that putting

both the provisions together the plaint had to be rejected.

6. That a suit contemplated by Section 92, C.P.C. cannot be filed without obtaining sanction of the Advocate General is not disputed. There is no dispute either that such a suit can be lodged only in the Court of the District Judge and Civil Judge has no jurisdiction to entertain such a suit. The grievance of the appellant here is only about the nature of the order that the Court should have passed in the instant case. The submission of Sri Sinha was that in all such cases a proper order would be one under Rule 11 and not an order returning the plaint under Rule 10. A reference was made to Full Bench decision of this Court in Ganeshi Lal Vs. Nobin Chandra Bose and Others, . That was a suit under S. 92 but there was no dispute as to Courts jurisdiction as it appears to have been filed in the proper Court. What appears from the report is that although sanction of the Advocate General was for a certain relief but what was claimed in the suit was something more than that. In those circumstances the Court had this to observe :--

"A suit u/s 92 must be limited to the matter included in the sanction. The Court cannot enlarge the scope of the suit and grant relief other than those included in the terms of the sanctions. The suits u/s 92 are of special nature and can be filed primarily by the Advocate General or by persons to whom he grants sanction."

7. Reference to this case is, therefore, suits inappropriate as this point is not raised in this appeal.

8. Reference was then made to Rahmath Bi and Another Vs. State Wakf Board, . That was a case to which Waqf Board was a party but requisite statutory notice was not served before the suit because of which the plaintiff prayed for withdrawal of suit with leave to file a fresh suit. This leave was refused holding that the defect in the suit was not of a formal nature but was of a more radical and substantial in nature. In this case also Courts jurisdiction was not in question. This case too has no applicability to the issue raised here. Similarly in Patel Nanji Devji and Others Vs. Patel Jivraj Manji and Others, , a suit had been filed without serving the statutory notice. The plaint was accordingly rejected by the trial court under Order VII Rule 11(d) of the Code. In appeal the power of the Court under Rule 11 was not in question but the order was being assailed on merits.

9. Thus none of the cases referred to by the appellant offer any assistance to him on the point in issue and we need not have mentioned these cases at all. But we have been constrained to do so because the learned counsel during his submissions pressed that we should deal with these cases in detail. We " do not, however, very much approve this kind of attitude on the part of the members of the Bar. We regret this more as many other cases on this point from this Court went unnoticed by the learned counsel.

10. There are large number of cases of this Court as well as from other High Courts in the country which have dwelt upon this aspect in greater detail and

specific guidelines have been laid down. First of these cases which we have been able to lay our hands on is *Latu v. Smt. Rani Maha Laxmi Bai* AIR 1942 All 130 In that case several reliefs had been claimed in the suit some of which were within the jurisdiction of the civil court while some others were beyond its jurisdiction. The trial court having entered the question of jurisdiction came to the conclusion that due to alternative claim in regard to redemption the jurisdiction of the Civil Court remained intact. On appeal the Civil Judge came to a contrary conclusion and held that the Civil Court had no jurisdiction. It took the course of ordering the whole plaint to be returned lock, stock and barrel for being presented in the right court. When the matter came up in appeal the High Court disagreed with the course adopted by the Civil Judge. It directed that the suit as to those reliefs which were beyond its jurisdiction should be dismissed and decreed in respect of that part of the relief which falls within its jurisdiction. This, however, was a case peculiar to its own facts and raised no conflict as to the applicability of either Rule 10 or 11 of Order VII.

11. The next case *Kailash Chandra Agarwal Vs. Subhash Chand Satish Chand Viyopari and Others*, , related to a suit in respect of unpaid price of the goods supplied, in which the question of jurisdiction was decided after the entire trial had been gone through and not as a preliminary issue. The trial court dismissed the suit on reaching the conclusion that it had no jurisdiction. In appeal the mere fact that the issue of jurisdiction had been decided along with the decision of the other issues, was held to be insufficient ground for dismissing the suit. Accordingly it was held that the only just and proper order to pass was to return the plaint for presentation to the proper Court. In this case, therefore, even though the question of jurisdiction was decided after full trial the proper course was held to be return of plaint under Rule 10 rather than dismissal of the suit.

12. In *Lal Bahadur Singh and Another Vs. Bagesara and Others*, (One of us sitting singly) considered this matter and the various aspects involved therein and observed :--

In every case in which a suit is instituted in a Civil Court it has to be seen whether on the allegations made in the plaint the suit was not maintainable in the Civil Court and if so the plaint has to be returned for presentation to the proper Court. But if the question of jurisdiction depends on decision of other questions on merit then the Court has a discretion either to dismiss the suit after recording a finding that it has no jurisdiction and may in appropriate cases also direct return of the plaint without dismissing the suit. It will depend on the facts of each case."

13. Similarly in *Devi Dutta Sharma v. Teg Singh* 1979 AILLJ 1086 the Court held as under (para 3) :--

"Ordinarily where the finding is that the court has no jurisdiction to entertain the plaint, the plaint is returned for presentation to the proper court under the provisions of Order 7, Rule 10. Even where the court as a matter of caution,

records findings on issues touching merits of the controversy in addition to the issue of jurisdiction, the order has to be of return of plaint because the other findings in such a case have no legal effect, these are recorded only for facilitating the higher courts and avoidance of a remand in case they come to a different conclusion on the question of jurisdiction."

14. Coming now to decisions from other High Courts. We may refer first to *Ebrahimbhai Vs. State of Maharashtra and Others*, . In this case the plaint was found to be defective as it was premature and the notice u/s 80, C.P.C. had not matured at that time. In these circumstances the plaint was rejected under Order 7 Rule 11 (d), In this connection the Court observed as under (para 10) :

"Filing of a suit before the expiration of two months next after the notice has been delivered is prohibited by the mandatory provisions of Section 80 of the Code. There does not seem to be any power or jurisdiction in the Court to entertain such a suit. To that extent, the matter clearly relates to the jurisdiction of the Court to entertain the suit, and in such a case the question of waiver either by the State Government or by the public officer cannot arise. Under Order 7 Rule 11(d) it is obligatory on the Court to reject the plaint where the suit appears from the statement of the plaint to be barred by any law. Thus, in a case where the suit is filed before the expiration of the period of notice contemplated by Section 80, there is no alternative for the Court to reject the plaint under Order 7, Rule 11 (d) of the Code of Civil Procedure."

In this case there was no dispute that the suit was within Court's jurisdiction.

15. In *Arjun Singh v. Union of India* AIR 1987 Delhi 165 the Court was dealing with an order rejecting the plaint under Order 7 Rule 11(d). It was held :

"Normally, a plaint has to be rejected not by taking evidence, or reading the written statement, but by finding out what is contained in the plaint itself. For purpose, of seeing whether a plaint is within time or not every allegation of the plaint has to be assumed correct. If the plaint itself shows that the claim is barred by time, then the plaint can be rejected. However, if the real question of limitation is connected with the merits of the claim in the suit then it has to be tried along with the other issues. Appeal accepted only to the extent that the plaint could not be rejected and direction given that the issue of limitation be tried along with other issues in the suit."

16. The scope of Rule 11 is rather limited as the Court cannot travel beyond what is averred in the plaint. If an examination of the plaint discloses defect of the nature enumerated in grounds (a) to (d) the plaint has to be rejected, and the question of return of plaint does not at all arise. On the other hand the cases to which Rule 10 is attracted are those where the Court had no jurisdiction at all in the matter, either inherent, territorial or pecuniary. In such a case the Court will order return of the plaint for being presented before the proper court if, at any stage of the suit, it finds that it has no jurisdiction to entertain it provided there exists a proper court to which the plaint can be presented after its return.

17. In Mrs. Myrtle Stephenson Vs. Robert Stephenson and Another, , a suit for divorce has been filed, at a place where the marriage had taken place although in the plaint there was an admission that the parties had last resided together within the jurisdiction of another Court.

Under the Divorce Act the place of marriage does not confer jurisdiction to the Court. On its own allegation the Court had no jurisdiction to entertain it hence it was ordered to be returned for being presented to the proper Court.

18. Having thus considered the provisions of Rules 10 and 11 of Order VII and the various decisions referred to above we are clearly of opinion that these provisions have their own field of operation and should not be inter-mixed. In fact, for the applicability of Rule 10 there are two essential conditions: (i) the court lacks territorial, pecuniary or inherent jurisdiction to try the suit; and (ii) the proper Court exists which is competent to entertain it.

19. This power to return can be exercised at any stage of the suit. But once the Court reaches the conclusion that the court has no jurisdiction and Rule 10 applies then the Court should order return of plaint for presentation before the proper Court rather than dismiss the suit.

20. In the case of Rule 11, however, the plaint can be rejected if the plaint suffers from any of the defects enumerated therein and for no other reason. Besides averments in the plaint no other pleading can be looked into to decide the question, the plaint can also be rejected if there be any statutory bar provided however, there is no other competent Court to entertain the plaint.

21. As seen for the earlier discussions the scope of Rule 10 is confined only to jurisdictional defect and in case the Court finds that the particular suit is not entertainable by it and that it should have been filed in some other Court the only course open to it is to direct its return for being filed in the proper Court. Rule 11 however will come in the picture when the plaint on being presented is admitted and found to be within the cognizance of that Court. But despite this the plaint, on the face of it, may suffer from some defect of the nature mentioned in clauses (a) to (d) of Rule 11 because of which the same cannot be sustained. It is in these circumstances that the Court can exercise power to reject the plaint. No doubt cases of jurisdictional defect can also arise under clause (d) of Rule 11 but only if recourse to Rule 10 is not possible for want of another Court where the plaint could be presented or where there is a statutory bar. In either of these cases the plaint can be rejected for defect of jurisdiction also.

22. Having given our careful consideration to the matter we are of opinion that the order passed by the trial court in this case was eminently just and proper and it does not suffer from any illegality or legal infirmity. The suit was admittedly one under S. 92, C.P.C. and the only Court competent to entertain it was the Court of the District Judge. The plaint had been wrongly filed in the Court of Civil Judge who had no jurisdiction to entertain it, absence of sanction by the

Advocate General notwithstanding. In these circumstances, the only and only option" with the Court was to return the plaint for being presented in the Court of proper forum. Having concluded that the Court had no jurisdiction on the matter it could not reject the plaint. Accordingly we find that the, appeal does not deserve to be admitted.

23. In view of the above we find no merit in this appeal and the same is dismissed at the stage of admission itself.

24. Appeal dismissed.