
(2006) 08 DEL CK 0142

In the Delhi High Court

Case No : IA No. 4219 of 2005 in CS (OS) No. 2020 of 2002

Hawkins Cookers Limited

APPELLANT

Vs

Citizen Metal Industries (India)

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A

Citation : (2006) 133 DLT 281 : (2006) 33 PTC 387

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : D.K. Mahant, for the Appellant; Shailen Bhatia, Amit Jain and Jaya Verma, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The facts of the present case are that the present Suit was instituted in this Court when the pecuniary jurisdiction of the District Court was restricted to Rs. 5 lacs. Several proceedings were held in this Court which at that particular time was the "competent Court" as envisaged in the Code of Civil Procedure. Consequent on the increase in the pecuniary jurisdiction of the District Court the case was transferred to that Court by the High Court. Subsequently an application was filed by the plaintiff for enhancing the valuation of the Suit for the purposes of pecuniary jurisdiction to Rs. 21 lacs. At the time when the amendment application was moved it was the District Court which was the "competent Court". The application was allowed despite the stiff opposition of the Defendant. Thereupon, the District Judge "sent" the file to this Court.

2. Learned Counsel for the Defendant relies on the decision of a Single Judge of this Court in Vogel Media International GmbH and Another Vs. Jasu Shah and Others, . The conclusions are contained in paragraph 13 of the judgment and are reproduced for facility of reference:

(i) The suit which is instituted on the representation of the Plaintiff in the

competent court after its return by the Court which lacked the jurisdiction is a freshly instituted Suit within the meaning of the provisions of the CPC and shall be governed by the provision of Order VII Rule 10 and 10A. Such a suit will be tried de novo in accordance with the provisions of the Code.

(ii) Any proceedings taken up and orders made in the Suit during its pendency before the Court which lacked necessary jurisdiction come to an end as soon as the order for the return of the plaint is made by the said Court.

(iii) If the plaintiff on the return of the suit consider it necessary that any interim protection granted to him under the orders of the Court which lacked jurisdiction should be continued, he must approach the competent Court with a fresh application for grant of such a relief and it will be for the said Court to consider the application on its merits.

(iv) The return of the plaint for want of jurisdiction whether pecuniary or territorial cannot be equated to the transfer of the suit or proceedings either by virtue of Section 24 CPC or owing to any other statutory change

3. Two other Single Benches have resolved the impasse by assuming jurisdiction u/s 24 of the Code of Civil Procedure. These judgments are *Aviat Chemicals Pvt. Ltd. v. Magna Laboratories (Gujarat) Pvt. Ltd.* 2005 (31) PTC 557 (Del.) and *Ziff-Davis Inc v. Dr.J.K. Jain* 2006 (32) PTC 86 (Del.)

4. The decision of the Hon'ble Supreme Court in *Sri Amar Chand Inani Vs. The Union of India (UOI)*, forms the basis of the discussion. What should not be ignored is the fact that in that case the Suit was filed in the Panipat Court which did not possess territorial jurisdiction. In other words, the Panipat Court "lacked jurisdiction" and was not a "competent Court". This is the distinguishing feature between *Amar Chand* and several cases including the present one where the problem has been presented because of the increase in the pecuniary jurisdiction of the District Court. Furthermore, the words in Rule 10 of Order VII of the CPC which have not been given their due weightage are - "to be presented to the Court in which the Suit should have been instituted". Rule 10, Therefore, does not apply in the present case since at the time of the institution of the Suit it was the High Court of Delhi which possessed pecuniary jurisdiction. In cases of the present genre the only procedure that can be followed is in fact what the District Judge has adopted viz. "sending" or transmitting the file from the District Court to the High Court since till the time when the amendment was permitted the District Court was the competent Court. My Learned Brother has in fact properly culled out an exception in Sub-paragraph (IV) of *Vogel Media* by observing that the return of the Plaint for want of jurisdiction whether pecuniary or territorial cannot be equated to the transfer of the Suit or proceedings either by virtue of Section 24 of CPC or owing to any other statutory change.

5. My Learned brother *Swatantra Kumar, J.* had taken note of the fact that an appeal is pending in respect of *Vogel Media*.

6. I find it impossible to accept the argument that the filing of a Suit in a competent Court must be rendered void and nugatory only because of procedural changes made by the High Court. In several cases where Suits have been transferred from the High Court to the District Court the plaintiffs have, after succeeding in an upward revision of the valuation of the Suit, approached the Court u/s 24 of the CPC. This Section contemplates the filing of an application by the parties desirous of a transfer, or of its own motion. The Orders of the District Judge are merely to the effect that the file should be sent or transmitted to this Court. It is, Therefore, for the High Court to decide what action has to be adopted. To set all controversies at rest, I assume jurisdiction u/s 24 and hold and direct that the Suit stands transferred to this Court by Orders of this Court itself.

7. The Suit is restored to its original number. I.A. 4219 of 2005 stands dismissed.
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8. List the Suit and pending applications for consideration on 21st November, 2006.