

(1977) 09 AHC CK 0015
In the Allahabad High Court
Case No : Civil Revision No. 402 of 1975

Mohd. Ajmal

APPELLANT

Vs

Firm Indian Chemical Co. and Others

RESPONDENT

Date of Decision : 19-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2

Citation : AIR 1978 All 21 : (1977) AWC 624

Hon'ble Judges : Yashoda Nandan, J

Bench : Single Bench

Advocate : Rousul Hasan Zaidi, for the Appellant; Lakshmi Bihari, for the Respondent

Final Decision : Dismissed

Judgement

Yashoda Nandan, J.—This is a plaintiff's revision directed against an order passed by the learned Civil Judge, Azamgarh, dated 4th February, 1975.

2. The relevant facts giving rise to this revision are that the plaintiff, claiming to be a partner of the defendant-firm Indian Chemical Co. having its office in Mohalla malik Tehirpura, Maunath Bhanjan, district Azamgarh, filed a suit against the Firm and remaining defendants praying for the following reliefs :--

(a) That by granting the decree of dissolution of partnership of the firm defendant No. 1 defendant No. 2 or any other defendant who may be found liable be ordered to render the account of the capital profit and loss of the firm from 1963 right upto this day and on accounting the plaintiff's share of capital and profit to the extent of one third be got recovered from defendant No. 2 or any other defendant who may be found to be liable.

(b) The assets of the firm as disclosed in list A be partitioned and one third share of the plaintiff be separated and If the articles of the firm are found missing a money decree for the same in respect of the plaintiff's share be passed against all or any of the defendants Nos. 2 to 5.

(c) That a vakil receiver be appointed to carry out the accounting and partition of the assets of the firm after taking the assets of the firm in his possession valued at Rs. 200/-"

The other reliefs prayed for are not relevant for the purposes of this revision. It was stated in paragraph 18 of the plaint that,

"The valuation of the suit for the purposes of jurisdiction is fixed to be Rupees 15,000/- .approximately for relief (a) and Rs. 33,000/- for relief (b) and Rs. 200/- for relief (c) because it is incapable of valuation; total valuation is Rs. 48,200/-, and on relief (a) court fee of Rs. 1532.50 is being paid at present and if higher amount becomes due to the plaintiff on accounting the plaintiff will pay court fee on that amount after decree. On relief (b) the court fee of Rs. 997.50 P is being paid on Rs. 8250/- one fourth valuation of the said relief. On relief (c) a court fee of Rs. 22.50 is being paid. Total court fee Rs. 2552.50 is being paid."

The suit was instituted on the 11th September, 1974. An application for amendment of paragraph 18 of the plaint was made on the 11th November, 1974 in pursuance of the order of the court dated 29th October, 1974. On the 26th November, 1974, the trial court passed an order to the effect that according to Section 7(iv)(b) of the Court Fees Act the plaintiff was required to value the suit for accounts at the approximate sum due to him and this fact had to be mentioned in the plaint. Since the proposed amendment was not in accordance with the court's order dated 29th October, 1974. this application for amendment was rejected. On the 10th December, 1974, the plaintiff presented another application for amendment of the plaint. Paragraph 18 of the plaint was sought to be substituted by means of this application in the following terms :

"18, That for purposes of jurisdiction relief (a) of the plaint is valued at Rupees 20,000/- only, the relief (b) is valued at 1/3rd of the total value of the assets as mentioned at the foot of the plaint i.e. 1/3rd of Rs. 99,000/- only which is Rupees 33,000/- only. The relief (c) for purposes of jurisdiction is valued at Rupees . 200/- only. The total value for purposes of jurisdiction is therefore Rs. 53,200/- only. Since the amount due to the plaintiff can only be ascertained after the accounts have been rendered and the plaintiff is not aware of approximate sum due to him at the date of suit, the plaintiff values relief (a) for purposes of court-fee u/s 7(iv)(b) of the Court Fees Act at Rs. 20,000/-only. If on the account, the plaintiff is found entitled to a higher sum he shall pay the necessary court fee thereon. Again for purposes of court fee the relief (b) is valued at 1/4th of the Rupees 33,000/- i.e. at Rs. 8,250.00 only and relief (c) is valued at Rs. 200.00."

Objections were filed to the amendment sought and to the valuation given in the plaint and the court-fee paid. On the 10th February, 1975, another application for amendment was made and it was prayed that after the words "20,000/- only" used in the said para 18, the words "approximate sum due to the plaintiff" be added.

3. By means of the order challenged in this revision, the application filed by the plaintiff for amendment of the plaint the objection filed by respondent No. 2, who figured as defendant No. 2, the application made for dismissing the suit for non-compliance with the order of the court and the objection filed by the plaintiff to the above-mentioned application of the defendant were disposed of by the trial court. The trial court by means of the order under revision held that the plaint was not liable to be rejected for non-compliance of its order dated 29th October, 1974 or 26th November 1974. It may be mentioned here that along with the plaint on the date of the institution of the suit, the plaintiff had filed a list of documents on which he proposed to rely in support of his claim and one such document mentioned was an uncertified copy of the assessment order of the Wealth Tax Officer, A Ward, Azamgarh dated 15th September, 1973 for the year 1973-74. The assessment order disclosed the name of the assessee as that of Mohd. Ajmal, the plaintiff C/o Indian Chemical Co., Mau, Azamgarh. The assessment order also disclosed that the assessee was assessed to have a capital in the Indian Chemical Co. to the tune of Rs. 86,283/-.

4. In support of his claim that the plaintiff had not valued his claim and had paid insufficient court-fee, on behalf of the defendant-respondent No. 2 reliance was placed on the uncertified copy of the abovementioned assessment order which showed that in the assessment year 1973-74 the taxable wealth of the plaintiff included Rs. 86,283 as his capital in the Indian Chemical Co. On behalf of the plaintiff, it was contended that this amount had been got included by the defendant-respondent No. 2 himself and it should not be taken as the basis for the valuation of his share on the date of the filing of the suit which was 11th September, 1974. The trial court held that it had examined the plaint as well as the copy of the assessment order mentioned above and found that there was nothing at that stage to show that the assessment had been done at the instance of defendant No. 2. It held that if the assessment order was considered on its face value, it was clear that till the end of the financial year 1972-73 the plaintiff had a capital of Rs. 86,283/- in the Indian Chemical Co. It further held that there was at that stage nothing on record and there was no allegation to show loss in the Indian Chemical Co. since the said assessment. The learned Civil Judge took the view that since the document had been relied upon by the plaintiff himself, initially he should have valued the suit for the purpose of jurisdiction at the aforesaid amount of Rs. 86, 283/- for the purpose of accounting and Rs. 33,000/- for the purpose of partition, total Rs. 1,19,283/- and should have paid court fee for the relief of dissolution under Article 17 (vii) of Schedule 2 of the Court Fees Act. The plaintiff was directed to correct the valuation of the plaint accordingly by moving proper amendment application within a week failing which the plaint shall stand rejected. Aggrieved by this order, the plaintiff has come to this Court.

5. A preliminary objection was raised to the maintainability of the revision, and it was contended that in view of Section 12(i) of the Court Fees Act, the decision of the trial court on the question relating to valuation was final and could not be

questioned by means of a Civil revision u/s 115 of the Code of Civil Procedure. I do not find the preliminary objection sustainable. The court has clearly ordered that if the valuation is not corrected "in accordance with the order challenged by means of the revision and court fee paid on the corrected valuation, the plaint shall stand rejected. The court consequently has declined to proceed to try the suit unless its order is carried out. A learned single judge of this Court in *Lala Ram Babu v. Lala Ramesh Chan-dra* (1957 All LJ 53) held that.

"The finality of the decision relating to valuation, however, does not take away the power of the High Court to interfere in exercise of its power u/s 115 of the CPC provided the decision of the court below amounted to a case decided."

The Supreme Court in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, reconciled the provisions of the Court Fees Act with the CPC and held that, (at p. 32).

"Perhaps it may be possible to reconcile the provisions of the two statutes by holding that the finality declared by Section 12 of the Court Fees Act means that the parties cannot impugn such a decision by preferring an appeal but that it does not confer on such decisions a complete immunity from examination in a higher Court. In other words, Section 12 when it says that such a decision shall be final between the parties only makes the decision of the Court on a question of court-fee non-appealable and places it on the same footing as other interlocutory non-appealable orders under the Code and it does no more than that. If a decision u/s 12 is reached by assuming jurisdiction which the Court does not possess or without observing the formalities which are prescribed for reaching such a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers. Similarly, when a party thinking that a decision u/s 12 is palpably wrong takes the risk of his plaint being rejected or suit dismissed and then appeals from the order rejecting the plaint or from the decree dismissing the suit but not from the decision on the question of court-fee, then it is open to him to challenge the interlocutory order even on the question of court-fee made in the suit or appeal. The word "finality" construed in the limited sense in which it is often used in statutes means that no appeal lies from an order of this character as such and it means no more than that."

6. Having disposed of the preliminary objection, I shall now proceed to consider the revision on merits.

7. Section 7(iv)(b) of the Court Fees Act (as it is applicable to this State) to the extent relevant for our purposes, runs as follows :

"7. The amount of fee.....

(iv) In suits,

(a)

(b) for accounts :

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :

Provided that.....

Provided further, that.....

Provided also, that in suits falling under Clause (b), such amount shall be the approximate sum due to the plaintiff and the said sum shall form the basis for calculating (or determining) the valuation of an appeal from a preliminary decree passed in the suit."

Thus, though in a suit for accounts the plaintiff has to a certain extent been given the liberty of paying court-fee on the amount at which he valued the relief in the plaint, this discretion is not absolute. He is required to value the suit according to the approximate sum due to him. It is (not?) open to a plaintiff to arbitrarily value the relief claimed by him and to pay court-fee only on such amount. If the court can discover from the plaint or material furnished by the plaintiff himself that the valuation given by the plaintiff is unacceptable being inaccurate and arbitrary, it has the power to direct the plaintiff to amend his plaint or take the risk of its being rejected in the event of non-compliance.

8. It was strongly contended by the learned counsel representing the plaintiff-applicant that the trial court could have taken into account only the allegations contained in the plaint and it acted without jurisdiction in passing the order on the basis of an uncertified copy of the wealth-tax assessment order. Learned counsel appearing for the respondents on the other hand, urged that if the material furnished by the plaintiff himself disclosed that the approximate sum due to him had not been correctly set out in the plaint, the trial court was perfectly justified in taking into consideration such material, even though it may not be strictly evidence.

9. Having heard learned counsel for the applicant and the learned counsel for the contesting respondent, I am of the opinion that the court below was legally justified in taking into consideration the copy of the assessment order filed by the plaintiff himself, and on which he proposed to rely for the purposes of his claim. It is true that if the document had been produced by the defendant, even though it might have been a certified copy of the order, it would not have been competent for the trial court to base its decision on it. Reliance was placed by the counsel for the parties on a number of decisions but I propose to refer to only those of our own Court.

10. On behalf of the plaintiff, reliance was placed on a single Judge decision of this Court in "Mukhtar Ahmad Vs. Mohan Lal Singhanian". The material facts giving rise to the above-mentioned decision were that the plaintiff-opposite-party brought a suit in the court of Munsif, Gorakhpur, in which he claimed a decree for the dissolution of the partnership business of the United Talkies, Gorakhpur, and for accounts of the said business. There were also general prayers for any other

relief to which the plaintiff may be considered to be entitled and for award of costs. The trial court held that the value of the assets of the partnership was about Rs. 50,000/-, and the account-books showed that the liabilities of the firm were to the extent of about Rs. 56,000/-, though most of the debts were challenged by the defendant. The plaintiff had valued the suit for the purposes of court-fee and jurisdiction at Rs. 500/-. It was contended by the defendant that the valuation should be only on the basis of the value of the assets of the firm. The contention of the defendant was repelled by the learned Munsif, who held that the suit had been approximately valued by the plaintiff and was within his jurisdiction. The sole question, as would appear from a reading of the report, for consideration before the court was as to whether the liabilities of the firm were also to be taken into account for the purposes of valuation of the relief for accounting. The learned Judge held that according to the allegation nothing was due to the plaintiff because the liabilities of the partnership exceeded its assets." It was in the context that the learned Judge observed that,

"Hence, it cannot be said that the plaintiff has under-valued his suit. In fact the case is one where the relief can be valued only at the discretion of the plaintiff."

The decision cannot be relied upon as an authority for the proposition that even though the plaintiff himself has placed material before the court showing that he has not correctly valued his suit either for the purpose of court-fee or for the purpose of jurisdiction, the valuation must necessarily be accepted.

11. The material facts giving rise to the decision of a Division Bench of this Court in Jumman Khan Vs. Bhoorey Khan, were that Bhoorey Khan, who figured as opposite-party No. 1 in the revision, instituted a suit for dissolution of partnership and accounts on the allegations that he and defendants 1 to 4 in the suit had entered into a partnership for the purposes of manufacturing bangles at Firozabad and to carry on the business in the name and style of "Forward Glass Works." In para 12 of the plaint the plaintiff had stated, "that the suit is valued at Rs. 2000 both for the purposes of jurisdiction and payment of court-fees." The defendants denied that they were partners in the partnership and further pleaded that the suit had been under-valued and the court-fee paid was insufficient, and that it was beyond the pecuniary jurisdiction of the Court. From the decision reported, it appears that after institution of the suit a receiver was appointed to take charge of the properties belonging to the firm. One item of the firm's property consisting of bangles was made over to defendant Jumman Khan on a valuation of Rs 9000/-. The rest of the properties were valued by the plaintiff at Rs. 27,127/-and by the defendant at Rs. 40,250/-. Thus, the partnership property was admitted worth more than Rs. 37,000/-. The learned Munsif held that the plaintiff's share being one-fifth, the value of the assets of his share would be Rs. 7514/-. He further held that in a suit for dissolution of partnership and for accounts the value for purposes of court-fee and jurisdiction should be fixed at the value of the plaintiff's share in the assets without taking into account the liabilities of the firm. In the result, he ordered the plaint to be

returned for presentation to the proper court. Against the order returning the plaint, the plaintiff appealed. The appellate Court held that the liabilities could not be disregarded in arriving at the true valuation of the suit. It entered into a rough enquiry about the assets and liabilities of the firm and came to the conclusion that the value of the plaintiff's share was roughly about Rs. 4300/-, But considering the fact that the difference between Rs. 4000/-, which was the limit of the Munsif's pecuniary jurisdiction, and Rs. 4300/-, the value of the plaintiff's share on a rough calculation, was very small, it thought that the case needed further enquiry as to the approximate amount due to the plaintiff. The court below consequently allowed the appeal, set aside the decree of the lower Court and remanded the case to the Munsif directing him to decide the question of valuation after holding further enquiry.

The defendant came up in revision to this Court and it was urged on his behalf that once the lower Court had come to the conclusion that on a rough calculation, the valuation of the share of the plaintiff was Rs. 4300/- he should have dismissed the appeal and not remanded the case for further enquiry. It was further urged that the Munsif was right in holding that the valuation of the suit should be ascertained on a calculation of the value of the plaintiff's share in the assets of the partnership without taking into consideration the liabilities. This Court allowed the revision in part, and modified the order of the lower Court and directed the learned Munsif to require the- plaintiff to state the approximate sum due to him and to apply for the amendment of the plaint accordingly. It further ordered that when this had been done by the plaintiff, the learned Munsif should proceed to decide the case if after the amendment of the plaint the suit is cognizable by him. It was held that no further enquiry into the valuation of the suit was necessary. Construing Section 7(iv)(b) of the Court Fees Act (as applicable to this State), the Bench held that,

- "(1) The plaintiff should be required to state the approximate sum due to him;
- (2) The sum so stated by the plaintiff shall be taken as value of the suit both for purposes of payment of court-fee and jurisdiction;
- (3) Even if the matter is contested, the Court at the preliminary stage, is not to enter Into any enquiry for the purpose of determining the approximate amount due to the plaintiff except when the matter can be decided upon the admitted facts of the case."

This decision also, in my opinion, is not an authority for the proposition that the Court Is bound to accept the valuation as disclosed by the plaintiff in the plaint irrespective of other materials furnished by him indicating that the valuation placed by the plaintiff is apparently incorrect.

12. The decision in Jumman Khan Vs. Bhoorey Khan, was followed with approval by B. Mukerji and D. P. Uniyal, JJ. in Om Prakash Vs. Maya Ram and Others, . Relying upon certain observations in Jumman Khan v. Bhoorey Khan (supra), it was held that (at p. 431)

"Where the plaintiff has clearly stated that a particular sum is due to him from the partnership firm and it is alleged that the said partnership had earned profits in the course of its business, the plaintiff cannot be allowed to put an arbitrary or fictitious valuation on the suit for the purpose of jurisdiction. There may, however, be cases where the plaintiff states that it is not possible for him to ascertain the amount due to him without a proper accounting; there the plaintiff would be justified to give a notional valuation in the plaint for purposes of jurisdiction and payment of the court-fees. It would, therefore, depend on the facts of each case whether the valuation put down by the plaintiff in the plaint was the approximate sum due to him for the purpose of determining the valuation of the suit and the payment of court-fees. No hard and fast rule can be laid down for the purpose of determining the proper valuation that may be put by the plaintiff in a suit for accounts. The question has to be decided with reference to the facts and circumstance of each case."

It was further held that, (at p. 431)

"The jurisdiction of the Court to entertain a suit must ordinarily depend on the allegations made in the plaint and not upon the denial of the plaintiff's claim in the written statement. The plaintiff cannot be allowed to choose his forum by deliberately under-valuing his suit. It is the function of the Court in which the suit is instituted to find out whether on the allegations made in the plaint the suit would be cognisable by that court or not. If prime facie the allegations in the plaint disclose that the Court has no jurisdiction to grant the relief claimed in the suit and the plaintiff has deliberately under-valued the suit, the Court would have no option but to return the plaint for presentation to the proper Court."

The Bench which heard *Om Prakash v. Maya Ram* (supra) was satisfied that in the case before it the plaintiff had deliberately under-valued his claim in order to give jurisdiction to the Munsif to entertain the suit.

13. The principle that can be culled out from the decisions to my mind, is that, ordinarily the valuation given by the plaintiff has to be accepted and it is not open to the Court to enter into a derailed enquiry at the initial stage on the basis of the pleas put forward by the defendant. It is the function of the Court to apply its mind as to whether the valuation in the suit is correct or incorrect, not only on the basis of allegations contained in the plaint but also taking into account other materials furnished by the plaintiff himself at the stage when the preliminary question comes up for consideration as to whether the suit is undervalued or not and whether the court-fees paid is sufficient or insufficient. If the plaintiff himself provides the Court material on the basis of which the Court without any detailed enquiry could arrive at the conclusion that the valuation disclosed by the plaintiff in the plaint is incorrect and arbitrary, it is not only open to the Court but it is its duty to hold so and to direct the plaintiff to amend the plaint accordingly, If for instance, during examination of the plaintiff under Order X Rule 2, C.P.C. material comes on record showing that the valuation disclosed by the plaintiff in the plaint is incorrect, the Court would not only be justified but, in my opinion,

would be bound to direct the plaintiff to amend his plaint disclosing the correct valuation. Order VII Rule 14 Sub-rule (2), C.P.C. provides that,

"Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such document in a list to be added or annexed to the plaint."

In the instant case apparently in accordance with this rule the plaintiff filed a list, as already stated, in which was entered the assessment order of Wealth Tax Officer dated 15th September, 1973 for the year 1973-74 relating to the plaintiff. The plaintiff not only included in the list filed by him the Wealth-tax assessment order relating to him for the year 1973-74 but also produced an uncertified copy thereof which he apparently intended to prove during the trial. The fact that the document was not proved and evidence had not been given that it was admissible as secondary evidence was not relevant at the stage when the decision challenged was given by the court below. The assessment order, according to the plaintiff's own case, was to be relied upon by him in the trial and in my judgment can be placed on par with an admission made by him at this stage.

14. For the reasons given, this revision is dismissed. Parties shall bear their own costs. Interim orders, if any, are hereby vacated. The applicant shall have one month's time to comply with the orders of the court below.