

(2009) 09 DEL CK 0427

In the Delhi High Court

Case No : I.A. No's. 8748 and 8750 of 2008 in C.S. OS No. 574 of 2007

Mr. Panna Lal

APPELLANT

Vs

Mrs. Neelam Chopra

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, Order 7 Rule 2, 151
Court Fees Act, 1870 — Section 7

Citation : (2009) 09 DEL CK 0427

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rakesh Tikku and P. Gautam, for the Appellant; Shiv Charan Garg, for the Respondent

Judgement

Manmohan Singh, J.—This order shall dispose of two applications being IA Nos. 8750/2008 u/s 151 CPC filed by the defendant to direct the plaintiff to pay use and occupation charges to the former in respect of the premises bearing Shop No. 58-B, Khan Market, New Delhi till the pendency of the counter claim and IA No. 8748/2008 filed by the plaintiff under Order 7 Rule 11 CPC seeking dismissal of counter claim of the defendant.

2. The brief facts of this case are that the plaintiff, Shri Panna Lal, filed the present suit for permanent injunction against Smt. Neelam Chopra, praying therein to pass a decree for permanent injunction thereby restraining the defendant from forcibly dispossessing the plaintiff and his sons from the premises in dispute i.e. Shop No. 58-B, Khan Market, New Delhi. During the pendency of the suit, in IA No. 6884/2007 and IA No. 6865/2007 the learned Counsel for the plaintiff on 11th February, 2008 offered to pay a sum of Rs. 50,000/- towards the use and occupation charges of the suit premises on monthly basis w.e.f. 10.05.2007 till the date of the passing of the order i.e. 11.02.2008. It was also observed in the said order that the said payment of the amount made by the plaintiff and received by the defendant would be without

prejudice to the rights and contentions of the parties.

3. The defendant, in the suit, filed the written statement as well as counter claim No. 17/2008 praying therein to pass a decree for declaration in favour of the defendant and against the plaintiff declaring that the plaintiff, his sons, nominees, employees, agents or any company formed by the plaintiff are unauthorised occupants of the suit premises and have no right or interest in the suit premises as well as a preliminary decree for rendition of accounts for rendering the accounts and mandatory injunction against the plaintiff to vacate and remove himself from the suit premises and a decree for damages for use and occupation charges/mesne profits against the plaintiff for a sum of Rs. 5 lacs per month from the date of the filing of the counter claim till the plaintiff vacates and removes himself from the suit premises along with interest @ 18% p.a. till the realisation of the said amount.

4. The case of the defendant in the written statement is that she is the owner of shop bearing No. 58-B, Khan Market, New Delhi and that she has always been in possession of the shop and has been running a business from the said shop under the name and style of "M/s. Allied Fruit and Florists". The defendant has always been in control of the business being conducted from the shop. The said shop was purchased by the defendant vide a duly registered Sale Deed dated 19th November, 1969. The plaintiff and his sons were employees of defendant. Over a period of time, the plaintiff established faith and confidence with the defendant and performed various responsibilities of the defendant's business. The plaintiff impersonated himself as a proprietor of the proprietary concern of the defendant and with connivance of his three sons lodged a false complaint at police station Tuglak Road for the theft of Rs. 4.5 lakhs from the said shop. Thus, the plaintiff committed fraud and criminal breach of trust for which he is liable to be prosecuted.

5. A statement was made by the defendant that she has no objection to the suit being decreed in favour of the plaintiff in terms of the prayer made by the plaintiff in the plaint to the effect that the defendant be restrained from forcibly dispossessing the plaintiff and his sons from the suit premises by any illegal or unfair means except by due process of law. As a result, by order dated 27th May, 2008 this Court disposed of the suit as well as pending applications i.e. IA No. 3632/2007 under Order 39 Rules 1 and 2 CPC, IA No. 6884/2007 u/s 151 CPC and IA No. 2082/2008 u/s 151 CPC.

6. As far as the Counter claim No. 17/2008 was concerned, it was ordered to be continued and the plaintiff was granted time to file written statement to the counter claim. During the pendency of the counter claim, the above-mentioned two applications i.e. IA No. 8748/2008 under Order 7 Rule 11 CPC was filed by the plaintiff for rejection of the counter claim of the defendant and IA No. 8750/2008 u/s 151 CPC was filed by the defendant thereby seeking a direction to the plaintiff to continue paying use and occupation charges to the defendant according to the current market value of the premises.

7. Learned Counsel for the defendant has contended, while arguing the matter, that till the disposal of the suit or till the plaintiff hands over the vacant and peaceful possession of the premises in question to the applicant/defendant, he should pay use and occupation charges to the tune of Rs. 5 lacs p.m. In reply to the application being IA No. 8750/2008 filed by the plaintiff, it is submitted that the defendant is creating problem in the smooth running of the business of the plaintiff from the shop in suit premises. It is contended by the plaintiff that the defendant has disconnected the electricity of the suit premises since March 2007 and also filed four FIRs against the plaintiff in connivance with the officials of NDMC. Learned Counsel for plaintiff has stated that the plaintiff is ready and willing to pay a sum of Rs. 50,000/- to the defendant as use and occupation charges as per the earlier order dated 11.02.2005 provided the defendant should supply the electricity and also issue "no objection certificate" in favour of NDMC.

8. On the other hand, learned Counsel for the defendant has stated that the plaintiff has not paid any use and occupation charges after 11.02.2008 and also argued that in case if a "no objection" certificate is issued by the defendant in favour of the NDMC or any other authority, it would tantamount to admitting the tenancy of the plaintiff. It is further stated that the electricity might have been disconnected due to non-payment of electricity bills. Due to peculiar circumstances of the present case, the defendant is not in a position to issue ?no objection certificate. in favour of Government authorities as the plaintiff will take undue advantage of the same. It is also argued by the defendant that the current market value of the suit premises for the purposes of use and occupation charges is about Rs. 5 lacs p.m. and is ready to provide many instances for the same and in case the plaintiff is not agreeable to pay the said amount as per current market value, the defendant is even prepared to pay a sum of Rs. 75,000/- to Rs. 1 lac p.m. to the plaintiff, who should then allow the defendant to use the said premises during the pendency of the counter claim. Learned Counsel for the defendant, however, agrees that the plaintiff should pay to the defendant at least 50% of the current market value of the premises as use and occupation charges and the appropriate orders in this regard should be passed.

9. Considering the rival submissions of the parties, it is not in dispute that the plaintiff has not paid any use and occupation charges after 11.02.2008 and at the same time it is also not denied by the defendant that the electricity of the suit premises is disconnected. There cannot be any dispute to the fact that the current market value of the suit premises is much more than Rs. 50,000/- p.m. which is the amount suggested by the plaintiff during the hearing of the earlier pending applications and the order passed on 11.02.2008. Considering the overall circumstances of the matter, this Court is of the view that during the pendency of the determination of the counter claim filed by the defendant, the plaintiff shall pay to the defendant directly a sum of Rs.50,000/- p.m. from 11.02.2008 till the passing of this order within six weeks from today and shall also keep on paying the said amount regularly by 7th of each English calendar month till the disposal of the counter claim. As regards the dispute of

disconnection of electricity is concerned, the defendant is directed to give "no objection certificate" for the purpose of restoration of the electricity connection which was allegedly disconnected due to non payment. All the dues in this respect shall be paid by the plaintiff. The ?No Objection Certificate? shall be issued by the defendant subject to the payment of outstanding amount by the plaintiff from the defendant without prejudice to the rights and contentions of her case on merits. Needless to say that all the amounts paid pursuant to the orders of this Court shall be subject to the final outcome of the present counter claim.

10. In view of the aforesaid directions, the application being IA No. 8750/2008 is disposed of. IA No. 8748/2008

11. In the application filed under Order 7 Rule 11 CPC, it was contended that the defendant has valued the counter claim at Rs. 30 lac for the purposes of court fee and has sought various reliefs namely decree for declaration, rendition of accounts, mandatory injunction, eviction, removal, damages for a sum of Rs. 5 lac for the month of May, 2007 and a decree for damages @ Rs. 5 lac p.m. till the plaintiff vacates and removes himself from the suit premises along with interest. It is contended by the learned Counsel for the plaintiff that no court fee has been paid on the reliefs sought for by the defendant in the counter claim with regard to declaration and for vacation/removal of the plaintiff. As per Section 7 of the Court Fees Act, the counter claimant is liable to pay the court fee on the value of the property. It is further contended that the defendant has not made the sons or the company of the plaintiff as a party in the counter claim, therefore, the counter claim is bad for misjoinder of necessary parties.

12. In the reply filed by the defendant, it is submitted that the claim of the defendant regarding mesne profits/damages is yet to be determined and the defendant has already undertaken to pay the requisite court fee in the counter claim. As far as rendition of accounts and undetermined accounts are concerned, in the celebrated judgment of the Apex Court reported as Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, it was observed in para 8 and 9 as under:

8. In a suit for accounts it is almost impossible for the plaintiff to value the relief correctly. So long as the account is not taken, the plaintiff cannot say what amount, if at all, would be found due to him on such accounting. The plaintiff may think that a huge amount would be found due to him, but upon actual accounting it may be found that nothing is due to the plaintiff. A suit for accounts is filed with the fond hope that on accounting a substantial amount would be found due to the plaintiff. But the relief cannot be valued on such hope, surmise or conjecture.

9. In this connection, we may refer to the provision of Order VII, Rule II(b) of the CPC, which provides, inter alia, that the plaint shall be rejected 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. It is

manifestly clear from the provision of Order VII, Rule II(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the Court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively." It is further contended by the defendant that she is open to give up any prayer at the time of final hearing of the suit if necessary or if any valid plea is raised by the plaintiff. It is denied that the suit is bad for mis joinder of the parties. It is argued by the defendant that the said prayer is made by the defendant so that in case the plaintiff assigns his right in favour of his sons, employees or any company, the said prayer made in the counter claim should be covered.

13. The contention of the plaintiff for rejection of the counter

claim of the defendant under Order 7 Rule 11 CPC on the ground of non-payment of court fee is devoid of any merit. The defendant in her counter claim has paid a total court fee of Rs. 30,285/- for the reliefs of declaration, injunction as well as rendition of accounts and has also given an undertaking to pay the further necessary court fee, if any found due from the defendant after the passing of the decree in the counter claim filed by the defendant.

14. Issues in this regard are yet to be framed. Prima facie, therefore, the court fee affixed by the defendant is to be accepted. Since the defendant has also given an undertaking to pay the remaining court fee, therefore, the application at this stage cannot be considered as it appears that it has been filed only to delay further proceedings in the matter. The application is, therefore, dismissed as being without any merit. However, the said objection is left open and the plaintiff is entitled to take the same at the time of framing of issues.

15. Both the applications are accordingly disposed of. C.S. [OS] No. 574/2007

16. List the matter on 6th November, 2009 for framing of issues.