

(2008) 01 CAL CK 0076

In the Calcutta High Court

Case No : G.A. No. 2411 of 2007 and C.S. No. 151 of 2007

N.D. Tubes Impex Private Limited and Others

APPELLANT

Vs

Geeta Gupta and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

City Civil Court Act, 1953 — Section 5(2)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, 15
Court fees Act, 1870 — Section 11, 7
Negotiable Instruments Act, 1881 (NI) — Section 138
West Bengal Court Fees Act, 1970 — Section 11, 7, 9

Citation : (2008) 1 CHN 1008

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Samit Talukdar, for the Appellant; Pradip Ghosh and Aryak Dutta for Defendant Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The first and second defendants, the persons against whom reliefs have primarily been sought in the suit, have applied for the plaint to be taken off the file on the ground that even if the plaintiffs' basis for valuation of the suit were accepted, it would fall below the pecuniary threshold of receiving a suit in this Court.

2. The defendant Nos. 1 and 2 rely on the principle recognized by Section 15 of the Code of Civil Procedure, that a suit has to be instituted in the Court of the lowest grade competent to try it. The applicant-defendants refer to the last two paragraphs of the plaint and say that the reliefs claimed in the suit do not match up to the palpably absurd valuation indicated. The two concluding paragraphs of the plaint read as follows:

51. For the purpose of Court-fees and jurisdiction, the suit is valued at Rs. 10,00,001/- and the maximum Court-fees of Rs. 50,000/- has been paid

thereon. The plaintiffs undertake to pay further Court-fees, if found deficient.

52. Inasmuch as the value of the suit exceeds Rs. 15,00,000/- this Hon''ble Court has and the City Civil Court at Calcutta does not have the jurisdiction to receive, try and determine the instant suit.

3. The first and second defendants submit that the case run by the plaintiffs is that the applicant defendants had deposited a sum of Rs. 10,00,000/- with the plaintiffs as advance or deposit for future supplies of aluminium roll products, obtained supply of value of nearly the amount deposited and thereafter attempted to encash cheques of value of Rs. 10,00,000/- obtained from the plaintiffs. According to the applicants, the plaintiff had claimed that a subsequent concession was extracted by the applicants from the plaintiffs with the help of the defendant police officers at the Headquarters- of Calcutta Police. The applicants argue that even if the averments in the plaint are taken to be correct, which a challenger on a demurrer has to accept, the reliefs claimed in the suit would indicate that the value of plaintiffs' claim would not exceed Rs. 5,00,000/- and, in the event, would not cross the floor-limit to entitle the plaintiffs to bring this action before this Court.

4. The applicants rely on Sections 9 and 11 of the West Bengal Court-fees Act, 1970 and say that it is a fit case for the Court to inquire whether the basis on which the plaintiffs have valued the suit is completely flawed. The applicants assert that u/s 7(iv)(b) and u/s 7(iv)(c) of the said Act of 1970, the amount of fee payable would be according to the amount at which the reliefs are sought in the plaint, but subject to the provisions of Section 11. The applicants stress on the last limb of Sub-section (iv) which provides that in all suits the plaintiff shall state the amount at which he values the reliefs sought. There is nothing in the plaint, according to the applicants, to show the basis on which the reliefs had been valued by the plaintiffs. Even if paragraphs 51 and 52 were accepted as the valuation put forth by the plaintiffs for the reliefs, such valuation would be subject to an inquiry by Court u/s 11. The applicants invite the Court to undertake such inquiry.

5. The applicants rely on three judgments of this Court reported at 1981 (1) Cal LJ 316, Tarai Tea Co. Pvt. Ltd. Vs. Life Insurance Corporation of India and Others, ,Terai Tea Co. Put. Ltd. v. Life Insurance Corporation of India and Ors. and Asit Baran Chaudhury and Another Vs. Profulla Chandra Bose, for the proposition that the Court may undertake such an inquiry u/s 11 at the invitation of the defendant to assess if a palpably absurd or patently erroneous valuation had been made for inappropriate Court-fees being paid on the plaint.

6. In the Shambhu Nath Singh case a Single Judge revised an order of the Munsif upon finding that an unnaturally low valuation of the reliefs claimed had been made. The facts that the Court relied on appeared from the plaint that an auction purchase of the suit property was made by Rs. 27,100/- which property the plaintiff thereafter purchased from the auction purchaser at Rs. 25,000/-. The

plaintiff claimed for recovery of possession, describing the occupant as a trespasser and valuing his relief at Rs. 1,300/-. It was on such valuation of the relief that the suit was instituted before the Munsif. In the revisional application, this Court found that despite the plaintiff claiming mesne profits, the plaintiff artfully avoided inserting the figure of mesne profits in the plaint and thus it was a fit case for exercising power u/s 11 of the West Bengal Court-fees Act. This Court found that the subject-matter of the suit had been wrongly valued and that the, valuation of the relief sought was not less than Rs. 27,100/- but had been arbitrarily valued at the patently absurd figure of Rs. 1,300/-.

7. In the Terai Tea Company matter, a Division Bench of this Court held that where a plaintiff had sought a declaratory decree with consequential relief and had stated the amount at which he valued the relief, the Court would ordinarily not interfere with the plaintiffs determination of the value unless the Court was of the opinion that the valuation was illegal, palpably absurd, manifestly illogical or arithmetically wrong. As in the Shambhu Nath Singh case, the Court found the suit to have been grossly undervalued and required appropriate Court-fees to be paid for the suit to remain in this Court.

8. The Asit Baran judgment was rendered by a Single Judge on a revisional application. It was held that a plaintiff was at liberty to put his own valuation as regards the reliefs sought if there was no objective standard for valuing the reliefs, but the Court had power u/s 11 to revise the value if the Court was of the opinion that the subject-matter of the suit had been wrongly valued. The following passage from paragraph 7 of the report may be referred to:

The Court can only act in this respect if there be material before it from which it can be determined that the valuation given by the plaintiff is erroneous. The objective standard in the present case is provided in the plaint. In the plaint, it has been stated the defendant No. 2 wanted Rs. 60,000/- as the price of the premises; certain terms and conditions were also imposed. It has been further stated that the plaintiff agreed to the proposal. In such circumstances, there is every reason for the Court to hold that in view of the admitted valuation the Court is entitled to revise the valuation u/s 11 of the Court-fees Act, the objective standard of valuation being provided in the plaint itself. The learned Additional District Judge has committed jurisdictional error and his decision thus cannot be sustained.

9. The applicants urge that as the plaintiff was entitled, at best, to value the suit at Rs. 10,00,000/- on the basis of the reliefs claimed, u/s 5(2) of the City Civil Court Act, 1953 this Court did not have jurisdiction to entertain the suit since the proper valuation thereof was not in excess of Rs. 10,00,000/-

10. The applicants have also placed Order 7 Rule 1(f) of the CPC to demonstrate that it is necessary that a plaint contain the particulars showing that the Court before which the suit is instituted has jurisdiction to receive it.

11. The plaintiffs refer to the fourth relief claimed in the suit and the averments

in support thereof at paragraph 32 of the plaint. At paragraph 32, the plaintiffs have claimed that the second plaintiff was forced by the third and fourth defendants to hand over a sum of Rs. 5,00,000/- in cash to the first and second defendants and the second plaintiff was also forced by the third and fourth defendants to issue a cheque for Rs. 5,00,000/- in favour of the first defendant in addition to being made to sign and hand over 12 blank, signed and undated cheques to the first and second defendants. The fourth relief in the suit is for an injunction restraining the defendants from seeking to encash any of such blank cheques detailed at Annexure I of the plaint. The plaintiffs say that it was impossible for the plaintiffs to assess the value of the fourth relief and the plaintiffs had given a combined value of the reliefs at Rs. 10,00,001/- which is neither absurd nor arithmetically erroneous.

12. The plaintiffs have cited the judgment reported in *Tara Devi Vs. Sri Thakur Radha Krishna Maharaj*, through *Sebaitis Chandeshwar Prasad and Meshwar Prasad and Another*, and have referred to the fourth paragraph thereof in support of their contention that a plaintiff is free to make his own estimation of the reliefs claimed, and only if it appeared to the Court that the plaint had been demonstratively undervalued, the Court could examine the valuation and revise the same. Paragraph 4 of the report needs to be seen:

The instant SLP has been filed against the said order. We have heard the learned Counsel and in our considered opinion we do not find any merit in the arguments made on behalf of the petitioner. It is now well-settled by the decisions of this Court in *Sathappa Chettiar v. Ramanathan Chettiar* (supra) and *Meenak Shisundaram Chettiar v. Venkatachalam Chettiar* (supra) that in a suit for declaration with consequential relief falling u/s 7(iv)(c) of the Court-fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of Court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same. The plaintiff has valued the lease hold interest on the basis of the rent. Such a valuation, as has been rightly held by the Courts below, is reasonable and the same is not demonstratively arbitrary nor there has been any deliberate underestimation of the reliefs. We, therefore, do (not?) find any reason to grant special leave to appeal asked for in the petition as the order passed in the said revision is unexceptional. The SLP is therefore dismissed. There will however be no order as to costs.

13. Section 9 of the West Bengal Court-fees Act requires a plaintiff to file with the plaint a statement of particulars of the subject-matter of the suit and the plaintiffs' valuation thereof, unless such particulars and the valuation are contained in the plaint. Section 11 permits a Court to revise the valuation given by a plaintiff and determine the correct valuation upon holding an appropriate

inquiry, if the Court is of opinion that the subject matter of the suit has been wrongly valued.

Clauses (b) and (c) of Section 7(iv) of the Act provide as follows:

7. Computation of fees payable in certain suits: The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(i) ...

(ii) ...

(iii) ...

(iv) for movable property of no market value: In suits-

(a) ...

(b) for declaratory decree and consequential relief: to obtain a declaratory decree or order, where consequential relief is prayed,

(c) for injunction: to obtain injunction,

(d) ...

(e) ...

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of Section 11.

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

14. Before the legal issue can be addressed, the plaint has to be noticed for assessing the scope of the suit. According to the plaintiff, the first and second defendants were desirous of obtaining supplies of aluminium roll products from the plaintiffs" and put in a deposit of Rs. 10,00,000/- in early 2002. The plaintiffs case is that the first two defendants came back shortly thereafter to say that they were not interested in large supplies of aluminium roll products to be made by the plaintiffs, following which the plaintiffs refunded the deposit of Rs. 10,00,000/- by making over four account payee cheques of April 1, 2002 for Rs. 2.5 lakh each. The plaintiffs say that in end May 2002, the second defendant came back to the plaintiffs and represented that the first two defendants would acquire further material from the plaintiffs and the plaintiffs could retain the deposit of Rs. 10,00,000/- as the first defendant had not encashed the cheques made over by the plaintiffs. It is the plaintiffs" case that the second defendant represented to the plaintiffs that the four cheques issued by the plaintiffs in favour of the first defendant would be returned in due course. The plaint thereafter speaks of the plaintiffs having supplied goods of value of Rs. 9,19,212/- to the first two defendants and having adjusted the amount lying with the plaintiffs by the value of the goods supplied. The plaintiffs claim that they

were surprised in September, 2002 to learn that the four cheques that had been made over in favour of the first defendant were put in for encashment, though the second defendant had represented that such cheques would not be encashed and would be returned to the plaintiffs. According to the plaintiffs, they instructed their bankers to not honour the cheques and called upon the first defendant by a writing of September 14, 2002 to return the cheques. The cheques were not returned despite the demand, claim the plaintiffs, and the first defendant chose not to reply to the letter of September 14, 2002. A notice u/s 138 of the Negotiable Instruments Act was issued on behalf of the first defendant but after the plaintiffs' reply thereto, no criminal proceedings for the dishonour cheques appear to have been launched.

15. The plaintiffs version of things thereafter leapfrogs to June, 2007 when the police official defendants apparently coerced the plaintiffs into paying the first two defendants a sum of Rs. 5,00,000/- in cash, make over a cheque for Rs. 5,00,000/- in favour of the first defendant and issue 12 blank, signed and undated cheques to the defendants.

On such averments the plaintiffs have sought the following reliefs: a declaration that the agreement of June 18, 2007 that the plaintiffs were coerced into executing be adjudged void and cancelled; for injunction restraining such agreement being given effect to; for an injunction restraining the defendants from encashing the blank signed cheques; for a decree for Rs. 5,00,000/- in respect of the amount said to have been paid in cash to the first defendant; and, a mandatory injunction requiring the blank signed cheques to be returned to the plaintiffs apart from the usual attendant reliefs.

16. The defendants cannot pick holes in the plaint case, at least on an application in the nature of a demurer. The first two defendants question the valuation of the reliefs, generously reading paragraphs 51 and 52 to indicate the value of the reliefs, and suggest that as even the corollary claim of damages is missing, the plaintiffs' claim can be only for the Rs. 5,00,000/- that they claimed to have paid in cash and the return of the cheque for Rs. 5,00,000/- issued in favour of the first defendant at the police prodding. More than this, the first two defendants urge, there is nothing to the claim. This, the applicant-defendants say, would bring the sum total of the value of the reliefs claimed to be Rs. 10,00,000/-, falling short by the barest minimum to come to this Court.

17. However indignant the applicant-defendants may be at the case brought by the plaintiff, for the moment and for this application, the applicants have to proceed by accepting such case. To take up the applicants on their suggestion, the value of the reliefs to which the applicants have drawn attention is, at the highest, Rs. 10,00,000/-. That does not appear to be arbitrary or manifestly illogical. Paragraph 32 of the plaint and the fourth relief which is a consequence thereof, has, thus, been valued at the additional rupee over Rs. 10,00,000/- that the plaintiffs have indicated at paragraph 51 of the plaint. The applicants do not make an issue of the fourth relief having been improperly valued, but they

suggest that there has been overall overvaluation of the suit. The point urged is not that the plaintiffs have paid less in Court-fees than what they ought to have, the applicants' endeavor is to seek an inquiry as to the overvaluation and have the plaintiffs go to a lesser forum.

18. Surely, the reliefs relating to the prayer for mandatory and prohibitory injunctions sought in respect of the 12 blank unsigned cheques, would of some value. Since the valuation in respect of other reliefs seems to have to be Rs. 10,00,000/-, it can be concluded that the plaintiffs have ascribed a value of one rupee for the blank signed cheques to sneak in to this Court. Rather than the overvaluation that the applicant's assert, they are appears to have been a valuation on the lower side. Apart from the minor matter of the applicants not having sought an inquiry into any undervaluation, the general principle is that the Court can undertake an inquiry u/s 11 when it sees that there are objective standards available for valuing the reliefs, but the plaintiff has given a go-bye to such standards. There is no objective standard for valuing a relief for return of blank unsigned cheques which have not been presented for encashment upon being filled in. The Court may wonder as to why the plaintiffs should bother at all to seek return of cheques when the value thereof is a mere rupee. But the plaintiffs have not apportioned values against the various reliefs claimed and even if there was any apportionment apparent from the plaint, there is no objective standard for assessing the value of reliefs for injunction in respect of blank signed cheques.

19. The judgments on which the applicants have relied are all cases of undervaluation where this Court has taken a dim view of the attempt by the plaintiffs in each case to defraud revenue. It is for such purpose that the Court inquired in each case and assessed the value of the reliefs to be in excess of what the plaintiffs had ascertained therefore. It is not inconceivable that a plaint may be looked into by Court, at the defendant's behest, to discover as to whether the reliefs had been overvalued and the plaintiff had undeservingly come to be a higher forum, but for such a case to be made out and answered affirmatively in the defendant's favour, an objective standard of valuing the reliefs must be established. The authorities that the parties have brought speak of the Court ordinarily shunning such inquiry unless the valuation is shown to be demonstrably false?of being palpably absurd or manifestly illogical or arithmetically erroneous. These defendants have shown none of the kind.

20. The application fails. The applicants are left to carry their indignation to the plaintiffs' interlocutory application and the trial. There will be no order as to costs.

21. The defendants pray for an extension of time to file the written statements. The defendants have an extension for three weeks from date. Urgent photostat certified copy of the order may be supplied to the parties applying for it upon compliance with all requisite formalities.