

(1994) 10 BOM CK 0057
In the Bombay High Court
Case No : Second Appeal No. 111 of 1994

Nirmal Quality Products

APPELLANT

Vs

Contey Industries and Another

RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 26
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 100, 96, 9A
Suits Valuation Act, 1887 — Section 11

Citation : (1995) 2 BomCR 540

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : R.G. Karmarkar, for the Appellant; P.R. Patil, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonker, J.—This second appeal challenges the decree passed by the learned Additional District Judge, Jalgaon, in Civil Appeal No. 226 of 1990 on the ground of want of jurisdiction. Appellant in this Court is the plaintiff in Special Civil Suit No. 117 of 1989 by which he had made a claim of Rs. 55,596.01 paise from the defendant. It was contended by the plaintiff that defendant purchased some chemical products from the plaintiff during the year 1983 and paid only part of the price. The balance of the price i.e. Rs. 28,369.38 paise along with the interest of Rs. 17,101.63 paise and the notice expenses of Rs. 125/- were demanded by the plaintiff from the defendant. The learned trial Judge was pleased to pass a decree for Rs. 41,266.38 paise against the defendants. He was also pleased to direct the defendants to pay future interest at the rate of Rs. 6 per cent per annum on a sum of Rs. 28,369/- (Principal sum out of the total decretal amount). This decree dated 7th July, 1990 in Special Civil Suit No. 117 of 1984 was challenged by the defendants in Appeal No. 226 of 1990 in the District Court at Jalgaon. When the notice of this appeal was served on the respondent plaintiff, he filed a cross-objection under Order XLI, Rule 22 challenging the part of the decree which had refused the portion of the claim of

the plaintiff.

2. In this Civil Appeal No. 226 of 1990, an application for the stay of the execution of the decree under appeal was moved by the appellant/defendant. The learned IInd Additional District Judge, Jalgaon, was pleased to grant an ad interim stay with notice to the respondent. While submitting say to the said application for the stay, respondent plaintiff raised an objection to the jurisdiction of the District Court, Jalgaon, to hear the appeal and contended that only High Court is competent to hear the appeal. On 20th January, 1992, a further application was moved by the respondent plaintiff that a preliminary point be framed and decided u/s 9-A of the Code of Civil Procedure, 1908 (in its application to the State of Maharashtra). This application was heard by the learned Vth Additional District Judge, Jalgaon, and he was pleased to hold that the decree passed is only for Rs. 41,266.38 paise with further interest on part of the said sum and, therefore, this cannot be said to be more than the pecuniary jurisdiction of the District Court while hearing appeals arising from decrees passed by the Civil Courts. Recording this finding, he was pleased to dismiss the application to frame point u/s 9-A of the Code of Civil Procedure, 1908 vide his order dated 1st April, 1992. Thereafter, the matter was heard by the learned Additional District Judge, Jalgaon, who was pleased to allow the appeal partly, found that the defendant appellant is liable to pay only Rs. 12,561/- and he also granted future interest at the rate of 10 per cent per annum from the date of the suit till the realization on the principal amount found due i.e. Rs. 11,277.69 paise. This decree dated 12th October, 1993 has been challenged in this Second Appeal.

3. There is no dispute over the fact that the valuation of the suit was Rs. 55,596.01 paise. This was the sum for which the decree was prayed by the plaintiff. Pecuniary jurisdiction of the appellate Court to hear appeals arising out of the decrees passed by the Civil Court is to be determined on the basis of the valuation in the plaint and not on the basis of the decree passed in that suit. Court may decree the claim of the plaintiff in part and, therefore, the valuation of the appeal may be lesser than the valuation of the plaint. But the jurisdiction to hear the appeal would be dependent on the valuation of the lis at its commencement. The point is no more *res integra*. Several judicial pronouncements including some of this Court have accepted the position that the forum of the appeal is determined on the basis of the valuation of the suit and not on the basis of the valuation of the appeal which would be sometimes lesser than the valuation of the suit if plaintiff's claim is only partly decreed. (See : (i) *Ishwarappa Malleshappa Manvi v. Dhanji Bhanji Gujjar and another*, AIR 1932 Bom 111, (ii) *Ahmedbhai Kadubhai v. Badruddin*, AIR (33) 1946 Bom 356, (iii) *Kalu Ram v. Hanwant Ram & others*, AIR 1934 Lah 488, (iv) *Bidyadhar Bachar & others v. Manindra Nath Das & others*, 1925 Cal 1076 . Admittedly, in the present suit, the claim made by the plaintiff was more than Rs. 50,000/- and, therefore, on this count the appeal would lie directly to the High Court as provided for by section 26 of the Bombay Civil Courts Act, 1869.

4. Shri P.R. Patil, learned Counsel appearing on behalf of respondent, submitted that no prejudice is caused to the either of the parties because of the hearing of appeal by the District Court. He submitted that appellant has a further chance of hearing in the Second Appeal before this Court and the parties can raise all their contentions in the Second Appeal also. According to him, unless prejudice is shown to have been caused because of the hearing of the appeal by different forum, decree cannot be held to be nullity. He relied on the provisions of the section 11 of the Suits Valuation Act and contended that unless it is shown that the party has been prejudicially affected in the disposal of the appeal in its merits, the hearing of the appeal by the District Court would not render the decree nullity if it is in respect of the suit valued at more than Rs. 50,000/-. Shri Patil relied on the judgment of the Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, . Full Bench Judgment of Allahabad High Court in the case of Mool Chand Moti Lal Vs. Ram Kishan and Others Full Bench Judgment of Madras High Court in the case of Kelu Achan & others v. Cherive Parvathi Nethiyar & others, AIR 1924 Mad 6 and Full Bench Judgment of Patna High Court in the case of Ramdeo Singh and Others Vs. Raj Narain Singh and Another, . The crux of the argument of Shri Patil appears to be that unless prejudice is shown to have been caused, hearing of the appeal by the District Court, which was not competent, would not render the decree as nullity.

5. Sub-section (1) of section 11 of the Suits Valuation Act, 1887 is as follows :

"Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

(1) Notwithstanding anything in section 578 of the Code of Civil Procedure, 1882 (14 of 1882), an objection that by reason of the over-valuation or under valuation of a suit or appeal a Court of first instance or Lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless---

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the Lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for the reasons to be recorded by it in writing that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal in its merits."

Section 11 of the Suits Valuation Act, 1887, deals with the cases in which the valuation made in the plaint is disputed either being over valued or under-valued and on account of this dispute, objection is taken to the jurisdiction of the Court. Dispute about the valuation of the subject-matter often raises questions of fact and if the Court at the first instance decides the dispute, assuming the valuation to be such as would give jurisdiction to that Court, the case will have to be dealt u/s 11 of the Suits Valuation Act, 1887. In such cases, the decision by Court

having no pecuniary jurisdiction shall not ipso facto render the decree a nullity. A person objecting to the validity of the decree on the ground of want of pecuniary jurisdiction to the said Court will have to establish firstly that the objection to the jurisdiction was taken at the first instance and secondly that the hearing of the suit or appeal by that Court has resulted in the prejudice to him. In the case of *Kiran Singh & others v. Chaman Paswan & others*, (cited supra), Supreme Court was pleased to observe :

"A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of the parties."

But if the Court has assumed pecuniary jurisdiction because of the over-valuation or under-valuation of the subject-matter, then the matter will have to be dealt u/s 11 of the Suits Valuation Act, 1887. Supreme Court was also pleased to consider the scope of prejudice in relation to the clause "unless the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits" appearing in section 11 of the Suits Valuation Act, 1887 and was pleased to hold that the prejudice contemplated by this clause is something different from the fact that the appeal is heard by a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined.

6. The very object of section 11 of the Suits Valuation Act, 1887 is to consider cases wherein the suits have not been properly valued and the correct valuation is found to be something different than what is stated in the plaint. Where there is no dispute about the valuation of the suit or appeal, section 11 of the Suits Valuation Act, 1887 has no application at all. When the valuation of the suit or appeal is disputed, it is to be decided on the basis of the appreciation of the part of the evidence and, in cases, the valuation might prove to be wrong at a very late stage. Section 11 of the Suits Valuation Act, 1887 provides for such cases. The suit filed by the present plaintiff was a suit for recovery of the money and there can hardly be any dispute about its valuation. Money claimed exceeded Rs. 50,000/- and, therefore, appeal would lie directly to the High Court u/s 26 of the Bombay Civil Courts Act, 1869. When this valuation was never disputed, though a decree for an amount lesser than Rs. 50,000/- was passed, it cannot alter the forum of appeal. Since section 11 of the Suits Valuation Act, 1887 has no application to the present case, there is no question of considering the prejudice. The decree passed by the District Court would be a nullity.

7. The argument of Shri Patil that even in Second Appeal the appellant can raise the questions which he wanted to raise in the First Appeal and, therefore, it is not necessary to set aside the decree is fallacious. The scope of Second Appeal before the High Court u/s 100 of the Code of Civil Procedure, 1908 is quite different from the scope of First Appeal u/s 96 of the Code of Civil Procedure, 1908. No questions of fact can be agitated before the High Court which a party

filing First Appeal can always do. If the defendant's appeal would have come before the High Court, it was open for the present appellant (respondent in the lower appellate Court) to point out that on facts that the decree passed by the trial Court should be upheld and even cross-objections deserves to be accepted. This he will not be able to do in a Second Appeal. As already pointed out, the question of prejudice need not be considered in this case since section 11 of the Suits Valuation Act, 1887 does not apply to the facts of the case at hand and even assuming that the question whether prejudice is caused is to be considered, the finding may not help the contention raised by Shri Patil. Prejudice is obvious in such cases.

8. In the result, the judgment and decree passed by the learned Additional District Judge, Jalgaon, in Civil Appeal No. 226 of 1990 on 12th October, 1993 is hereby set aside. The appeal is restored and the District Judge, Jalgaon, is directed to return the memorandum of said appeal to defendant/appellant for presentation before proper Court. Second Appeal is allowed. In the circumstances of the case, there shall be no order as to costs of this Second Appeal.