

(2009) 10 DEL CK 0278

In the Delhi High Court

Case No : I.A. No. 11661 of 2006 in CS (OS) 408 of 1989

Nu-Tech. Security Printers

APPELLANT

Vs

Santhi Agency

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 24

Citation : (2009) 10 DEL CK 0278

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : J.S. Bakshi and S.S. Sobti, for the Appellant; Anil K. Kher D.R. Bhatia and S.S. Pandit, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—This order shall dispose of the application u/s 24 read with Section 151 CPC filed on behalf of defendants No. 3 to 7 praying that the three suits pending now in the Court of Smt. Shail Jain (two suits) and Sh. Dinesh Bhatt be withdrawn from the said courts and be tried along with the present pending suit bearing CS(OS) No. 408/1989.

2. The facts are that originally the four suits were filed by the plaintiff. The detail of which is as under:

(a) The present suit being CS(OS) No. 408/1989 for recovery of Rs. 20,29,634.55;

(b) Suit No. 409/1989 for recovery of Rs. 5,31,873.01 titled as NuTech Security Printers v. Ram Agency and Ors.;

(c) Suit No. 405/1989 for recovery of Rs. 7,45,975.15 titled as K.L. Shroff v. Ram Agency and Ors.; and

(d) Suit No. 407/1989 for recovery of Rs. 3,39,2953.85 titled as K.L. Shroff v. Shanti Agency and Ors.

3. The defendants No. 3 to 7 filed their written statement in the matter.

4. Due to increase of pecuniary jurisdiction of the High Court the suits mentioned above as (b) to (d) were transferred to the court of District Judge as the amount claimed in the suits was less than Rs. 20,00,000/-.

5. It is argued by learned Counsel for defendants No. 3 to 7 that earlier the plaintiff moved an application in the year 1991 praying for consolidation of all the suits when pending in this Court being I.A. No. 9009/1991 and the following orders were passed:

12.09.1991

Pr.: Sh. Chetan Sharma for plaintiff.

I.A. No. 9009/91 (App. On behalf of plaintiff u/s 151 CPC)

This application has been filed on behalf of the plaintiff praying for consolidation of the suit bearing No. 409/89 (titled NuTech Security Printers v. Ram Agency and Ors.); suit No. 408/89 (titled Nu-Tech Security Printers v. Shanthi Agency and Ors.) and suit No. 407/89 (titled Sh. K.L. Shroff v. Shanthi Agency and Ors.).

Notice in I.A. to issue to the defendants through counsel for appearances before me on the next date i.e. 18.9.91, the date already fixed. Process fee within two weeks.

6. It has been argued that in view of the order passed on 12th September, 1991 and 15th November, 1991 in order to avoid the conflict of judgments the present application has been filed and the same is liable to be allowed.

7. Learned Counsel for the parties have not denied the fact that the evidence in the suits mentioned above as (b) to (d) has already been concluded and these are listed for final disposal.

8. Learned Counsel for the plaintiff has also referred order dated 11th July, 2008 where the court ordered that the pendency of the present application shall not come in the way of competent courts in proceedings to hear the arguments in the pending suits before the Additional District Judge, however the judgments shall not be pronounced.

9. Learned Counsel for the plaintiff has argued that in view of this order no prejudice would be caused to the plaintiff if all the three cases mentioned above as (b) to (d) pending in the District Court be withdrawn from the courts and be consolidated with the present suit and decided together.

10. On the other hand, learned Counsel for the plaintiff has argued that parties in the three suits pending before the Additional District Judge are different. Further he has argued that the suit pending before District Court are at the stage of final arguments and on the other hand in the suit pending in this Court the evidence is yet to be recorded.

11. Mr. Bakshi, Advocate for the plaintiff argued that the application is not maintainable and it bears no merit as the same has been filed at the belated stage. He submits that earlier when the application for consolidation was filed by the plaintiff all the suits were pending in the High Court itself. Since all the cases are at different stages and the subject matter of the suits are also on the basis of different documents/bills, therefore, the prayer made in this application be rejected.

12. After considering the rival submissions of all the parties I am of the considered opinion that the present application u/s 24 CPC filed by the plaintiff is liable to be dismissed and is not maintainable for the following reasons:

(i) That the evidence in all the three suits pending before the Additional District Judges has already been recorded and now they are fixed for final disposal on 27th October, 2009 and 11th November, 2009 before Ms. Shail Jain, Additional District Judge for final arguments and third suit is listed on 4th November, 2009 before Sh. Dinesh Bhatt, Additional District Judge, Delhi for final disposal; on the other hand, in the suit pending in High Court the evidence is yet to be recorded;

(ii) It is not denied by the parties that although some of the parties are common, however the cause of action and documents involved in the four suits relate to different transactions. Therefore, in my considered view the suits pending in the District Court can be decided as per their own merits. At this stage, the said prayer can not be granted.

(iii) As far as the present suit is concerned learned Counsel for defendants No. 3 to 7 has argued that the plaintiff has not produced the evidence in time, therefore, it is all the more feasible that the suits mentioned above as (b) to (d) may be withdrawn from the court and consolidated and be considered with the present suit. I do not agree with the contention of defendants No. 3 to 7 even as it appears from the record, since the present application filed by the defendants No. 3 to 7 is pending for the last more than three years, therefore, none of the parties has taken any care to proceed further in the matter on merit.

13. For the reasons mentioned above, the present application is not maintainable and same is dismissed. Order passed on 11th July, 2008 wherein the direction given to the competent court not to pronounce the judgment is vacated.

14. List the matter on 25th November, 2009 before the Joint Registrar for direction.