

(1995) 04 DEL CK 0001

In the Delhi High Court

Case No : Suit No's. 730 and 1294 of 1994

NUT Limited

APPELLANT

Vs

NUT
 Fanners India Limited Vs Salbros Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Citation : (1995) 2 AD 201 : (1995) 34 DRJ 709

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : P.M. Singh, Amit Kapur, Man Mohan and Baldev Raj, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) Question of court fees and valuation (for the purpose of court fees and jurisdiction) has come up for decision in two suits.

(2) Suit No.730/94, M/s.Fanner India Ltd. VS. M/s.Salbros Enterprises Pvt.Ltd. is a suit seeking reliefs of perpetual injunctions, delivery up, and rendition of accounts, complaining of infringing of plaintiff's copyright. The plaintiff has sought for two perpetual injunctions restraining passing off and infringement of the plaintiff's copyright; delivery up of the infringing material is also sought for. These three reliefs are valued at Rs.200.00 each and court fees of Rs.20.00 each has been paid. Relief of rendition of accounts has also been sought for valuing it at RS.1000.00 for the purpose of court fees, paying Rs.150.00 as court fees but valuing it for the purpose of jurisdiction at Rs.5 lacs. Total court fees paid is Rs.210.00 and total value for the purpose of jurisdiction is Rs.5,00,600.00 .

(3) Suit No. 1294/94 Nut Ltd. VS. Nut, is a suit complaining of inurnment of registered trade marks, infringement of copyright and passing off. There are three injunctions and relief of delivery up sought for each valued at Rs.200.00 for the purpose of court fees and jurisdiction with payment of Rs.20.00 as court fees

on each of the four prayefs. Relief of rendition of account of profits is also sought for valuing it at Rs.200.00 for the purpose of court fees, followed by payment of Rs.20.00 as court fees, but valuing it for the purpose of jurisdiction at Rs.5 lacs. A total court fees of RS.100.00 has been paid valuing the suit at a total of RS.1000.00 for the purpose of court fees but at Rs.5,00,800.00 for the purpose of jurisdiction.

(4) Both the learned counsel appearing for the two plaintiffs have maintained the correctness "of their payment of court fee and valuations as put, placing reliance on the rules framed and applicable to the High Court of Delhi u/s 9 of the Suits Valuation Act and on the oft quoted decisions in Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, confirming a Division Bench decision of the High Court of Delhi reported as Commercial Aviation and Travel Co. (Inc.) and Others Vs. Vimla Panna Lal, , Full Bench Decision in Smt.Sheila Devi Vs. Shri Kishan Lal Kalra (1974) 2 Delhi 491 and Single Bench decision in the case of The Tata Oil Mills Co.Ltd. VS. Hansa Chemical Pharmacy (1979) Ii Delhi 236.

(5) The above said decisions appear to hold that in a suit for accounts, the plaintiff has liberty to value the suit for relief of accounts differently for the purpose of court fees and for the purpose of jurisdiction. The plaintiff can also value the relief at any Figure of his choice and the Court shall not interfere with the valuation of the plaintiff, such relief being incapable of definite valuation.

(6) A suit for accounts is covered by Section 7(iv)(f) of the Court Fees Act, 1870 which provides that the amount of fees payable for suits for accounts shall be according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. The plaintiff shall state the amount at which he values the relief sought. Section 8 of the Suits Valuation Act, 1887 provides that in the category of suits to which it applies (suits for accounts covered) the value as determinable for computation of court fees and the value for purposes of jurisdiction shall be the same. There is unanimity of opinion amongst all the High Courts that the plaintiff has to determine the value for the computation of court fees which becomes the value for purposes of jurisdiction also and not the vice versa.

(7) Section 9 of the Suits Valuation Act provides as under :-

"9.Determination of value of certain suits by High Court.- When the subject matter of suits of any class, other than suits mentioned in the Court Fees Act, 1870, Section 7, paragraphs v and vi, and paragraph x, clause (d), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the State Government direct that suits of that class shall, for the purposes of Court fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject matter were of such value as the High Court thinks fit to specify in this behalf.

(8) A suit for accounts governed by Section 7(iv)(f) of the Court Fees Act is

included in the category of suits covered by Section 9. In exercise of the power so conferred, the High Court of Lahore has framed rules. Rules 3 and 4 relevant for the purpose at hand are extracted and reproduced hereunder :-

3.Suits in which the plaintiff in the plaint asks for accounts only not being...

(I)Suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant.

(II)Suits of either of the kinds described in Order Xx, Rules 13 of the Code of Civil Procedure.

VALUE(a) For the purposes of Court Fees Act 1887 Rs. 200

(B)For the purposes of the Suits Rs. 1000 Valuation Act. 1887, and the Punjab Courts Act. 1981

4(I)Suits in which plaintiff in the plaint seeks to recover the amount Which may be found due to the plaintiff in taking unsettled accounts between him and the defendant.

(II)Suits of either of the kinds described in Order XX. Rule 13 of the CPC :

VALUE for the purpose

OF Court Fee (a) As determined by the Court Fees Act, 1870 Value for the purpose

OF jurisdiction (b) For the purposes of Suits Valuation Act, 1887 and the Punjab Suits Courts Act, 1918, as valued by the plaintiff in the plaint, subject to determination by the Court at any stage of the trial.

THERE is no dispute that the above said rules shall be deemed to have been framed by Delhi High Court and would apply to the suits tried in courts at Delhi.

THE distinction .between Rule 3 and Rule 4 is apparent. For the purpose to jurisdiction the suit cannot be valued at any Figure other than at Rs.1,000.00 if governed by Rule 3 but can be Valued at any other figure subject to determination by the Court at any stage of the trial, if governed by Rule 4. The question for determination is whether the suits of the type filed by the two plaintiffs are governed by Rule 3 or by Rule 4.

GENERALLY speaking suits for accounts excluding the administration suits covered by Rule 4(i), can be divided into broad three categories, which would be covered either by Rule 3 or by Rule 4 (ii). These are :

(I)Suits for accounts arising out of contractual relationship between the parties such as between partners or principal and agent etc.

(II)Suits in which it is necessary that an account should be taken in order to ascertain the amount due to or from any party such as suits arising out of quasi-contractual relationship.

(III) Suits in which plaintiff has a right to a rendition of accounts from defendant de hors a contract.

(9) It is significant to note that in first two of the above said three categories though a preliminary decree would be passed in favor of the plaintiff but on taking accounts it may be found that the plaintiff is liable to pay something to the defendant and in spite of the suit having been filed by the plaintiff a decree may ultimately come to be passed in favor of the defendant against the plaintiff. In these categories it cannot be said that it is the plaintiff only who has to recover or not to recover something from the defendant. In the third category of the suits there would be a decree or no decree in favor of the plaintiff. It is the plaintiff who has to recover or not to recover an amount from the defendant. The Rules 3 and 4 above said show such two types of suits for accounts having been treated differently. Those types of suits for accounts for which provision has been made by Rule 4 (i) have been excepted from Rule 3. Rule 4(i) contemplates administration suits described in Order 20 rule 13 Cpc, also excepted from Rule 3.

(10) Rule 4(i) contemplates such suits for accounts where the relationship of the parties has originated in contract or quasi-contract as the use of phrase "unsettled accounts" suggests. "Unsettled accounts" contemplates that prior to the institution of the suit there was an obligation cast on the defendant to settle the accounts ; the plaintiff would not have been called upon to file the suit if the accounts would have been settled by defendant ; and for rendition of accounts being allowed by the Court to the plaintiff would result in settling the unsettled accounts. As already said, .Rule 4(ii) contemplates administration suits ; trade mark, copyright and patent cases do not fall in any of the two categories contemplated by Rule 4.

(11) Section 106 of Trade and Merchandise Marks Act, 1958 provides relief, amongst others of either damages or an account of profits being allowed to the plaintiff at its option in a suit for infringement or for passing off.

(12) Section 55 of the Copyright Act. 1957 provides for relief amongst others of damages or accounts, same as is conferred by law for the infringement of a right being allowed to the plaintiff.

(13) Section 108 of Patents Act, 1970 entitles the Court to grant in any suit or infringement a relief of either damages or an account of profits being allowed at the option of the plaintiff.

(14) In the all the above said three cases right to relief for account of profits arises not by virtue of contractual relationship, but by virtue of statutory provisions and depending on the right to relief being determined by the Court.

(15) All such suits would be governed by Rule 3 above said. The plaintiff has no other option but to value the suit for the relief of accounts at Rs.200.00 for the purposes of the court fees and at RS.1000.00 for the purposes of jurisdiction. The valuation can be neither less nor more either for court fees or for jurisdiction.

(16) Rules framed u/s 9 of Suits Valuations Act operate as a proviso over the provisions of Section 8 of the Suit Valuation Act and have an overriding effect.

(17) The cases of M/s. Commercial Aviation and Travel Co. (supra) and Smt. Sheila Devi & Ors. (supra), both are cases for dissolution of partnership and for accounts governed by Rule 4(1) and not by Rule 3. They have no applicability to the cases at hand.

(18) Case of Tata Oils Mills Company Ltd. (supra) is a case of infringement of copyright and passing off, seeking relief of rendition of accounts inter alia. A perusal of the report reveals that the question of payment of court fees and valuation on relief of rendition of accounts arose therein a different setting. The question posed was whether the rules framed by the Lahore High Court would be applicable to Delhi. The question engrossed the attention of the Court from paragraphs 19 to 50. It was held that the Rules framed by the Lahore High Court continue to apply to Delhi High Court. Vide para 51 the question posed was whether the relief for accounts would be a consequential relief flowing from the relief of declaration sought. The answer has been in the negative. The question whether such a suit would be governed by Rule 3 or by Rule 4 was never posed before the learned Single Judge nor answered by him. At the end of para 51 the learned Judge has held that the several remedies available to the holder of a copyright in case of infringement of his work are all statutory remedies independent of each other entitling the party to sue for any or all the reliefs available to him under the law. This view of the law held by the learned Judge supports my view taken hereinabove that the relief for accounts of profits in such suits is based not on contract but on statute and so would be governed not by Rule 4(i) but by Rule 3.

(19) Mr. Ishawar Sahai and Mr. Mukul Rohtagi, learned senior advocates have adopted a different line of approach to the interpretation of Rules 3 and 4. They submit that having excepted the suits covered by clauses (i) and (ii) in Rule 3 what would be left to be governed by Rule 3 would be such suits in which the plaintiff asks for relief of accounts only. In other words, the contention is that where the plaintiff has sought for relief of accounts only, and there is no other relief prayed for, then the suit would be governed by Rule 3 and not by Rule 4, and when the relief of accounts is accompanied by other reliefs also then the suit should be governed by Rule 4(i).

(20) This contention has to be rejected for three reasons. Firstly, had it been the intention of the framers of the Rules then instead of drafting such long rules as the Rules 3 and 4 are, they would have simply provided for two categories (i) suits in which the plaintiff asks for relief of accounts only, and (ii) the suits in which reliefs other than for accounts are also asked for. The Rules are not so framed. Secondly, such an interpretation would lead to a discrimination and arbitrariness. A plaintiff seeking the relief of accounts alone would value the same relief in one manner while a plaintiff suing for reliefs more than one would value the same relief for accounts in a different manner. Thirdly the fountain

source of the power under which the Rules have been framed in Section 9 read with Section 8 of the Suits Valuation Act. A reading of those provisions shows that the word "suit" therein has been used in the sense of "suing for relief. The word "suit" is a generic term of comprehensive signification. It also means right of a person to have or pursue a remedy which the law affords him for redressing an injury. It is in this sense in which the word "suit" as used in the Rules has to be read and understood.

(21) Yet another approach canvassed is that Rule 3 would apply to a suit in which the plaintiff merely asks for accounts while Rule 4 (i) would apply to a suit in which apart from asking for accounts the plaintiff also seeks to recover the amount. This interpretation has also be rejected for more or less similar reasons.

(22) If it was so, then Rules 3 and 4(i) could have spoken of only two short categories, namely (i) suit for accounts without seeking recovery of an amount, and (ii) suit for accounts with relief of recovering an amount. Such is not the framing of Rules.

(23) A person who sues for accounts does not do so merely for pleasure of asking for accounts ; he does mean to recover an amount. Though the possibility of a suit for accounts without a relief of recovery of an amount may not be totally ruled out yet it cannot be imagined that framers of the Rules would have made a special provisions for such a rare suit and that too without saying so specifically.

(24) It has to be remembered that the said Rules framed by High Court of Lahore u/s 9 of the Suits Valuation Act are not a piece of artistic legislative drafting. These are just working rules. A reading of the Rules 3 and 4 in the light of the provisions of the Suits Valuation Act and Court Fees Act clearly reveals that framers had in view the suits for accounts contemplated by Section 7(iv)(f) of the Court Fees Act. These suits for accounts were divided into three. Two categories were excepted from Rule 3 and provided by Rule 4. What was not recovered by Rule 4 has been left to be recovered by Rule 3. Administration suits have been specifically provided for by Rule 4 (ii).

(25) I am fortified in taking the above said view by the well settled principles of interpretation of statutes. A proviso or an exception is intended to carve out from the principal provision what would have been covered by it if not excepted. The subject matter of suits covered by Clauses (i) & (ii) of Rule 3 would have been covered in suits for accounts only, had it not been excepted.

(26) Tobu Enterprises (P) Ltd. Vs. Joginder Metal Works and Another, was cited. It was a case under Designs Act. Vide para 7 it has been held that the liability for rendition for accounts arose lie cause it could be said that there was a fiduciary relationship between the parties. In as much as whatever profits the defendants were making by sale of goods was with the impugned design of the plaintiff and they were holding the same as trustee for the plaintiff and must account for the same to the plaintiff. This view would support the view I was already taken that the liability of defendant was not contractual.

(27) Manohar Lal Gupta Vs. State of Haryana (1977) 79 Plr 181 was cited. A suit for infringement of copyright was valued at Rs.1,000.00 for the purposes of court fee and at Rs.55,000.00 for the purposes of jurisdiction. In so far as the relief for rendition of accounts is concerned challenge to valuation and jurisdiction has been dealt with as issue No.2 vide paragraphs 4 to 8 of the report and the valuation has been upheld as correct. Though Rules 3 and 4 have been referred but the judgment nowhere analyses the distinction between Rules 3 and 4; it simply proceeds to say that under Rules 3 and 4 the two valuations (for Court fees and for jurisdiction) need not be identical and they can be widely divergent. The decision is of no assistance in solving the problem posed before me.

(28) Accordingly, it is held that the relief for account of profits sought for by the plaintiffs in the two suits has to be valued at Rs.200.00 and RS.1000.00 respectively for the purpose of court fee and jurisdiction in accordance with Rule 3 of the Rules u/s 9 of the Suits Valuation Act. Both the plaintiffs are directed to move appropriate applications seeking amendment in the valuation, court fees and jurisdiction clauses of the plaint within four weeks.

(29) Appreciation is placed on record of the valuable assistance rendered by S/ Shri Ishwar Sahai and Mukul Rohtagi, senior advocates and S/Shri Ajay Sahni and S.K. Bansal, advocates who though not counsel in these cases, assisted the Court in putting forth different viewpoints touching the interpretation of Rules 3 and 4 above said.