

(2015) 07 DEL CK 0344

In the Delhi High Court

Case No : Tr. P. (C) No. 63/2014 and C.M. No. 11544/2014

Pritesh Kumar Singh

APPELLANT

Vs

Peepee Publishers & Distributors (P) Ltd. and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A, Order 8 Rule 6A(1), 24

Citation : (2015) 07 DEL CK 0344

Hon'ble Judges : V.K. Shali, J.

Bench : Single Bench

Advocate : Jyoti Taneja, Advocate, for the Appellant; Vaibhav Arora, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.—This is a petition filed by the petitioner under Section 24 CPC for transfer of Civil Suit 382/2014 titled Peepee Publishers & Distributors (P) Ltd. vs. Dr. Pritesh Kumar Singh & Another along with a counter claim titled Dr. Pritesh Kumar Singh & Another vs. Peepee Publishers & Distributors (P) Ltd. & Another pending before Sh. Devender Kumar, Additional District Judge, Patiala House Court, New Delhi to the original side of the High Court on account of the jurisdictional value of the counter claim being more than Rs. 20 lacs.

2. Briefly stated the facts of the case are that the petitioner, Dr. Pritesh Kumar Singh, MBBS, Ms. (Surgery) is the owner of all intellectual property rights including copyrights in a book titled "Surgery Essence". The petitioner entered into an agreement dated 1.1.2013 with the respondent to publish the work. The respondent had promised good service and timely publication; however, it is alleged that they failed to fulfill any of the promises made by them. The petitioner vide letter dated 23.4.2014 intimated to the respondent that he is not bringing the second edition of the book for which he had entered into an agreement with them. The respondent vide letter dated 1.5.2014 intimated that they are ready to transfer the rights to the petitioner in respect of second edition

for an amount of Rs. 40 lacs. As a consequence of this difference in perception, the petitioner while relying on clause 20 of the agreement terminated the agreement between him and the respondent.

3. The respondent filed a suit claiming damages of Rs. 19 lacs bearing No. 382/2014 titled Peepee Publishers & Distributors (P) Ltd. vs. Dr. Pritesh Kumar Singh & Another which is pending before the learned Additional District Judge, Patiala House Courts. The present petitioner on being served filed his written statement along with counter claim of Rs. 25,00,500/- out of which Rs. 5 lacs was by way of royalty and Rs. 20,00,500/- by way of damages.

4. It is in this background that the petitioner while relying on Order VIII Rule 6A sub-clause (2) CPC has sought transfer of the main suit as well as the counter claim being a cross suit to be tried by the High Court because the valuation of the counter claim is more than Rs. 20 lacs and triable by the High Court.

5. I have heard the learned counsel for the parties and have gone through the record.

6. The learned counsel for the petitioner has relied upon the judgment of the Division Bench of this High Court in case titled Raj and Associates and Anr Vs. Videsh Sanchar Nigam Limited and Another, wherein the Division Bench of this court has observed that the object of sub-clause (2) of Order VIII Rule 6A CPC is to avoid the possibility of conflicting judgments by different courts on common issues which may arise between the suit and the counter claim, if the same are heard separately by different courts. In view of this Division Bench judgment the question as to whether the suit and the counter claim can be tried by the same court where the valuation of the counter claim may be more than the pecuniary jurisdiction of the court is no more res integra because the purpose of sub-clause (2) of Rule 6A of Order VIII is to avoid the conflict of judgments being passed if they are tried by two different courts. This can be avoided only if both suit and the counter claim are tried by a court within whose pecuniary jurisdiction the counter claim falls. Looked from this perspective, the counter claim being more than Rs. 20 lacs cannot be tried by the lower court. This being the mandate of law as laid down by the statute and accepted by the Division Bench of this court has to be followed by the single judge. The judgment of the Division Bench of the High Court has taken note of this consistent view expressed by other courts also in this regard in T.K.V.S. Vidyapoornachary Sons and Others Vs. M.R. Krishnamachary, and Shravan Jairam Jadhav Vs. State Bank of India and others--> .

7. As against this, the learned counsel for the respondent has opposed transfer of the suit and the counter claim to the High Court by relying on a judgment of the Apex Court in a case titled Gurbachan Singh Vs. Bhag Singh and others, in support of his submission.

8. Not only the facts in Gurbachan Singh's case (supra) were different but also the fact that what was involved before the Apex Court in the said case was under

Order VIII Rule 6A sub-clause (1) and not sub-clause (2). It may be pertinent here to mention that Order VIII Rule 6A(1) and (2) read as under :-

"6-A. Counter-claim by defendant - (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both in the original claim and on the counter claim."

9. As it crystallizes from the aforesaid the defendant in a suit may file for a counter claim or damages or seek set off before filing his defence but the same cannot exceed the pecuniary jurisdiction of the court. The object of the aforesaid proviso is to see that the jurisdiction of the court trying the suit is not ousted by taking unscrupulous stand in defence i.e. by way of filing counter claim/set-off/damages in excess to the pecuniary jurisdiction of that court.

10. It was in the context of interpretation of the aforesaid sub-rule (1) that the Apex Court had while dismissing the SLP, had observed that in a suit for injunction the counter claim for possession could also be entertained and it was not necessary that the counter claim be entertained by the same court which was entertaining the suit for the reason that the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction.

11. Further the Apex Court in Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, has observed in para 19 that a mere dismissal of a special leave petition at the preliminary stage does not constitute a binding precedent. In the light of the aforesaid the facts of Gurbachan Singh's case (supra) as well as the law contained in Order VIII Rule 6A sub-rule (1) which was involved in the aforesaid case makes it distinguishable from the facts of the present case in hand.

12. Seeing the totality of circumstances, the court can pronounce final judgment in the suit and the counter claim only if they are tried together by the same court and since in the instant case, both the parties are claiming damages qua each other, the matter can be tried by the High Court within whose pecuniary jurisdiction alone the counter claim will lie. Permitting two different forums to hear and decide the two cases will lead to multiplicity of proceedings and has the potential to result in conflicting judgments which is a sheer abuse of the process

of law.

13. Because of the aforesaid reasons, I allow the petition of the petitioner and transfer both the Civil Suit No. 382/2014 and the counter claim titled Peepee Publishers & Distributors (P) Ltd. vs. Dr. Pritesh Kumar Singh & Another pending before Sh. Devender Kumar, Additional District Judge, Patiala House Court, New Delhi to the High Court. Both the suits shall be listed before the Registrar on 18th August, 2015.

14. Record of the cases be summoned and the same be placed before the Judge (Original side) for such directions as the court may deem fit.