
(2012) 08 DEL CK 0307
In the Delhi High Court
Case No : CM (M) 263 of 2011

Raj Kumar Gupta

APPELLANT

Vs

Girish Bansal and Another

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(1), Order 41 Rule 1, 114, 151
Constitution of India, 1950 — Article 227

Citation : (2012) 7 AD 1

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Dinesh Garg, for the Appellant; Prashant Sharma, for R-2, for the Respondent

Final Decision : Allowed

Judgement

M.L. Mehta, J.—This petition under Article 227 of the Constitution assails order dated 27.07.2010 of Additional District Judge (ADJ) whereby the plaint filed by the petitioner was directed to be returned to the plaintiff. Subsequently, review of the aforesaid order of 27.07.2010 was sought by the plaintiff u/s 114 read with Order 41 Rule 1 and Section 151 CPC. This review petition also came to be dismissed by the learned ADJ vide his impugned order dated 31.01.2011. The plaintiff had filed a suit for recovery of Rs. 20.00 lac with past, pendent elite and future interest @18% per annum till realization. The suit was valued for the purpose of court fee and jurisdiction at Rs. 20.00 lac. An application u/s 6 CPC was filed by the respondent for disposal of the suit on the ground of lack of pecuniary jurisdiction. The learned ADJ was of the view that since the plaintiff had claimed past interest @ 18% on Rs. 20.00 lac, and the interest could be quantified, the same ought to have been added in the suit amount. He was of the view that if the interest was added to the suit amount, which may be even rupee 1/-, the suit shall go beyond the jurisdiction of the court of ADJ. During the course of arguments on the application of the respondent u/s 6 CPC, the

petitioner sought to relinquish his claim in respect of past interest, so as to meet the objection and not to let the suit amount exceed the statutory jurisdiction of the Court of ADJ. The learned ADJ was further of the view that seeking relinquishment of a part of the claim, the past interest in this case, would amount to amendment of the plaint and that since amendment could only be considered by the court which had the jurisdiction to entertain and try the suit, which according to him he did not have, he returned the plaint on account of lack of jurisdiction, being beyond Rs. 20.00 lacs.

2. The petitioner sought review of the aforesaid order of 27.07.2010. The same came to be dismissed by the learned ADJ observing the matter to be out of the purview of review jurisdiction.

3. Both these orders are assailed in this petition.

4. The sum and substance of arguments of the learned counsel for the petitioner is that under Order 23 Rule 1 CPC, the petitioner was entitled to relinquish any part of his claim, to bring his suit within the jurisdiction of the Court. He submitted that the petitioner having relinquished his claim of past interest on 27.07.2010, by making a statement to that effect before the Court, which was seized of the matter at that time, the court erred in observing that the relinquishment of a part of claim would amount to amendment of the plaint or that the same could only be done by the court having pecuniary jurisdiction in the case as it originally stood filed. The learned counsel placed reliance on the judgment of this Court in *Smt. Birmati vs. Iqbal Singh* 2011 (3) CCC 511 (Delhi).

5. On 27.07.2010, the counsel for the petitioner made a statement regarding relinquishment of claim of past interest. Thereupon following order came to be passed by the learned ADJ.

During the arguments, it was submitted by the counsel for plaintiff that he relinquishes the claim of the plaintiff in respect of the past interest. There cannot be any doubt that this action of the plaintiff (in relinquishing the claim in respect of the past interest) amounts to amendment of the plaint. I am of the view that an amendment of the plaint can be considered only by the Court, which as per the prayer made in the plaint and the valuation of the suit, has the jurisdiction to entertain and try the suit.

6. It would be seen that the aforesaid order came to be passed on the premise that relinquishing a part of claim from the plaint would amount to amendment of the plaint, and that the amendment of plaint could only be considered by the Court which had the jurisdiction to entertain and try the suit as per the prayer made in the plaint. To my mind, the learned ADJ seems to have over-looked the provisions contained in Order 23 Rule 1(1) CPC. Similar controversy arose before this Court in the case of *Smt. Birmati* (supra). The decision rendered by the Bombay High Court in the case of *Shobha Venkat Rao Vs. K.R. Mahale*, was relied upon and approved by this Court in the case of *Smt. Birmati* (supra). In the case of *Mrs. Shobha Venkat Rao* (supra) the Bombay High Court held thus:

The only purpose of the amendment was to abandon a part of her claim. Order 23, Rule 1(1), Civil P.C. provides that at any time after the institution of a suit, the plaintiff may abandon a part of his claim. The plaintiff was, therefore, within her right to abandon a part other claim. This did not require any amendment of the plaint or any permission of the Court. She could have done so voluntarily by a unilateral act of herself. She could have made a statement to the Court and the Court would normally record the statement and proceed to try the suit with regard to the remaining part of the claim.

As long as the Court has not given a finding that it had no jurisdiction and the plaint should be returned for presentation to the proper Court, it is seized of the matter because the Court has the right to decide the question of its own jurisdiction even if the decision ultimately be that it has no jurisdiction. As long as the Court is seized of the matter, it is open to a party at any time to abandon a part of the claim by a unilateral act by making a statement to that effect which the Court must record if thereafter the suit is within its jurisdiction, the Court should proceed to hear it. If this position were not correct, it would only mean that the Court must make an order returning the plaint for presentation to the proper Court and the plaintiff must withdraw the plaint, amend it by abandoning a part of his claim and represent it to the same Court. The only consequence of such procedure would be that the suit must be numbered as a new suit and under the conditions prevailing to-day be heard after another six years and if evidence has already been recorded, as it has been done in this case, the suit must be re-tried. Form the words of Order 23, Rule 1(1) I do not think that such consequence is inevitable.

7. I am in complete agreement with the findings of Bombay High Court in the aforesaid case that the plaintiff was within his right to abandon any part of his claim at any time and that would not require an amendment of the plaint or even permission of the Court. This can be done by the plaintiff voluntarily and unilaterally, simply by making statement before the Court to that effect. In the instant case, the learned ADJ was seized of the matter when the petitioner made statement of relinquishment of his claim of past interest. By any interpretation or imagination that could not have amounted to seeking amendment of the plaint. It was within the competence and jurisdiction of the Court of ADJ, where the suit was pending, to have simply allowed relinquishment of the claim of past interest. The learned ADJ seems to have committed apparent error while declining the request of the petitioner to relinquish his claim of past interest. Both the impugned orders suffer from illegality, and are thus liable to be set aside. Consequently, the petition stands allowed. The parties are advised to appear before the Court of ADJ on 17.08.2012.