

(1986) 04 DEL CK 0017

In the Delhi High Court

Case No : Interim Application No. 2234 of 1986 and Suit No. 1840 of 1985

Rank India Pvt. Ltd.

APPELLANT

Vs

Saraswati Industrial Syndicate Ltd. and Another

RESPONDENT

Date of Decision : 16-04-1986

Acts Referred:

Citation : AIR 1988 Delhi 399 : (1990) ILR Delhi 401 : (1986) 1 ILR Delhi 401

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : L.R. Gupta, Rajiv Gupta and V.K. Makhija, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) This is an application moved by the plaintiff under Order Vi Rule 17 of the CPC for effecting additional amendments in the plaint. The proposed amendments inter alias include a decree for the recovery of Rs. 1,04,500 by way of damages. This application has been resisted by the defendants.

(2) The perusal of the plaint shows that even though in the prayer clause only two relief one for permanent injunction and the other for mandatory injunction in respect the building in question were prayed for, it was specifically asserted in para No. 15 of the plaint that the defendants had caused serious damages to the said building for which reason they were liable to pay damages to the tune of Rs. 1,04,500 to the plaintiff. Not only that the plaintiff further in para No. 22 of the plaint stated valuation for the purposes of court fees and jurisdiction not only for the reliefs of mandatory and prohibitory injunctions but also in respect of the recovery of damages of Rs. 1,04,500.

(3) The contention raised against the amendment application by the learned counsel for the defendants is that the court lacked initial jurisdiction inasmuch as the same depended upon only the two reliefs i.e. permanent and mandatory injunctions which had been valued for purposes of jurisdiction at Rs. 250 each and further the mere statement of the valuation for purposes of jurisdiction

regarding the recovery of damages which claim does not find mention in the prayer clause of the plaint, had no relevance for determining the initial jurisdiction of the court. What he means to convey is that the jurisdiction of the court is determined taking into consideration the valuation for purposes of jurisdiction only in respect of the reliefs claimed and not in respect of a non-existing relief. On the other hand, it was urged by the learned counsel for the plaintiff that through out the plaint the intention of the plaintiff was very clear that he wanted to claim damages also from the defendants to the tune of Rs. 1,04,5001- and with that purpose in mind had also valued that relief at Rs. 1,04,500 for purposes of court fees and Jurisdiction had actually paid court fees to the tune of Rs. 3,370 on that amount besides another amount of Rs. 50 by way of court fees on the reliefs sought for mandatory and perpetual injunctions and that the omission in the prayer clause for the relief of damages was only an accidental omission calling for and necessitating the amendment proposed.

(4) If the court lacks the initial inherent/pecuniary jurisdiction to entertain the suit, it cannot assume jurisdiction to act further in the suit including even the allowing of an amendment application even though meant for the purpose of bringing the suit within the competence of the court which lacks initial jurisdiction. Authorities upon this point are Hans Raj Kalra and others v. Kishan Kalra and others, Air 1977 Delhi 267 ; Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others, and Ratan Chand Khanna Vs. Mahendra Kumar, . The learned counsel for the plaintiff has no dispute with this proposition of law but his contention is that this proposition of law is not applicable in the case in hand for the reasons already advanced by him that throughout the plaint he has asserted the claim of damages and even valued it for purpose of jurisdiction and has also paid court fees on the claimed amount but simply omitted accidentally to claim the same in the prayer clause. The contention of the learned counsel for the plaintiff is quite sound. The statement of the jurisdiction value in para 22 of the plaint is quite clear showing the jurisdiction value which further shows that this court had the initial jurisdiction and competence to entertain this suit and the omission in the prayer clause of the plaint regarding damages is only an accidental one. The reliance of the learned counsel for the defendants on the observations appearing in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , does not take note of the context in which the same appear. These observations are that the plaintiff valued the relief sought for purposes court fees and determined the value for jurisdiction in the suit. According to the facts of that case the plaintiff had valued the relief sought but it does not necessarily go to convey that the jurisdiction value stated in the plaint must necessarily comply with the reliefs sought. The reliefs sought may contain an omission in respect of a relief which also finds valued for purposes of jurisdiction in the body of the plaint. To take a contrary view would not be just.

(5) For the aforesaid reasons and further in view of the pointing out by the learned counsel for the defendants that if the aforesaid legal proposition is decided in favor of the plaintiff he shall have no objection to the allowing of the

proposed amendments, the proposed amendments are allowed on conditional payment of Rs. 200 as costs.