(2022) 10 DEL CK 0016

In the Delhi High Court

Case No : Civil Suit (OS) No. 58 Of 2021

Sandip Kumar Roy Choudary APPELLANT

Vs

Indian Plumbing Association RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 15, 151, Order 7 Rule 10, Order 7 Rule 11(b)
Court Fees Act, 1870 — Section 7, 7(iv), 7(iv)(c), 7(iv)(d)
Suit Valuation Act, 1887 — Section 8

Citation : (2022) 10 DEL CK 0016

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Abhishek Sharm, Harshita Agarwal, Sanjeev Dubey, Vineet Bhagat, Mohit Gulati

Judgement

Neena Bansal Krishna, J

I.A. 4632/2021

1. An application under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed on behalf of the defendant for return of the plaint on the ground of suit valuation.

2. It is submitted in the application that the plaintiff has filed the suit for declaration for declaring the Resolution no. 4 passed in the National Executive Committee (NEC) Special Meeting no. IPA/NEC Spl. Mtg./02 held on 11.12.2020 as illegal, arbitrary, null and void and also for injunction for restraining the defendant Company from giving it effect and operation.

3. The defendant Association has filed a Written Statement. The defendant has asserted in the application that in terms of the Section 15 of CPC, every suit instituted in the Court of the lowest grade competent to try it. The plaintiffs have grossly overvalued the present suit which has no nexus with the cause of action and is an abuse of process of law. The plaintiffs have dishonestly and

intentionally inflated the value of the suit with an object to bring within the jurisdiction of this Court. The Arbitrary and whimsical value of Rs. 2,00,01,000/- has been fixed without disclosing any basis. The application is therefore liable to be return under Order VII Rule 10 of CPC.

4. Learned counsel for the defendant has placed reliance on Abdul Hamid Shamsi v. Abdul Majid (1988) 2 SCC 575.

5. The plaintiff in its reply to the application has asserted that in a suit for permanent injunction and mandatory injunction, it is the discretion of the plaintiff to value its suit according to its own estimation and such valuation is normally accepted. It is only in the cases where it is manifestly and deliberately under-estimated that the Court may examine the correctness of the valuation as affixed by the plaintiff.

6. It is submitted that Section 7 of the Court Fees Act, 1970 (hereinafter referred to as "the Act") clearly states that in a suit for a declaratory decree and consequential relief and injunction, the plaintiff shall state the amount at which each relief is being valued. The plaintiff has rightly valued its suit and there is no allegation of undervaluation. It is claimed that the application is without merit and is liable to be dismissed.

7. Plaintiff has placed reliance on Sathappa Chettiar v. Ramanathan Chettiar AIR 1958 SC 245, and Meenakshi Sundaram Chettiar v. Venkatchalam Chettiar (1980) 1 SCC 616.

8. Submissions heard.

9. Section 15 of the CPC provides for the Courts in which the suit may be instituted. It reads as under:

"Section 15 - Courts in which suits to be instituted - Every suit shall be instituted in the Court of the lowest grade competent to try it."

10. Competence means having jurisdiction to try. The jurisdiction has reference to (a) subject matter (b) pecuniary valuation and (c) territorial jurisdiction. This Section is a rule of procedure and not of jurisdiction and it does not therefore, oust the jurisdiction of the Court of higher grade who have concurrent jurisdiction in the matter. When a suit triable by a Court of a lower grade, is instituted in a Court of higher grade, the later Court may return the plaint. It is only discretionary on the part of the later Court. Section 15 of CPC is enacted not merely to avoid overcrowding but also for the convenience of the parties and the witnesses who may be examined by them. Where the relief claimed is of injunction which it is incapable of valuation, the plaintiff may put a notional value and the same should not be questioned by the Court on the ground that the valuation so affixed is to avoid payment of higher amount (P. Rama Rao v. Srikakulam Municipality AIR 1993 AP 255).

11. Section 7(iv)(d) of the Act provides for computation of fee payable in certain

suits. Section 7 of the Act provides for computation of fees payable in certain suits. Section 7(iv)(d) reads as under:

“7(iv) In suits …

For an injunction—(d) to obtain an injunction - according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;" In all such suits the plaintiff shall state the amount at which he values the relief sought”

12. In Padmavati Mahajan v. Yogender Mahajan and Anr. (2008) 152 DLT 363, it was observed that a suit for injunction could be valued by the plaintiff in his/ her discretion subject to the condition that such discretion ought not to be whimsical.

13. In Parbha v. Suraj Bhan & Ors. AIR 1935 All. 157, it was observed that unless it is established in the Court on preliminary enquiry from the reasons assigned by the party for fixing a particular valuation that it has been grossly inflated then it is the duty of the Court to return the plaint for presentation which is its jurisdiction.

14. In J. Cook v. GH Cook, AIR 1938 Nag. 149, it was observed that objection as to the jurisdiction based on overvaluation or under valuation must be raised at the earliest possible opportunity. It was observed that where the objection raised is of the nature which would show that the valuation put by the plaintiff is not grossly wrong but prima facie bonafide does not necessary for the Court to enter into an elaborate enquiry regarding the valuation. However, if overvaluation or undervaluation appears from the face of the plaint patently to be incorrect, it is the duty of the court to return the plaint to be presented in the Court having the jurisdiction. It was further observed that the Court should not encourage frivolous objections on the part of the defendants while valuation if they are raised only when the view to protect litigation.

15. In Khem Raj v. Durgi (a) Durga Myaya AIR 1942 Rang 10 an objection was taken in regard to the valuation as having been fixed arbitrarily only to bring the suit within the pecuniary jurisdiction of the District Court. It was observed that only if the valuation made was found to be not bonafide and for an improper purpose that the same should be interfered with by the Court and a fresh valuation for the purpose of jurisdiction may be fixed.

16. The Constitution Bench of Hon’ble Supreme Court in Sathappa Chettiar (Supra) observed that while Section 7(iv)(c) of the Act, 1870 gives an option to the plaintiff to determine the value of the relief claimed, but Section 8 of the Suit Valuation Act, 1887 provides that the value so determined by the plaintiff shall be the value for the purpose of jurisdiction and ad valorem Court Fee shall be payable on the same amount. It was observed that the computation of the Court fees in suits falling under Section 7(iv) depends upon the valuation that the plaintiff makes in respect of his claims. Once, the plaintiff exercises his option and values his claim for the purpose of the Court fee that determines the value for jurisdiction. The value for Court fee and the jurisdiction must no doubt be the

same in such cases, but it is the value for the Court fee as stated by the plaintiff that is of primary importance. It is this value which determines the jurisdiction and is the value on which the Court fee has to be paid.

17. In Smt. Sheila Devi and Ors v. Sh. Kishan Lal Kalra and Ors. 1974 SCC OnLine Del 136 referred to Sathappa Chettiar (Supra) and held that Section 7(iv) of the Act, 1870 gives a right to the plaintiff in any of the suit mentioned in its various clauses to place any valuation that he likes on the relief he seeks, and the Court has no power to interfere with the plaintiff's valuation. In Shakuntala Rani v. Rajesh Bhatt (Deceased) through Lrs. 80 (1999) DLT 98 (DB), the Division Bench of this Court made a reference to the aforementioned judgements to conclude that it is not open for the Court to form its own opinion and substitute it with the plaintiff's opinion that the suit ought to be valued at a certain value different from that which has been put by the plaintiff, unless it is shown to be arbitrary or unreasonable. Once it is not demonstrated that the valuation has been done arbitrarily or there is a deliberate under-estimation of the reliefs, the Court must not interfere in such fixation of the valuation.

18. In Mahesh Gupta v. Ranjit Singh & Ors. (2009) 159 DLT 624 (DB), the valuation for the purpose of Court fee and jurisdiction was fixed at Rs. 200/- for the relief of permanent injunction, while the valuation of the suit was done at Rs. 20,10,000/- and accordingly Court fee was paid. It was noticed that the valuation done for the purpose of the Court Fee on various reliefs when clubbed together came to Rs. 1,600/- while for the purpose of jurisdiction the valuation was fixed at Rs. 20,10,000/- without specifying how the value was arrived at.

19. Section 15 of the CPC provides that every suit is mandatorily to be instituted by the plaintiff in the Court of lowest grade competent to try it. This Section is a rule of procedure and has been incorporated in CPC so that the different courts exercise their jurisdiction as per law and no single court is overcrowded. It was further observed that when the suit was valued at Rs. 1,600/- for the purpose of Court Fee its valuation at Rs. 20,10,000/- for the purpose of valuation was clearly with an intent to forum shopping and in total disregard to the Suit Valuation Act for it was intended to be tried by the Court where the plaintiff wanted i.e. before the High Court and not before the Civil Judge or the Additional District Judge as it should be. If this is permitted, then Section 15 of CPC would become redundant and the legislative mandate that the suit should be instituted in the lowest grade Court competent to try shall stand nullified.

20. In Tara Devi v. Thakur Radha Krishna Maharaj AIR 1987 SC 2085, it was observed that it is only in cases where it appears to the Court on the consideration of the facts and circumstances of the case, that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued that the Court may examine the valuation and reverse the same. In Abdul Hamid Shamsi v. Abdul Majid (1988) 2 SCC 575, the observations in the case of Tara Devi (Supra) were re-affirmed.

21. In Commercial Aviation and Travel Co. v. Vimla Pannalal (1988) 3 SCC 423, it was observed that so far as the suits coming under Section 7(iv) of the Act are concerned, the legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff, the reason as obvious. The suits mentioned under Section 7 (iv) are of the nature that it is difficult to lay down any standard of valuation. In fact, the legislature has not laid down any standard of valuation in the Act. It was explained that where a case falls under the category of 7(iv) and there are certain positive objective standards available for the determination of the valuation of the relief which are ignored by the plaintiff to put an arbitrary valuation, the Court in its opinion is entitled to interfere under Order VII Rule 11(b) of CPC for the Court will be in a position to determine the correct valuation with reference to objective standards or material available to it. This principle was explained by reference to Urmilabala Biswas v. Binapani Biswas and Ors. AIR 1938 Cal 161 wherein suit was instituted for declaration of title to Provident Fund money amounting to a definite sum with a prayer for injunction restraining he defendant from withdrawing the said money. It was held that there was no real distinction between the right to recover money and the right to that money itself and the relief should be valued at the Provident Fund amount to which a title is claimed by the plaintiff.

22. It may thus be concluded that where an objective standard exists which enables the plaintiff and the Court to value the relief correctly, in such cases the Court would be competent to direct the plaintiff to value the relief accordingly.

23. In Commercial Aviation (supra) it was explained that even where there is a suit for mandatory injunction concerning a property and seeks a mandate over the acts/ omissions of the defendant, the suit is not necessarily required to be valued as per the market value of the property. It is the nature of the relief claimed which has to be considered for affixing the valuation and the Court Fee and the proposition that wherever a relief is claimed in respect of a property, its market value shall be the basis for calculation of Court Fee and suit valuation would render the entire scheme of the Act concerning suit valuation with reference to the nature of relief go haywire.

24. In Bharat Bhushan Gupta v. Pratap Narain Verma (2022) 8 SCC 333, the plaintiff had sought mandatory and prohibitory injunction against the defendant claiming him to be in permissive user. The above mentioned judgment were referred to conclude that it is the nature of the relief viz-a-viz the property which is the criteria for determination of payment of suit valuation and court fee and not the value of the property per se.

25. To sum up the principles for consideration of proper suit valuation and payment of Court Fee as can be gathered from the above discussed case law, is that it is the nature of relief which is determinative of the court fee payable. If there exists objective standard to calculate the valuation of relief, then court fee must be paid on such valuation as may be made for the purpose of suit valuation. However, when the relief cannot be quantified as in the case of

injunction, the law gives a discretion to the party to value it as per its own estimation. Having regard to the Section 15 of CPC, though the suit should be filed in the Court of lowest grade, but once the discretion as granted by law, is exercised by a party, it should not be lightly disturbed or substituted by the Court unless it is found to be fixed arbitrarily and with the malafide intention such as “Forum Shopping” and such like other reasons.

26. Applying these tests, it cannot be said nor has defendant been able to demonstrate, any malafide in fixation of the value of suit on which ad volarem Court Fee has been paid in terms of the Section 8 of the Suit Valuation Act.

27. The present application is without merit and is hereby dismissed.

CS(OS) 58/2021 and I.A. 1247/2021

1. List before the learned Joint Registrar on 16th November, 2022 for completion of pleadings.