
(2014) 08 AHC CK 0296
In the Allahabad High Court
Case No : C.R. No. 74 of 2014

Saurabh Soni

APPELLANT

Vs

S and P Infrastructure Developers (P) Ltd.

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Court Fees Act, 1870 — Section 7
Suits Valuation Act, 1887 — Section 4

Citation : (2015) 3 ALJ 750 : (2015) 108 ALR 607 : (2014) 125 RD 759

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : Adil Khan, Aslam Khan and Moluiddin, Advocate for the Appellant;
Hari Om Singh, Advocate for the Respondent

Judgement

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Devendra Kumar Upadhyaya, J.—Heard Shri Mohd. Arif Khan, learned Senior Advocate, assisted by Shri Mohd. Adil Khan and Shri Hari Om Singh, learned Counsel for the sole opposite party. Through the instant revision petition, the order dated 11.7.2011, passed by the Civil Judge, (Senior Division), Lakhimpur Kheri, has been assailed on the ground that issue No. 3 which related to valuation of the suit and the Court fee has wrongly been decided keeping in view the prayer clause made in the plaint.

2. I have heard the arguments advanced by learned Counsels appearing for respective parties and perused the record of the Court below.

3. A suit before the Court below for permanent injunction was filed by the revision applicant (plaintiff) against the opposite party-defendant with the prayer that a decree for permanent injunction be granted in favour of the plaintiff against the defendant to the effect that the defendant will not transfer the Hot Mix Plant mentioned in para 3 of the plaint and the other machinery anywhere till the work of all four projects mentioned in para 1 of the plaint are complete and

the accounts of the aforesaid four projects are settled.

4. A written statement was filed by the sole opposite party-defendant denying the plaint allegations. On the basis of pleadings of the respective parties, issues have been framed including issue No. 3, which is as follows:--

The learned Trial Court while discussing the case put forth by the opposite party-defendant has stated in the impugned order that in fact the revision-applicant intends to get the specific performance of the terms of the agreement dated 31.3.2009 done and hence, he should have furnished the Court fee accordingly. It has also been stated by the learned Court below that the opposite party-defendant has also prayed for accounting and hence, according to the provisions of the Court Fees Act, the Court fee should be paid whereas the revision-applicant has paid Court fees of Rs. 500/- only. The learned Court below while quoting the prayer clause made in the plaint has recorded a finding that the prayer made by the revision-applicant is not confined to seeking permanent injunction; rather prayer is that the opposite party-defendant be restrained till the revision-applicant is able to complete the work and accounting is also complete. On that basis, an inference has been drawn by the learned Court below that in fact, the revision applicant has prayed for specific performance of contract and he has also prayed for a decree for accounting, therefore, in case the prayers made by the plaintiff is granted, then necessary directions will be required to be issued for specific performance of contract and also for accounting.

5. So far as the valuation of the suit is concerned, the opposite party-defendant did not raise any objection and the suit was valued at Rs. 1,00,00,000/- (Rs. One Crore) on which, the payment of Court fees of Rs. 500/- was made for the reason as alleged by the learned Counsel for the revision-applicant, that the prayer in the suit is for permanent injunction only. The prayer clause as extracted from the plaint runs as under:--

6. A perusal of the prayer clause as extracted hereinabove, reveals that the suit by the revision applicant does not contain any prayer seeking any accounting or for passing a decree for specific performance of contract. The prayer, in fact, is that the defendant be restrained from transferring the Hot Mix Plant and other machinery, till the plaintiff is able to complete the work and projects mentioned in para-1 of the plaint. The prayer made is only for simple permanent injunction against the defendant. The finding recorded by the Court below that the revision-applicant has made a prayer for grant of decree for specific performance and for accounting is thus, based on misreading of the prayer clause of the plaint.

7. As observed above, the prayer in the suit made by the revision-applicant is for restraining the defendant from transferring the Hot Mix Plant and other machinery. Only because the said prayer is being made to direct the defendant not to transfer the Hot Mix Plant and other machinery till the project work by the revision-applicant is completed will not change the nature of the prayer and the same will not amount to reading something in the prayer clause which does not

exist at all.

8. The prayer clause, in my considered opinion, clearly does not contain any prayer for passing a decree for specific performance of the contract or for accounting.

9. In view of the aforesaid reasons given, the findings recorded by the Court below in the impugned order dated 11.7.2011 are not tenable.

10. Learned Counsel for the opposite party-defendant has relied upon two judgments of this Court in the cases of Inayat Husain Vs. Bashir Ahmad and Another and Jageshra Vs. Durga Prasad Singh and Others, . He has submitted on the basis of the aforesaid judgments of this Court that the Court fees is to be paid in terms of the provisions of section 7 of the Court Fees Act, 1870 read with provision of Suit Valuation Act, 1887. He has also stated that the valuation of relief in the suit relating to land has to be made in terms of provision of section 4 of the Suit Valuation Act and accordingly in terms of section 7 of the Court Fees Act, the Court fee is to be paid.

11. So far as the valuation of the suit is concerned, which has been valued as Rs. 1,00,00,000/- (Rs. one crore) and no objection by the defendant before the Court below was taken about the said valuation and hence, issue of valuation of the suit does not require any determination by this Court in revision petition.

12. As far as the payment of the Court fees is concerned, the provisions of section 7 of the Court Fees Act clearly stipulate that in a suit for injunction the amount of the Court fees leviable shall in no case exceed Rs. 500/-. In the instant case, the maximum Court fee of Rs. 500/- leviable on a suit for injunction has been paid. I do not see any infirmity in the Court fees paid by the revision-applicant while instituting a suit.

13. For the discussions made and reasons given above, in my considered opinion, the impugned order dated 11.7.2011 passed by the Civil Judge (Senior Division), Lakhimpur kheri deserves to be set aside.

14. Accordingly, the order dated 11.7.2011 passed by the Civil Judge (Senior Division), Lakhimpur Kheri is hereby set aside and the revision petition is allowed.

15. Let the record of the Court below be returned back by the office forthwith. At this juncture, learned Counsel appearing for the parties submit that the Court below be directed to expedite the proceedings of the suit expeditiously. Accordingly, the Court below is directed to expedite the proceedings of the suit and conclude the same as early as possible.