Haresh Pharma-chem Vs. M/S. Max Gb Ltd. and Another

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Court : Delhi

Decided On : Apr-28-1998

Reported in : 1998VAD(Delhi)931; 1998(46)DRJ135

Judge : J.B. Goel, J.

Acts : Court Fees Act, 1870 - Sections 7 - Schedule - Article 17; Suit valuation Act, 1887 - Sections 9; Indian Contract Act, 1872 - Sections 213

Appeal No. : S.No.793/98

Appellant : Haresh Pharma-chem

Respondent : M/S. Max Gb Ltd. and Another

Advocate for Pet/Ap. : Mr. R.K. Gupta, Adv

Judgement :
ORDER

J.B. Goel, J.

1.The plaintiff has filed the present suit for (i) rendition of accounts; (ii) declaration; and (iii) injunction. The plaintiff had entered into an agreement dated 27.5.1994, called 'Agreement for Consignment' for sale of medicinal goods of the defendant on the terms and conditions agreed therein initially for one year which was twice renewed and last agreement dated 7.4.1997 was for one year. It contemplated supply of medicinal goods by the defendant to be sold on commission basis by the plaintiff. Plaintiff was liable to make payments of those goods to the defendant and on the sales effected the plaintiff was to get 2% commission on the net invoice price. In pursuance of the agreement the plaintiff had furnished a Bank Guarantee of Rs. 40 lakhs entitling the defendant to claim from the said Bank Guarantee the amounts that may be due from the plaintiff towards the supply. Though this agreement was for one year however the supplies had been made up to 14.11.1997 only. The defendant demanded payment of their dues amounting to Rs. 45.51 lakhs vide letter dated 15.4.1998. This demand is disputed as according to the plaintiff only a sum of Rs. 31.74 lakhs is due and plaintiff had informed the defendant that the amount will be paid in May/June, 1998 when funds will be available with them. The defendant has invoked the Bank Guarantee in full on 22.4.1998. The plaintiff has alleged that this invocation of the Bank Guarantee of Rs. 40 lakhs is illegal, unwarranted and un-enforceable.

2. In this suit the plaintiff has claimed the following reliefs :-

(a) pass a preliminary decree for the rendition of accounts against the defendant in respect of the goods supplied by the defendant and after adjusting the commission, rate difference etc. a final decree may kindly be passed;

(b) pass a decree of declaration that the demand of the defendant to the extent of Rs. 45.51 lacs vide letter dated 15.4.1998 is illegal, unwarranted, void and can not be enforced under the law;

(c) pass a decree of permanent injunction in favor of the plaintiff and against the defendant restraining it from invoking or encashing the bank guarantee No. 43/274 dated 12.8.97 executed by Sr. Manager, Bank of Baroda, H-11, Connaught Circus, New Delhi- 110 001.

3. For the purposes of these reliefs the suit for purposes of court fees and jurisdiction has been valued as under :-

Court Fee paida) For the relief of injunction, valued at Rs. 5 lakhs Rs. 7224.00b) For relief of rendition of accounts valued at Rs. 200/- Rs. 20.00c) For declaration valued at Rs. 200/- Rs. 20.00The suit did not appear to be valued properly and I put the learned counsel for the plaintiff to notice to satisfy on the following points :-

(1)Whether the suit for declaration as framed is maintainable

(2)Whether the suit as framed is properly valued for the purposes of court fee and jurisdiction?

(3)Whether the plaintiff is entitled to file a suit for rendition of accounts?

Learned counsel for the plaintiff has simply stated that the suit as framed is properly valued and properly instituted but without supporting with the relevant provision of law or the case law and he insisted that the matter may be taken up.

To determine whether the suit as framed is maintainable and proper court fee has been paid only the averments made in the plaint have to be looked into. The plaintiff seeks declaration and also injunction that they are not liable to pay the amount of Rs. 45.51 lakhs demanded by the defendant and for the relief of declaration the suit is valued at Rs. 200/- and only a court of Rs. 20/- has been paid and for the relief of injunction it is valued at Rs. 5 lakhs without disclosing under which provision and on what basis the suit has been so valued.

The relevant provisions of the Court Fees Act Act are :-

(1) Clause (iii) of Article 17 of Schedule II which reads as under :-

(iii)To obtain a declaratory Court fee decree where no consequent-payable is tial relief is prayed. Rs.19.50ps.(2) Section 7(iv)(c) and (d) which provides as under :-

'7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

(i) x x x x x x x

(ii) x x x x x x x

(iii) x x x x x x x

(iv) In Suits -

(a) x x x x x x x x

(b) x x x x x x x x

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

(d) for an injunction - to obtain an injunction,

(e) x x x x x x x x

(f) x x x x x x x x

In all such suits the plaintiff shall state the amount at which he values the relief sought;

Provided that the minimum Court fee in each case shall be (thirteen) rupees.

Provided further that ....

Two reliefs, one of declaration and the second for permanent injunction from enforcing/invoking the Bank Guarantee of Rs. 40/- lakhs have been separately claimed. The relief for declaration has obviously been valued under Clause (iii) of Article 17 of Schedule II of the Court Fees Act whereas the other relief of injunction under Section 7(iv)(d). Two questions arise whether the suit is pure and simple for declaration or declaration with consequential relief of injunction and in both cases what should be the valuation for purposes of jurisdiction and court fees.

4. Section 9 of the Suits Valuation Act, 1887 provides that in certain cases, including those falling under Section 7(iv)(c) and (d) of the Court Fees Act, where the subject matter of the suit is such that in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the State Government, direct that suits of that class shall, for the purposes of Court Fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject matter were of such value as the

High Court thinks fit to specify in this behalf.

5. So far as suit for declaratory decree or for injunction is concerned, no such rules have been framed either by the Punjab High Court or by the Delhi High Court.

6. The Court in deciding the question of court fees have to look into the allegations and the prayer in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not stand in its way looking at the substance of the relief asked for. (See: Shamsher Singh Vs . Rajinder Prashad : [1974]1SCR322).

For determining the question of proper court fee payable, Order 7 Rule 11 of the Code of Civil Procedure (for short 'the Code') has bearing. The provisions of Order 7 Rule 11 (b) which provides inter alias that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. This provision came for consideration before the Supreme Court, inter alia, in M/s. Commercial Aviation and Travel Company & Others Vs . Ms. Vimla Pannalal, : AIR 1988 SC1636 , where it has been observed as under :-

'It is manifestly clear from the provisions of Order VII Rule 11(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected.'

8. It is further observed that if the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, Order VII, Rule 11(b) will not be applicable. This will be the case where positive objective standards may not be available for the purposes of determination of the valuation of the relief. But if there be materials or positive objective standards for the valuation of the relief and yet the plaintiff ignores the same and puts an arbitrary valuation, the court is entitled to interfere under Order

7 Rule 11(b) of the Code, for the Court will be in a position to determine the correct valuation with reference to the objective standards and materials available to it. The Hon'ble Supreme Court has referred to certain instances from decided cases where such valuation could be determined. In Urmilabala bids was Vs . Binaparu bids was : AIR1938 Cal161 , a suit instituted for declaration of title to a definite sum of Provident Fund money with a prayer for injunction restraining the 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 that the relief should have been valued at the Provident Fund amount to which title was claimed by the plaintiff.

9. In another case, Kishori Lal Marwani Vs . Kumar Chandra Narain Deo : AIR1939 Pat572 , the question arose as to the valuation of a suit for injunction restraining a decree holder from executing a decree on the ground that the decree was collusive and obtained by fraud and thereforee void and incapable of execution. It was held by the Patna High Court that the plaintiff must value the suit according to the amount of decree and must pay ad valorem court fee on such amount. And in Nalini Nath Mallick Thakur Vs . Radhey Shyam Marwari : AIR1940 Cal482 , in a suit to set aside a decree, it is observed that such valuation, although difficult, is not impossible. Prima facie, the value of the relief claimed by the plaintiff shall be the value of the decree and the onus would clearly lie on him to show that the relief should be valued at some smaller amount. In all these cases there was objective standards available which would enable the plaintiff and the court to value the relief correctly, the amount of Provident Fund in first and the valuation of the property involved in the decrees in other two cases.

10. In Tara Devi Vs . Sri Thakur Radha Krishna Maharaj : AIR 1987 SC2085 , also it has been held by the Hon'ble Supreme Court that in a suit for declaration with consequential relief, falling under Section 7(iv)(c) of the Court Fees Act, plaintiff is free to make his own estimation of the relief sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. But, in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstrably undervalued, the Court can examine the valuation

and can revise the same.

Suit of accounts fall in different categories.

11. This shows that the right of plaintiff to value his suit is not absolute. It is subject to the right of the court to determine the valuation where the suit has been unreasonably under-valued. The Court in deciding the question of Court fee has to look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in its way looking at the substance of the relief asked for. (See: Sham Sher Singh Vs . Rajinder Prashad : [1974]1SCR322).

12. What is the nature of relief sought in the plaint is a matter of construction of the plaint in each case. The mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed is a declaration pure and simple and involves no other relief, the suit would fall under Article 17 (iii) and the Court fee payable would be as prescribed therein i.e. Rs. 19.50 in Delhi.

13. The facts as disclosed in the plaint are that towards the supplies made by them, the defendant has claimed/demanded a sum of Rs. 45.51 lakhs as balance amount due and payable and has invoked the Bank Guarantee of Rs. 40 lakhs furnished by the plaintiff to meet such liability. According to the plaintiff no liability exists at present and this demand is illegal and un-enforceable and the invocation of the Bank Guarantee is also illegal and unwarranted.

14. In other words, the plaintiff has claimed a declaration that they are not liable to meet this demand and seeks restraint against invocation of the Bank Guarantee. This is not a simple and pure case of declaration but declaration with consequential relief of injunction. Mere declaration will not satisfy the purpose of filing the suit. The purpose is to seek injunc-tion against invocation of the Bank Guarantee on getting declaration. The relief of declaration thus does not fall under Article 17 (iii). The suit to that effect is not properly valued both for the purposes of court fees and jurisdiction. The purpose is to get a declaration that Rs. 45.51 lakhs is not due and payable and this demand is not enforceable by invocation of Bank

Guarantee. It would fall under Section 7(iv)(c) and for that purpose there is objective material available to determine the valuation of this declaration. It is the amount of Rs. 45.51 lakhs demanded by the defendant and intended to be avoided. The suit is liable to be valued on this valuation for purpose of the Court fees and by virtue of Section 8 of Suits Valuation Act this is also valuation for purposes of jurisdiction.

15. In Nathuram Kashiram Vs . State Government of Madhya Pradesh : AIR 1962 MP367 , it has been held as under :-

'A declaration which affects only the pecuniary relationship between the plaintiff and a defendant does not come within the purview of Section 42 of the Specific Relief Act and a suit for such a declaration is not maintainable. The plaintiff has thereforee got to specify in the suit that he is challenging his liability for a certain amount and if he were to do so, it would mean that he is avoiding the liability to that extent, necessarily requiring an adjudication whether that amount is or is not due. Thus, it is not a case where the claim is incapable of any valuation or liable to be arbitrarily valued. The claim in such a suit being capable of definite valuation, it cannot be argued that to the plaintiff it has got a different value which he can put down in the plaint 'either for purposes of court fee or for purposes of jurisdiction'. When he seeks to avoid that liability for a definite amount, value to him must be the same which he seeks to avoid. Hence, when a plaintiff files a suit against the State Government challenging the right of the State Government to recover the specified amount from him as a surety for the performance of a contract, the claim in suit is governed by Section 7(iv)(c) of the Court Fees Act, and an ad valorem court fee on the specified sum is liable to be paid.'

16. This view has been approved and followed by a Division Bench of that Court in Badrilal Bholaram Vs . State of Madhya Pradesh & Anr. : AIR 1964 MP9 . There were two suits, in one the amount involved was Rs. 16318.81 and in the other Rs. 61,173.41 P. Plaintiff had disputed their liability to pay these amounts and sought injunctions and paid court fee on smaller and arbitrary figures. It was held that the value of the relief of injunctions claimed in each case is the amount, the liability for which he seeks to avoid.

17. From this legal position, it is thus clear that if the relief sought for by the plaintiff is capable of being valued in terms of money, then that would be the valuation for the purposes of jurisdiction and court fee and the court fee is payable ad valorem.

18. In the present case, the plaintiff claims a declaration that he is not liable to Rs.45.51 lakhs and seeks injunction from enforcing it. This is a case of declaratory decree with consequential relief. This declaration is capable of being valued on the liability disputed. Thus plaintiff is liable to make the valuation of the suit both for purposes of jurisdiction and court fee on this valuation of Rs.45.51 lakhs and pay court fee ad valorem. The suit thus has not been valued properly but arbitrarily and is undervalued.

19. The second relief is for rendition of accounts. Question is whether the plaintiff's case for rendition of account against the defendant is maintainable.

20. A suit for money which will be found due on taking accounts is instituted when the defendant is under a legal obligation to render accounts which the plaintiff is not in a position to ascertain. Such a suit can be resorted to only in some well recognised circumstances.

21. Plaintiff is an agent appointed by the defendant for sale of latter's goods. According to the procedure agreed, the defendant was to supply the goods against invoices which the defendant would sell, realise the price and pay to the defendant. The commission payable on the sales effected by the plaintiff is agreed @ 2% on the net sale price; plaintiff becomes entitled to this commission on sale, Realizing the price and making the payment to the defendant. And to claim of the plaintiff has to furnish certain details and documents which are available with the plaintiff themselves.

22. All the materials on which the plaintiff may be entitled to commission is in possession and within their knowledge. Plaintiff knows what exactly is payable to him by the defendant. In that event plaintiff is not entitled for rendition of accounts. He should make claim for recovery of specific amount due on the sales effected by him.

23. In the facts and circumstances of the case, it is the plaintiff and not the defendant who is the accounting party. Under Section 213 of the Contract Act, it is the agent who is bound to render proper accounts to his principal. This suit for rendition of accounts thus is misconceived and is not maintainable.

24. The third relief sought is for permanent injunction. By this plaintiff seeks injunction restraining defendant from invocation of the bank guarantee. A suit for injunction will be treated as a suit under Section 7(iv)(d) of the Court Fees Act if a plaintiff can get an injunction prayed for without the necessity of praying for declaration. But the declaration has to be prayed where an obstacle has to be removed before the plaintiff can claim the relief of injunction simplicitor. (Mahant Purshottam Dass and Others. Vs . Har Narain and Others : [1978]113ITR389(Delhi) . Suit has been valued for the purposes of court fee and jurisdiction at Rs.5.00 lakhs. There are two aspects - (1) This involves declaration that the defendant is not entitled to claim the amount of the bank guarantee amounting to Rs.40.00 lakhs; and (2) the injunction from invocation of bank guarantee. In other words, the plaintiff is disputing their liability to pay the amount of the Bank Guarantee. This relief like the decree of declaration discussed earlier is capable of valuation in terms of money being the amount of the Bank Guarantee sought to be invoked. The suit should have been valued on the value of this Bank Guarantee, i.e. Rs. 40 lakhs and not arbitrarily on Rs. 5.00 lakhs. However, this relief of injunction will follow consequent to the relief of declaration. As held above, if suit for declaration is valued at a value of Rs. 45.51 lakhs the injunction will follow as a consequential relief on that basis. Thus the suit for the relief of injunction also has not been properly valued both for purposes of court fee and jurisdiction.

25. The suit for the reliefs of declaration and injunction thus has not been properly valued and proper court fee has not been paid. The suit for account as framed is also not maintainable. Plaintiff is allowed ten days' time to take appropriate steps for framing and valuing the suit properly and to make up the deficiency in the court fee.

Put up for further directions on 12th May 1998.