

Dev Pharmcy Vs. Nova International

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Court : Delhi

Decided On : Sep-17-2003

Reported in : 2003(27)PTC395(Del)

Judge : Mahmood Ali Khan, J.

Acts : [Suits Valuation Act, 1887](#) - Sections 9; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11; Suits Valuation Rules - Rule 4

Appeal No. : S. No. 1458/2003

Appellant : Dev Pharmcy

Respondent : Nova International

Advocate for Def. : Amit Sindhvani, Adv.

Advocate for Pet/Ap. : S. Rajan, Adv

Disposition : Application dismissed

Judgement :

Mahmood Ali Khan, J.

1. Plaintiff has filed this application for amendment of paragraph 10 of the plaint. The proposed amendment is specified in paragraph 4 of the application, which is as under:--

'Further the plaintiff also issued upon the defendant cease and desist notice dated 19.7.2003 to discontinue forthwith their impugned activities under the trademark Paurush Jiwan Label of the plaintiff. This notice was duly replied to on 23.7.2003 and 26.7.2003 respectively wherein instead of complying with the terms of the notice, the defendant blatantly denied the knowledge of the plaintiffs products under the impugned trademark. Besides the replies are illegal, vague and baseless.'

2. The plaintiff has filed this suit for passing off action against the defendant. The defendant has not filed the written statement as yet. Instead has filed an application under Order 7 Rule 11 CPC which is yet to be heard. The proposed amendment does not change the nature of the suit. It does not cause any prejudice to the defendant. This is not mala fide, there is no gross delay or laches on the part of the plaintiff. The amendment seems necessary for deciding the real question in controversy between the parties. Counsel for the plaintiff has requested for allowing the application and has cited Akshaya Restaurant v. P. Anjanappa and Anr., : AIR 1995 SC1498 ; Jayanti Roy v. Dass Estates Pvt. Ltd., 2002(4) SCALE 275 ; Sampath Kumar v. Ayyakannu and Anr., : [2002]SUPP2SCR397 and Prem Bakshi v. Dharam Dev, : [2002]1SCR103 in support of his argument. Following the principles of law laid down in the cited judgments the application is allowed. Amended plaint has already been filed. Copy thereof has already been supplied to the counsel for the defendant. Defendant shall file written statement to the amended plaint within four weeks. Replication if necessary be filed within four weeks thereafter. Renotify before the Joint Registrar for completing the pleadings on 19.11,2003. The case now need not be listed the Joint Registrar on 24.9.2003.

IA No. 8398/03

3. Defendant has filed this application for return of the plaint on the ground that the plaintiff has valued the plaint for the relief of decree of injunction for passing off and infringement of copyright and delivery of the material at Rs. 200 each and court fee of Rs. 20 each has been affixed. However, for the purpose of rendition of accounts the plaintiff vide paragraph 15(d) has valued the suit for rendition of

accounts of profits both for the purposes of court fees and jurisdiction at Rs. 200 and has affixed court fees of Rs. 20, therefore, the total value of the suit for the purpose of jurisdiction is only Rs. 800. It is further alleged that the plaintiff in paragraph 15(e) of the plaint has again valued the suit for the purpose of jurisdiction this relief at Rs. 20,01,000 as the plaintiff estimates that such an amount shall be found due to the plaintiff from the defendant on rendition of accounts. It is accordingly submitted that once the plaintiff has valued the relief of rendition of accounts of profits both for the purposes of court fees and jurisdiction at Rs. 200 as per paragraph 15(d) of the plaint then the pleading contained in paragraph 15(e) of the plaint are completely redundant and are liable to be ignored. It is therefore, submitted that this Court has no pecuniary jurisdiction to entertain and try the suit and the plaint is liable to be returned to the plaintiff to be presented to a court of competent jurisdiction. Plaintiff has not filed reply to this application. However, he wants to argue on the existing material.

4. Counsel for the defendant applicant drew my attention to paragraph 15 of the plaint where the various reliefs have been valued for the purpose of court fees and jurisdiction. All the four reliefs have been valued for the purpose of court fees and jurisdiction at Rs. 200 each and a court fee of Rs. 20 in respect of each of these reliefs has been affixed. But in sub-paragraph (e) of paragraph 15 of the relief for rendition of account is again valued at Rs. 20,01,000 for the purpose of jurisdiction. He has relied upon a judgment of this court in M/s. Globe Super Parts, Faridabad v. Domestic Appliances and Anr., 1981 PTC 78 in support of his agreement that the aggregate value of the suit for all four reliefs being Rs. 800 this Court has no pecuniary jurisdiction to hear the suit.

5. Conversely counsel for the defendant has stated that in sub-paragraph (d) of paragraph 15 the plaintiff has inadvertently mentioned that the value of the suit to the purpose of court fees and jurisdiction is Rs. 200 since in the next para 15(e) it has been clearly alleged that the valuation of the suit for the purpose of jurisdiction in respect of relief for rendition of accounts is Rs. 20,01,000. It is submitted that the plaintiff has a right to value the suit for the relief of rendition of account for the purpose of court fee and jurisdiction differently under Rule 4 of the Rules framed by the High Court under Section 9 of the Suits Valuation Act. He relied upon the

judgment of this Court in Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. 1997 (4) (Del) 24 : 1997 (17) PTC 447 (Del) in support of his argument and also a judgment of this Court in STP Limited v. Shalimar Tar Products P. Ltd. 2002 (24) PTC 172 (Del).

6. I have given careful consideration to the submissions made at the bar and have gone through the case law cited in support of the respective arguments. This court in M/s. Globe Super Parts, Faridabad (Supra) has held that the question of jurisdiction is dependent on the terms of the suits valuation Act. Section 8 of the said Act requires that except in certain types of cases, the value of the suit for the purposes of court fees and the value for the purpose of jurisdiction shall be the same. It was further observed that Section 9 empowered the High Court to make rules to govern the determination the valuation of certain suits and the High Court has made rules regarding various types of suits. It was observed that valuation of court fees and jurisdiction has been given in regard to the four different reliefs claimed in the suit and the value for jurisdiction and the value for court fees is the same with regard to all of them. But later the plaintiff stated that the value for the purpose of court fees is Rs. 800 and value for jurisdiction is Rs. 200,600. It was held that if the value for jurisdiction is Rs. 200,600 then the court fees is also payable on Rs. 200,600 but the value for jurisdiction and the value for the court fees can only be altered in certain cases covered by the rules otherwise it has to be same. It was further observed that there were two possibilities. Either the present suit has to be tried on the basis of the jurisdictional value i.e. Rs. 800 or it has to be tried on the basis that the value is Rs. 200,600 in which case full court fees on that sum has to be paid. It was further held that the court has no jurisdiction since the plaintiff has shown the jurisdictional value of Rs. 800. Accordingly, the plaint was directed to be returned to the plaintiff for presentation to the court of competent jurisdiction. In Fenner India Ltd. (Supra) the Division Bench of this Court was considering the valuation of the suit in a copyright case. It was held that in a case for rendition of accounts the suit is to be governed by Rule 4 of the Rules framed by the High Court under Section 9 of the Suits Valuation Act and the plaintiff can value the suit for the purposes of jurisdiction as he wishes it to be valued and fixed court fees was payable. In STP Limited (Supra) this Court was dealing with an application for amendment of the valuation clause. It was more or

less similar to the valuation clause of this suit. The court while dealing with this application observed that the word 'and jurisdiction' similar to the words mentioned in Clause (e) of paragraph 15 was superfluous and reading of the prayer clause as a whole would show that it was by mistake and accordingly the application for amendment was allowed.

7. It is true that the plaintiff has given valuation for the relief of rendition of account for the purpose of court fees and jurisdiction at Rs. 200 but in the next paragraph the plaintiff has specifically stated that the valuation of suit for the relief of rendition of accounts is being fixed at Rs. 1000 for the purpose of court fees and Rs. 20,01,800 for the purpose of jurisdiction. Reading Clauses (d) and (e) together makes it abundantly clear that the plaintiff has valued the suit for rendition of accounts in accordance with Rule 4 of the Rules framed by the High Court under Section 9 of the Suits Valuation Act and has valued the suit for the purpose of jurisdiction at Rs. 20,01,800 which was permissible under law. This view finds support from the judgment of the Division Bench in Fenner India Ltd. (Supra). The judgment in M/s. Globe Super Parts (Supra) was on its own distinguishable facts. In that case the suit has not been valued for the jurisdiction for relief of rendition of account separately but a different valuation for the purpose of jurisdiction was mentioned in respect of the four reliefs claimed. Even otherwise in view of the judgment of the Division Bench I do not find merit in the application. It is therefore, dismissed. Defendant shall file the written statement within four weeks.

IA No. 7629/03

8. Additional reply if any be filed within two weeks. Notify for hearing on 4.11.2003.

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