

Smt. Surinder Kaur and ors. Vs. S. Rajdev Singh and ors.

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Court : Delhi

Decided On : Oct-27-2005

Reported in : 128(2006)DLT460; 2006(86)DRJ80

Judge : Swatanter Kumar, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 7, Rule 11; [Specific Relief Act, 1963](#) - Sections 16; Court Fee Act - Sections 7 and 7(4); Suit Valuation Act - Sections 9; Punjab High Court Rules - Rule 4 and 4(1)

Appeal No. : IAs Nos. 3144-3145 and 4475/2005 in CS(OS) No. 1806/1999

Appellant : Smt. Surinder Kaur and ors.

Respondent : S. Rajdev Singh and ors.

Advocate for Def. : Parag Tripathi, Sr. Adv., ; P.S. Khandelwal, Adv. for Defendants Nos. 1A and 3, ;

Advocate for Pet/Ap. : Arun Khosla and; Nikhil Singla, Advs

Judgement :

Swatanter Kumar, J.

1. By this order I would dispose of three applications being is NO. 3144/2005, is NO. 3145/2005 and is NO. 4475/2005. The first two are the applications filed by

defendant No. 3 under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure and Section 16(c) of the [Specific Relief Act, 1963](#) for rejection of the plaint and consequent dismissal of the suit, while is NO. 4475/2005 has been filed by the plaintiffs for amendment of the plaint. The plaintiffs filed a suit for declaration, permanent injunction, mandatory injunction, rendition of accounts, specific performance and mesne profits. The suit is between the family members in relation to carrying on of business and running of a five-star hotel under the name and style of Hotel Imperial. Plaintiffs and defendant No. 4 are the sisters of defendant No. 1, while defendants No. 2 and 3 are the sons of defendant No. 1 and defendant No. 5 is a partnership concern comprising of the plaintiffs and defendants No. 1 to 4. The defendant No. 1 is stated to be the owner of the leased premises being Hotel Imperial, situated at 124, Janpath, New Delhi. The property was owned by the predecessor of defendant No. 1 and the premises of Hotel Imperial were given on lease to defendant No. 5. According to the plaintiffs, plaintiffs and defendants No. 1 to 4 as partners of defendant No. 5 have been successfully running the said business for the last more than 31 years. Certain disputes arose in December 1998 with respect to continuance of the business and renewal of the lease, which had become due for renewal on 1st July, 1999 for a further period of five years and the option to renew the lease vests with the partnership firm or the partners in the similar fashion till 2014. It is also the case of the plaintiffs that in order to resolve the issues, they attempted to meet the managing partners, which attempts failed. The persistent dispute between the parties kept on increasing and it is stated that more than Rs. 50 crores was spent in the reconstruction and refabrication of the hotel and this was done with the object of continuing the partnership activity, which the defendants abruptly attempted to end resulting in filing of the present suit. While claiming the above reliefs, the plaintiffs have valued the suit for the purposes of court fee and jurisdiction as under and claimed the following reliefs:-

Prayer Clause Relief Value for Court Court Fee paid

Fee & Jurisdiction

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- (a) Permanent Injunction Rs.5,05,000 Rs.7,273
- (b) Permanent Injunction Rs. 200 Rs. 20
- (d) Permanent Injunction Rs. 200 Rs. 20
- (e) Permanent Injunction Rs. 200 Rs. 20
- (m) Permanent Injunction Rs. 200 Rs. 20
- (c) Declaration Rs. 200 Rs. 20
- (i) Declaration Rs. 200 Rs. 20
- (j) Declaration Rs. 200 Rs. 20
- (k) Declaration Rs. 200 Rs. 20
- (g) Mandatory Injunction Rs. 200 Rs. 20
- (h) Mandatory Injunction Rs. 200 Rs. 20
- (f) Specific Performance Rs. 60,000 Rs. 2,929.60
- (l) Mesne Profits per month Rs. 50,00,000 Rs.20
- (n) Rendition of accounts Rs. 54,00,00,000 Rs, 10,442.60
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- Total Rs.10,442.60
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2. Besides contesting the suit on merits, and by raising preliminary objections as to the maintainability of the suit, the defendants have taken up the plea that the partnership business stood dissolved by efflux of time and had ceased to exist for all practical purposes and intents w.e.f the midnight of 30th June, 1999. The

balance sheet of the erstwhile firm, clearly stating realisation and expenditure account, was prepared by the contracted Chartered Accountant of the firm in accordance with rules of law. It is stated that plaintiff No. 3 was offered Rs. 1,47,94,102/- vide cheque No. 400391 dated 11th August, 1999, defendant No. 4 was offered Rs. 2,91,60,003/- vide cheque No. 400392 dated 11th August, 1999, defendant No. 2 was offered Rs. 5,53,39,098/- vide cheque No. 400393 dated 11th August, 1999 and defendant No. 3 was offered Rs. 4,09,08,605/- vide cheque No. 400394 dated 11th August, 1999. It is stated that the plaintiffs and defendant No. 4 refused to accept the same without any good reason and cause and that they have no subsisting interest in the partnership concern. It is also stated that the plaintiffs and defendant No. 4 had no right in the management and the lease deed dated 16th August, 1968 came to an end and the premises of Hotel Imperial was surrendered by its lessee to Sardar Rajdev Singh vide the Registered Deed of Surrender dated 30th April, 1972. It is denied that any permanent interest was created in favor of the plaintiffs by the said defendant.

3. A detailed written statement was filed to quite a long plaint and equally voluminous is the reply filed thereto. It is not necessary for the Court to note the facts in any greater detail.

4. Having referred to the basic case pleaded by the parties essential for the determination of the applications afore-referred, now I may refer to the grounds taken by the defendants in their application under Order 7 Rule 11 of the Code of Civil Procedure. They pray for rejection of the plaint and consequential dismissal of the suit of the plaintiffs on the following grounds:-

(a) The suit has not been valued properly for the purposes of court fee and jurisdiction and the plaintiffs have failed to claim Ad Valorem court fee in terms of Section 7 of the Court Fee Act.

(b) For the relief of mesne profits, the plaintiffs have valued the suit @ 50 lakhs per month but the court fee of only Rs. 20 has been paid, even for the specified period prior to institution of Suit.

(c) For the relief of rendition of accounts, the suit has been valued at Rs. 54 crores and only a fixed fee of Rs. 20 has been paid.

5. These objections are based upon the reading of the averments made in paragraph 33, 37, 55 and 87 of the plaint read in conjunction with the prayer clause and reply given by the plaintiffs to the preliminary objections raised by the defendants in the written statement. The value of the suit for the purposes of jurisdiction, which has been assessed at Rs. 54 crores and Rs. 50 lakhs respectively, as afore-noticed, is based on definite data calculation and is not a pious hope of the plaintiffs. Having defined this value upon established parameters, the plaintiffs cannot be permitted to fix the value for the purposes of court fee arbitrarily. This would be in apparent violation to the provisions of Section 7 of the Court Fee Act. The plaintiffs are obliged to value the suit similarly for the purposes of court fee and jurisdiction. Having failed to do so, the plaint of the plaintiffs is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

6. The other objection taken is that the plaint of the plaintiffs is liable to be rejected and suit liable to be dismissed as the plaintiffs have failed to make an averment that they were always ready and willing to perform essentials of the contract which were to be performed by them under Section 16(c) of the Specific Relief Act.

7. Partially in view of the objections taken in these two applications, which have been pending for a considerable time, the plaintiffs with an intent to remedy and meet the objections taken in the written statement to some extent, filed is NO. 4475/2005 under Order 6 Rule 17 for amendment of the plaint, while the application for amendment was filed subsequent thereto i.e. 26th May, 2005. In the application for amendment the plaintiffs pray for leave to amend the plaint so as to specifically state the readiness and willingness on the part of the plaintiffs as well as to correct the number of years for which the parties have carried on the business in question. It is the case of the plaintiffs that in the detailed plaint, already filed on record, the readiness and willingness on their part is obvious and it has been specifically stated in the plaint that the plaintiffs have exercised their right to renew the lease in terms of Lease Deed dated 1st July, 1999, but still, and

in order to avoid any technical objection, they wish to add the specific expression of 'readiness and willingness' on the part of the plaintiffs to perform their obligations for extension of lease. Furthermore, they wish to add and amend paragraphs 69 and 78 of the plaint to say that the partnership has worked on the understanding stated therein for a period of 25 to 30 years and valuable rights have accrued to the plaintiffs. Consequently, the plaintiffs also wish to amend paragraph 68 of the plaint by rewording the same consequent upon the above amendment.

8. The plaintiffs then want to amend paragraph 87 referring to the jurisdiction for the purposes of court fee as under:-

Prayer Clause Relief Value for the Value for the Court fee paid

purposes of purposes of

jurisdiction court fee

(l) Mesne profits per month Rs. 50 lac Rs.200/- Rs. 20/-

(n) Rendition of accounts Rs. 54 crore Rs. 200/- Rs. 20/-

9. It will be more appropriate to deal with the application for amendment first. The suit is at the initial stages. The plaintiffs are praying for amendment which would not alter the cause of action or the basic case of the plaintiffs. The plaintiffs want to add an averment with regard to readiness and willingness on their part to perform their obligations under the terms of the agreement. This averment in face of the plaint read together, would not tantamount to setting up a new or a contradictory case. In fact, it would be complimentary or incidental to the main averments already made by the plaintiffs. The plaintiffs claim to have exercised their right for renewal of the lease, which is a matter that has to be adjudicated upon only after

the parties have led evidence. In regard to paragraph for specifying or clarifying the clause related to pecuniary jurisdiction, it again is a re-affirmation in a more arranged and specific manner, than the same averments being made in a vague and indefinite manner. In view of the judgment of the Supreme Court in the case of *Lekha Ram Sharma v. Balar Marketing Pvt. Ltd.* : 2003(27)PTC175(SC) in relation to pecuniary jurisdiction, the amendment prayed for even otherwise would clarify or make the already pleaded facts with greater clarity and would give the plea of the plaintiffs a cover of legal wording, which may be proper for adjudicating the disputes between the parties. The law of amendment has been liberally construed, of course with an obvious limitation of a party not abusing the process of the court in this regard. The application for amendment cannot be said to be malafide or with an intention to delay the suit. Consequently, and keeping in view all the judgments of the Supreme Court in the cases of *Ragu Tilak D. John v. S. Rayappan and Ors.* 2001 (2) SCC 472, *Indian Sulphacid Industries Ltd. v. Joginder Kaur and Anr.* 1999 (2) PLR 734, *Raghunath G. Panhale v. Chaganlal Sundarji and Co.* : AIR 1999 SC3864 , *Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* : [1970]1SCR22 , *Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy and Ors.* : AIR 2001 SC3685 , *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* : (1990)1SCC166 and *Balwant Singh v. Harbans Singh* 1999 (2) PLR 517, the application is allowed. The plaintiffs are permitted to amend their plaint. Of course, the plaintiffs could have taken such pleas even at an earlier stage, but some delay in filing this application cannot be a ground for denying the relief to the plaintiffs at this initial stage. Consequently, the application for amendment is allowed, subject to payment of Rs. 10,000/- as costs, costs being conditional.

10. If the amended plaint has already been filed, let the the same be taken on record.

11. I.A. No. 4475/2005 stand disposed of accordingly.

IAs No. 3144/2005 and 3145/2005 in CS(OS) No. 1806/1999

12. These applications under Order 7 Rule 11 of the Code of Civil Procedure are mainly based on the contention that the plaintiff has not valued the suit properly for

the purposes of Court fee and jurisdiction. The claim of the plaintiff is based upon a rational and relevant material which admittedly was in possession of the plaintiff and the plaintiff has arrived at the relevant figures in relation to mesne profits as well as for rendition of accounts on such computed basis, as such the plaintiff should have paid the ad valorem court fee on the amounts claimed, and could not take the benefit of paying a fixed court fee. The other contention raised is that the plaintiff is liable to be rejected in view of the provisions of Section 16(c) of the [Specific Relief Act, 1963](#) and also on the ground that the plaintiff has not made any averment that he was always ready and willing to perform his part and incur the obligations for extension of lease. While relying upon the judgments of the Supreme Court and this Court reported in *Automatic Electric Limited v. R.K. Dhawan* 57 (1994) DLT 49, *Sarjiwan Singh v. Delhi Vidyut Board* : 110(2004)DLT633, *Eastman Kodak Co. v. M.R. Electronics* 1994 RLR 476, *United India Insurance Co. Ltd. and Anr. v. Samir Chandra Chaudhary and Bombay Ammonia Pvt. Ltd. v. Raj Kumar and Ors.* : 115(2004)DLT609 in support of the above contention, the learned counsel appearing for the applicant has also made reference to the documents on record and averments made in the plaint, in support of this contention. While referring to paragraph 71 of the plaint, it is argued that the plaintiff has claimed mesne profits for illegal use of the property after 1st July, 1999, while the suit was filed on 16th August, 1999. The plaintiff has further assessed the mesne profits @ Rs. 50 lacs per month which obviously according to the plaintiff, is the amount payable for unauthorised and illegal use of the assets and properties of the partnership, as such the plaintiff was liable to pay ad valorem court fee on the amount of Rs. 50 lacs calculated prior and after filing of the suit. In reply to the preliminary objections, a stand in this regard has also been taken by the defendants in the written statement. Plaintiff in the replication stated that the partnership had not been dissolved and affairs of the partnership had not been wound up and defendants have been using the property of the partnership firm while running the hotel business. The plaintiff could not, in law, thus be stated to have filed a suit on imaginary mesne profits, but the claim of the plaintiff is specific i.e. Rs. 50 lacs per month and thus, he was required to pay the ad valorem court fee on the sum of Rs. 50 lacs prior to the institution the suit. However, for pendente lite mesne profits the plaintiff could file the suit by fixing a fixed court fee

with an undertaking that he would pay the court fee on the amount assessed and decreed in his favor by the court at the relevant time. Such a statement has vaguely been made but the plaintiff was certainly liable to pay the court fee on the amount claimed prior to the institution of the suit. The claim in the plaint is with effect from 1st July, 1999 while the suit was filed on 16th August, 1998. therefore, for this period the plaintiff ought to pay the ad valorem court fee and cannot pursue the suit by payment of fixed court fee. It is a settled principle of law that except for the exceptions specifically provided under Section 7(4) of the Court Fee Act, the plaintiff is required to value the suit for the purposes of court fee and jurisdiction identically. The plaintiff cannot be permitted to exercise arbitrariness in claiming the amounts and in payment of court fee. The learned counsel appearing for the plaintiff while relying upon the judgments of the Supreme Court in the case of Commercial Aviation and Travel Company and Ors. v. Mrs. Vimla Pannalal : AIR 1988 SC1636 and judgment of this Court in the case of Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. : 67(1997)DLT673 contended that determination of damages by the plaintiff is not based on any fixed criteria and the mesne profits like a suit for unsettled accounts has been filed on a hope of the plaintiff that he would get the claimed amount, as such the plaintiff would not be liable to pay ad valorem court fee on this amount. Reliance in this regard was rightly placed upon the judgment of the Supreme Court in the case of Gopalakrishna Pillai and Ors. v. Meenakshi Aval and Ors. : AIR 1967 SC155 to argue that the relief of past mesne profits on a stated amount by the claimant has to be valued and ad valorem court fee paid thereupon.

13. It has already been discussed above that the plaintiff in relation to the relief of mesne profits, prior to the institution of the suit, cannot take benefit of paying fixed court fee. Of course, the mesne profits pendente lite or future would have to be determined and then alone a fixed amount would be arrived at and the plaintiff would be called upon to pay an ad valorem court fee on the said amount, but for the amount which has already been claimed, would squarely fall outside the ambit of Rule 4 (1) of the Punjab High Court Rules as applicable to this Court read with Section 7(4) of the Court Fee Act and Section 9 of the Suit Valuation Act. The plaintiff would be required to pay the ad valorem court fee on the amount claimed by him prior to the institution of the suit. It was for the plaintiff to claim or give up

the mesne profits or damages prior to the institution of the suit. Once he has opted to claim the mesne profits on a calculated sum, it will be obligatory upon the plaintiff to make the payment of ad valorem court fee on the said amount.

14. In accordance with the provisions of the amended Code of Civil Procedure, plaint of the plaintiff cannot be rejected on this ground at the first instance. Plaintiff would be entitled to an opportunity for making up the deficiency in payment of court fee. In the event he fails to make up the deficiency now, after direction of the court, then alone the court would be in a position to reject the plaint of the plaintiff under the provisions of Order 7 Rule 11 of the Code of Civil Procedure. At this stage, the contention of the applicant for rejection of the plaint cannot be accepted.

15. The second limb of this argument relates to lack of mentioning. The provisions of section 16(c) of the Specific Relief Act requires a plaintiff to make certain definite averments in the plaint before he could claim the relief in regard to specific performance even in relation to lease of immovable property. The plaintiffs have specifically stated in the plaint that they had asked for renewal of the lease by a specific request made to the defendants. The plaint has to be read as a whole and to answer such a contention, the plaintiffs can rightly rely upon the documents placed on record. A party is not expected to plead evidence in the plaint, but is required to make averments which they would prove in order to justify their claim for relief before the Court. It is true that in the plaint, there is no specific averment to say that the plaintiffs were ready and willing to perform all their obligations justifying the claim of specific performance. Even if for the sake of arguments, it has to be accepted that absence of such specific averment would result in rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, even then the said defect stands cured by the fact that is No. 4475/2004 filed by the plaintiffs under Order 6 Rule 17 had been allowed to that extent. Though it is difficult for the Court to come to the conclusion that the plaint as framed did not substantially satisfy the requirement of section 16(c) of the Specific Relief Act, but in any event because of the application for amendment having been allowed by the Court, this objection is without any merit and is thus rejected.

16. Coming to the last contention raised on behalf of the defendants/applicants that the plaintiffs ought to have paid the ad valorem court fee in relation to the claim of rendition of accounts as well, it may be noticed that in the prayer clause, the plaintiffs have claimed a sum of Rs. 54 crores which according to them could be payable to them in accordance with true and correct rendition for settlement of accounts. According to the applicants this sum of Rs. 54 crores is based upon rational basis calculated by the plaintiffs and is not an imaginary figure. The plaintiffs, in fact, in their plaint have referred to the very basis of these Rs. 54 crores including the letters exchanged between the parties. In this regard, reference has been made to some of the paragraphs in the plaint as well as paragraphs 15 and 32 of the replication filed by the plaintiffs.

17. Specific emphasis has been placed on the averments made in the plaint as well as paragraphs 26 and 29 of the reply to the preliminary objections and merits in the replication, that according to the plaintiffs, partners have invested about Rs. 50 crores in reconstruction and refurnishing of the hotel and also that the firm had invested more than Rs. 50 crores in additions and alterations. Another averment made in the pleadings of the parties and the correspondence exchanged between them is that the defendants were ready to pay to the plaintiffs for such consideration in furtherance to the writing of the plaintiffs themselves. As such these provided definite data so as to value the suit for the purposes of court fee and jurisdiction. The plaintiffs could not have valued the suit for the purposes of pecuniary jurisdiction at Rs. 54 crores and for the purposes of payment of court fee at a fixed sum of Rs. 20/- . A reference was also made to the letter dated 13th May, 1999 in regard to the offer of the plaintiffs for valuation of the partnership properties. The learned counsel appearing for the applicant, while relying upon the judgment afore-referred as well as on the judgments of this court in the case of Wockhardt Veterinary Ltd. v. Raj Medicos and Anr. 1998 VI AD (Del) 1 argued that the plaint of the plaintiffs is liable to be rejected for non-payment of ad valorem court fee. With emphasis, he relied upon the following observations of the court:-

'In the case before me the valuation for the purpose of jurisdiction has been quantified with the sole objective to confer jurisdiction on this Court as this Court will have pecuniary jurisdiction if the valuation of the subject matter is over Rs. 5

lakhs, otherwise in the normal course, the jurisdiction would lie with the District Judge. No doubt law provides that in case of relief for rendition of account when the amount is not ascertained the plaintiff cannot be asked to give a specific and ascertained figure of the amount on which relief is sought in the suit. But that does not give a license to the plaintiff to give a wholly arbitrary and unreasonable figure so as to divest a Court which has got the jurisdiction to try the suit and to invest a Court which for these aforesaid three lines would not have the jurisdiction to try the suit by giving a higher valuation so as to bring suit within the pecuniary jurisdiction of this Court.'

18. On the other hand, the learned counsel appearing for the plaintiffs while relying upon the cases of Commercial Aviation and Travel Company and Ors. v. Mrs. Vimla Pannalal, : AIR 1988 SC1636 and Bombay Ammonia Pvt. Ltd. (supra) contended that it is only a fond hope of the plaintiffs that an amount of even more than Rs. 50 crores may be due to the plaintiffs upon correct rendition of accounts by the defendants. There is no arbitrariness and the plaintiff's claim would be covered under Rule 4, the provisions of Section 7(4) of the Court Fee Act and the exception to the Rule of the Suit being valued identically for the purposes of court fee and jurisdiction. The principle of law cited on either side can hardly be a matter of dispute. The plaintiffs cannot act arbitrarily in valuing the suit for the purposes of court fee and jurisdiction. Wherever the suit for rendition of accounts is filed and it is not practically probable for the plaintiff to exactly value the suit for the purposes of court fee and jurisdiction, he can avail of the benefit of payment of fixed court fee with an undertaking to make up the deficiency in payment of court fee, once the accounts are settled and a definite amount is determined by the court, which the plaintiff would be entitled to receive. The application of the plaintiff to pay court fee on that amount can fully be protected by decree being subject to payment of court fee at that stage, of course, limited in such suits.

19. In the present case, the reference to Rs. 40 or 50 crores firstly relates only to renovation and furnishing of the hotel and does not even on the bare reading of the plaint, reflect to be the entire value of the assets and accounts of the partnership or as a true and correct depiction of the settled account or share of an individual partner. The figure arrived at by the plaintiffs should be definite and

essentially must be based upon such determining factors which ex facie indicate an acceptable value of the assets of the partnership and its business, including all its aspect. Merely because some figure has been indicated in the pleadings or correspondence exchanged between the parties in regard to renovation and furnishing of the hotel, would not determine the complete settled accounts of the partnership so as to make the plaintiffs liable to pay the ad valorem court fee on the fond hope or an estimated figure. The plaintiffs would obviously be liable to pay the court fee on final determination arrived at by the court upon true and correct rendition of accounts, as admittedly the defendants are carrying on the business, though their pleading is that the partnership has already been dissolved.

20. In the circumstances aforesaid, I find no merit in this objection raised on behalf of the defendants. In view of my above detailed discussion, the applications of the defendants are partially allowed and the plaintiffs are directed to make good deficiency in payment of court fee in relation to the relief of mesne profits within one week from today. In the event the deficiency is not made good, the plaint of the plaintiffs shall be liable to be rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure. Other objections are rejected.

21. IAs No. 3144/2005 and 3145/2005 are disposed of accordingly, while leaving the parties to bear their own costs in these applications.