

(2013) 04 AHC CK 0281

Allahabad High Court

Case No: F.A.F.O. No. 531 of 2013

Smt. Neelam Mishra

APPELLANT

Vs

Smt. Urmila Yadav and Others

RESPONDENT

Date of Decision: April 3, 2013

Citation: (2013) 98 ALR 90 : (2013) 4 AWC 4192 : (2013) 119 RD 664

Hon'ble Judges: Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench: Division Bench

Advocate: Nikhil Kumar, for the Appellant; Sudhir Mehrotra, Satya Prakash and Prateek Sinha, for the Respondent

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.

Heard Sri Nikhil Kumar, learned counsel for the appellant, Sri Sudhir Mehrotra, Special counsel appearing for the District Judge, Auraiya and Sri Satya Prakash, learned counsel appearing on behalf of respondent No. 3. Before passing order on the withdrawal application, for the sake of brevity, we would like to quote our order dated 22.2.2013, which reads thus:

Heard Sri Nikhil Kumar, learned counsel for the appellant and Sri Satya Prakash assisted by Sri Prateek Sinha, learned counsel appearing on behalf of respondent No. 3 and perused the record.

This appeal challenges the order dated 9.1.2013 passed by Civil Judge (Senior Division), Auraiya in O.S. No. 417 of 2012 rejecting the application paper No. 6C for grant of temporary injunction filed by the appellant.

The appellant prays for setting aside the aforesaid order by which the application for temporary injunction has been rejected and further for grant of temporary injunction to him during the pendency of the suit or pass such other and further orders which this Court may deem fit and proper in the circumstances of the case.

Perusal of the record shows that against the order impugned Misc. Civil Appeal No. 3 of 2013, Smt. Neelam Mishra v. Smt. Urmila Yadav and others, was preferred by the appellant before the District Judge, Auraiya. The appeal was admitted by the order dated 11.1.2013 directing the parties to maintain status quo.

The memo of appeal filed in the court of District Judge shows that the valuation of the suit for the purpose of the pecuniary jurisdiction was Rs. 50 lakhs. It appears from Annexure-13 filed in this F.A.F.O. before us that respondents have moved an application on 14.1.2013 supported with an affidavit inter alia stating in paragraph 2 that court has no pecuniary jurisdiction to entertain the appeal. Paragraph 2 of the application dated 14.1.2013 in this regard may be referred which reads thus:

It appears that appellant before us further moved an application for amendment of the plaint after getting status quo order aforesaid seeking cancellation of the sale deed dated 13.6.2012 and for temporary injunction, which is appended as Annexure-14 to this appeal. It appears from paragraph No. 7 of the plaint that appellant had given valuation of the suit as Rs. 50 lakhs whereas by the aforesaid amendment sought by the appellant after grant of temporary injunction he has sought to substitute entire valuation clause in paragraph 7 of the plaint by paragraph 5 of the amendment application and proposed to bring down the pecuniary jurisdiction of the suit to Rs. 25,600 within the jurisdiction of the Civil Judge {Senior Division}. Aforesaid paragraphs are reads thus:

Para-5 of application for amendment in plaint dated 17.1.2013:

We also note that counsel for the appellant has informed that his application for amendment is still pending before the Civil Judge (Senior Division) and no order has yet been passed by the District Judge on the application of the respondent dated 14.1.2013.

It is argued by learned counsel for the appellant that appeal has been filed before the District Judge as formal order was not available with them and, therefore, this mistake is on their part. But in suit as well as the Misc. Civil Appeal No. 3 of 2013 appellant had given valuation of the suit as Rs. 50 lakhs. Therefore. not only the advocate in the court below but also the District Judge knew about the pecuniary jurisdiction while filing/entertaining the appeal.

Aforesaid facts show that District Judge. Auraiya has passed the order on 11.1.2013 without having any pecuniary Jurisdiction in the matter even to entertain the appeal.

We direct the District Judge, Auraiya to appear in person before this Court on 1.3.2013 at 10.00 a.m. to explain his conduct.

Copy of this order may be provided to the Registrar General by today and to the District Judge, Auraiya by FAX.

2. Pursuant to the aforesaid order, the District Judge, Auraiya has appeared before us through Sri Sudhir Mehrotra and has filed supplementary-affidavit and action taken report etc. which finds mention in our earlier orders.
3. He has stated in the supplementary-affidavit that the suit was filed on 11.9.2012 and an interim injunction was granted by the court as well as notices were issued to the defendants. The said injunction application was decided on merit by the order dated 9.1.2013 by the trial court and the same was rejected. Against the order dated 9.1.2013 passed by the Civil Judge (S.D.), Auraiya in suit No. 417 of 2012, the plaintiff of the suit Smt. Neelam Mishra presented a memorandum of appeal in the office of the deponent on 11.1.2013 which was numbered as misc. civil appeal No. 3 of 2013 and was presented before the District Judge for admission alongwith the caveat filed on behalf of the defendant-respondent.
4. He further submitted that on the same day, i.e., 11.1.2013 the parties were heard on admissibility of appeal and on injunction application, when counsel for the appellant submitted that there was an order of interim injunction passed by the learned trial court since the institution of the suit and the counsel for the defendant requested for time to file objection. Accordingly 14.1.2013 was fixed summoning the record and directing the parties to maintain status-quo on the spot. It is stated that the appeal was entertained by the District Judge on account of the report of Sadar Munsarim regarding pecuniary jurisdiction of Court as well as on account of the fact that no objection regarding pecuniary jurisdiction was raised by the counsel for contesting defendant/respondents. Hence, on account of these facts the deponent passed the order dated 11.1.2013 in good faith presuming the appeal to be within his Jurisdiction. According to the District Judge the said order has been passed due to inadvertence, without any ill-will malice or any motive otherwise and without any intent to cause any prejudice to the rights of the contesting parties.
5. The District Judge also submitted that on 14.1.2013 he was -on leave and the said appeal was presented before Incharge, District Judge, Auraiya when the said appeal was ordered to be listed on 17.1.2013 for hearing and objection alongwith affidavit in respect of jurisdiction filed by the respondent which was taken on the record.
6. On 17.1.2013, the above mentioned appeal was put up for hearing before the District Judge. Arguments in appeal on merit were heard and the appeal was directed to be put up again on 21.1.2013 for arguments. On 21.1.2013, the District Judge again went on leave, therefore, the Incharge, District Judge, Auraiya fixed 4.2.2013 in the appeal being heard by the District Judge. The appellant then appears to have sought adjournment on which, the hearing of appeal was fixed for 12.2.2013. The argument could not be heard due to paucity of time and the appeal was then fixed for 16.2.2013 for further hearing. However, on 13.2.2013 an application, 19C, was filed by the appellant with the request that the memo of appeal be returned, so that the appeal may be preferred before Hon"ble High Court and the said application was ordered to be put up on the next date already fixed,

i.e., on 16.2.2013 in due course. However, despite call, none appeared on behalf of either side on 16.2.2013, hence the case was fixed for disposal of 19C on 23.2.2013. The District Judge after hearing both the parties on 23.2.2013, dismissed the appeal for want of pecuniary jurisdiction.

7. The District Judge has punished the errant officials of his Court by awarding major punishment. In so far as he is concerned, the District Judge has apologized unconditionally on affidavit with regard to entertaining the appeal without having pecuniary jurisdiction in the matter putting it to his inadvertence as the matter had been put up by the Munsarim after scrutiny of the case and relying upon the report of the officials aforesaid in good faith. We are not satisfied with this explanation of the District Judge as even after filing of the application by the respondents informing the Court that it has no pecuniary jurisdiction to entertain the appeal on 14.1.2013 he proceeded to hear the arguments on merit on 17.1.2013 instead of deciding the objections regarding jurisdiction and then proceeded on leave on 21.1.13, which appears to be deliberate. It appears from the record that even thereafter he did not hear and decide the application regarding jurisdiction, but facilitated the appellant before him to enjoy the interim order. The proceedings conducted by the District Judge reflects his involvement in the matter in delaying hearing of the objections raised by the opposite party on the very next day about his pecuniary jurisdiction, yet he continued hearing the appeal on merits and adjourning the matter on subsequent dates, which appears to be mala fide.

8. The application for withdrawal of appeal in the circumstance is allowed and the appeal is dismissed as withdrawn. The District Judge is warned and advised to be careful in future.

9. A copy of this order may be sent to the District Judge, Auraiya through the Registrar General of this Court for future guidance and a copy of the same may also be kept on the personal file of Sri U.N. Singh, District Judge. Certified copy of the formal order filed in this appeal may be returned to the counsel for the appeal within three days and photo stat copy of the same may be kept on record.