

(2017) 02 DEL CK 0085

DELHI HIGH COURT

Case No: O.A. No.22 of 2016 in CS(OS) No.3275 of 2014

Mrs. Veena Bahl

APPELLANT

Vs

Manmohan Bahl

RESPONDENT

Date of Decision: Feb. 10, 2017

Acts Referred:

- Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 - Section 12, Section 15(5), Section 2(c)(i), Section 21
- Delhi High Court (Amendment) Act, 2015 - Section 4

Citation: (2017) 238 DLT 281

Hon'ble Judges: Ms. Hima Kohli, J.

Bench: Single Bench

Advocate: Mr. Mohit Chaudhary, Ms. Damini Chawla and Ms. Isha Tyagi, Advocates, for the Appellant; Mr. Sanjay Kumar Maria and Mr. Anant V. Maria, Advocates, for the Respondent Nos. 1, 2 & 7; Mr. Harpreet Singh and Mr. Rajesh Gupta, Advocates, for the Respondent No. 3

Final Decision: Dismissed

Judgement

Ms. Hima Kohli, J.—The appellants/plaintiffs are aggrieved by the order dated 14.1.2016 passed by the learned Joint Registrar, transferring the present suit to the court of the learned District Judge, South-East District, Saket Court Complex, New Delhi, in terms of the Notification dated 24.11.2015, issued under Section 4 of the Delhi High Court(Amendment) Act, 2015 (in short "the amendment Act").

2. The ground for laying a challenge to the aforesaid order of transfer is that the learned Joint Registrar had failed to appreciate the concept of "specified value", as mentioned in Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as "the Commercial Courts Act"), that was promulgated on 23.10.2015, and the present dispute squarely falls under the definition of "commercial dispute", in terms of

Section 2(c) (i), (xii) & (xxi) of the Commercial Courts Act. It has been averred in the appeal that on 5.1.2016, the appellant No.1/plaintiff No.1 had filed an affidavit, detailing the "specified value" in terms of Section 12 of the Commercial Courts Act and determining the "specified value" of the suit at Rs.4,41,90,000/-, which has been completely overlooked by the Joint Registrar.

3. Mr. Chaudhary, learned counsel appearing for the appellants/plaintiffs has submitted that in view of the averments made in the affidavit dated 5.1.2016 filed by the appellant No.1/plaintiff No.1 wherein the specified value of the suit has been determined at Rs.4,41,90,000/-, the same could not be transferred to the trial court and though an objection to the transfer was taken before the learned Joint Registrar, the said plea was not appreciated. Hence the present Chamber Appeal.

4. A detailed reply in opposition to the present Chamber Appeal has been filed by the respondent No.2/defendant No.2 challenging the maintainability thereof by invoking the provisions of Section 15(5) of the Commercial Courts Act and referring to Section 21, which is the non-obstante clause and prescribes that the Commercial Courts Act has an overriding effect. The Chamber Appeal is also opposed on the ground that in the plaint, the appellants/plaintiffs have themselves valued the suit at Rs.21,00,000/- for the relief of damages which is far below the revised pecuniary jurisdiction of the original side of the High Court, fixed at over Rs.2,00,00,000/- w.e.f. 26.10.2015. As for the appellants/plaintiffs' claim that the specified value of the suit aggregates to Rs.4,41,90,000/- in terms of the averments made in the affidavit dated 5.1.2016, wherein the value of each share has been determined at Rs.22,500/-, it was submitted that the said valuation is completely arbitrary and without any basis.

5. Mr. Maria, learned counsel appearing for the respondents No.1, 2 & 7 had argued that the affidavit in question has been filed by the appellants/plaintiffs without seeking prior permission from the court and without an accompanying application for leave to enhance the suit valuation. He has also disputed the plea taken by the appellants/plaintiffs that the suit falls in the category of a "commercial dispute", as contemplated under the Commercial Courts Act and clarified that the suit raises a dispute between family members and the appellants/plaintiffs have sought partition and claimed damages from the respondents/defendants. He further submitted that there is no document or a contract executed between the parties and nor is there any shareholders' agreement or contract of agency to attract the provisions of Section 2 (c) (i), (xii) & (xxi) of the Commercial Courts Act. It was thus submitted that the learned Joint Registrar had correctly transferred the suit to the District Court and the said order does not deserve to be set aside.

6. This court has heard the arguments advanced by learned counsels for the parties, examined the averments made by the appellants/plaintiffs in the Chamber Appeal and the documents annexed therewith including the affidavit dated 5.1.2016 and has also considered the reply in opposition thereto filed by the respondent No.2/defendant No.2.

7. Before dealing with the submissions made by learned counsels for the parties, it is considered necessary to set out the reliefs prayed for by the appellants/plaintiffs in the suit which are as under:

"(a) Pass decree of declaration declaring that D1 and D2 are guilty of committing corporate fraud, misuse the fiduciary powers, guilty of malfeasance, misappropriation, misapplication, misfeasance & have indulged in breach of trust while dealing D-7 and its" shareholders, and/or;

(b) Pass decree of permanent and mandatory injunction restraining D1 and D2 from selling/alienating/mortgaging and/or creating any third party interest in respect of properties mentioned in para 6 and 7 of the suit and further in respect of any other valuables movable(s), cars and immovable(s) etc. belonging to the company, and /or;

(c) Pass decree of declaration declaring that the act of transfer of shares as shown in annual return for the period 2010-11 (pursuant to alleged AGM dated 30.09.2011) to be illegal, nonest, void ab-initio and nullity and further holding that even the alleged AGM is nullity in law, and /or ;

(d) Pass a decree of cancellation, cancelling illegal transfer of shares in favour of defendant No.1 and 2 reflected in annual return for the period 2010-11 (pursuant to alleged AGM dated 30.09.2011) detailed in para no.8 (i) of the suit plaint, and/or;

(e) Pass decree of declaration declaring that the minutes of alleged AGM dated 30.09.2011, whereby factum of transfer is sought to be mentioned is illegal, nonest, void ab-initio and nullity and cancel the same, and/or;

(f) Pass decree of declaration declaring that the property being C-705, New Friends Colony, New Delhi is joint family property and belongs to D-7 company, further that even the superstructure standing thereupon belongs to the D-7 company and/or;

(g) Pass a decree of partition, partitioning and apportioning the shares 1894 in numbers held by Mrs. Prakash Devi, 252 numbers of shares held by Sh. Shakki Sah and 950 number of shares held by Sh. Gulshan Bahl amongst their respective legal heirs, and/or;

(h) pass a decree in favour of plaintiff(s) and against Defendant No. 1 and 2, commanding them to render true and proper accounts of the company along with the details of transaction (s) if any entered into by and on behalf of company and/or;

(i) Pass a decree of damages, for a sum of Rs.21,00,000/- in favour of plaintiff(s) and against defendant No.1 and 2 ♦"

8. The appellants/plaintiffs have valued the suit for the reliefs sought above in the following manner:

" 18. COURT FEES:

Present suit is filed for the prayers set out in prayers clause for which court fees in following manner is paid:

Sr. No.	Prayer sought	Valuation	Court Fee Paid in Rs.
1.	For decree of declaration in terms of Prayer (a)	Fixed court fee Rs.200/-	Rs.200/-
2.	For Decree of permanent and mandatory injunction in terms of Prayer (b)	Fixed court fee Rs.200/-	Rs.20/-
3.	For Decree of declaration in terms of Prayer (c)	Fixed court fee	Rs.200/-
4.	For Decree of cancellation in terms of Prayer (d)	Rs.200/-	Rs.20/-
5.	For Decree of declaration in terms of Prayer (e)	Fixed court fee Rs.200/-	Rs.200/-
6.	For Decree of declaration in terms of Prayer (f)	Fixed court fee Rs.200/-	Rs.200/-

7.	For Decree of partition of shares held by Mrs. Prakash Devi, Sh. Saki Shah, Sh. Gulshan Bahl, in terms of Prayer (g)	Rs.200/-	Rs.200/-
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8.	For Decree of rendition of true and proper accounts of the company in terms of prayer (h)	Fixed court fee	Plaintiff has no access to the accounts, therefore fixed court fee is being paid by the plaintiff with an undertake to pay balance court fee upon true and correct rendition of accounts. Court Fee Paid in terms of 2006 (128) DLT
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9.	For Recovery of Damages in terms of Prayer (i)	21,00,000/-	Rs.22840/-
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9. A perusal of the order sheet shows that pleadings qua the defendants No. 1, 2 & 7 are complete. However, admission/denial of documents has yet to take place. In the meantime, several interim applications have been filed by the appellants/plaintiffs and the defendants that are pending consideration, including an application filed by the defendant No.1 under Order 7, Rule 11 of the CPC, for seeking rejection of the plaint .

10. When the present suit was instituted by the appellants/plaintiffs on 9.10.2014, it was valued by the appellants/plaintiffs for purposes of pecuniary jurisdiction at Rs.21.00 lacs. As per Section 5(2) of the Delhi High Court Act, 1966 (in short "the DHC Act"), as it stood at the time of institution of the suit in the year 2014, this Court was vested with the ordinary original civil jurisdiction in every suit, value whereof exceeded a sum of Rs.20.00 lacs. Accordingly, the present suit came to be instituted in the High Court. However, the Amendment Act came into force on 26.10.2015 and the words "rupees twenty lacs" were substituted with the words, "rupees two crores". Meaning thereby, that the ordinary original civil jurisdiction of this Court was enhanced for entertaining suits, valuation whereof exceeded Rs.2.00 crores. As a result, with effect from 26.10.2015 institution of suits in the High Court, valuation whereof was determined upto Rs.2.00 crores, was stopped.

11. The Amendment Act was notified and gazetted w.e.f. 26.10.2015 and reads as follows :

"MINISTRY OF LAW AND JUSTICE

(Department of Justice)

NOTIFICATION

New Delhi, the 26th October, 2015

S.O.2903(E).-In exercise of the powers conferred by sub-section(2) of section 1 of the Delhi High Court(Amendment) Act, 2015(23 of 2015), the Central Government hereby appoints the 26th day of October, 2015 as the date on which the provisions of the said Act shall come into force."

12. In exercise of the powers vested in Hon"ble the Chief Justice, the following Office Order was passed on 24.11.2015:

"HIGH COURT OF DELHI, NEW DELHI

OFFICE ORDER

Notification No. 27187/DHC/Orgl. Dated 24.11.2015 in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), which came into force with effect from 26.10.2015 vide Notification No.F. No. L-19015/04/2012-Jus dated 26.10.2015 issued by the Government of India, Ministry of Law, Justice and Company Affairs published in Gazette of India Extraordinary, Part II, Section 3 Sub-section (ii), Hon"ble the Chief Justice has been pleased to order as under:-

(i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value or rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate Courts.

(ii) All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in the Commercial Courts Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate Courts.

The transfer of cases to the subordinate Courts shall commence from today, i.e. 24.11.2015.

Sd/-

Registrar General

24.11.2015"

13. The effect of the aforesaid Order dated 24.11.2015 came up for consideration by the Full Bench of this Court in the case of **Subhashini Malik v. S.K. Malik & Ors., decided on 06.9.2016 reported as 233 (2016) DLT 83 (FB)**, wherein by a majority of 2:1, it was held that neither the Amendment Act, nor the Office Order dated 24.11.2015 come in the way of the High Court in exercising its powers under the original civil jurisdiction for considering applications for amendment of the plaint for enhancement of value of the suit for purposes of pecuniary jurisdiction. It was held, per the majority view, that the nature of the power in exercise whereof the Office Order dated 24.11.2015 has been issued, though having its source in Section 4 of the Amendment Act, is purely administrative in nature and merely on the issuance of the Office Order, the High Court did not become functus officio and till the suit is so transferred, the court continued to have jurisdiction.

14. Incidentally in almost similar circumstances, in the case of **Sanofi Aventis v. Intas Pharmaceuticals Ltd. & Ors. reported as 227 (2016) DLT 296**, the plaintiff therein had filed an amendment application for seeking enhancement of the pecuniary value of a suit for infringement of trademark, passing off etc. from Rs.20,01,000/- to Rs.1 crore, after the promulgation of the Commercial Courts

Ordinance on 23.10.2015 and issuance of the Notification of the Amendment Act on 26.10.2015. By the time the said application came up for arguments on 05.1.2016, the Commercial Courts Act had been legislated on 31.12.2015 where under, the first proviso of Section 7 that deals with the Jurisdiction of Commercial Division of High Court, was amended. Counsel for the plaintiff therein had urged that even if the jurisdictional value of the suit remains below Rs. 1 crore, it would still lie before the High Court and cannot be transferred to a subordinate court and if the amendment proposed is allowed, the value of the suit would stand enhanced to over Rs.1 cores which is the specified value in relation to a commercial dispute. This court, then notified as a Commercial Court on the original side, had allowed the amendment application by placing reliance on the decision of the Supreme Court in **Lakha Ram Sharma v. Balar Marketing Pvt. Ltd., (2008) 17 SCC 671**, and had held that "when the court has the inherent jurisdiction to pass certain orders even though it may not have the pecuniary or territorial jurisdiction to try the suit, that would not be a ground to disallow an amendment to the plaint, the logic being that one cannot stick to the form of law to the point that the substance gets obliterated."

15. As is apparent from the language used in Section 4 of the Amendment Act, it was not necessary for Hon"ble the Chief Justice to transfer all the suits that were pending in the High Court prior to the commencement of the Act. Rather, the said provision empowers Hon"ble the Chief Justice to exercise a discretion to transfer a particular category of suits, while deciding to retain the other category of suits.

16. By the date the present suit was listed before the Joint Registrar on 14.1.2016, the aforesaid Office Order had come into play. Consequently, the learned Joint Registrar proceeded to transfer the suit to the Court of the learned District Judge, South East District, Saket Court Complex, Delhi, for further proceedings.

17. Aggrieved by the aforesaid order, the appellants/plaintiffs have filed the present Chamber Appeal claiming inter alia that the present suit falls under the definition of a "commercial dispute" in terms of the Commercial Courts Act and that the learned Joint Registrar had failed to take note of the affidavit dated 5.1.2016 filed by the appellant No.1/plaintiff No.1, wherein the specified value of the suit was determined at Rs.4,41,90,000/- .

18. It is well settled that the plaintiff is dominus litis and in him vests the power to choose the court and determine the valuation of the suit for purposes of pecuniary jurisdiction and that the defendant cannot insist that the suit be tried before a particular court. Nor can the courts compel the plaintiff to go to another court or interfere with his valuation of the suit. [Ref.: **Hans Raj Kalra v. Kishan Lal Kalra, (1976) ILR 2 Delhi 745**; **Indian Overseas Bank, Madras v. Chemical Construction Company and Ors. (1979) 4 SCC 358**; **Govind Gopal & Ors. v. Banwari Lal AIR 1983 Del 323**; **Md. Alam and etc. v. Gopal Singh & Ors., AIR 1987 Patna 156 (FB)**; **Dr. Subramaniam Swamy v. Ramakrishna Hedge, 1990 (1) SCC 4**, **Abdul Gafur and Anr. v. State of Uttarakhand & Ors., (2008) 10 SCC 97**, **Horlicks Ltd. and Anr. v.**

Heinz India (Pvt.) Limited, 164 (2009) DLT 539 DB and Nahar Industrial Enterprises Ltd. v. Hongkong Shanghai Banking Corporation (2009) 8 SCC 646].

19. Having exercised the discretion vested in them, the appellants/plaintiffs herein as dominus litis have determined on their own, the valuation of the suit for the reliefs prayed for, for purposes of payment of court fees and instituted the suit in the High Court. Under the changed circumstances noted above, if appellants/plaintiffs proposed that the suit be retained in the High Court which otherwise, in view of the Amendment Act and the Office Order, stands transferred to a subordinate court, they ought to have sought enhancement of the valuation of the suit so as to bring it within the jurisdiction of the High Court. Meaning thereby, that the appellants/plaintiffs would have then had to file an application under Order 6, Rule 17 CPC for seeking amendment of the plaint, which is the only provision available in the Code of Civil Procedure for amendment of pleadings. However, without a by-your-leave from the court, the appellants/plaintiffs have filed an affidavit dated 5.1.2016, declaring inter alia that the specified value of the subject matter of the present suit is Rs.4,41,90,000/-, which is the sum total of the value of the shares of the defendant No.7/company, assessed by them as Rs.22,500/- per share and based thereon, it has been canvassed that the suit cannot be transferred to a subordinate court.

20. For the appellants/plaintiffs to adopt a circuitous route of attempting to substitute an application for seeking amendment of the plaint, as prescribed under Order 6, Rule 17 CPC, by filing an affidavit and that too without seeking the prior permission of the court, is absolutely impermissible. As the Statute does not contemplate any other mode or manner of amending the pleadings except by invoking the provisions of Order 6, Rule 17 of the CPC, the appellants/plaintiffs cannot get so innovative as to chart an entirely new and different route from the well trodden path prescribed in the Code of Civil Procedure.

21. Having failed to file an amendment application for seeking enhancement of the pecuniary value of the suit to an amount over and above the valuation that was determined by the appellants/plaintiffs at the time of instituting the suit in the year 2014, they cannot be heard to state that the learned Joint Registrar has committed an error by disregarding the affidavit filed by them wherein it has been stated that the present suit raises a commercial dispute or that the specified value of the subject matter is above Rs.4.00 crores.

22. Sections 2 and 3 of the Amendment Act have amended Section 5(2) of the DHC Act, and Section 25 of the Punjab Courts Act, 1918. Now, the suits valued at above Rs.3 lakhs and not exceeding Rs. 2 crores are required to be instituted in the court of the District Judge and the pecuniary jurisdiction in respect of ordinary suits other than commercial cases governed under the Commercial Courts Act to be instituted in this court, has been fixed at an amount exceeding Rs.2.00 crores. The valuation of a suit in respect of a movable property, as in the present case, will continue to be

governed by the provisions of the Court Fees Act and the Suits Valuation Act and only those commercial disputes that have been defined under Section 2(c) of the Commercial Courts Act will be triable by the commercial courts, where the pecuniary jurisdiction has been valued at above Rs.1.00 crore.

23. Even if the present suit has been transferred by the impugned order to the District Court, all is not lost. If the appellants/plaintiffs is desirous of enhancing the suit valuation for valid and cogent reasons, they still have the option of filing an amendment application, which will be entertained and adjudicated upon in accordance with law. But for the appellants/plaintiffs to on the one hand maintain the aggregate value of the suit at Rs.21.00 lakhs, as set out in para 18 of the plaint and on the other hand, invoke the provisions of the Commercial Courts Act and unilaterally determine the specified value of the suit at Rs.4,41,90,000/-, on the strength of a self serving affidavit, is untenable.

24. In view of the above discussion, this court is of the opinion that the unsolicited affidavit dated 5.1.2016 filed by the appellant/plaintiffs cannot serve any purpose. Nor can it be a substitute for an amendment application. Nor could the said affidavit be taken into consideration by the learned Joint Registrar for retaining the suit in the High Court. This court therefore declines to examine the merits of the plea taken by learned counsel for the appellants/plaintiffs that the present suit raises a commercial dispute as is defined under the Commercial Courts Act or examine as to what would be the specified value of the suit. These are aspects that will engage the competent court only after the appellants/plaintiffs take steps to file an appropriate application for seeking amendment of the plaint, strictly in accordance with law.

25. The Chamber Appeal is therefore held to be devoid of merits and is accordingly dismissed with costs quantified at Rs.10,000/-.