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(2010) 2 ARC 229 : **(2010) 28 LCD 1120**

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

CHANDRA SHEKHAR AND OTHERS — Appellant

Vs.

RAJESH KUMAR — Respondent

(Before : S.N.Shukla, J)

Miscellaneous Single No. 2018 of 2010

Decided on : 26-04-2010

- Civil Procedure Code, 1908 (CPC) - Section 24

A. Civil Procedure Code, 1908 — Section 24 — Transfer of Cases — Jurisdiction — Scope of transfer from a court lacking jurisdiction — A suit initiated in a court lacking pecuniary jurisdiction can be transferred to a court of competent jurisdiction under Section 24 of the CPC, even if the suit has progressed to the stage of final arguments, rather than requiring the plaint to be returned under Order 7 Rule 10 CPC. (Paras 3, 4, 11, 12, 13, 14)

B. Civil Procedure Code, 1908 — Section 24(2) — Continuation of Proceedings after Transfer — The transferee court, upon receiving a case transferred from a court without jurisdiction under Section 24, has the discretion to either retry the case de novo or proceed from the stage at which it was transferred, especially when significant proceedings like evidence production have already concluded. (Paras 4, 12, 13, 14)

C. Civil Procedure Code, 1908 — Section 24(5) — Transfer from Incompetent Court — Section 24(5) explicitly permits the transfer of a suit or proceeding from a court which lacks jurisdiction to try it, affirming the validity of such transfers. (Paras 9, 12, 13)

D. Civil Procedure Code, 1908 — Order 7 Rule 10 — Return of Plaintiff — Applicability in Case of Transfer — While Order 7 Rule 10 mandates the return of a plaintiff for presentation to the proper court when the original court lacks jurisdiction, Section 24 of the CPC provides an alternative mechanism for transfer, which may be more appropriate in cases where the suit has substantially progressed. (Paras 10, 11)

E. Precedent — Distinction from Current Case — R. Venkataswami Naidu v. M/s South India Viscose Ltd. (AIR 1985 Madras 257) and Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. (AIR 2006 Supreme Court 646) — These cases, dealing with inherent lack of jurisdiction and the consequence of de novo trials, are distinguished from the present case where Section 24 CPC specifically allows for transfer from a court lacking jurisdiction and continuation from the stage of transfer. (Paras 6, 7)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. S.K.Mehrotra, learned counsel for the petitioner and Ms.Kirti Srivastava, learned Standing Counsel.

2. The petitioner is aggrieved with order dated 27.3.2010 passed by the District Judge, Unnao in Misc.Case No. 52 of 2009 to the extent that through the finding given in the order it appears that learned District Judge has validated the proceedings held before the court of incompetent jurisdiction.

3. Briefly the facts of the case are that the plaintiff filed a suit for arrears of rent and damages and ejection from the shop in question against defendant in the court of Judge, Small Causes Court/Civil Judge (Senior Division), Unnao. When the case was fixed for final arguments, the defendant raised plea of jurisdiction. The valuation of suit was Rs. 7000/-. The plaintiff instead of getting returned the plaintiff for presentation before the court of competent jurisdiction moved an application under section 24 of Code of Civil Procedure to transfer the case to the Small Causes Court/Civil Judge (Senior Division), Unnao.

4. The defendant vehemently opposed the transfer application and submitted that proceeding of the case is null and void as the Civil Judge (Junior Division), Unnao has had no jurisdiction to try the suit. Therefore, the plaintiff cannot take benefit of proceedings, which are without jurisdiction and further requested to return the plaintiff to be presented before the court of competent jurisdiction in accordance with provisions of Order 7, Rule 10 CPC. The District Judge allowed the plaintiff's application under Section 24 of the Code of Civil Procedure and instead of issuing direction to present the same before the court of competent jurisdiction as provided under Order 7, Rule 10 CPC transferred the case to the

court of Civil Judge (Senior Division), Unnao to proceed with the case from the stage it is transferred. In the present case, the evidence has already been produced and the case is at the stage of final arguments.

5. The learned counsel for the petitioner submits that the proceeding held before the court of incompetent jurisdiction at each and every stage of case becomes without jurisdiction, therefore, the suit is liable to be tried de novo from the stage of presentation of plaint by the court of competent jurisdiction as it has been presented before the said court.

6. In support of his contentions he cited a case i.e. *R. Venkataswami Naidu v. M/s South India Viscose Ltd. Coimbatore*, AIR 1985 Madras 257, in which the Madras High Court has held that If the court had no jurisdiction at all to entertain the suit, anything done by it, by assuming such jurisdiction, would be totally without competence on its part to do so and merely because such incompetence is discovered subsequently that would not render the intermediate act valid and binding till the date of discovery of such incompetence. To accept this argument would lead to a very strange situation in that orders passed by a court, incompetent to entertain the proceedings would be valid between the date when the proceedings are entertained and the discovery of its incompetence and would not be either binding or operative, after the date of discovery of the incompetence of the Court. Either the court is competent or it is incompetent to entertain suits and pass orders.

7. He further cited a case of *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.* and another, AIR 2006 Supreme Court 646. In this case due to amendment made in the written statement the court where the suit was originally instituted i.e. before Delhi Court lost its jurisdiction as the property was situated at Gurgaon. Accordingly the plaint was ordered to be returned to the plaintiff for presentation to proper Court. The order was confirmed by the High Court as well by the Hon'ble Supreme Court. The plaintiff moved the application before Hon'ble Supreme Court to the effect that since 17 years have passed from the institution of suit and the pleading are complete, evidence is recorded and the arguments are over, the Hon'ble Supreme Court may direct the Gurgaon Court to take up the suit from the stage at which it stands transferred and to decide it expeditiously. The respondent/defendant opposed the application on the ground that this Court held that there was inherent lack of jurisdiction in Delhi Court, the only court which had jurisdiction was the court of Gurgaon where the property was situated, therefore, when the plaint is presented before Gurgaon Court, it would not be treated as continuation of proceedings of court which had no jurisdiction but a suit would commence on the day when the plaint would be presented to the proper court. The Hon'ble Supreme Court held that Section 24 and/or Section 25 of the Code of Civil Procedure have no application to the said case and it dealt with the matter under Order 7, Rule 10 of the Code of Civil Procedure relying with judgment rendered in the case of *Amar Chand Inani v. Union of India*, (1973) 1 SCC 115, in which the Hon'ble Supreme Court held as under:

It was, however, argued by counsel for the appellant that the suit instituted in the trial court

by the presentation of the plaint after it was returned for presentation to the proper court was a continuation of the suit filed in the Karnal court and, therefore, the suit filed in Karnal court must be deemed to have been filed in the trial court. We think there was no substance in the argument, for, when the plaint was returned for presentation to the proper court and was presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint was presented in that court. In other words, the suit instituted in the Trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court.

The Hon'ble Supreme Court held that since Delhi Court was not having territorial jurisdiction to entertain the suit keeping in view the subject matter the application for proceedings that suit from the stage of its presentation before Gurgaon Court cannot be allowed.

8. He also cited a case i.e. *Balkishan and others v. 6th Additional District Judge Kanpur Nagar and others*, 2003 (21) LCD 1287, in which this court has held that whenever there is transfer of suits of higher valuation to a court of competent jurisdiction, on transfer the present suit also must have been registered in the transferee court. In the said case, the suit was filed before the Munsif City, the valuation of the suit was shown only Rs. 1000/-. On an objection being raised after making enquiry, the valuation of the suit was increased. The petitioner submitted that as the Munsif City had lost jurisdiction to hear and decide the suit because of increase in valuation, the plaint ought to have been returned to the plaintiff for filing afresh under Order IV CPC read with Order VII Rule 10 CPC. The suit was transferred to the competent court and the court fee on the increased valuation was paid. The only grievance of the petitioner was that the suit should have been registered again in the court of Civil Judge, Kanpur Nagar afresh after it was transferred, but the court declined to accept the aforesaid submission of the petitioner.

9. Section 24 of CPC, which deals with transfer of case is reproduced hereinunder:

24. General power of transfer and withdrawal. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

i. try or dispose of the same; or

ii. transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

iii. retransfer the same for trial or disposal to the Court from which it was withdrawn.

2. Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which (is thereafter to try or dispose of such suit or proceeding) may, subject to any special directions in the case of and order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

3. For the purposes of this section,

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) 'proceeding' includes a proceeding for the execution of a decree or order.]

4. The court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

5. A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

10. Order 7 Rule 10 of Code of Civil Procedure is also relevant for determination of question is also reproduced hereinunder:

10. Return of plaint: Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation. For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this subrule.

11. In the present case, opposite party no.1/plaintiff moved an application under Section 24 of the Code to transfer the case to the court of competent jurisdiction. The petitioner has challenged the order passed by the District Judge on the ground that the application under Section 24 of the Code was not maintainable. The District Judge should have directed the trial court to return the plaint for presentation before the court of competent jurisdiction under the provisions of Order 7, Rule 10 of the Code of Civil Procedure. It was further submitted that once the court of Judge, Small Cause Court/Civil Judge (Junior Division), Unnao has no pecuniary jurisdiction to try the suit, the same is liable to be dismissed or in any case, the plaint can be returned for proper presentation in accordance with provisions of Order 7, Rule 10 and 10 A of the Code. It is not in dispute that in the present case for the purpose of transfer the question of pecuniary jurisdiction is involved.

12. Subsection 2 of Section 24 of the Code of Civil Procedure provides that where any suit or proceeding has been transferred or withdrawn under subsection (1), the court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions

in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. Subsection 5 of section 24 of the Code provides that a suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

13. The Hon'ble Supreme Court in the case of Durgesh Sharma v. Jayshree (2008) 9 Supreme court Cases 648 has held that subsection 2 of section 24 of the Code empowers the Court ordering transfer to issue directions for the de novo trial or to proceed with the suit, appeal or other proceeding from the point at which it was transferred or withdrawn. Subsection 5 also clarifies that a suit or proceeding can be transferred from a court which has no jurisdiction to try it. In the present case since on the date of application of transfer the proceedings of producing evidences have been concluded and it was at the stage of final argument, the learned District Judge felt it proper to transfer the suit to the court of competent jurisdiction with the direction to proceed with the suit from the stage it is transferred to the court concerned in the interest of justice. It is clear that till that time the court has not recorded its own finding or has not reached to any conclusion and now the court of competent jurisdiction has to arrive at the conclusion on the basis of documentary evidence as well as the statement of witnesses after providing opportunity of hearing to the learned counsels for the parties that stage is yet to come.

14. Therefore, after considering the facts and circumstances of the case as well as the decisions discussed hereinabove, I am of the considered view that District Judge, Unnao has not committed manifest error in transferring the case to the court of competent jurisdiction with the direction to proceed with the suit from the stage it is transferred.

15. In the result, the writ petition is dismissed.

(Petition dismissed)