

07.09.2024

Present: Sh. Ashok Kumar, Ld. Counsel for the plaintiff with
plaintiff/PW1.

Ms. Aditi Aggarwal, Ld. Counsel for the defendant with
defendant.

(1) Fresh vakalatnama filed on behalf of defendant, same is
taken on record.

(2) At this stage, application u/o VII Rule 11 r/w Section 151
CPC filed on behalf of defendant. Copy supplied.

(3) Ld. counsel for defendant submits that, present suit has
not been properly valued and Rs. 17,000/- is mentioned in valuation
paragraph. It is further submitted that since there is violation of Order
VII Rule 1(i) CPC as well as Order IV Rule 3 CPC, present plaint is to
be rejected under Order VII Rule 11 CPC.

(4) *Per contra*, Ld. counsel for plaintiff submits that present
application may be dismissed being devoid of any merit on the face of
it. It is submitted that present suit for recovery of Rs. 7,50,000/-
alongwith damages filed on behalf of plaintiff and court fees of Rs.
17,000/- affixed on the plaint. It is further submitted that due to some
typographical error court fees of Rs. 17,000/- mentioned in valuation
paragraph instead of Rs. 7,50,000/- and same is curable defect. Ld.
counsel for plaintiff further undertake to abide by direction of this
court for correction of above typographical error.

(5) Submissions heard. Record perused.

(6) It is settled law that at the stage of considering an application under Order VII Rule 11 CPC, the court is only required to examine the plaint and the list of documents filed on behalf of the plaintiff alongwith the suit. Other pleas raised by the parties including those in the written statement are not relevant to decide the said application.

(7) It is well settled law that pleadings has to be read as a whole. Admittedly, present suit for recovery for Rs. 7,50,000/- towards refund of advance money and Rs. 7,50,000/- towards damages (i.e. Rs. 15,00,000/- in total) filed on behalf of plaintiff and court fees of Rs. 17,000/- affixed. Pecuniary jurisdiction of this court is above Rs. 3,00,000/- and as per Court Fees Act, Advoleram court fees for Rs. 15,00,000/- amounts to be Rs. 16,984/-.

(8) Further, record reveals that vide order dated. 14.07.2022, following issues were framed by Ld. Predecessor of this court.

- (1) Whether plaintiff is entitled for decree for recovery of the suit amount of Rs. 7,50,000/- as prayed for? OPP
- (2) Whether the plaintiff is entitled for damages alongwith pendente lite and future interest, if so, at what rate and for what period? OPP
- (3) Relief.

(9) Record further reveals that, matter is pending for PE since 14.07.2022, thereafter, PW1 was examined on 23.03.2024 and his cross-examination was deferred at the request of defendant. However, on 18.07.2024, again adjournment was sought on behalf of defendant and matter listed for today. No objection with respect to the valuation of the suit was ever raised by defendant in her pleadings i.e. written statement. In fact, present application is not accompany any affidavit.

(10) Although, it is settled Law that, Legal objection can be raised at any stage of proceeding but, in the considered opinion of this court, present suit cannot be treated as under valued and present

application is devoid of any merit. Hence, dismissed with cost of Rs. 1,500/- for wastage of judicial time that is to be paid to the plaintiff.

(11) PW1 is present, partly cross-examined. His further cross-examination deferred at the request of Ld. Counsel for defendant as it is lunch time and she is not available in post lunch session.

(12) Put up for further cross-examination of PW1 on **07.11.2024.**

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 07.09.2024