

SUPREME COURT OF INDIA

Joginder Tuli

Vs.

S.L. Bhatia

(K Ramaswamy and G Pattanaik JJ.)

07.10.1996

JUDGMENT

1. Leave granted.

2. This appeal by special leave arises from the order of the learned single Judge of the High Court of Delhi made on January 8, 1996 in C.M. No. 3825/95 in C.R. No. 723/95.

3. The admitted position in that the appellant had enjoyed the demised property pursuant to lease dated December 21, 1990 at a monthly rent of Rs. 6,000 the respondent had terminated the tenancy on March 15, 1993 and filed the suit No. 133/1993 for possession. He valued the suit at Rs. 72,000 on yearly rent. Respondent No. 1 filed an application to amend the plaint to recover damages for the use and occupation. On that basis, the pecuniary jurisdiction of trial Court was beyond its jurisdiction and accordingly plaint was returned for presentation to proper Court. On revision, the High Court directed to return it to the District Court with a direction that the matter would be taken up by the District Court and proceeded with from the stage at which it was returned.

4. In the first instance, it was contended that the appellant also has counter claim for the improvement effected on the building and, therefore, without giving an opportunity to the appellant

to adduce evidence in this regard, the District Court could not proceed in that behalf. An application made to be filed for clarification and review was rejected by the High Court. Thus, this appeal by special leave.

5. Shri Mohan, learned Counsel for the appellant, contended that in the written statement, the appellant has raised the issue of territorial jurisdiction of the Court and also the valuation in that behalf. He also stated in the written statement that he is entitled to the counter-claim for the improvement effected thereunder. When we directed the learned Counsel to produce the issue framed by the trial Court by our order dated September 16, 1996, Shri Mohan has now fairly stated that no issue of counterclaim had been framed by the trial Court. It is also admitted position that he did not pay any court fee on the counter-claim. He sought permission to pay the court fee on the counter-claim and direction to frame the issue and to proceed with the trial. We are afraid that we cannot give that direction. Once he has not paid the court fee within the time prescribed, necessarily, it is barred by limitation. Therefore, at this distance of time, he cannot be allowed to pay the court fee in this regard. Under these circumstances, the original order passed by the High Court directing the District Judge to proceed from the stage at which the suit stood transferred to the District Court appears to be correct in the circumstances. Normally, when the plaint is directed to be returned for presentation to the proper Court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that state at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.

6. The appeal is accordingly dismissed. No costs.