

IN THE HIGH COURT OF DELHI

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+ TR.P. (C) No. 26/2005

% Judgment reserved on : November 24, 2005  
Judgment delivered on : December 08, 2005

# Atma Ram Properties Pvt. Ltd.  
! ....Petitioner  
through: Mr. L.K. Garg,  
Advocate.

Versus

\$ Union of India and another  
^ ....Respondents  
through : Mr. S.Kait, Advocate.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

This is a petition under Section 24 of the Code of Civil Procedure (for short 'CPC') for transfer of Suit No. 235/2004, titled as

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physical file have been compared and  
the digital data is as per the physical  
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Atma Ram Properties Pvt. Ltd. vs. Union of India and another, pending before the Court of Sh. R.P. Pandey, Additional District Judge, Tis Hazari Courts, Delhi, to this Court and to try the same before this Court in accordance with law.

2. The necessary facts are that the plaintiff had filed a suit for declaration and injunction in this Court. The same was transferred to the Court of District Judge because of enhancement in the pecuniary jurisdiction of the Court as the plaintiff at that time had valued the suit for the purposes of court fee and jurisdiction at Rs. 1,05,000/-, though a refund of Rs. 42,00,000/- was claimed. The application for amendment filed in this court was allowed and consequently the suit was transferred to the Court of learned District Judge where the plaintiff again filed an application under Order 6 Rule 17 of the Code of Civil Procedure, which was allowed by the Trial Court vide its order dated 13<sup>th</sup> October, 2005. In that suit the plaintiff prayed for a decree for mandatory injunction and also for refund of a sum of Rs. 42,24,065.25. As already noticed, this application was allowed and the Court below lost pecuniary jurisdiction to try and decide the suit. As a result of that order, the Trial Court felt that the amendment asked for was formal and had allowed the application subject to making up of the deficiency in the Court fee. The prayer of the petitioner in the present petition is that because of change

in pecuniary value of the suit for the purposes of court fee and jurisdiction, rather than the plaint being returned to the plaintiff by the Trial Court for presentation to this court, it will be in the interest of justice to transfer the suit so as to avoid the possibility of the entire proceedings, so far taken in the suit, being vitiated or of the court orders being rendered ineffective, as the suit was filed in the year 1981.

3. The learned counsel appearing for the respondents had raised some opposition to the grant of this relief on the ground that the plaint should be returned to the plaintiff rather than the suit being transferred to this court. This rival contention raised between the parties no longer is a matter of any controversy. In fact, this has been dealt with at some length in the recent judgment of this Court in **TR.P.(C) NO. 9/2005** titled as **Aviat Chemicals Pvt. Ltd. and Anr. vs. Magna Laboratories (Gujarat) Pvt. Ltd. and Anr.** decided on **29<sup>th</sup> September, 2005**, where while considering such matter the Court held as under:-

10. The present cases are typical example of such class of cases. These suits were pending before this Court and after coming into force of the notification dated 16<sup>th</sup> July, 2003, the suits were transferred to the District Court because of increase in pecuniary jurisdiction of this Court. Subsequently, the parties prayed for amendment which, as already noticed, was allowed by the Court of Competent Jurisdiction on merits, in light of the judgment of the Supreme Court in the case of

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Lekha Ram Sharma Vs. Balar Marketing Pvt.Ltd. 2003  
(27) PTC 175(SC) and even with the consent of the parties. Such amendment resulted in increase in valuation of the suit for the purposes of court fee and jurisdiction and consequent increase in the pecuniary value. As the District courts then lost their pecuniary jurisdiction to entertain and decide the suits the proceedings under Order 7 Rule 10 remained pending. The Court cannot lose sight of the fact that for years the suits have progressed before this Court and then on transfer before the trial court and now are intended to be transferred to this Court. The suits would have to come to this Court without exception. Even if it is assumed for the sake of arguments that plaints would be returned to the plaintiff for being presented to this Court and all the orders, interim or otherwise passed would be rendered ineffective or inoperative or the suits are transferred along with the proceedings to this Court so as to prevent de novo trial as well as save the valuable time of the Court, are the consequences, which are bound to flow as a result of exercise of discretion by the Court. In the case of Ramesh Chand Bhardwaja (Supra), the court expressed the view that, since admittedly the plaint has been returned under the orders of the trial court and there is no plaint or suit pending in the court subordinate to the High Court, the provisions of Section 24 of the Code could not be invoked. Firstly, in the present case, unlike Bhardwaja case, the plaintiffs have admittedly not received the plaints from the subordinate court for its presentation in the High Court. In some of the cases, the plaintiffs have filed an application while in others, they have sought an adjournment from the learned trial court as to whether the complete proceedings should be sent to this Court along with the Order 7 Rule 10. These proceedings are pending and, in law, it cannot be stated that the proceedings in the suit have fully and finally terminated and the court below has become *functus officio*. Once these applications are pending or that the court has adjourned the cases for some consideration or the other, the proceedings, even if it

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could be said *stricto sensu* that suit is not pending before the court, even then it cannot be stated that no proceedings are pending before the trial court. The provisions of Section 24 of the Code are applicable not only to a suit but even to proceedings pending before the subordinate court. It may be relevant to notice at this stage itself that in some of the cases, the proceedings before the trial court were stayed by interim orders passed by different Benches of this Court. Maybe, the provisions of Section 24 on the one hand and order 7 Rule 10 and 10(a) on the other of the Code may not be read together or applied to the facts of the case to the suit at one and the same domain. Normally, both these powers would fall in the domain of different jurisdictions. As already noticed, these are the two different courses open to the courts at the relevant time and they could be applied to the facts of a case keeping in view element of prejudice, adherence to the law of procedure, equity and attainment of ends of justice. Once suit and/or any other proceedings are pending before a trial court, at any stage, the powers of this court under Section 24 could be invoked and cases transferred to this Court from the courts having no jurisdiction. Resorting to the provisions of Section 24, despite passing of an order, would per se not tantamount to lack of jurisdiction. Recourse to one prescribed mode under the law of procedure would not bring into play the doctrine of no jurisdiction as none has a vested right in procedure, particularly when no prejudice is suffered by such a party.

11. In the case of Rail Chand Vs. Alal Chand & Ors. (1977) 13 D.L.T. 153, a Bench of this Court followed the view and methodology adopted by a Division Bench of Allahabad High Court in the case of Sahu Nand Ram Vs. Ms. Hira Devi and Ors. 1973 I.C. 495 and directed that plaint had to be returned because of lack of jurisdiction. But instead of return of the plaint, it was ordered that the suit be transferred from the court of Commercial Sub-Judge to the Court of District

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Judge. In the case of Joginder Tuli Vs. S. L. Bhatia (Supra), the Supreme Court approved the order of the High Court where it had directed the subordinate court to proceed with the suit from the stage at which the suit stood transferred because the trial court had no pecuniary jurisdiction to entertain and decide the suit and had directed return of the plaint for presentation to the proper court. Their Lordships held as under:

"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 stage 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."

12. The learned counsel for appearing for the respective respondents, while relying upon the judgment of the Supreme Court in the case of Auto Engineering Works Vs. Bansal Trading Company (2001) 10 SCC 630 and Amarchand Inani Vs. Union of India AIR 1973 SC 313, argued that provisions of Order 7 Rule 10 would have the effect of completely ousting the jurisdiction of the court and once an order under these provisions is passed, there shall be commencement of a fresh suit upon presentation of the plaint before the court of

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competent jurisdiction and old suit would not continue. In this regard, they have also referred to some judgments of other High Courts. Reliance was also placed upon the judgment of this court in Jasu Shah case (Supra) to argue that return of the plaint cannot be treated as transfer petition under Section 24 of the Code. As far as Jasu Shah case (Supra) is concerned, I have already stated that the principle enunciated in that case has no application to the present case, which is a petition under Section 24, as the court itself has noticed that no petition for transfer was filed in that case. Furthermore, the matter is subjudice before the appellate court. The principle enumerated in the case of Auto Engineering Works as well as Amarchand Inani case can have no dispute. Once the court finds that it lacks territorial or pecuniary jurisdiction, it should pass an order returning the plaint to the plaintiff for its presentation before the court of competent jurisdiction. In that case, the court had declined to exercise its jurisdiction under Order 7 Rule 10 and kept the matter pending. It was despite the fact that it had recorded that it had no territorial jurisdiction and still did not record the final order. In the case of Amarchand Inani case (Supra), the plaint had been returned for presentation to the court of competent jurisdiction. The plaint had been taken by the plaintiff therein and was actually presented before the proper court and it was held that the presentation before the proper court was not a continuation of the suit filed before the earlier court. Both these cases would have no application to the facts and circumstances of the present case.

13. The rules of procedure are hand-made to achieve the ends of justice to adopt a micro-cosam approach to the language of these provisions, which otherwise do not imply mandatory character, would amount to frustrating the very object of procedural law. The purpose is to expedite the conclusion of the proceedings and not to scuttle the same. The process of justice dispensation demands effective participation as well as expeditious disposal. If the suits are permitted to commence de

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novo as a result of inevitable presentation of plaint before this Court, it would be retrograde rather than progressive. Enforcement of procedural law with rigorous accuracy would not be congenial to administration of justice if it defeats the very object of procedural law.

14. In a recent judgment, the Supreme Court in the case of Rani Kusum (Smt.) Vs. Kanchan Devi (Smt.) & Ors. 2005 VII AD (S.C.) 192 emphasised the principle that merely because provision of law is couched in a negative language implying mandatory character, the same could not be without exceptions, which again would be relatable to the facts of the case, making a satisfactory reason for carving out that exception.

15. A similar view, in relation to whether the character of provisions of Order 8 Rule 1 are directory or mandatory, it was held to be directory in the case of Kailash Vs. Nanhku & Ors., JT 2005 (4) SC 204. The counsel for the respondents have not been able to even reasonably argue what prejudice would the respondents suffer either in law or on facts, if these suits are ordered to be transferred to this Court. Learned counsel appearing for the respondents did argue that the plaintiffs are trying to delay disposal of suits and the present transfer petitions are one such attempt on their part. It may be noticed that some of the suits are stated to be fixed for hearing while in others evidence has been recorded, still some other suits are pending at initial stages. Now this court alone would have the pecuniary jurisdiction to entertain and decide the suits because of the orders passed by the trial court. In the event the plaints are taken back by the plaintiffs and are represented in the registry of this Court for *de novo* trial it would but naturally result in further delay and prejudice to parties. There would be expeditious disposal of the suits, if the suits are permitted to be transferred, in the sense that all the proceedings so far lawfully taken by the court of competent jurisdiction would be protected and not



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treated as having invalidated in law. It is difficult to accept the reasoning that loss of pecuniary jurisdiction before a Court whether by virtue of operation of law or by act of the parties covered by an order of the Court should be permitted to vest parties with different consequences in law, particularly when one of such consequences could be adverse to the very system of expeditious disposal of suits.

16. The argument raised on behalf of the respondents that loss of jurisdiction as a result of amendment would necessarily have to be construed as no suits or proceedings are pending before the trial court, is without any merit. I have already noticed that the provisions of section 24 and Order 7 cover a different domain and there is no conflict between these provisions. The provisions of Section 151 would come to the aid of the Court, as no Code can possibly make provisions so as to meet every situation which may arise during the pendency of the suit. It is a situation where inherent jurisdiction of this Court would come to the aid and supply the vacuum. The inherent jurisdiction of the Court would normally be exercised in the interest of justice and for attainment of object of expeditious disposal of suits. May be it is the creation of the applicants themselves that the Court has lost pecuniary jurisdiction and the applications under Order 7 Rule 10 and 10(A) are pending or that the order has been passed for return of plaint but the plaint as a matter of fact has not been returned to the plaintiffs as of today. Thereafter interim orders in the present petitions were passed in favour of the petitioners. In these circumstances, it is difficult for this Court to hold that there is no suit or proceedings in the suit, pending before the trial court. The legislature in its wisdom has worded the language of section 24 in wide terms by empowering the High Court to transfer any suit or appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it. In other words, the meaning of the word "such or other proceedings pending in any court" cannot be restricted

or construed so as to exclude the proceedings as contemplated under Order 7 Rule 10, 10(A) of the Act.

17. The present are the cases which have been filed by the plaintiffs in the Court of Competent jurisdiction. However, earlier they were transferred to the District Courts in view of the notification and now the district courts have lost pecuniary jurisdiction as a result of the order of the Court at the behest of the parties. The interim orders, undertakings have continued for years together. In some cases evidence has been recorded. It will be travesty of justice if the proceedings have to commence de novo right from the stage of filing a written statement as the plaintiff would be returned only with a plaint, to be presented before the court of competent jurisdiction there is nothing in the provisions of Order 7 Rule 10 which on its plain reading or by necessary implication be construed as a bar to maintainability of a petition under section 24 of the Code. These circumstances examined in light of the predicated principles of law adjunct with the fact that no prejudice would be caused to the respondents if the suits are permitted to be transferred by itself would be sufficient ground for ordering the transfer of the suits if other ingredients of section 24 are satisfied and such an order is demanded in the interest of justice.

18. Harmonious and constructive application of the above two sets of provisions of the procedural law would require the court to adopt an approach which would satisfy the twin objects of the Code of Civil Procedure, namely, expeditious disposal of the case and achievement of ends of justice, without causing prejudice to the parties. Convenience or inconvenience of the parties would hardly be a relevant consideration for the court while laying down such a principle. Apparently an order of transferring the suits to this Court would cause no prejudice to the respondents and infringes no legal principles, and I see no reason why the petitions should not be allowed.

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19. For the reasons afore-stated all the petitions under Section 24 of the Code of Civil Procedure filed by the petitioners are allowed, the suits in question are ordered to be transferred to this court and tried in accordance with law. However, in the facts and circumstances of the case, parties are left to bear their own costs."

4. In view of the above discussion, no prejudice would be caused to the respondents if the suit is permitted to be transferred to this court and tried in accordance with law. The purpose of procedural law is to further the cause of justice, and certainly in the present case, if the suit is transferred, it will serve a better cause than if the plaint is merely returned to the plaintiff without the orders of the court and other records of the court filed in the suit.

5. Consequently, this petition is allowed. Suit No. C.S.-235 of 2004 titled as Atma Ram Properties (P) Ltd. vs. Union of India and another, pending before the Court of Sh. R.P. Pandey, Additional District Judge, Tis Hazari Courts, Delhi is ordered to be transferred to this court and tried in accordance with law. However, in the facts and circumstances of the case, parties are left to bear their own costs.

  
**SWATANTER KUMAR**  
**(JUDGE)**

December. 08, 2005  
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