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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TR.P.(C.) 63/2022, CM APPL. 37260/2022

SHRI RAM DASS MALIK

..... Petitioner

Through: Mr Abhishek Singh, Mr. Surjeet Singh Malhotra and Mr. Akshat Choudhary, Advs. (through VC)

versus

SHRI RAJA BADAMI & ORS.

..... Respondents

Through: Ms. Uma Aggarwal and Mr. Pulkit Aggarwal, Advs.

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Date of Decision: 28th September, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL. 37261/2022 (exemption)

Exemption is allowed subject to all just exceptions.

TR.P.(C.) 63/2022

1. The present transfer petition has been filed by the petitioner seeking transfer of civil suit bearing CS DJ No.775/2021 titled as *Shri Raja Badami and Ors vs. Shri Ram Das Malik*.
2. The admitted facts are that initially the suit was filed by the

respondent-plaintiff for possession and damages. In the said suit, the petitioner herein filed a written statement along with the counter claim. The petitioner set up a counter-claim that there was an oral agreement to sell and the counter claim was valued at 2,75,00,000/-. Petitioner further took a plea that since the counter claim exceeded the jurisdiction of the learned Trial Court therefore, the matter may be transferred to this Court.

3. Sh. Abhishek Singh, learned counsel for the respondent has raised two fold objections. Learned counsel submits that firstly, the counter claim being filed by the petitioner herein is not maintainable in view of the proviso to Order 8 Rule 6 A which provides that the counter claim shall not exceed the pecuniary limit of the jurisdiction of the Court.
4. Learned counsel submits that since the counter claim was beyond the pecuniary jurisdiction of the learned Trial Court, therefore, the same itself is non-est in the eyes of law.
5. Learned counsel further submits that the petitioner has based his case on an oral agreement to sell. It has been submitted that there has never been an agreement and further oral agreement to sell has no value in the eyes of law and the reliance has been placed upon ***Balram Singh v. Kelo Devi***, in Civil Appeal No. 6733 of 2022.
6. Learned counsel for the respondent submits that the transfer of the entire suit with the counter claim will delay the trial. It has been submitted that if the petitioner wants to pursue his claim, he can independently file a separate suit before this Court.
7. *Per contra*, learned counsel for the petitioner submitted that since the

counter claim has been filed, which is beyond the pecuniary jurisdiction of the learned Trial Court. Therefore, the matter is required to be transferred to this Court.

8. Learned counsel for the petitioner has relied upon the judgment of this Court in “**Dr. Pritesh Kumar Singh v. Peepee Publishers & Distributors (P) Ltd. & Anr.**” 2015 SCC OnLine Del 11261.
9. Learned counsel submits that in Dr. Pritesh Kumar Singh (supra) initially a suit was filed claiming damages of Rs. 19,000,00/- which was pending before the learned ADJ, Patiala House Court. In that suit the petitioner filed his written statement along with counter claim of Rs. 25,00,500/- before the Court. In this background, the petitioner relying on Order 8 Rule 6A sub Clause 2 CPC sought transfer of the main suit as well as the counter claim being a cross suit to be tried by the High Court because the valuation of the counter claim was more than Rs.20,000,00/-.
10. This Court *inter alia* held that the Court can pronounce final judgment in the suit and counter claim only if they have been tried together by the same Court and since both the parties are claiming damages qua each other, the matter can be tried by the High Court within whose pecuniary jurisdiction alone, the counter claim lies.
11. Learned counsel for the petitioner has further relied upon the judgment passed by this Court in “**Raj & Associates & Anr. v. Videsh Sanchar Nigam Limited & Anr.**” 2009 (110) DRJ 340 (DB). In this case also this Court taking into account, Order 8 Rule 6 A CPC *inter alia* held that ordinarily, a suit claim and the counter claim relate to the same subject matter and inter-related cause of action and therefore

are best disposed of together.

12. Learned counsel further submits that in view of the authoritative pronouncement by this Court and for the harmonious interpretation of Order 8 Rule 6 A CPC, the present suit along with the counter claim is required to be transferred to this Court.
13. I have heard the submissions and perused the record carefully.
14. At the outset, this Court is not convinced with the arguments of the learned counsel for the petitioner. First and the foremost the proviso to Order 8 Rule 6A CPC specifically provides that the counter claim filed by the respondent shall not exceed the pecuniary limit of the jurisdiction of the Court.
15. I consider that the counter claim filed by the defendant, being beyond pecuniary jurisdiction of the Court, is not maintainable, as even been mentioned by this Court in *Dr. Pritesh Kumar Singh* (supra) relying upon “*Gurbachan Singh v. Bhag Singh*” (1996) 1 SCC 770 that the counter claim or the damages cannot exceed the pecuniary jurisdiction of the Court. It is also a cardinal principle that the jurisdiction of the Court trying the suit cannot be ousted by taking stand in defence i.e. by way of filing counter claim/set-off/damages in excess to the pecuniary jurisdiction of that court.
16. The judgments cited by the learned counsel for the petitioner are respectfully distinguished on the facts and circumstances of the case. In “*Raj & Associates & Anr* (Supra), the facts were totally different. In the case, the initial pecuniary jurisdiction was valued at Rs. 9, 70, 417/- which was much below the pecuniary jurisdiction of Rs.20,00,000/- at that particular time. Later on, the counter claim was

filed which was valued at around Rs.30,00,000/-. The Court taking into account, the peculiar facts and circumstances, allowed both the suit and the counter claim be tried by this Court. Similarly, the facts in ***Dr. Pritesh Kumar Singh*** (Sura) are also distinguishable. In this case also the damages for claim and in the counter claim, the respondent-petitioner sought the damages which were beyond the pecuniary jurisdiction of the learned Trial Court.

17. In the present case, the respondent-plaintiff has filed a suit for recovery of possession claiming the petitioner to be the tenant, the petitioner herein set up a case that in fact, he had entered into an oral agreement to sell for a sum of Rs.2,75,00,000/- out of which Rs.40,00,000/- has been paid.

18. I consider that therefore the judgments as cited by the learned counsel for the petitioner are distinguishable. This Court is of the view that there is no ground to allow the transfer petition. Hence, the present petition along with pending application is dismissed.

19. However, no expression made herein shall tantamount to be an expression on the merits of the case.

DINESH KUMAR SHARMA, J

SEPTEMBER 28, 2022

Pallavi