

JOGINDER TULI  
v.  
S.L. BHATIA AND ANR.

OCTOBER 7, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Rent and Eviction:*

*Landlord Terminating the tenancy—Suit for possession—Landlord subsequently filing application to amend the plaint to recover damages for use and occupation—Suit being beyond pecuniary jurisdiction of trial court, it returned the plaint for presentation to proper Court—High Court directing the district Court to take up the matter and to proceed with the suit from the stage it was returned—Tenant's plea for counter-claim—Court fee on counter claim not paid—Held, normally when plaint is returned for presentation to proper court it has to start from the beginning but in this case since the evidence was already adduced, High Court was right in directing to proceed from the stage at which the suit stood transferred—The tenant has not paid the court fee on counter claim within prescribed period, it is barred by limitation—He cannot be allowed to pay the court fee now.*

*Code of Civil Procedure, 1908 :*

*Order IV, Rule 1—Suit—Presentation of plaint, and commencement of suit—Discussed.*

*Court Fee :*

*Court fee on counter—Claim—To be paid within prescribed period.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13235 of 1996.

From the Judgment and Order dated 8.1.96 of the Delhi High in C.M. No. 3825/95 in C.R. No. 723 of 1995.

K.K. Mohan, Ms. Amarjit Kaur, Smit Mohan and Ms. Geetanjali Mohan for the Appellant.

Mukul Rohtagi and Arun K. Singa for the Respondents.

A The following Order of the Court was delivered :

Leave granted.

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.

The admitted position is 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.

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.

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 counter-claim 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 A  
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 B  
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 accord-  
ingly. 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.

The appeal is accordingly dismissed. No costs. C

R.P.

Appeal dismissed.