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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 646 OF 2026

M/s. Koyna Power Limited

...Appellant

Versus

Mr. Sunil Bhikaji Kanade

...Respondents

Mr. Ashok M. Saraogi a/w. Mr. Sushil Upadhyay, for Appellant.

Mr. Bhavin Gada i/b. Mr. Namdev Gore, for Respondent.

CORAM: AARTI SATHE, J.

DATE: 18 AUGUST 2026

P.C.

1. This Appeal from Order under Order XLIII Rule 1(a) of the Code of Civil Procedure 1908 ("CPC") takes exception to the order dated 19th June 2026 passed by the Learned Judge of the Bombay City Civil Court ("Trial Court") in Notice of Motion No. 1903 of 2021 in S.C. Suit no. 1504 of 2021 whereby the Trial Court directed return of the plaint under Order VII Rule 10 of the CPC for presentation before the appropriate court.

2. The Notice of Motion No. 1903 of 2021 in SC. Suit no. 1504 of 2021 had been instituted by the Appellant (Original Plaintiff) for issuing temporary injunction restraining the Respondent from disposing of or putting any third party in possession of immovable property as described in the plaint, which is situated at Village Chikhaloli, Ambarnath, District – Thane (hereinafter referred to as "the suit property"). The suit was filed for declaration that Respondent (Original

Defendant) has no right to create any third party right, or to dispose of, or part with possession in respect of the said suit property, and perpetual injunction restraining Respondent from disposing of, or putting any third party in possession of the said suit property.

3. The principal objection raised by the Respondent before the Trial Court was that the suit was not maintainable before the Trial Court for want of territorial jurisdiction and, consequently, ought to have been instituted before the competent Court having territorial jurisdiction. The Trial Court accepted the said objection and directed return of the plaint under Order VII Rule 10 of the CPC by order dated 19th June 2026.

4. Learned counsel for the Appellant submitted that the Trial Court failed to appreciate that the provisions of Order VII Rule 10 of the CPC could not have been invoked in the facts of the present case without taking into consideration the provisions of Order VII Rule 10A of the CPC. He drew my attention to the provisions of Order VII Rule 10 as well as Rule 10A of the CPC and submitted that Rule 10 has to be read subject to the procedure prescribed under Rule 10A.

It was submitted that where the Defendant has appeared in the suit and the Court is of the opinion that the plaint is liable to be returned, Rule 10A specifically requires the Court, before returning the plaint, to intimate its decision to the Plaintiff. Sub-rule (2) of Rule 10A further provides that, upon such intimation, the Plaintiff may make an application specifying the Court in which he proposes to present the plaint after its return and may request the Court to fix a date for the appearance of the parties before such Court. The Plaintiff may also request that notice of the date so fixed be given to both the Plaintiff and the Defendant.

5. Learned counsel further submitted that sub-rules (3) and (4) of Rule 10A

prescribe the procedure to be followed thereafter and enable the Court to proceed with the said application before returning the plaint, notwithstanding that the order directing return of the plaint was made by it on the ground that it has no jurisdiction to try the suit. It was therefore submitted that, since the procedure prescribed under Rule 10A was not followed by the Trial Court, the order directing return of the plaint under Order VII Rule 10 could not have been passed in the manner in which it has been done in the present case. For ease of reference Order VII Rule 10 and 10A are reproduced below:

10. Return of plaint. —(1) 2 [Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. 3 [Explanation. — For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.] (2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return. —(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.] (2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court— (a) specifying the Court in which he proposes to present the plaint after its return, (b) praying that the Court may fix a date for the appearance of the parties in the said Court, and (c) requesting that the notice of the date so fixed may be given to him and to the defendant. (3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit, — (a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and (b) give to the plaintiff and to the defendant notice of such date for appearance. (4) Where the notice of the date for appearance is given under sub-rule (3),— (a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned. (5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

6. He further submitted that the Trial Court, without deciding the issue of injunction, which was the primary grievance of the Appellant (Original Plaintiff) in the Notice of Motion, erroneously proceeded to return the plaint solely on the ground of want of jurisdiction. He submitted that no prior notice or intimation was given to the Appellant (Original Plaintiff) before passing the order directing return of the plaint. On this ground also, the impugned order passed by the Trial Court is erroneous and deserves to be set aside.

7. He further submitted that, insofar as the earlier order dated 4th March 2026 passed by the Trial Court, which was challenged before this Court by filing an Appeal from Order No. 406 of 2026, is concerned, a Co-ordinate Bench of this Court had disposed of the said Appeal from Order by order dated 28th April 2026 with a direction to the learned Trial Court to hear and finally decide Notice of Motion No. 1903 of 2021 within a period of six weeks from the date of appearance of the parties before the Trial Court. It was further submitted that all contentions of the parties, including the issue of pecuniary jurisdiction, were expressly kept open for consideration by the Trial Court while deciding the said Notice of Motion.

8. Learned counsel submitted that the order dated 4th March 2026 passed by the Trial Court could not be construed as constituting notice or caution to the Appellant (Original Plaintiff) that the Trial Court proposed to return the plaint on the ground that it lacked jurisdiction to try the suit. Consequently, the mandatory procedure contemplated under Order VII Rule 10A was not followed by the learned Trial Court before invoking the provisions of Order VII Rule 10 and directing return of the plaint.

9. He further submitted that, insofar as the provisions of Section 16 of the CPC are concerned, the same would not operate as a bar to the maintainability of the present suit before the Trial Court. He submitted that, although the subject matter of the present suit is situated at Village Chikhaloli, Ambarnath, District – Thane, the Appellant has its registered office within the jurisdiction of the learned Trial Court at Mumbai. He further submitted that the various properties held by the Appellant (Original Plaintiff) are situated at different places and are scattered across jurisdictions. He also submitted that the suit property is situated at Village Chikhaloli, Ambarnath, District – Thane only for the reason that the same has been purchased by the Respondent (Original Defendant), who is an agriculturist, from the funds of the Appellant (Original Plaintiff) and he is a director of the Appellant (Original Plaintiff). In these circumstances, it was submitted that the Trial Court at Mumbai is a competent Court having territorial jurisdiction to entertain and try the present suit.

10. Per contra, learned counsel for the Respondent (Original Defendant) supported the impugned order and submitted that the same has been correctly passed. He vehemently opposed the submissions advanced on behalf of the Appellant (Original Plaintiff) and submitted that it would be incorrect to contend that the provisions of Order VII Rule 10A were not complied with or that the Appellant (Original Plaintiff) was neither aware of nor put to notice regarding the issue of jurisdiction.

11. He submitted that, in the earlier round of litigation, this Court, by its order dated 28th April 2026, had specifically set aside the order dated 4th March

2026 and directed the Trial Court to decide Notice of Motion No. 1903 of 2021 expeditiously, while keeping open all contentions of the parties, including those relating to territorial and pecuniary jurisdiction. He therefore submitted that the requirements of Order VII Rule 10A were duly complied with and, consequently, the Trial Court was justified in invoking the provisions of Order VII Rule 10 and directing return of the plaint.

12. He further submitted that there is no dispute that the suit property is situated at Village Chikhaloli, Ambarnath, District – Thane, which is outside the territorial limits of the Trial Court. He submitted that Section 16 of the CPC clearly provides that suits relating to immovable property falling within the categories enumerated in clauses (a) to (f) thereof are required to be instituted in the Court within whose territorial jurisdiction the property is situated. Therefore, according to him, in respect of a suit concerning such immovable property, territorial jurisdiction is to be determined with reference to the situs of the property. He therefore submitted that, in respect of suits concerning immovable property, territorial jurisdiction is to be determined with reference to the place where the immovable property is situated.

13. Learned counsel for Respondent further submitted that, insofar as other suits are concerned, Section 20 of the CPC specifically provides for the place of institution of such suits, inter alia, on the basis of the place where the Defendant resides or carries on business, or where the cause of action, wholly or in part, arises, subject to the conditions stipulated therein. He therefore submitted that, on all counts, the impugned order passed by the Trial Court is well-reasoned and correct.

Once the Trial Court came to the conclusion that it was not the competent Court having territorial jurisdiction to entertain and try the suit, the Notice of Motion pending before it was rightly disposed of, with liberty to the Appellant (Original Plaintiff) to agitate the reliefs sought in the suit before the competent Court having jurisdiction, upon presentation of the plaint before such Court.

14. I have considered the rival submissions and perused the plaint as well as the impugned order. At this stage, the question that arises for consideration is whether, on the basis of the pleadings and the reliefs sought in the plaint, the Trial Court was justified in directing return of the plaint under Order VII Rule 10 of the CPC.

15. The jurisdictional averment contained in paragraph 11 of the plaint, on which learned counsel appearing for the Appellant (Original Plaintiff) seeks to place reliance to contend that the Trial Court has jurisdiction to entertain the Suit and, states that the property in question is situated at Village Chikhaloli, Ambarnath, District – Thane. Further, it is averred in the said paragraph that the registered office of the Company is situated within the jurisdiction of the Trial Court and all decisions pertaining to the Appellant (Original Plaintiff) are taken within the jurisdiction of the Trial Court and hence the Trial Court would have jurisdiction to entertain the present Suit.

16. To my mind, this cannot constitute a ground for conferring jurisdiction upon the Trial Court, particularly when Section 16 of the CPC, clearly provides that suits in respect of immovable property are to be instituted in the Court within the local limits of whose jurisdiction the property is situated.

17. Further, it is an undisputed fact that, in the present case, that the immovable property/suit premises is situated at Village Chikhaloli, Ambarnath, District – Thane which is outside the territorial limits of the Trial Court. I am, therefore, in agreement with the contention advanced by learned counsel for the Respondents (Original Defendants) that, in view of the clear provisions contained in Section 16 of the CPC governing territorial jurisdiction in respect of suits concerning immovable property, the impugned order directing return of the plaint under Order VII Rule 10 cannot be interfered with or called into question in the present Appeal from Order. My this view is fortified by the decision of the Supreme Court in *Chiman Lal Modi Vs. DLF Universal Ltd. & Anr.*¹ wherein it has been held that Section 16 of CPC recognises a well-established principle that actions against res or property should be brought in the forum where such res is situated. The relevant paragraphs of the aforesaid decision are reproduced below:-

15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision

¹ (2005) 7 SCC 791

and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based commonly on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property.

(emphasis supplied)

18. I am also of the view that, in the facts of the present case, the requirements of Order VII Rule 10A stood duly complied with. The question of giving any further notice or intimation to the Appellant (Original Plaintiff) did not arise, inasmuch as, in the first round of litigation, this Court, by its order dated 28th April 2026, had directed the Trial Court to hear the Notice of Motion expeditiously, while expressly keeping open all rights and contentions of the parties, including those relating to territorial and pecuniary jurisdiction. The Appellant (Original Plaintiff) was, therefore, clearly aware that the issue of jurisdiction remained open for consideration by the Trial Court.

19. The contention therefore of the Appellant (Original Plaintiff) that the Appellant (Original Plaintiff) was not aware, or was not put to notice, that the Trial Court was not the competent Court to entertain and try the present suit deserves to

be rejected. Rule 10A(2) contemplates a situation where, after the Court forms an opinion that the plaint ought to be returned, an intimation is given to the Plaintiff, pursuant to which the Plaintiff may make an application specifying the Court in which he proposes to present the plaint and seeking appropriate directions in terms of Rule 10A(2) of the CPC.

20. In the present case, as held hereinabove, the Appellant (Original Plaintiff) was well aware, from the first round of litigation itself, that the question of territorial jurisdiction of the Trial Court was in issue and remained open for consideration. Consequently, the contention regarding non-compliance with the provisions of Order VII Rule 10A cannot be accepted.

21. I am also of the view that merely because the registered office of the Appellant (Original Plaintiff) is situated within the jurisdiction of the Trial Court, or because the decision-making process of the Appellant (Original Plaintiff) may take place within such jurisdiction, would not confer territorial jurisdiction upon the Trial Court when the immovable property/suit premises is admittedly situated at Village Chikhaloli, Ambarnath, District – Thane outside the territorial jurisdiction of the learned Trial Court.

22. In these circumstances, I am of the view that the Trial Court has correctly concluded that it is not the Court of competent jurisdiction to entertain and try the present suit. The suit would, therefore, have to be presented before the competent Court having territorial jurisdiction in District Thane. The Trial Court has consequently rightly directed return of the plaint under Order VII Rule 10 of the CPC.

23. I find that the impugned order is well-reasoned and cogent and does not suffer from any perversity or legal infirmity warranting interference by this Court.

24. For the reasons aforesaid, the Appeal from Order is dismissed. There shall be no order as to costs.

25. In view of the disposal of the Appeal, the accompanying interim application(s) pending, if any, shall also stand disposed of .

26. Ordered accordingly.

(AARTI SATHE, J.)