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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1925 OF 2015

Sayed Taher Syed Rashid Patel.

..Petitioner

-Versus-

Sayed Manna Sayed Rashid and others.

..Respondents

.....
Mr.T.G. Gaikwad, Advocates for the Petitioner.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2015

Per Court:

1 The Petitioner is the original Defendant No.4 in Special Civil Suit No.48/2007 which was preferred before the Civil Judge Senior Division. On account of change in pecuniary jurisdiction by amendment in the Bombay Civil Courts Act under Section 28B, the suits in which the valuation was below Rs.5 lacs were transferred from the Civil Judge Senior Division to the Civil Judge Junior Division. Special Civil Suit No.48/2007 was, therefore, transferred in 2012 to the Civil Judge Junior Division and registered as Regular Civil Suit No.29/2012.

2 It is an admitted position that the Petitioner did not raise any issue about the pecuniary jurisdiction of the Civil Judge Junior Division ever since the transfer of the said suit in 2012. It was only on 28.01.2015

that the Petitioner moved an application Exhibit-194 alleging that the Trial Court lacks the pecuniary jurisdiction to entertain the suit.

3 It is not disputed that no amendment has been sought in the Written Statement by the Petitioner for raising this objection as a part of the pleadings after transfer of the suit in 2012 to the Civil Judge Junior Division.

4 By the impugned order dated 04.02.2015, application Exhibit-194 has been rejected.

5 The Petitioner relies upon the judgment of this Court in the case of Vice Chairman of Area Canteen v/s Their Workmen represented by the General Labour Union reported in **2008(1) All M.R 173**, to contend that even if the parties consent to a hearing of the matter, the question of inherent lack of jurisdiction can be raised at any time. It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

6 It clearly appears from the fact situation in this matter that the Petitioner subjected himself to the jurisdiction of the Civil Judge Junior Division after transfer of the suit. The Plaintiff has led evidence and after the recording of evidence was completed, the closing pursis has been

filed. An order of no-cross as regards the Plaintiff's witness No.2 was also passed. Since the Plaintiff No.2 was not available for cross-examination, the Plaintiff has closed the evidence. The Petitioner did not lead his oral evidence.

7 In this backdrop, as this Court had caused a time frame for deciding RCS No.29/2012 by an order passed in Writ Petition No.849/2014, the Petitioner was expected to lead evidence in the matter. Finally, an order of forfeiting his right to lead evidence was passed and the matter was posted for final arguments.

8 The Petitioner has, thereafter, engaged a new Advocate and then filed an application seeking framing of an issue under Section 9A of the Code of Civil Procedure.

9 There is no explanation forthcoming inasmuch as there is no pleading in application Exhibit-194 as to what prevented the Petitioner/Defendant No.4 to raise an objection as regards the pecuniary jurisdiction of the Civil Judge Junior Division.

10 It is not in dispute that the Sale Deeds at issue in the suit are for a total consideration of Rs.4,01,000/-. It was the contention of the

Petitioner that by passage of time, the suit properties are worth Rs.12 lacs. Besides making such a bald statement in application Exhibit-194, there are no pleadings set out which could have convinced the Trial Court that there was some merit in the contentions of the Petitioner as regards the actual valuation of the suit property.

11 In the judgment of this Court delivered in the Vice Chairman of Area Canteen (supra), the issue was as regards the appropriate Government and as such, whether, the matter could have lied before the Central Administrative Tribunal. After delivery of the Part-I Award, it was pointed out that the said award has been passed without considering the objection as regards the jurisdiction of the Tribunal. It was in these circumstances that this Court held that the Part-I Award has been passed without considering, whether, the said Authority had jurisdiction to entertain the industrial dispute.

12 I am afraid, the ratio laid down in the said judgment would not be applicable to the present case for the reason that the Petitioner has, for the first time, come out with a claim that the suit property, by passage of time, is valued at Rs.12 lacs and not Rs.4,01,000/- as was set out in the Sale Deeds at issue. There were no pleadings as such in the said application Exhibit-194 to substantiate the contention that the valuation

mentioned in the sale deeds as Rs.4,01,000/- can not be accepted.

13 Taking an overall view of this matter, I do not find that there is any error committed by the Trial Court in delivering the impugned order. The Writ Petition being devoid of merit is, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)