

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION (MAIN) NO. 558 OF 2015

SHRI SUHAS M. WALAWAIKAR AND 2
ORS.,

... Applicants/Appellants

Versus

MR. PARESH MADEVA PAI AND ANR.,

... Respondents

Shri Avinash Bhosle, Advocate for the Applicants/Appellants.

Shri Jayant Mulgaonkar, Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 14th SEPTEMBER, 2015.

ORAL ORDER:

By this application under Section 24 of the Code of Civil Procedure, the applicants/original defendants are seeking transfer of Regular Civil Suit No. 69/2014/D from the file of Civil Judge Junior Division, 'D' Court, Panaji to the Court of Senior Civil Judge, Panaji.

2. The brief facts are that the respondents have filed the said suit against the applicants, which is valued for the purpose of jurisdiction at Rs.10,00,000/- (Rupees Ten Lakhs only). The applicants raised a counter claim therein, which is valued at Rs.1,94,01,000/- (Rupees One Crore Nintey Four Lakhs One Thousand only). It is undisputed that the respondents have filed an application under Order 8 Rule 6-C of C.P.C., for exclusion of the said counter claim, on the ground that the cause of action for the counter claim has arisen after filing of the written statement. That application is still pending.

3. The applicants approached the Principal District Judge, Panaji with an application under Section 24 of C.P.C., for transfer of Regular Civil Suit No. 69/2014/D from the Court of the Civil Judge Junior Division, Panaji to the Court of Senior Civil Judge, Panaji. That application was registered as Civil Miscellaneous Application No. 71/2015. The learned Principal District Judge by an order dated 05.08.2015, has rejected that application. The learned Principal District Judge placed reliance on the decision of this Court in the case of **Sanjay Deshpande Vs. Rajesh**

Deshpande, reported in **2008(2) BCR 399**, holding that it is for the learned trial Court to consider and decide the application filed by the respondents for exclusion of the counter claim.

4. I have heard Shri Bhosle, the learned for the applicants and Shri Mulgaonkar, the learned Counsel for the respondents. Perused the impugned order.

5. The sole ground on the basis of which the transfer is sought is that the valuation of the counter claim exceeds the pecuniary jurisdiction of the Civil Judge Junior Division. The only question is whether, in view of the fact that, an application for exclusion of the counter claim is pending, the application for transfer could be rejected. It is true that the learned Civil Judge Junior Division would be competent to decide the application for exclusion on its own merits. Two contingencies arise in the matter. If, the application is allowed and the counter claim is excluded, the learned Civil Judge Junior Division will continue to have jurisdiction and on the contrary, if the counter claim is not excluded, the suit will have to be transferred to the Court of Senior Civil Judge,

Panaji, as in that event, the learned Civil Judge Junior Division would lack pecuniary jurisdiction. Thus, although no exception can be taken to the finding recorded by the learned Principal District Judge that the trial Court can decide the application for exclusion, in my considered view, it would be appropriate that the suit is transferred to the Court of Senior Civil Judge, Panaji.

6. Shri Mulgaonkar, the learned Counsel appearing for the respondents fairly submits that the respondents would have no objection for such a transfer.

7. In that view of the matter, the following order is passed:

(a) The application is allowed.

(b) Regular Civil Suit No. 69/2014/D is hereby withdrawn from the file of the learned Civil Judge Junior Division, 'D' Court, Panaji and transferred to the Court of Senior Civil Judge, 'A' Court, Panaji, for disposal in accordance with law.

(c) Needless to mention that the learned Senior Civil Judge, Panaji shall decide the application for exclusion on its own merits and in accordance with law.

(d) It would be open to the learned Senior Civil Judge, Panaji to transfer the suit back to the learned Civil Judge Junior Division, Panaji or to pass any other appropriate orders, in the event, the application for exclusion is allowed.

(e) Parties to appear before the learned Senior Civil Judge, 'A' Court, Panaji on 03.10.2015.

(f) The application is disposed of in aforesaid terms, with no order as to costs.

C. V. BHADANG, J.