

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.371 OF 2015
WITH
CIVIL APPLICATION NO.345 OF 2015

Atlantic Alloy Dyes Pvt. Ltd. and Anr. ... Applicants
Vs.
The Board of Trustees of Port of Bombay and Anr. ... Respondents

Mr. Atul Damle, Senior Advocate i/b. Mr. Jayesh Patel for Applicants.
Mr. U. J. Makhija a/w. Mr. Manoj Thakur i/b. Mulla and Mulla CBC for
Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 17TH JULY, 2015

P.C. :

Heard Mr. Damle, learned Senior Counsel for applicants and
Mr. Makhija, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, the original defendants No.2 and 3 have challenged the judgment and order dated 16.02.2015 passed by the learned Judge, City Civil Court, Court Room No.20, Greater Mumbai in Short Cause Suit No.7040 of 1997 (High Court No.1312 of 1997). By that order, the learned trial Judge overruled the preliminary objection raised by defendants No.2 and 3 and held that City Civil Court has jurisdiction to entertain and try the Suit.

3. In support of this Application, Mr. Damle raised only one contention. He submitted that defendant No.1 was carrying on business at Seoul in South Korea. Respondent No.1, hereinafter be referred to as the plaintiff, has instituted Suit on the Original Side of this Court. However, plaintiff has not obtained leave under Clause 12 of the Letters Patent before acceptance of the plaint. He, therefore, submitted that basically, the Suit instituted in the High Court, itself, was liable to be

dismissed as High Court had no jurisdiction to entertain and try the Suit. He submitted that as the pecuniary jurisdiction of the Civil Court was enhanced from Rs.50,000/- to Rs.1,00,00,000/-, the Suit was transferred to the City Civil Court. However, in view of the inherent lack of jurisdiction, even the City Civil Court will have no jurisdiction to entertain and try the Suit. In support of this submission, Mr. Damle relied upon the decision of this Court in the case of *Quadricon Pvt. Ltd. Vs. Bajarang Alloys Limited*, **AIR 2008 Bombay 88** wherein it is observed that the leave under Clause 12 must be granted at the time of acceptance of the plaint and cannot be granted afterwards. He, therefore, submitted that since the plaintiff did not obtain leave as contemplated by Clause 12 of Letters Patent, the Suit is liable to be dismissed on the ground that City Civil Court has no jurisdiction to entertain and try the Suit.

4. On the other hand, Mr. Makhija supported the impugned order. He submitted that in view of Rule 3 of the Bombay City Civil Court (Transfer of Suits) Rules, 2012 (for short 'Rules'), the City Civil Court will have all the powers and jurisdiction in respect of the Suits and / or proceedings, which are transferred to the City Civil Court under sub-section (1) of Section 4-A of the Bombay City Civil Court Act, 1948 as if it had been originally instituted in that Court. He, therefore, submitted that even if plaintiff had instituted Suit on the Original Side of this Court in the year 1992, which was numbered in the year 1997, in view of the Rule 3 of Rules by legal fiction, it is deemed to have been originally instituted in the City Civil Court. He, therefore, submitted that Clause 12 of the Letters Patent is not applicable.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Suit was instituted on the Original Side

of this Court in the year 1992 and it was numbered in the year 1997. It is also not in dispute that Suit was transferred to the City Civil Court in view of the Bombay City Civil Court (Amendment) Act, 2012. Rule 3 of the Rules reads as under:

“3. All suits and / or proceedings, which are liable to be transferred to the City Civil Court, under sub-section (1) of Section 4A of the Bombay City Civil Court Act, 1948, shall stand transferred to the Principal Seat of the Bombay City Civil Court, Old Secretariat, Bombay, with effect from the date on which Section 4 of the Amending Act, shall come into force. **The City Civil Court shall have all the powers and jurisdiction in respect thereof as if it had been originally instituted in that Court.**”

(Emphasis supplied)

6. In view of Rule 3 as extracted hereinabove, all suits and / or proceedings, which are transferred to the City Civil Court under sub-section (1) of Section 4A of the Bombay City Civil Court Act, 1948, City Civil Court will have all the powers and jurisdiction in respect thereof as if it had been originally instituted in that Court. Though factually, plaintiff had instituted Suit on the Original Side of this Court in the year 1992, by legal fiction, it is deemed to have been originally instituted in the City Civil Court. In view thereof, I find substance in the submission of Mr. Makhija that Clause 12 of the Letters Patent is not applicable requiring plaintiff to obtain leave at the time of acceptance of the plaint.

7. In the light of the above discussion, I do not find that the learned trial Judge has committed any error in overruling the preliminary objection and holding that City Civil Court has jurisdiction to entertain and try the Suit. No other contention was advanced. Hence, Application fails and the same is dismissed. In view of the dismissal of the Application, nothing survives in Civil Application No.345 of 2015 for stay and the same is disposed of as such.

(R. G. KETKAR, J.)