

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Miscellaneous Civil Application (St.) No.25252 of 2015

Mr. Hifzu Rehman Abdul Patel and ors. ... Applicants
VS
Sureshchandra Shantilal Hakemchand & ors. ... Respondents.

.....

Mr. Mayur Khandeparkar i/b Mr. Girish Kedia for Applicants.
Mr. Vivek Kantawala a/w Mr. A. Patil i/b M/s. Vivek Kantawala & Co. for
Respondent No.1.
Mr. M.G. Agre for Respondent Nos. 3, 4 and 9.

.....

CORAM : MRS.MRIDULA BHATKAR, J.

DATED : SEPTEMBER 21, 2015

P.C. :

. This Misc. Civil Application is filed under section 24 of the Code of Civil Procedure praying that Suit No.85/2008 i.e. BCCC Suit No.3149/2008 filed in the Mumbai City Civil Court be transferred to the High Court and heard along with High Court Suit No.2034/2009 i.e. BCCC Suit No.4056/2009 which was pending before the City Civil Court is now transferred to the High Court as the claim of the plaintiffs in Suit No.2034/2009 i.e. applicants in the present Misc. Civil Application is enhanced to Rs.2,20,00,000/- and the City Civil Court has pecuniary jurisdiction to the limit of Rs.1 crore only.

2. Learned counsel for the applicants pointed out that both the suits were earlier transferred to the Mumbai City Civil Court, which were filed before this Court are pending before Court No.4. The applicants seek specific performance of Deed of Conveyance dated 2nd August, 2007 whereas Respondent No.1 seeks cancellation of the said Deed of Conveyance dated 2nd August, 2007 in his suit. Therefore, he prays for transfer of Suit No.85/2008 to this Court.

3. Learned counsel for Respondent No.1 submits that monetary claim of Respondent No.1 is limited to Rs.50,00,000/- i.e. till Rs.1 crore and the Civil Court is competent to try and dispose of suits having pecuniary jurisdiction of below Rs.1 crore. He relies on section 24-A and section 6 of the Code of Civil Procedure, which specify that suits are to be tried by the Court having pecuniary jurisdiction. He submitted that the City Civil Court is competent to try and dispose of the suits.

4. After hearing the learned counsel for both the sides and going through the sections 6 and 24-A of the Code of Civil Procedure and considering the nature of the reliefs sought in both the suits, I am of the view that in Suit No.85/2008, though there is a claim of less than Rs.1 crore, it is to be transferred to this Court. The High Court is competent to try the suit having pecuniary jurisdiction of more than Rs.1

crore. Therefore, BCCC Suit No.4056 of 2009 was rightly transferred before this Court. Both the suits are required to be tried and disposed of by one and the same Court in order to avoid conflict of orders and interest of the parties, if both the suits are decreed by the different Courts. The High Court is having pecuniary jurisdiction to try suits of more than Rs.1 crore. In such circumstances, this Court is also competent to try the suit having pecuniary jurisdiction of less than Rs.1 crore, if it is clubbed with the other suits having same parties and same issues.

5. Hence, the Misc. Civil Application is allowed in terms of prayer clauses (a) and (b) and is disposed of.

6. Transfer of Suit No.85/2008 does not amount that Respondent No.1 has enhanced his pecuniary claim to more than Rs.1 crore. The monetary claim of the respondent is maintained as it is claimed by him in his plaint and, therefore, Court fee stamp is required to be paid on the same suit.

(MRS. MRIDULA BHATKAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed Order.