

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 205 OF 2014

Shri. Daresaheb Saheb Patel

.....Applicant

: V/S :

R.N.A. Corporation Ltd and Ors.

.....Respondents

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Mr. Sandesh Patil, Advocate for the applicant.

Mr. P.K. Dhakephalkar, Senior Counsel a/w. Mr. Rakesh Pandey
i/by. ALJ and Partners, Advocate for respondents no.1 to 18.

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Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2015.

P.C. :-

1). By this application, the applicant seeks transfer of Miscellaneous Civil Appeal No. 149 of 2014 arising out of Regular Civil Suit No. 706 of 2013 pending in the Court of District Judge, Thane to this Court for hearing alongwith Appeal from Order (St) No. 24846 of 2014. Though titled as an application under Article 227 of the Constitution of India, it has been numbered as a Miscellaneous Civil Application, i.e. an application for transfer under Section 24 Civil

Procedure Code (“CPC” for short). Considering the prayer in the application and the averments made therein, to support the prayer, it is clear that, it is an application under Section 24 CPC.

2). The facts leading to the application are that, the applicant had filed Regular Civil Suit No. 706 of 2013 in the Court of Civil Judge Junior Division, Thane for a declaration that the agreement dated 30th April, 2011 between the respondents inter-se is bad in law and to restrain respondent no.1, inter-alia, from creating any third party rights over the suit property and/or disturbing the applicant's possession thereof. Respondents no.1, 2, 5, 10, 11, 12, 13, 16, 17 and 18 have filed Special Civil Suit No. 86 of 2014 for declarations and injunctions against the applicant, respondent no.19 and one more person, which is pending in the Court of Civil Judge Senior Division, Thane. The property in question in both the proceedings is same and the dispute is essentially about to the title to the suit property and its possession. In both the proceedings applications for interim reliefs had been filed. At the stage of hearing of interim applications, respondent no.1 filed an application to the District Court, Thane being Civil Misc. Application No. 67 of 2014 under Section 24 CPC for transfer of Regular civil Suit No. 706 of 2014 pending in the Court of Civil Judge Junior Division to the Court of Civil Judge Senior Division, where Special Civil Suit No. 86 of 2014 was

pending. It was contended in the application that, the parties to the proceedings, the subject matter of the proceedings, the property involved therein and the facts and circumstances alleged in the two suits being similar, it was necessary that they are heard together by the same Court for the just and proper adjudication of the dispute on merits. By the order dated 7th April, 2014 the Principal District Judge, Thane allowed the application and transferred Regular Civil Suit no. 706 of 2013 from the Court of Civil Judge Junior Division to the Court of Civil Judge Senior Division, where Special Civil Suit No. 86 of 2014 was pending. The reasons set out by the learned Principal District Judge for transferring the proceedings are as follows :-

“ The parties to the proceeding are also one and same petitioner and respondent. The nature of relief claimed in both the proceeding are also inter-connected and inter-related with each other, rests on the similar facts and circumstances of the case. In such circumstances, in case, the presiding officers of different courts are allowed to deal with the matters, there may be an possibility of conflict findings and multiplicity of the litigations. Therefore, it would be imperative that, both the proceedings be dealt-with by the single Judge. Moreover, both the matters are filed in the court at Thane, in such situation, there would not be any impediment that, the court of 7th Jt. C.J.S.D. Thane be allowed to deal with the proceeding of R.C.S. No.706/13 simultaneously with the proceeding of Spl. C.S. No. 86/2013. Definitely, it would not cause any injustice or prejudice to the respondent. In contrast, it would facilitate the respondent to adduce the evidence in both the matters conveniently and more effectively for its just and proper adjudication on merit.

3). On transfer of the proceedings, the application for interim reliefs at Exhibit-5 in both the suits were heard together. The learned Judge, however, on 6th August, 2014 passed separate orders in the two suits. The applications for interim reliefs filed by the applicant in his suit, being Regular Civil Suit No. 706 of 2013 was dismissed and the application of respondent no.1 and others in Special Civil Suit No. 86 of 2014 was allowed. Being aggrieved by the two orders, the applicant was required to file appeals therefrom. Since as per the valuation of the two suits, they fell within the pecuniary jurisdiction of different courts, the applicant claims that he was advised to file appeals in different Courts. The appeal to challenge the interim order passed in Reg. Civil Suit No. 706 of 2013 was filed in the District Court, Thane and the appeal against the interim order in Special Civil Suit No. 86 of 2014 was filed in this Court. The present application is for transfer of the appeal from the District Court to this Court and its hearing alongwith Appeal from Order (St) No. 24846 of 2014.

4). Mr. Patil, the learned Advocate appearing for the applicant submits that, the Miscellaneous Civil Appeal pending in the District Court, needs to be transferred to this Court for hearing with the Appeal from Order pending here for the same reason and purpose for which the

transfer of the suit from the Court of Civil Judge Junior Division to the Court of Civil Judge Senior Division was prayed for by the respondents and permitted by the District Court. That is to avoid conflict of findings and to avoid multiplicity of proceedings.

5). Mr. Dhakephalkar, the learned Senior Counsel appearing for respondents no.1 to 18, vehemently opposes the application with an argument that, transfer of the Miscellaneous Civil Appeal from the District Court to this Court, would cause prejudice to the respondents, as they would be deprived of one forum to challenge the order of the District Court on the Miscellaneous Civil Appeal. Mr. Dhakephalkar, submits that right to challenge the order is a valuable right vested in the respondents and that they should not be deprived of the same. Relying upon the decision of the Apex Court in **Nahar Industrial Enterprises Limited V/s. Hong Kong and Shanghai Banking Corporation, reported in (2009) 8 Supreme Court Cases page 646**, he submits that the right of transfer of a case is procedural in nature but that does not permit substantive right of a party to be taken away. The rules of procedure are intended to provide justice and not to defeat it.

6). Mr. Dhakephalkar, relies upon the following observation of the Apex Court in the judgment cited.

“129. A suitor has the right to maintain a first appeal. A

second appeal also is maintainable before a High Court, subject of course to the effect that questions of law must be there for the court's consideration. For the said purpose no pre-deposit is required to be made, as is necessary in terms of the Act, that 75% of the awarded amount is required to be deposited, subject of course, to an order to the contrary, which may be passed by the Debt Recovery Appellate Tribunal.”

“131. A civil suit may also be maintainable before Original Side of the High Court in terms of the statutes under which the High Courts are constituted or in terms of the provisions of the Letters Patent. An intra- court appeal is available against a decree passed by a learned Single Judge of a High Court in a suit filed before it. In the event, however, if a civil suit is transferred to the Debt Recovery Tribunal, the plaintiff would be deprived of his right in relation to the procedural mechanism as contained in the Code as also the Evidence Act. His right of appeal would also stand curtailed. While exercising the power of transfer, the High Court and this Court would thus be curtailing the right of a suitor indirectly which could not be done directly. It clearly establishes the Parliamentary intent that only civil suits are subject matter of inter State transfer from one civil court to another civil court. If such a power is exercised, all the rights of the plaintiff remain intact, no right is taken away and no right is diluted.”

7). Undoubtedly, a right of appeal provided by the procedural code CPC is a substantive right vested in a party. But the question is, do the respondents have any such vested right to challenge the order of the District Court on the Miscellaneous Civil Appeal. The CPC does not provide for any appeal to challenge such order. Therefore, there can be no apprehension of loss of any such right on transfer.

8). Mr. Dhakephalkar, then submits that the respondents can challenge the order by resorting to the extra-ordinary jurisdiction of this Court i.e. by preferring writ petition. According to him, the right to file writ petition provided under the Constitution of India, must be placed on a higher pedestal than the statutory right of appeal and hence the respondents ought not to be deprived of it. The argument needs to be only stated to be rejected. The right to file writ petition, though derived from the Court of India, cannot be said to be a vested right. It is only a resort to the discretionary powers of this Court conferred upon it by the Constitution of India, whereas, the statutory right of appeal is a vested right can be taken away only by subsequent enactment.

9). The application for transfer by the applicant is fully justified in the facts of the case. The transfer of the Miscellaneous Civil Appeal and hearing of the two appeals together, will prevent conflicting

decisions as also the multiplicity of proceedings. The respondents themselves having opted for consolidation of two suits, cannot be permitted to oppose consolidation of the appeals. Hence, the application is allowed in terms of prayer clause (a).

(SMT. R.P. SONDURBALDOTA, J)

Rane

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MCA-205-2014
(sr. no.1)
Wed,18Feb,2015