

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.1096 OF 2014

Narottam Shivji Karsandas Thakkar and others ... Applicants
Vs.
Bharat Petroleum Corporation Limited and others ... Respondents

Mr. Nitin Thakkar, Senior Advocate a/w. Ms Priya Ranade, Ms Triveni Jani and Ms Nupur Desai i/b. Markand Gandhi & Co. for Applicants.
Mr. P. S. Dani, Senior Advocate a/w. Mr. Prantik Majmudar i/b. M/s. M. P. Savla & Co. for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 22ND JULY, 2015

P.C. :

Heard Mr. Thakkar, learned Senior Counsel for applicants and Mr. Majmudar, learned Counsel for respondent No.1 at length.

2. Mr. Thakkar seeks leave to delete respondents No.2 and 3 from this application as no relief is claimed against them and respondent No.1 is the only contesting respondent. On the application made by Mr. Thakkar, respondents No.2 and 3 are deleted from the application. Amendment shall be carried out forthwith. Rule. Mr. Majmudar waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No.2 and 4 to 6 have challenged the judgment and order dated 09.10.2014 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.643 of 2014 in Short Cause Suit No.6335 of 2003. By that order, the learned trial Judge dismissed the Motion taken out by defendants No.2

and 4 to 6 for passing order under Order VII, Rule 10 read with Section 151 C.P.C. for presenting the plaint before the competent court having jurisdiction to entertain and try the Suit.

4. Mr. Majmudar, after arguing the Application for quite some time, states that by consent of the parties and without recording reasons, the impugned order may be set aside and the Motion may be restored for deciding it afresh. Mr. Thakkar has no objection.

5. In view thereof, by consent of the parties, Application is disposed of in the following terms:

- a. The impugned order dated 09.10.2014 is quashed and set aside and Notice of Motion No.643 of 2014 is restored to the file of the trial Court;
- b. It is made clear that I have not examined the merits of the Motion and all the contentions of the parties in that regard are expressly kept open;
- c. Parties agree that they will appear before the trial Court on 03.08.2015 and for that purpose, no fresh notice be issued to them;
- d. The learned trial Judge is requested to dispose of the Motion within 3 months from the date of the appearance of the parties.
- e. Rule is made absolute in the aforesaid terms with no order as to costs.
- f. Order accordingly.

(R. G. KETKAR, J.)