

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10973 OF 2014

Naresh Ramniklal Bhayani and Ors.] ... Petitioners

Versus

Bharat Petroleum Corporation Limited]
and Anr.] ... Respondents

Mr. R. V. Govilkar for Petitioners.
Mr. S. R. Page for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 18, 2015

P. C. :-

1. Mr. Govilkar, the learned Counsel for Petitioners, seeks leave to delete Respondent No.2, in view of communication dated 12/01/2015. Leave granted to delete Respondent No.2 at the risk and consequences of the Petitioners. Amendment to be carried out forthwith.

2. Rule.

3. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

4. This petition challenges order dated 18/02/2014 made by the Civil Judge, Junior Division, Vadgaon Maval, Pune, directing the framing of preliminary issue under Section 9A of the CPC. The entire reasoning is contained in paras 6 and 7 of the impugned order which read thus :

“6. After considering the said aspect, I have given my anxious consideration to the arguments and documents placed on record by both the parties and after careful perusal of the application and say of plaintiffs, I am of the considered view that in the present application, necessary issue in respect of maintainability of the suit as prayed by defendant No.1 is required to be framed in respect of jurisdiction of this court. Reason for the same is that in the say Exh.35, the plaintiffs have admitted that defendant no.1 is Government of India undertaking. Further it is evident from the letter written by Mr.C.V.Joshi which is categorically admitted prices was fixed in respect of suit property for consideration Rs.fifty five lakhs at the relevant time. Hence, the said categorical admissions under the preliminary title requires detail inquiry before proceeding further in the present suit.

7. Considering the said material aspect, I am of the considered view that on the strength of admissions binding on the plaintiffs as averred by defendant in the present application and specific admission given in respect of admitting that defendant no.1 is Government of India

undertaking and consequences of not issuing of notice under Section 60 of C.P.C. requires preliminary inquiry as averred by defendant no.1 in the present application. To sum up, I pass following order :”

5. Insofar as the provisions contained in Section 80 of the CPC are concerned, notice is required where suit is proposed to be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity. The Respondent No.1 i.e. Bharat Petroleum Corporation Limited, may be a 'State' for the purposes of Article 12 of the Constitution of India or even may be a Government of India undertaking, as described in the impugned order. However, that by itself does not mean and imply that the corporation is the 'Government'. Accordingly, there is no necessity of issue of notice under Section 80 of the CPC prior to institution of any suit against the Bharat Petroleum Corporation Limited. The impugned order, is clearly wrong and in excess of jurisdiction, insofar as the said aspect is concerned.

6. As noted earlier, there is hardly any discussion on the aspect of any alleged lack of pecuniary jurisdiction. The learned Counsel for Respondent No.1, however, submitted that on a plain reading of the averments of the plaint, it is evident that the relief claimed is under-valued and insufficiently stamped. In this regard, it is always open to the Respondent No.1 to take out appropriate

proceedings under Order 7 Rule 11 of the CPC. Such proceedings, is taken out, shall be decided by the Civil Court on its own merits in accordance with law, uninfluenced by any observations contained in the impugned order. It is also made clear that this Court has not examined the aspect of alleged under-valuation and consequent lack of pecuniary jurisdiction.

7. Therefore, with liberty as aforesaid, the impugned order dated 18/02/2014 is set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)