

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

WRIT PETITION NO. 12210 OF 2015

M/s. Pragati Metals and Ors		..Petitioners
	Vs	
Jawararam Hiraram Devasi		.. Respondent

Mr. Dushyant S. Pagare, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 11/12/2015

PC:

1. Not on Board. At the request of Mr. Pagare, taken up in production at length. Heard Mr. Dushyant Pagare, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the Judgment and order dated 27.10.2015 passed by the learned Judge, City Civil Court, Bombay in Summons for Judgment No.585 of 2014 in Summary Suit No.3316 of 2012 (High Court Summary Suit No.1197 of 2012). By that order, the learned trial Judge granted petitioners, herein referred to as 'defendants', conditional leave to defend the suit on depositing the amount of Rs.8.30,000/- within six weeks. If the defendants deposit the said amount in the Court, Registrar, Civil, is directed to invest the said amount in any nationalised Bank initially for a period of 3 years and renew the same till further orders. On depositing Rs.8,30,000/-

within six weeks, the defendants are permitted to file Written Statement within a period of four weeks.

3. Mr. Pagare strenuously contended that the defendants have never issued any purchase order to the plaintiff and consequently there is no question of making any payment to the plaintiff against the purchase order. He submitted that the defendants had never placed any verbal purchase order to the plaintiff as alleged and further denied that pursuant to the alleged purchase order, the plaintiff sold and dispatched "SS Pipes", material worth Rs.10,31,339/- to the defendants vide tax invoice no.181 dated 2.4.2009 and delivery Challan No. 181 dated 2.4.2009.

4. He further submitted that though the plaintiff had given details as regards criminal complaint filed by him against the defendants under section 138 of the Negotiable Instruments Act, 1881, (for short, 'Act'), the said details are not in respect of transaction as alleged in paragraph 3 of the plaint. Lastly, he submitted that the suit was instituted on the Original Side and leave under clause 12 of the Letters Patent was granted to the plaintiff on 26.3.2012. The suit was thereafter transferred to the City Civil Court in view of enhancement of the pecuniary jurisdiction. He, therefore, submitted that the City Civil Court has no jurisdiction to entertain and try the suit as no cause of action accrued within the territorial jurisdiction of the City Civil Court,

Bombay.

5. I have considered the submissions advanced by Mr. Pagara. I have also perused the material on record. In paragraph 3 of the plaint, the plaintiff specifically contended that the defendants towards discharge of their liability in part issued two cheques on 27.10.2009 in favour of the plaintiff's proprietary firm. Cheques were deposited by the plaintiff with their bankers for encashment. Both the cheques were dishonoured. The plaintiff, therefore, instituted criminal case under section 138 of the Act. In pursuance thereof, the plaintiff received Rs. 2 lacs from the defendants by two Demand Drafts. The plaintiff, therefore, withdrew that complaint as the defendants assured that the principal balance amount of Rs.8,31,339/- together with interest at the rate of 24% per annum will be paid to the plaintiff shortly.

6. Plaintiff further asserted that as the defendants failed to pay the said amount, he issued notice on 20.6.2011. Though the said notice was received, they did not reply that notice.

7. The defendants raised various contentions in opposition. The learned trial Judge has considered these aspects in paragraph 6 of the impugned order. The learned trial Judge disbelieved the case made out by the defendants that there was no transaction with the plaintiff which is subject matter of the suit. That apart, no explanation is given by the defendants as to

why the part payments were made under cheques dated 27.10.2009. The plaintiff has produced list of documents at Exh.3 which substantiates his claim that on receipt of amount of Rs. 2 lacs, the criminal case was withdrawn by the plaintiff. The learned trial Judge was also noted that though the demand notice was served on the defendants they did not reply. Though the earliest opportunity was given to the defendants to raise the defence that no goods were delivered under the invoice, they did not avail that opportunity. In view thereof, the learned trial Judge held that to secure the claim of the plaintiff, it is necessary to direct the defendants to deposit the principal amount.

8. Mr. Pagare relied upon the decision of this Court in the case of Mahomed Haji Hamed Vs. Jute & Gunny Brokers Ltd, Vol.XXXIII (1930) Bombay Law Reporter 1364 to contend that as no material part of the cause of action has arisen in Mumbai, City Civil Court has no jurisdiction to entertain and try the suit. It is not possible to accept this submission. It is not in dispute that on 26.3.2012 this Court had granted leave under Clause 12 of the Letters Patent and no application for revocation of that leave was made.

9. The Bombay City Civil Court Act, 1948 (for short, 'Principal Act'), was amended by the Bombay City Civil Court (Amendment) Act, 2012 (for short, 'Amendment Act'). By clause (3) of the

Amendment Act, Section 3 of the Principal Act was amended. After the words “proceedings of a civil nature” the words “not exceeding rupees one crore in value” were inserted. Section 4A(a)(1) was substituted and the same reads thus :

"(1) Notwithstanding anything contained in section 9 of the Bombay City Civil Court and the Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986, all suits and proceedings cognizable by the City Court under section 3, and pending in the High Court on the date of coming into force of section 4 of the Bombay City Civil Court (Amendment) Act, 2012, not being suits or proceedings falling under causes (a) to (d) of section 3, shall stand transferred to the City Court. " ;

10. Rule 3 of the Bombay City Civil Court (Transfer of Suits) Rules, 2012 (for short, 'Rules), lays down that the City Civil Court will have all the powers and jurisdiction in respect of suits and/or proceedings, which are transferred to the City Civil Court under sub section (1) of Section 4A of the Principal Act as if it had been originally instituted in that Court. Rule 3 reads thus :

“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.**”

In view of Rule 3 of Rules by legal fiction, suit instituted on the Original Side of this Court is deemed to have been originally

instituted in the City Civil Court. In view thereof, reliance placed by Mr. Pagare on the decision of Mohamed Haji Hamed (supra) does not advance his case.

11. Mr. Pagare also relied upon the decision of this Court in the case of Bank of India Vs. Radhakrishnan Iyer, 1999 (4) Bom.C.R. 895. In paragraph 4, the learned Single Judge observed that suit was for recovery of amount at the foot of the account. The defendant did not admit the said amount. It is in that context, the learned Single Judge observed that the defendant has raised triable issues and therefore is entitled to unconditional leave to defend the suit.

12. In view of the facts in the present case and for the reasons recorded by the learned trial Judge in paragraph 6, I do not find that the reliance placed on the decision of this Court in the case of Bank of India (supra) advances case of the defendants. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

13. At this stage, Mr. Pagare seeks extension of six weeks time for depositing amount of Rs.8,30,000/- and extension of 10 weeks time for filing written Statement. In view thereof, notwithstanding dismissal of the petition, time to deposit amount of Rs.8,30,000/- is extended upto and inclusive of six weeks from today. Time to file written statement is extended upto and

inclusive of 10 weeks from today. Rest of the order of the learned trial Judge remains as it is. Order accordingly.

(R.G.KETKAR, J.)