

Sequeira

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

CIVIL REVISION APPLICATION NO. 21 OF 2016

M/s.Riche Investment Consultants & ors. .. Applicants
Vs.
Mrs.Nainaben Pranjivan Mehta & anr. .. Respondents

Mr.S.P.Dalal i/b Dalal & Co., for Applicants.
Mr.N.D.Jaywant, for Respondents.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

Heard learned counsel for the parties.

2. The order impugned in this Civil Revision Application is passed by the City Civil Court Mumbai, in Summary Suit No.107457 of 1996 deciding the preliminary issue in favour of Respondents-Plaintiffs. The issue was framed as to, whether the suit is hit by the provisions of Securities Contract Regulation Act, 1956. The learned City Civil Court Judge has held that since the contract falls within the definition of spot delivery contract as defined under Section 13 (2)(i) (a) of the Act, the suit is maintainable.

3. The learned counsel for the Applicants submitted that conclusion that the claim in the suit relates to a spot delivery contract

is not pleaded in the plaint and this aspect of the matter has been completely overlooked by the learned City Civil Court Judge. The learned counsel for the Respondents submitted that if the aspect of spot delivery contract is kept aside the main issue is, whether the Respondents are sub-brokers and if that is held in favour of the Applicants then the suit is maintainable.

4. Perusal of the impugned order shows that the sole ground on which the suit is held to be maintainable and not hit by provisions of Section 13 of the Act is the provisions of Section 18 wherein spot delivery contracts have been excluded. The contention which is sought to be raised by the learned counsel for the Respondents is not the reason on which the learned City Civil Court Judge has held in favour of the Respondents. Prima facie the ground on which the learned City Civil Court Judge has held in favour of the Applicants regarding spot delivery contract, the averments in the plaint do not support the said conclusion.

5. In the circumstances, since the argument of the learned counsel for the Respondents is also one which is not considered by the City Civil Court Judge, it was put to the learned counsel for the parties that the order can be set aside and the matter can be remanded back to the learned City Civil Court Judge to decide the same afresh. The learned counsel for the parties are agreeable to this course of action. The learned counsel for the Respondents submitted that suit is now

at advanced stage and the entire suit can be disposed of instead of taking the matter on preliminary basis. The learned counsel for Applicants submitted that if the issue of maintainability is taken first further proceedings can be avoided. The Revision Application can be disposed of by directing the learned City Civil Court Judge, to take up Issue no.6 regarding the bar of Securities Contracts Regulation Act, 1956 first. In case the learned City Civil Court Judge holds in favour of Applicants further proceedings will not arise. The learned counsel for the parties agree to avoid further delay, that in case the issue is decided against Applicants, the learned City Civil Court Judge, will continue the hearing as regards the other issues and give a finding and if the final conclusion is against Applicants, then Applicants will be entitled to challenge the finding including the one given on preliminary issue.

6. Accordingly, the impugned order passed by the learned City Civil Court Judge dated 30 November 2015 is quashed and set aside. The learned City Civil Court Judge, Mumbai will follow the course of action which is indicated above, which has been arrived by consent between the parties. All contentions of the parties on merits are kept open.

(N.M.Jamdar, J.)