

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC. CIVIL APPLICATION NO. 71 OF 2015****Deepak Agarwal****..... Applicant****VERSUS****Nikhil Machines Pvt. Ltd. & Ors.****..... Respondents**

Mr.Girish Kedia for the Applicant.

Mr.Y.C.Contractor, i/b. Sarida Unny for the Respondent Nos. 1 and 2.

Mr.Manoj Agre for Respondent Nos. 3 to 5.

CORAM : R.D. DHANUKA, J.**DATED : 25th FEBRUARY, 2016****P.C.**

By this miscellaneous civil application, the applicant seeks transfer of the suit being R.C.S.No.167 of 2011 filed by the respondents in the Court of learned Civil Judge, Junior Division, Thane to this court and for an order for clubbing of the said proceedings with the High Court suit No. 570 of 2014.

2. Learned counsel for the applicant invited my attention to the plaint in the suit being R.C.S.No.167 of 2011 and also in suit Nos. 570 of 2014. It is submitted that only reliefs claimed in the Thane Court by the original plaintiffs for injunction in respect of the suit properties is also made as prayer (H) in High Court suit also. It is submitted that the parties in both the suits are same. Both the suits are arising out of the same agreement. It is submitted that the suit filed in the Thane Court can be conveniently tried and disposed off by this court along with High Court Suit bearing No. 570 of 2014.

3. The miscellaneous civil application is however opposed by the learned counsel for the original plaintiffs on the ground that some of the properties which are subject matter of the said suit filed at Thane are not available now. He submits that the subject matter of both the suits are different and the proceedings filed at Thane Court cannot be transferred to this court. He submits that there is no extraordinary circumstances in this case for transfer of the proceedings filed at Thane Court to this court. He submits that the respondent nos. 3 to 5 have not filed any written statement in the suit at Thane.

4. Upon making query, the learned counsel appearing for the original plaintiffs does not dispute that prayer for injunction in the Thane suit as well as in this suit is in respect of the same property and the prayers are identical.

5. A perusal of the prayers in High Court suit indicates that in addition to the prayers for injunction, the original plaintiffs had also prayed for money decree against the original defendants who are applicants in the present miscellaneous civil application.

6. In my view since the cause of action has arisen in both the suits is under the same agreement and the parties being common and prayers for injunction in both the suits are common, it would be more convenient for both the parties to lead common evidence in both the suits on the prayer for injunction.

7. In my view the applicant has thus made out a case for transfer of the Thane suit to this court under section 24 of the Code of Civil Procedure, 1908.

8. I, therefore, pass the following order :-

(a) The learned Civil Judge, Junior Division, Thane is directed to transmit the proceedings in suit bearing R.C.S.No.167 of 2011 to this court for hearing and final disposal.

(b) It is made clear that insofar as prayer for clubbing of both the suits is concerned, the applicant would be at liberty to seek such directions from the Hon'ble Chief Justice.

(c) It is made clear that the suit from the Court of learned Civil Judge, Junior Division Thane which is transferred to this court shall be tried by this court from the stage as it stands today.

(d) Considering the facts of both these matters, hearing of both the suits is expedited.

9. Miscellaneous civil application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]