

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

**CIVIL REVISION APPLICATION NO.293 OF 2009**

The Bombay Dyeing & Manufacturing Co. Ltd.  
a Company incorporated under  
The Companies Act, having its registered  
office at Neville House, J.N. Heredia Marg,  
Ballard Estate, Mumbai – 400 001.

..... Applicant

Versus

1. Ram Rukya Mallar  
age 60 years
2. Mrs. Vasnathi Ram Mallar  
age 49 years, both Indian Inhabitants,  
of Mumbai, residing at Flat Nos.152  
& 152A, Beach Towers, Prabhadevi,  
Mumbai 400 025.
3. SCAL Investments Ltd.  
a Company registered under the  
Indian Companies Act, 1956  
having its registered office at  
Neville House, J.H. Heredia Marg,  
Ballard Estate, Mumbai – 400 001.
4. Beach Tower Condominium  
Having their office at Beach Towers  
P. Balu Marg, Prabhadevi,  
Mumbai 400 001.

..... Respondents

(Original Plaintiffs No.1 & 2 and  
Original Defendant No.1 & 2)

Mr.Rohan Kelkar a/w Ms. Shruti Katakey i/b. M/s Crawford Bayley  
& Co. for the applicant.

Mr.Akshay Vani for Respondent Nos.1 and 2.

**Coram: N.M. Jamdar, J.**

**Dated: 8 September 2016**

**ORAL JUDGMENT**

By this Civil Revision Application, the applicant has challenged the order dated 3 March 2009 passed by the learned City Civil Court Judge, holding that the City Civil Court has pecuniary jurisdiction to try and entertain the suit.

2. Heard learned counsel for the parties.

3. The suit is filed for a declaration that the Respondent-plaintiff is entitled to use the disputed garage. The dispute regarding the valuation of the suit property centers around the question whether the disputed garage can be held to be part and parcel of the flat sold to the Respondent-plaintiff. In the impugned order, the learned City Civil Court Judge has gone by the case of the plaintiff and has reached a prima facie conclusion that the delivery of possession of the property sold is a statutory obligation. It is the contention of the learned Counsel for the Applicant that this approach is not correct as it is not clear as to whether the Respondent-plaintiff is claiming the garage as a part of the agreement or under the statutory obligation of the Petitioner. The suit is instituted in the year 2001. Learned counsel for the applicant submits that the plaint proceeds on the basis that the claim is based on the agreement and not statutory obligation.

4. By order dated 27 August 2009, the learned Single Judge of this Court had directed to proceed with the trial, however, not to declare the final judgment. It is informed that all pleadings are complete and the matter is now at the stage of arguments. I am

of the opinion that the issue of valuation in the present case would depend on the core issue to be decided in the suit as to whether the disputed garage is part and parcel of the flat. If the said issue is decided, the learned City Civil Court Judge is empowered to take a decision as to whether the claim made by the Respondent-plaintiff is properly valued, so as to bring within the jurisdiction of the City Civil Court. In short, the issue of valuation in the present case in view of the rival contentions cannot be decided only on the basis of averments in the plaint, but will depend on the adjudication of the core issue. Therefore, after the issue regarding disputed garage being part and parcel of the flat is decided, the issue of valuation would arise and the learned City Civil Court Judge would then decide the issue of valuation on its own merits and the observations made in the present impugned order will be considered as prima facie in that regard. In view of this position, no further orders are required to be passed.

5. Civil Revision Application is disposed off as above. No costs. Since only the stage of oral arguments remain in the suit, learned City Civil Court will make endeavor to dispose off the suit within a period of six months from the date of receipt of this order, subject of course to earlier time bound directions/commitment. Learned counsel for the parties assure the Court that they will cooperate with the learned City Civil Court for early disposal of the suit and will not seek needless adjournment. This assurance is accepted.

***(N. M. Jamdar, J.)***