

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8278 OF 2015

M/S. MATSUN FINANCIALS LLP

...Petitioner

Versus

M/S. OG CORPORATION

...Respondent

....

Mr. Vishal Kanade i/b. Deepak J. Lulia, for the Petitioner.

Mr. Pradip D. Gharat, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 29th JANUARY, 2016

P.C.

1. Heard Mr. Vishal Kanade, learned Counsel for the petitioner and Mr. Pradip Gharat, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 4.4.2015 below Exhibit-9 in L.E. & C. Suit No.56/69 of 2013 passed by the learned Judge, presiding over Court Room No.13 of Court of Small Causes at Bombay. By that order, learned trial Judge rejected the application made by the plaintiff for issuing direction to the respondent, hereinafter referred to as defendant to deposit the arrears of municipal taxes, compensation, interest and other

charges totaling Rs.4,79,99,874/- plus applicable taxes and interest.

3. Mr. Kanade submitted that the application at Exhibit-9 taken out by the plaintiff is filed under Order 15-A of Code of Civil Procedure (for short, 'CPC'). Mr. Gharat has raised preliminary objection about maintainability of the petition. He submitted that against that order, the petitioner has an equally efficacious alternate statutory remedy of revision under Section 42(4) of the Presidency Small Cause Courts Act, 1882 (for short, "the Act"). Section 42(1) of the Act provides for remedy of an appeal from a decree or order made by the Small Cause Court exercising jurisdiction under Section 41, to a bench of two Judges of the said Court. Proviso thereto lays down that no appeal shall lie from a decree or order made in any suit or proceeding in respect of which no appeal lies under CPC. He submitted that no appeal is provided against any order passed in an application under Order 15-A of CPC. Sub-section (4) of Section 42 of the Act lays down that where no appeal lies from a decree or order in any suit or proceeding, the bench of two Judges specified in sub-section (1) may, for the purpose of satisfying itself that the decree or order was according to law, call for the case in which such decree or

order was made and pass such order with respect thereto as it thinks fit.

4. Mr. Kanade fairly pointed out the decision of this Court in the case of **Colaba Co-operative Consumer Wholesale and Retail Stores Ltd. alias Sahakar Bhandar v. Kusumben Kantilal Shah & Ors. 2004(1) Bom.C.R. 547**. In paragraph-7 of said decision it was held that the order passed under sub-rule (1) of Order 15-A cannot be said to be a procedural order and it cannot be said that it is not subject to revision under sub-section (4) of Section 42 of the Act. In other words, the order passed in an application under Order 15-A of CPC is affecting the substantive rights of the parties and, therefore, revision under Section 42(4) of the Act is maintainable.

5. I, therefore, find merit in the objection raised by Mr. Gharat and hold that as the petitioner has an equally efficacious alternate statutory remedy of revision, this Petition is not maintainable.

6. Mr. Kanade submitted that within four weeks from today the petitioner will file revision application before the Bench of Small Causes Court as contemplated by Section 42(4) of the Act. He submitted that the impugned order is passed on 4.4.2015 and

the petition was instituted in this Court on 24.6.2015. He, therefore, submitted that the time spent by the petitioner between 24.6.2015 and 29.1.2016 may be excluded while considering the question of condonation of delay.

7. In view thereof, the Petition is disposed of as not maintainable as the petitioner has a remedy of revision under Section 42(4) of the Act. The petitioner shall file revision application within two weeks from today before the Bench of Small Causes Court. Along with revision application, the petitioner shall file application for condonation of delay for excluding the time spent from 24.6.2015 to 29.1.2016 and the learned trial Judge will pass appropriate orders keeping in mind that the petitioner was bonafide prosecuting this remedy in this Court. If revision application is filed, the Bench of Small Causes Court is requested to decide the same as expeditiously as possible and preferably within three months from the date of filing of revision. All contentions on merits are expressly kept open. Writ Petition is disposed of in aforesaid terms. Order accordingly. Parties to act on an authenticated copy of this order.

(R. G. KETKAR, J.)