

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3374 OF 2016**

M/s Stationery Point India Ltd

Petitioner

Vs

State Bank of India

.. Respondent

Mr. V. S. Kapse, Advocate for Petitioner.

Mr. Rupesh R. Lanjekar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 30/03/2016

PC:

1. Heard Mr.V.S. Kapse, learned counsel for the petitioner and Mr. Rupesh Lanjekar, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 23.7.2015 passed by the learned Civil Judge, Sr. Dn., Vaduj below Exhibit 41 in Spl. Civil Suit No.16 of 2012. By that order, the learned trial Judge framed two preliminary issues under Order XIV, Rule 2(2) of C.P.C.

3. The petitioner, hereinafter referred to as 'plaintiff', has instituted suit against the respondent, hereinafter referred to as 'defendant, inter alia, praying for direction to the defendant to pay an amount of 403.52 Crores together with interest at the rate of 18 % PA till payment of the entire amount to the plaintiff; as and by way of interim order, for directing the defendant to maintain status-quo with regard to the immovable property of the

plaintiff-company. The defendant took out application Exhibit 13 under Order VII, Rule 11(d) of C.P.C contending that the Court of Civil Judge, Sr. Dn., Vaduj has no territorial jurisdiction as entire cause of action arose in Mumbai. The plaintiff filed reply opposing the application. After hearing both sides, by order dated 5.1.2013 the learned trial Judge dismissed the application. Aggrieved by that decision, the defendant preferred Civil Revision Application No.196 of 2013. By order dated 4.8.2014, Civil Revision Application was disposed of by observing that the question of territorial jurisdiction of the Court cannot be raised by way of AN application under Order VII, Rule 11 of C.P.C. The trial Court was right in dismissing the application. However, however liberty was given to the defendant to raise the question of jurisdiction under Order XIV of C.P.C. as and when issues are framed. In pursuance of the order passed by this Court, the defendant filed application Exh.41 on 1.11.2014 for framing following preliminary issues:

(i) Whether the Court has territorial jurisdiction to entertain the suit?

(ii) Whether the suit is maintainable in view of bar created under law with special reference to RDDB Act, SERFASI Act and Specific Relief Act?

4. The learned trial Judge framed issues at Exhibit 43 on 23.7.2015. Issues no. 4 and 5 are the issues suggested by the defendant to be framed as preliminary issues. By the impugned order, the learned trial Judge has framed the preliminary issues

as suggested by defendant under Order XIV, Rule 2(2) of C.P.C. It is against this order, the plaintiff has instituted the present petition.

5. After arguing the petition for quite some time, the learned counsel appearing for the parties state that they will not lead any evidence for deciding these two issues and the learned trial Judge may be directed to consider the oral arguments and the material already on record for deciding the issues. They assure that they will appear before the learned trial Judge on 12.4.2016 and for that purpose fresh notice need not be issued to them. They further submit that the learned trial Judge may be directed to decide these issues within four weeks from the date of appearance of the parties.

6. In view thereof, Petition is disposed of in the following terms:

(i) Parties will appear before the trial Court on 12.4.2016 and for that purpose no fresh notice be issued to them.

(ii) Learned trial Judge will decide these two issues on the basis of material already on record as parties agree that they will not lead any evidence on these two issues and decide the issues as expeditiously as possible and preferably within four weeks from the date of appearance of the parties. All contentions on merits are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)