

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1995 OF 2016

Sayyad Shabbir S/o Osmansaheb

Petitioner

Versus

Laximikant S/o Balkishan Agroya and another

Respondents

Mr .G.R.Sayed advocate for the petitioner

Mr. P.P. More advocate for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 21st June, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 3.5.2016, by which the Trial Court has allowed Application Exhibit 26, filed by the defendants under section 6(iv)(d) and 8 of the Bombay Court Fees Stamp Act and order 7 rule 11(b) of the Civil Procedure Code. Consequently, the petitioner herein is required to pay deficit Court fees of amount of Rs.5,98,296/-.

2 The Trial Court has passed the following impugned order:-

“ ORDER

1 The Application Exh.26 is hereby allowed.

2 The plaintiff is hereby directed to deposit deficit

Court fees of Rs.5,98,296/- till 18.2.2016 and if plaintiff fail to comply the order of this Court within this period the plaint should be automatically rejected.

- 3 The plaintiff is hereby directed to pay an cost of Rs.5,000/- to defendants.
- 4 If plaintiff is deposited Court fees as per this order the suit be registered as Special Civil Suit.
- 5 Dictated, declared and signed in Open Court. "

3 The petitioner has relied upon section 18 of the Bombay Court Fees Act, which reads as under:-

" Section 18 of Bombay Court Fees Act

Multifarious suits:

Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memorandum of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the powers conferred by the Code of Civil Procedure, 1908, Schedule I, Order II, Rule 6. "

4 The issue, therefore, is, as to whether prayer clauses 'B' and 'C' put forth by the petitioner, in the suit, would amount to

separate reliefs prayed for, or whether prayer clause 'C' is intricately connected with prayer clause 'B' and plaintiff would not stand to get any relief under prayer clause 'C' if prayer clause 'B' is not granted.

5 During the course of the extensive submissions of the learned counsel for the respective sides, Mr. Sayed submits, on instructions from the plaintiff, that he is willing to deposit Rs.3,00,000/- before the Trial Court as a pre-condition for re-hearing Exhibit 26, since section 18 of the Bombay Court Fees Stamp Act has not been considered by the Trial Court.

6 Learned counsel for the respondents submits that, only if the plaintiff deposits Rs.3 lakhs, Exhibit 26 can be re-heard. He cannot indicate from the impugned order that the Trial Court has actually considered the effect of section 18, though the same has been reproduced in the impugned order.

7 In the light of above, the impugned order is quashed and set aside by consent, on the condition that petitioner shall deposit an amount of Rs. 3 lakhs before the Trial Court in RCS No. 482/2014 on or before 21.7.2017, failing which, this order shall stand recalled and the impugned order shall stand restored. After the amount is deposited, the trial Court would permit the litigating

sides to address the Court on Exh.26, in the light of section 18 of the Bombay Court Fees Act.

8 The Trial Court shall also consider the observations of the Gujrat High Court made in para 9 of the Judgment in the matter of **Cotseeds Corporation Versus Cotton Corporation of India and others** (1988GLH(2)140, (1988) 2 GLR 1021). For the sake of brevity, paragraph No.9 is reproduced below:-

“ 9. The learned counsel for the petitioner submitted that under the provisions of the Court-fees Act even if it is held that the petitioner plaintiff is required to pay court-fees on ad valorem basis he cannot be directed to pay court-fees in addition to Rs.15,000/-. In his submission the table of rates of ad valorem fees leviable on the institution of suits given in the Bombay Court-fees Act, 1959, it is clearly provided that maximum of Rs. 15,000/- of court fees can be levied. In the instant case, undisputedly the amount of court fees which is sought to be levied is Rs.18,800/-. Therefore, the amount which exceeds Rs.15,000/- i.e. Rs.3,800/- which is in excess of Rs.15,000/- is illegal and void. The aforesaid argument cannot be accepted, in view of the provisions of Section 18 of the Act. Section 18 provides for charging court fees in respect of multifarious suits. When the suit embraces two or more distinct subjects, the court fees to be levied would be on the basis of calculation on each separate subject and each separate subject is to be clubbed together. In fact such a suit would be bad multi-

furiosness, and the Court may order separate trials or make such other order as may be expedient in the interest of justice. (See: order II Rule 6 of the Civil Procedure Code). However whether the suit is bad for multi-furiosness or not, or the Court is required to order separate trials as provided in order II Rule 6 of the Civil Procedure Code, is not the question posed before me. The question is, whether separate causes of action have been clubbed together in this suit or not. It is obvious that the subject matter of the suit are two different document of sale of cotton seeds, one dated 28th November, 1986 and another dated 8th December, 1986. Causes of action arising out of both the aforesaid contracts have been clubbed together. Hence, as provided under Section 18 of the Act the court fee has to be levied after evaluating both the subject matters separately. This is what has been done by the inspecting officer (Court fees) Rajkot and by the trial court. This is in accordance with the provisions of Section 18 of the Act. In such cases, the ceiling limit of Rs.15,000/- would not be applicable. "

9 It is expected that the litigating sides would address the Trial Court on Exh.26 as expeditiously as possible and the Trial Court shall decide Exh.26 on or before 16.9.2017. The Writ Petition is partly allowed in the above terms.

(RAVINDRA V. GHUGE , J)