

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 7700 OF 2015

1. Shri Gajanan Sahakari Sakhar Karkhana Ltd.
Sonajinagar Rajuri (N)
Tq. & Dist. Beed
Through its Chairman and
Managing Director
2. The Chairman,
Shri Gajanan Sahakari Sakhar Karkhana Ltd.
Sonajinagar Rajuri(N)
Tq. & Dist. Beed.
3. The Managing Director,
Shri Gajanan Sahakari Sakhar Karkhana Ltd.
Sonajinagar Rajuri (N)
Tq. & Dist. Beed.

.. PETITIONER

VERSUS

1. M/s Yashsree Engineering Works
At Post Nimgaon(T)
Tq. Madha
Dist. Solapur
Through their partners
Sow Savita Sanjay Shinde and
Shri Sanjay mama Shinde
Power of Attorney Holder
Shri Vivekanand Kirtisingh Patil
2. Mrs. Savita Sanjay Shinde
w/o Shri Sanjay Vitthalrao (Mama) Shinde
age 35 years, occ. Industrialist
r/o Post Nimgaon(T),
Tq. Madha
Dist. Solapur
3. Shri Sanjay Vitthalrao (Mama) Shinde
age 40 years, occ. Industrialist & politician
r/o post Nimgaon(T), Tq. Madha
Dist. Solapur

.. RESPONDENTS

Mr. G.K. Naik Thigale, advocate for petitioners.
Mr. N.R. Kalshetti, advocate for respondent nos. 1 to 3.

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CORAM : S. B. SHUKRE, J.
DATE : 9th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. This order assails order dated 4th April, 2015, passed by the learned 2nd Joint Civil Judge Senior Division, Beed in Special Civil Suit No. 8/2013 thereby rejecting the application (Exh. 64) filed by petitioners, original defendants, seeking direction for returning of proceedings in Special Civil Suit No. 115/2009 to the Court of Civil Judge Senior Division, Barshi, directing the plaintiffs to furnish copies of documents and also permitting the petitioners to file written statement afresh.
4. The question raised in this petition is whether the suit instituted upon presentation of plaint to a correct Court after its return from the Court not having jurisdiction should be tried *denovo* or should be tried from the stage at which it has been pending earlier before the Court not having jurisdiction over the subject matter. In the opinion of learned counsel for petitioners, the answer to this question has to be in favour of *denovo* trial and, according to learned counsel for respondents, if much water has flown and the evidence has also been recorded before the earlier Court, the interest of justice would demand that the suit be allowed to proceed from the stage at which it was pending before the earlier Court.

5. The issue raised in this matter is no longer *res integra*. In the case of Harshad Chimanlal Modi (II) Vs. DLF Universal Ltd and another (2006) 1 Supreme Court Cases 364, on which heavy reliance has been placed by the learned counsel for petitioners, the Honourable Apex Court has held that when the plaint is returned by the Court not having jurisdiction to be presented before the Court having jurisdiction, it is not a case of “transfer” and it is a case of lack of jurisdiction of the first Court and that, in such an event, there is in the subsequent Court, no continuation of proceeding initiated in the wrong Court. The Honourable Apex Court has further held that this is for the reason that the proceedings initiated in the wrong Court were the proceedings taken by the Court not having jurisdiction over the subject matter of the proceeding and, therefore, would stand vitiated in the eye of law. This is the reason why the Honourable Apex Court held that in such a case, fresh trial is necessary.

6. Learned counsel for respondents has placed reliance upon the cases of Joginder Tuli Vs. S.L. Bhatia and another (1997) 1 Supreme court Cases 502, Lalita Awasthi Vs. Vidya Devi and others CM(M) No. 577/2012 decided by learned Single Judge of the Delhi High Court on 24th September, 2013, and, Narendar Singh and others Vs. The Indian Institute of Architects FAO (OS) 64/2013 C.M. Appl. No. 1784/2013 decided on 28th November, 2013.

In the case of Joginder Tuli, the facts were that when the suit was tried by the first Court, the first Court did have jurisdiction over the subject

matter of the suit and had lost its jurisdiction only when there were amendments in the plaint and the valuation of the subject matter of the suit went beyond its pecuniary jurisdiction which prompted the first Court to return the plaint for being presented to the correct Court. In the light of these facts, the High Court directed the trial Court to proceed from that stage at which the suit stood transferred and, therefore, the Honourable Apex Court saw no illegality in the order passed by the High Court warranting its interference. These facts of Joginder Tuli's case were considered by the Honourable Apex Court in the case of Harshad Modi (supra) and it found that these facts being peculiar and restricted to that case, same would have to be appreciated in that manner only. Relevant observations of the Honourable Apex Court in paragraph no. 11 of the judgment are reproduced thus :

11. Reliance placed on behalf of the applicant on a decision in Joginder Tuli v. S.L. Bhatia does not carry the case any further. In that case, the suit when filed was within the jurisdiction of the Court and it was properly entertained. In view of the amendment in the plaint during the pendency of the suit, however, the plaint was returned for presentation to the proper court taking into account the pecuniary jurisdiction of the Court. Such is not the situation here. As we have already held in the appeal, the suit could not have been instituted in the Delhi Court keeping in view the subject-matter which was immovable property and recovery of possession thereof. Considering all these factors, we had not granted the prayer made at the time of hearing of the appeal which has been made in this application. The application, therefore, cannot be allowed and the prayer cannot be granted now.

It would be clear that the case of Joginder Tuli being decided on a

different set of facts would be of help only when respondents could show that the first Court which recorded evidence in the present suit had jurisdiction at that time. But, facts of the present case disclose that the first Court did not have any territorial jurisdiction over the subject matter of the suit and this lack of jurisdiction was in existence from day one of the institution of the suit and as such, the case of Joginder Tuli would render no assistance to respondents in the present case.

So far as the case of Lalita Awasthi and Narendar Singh (*supra*) are concerned, I find that the law settled by the Honourable Apex Court in the case of Harshad (*supra*) has not been considered in these cases and, therefore, these cases would also be of no help to the respondents.

7. Thus, we have seen that in the present case, the first Court had no territorial jurisdiction from day one and, if this is so, whatever had been done by it would be non est in the eye of law and as such, *denovo* trial of the present suit is necessary.

8. In the circumstances, the impugned order cannot be upheld and deserves to be quashed and set aside. Writ petition is allowed accordingly with costs. Impugned order is quashed and set aside. Application vide Exh. 64 is allowed in terms of prayer clauses 1, 2 and 3. Petitioners be permitted to file written statement within four weeks from the date of appearance of the parties before the trial Court and *denovo* trial shall be held. Endeavour

shall be made to decide the suit at the earliest, preferably, within six months from the date of the order. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE

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