

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2483 OF 2014

Yeshwant Shankar Gholap ...Petitioner

Versus

Ahmednagar Forging Ltd. ...Respondent

Mr.S.S.Patwardhan for the Petitioner .
Mr.Sagar Ambedkar for the Respondent.

CORAM: M.S.KARNIK,J
DATED: 2nd February, 2017

PC:-

1. The Petitioner/Original Defendant challenges an order dated 19th October 2013 passed by the Joint Civil Judge, Junior Division, Khed below Exhibit 34 in Regular Civil Suit No.131 of 2013 allowing the present Respondent/Original Plaintiff to abandon part of his claim.
2. The Respondent/Original Plaintiff has filed the Suit for declaration and injunction. The Petitioner/Original Defendant

in his Written Statement and Reply to the Exhibit 5 Application had raised the contention that the Suit is not properly valued. By an order dated 3rd May 2013 the Trial Court had framed the Preliminary Issues, which are reproduced below:

"1. Whether the suit is properly valued?

2. Whether this Court is having jurisdiction to try and entertain the present suit.?"

3. By an order dated 24th of July 2013, the Trial Court directed the Plaintiff to value the Suit as per the Provisions of Section 6(iv)(d) of the Bombay Court Fees Act-1959 and affix the necessary court fees as per the said valuation within 15 days.

4. Thereafter, on 8th August 2013 the Plaintiff moved an application for amendment and thereby prayed that he may be allowed to amend the suit in effect deleting the relief of declaration and consequential reliefs. By the impugned order the learned Trial Court was pleased to allow the application

for amendment While permitting the Respondent/Plaintiff to abandon part of his claim, in view of the conduct of the Plaintiff the Court has imposed costs of Rs.10,000/-.

5. The learned counsel for the Petitioner/Original Defendant in his challenge to the said order has contended that once Trial Court has by the order dated 24th July 2013 directed to value the suit of the Plaintiff as per the Provisions of the Section 6 (iv)(d) of the Bombay Court Fees Act-1959 and affix the necessary Court Fees as per the said valuation within 15 days, upon passing of this order, the Joint Civil Judge, Junior Division, Pune, will no longer have jurisdiction to try and decide the suit. In his submission the Trial Court was not justified in thereafter entertaining the application for amendment dated 8th of August, 2013 and it is only the Court of competent jurisdiction i.e. Civil Judge Senior Division, which ought to have entertained the application.

6. It is not disputed that the Plaintiff did not affix the Court Fees as directed by the Joint Civil Judge Junior Division, Pune by its order dated 24th July 2013. In this view

of the matter, since the Plaintiff did not affix the necessary court fees and filed an Application for amendment within a period of 15 days from 24th of July 2013, no error can be found in the impugned order of the Trial Court while entertaining the Application for amendment so as to warrant interference in the exercise of Writ Jurisdiction.

7. In this view of the matter, I do not see any reason to interfere with the impugned order passed by the Trial Court.

8. The Petition is rejected.

9. Interim order, if any, stands vacated.

(M.S.KARNIK,J)