

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4223 OF 2013

Mukti Earth Movers	...	Petitioner
Vs.		(Orig. Plaintiff)
Chairman/Executive Director,		
Roman Tarmat Ltd. & Ors.	...	Respondents
		(Orig. Defendants)
Mr. Rahul S. Kate, for the petitioner.		
Mr. S. R. Nargolkar, for respondent No. 2.		

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 4th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. None appears for respondent No. 1, although served. Heard the learned counsel for the parties.

3. Being aggrieved by the order dated 7.2.2013, the petitioner has approached this Court under Article 227 of the Constitution of India. The petitioner herein happens to be the plaintiff in Summary Suit No. 2 of 2012. The respondent No. 2 had appeared before the Court and had raised an objection under Order VII Rule 11 of the Code of Civil Procedure. The first contention of the original defendant was that the plaint does not disclose cause of action and there was a lack of territorial jurisdiction. Both

the applications were filed by the original defendant Nos.1 and 2. It appears that the plaintiff had not pursued the suit diligently. The plaintiff had filed a list of documents along with the plaint. However, after the objection was raised by the defendants under Order VII Rule 11 of C.P.C., the plaintiff had submitted that he would file documents to satisfy the Court in respect of the territorial jurisdiction as well as the cause of action. The plaintiff had filed his affidavit in evidence, however the plaintiff had continued to take adjournments, thereby protracting further proceedings. On 5.1.2013 also the plaintiff had filed an application that he would not be available for submitting himself to cross-examination since he is preoccupied. The application seeking an adjournment was rejected on 5.1.2013 also on the ground that the plaintiff had failed to file documents upon which he desired to place implicit reliance in order to satisfy the Court in respect of the territorial jurisdiction.

4 The plaintiff had then filed an application on 11.1.013 stating therein that his presence was urgently needed in a business meeting and therefore he could not assign cogent reasons for seeking an adjournment on 5.1.2013. The plaintiff had tendered certain documents on that day and had prayed to the Court that they be taken on record in the interest of justice. The original defendant No.2 i.e. present respondent No2 had vehemently

opposed the grant of the said application and had prayed that the matter be posted for orders under Order VII Rule 11.

5. The learned Court has observed that the plaintiff had sought adjournments on several occasions and had only protracted the proceedings. The learned Court has also observed that even after the application was rejected on 5.1.2013, the plaintiff had not taken any steps to answer the preliminary issue which was raised below Exhibit 23. Hence, the application below Exhibit 48 was rejected.

6. The learned counsel appearing for the respondent No.2 vehemently submits that when an objection under Order VII Rule 11 is raised by the defendant, it is incumbent upon the Court only to consider the pleadings in the plaint and decide as to whether the plaint deserves to be rejected. However, the court had continued to give several opportunities to the plaintiff and therefore the proceedings are protracted.

7. As against this, the learned counsel for the petitioner submits that the Summary Suit was filed for seeking recovery of Rs.24,97,618/- and, therefore, the plaintiff had no interest in protracting the proceedings, but due to inevitable reasons, the plaintiff had to take adjournments. As against this, the learned counsel for the respondent No.2, while apprising the Court of the facts of the case, has submitted that the original contract was

between the respondent No.1 and respondent No.2 and that there was a specific clause firstly that there would not be any sub-contract and secondly there was a clause of arbitration also and accordingly the applications are filed to that effect and the said contention is taken in the written statement also to apprise the Court as to whether a suit would be maintainable in view of the arbitration clause in the agreement. It appears that the said application is also pending before the trial Court. Since the plaintiff has filed a summary suit for money decree, it would be appropriate to remand the matter and direct the Court to decide the preliminary issue under Order VII Rule 11, after considering the documents on record filed by the plaintiff. It would be suffice to pass the following order :-

ORDER

(i) The petitioner herein shall file an application requesting the trial Court to take additional documents on record (if any) on or before 3.11.2017. Upon failure to submit the documents along with the application on or before 3.11.2017, the trial Court shall decide the issue in respect of preliminary objection raised by the defendant under Order VII Rule 11.

(ii) The plaintiff/petitioner shall make himself available for cross-examination, if necessary without seeking any adjournment within four

weeks from 3.11.2017.

(iii) The learned Civil Judge, Senior Division, Baramati, shall decide the Summary Suit No.2 of 2012, in any case on or before 30.3.2018.

(iv) The plaintiff shall pay costs of Rs.1,000/- along with the application with a list of documents.

The Petition is allowed. Rule is made absolute in the above terms. The Petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]