

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.623 OF 2013

Sicom Limited

..Applicant

Vs

Mrs Manju Naresh Gupta and
Ors.

.. Respondents

Mr.Vishal Kanade a/w Mr. Satish S. Raut, Advocate for Applicant.

Mr.Mayur Khandeparkar, Advocate for Respondents no. 1 and 2.

CORAM : R.G.KETKAR,J.
DATE : 30/01/2017

PC:

1. Heard Mr.Vishal Kanade, learned counsel for the applicant and Mr.Mayur Khandeparkar, learned counsel for the respondents no. 1 and 2 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short,'C.P.C.'), the applicant, herein referred to as 'defendant no.1', has challenged the Judgment and order dated 13.2.2013 passed by the learned 8th Jt.Civil Judge, Senior Division, Nashik in Spl.Civil Suit No.158 of 2012. By that order, the learned trial Judge held that Civil Court has jurisdiction to entertain and try the suit and that the suit is also within limitation.

3. In support of this Application, Mr.Kanade submitted that Civil Court has no jurisdiction as respondents no.1 and 2, hereinafter referred to as 'plaintiffs', have not obtained leave

under section 446 of the Companies Act, 1956. Apart from that, in view of Section 29 of the State Financial Corporations Act, 1951 (for short, 'Act') as the plaintiffs are challenging the actions of defendant no.1 under Section 29 of the Act, Civil Court lacks jurisdiction to entertain and try the suit and jurisdiction of Civil Court is ousted. Apart from that, the suit instituted by the plaintiffs is barred by law of limitation.

4. On the other hand, Mr.Khandeparkar submitted that after instituting the suit, the plaintiffs have obtained leave under section 446 of the Companies Act, 1956. He relied upon order dated 13.1.2017 passed by this Court (Coram: R.D.Dhanuka,J.) in Company Application No. 648 of 2015 in Company Petition No.490 of 1988. He further submitted that leave can also be obtained after filing of the suit. Mr. Kanade fairly did not dispute this proposition.

5. In view thereof, as the plaintiffs have obtained leave under Section 446 of the Companies Act, 1956, albeit, after filing of the suit, it cannot be said that the Civil Court has no jurisdiction to entertain and try the suit on this ground.

6. As far as objection based on Section 29 of the Act is concerned, defendant no.1 relied upon the decision of the Apex Court in Punjab Financial Corporation Vs. M/s Surya Auto Industries,AIR 2010 SC 626. The learned trial Judge has considered this Judgment in paragraph 19 and observed that

Civil Court cannot nullify the action taken by the Corporation for recovery of the outstanding dues, except when such action is found to be in violation. The Court cannot sit as an appellate authority over the action of the Corporation and substitute its decision for one taken by the Corporation. The learned trial Judge has also considered the submissions based on Section 29 in paragraphs 59 and 60. It is the case of the plaintiffs that the actions of defendant no.1 are nothing but fraud against the plaintiff. There was collusion between defendants no.1 and 2. After considering these aspects, the learned trial Judge held that the jurisdiction of the Civil Court is not ousted. I do not find any fault with the reasoning of the learned trial Judge.

7. As far as the contention based on the ground of limitation is concerned, perusal of paragraph 62 of the impugned order shows that the learned trial Judge has held that the suit is within limitation. For the reasons recorded in paragraph 62, I do not find that the learned trial Judge has committed any error. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)