

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 873 OF 2014
WITH
CIVIL APPLICATION NO. 1279 OF 2016

Mr. Jagannath M. Sanas and anr. .. Appellants
vs.
M/s. Jonson & Johnson Ltd. and ors. .. Respondents

Mr. M. T. Narvekar, Appellant No.2 in person present.
Mr. Rajiv Singh i/b Chitnis & Co. for Respondent No.1.
Mr. Pratik Salgaonkar i/b Crawford Bayley and Co. for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 31 MARCH 2017.

P.C. :-

1] Heard Mr. Narvekar, appellant No.2 who appears in person, Mr. Rajiv Singh, learned counsel for respondent No.1 and Mr. Salgaonkar, learned counsel for respondent No.2.

2] The challenge in this appeal is to the order dated 23 April 2014, by which, learned Trial Judge has exercised the powers under Order VII Rule 10 of Code of Civil Procedure, 1908 (CPC) and returned the plaint to the plaintiffs for presentation before the proper court.

3] Mr. Narvekar submits that in the present case, the relief applied for by the plaintiffs was that certain judgments and orders made, *inter alia*, by the Industrial Courts, which according to the plaintiffs, were obtained by fraud and collusion, were required to be declared as nullity and set aside the impugned order. He submits that such a suit is maintainable before the Civil Court and in any

case, the powers under Order 7 Rule 10 of CPC, could not have been exercised by the learned Trial Judge without even recording any satisfaction as to which would be appropriate forum in which the plaintiffs ought to go in order to obtain such reliefs. Mr. Narvekar, has placed reliance upon the following judgments in support of his case:

Sr.No.	Case laws /Description
1	Union of India vs. Ramesh Gandhi – (2012) 1 SCC 476
2	S.P. Chengalvaraya vs. Jagannath – (JT 1993 (6) SC 331)
3	Rajwant P. Pande vs. Ram Ratan Gir - (AIR 1915 Privy Council 99)
4	Abdulla Bin Ali vs. Galappa & ors. - (AIR 1985 S.C. 577)
5	Ramchandra Vatkar vs. J.Co-op. Hsg. Society ltd. - (2003(1) Mh.L.J. 54)
6	Abdul Huq Chaudhari vs. Abdul Hafez - (Calcutta Law Journal Vo. XI Page 636)
7	Keshav Phadke vs. Subba Manga Naik - (AIR 1939 Bom.490)
8	Bhikaji Mahadev Gund vs. Balvant Ramchandra Kulkarni - (AIR 1927 Bombay 510)
9	Sadasheo Kirad vs. Mahadeo Ganesh Sohani - (AIR 1929 Nag.111)
10	Arunachaellam Chetty vs. Sabapathy Chhetty - (AIR 1918 Mad. 711)
11	Pandit Chandi Prasad Mishra vs. Gobind Sahay (Indian Cases Vol. XXXIX Page 791 Pat.)
12	Pilla Kakkadu alias Balaji vs. Vedula Chendrayya Chandari – (IC Vol. LI 536 Mad. 536)

4] Mr. Singh and Mr. Salgaonkar, learned counsel for the respondents, submit that only vague allegations of fraud and collusion were made by the plaintiffs in the plaint. They point out that the judgments and orders of the Industrial Court have already been upheld by this Court. They point out that for these very reliefs, the plaintiffs have instituted yet another suit. They point out that the preliminary issue has been framed in such other suit and the matter is now posted for final hearing on the preliminary issue. They also point out that the proceedings initiated by the plaintiffs are a gross abuse of process of the Court and therefore, this appeal should be dismissed with exemplary costs.

5] The rival contentions now fall for my determination.

6] This is hardly a stage to go into the merits and de-merits of the allegation of fraud and collusion made in the plaint by the plaintiffs. As a matter of principle, however, it cannot be said that a suit for declaring an order made by the Industrial Court, a nullity will not be maintainable, where the allegation is that such order was obtained by practising fraud and collusion. In such circumstances, it cannot be said that the Civil Court lacked jurisdiction to entertain the suit. Further, the exercise of powers under Order VII Rule 10 of CPC also appears to be improper. In this case, even the respondents had not pointed out which is the proper forum for the plaintiffs to obtain such reliefs. The impugned order also does not indicate which is the proper forum, in which the plaintiffs are expected to apply to or for that matter which is the proper forum, to which, the

appellants should present their plaint, in terms of the directions issued in the impugned order.

7] The issue as to whether the suit is barred by *res judicata* or not is an issue which will have to be decided on merits. Similarly, whether the allegations of fraud and collusion are valid or not will also have to be decided on merits and the Civil Court could not have declined to exercise its jurisdiction in the manner in which it has done so.

8] On this short ground, the impugned order is liable to be set aside and is hereby set aside. The appeal is allowed and the suit is restored to the file of learned Trial Judge and the same shall be disposed of, in accordance with law and on its own merits.

9] It is made clear that all contentions of all parties, including all objections, *inter alia*, even to the maintainability of the suit, are kept open.

10] It is also made clear that this Court has not at all examined the merits of the matter and therefore, nothing contained in this order may even remotely be construed as any reflection upon the merits or de-merits of the matter.

11] Parties to appear before the learned Trial Court on 15 April 2017 at 11.00 a.m., and produce an authenticated copy of this order.

12] Upon disposal of the main appeal, the pending civil application does not survive and the same is also disposed of.

13] All concerned to a ct on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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