

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (ST) NO. 22285 OF 2017
IN
Writ Petition NO. 11227 OF 2014

Oomen Michael And Ors ...Petitioners

Versus

Prabhakar Menka Shetty
And Anr. ...Respondents

....

Mr.Kishor V. Tembe, Advocate for the petitioners.

Mr. Mayur Khandeparkar, Advocate for respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 08th SEPTEMBER, 2017

P.C.

1. Heard Mr.Kishor Tembe, learned counsel for the petitioners and Mr.Mayur Khandeparkar, learned counsel for respondent No.1, at length.

2. By this Petition under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners seek review of the order dated 6.2.2017 passed by this Court in W.P. No.11227/2014. That Petition was disposed of by giving directions to the trial Court to hold enquiry under Section 8 of the Maharashtra Court Fees Act (for short, 'Act') by

permitting the parties to lead evidence for deciding the question whether the suit is properly valued or not. The learned trial Judge was also directed to decide that issue uninfluenced by the observations made in the impugned order dated 17.10.2014. It was also made clear that the learned trial Judge was free to decide the application for interim order in terms of Section 9-A(2) of Code of Civil Procedure, 1908 (for short, 'C.P.C.'). Pendency of the enquiry will not preclude the trial Court from proceeding with that issue.

3. It appears that by order dated 21.3.2017, the learned trial Judge declined to grant ad-interim relief and directed both the parties to lead evidence on affidavit for the purpose of holding enquiry under Section 8 of the Act. Aggrieved by that order, respondent No.1/plaintiff preferred Appeal From Order in this Court. By order dated 10.7.2017, Appeal from Order was disposed of by directing the trial Court to decide the plaintiff's Notice of Motion at the earliest possible and the enquiry under Section 8 of the Act will continue in parallel.

4. Respondent No.1 has instituted suit *inter alia* for the following reliefs :

- “a) That this Hon'ble Court be pleased to pass a permanent order and injunction restraining the Defendant No.1 to 3 and 7 by themselves, their servants, agents and representatives from carrying on any construction activity on the property bearing CTS No.569/2 of Village Nahur, Gowshala Road, Mulund (West), Mumbai 400 080;
- b) That this Hon'ble Court be pleased to pass a temporary order of injunction restraining the Defendant No.1 to 3 and 7 by themselves, their servants, agents and representatives from carrying on any construction activity on the property bearing CTS No.569/2 of Village Nahur, Gowshala Road, Mulund (West), Mumbai 400080, pending the hearing and final disposal of the suit;
- c) That ad-interim and interim reliefs in terms of prayer clause (b) above be granted;”

5. Section 9-A of C.P.C. reads thus :

“9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.-

(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such

application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

6. As noted earlier in terms of Section 9-A(2) of C.P.C., the learned trial Judge has considered whether the plaintiff is entitled to ad-interim relief and declined to grant ad-interim order. Said order was upheld by this Court in Appeal from Order. In view of Section 9-A(1) of C.P.C., once objection is raised to the jurisdiction of the Court (in the present case pecuniary jurisdiction) to entertain the suit, the Court has to proceed to decide the issue of jurisdiction as a preliminary issue at the time of hearing of the application for interim relief. As by order dated 10.7.2017, the learned trial Judge is directed to dispose of Notice of Motion of the plaintiff at the earliest possible as also enquiry under Section 8 of the Act is ordered to continue in parallel, interest of justice will be served by directing the trial Court to first pronounce the order on enquiry under Section 8 of the Act and thereafter depending upon the outcome of the order

in an enquiry under Section 8 of the Act will pronounce the order in Notice of Motion. Review Petition is disposed of in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)