

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

WRIT PETITION NO. 13090 OF 2016

Mrs.Priya Sachin Shahane		
Through her CA, Mr.Bandekar & Anr.	...	Petitioners
V/s.		
M/s.Parekh Paper Agencies Pvt. Ltd. & Ors.	...	Respondents

Mr.Sanjay Chitale for the Petitioners.
Mr.V.A.Shastry for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th DECEMBER, 2017.

ORAL JUDGMENT :

1] Heard learned counsel for the Petitioners and the Respondents.

2] Rule. Rule made returnable forthwith as the issue involved in this petition is short one.

3] By this petition original Defendant No.3 and 4 are challenging the order dated 14th June, 2016, below Exh.108, passed by Jt.Civil Judge Junior Division, Vadgaon Maval in Regular Civil Suit No.60 of 2006.

4] By the impugned order the application filed by the Petitioners herein for framing the additional issues came to be allowed partly. The Petitioners has sought framing of following four issues as additional one.

- “(a) Whether Plaintiff proves that the addresses given of Defendant Nos.1 and 2 given in the plaint were correct addresses on the date of the suit and whether Defendant Nos.1 and 2 are “duly served” with the suit summons on their respective correct addresses having regard to the provisions contained in terms of O.6 R.14-A(5) C.P. Code (Bombay Amendment) is committed?*
- (b) Whether valuation of the suit claim as made by Plaintiff in its plaint is correct and proper?*
- (c) Whether Defendants prove that the agreement dt.19.12.1981 was duly terminated by Defendant No.1 on account of sustained defaults on part of Plaintiff to pay the agreed balance consideration at mutually agreed point of time?*
- (d) Whether on the date of the suit, Plaintiff had any enforceable legal rights arising under the agreement dt.19.12.1981?”*

5] By the impugned order the learned Trial Court allowed the framing of additional issue No.(c) only. i.e.

(c) Whether Defendants prove that the agreement dt.19.12.1981 was duly terminated by Defendant No.1 on account of sustained defaults on part of Plaintiff to pay the agreed balance consideration at mutually agreed point of time?

6] As regards the issue No.(b), the learned Trial Court held that the Respondent herein is claiming only the relief of injunction on the basis of possession over the suit property and accordingly he has valued the suit claim under Section 6(4-J) of Maharashtra Court Fees Act. According to learned counsel for the Petitioners, however, the valuation should have been made on the consideration amount mentioned in the agreement to sale. In the opinion of this Court, when the suit is simplicitor for injunction and for no other relief even of declaration that the agreement executed by the owner in favour of Defendant No.1 is not binding on the share of the Plaintiffs, no question arises of the Plaintiffs paying any additional Court Fees on the valuation of the sale deed and therefore, the valuation of the suit claim being proper, there is no necessity of framing such issue.

7] As regards the issue No.(a) i.e. *As to whether the Defendant Nos. 1 and 2 were duly served on the address given in the plaint?* : Once

Defendant Nos.1 and 2 have appeared in the suit, this issue becomes redundant and therefore, learned Trial Court has rightly refused to frame that issue.

8] Even as regards issue No.(d) i.e. As to whether on the date of suit, Plaintiff had any enforceable legal rights arising under the agreement dt.19.12.1981? : This issue being in the nature of consequential relief, there is no necessity of framing the said issue, once the issue No.(c) i.e. *Whether Defendants prove that the agreement dt.19.12.1981 was duly terminated by Defendant No.1 on account of sustained defaults on part of Plaintiff to pay the agreed balance consideration at mutually agreed point of time?*, is framed.

9] Therefore, the impugned order passed by the trial Court being just, legal and correct, no interference is warranted therein.

10] The Writ Petition, hence, stands dismissed.
Rule is discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]