

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

APPEAL FROM ORDER NO.1380 OF 2013

Ramashree Tapsi

...Appellant

Versus

Bhupendra K. Gupta & Ors.

...Respondents

Mr.Rajesh Parab for the Appellant.

Mr.Amol P. Mhatre for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 30 MARCH 2017

P.C.

1. Heard Mr.Rajesh Parab for the appellant and Mr.Amol Mhatre for the respondent.

2. This Court, by order dated 22 January 2014 had issued notice for final disposal of this appeal. The order dated 22 January 2014 reads thus :-

“The learned counsel for the appellant states that the trial Court was not justified in answering the issues against the appellant on merit, when the trial Court was of the view that the suit was not tenable before the Court and the plaint was liable to be returned to the appellant for presentation to the proper Court.

It prima-facie appears that the Counsel for the appellant is right in making the submission. Unless the findings recorded by the trial Court in the impugned order are set aside, the appellant would not be able to effectively make a claim against the respondents before appropriate forum.

Hence, issue notice of final disposal to the respondents, returnable on 05th February, 2014.”

3. Mr.Parab, learned counsel for the appellant states that the appellant has no grievance as regards the final order dated 04-04-2013, to the extent, that it directs the return of the plaint to the appellant for presentation before the proper Court having jurisdiction to try and entertain the suit. Mr.Parab however, submits that the learned Trial Judge, in the impugned order, framed issues on the merits of the matter and has further, answered such issues against the appellant. Mr.Rajesh Parab submits that if the learned Trial Judge, had no jurisdiction in the matter to entertain the plaint, then, there was no justification for adjudicating the merits of the matters and answering certain issues against the appellant. He submits that the determination of the such issues by the learned Trial Judge is liable to be set aside so that the Competent Court will be in position to decide the suit on its own

merits and in accordance with law uninfluenced by any such findings or observations in the impugned order.

4. Mr.Amol Mhatre the learned counsel for the respondent points out that it is at the insistence of the appellant that the issues were framed and the learned Trial Judge was called upon to decide the same. In such circumstances, Mr.Mhatre submits that the appellants cannot now make any grievance with regard to the determination of issues. For this reason, Mr.Mhatre submits that impugned order may not be interfered with.

5. Rival contentions now fall for my determination.

6. The operative portion of the impugned judgment and order dated 04-04-2013 reads thus :-

ORDER

1. *Plaint and proceeding be returned to plaintiff to be presented before the Competent Court to whom having jurisdiction to try and entertain the suit subject to cost of Rs.2,000/-.*
2. *Plaintiff is directed to deposit the cost of Rs.2,000/- in the Court on or before 12-4-2013.*
3. *After deposit of cost by plaintiff, plaint and*

proceeding be returned to him, to be presented before the Competent Court to whom having jurisdiction to try and entertain the suit.

4. *Plaintiff is directed to comply provisions of 0-7 R-10(a) of CPC.*

5. *If plaintiff fails to deposit the cost or comply the order in time them, suit will be dismissed without reference to the Court for non compliance or order.”*

7. Mr.Parab, learned counsel for the appellant submits that the appellants have already deposited cost of Rs.2,000/- and further, they have no objection to return the plaint for presentation before the competent Court having jurisdiction to try the suit. Their grievance is that the impugned order dated 04-04-2013 has framed as many as nine issues on merits and further, proceeded to answer most of the issues against the appellants. Mr.Parab submits that such an exercise is in excess of jurisdiction.

8. At paragraph Nos.12 and 13 of the impugned judgment and order, the learned Trial Judge, has recorded the issues and its findings thereof. The said paragraphs read thus :-

12. ISSUES :

1) *Whether plaintiff proves that termination of agreement dated 13-05-2003 is bad and illegal ?*

- 2) *Whether plaintiff proves that he is entitled for alternate accommodation ?*
- 3) *Whether plaintiff is entitled to get possession of shop no.10 ?*
- 4) *Whether plaintiff proves that defendant intends to dispose of shop no.10 in new building illegally ?*
5. *Whether defendant proves that this court has no jurisdiction to try and entertain the suit ?*
6. *Whether defendant proves that plaintiff failed and neglected to pay the rent tot he defendant with effect from 01-07-1960 ?*
7. *Whether plaintiff is entitled for declaration ?*
8. *Whether plaintiff is entitled for injunction ?*
9. *What order/decreree ?*

13. FINDINGS :-

1. *In the negative.*
2. *In the negative.*
3. *In the negative.*
4. *In the negative.*
5. *In the affirmative.*
6. *Does not survive.*
7. *In the negative.*
8. *In the negative.*
9. *As per final order.*

9. Once the learned Trial Judge, comes to the conclusion that it had no jurisdiction to entertain the suit and that the plaint

was required to be returned for presentation before the Competent Court, the learned Trial Judge, naturally, ceased to have jurisdiction to go into the merits of the matter, frame issues on merits and thereafter, decide those issues on merits.

10] This Court, in the case of ***Shreyans Industries V/s. State of U.P. & Ors. (2004-1-Mh.L.J-50)***, in similar circumstances, at paragraph six, has observed thus :-

“6. I have considered the contentions canvassed by the learned Counsel for the parties. On the backdrop of the above referred facts, it is evident that the plaint was returned to the appellant/plaintiff under Order VII Rule 10 of Code of Civil Procedure since the trial Court had held that it does not have jurisdiction to try the suit and, therefore, appellant is required to present the plaint in the competent Court having jurisdiction to try the suit. Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the Court is to return the plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be of no consequence. If plaint is returned for want of jurisdiction and the same Court also records findings on merits, such findings are without jurisdiction and null and void. Similarly, the very purpose of returning the plaint for want of jurisdiction would be frustrated and that would

also foreclose the issue in the plaint, which was returned to the plaintiff to be presented to the competent Civil Court. In view of this legal position, the findings recorded by the trial Court on issue Nos. 1, 2 and 3 are without jurisdiction and it will be open for the competent Court at Lucknow to consider the entire claim of the appellant/plaintiff on its own merits. In the circumstances, the appellant is entitled to take back the plaint from the trial Court at Nagpur and file the same in the appropriate Court at Lucknow within a period of ninety days from today, failing which the suit shall be deemed to have been dismissed.”

11. In the aforesaid circumstances, the contentions of Mr.Rajesh Parab, learned counsel for the appellant are required to be accepted. Even assuming, as contended by Mr.Amol Mhatre that it is the plaintiffs who invited the learned trial Judge to frame issues and record findings thereon, it must be noted that even consent of the parties cannot confer the jurisdiction upon the Court, which, jurisdiction, it inherently lacks. At the highest, such consideration may be relevant for imposition of cost. However, it was not open to the learned Trial Judge to decide the issues on merits and at the same time return the plaint for want of jurisdiction with liberty to present the same before the Competent Court having jurisdiction in

the present matter.

12. The impugned order, to the extent, it records findings on the issues on merits is therefore required to be set aside and is hereby set aside. However, the direction with regard to the return of the plaint for presentation before the Competent Court of law is maintained.

13. Mr.Rajesh Parab states that the plaint would be taken from Trial Court within a period of four weeks from today and the same will be presented before the Competent Court within four weeks thereafter.

14. The Competent Court, to decide appellant's suit on its own merits and in accordance with law without in any manner being influenced by any of the findings and observations made in the impugned judgment and order dated 04-04-2013, which finding and observations in any case, have now been set aside, for want of jurisdiction.

15. All contentions of all the parties are kept upon to be determined by the Competent Court, to which, the plaint will now

be presented.

16. The appeal is disposed off. There shall be no further order of cost.

17. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)