

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 11227 OF 2014

Oommen Michael And Ors

...Petitioners

Versus

Prabhakar Menka Shetty
And Ors.

...Respondents

....

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

Mr.Rohaam Kama i/b. Ms. Sapna Rachure, Advocate for
Respondent No.1.

Respondent No.2 is present.

....

CORAM : R. G. KETKAR, J.

DATE : 06th FEBRUARY, 2017

P.C.

1. Heard Mr.Kishor Tembe, learned counsel for the petitioners and Mr.Rohaam Kama, learned Counsel for respondent No.1, at length.

2. The matter was heard on 12.12.2014. At the request of learned Counsel for the petitioners, leave to delete respondents No.2 to 4 was granted.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 17.10.2014 passed by the learned Judge, City Civil Court, Greater Bombay. By that order, the learned trial Judge decided

the preliminary issue, namely, whether City Civil Court has pecuniary jurisdiction to entertain and try the suit. The learned trial Judge held that the Court has pecuniary jurisdiction to entertain and try the suit. While deciding the issue of jurisdiction, the learned trial Judge held that the suit is for permanent injunction and not for declaration of any right. It is properly valued as per Section 6(iv)(j) of the Maharashtra Court Fees Act.

4. Perusal of paragraph-7 of the impugned order shows that both the parties did not choose to lead evidence. Perusal of prayers show that by prayer clause (a), the plaintiff has sought perpetual injunction against defendants No.1 to 3 and 7 from carrying out any construction activity on the property bearing C.T.S No. 569/2 of village Nahur, Gowshala Road, Mulund (West), Mumbai-400080 as also pending the suit claimed temporary injunction restraining defendants No.1 to 3 and 7 from carrying out any construction activity on the suit property.

5. In the case of **Gulam Mohamed Mohamed Yunus and another v. Lalchand Chellaram and others, AIR 1976 BOMBAY 389**, it is observed in paragraph-12 thus :

“12. The analysis of the two provisions would show that Section 6(iv)(j) contemplates suits where the subject-matter in dispute is not susceptible of monetary evaluation and where the suit is not otherwise provided for by the Court-fees Act. Article 7, on the other hand, refers to the obtaining of substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. Thus, whereas Section 6(iv)(j) lays emphasis on the subject-matter of the suit, under Article 7 substantive relief is to be looked into. The expression 'subject-matter; is a wider expression. In looking to the recitals of the plaint and in assessing the prayers the objective should be to find out what relief is substantively asked for. That would be the primary function for determining the application of Article 7 of Schedule I, so that the next step would be to find out whether such relief is or is not capable of being valued in terms of money value or at least loss to be occasioned could be estimated in money value. Apparently, if any suit satisfies the element of Article 7, Schedule I, it could be said with reason that the suit is provided for by the Act so that it would automatically be out of the purview of Section 6(iv)(j) of the Act. All these aspects, therefore, have to be looked into for finding out whether Section 6(iv)(j) applies or Article 7 applies and that will have to be done by looking into the subject-matter so far as the former provision is concerned.”

6. In the case of **Mohan Meakin Breweries Ltd. v.**

Oceanic Imports and Exports Corporation, 1980 Mh.L.J.

803, after referring to Section 6(iv)(j), the learned Single Judge of this Court observed thus :

“The aforesaid provision is attracted only when

three conditions are satisfied, namely, that the suit is (i) for declaration, (ii) the subject-matter in dispute is not susceptible of monetary evaluation and (iii) the suit is not otherwise provided for under the Act. Prayer (a) in the present suit is for a declaration that the second defendants are not entitled to demand, recover or receive any payment under the two guarantees or to enforce either of the said guarantees and that the first defendants have no right to make any such payment to the second defendants under either of the two guarantees. The subject-matter in dispute further is the amount due under the said two bank guarantees and the same is clearly susceptible of monetary evaluation. Further Item 7 of Schedule I of the said Act covers a suit such as the present one, and therefore, the third condition mentioned in the section 6(iv)(j) is also not satisfied in the present case. The said item 7 of Schedule I is as follows :

Any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid".

As is clear from what has been stated earlier, the present suit is for a substantive relief of a declaration that under the two bank guarantees, the second defendants are not entitled to demand, recover or receive any amount and the first defendants have no right to make such payment to the second defendants. The suit is also for an injunction restraining the first

defendants from making the said payment and the second defendants from enforcing the same thereby preventing a loss to the plaintiffs of the amount guaranteed under the said two guarantees. The suit therefore clearly falls under the said Item 7 of Schedule I of the said Act.”

7. In the present case, as noted earlier, none of the parties chose to lead evidence. In my opinion, the learned trial Judge should have held enquiry under Section 8 of the Act and permitted the parties to lead evidence and thereafter decided valuation in the suit.

8. In view thereof, the learned trial Judge is directed to hold enquiry under Section 8 of the Act, permit to lead evidence and decide whether the suit is properly valued or not. The learned trial Judge will decide this issue uninfluenced by observations made in the impugned order. All contentions of the parties on merits are expressly kept open. Petition is disposed of accordingly. The trial Court is free to decide the application for interim order in terms of Section 9-A(2) of C.P.C. Pendency of the enquiry will not preclude the trial Court from proceeding with that issue. Order accordingly.

(R. G. KETKAR, J.)