

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 269 OF 2017

Jitendra Rajaram Sawant

...Petitioner

Versus

Dr. Hari Tulshiram Gholap

And Ors.

...Respondents

....

Mr.S.M. Gorwadkar, Senior Advocate a/w. Niranjana Mogre,
Advocate for the Petitioner.

Mr. Abhijit P. Kulkarni, Advocate for Respondents No.1 & 2.

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CORAM : R. G. KETKAR, J.

DATE : 16th JANUARY, 2017

P.C.

1. Heard Mr.S.M. Gorwadkar, learned Senior Counsel for the petitioner and Mr.Abhijit Kulkarni, learned Counsel for respondents No.1 & 2, at length.

2. Rule. Mr.Kulkarni waives service on behalf of respondents No.1 & 2. As respondents No.1 & 2 being the original plaintiffs are the only contesting parties, notice on rest of the respondents is dispensed with. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith

and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.4', has challenged the judgment and order dated 20.12.2016 passed by the learned 7th Jt. Civil Judge, Senior Division, Pune below Exhibit-373 in Special Summary Suit No.207/2009. By that order, the learned trial Judge rejected the application made by defendant No.4 for transferring the suit to the Commercial Court as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, 'Act').

4. Mr.Gorwadkar relied upon Section 2(c)(i)(vii) and explanation (a) of the Act to contend that the plaintiffs have raised Commercial dispute and, therefore, the suit is required to be transferred to Commercial Court.

5. The matter was heard at length. Mr. Kulkarni states that respondent No.1/plaintiff No.1 is present in Court. Upon taking instructions from him, Mr.Kulkarni states that respondent No.1 is the husband of respondent No.2 who is also plaintiff No.2 in the suit. Respondent No.1 has instructions on

behalf of respondent No.2. After taking instructions from him, Mr. Kulkarni submits that the suit may be transferred to the Commercial Court constituted under the Act. He has tendered photocopy of driving licence of respondent No.1, which is taken on record and marked 'X' for identification. He further submits that as per Section 15(3) of the Act the suit may be proceeded from the stage at which it is presently before the learned trial Judge. Mr. Gorwadkar has no objection for adopting such course. Even otherwise I find merit in the submission of Mr. Gorwadkar based on Section 2(c)(i)(vii) and Explanation (a) of the Act. The suit is required to be transferred to Commercial Court.

6. The learned Counsel appearing for the parties further state that as per Section 3(2) of the Act the State Government, after consulting this Court, by notification, has specified Commercial Court for Pune District. As per Section 3(3) of the Act the State Government with the concurrence of the Hon'ble Chief Justice of this Court has appointed Judge to preside over Commercial Court. In view thereof, by consent of parties, the Petition is disposed of in following terms :

- [i] The proceedings of Special Summary Suit No.207/2009 shall stand transferred to the Commercial Court constituted for Pune District from the stage as it stands today in terms of Section 15(3) of the Act. In other words, the Commercial Court will not start denovo trial of the suit and will proceed from the stage at which presently it is before the learned trial Judge.
- [ii] All contentions of the parties, on merits, are expressly kept open.
- [iii] Having regard to the fact that by order dated 26.10.2015 passed by this Court in Writ Petition No.6435/2013 as also order dated 6.9.2016 passed by this Court in Writ Petition No.1235/2016, the Commercial Court is requested to dispose of the suit as expeditiously as possible and in any case on or before 31.12.2017. The learned trial Judge is requested to transmit the papers and proceedings of the Suit to the Commercial Court immediately upon receipt of the authenticated copy of this order.
- [iv] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)