

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

WRIT PETITION NO.75 OF 2017

Mr. Ganesh Sunder Shetty and ..Petitioners.
Anr.

Vs

Smt Vijaya Sharad Vichare and .. Respondents
Anr.

Mr. S. Shamim i/b Shamim & Co., Advocates for Petitioners.
Mr. S.P.Srivastava, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 17/01/2017**

PC:

1. Heard Mr. S. Shamim, learned counsel for the petitioners and Mr. S.P.Srivastava, learned counsel for the respondents at length. Rule. Mr. Srivastava waives service on behalf of the respondents. 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 Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 20.10.2016 passed by the learned Ad-hoc District Judge & Assistant Sessions Judge, City Civil & Sessions Court, Gr. Mumbai in Chamber Summons No. 791 of 2015 in S.C.Suit No.773 of 2010. By that

order, the learned trial Judge rejected the Chamber Summons taken out by the defendants for amending the written statement.

3. In support of this petition, Mr. Shamim invited my attention to paragraphs 7 and 8 of the Written Statement and the finding recorded by the learned trial Judge in paragraph 9. He submitted that the finding recorded by the learned trial Judge in paragraph 9 is contrary to the averments made in paragraphs 7 and 8 of the Written Statement.

4. On the other hand, Mr. Srivastava supported the impugned order. He submitted that the defendants have contended that the suit is not properly valued and if the suit is properly valued, it would exceed pecuniary jurisdiction of the City Civil Court. As the defendants have already raised those contentions in the written statement, the learned trial Judge was justified in dismissing the Chamber summons. He further submitted that the issue as regards valuation of the suit on the basis of the contentions in paragraph 8 of the written statement, is framed.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The learned trial Judge rejected the Chamber summons, principally, on the ground that in paragraphs 7 and 8 of the written statement the defendants have contended that if the suit is properly valued, it will exceed the pecuniary jurisdiction of the City Civil Court as the market value of the suit

property is more than One Crore. Paragraph 9 of the impugned order reads thus:

“9. Not only this perusal of written statement transpired that in para no.7 and 8 of his written statement, defendant has already contended that suit property is valued for more than crores. Hence this Court has no jurisdiction to try and entertain present suit. He has already raised plea that suit is not properly valued and insufficient court fee is paid by plaintiff. By proposed amendment defendant intended to insert property. Same contention about valuation stamp fee and jurisdiction of this court. This itself shows that proposed amendment is already found place in para no.7 and 8 of written statement. Therefore, defendant is not entitled for amendment of pleading.”

Paragraphs 7 and 8 of the written statement read thus:

7. Without prejudice to the aforesaid submissions the defendants state that this Honourable Court has no jurisdiction to try and entertain the suit. The value of the suit premises itself more than Rs.50,000/- and the same is also evident from the own document of the plaintiff, which is exhibited as Exhibit-I to the plaint, whereby the plaintiff no.2 has allegedly sought to purchase the suit premises at Rs. 1,30,000/-.

8. Without prejudice to the aforesaid submissions, the defendants state that the suit is not properly valued and the plaintiffs have paid insufficient court fees and therefore on this count also the present suit deserves to be dismissed with costs and compensatory costs.

6. Perusal of paras 7 and 8 in juxtaposition with para 9 of the impugned order shows that the finding recorded by the learned trial Judge is contrary to the averments made in the written statement. Mr.Srivastava was not in a position to defend the findings recorded by the learned trial Judge in paragraph 9 of the impugned order. In view thereof, in my opinion, the ends of justice will be served by permitting the defendants to substitute

figure 'Rs.50,000/-' in paragraph 7 of the written statement by 'Rs. One Crore' instead of allowing the Chamber Summons as per the Schedule appended to the Chamber Summons. Impugned order stands modified accordingly. Amendment in paragraph 7 of the written statement shall be carried out within two weeks from today.

9. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)