

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 512 OF 2017**

1. Smt. Ansuya Jayendra Soni ..Petitioners.
and Ors.

Vs

1.Smt.Santokben Nanji Gohil .. Respondents
and Ors.

Mr. Nitin H. Shukla, Advocate for Petitioners.
Mr.Bhavin Gada i/b Harakhchand & Associates, Advocate for
Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 03/03/2017**

PC:

1. Heard Mr.Nitin Shukla, learned counsel for the petitioners and Mr.Bhavin Gada, learned counsel for respondent no.1 at length. On the oral application made by Mr.Shukla, leave to delete rest of the respondents is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Gada waives service for respondent no.1. Having regard to the narrow controversy raised in this petition and at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs, have challenged the Judgment and order dated 1st December, 2016 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No. 3399 of 2016 in S.C.Suit No. 7705 of 1985.

By that order, the learned trial Judge allowed the Motion taken out by defendant no.4 in terms of prayer clause (a) only and directed the plaintiffs to pay additional court fees on the amount of compensation claimed within four weeks from the date of the order.

4. In support of this petition, Mr.Shukla submitted that the plaintiffs have instituted suit for specific performance of Agreement of Sale dated 24.8.1978, among other prayers. During the pendency of the suit, the plaintiffs amended the suit and incorporated paragraph 10A and prayer clause (c)(i). In paragraph 10(A), the plaintiffs asserted that if and only if the Court comes to the conclusion that specific performance of the agreement cannot be granted, then in that event the defendants jointly and severally be decreed and ordered to pay to the plaintiffs a sum of Rs. 1,00,00,000/- (Rs. One Crore only) by way of compensation/damages together with interest at the rate of 18% per annum thereon from the date of filing of the suit till the date of payment/realization.

5. Defendant no.4, therefore, took out Notice of Motion, inter alia, praying for direction to the plaintiffs to pay proper court fees on the plaint, failing which Plaint be rejected. Mr.Shukla submitted that substantive relief claimed by the plaintiffs is relief of specific performance of agreement of sale and in the alternative and in the event of the court declining to grant relief

of specific performance, the plaintiffs have claimed damages of Rs, One crore. He submitted that the Court fee is required to be paid as per Section 6(xi)(a) of the Maharashtra Court Fees Act (for short, Act). He relied upon the decision of this court in Dilip Bastimal Jain Vs Baban Bhanudas Kamble, 2001 (3) Mh.L.J. 730 and in particular paragraphs 15 and 16 thereof. The said decision was also subsequently followed by the learned Single Judge of this Court in Khanderao Bhujangrao Babar Vs Bharatbai Shrimant Gomsale, 2009(3) ALL MR 568.

6. On the other hand, Mr. Gada supported the impugned order. He relied upon the following decisions:

1. The Firm of M/s F. Makandas V Shri Shankaracharya, AIR 1970 Gujarat 145;
2. 2015(5) Arb.L R 427 (Delhi) (DB), SICPA India Private Limited Vs. Kapil Kumar;
3. Suraj Narain Anand V. The North-West Frontier Province, 1942 F.C.R. 113;
4. Motigavri V Pranjivandas, 1982 The Indian Law Reports Vol. VI, 302;
5. In Re Paturu Venugopalayya, The Indian Law Reports Vol LV Madras Series 336;
6. Balkrishna Babaji V Hari Govind, 15 Bom.84, Indian Decisions, New Series.

He submitted that though these decisions, excepting the decision of Gujarat High Court in The Firm of M/s. F. Makandas (supra), arose out of the Court Fees Act VII of 1870, the principle is laid down independent of the provisions of that Act. Principles laid

down by the Court are to the effect that party has to pay court fees on the higher of the alternative relief. The principle is consistently followed. In other words, the plaintiffs have to pay the court fees on the claim of damages of Rs. One Crore made by way of amendment in the plaint.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record.

8. In the case of Dilip Bastimal Jain (*supra*), the learned Single Judge of this Court reproduced prayers in paragraph 6 of the Judgment. A perusal of the reliefs claimed in that case shows that by prayer clause (i), the plaintiff sought relief of specific performance against defendant no.1. By prayer clause (iii), the plaintiff contended that if there is any difficulty in executing the sale deed, he may be awarded compensation from defendant according to the prevailing market value. In paragraph 10, the learned Single Judge considered the provisions of the Act. In paragraph 11, Article 7 of Schedule I was considered. In paragraphs 15 and 16, the learned Single Judge observed thus:

15. Now, it is necessary to examine the correctness of the suit claim valued by the plaintiff. If the scheme laid down for the computation of fees payable in suits covered by several sub-sections of Section 6 is considered. It would be clear that, In respect of suits falling under Sub-section (xi)(a) a departure has been made and liberty has been given to the plaintiff to value his suit claim for the purposes of court-fees according to the amount of the consideration. I am, therefore, of the opinion that the suit claim has been rightly valued under Section 6(xi) treating it as falling under Article

7 of Schedule I of the Court-fees Act. The substantive relief claimed in the suit is not a relief of declaration or the alternate relief relating to the damages, but is of specific performance of contract based on agreement of sale as such the suit claim was properly valued. It was not necessary to value it under Section 6(i) or (iv) (a) or (iv) (b) of the Act.

16. What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided reading Section 6(xi) of the Act along with Section 8 of the Suits Valuation Act. This later Section provides that, where in any suit other than that referred to in Court-fees Act, Section 6, paras (v), (vi) and (x) and Clause (d) of paragraph (xi), court-fees are payable ad valorem under the Court-fees Act, the value determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits, falling in Section 6(xi)(a) are concerned. Section 8 of the Suits Valuation Act provides that the value as determinable for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provision of Section 8 is to make the value for the purpose of jurisdiction Dependant upon the value as determinable for computation court-fees and that is natural enough. The computation of court-fees in the suits falling under Section 6(xi)(a) of the Act is as per the amount of consideration. Thus the consideration of the transaction determines the value of the jurisdiction. The value of court-fee and the value of the Jurisdiction must, no doubt, be the same in such cases. Thus from the value of consideration the value of the jurisdiction is to be determined, The result is that the amount at which the plaintiff has valued the relief sought for the purpose of court-fee that determines the value for jurisdiction of the suit and not a vice versa. The trial Court has, therefore, rightly concluded that the suit claim has been properly valued and the suit was well within its jurisdiction.

The said decision was followed subsequently in Khanderao (supra) and in particular paragraph 7.

9. Mr. Gada relied upon the decisions referred herein above. Except the decision of Gujrat High Court in the case of Firm F Makandas (supra), all these decisions arose under the Court Fees

Act, 1870. By Section 49 of the Act, provisions of the Court Fees Act, 1870 are repealed. In other words, in view of Section 49 of the Act repealing provisions of the Court Fees Act 1870, one has to decide the question of payment of court fees as per the provisions of the Act.

10. In view of the decision of this Court in the case of Dilip Bastimal Jai (supra), I find that the learned trial Judge was not justified in directing the plaintiffs to pay court fees on the basis of alternate relief of damages. The question of consideration of alternative relief will arise only if the Court comes to the conclusion that plaintiffs are not entitled to relief of specific performance. Apart from that, it is not disputed that the alternative relief does not exceed pecuniary jurisdiction of the Court. Hence, Petition succeeds. Impugned order is set aside and the direction given by the learned trial Judge to the plaintiffs to pay additional court fees on the amount of compensation is set aside.

11. It is, however, made clear that in case the learned trial Judge holds that the plaintiffs are not entitled to relief of specific performance of contract and in the event of court granting relief in terms of amendment prayer clause and awards compensation, the plaintiffs will be bound to pay deficit court fees. 12. Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)