

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.794 OF 2014

IN

SUIT NO.473 OF 2014

Bharati Mahendra Jain

....Applicant/Plaintiff

Vs.

A and A Shelters Pvt. Ltd. and Ors.

....Defendants

Mr. Vishal Kanade a/w. Mr. M.P Vora i/b. M/s. Pramodkumar and Co. for applicant/plaintiff.

Mr. Omar Khaiyam Shaikh for defendant no.1.

Mr. Y.V. Divekar i/b. M/s. Divekar and Co. for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 3rd AUGUST, 2017

PC.:

1 This Court was pleased to frame a preliminary issue of jurisdiction. This issue came to be framed because defendant no.1 raised the same. Plaintiff has taken out this notice of motion in a specific performance suit seeking specific performance of two agreements being Exhibit 'B' and Exhibit 'B-1' to the plaint. Defendant no.1 had stated that plaintiff has combined in the present suit two separate causes of action which plaintiff was not entitled to and if these two causes of action are separated, the present suit will be out of the pecuniary jurisdiction of this Court since the valuation in respect of each individual causes of action would be below Rs.1 crore. The parties had informed the Court that they do not wish to lead any evidence on this preliminary issue.

2 Today Mr. Shaikh, counsel for defendant no.1 stated that the Directors of defendant no.1 were arrested but now out on bail. Mr. Shaikh further stated that he has not been receiving any instructions in the matter.

3 Mr. Divekar, counsel for defendant no.2 stated that defendant no.2 is only a Co-operative Society and they do not have anything to submit on this preliminary issue. Mr. Divekar further stated that the Society has also terminated the contract of defendant no.1 and they are looking for an alternate developer.

4 Coming to the preliminary issue framed, Order 2 Rule 3 of the Code of Civil Procedure reads as under :

“3. Joinder of causes of action.- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.”

5 Therefore, plaintiff is entitled to unite in the same suit several causes of action against same defendant and where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit. Even if plaintiff had to file two separate suits, plaintiff will be common, defendant will be common, agreement relied upon will be

identical, I am not saying common because there are two separate agreements only difference being the flat numbers mentioned. The evidence also will be common. By joining the two causes of action that will also avoid multiple proceedings and multiple evidence being led. Since the Code of Civil Procedure provides for plaintiff under Order 2 Rule 5 to join causes of action against same defendant, the objection raised by defendant no.1 has to be rejected.

6 At this stage, Mr. Divekar, counsel for defendant no.2 pointed out that under Order 2 Rule 4 since the suit relates to immovable property and the prayer clause does not relate to Order 2 Rule 4 (a), (b) or (c), prior leave ought to have been obtained by plaintiff and such a leave has not been obtained. I do not agree with Mr. Divekar because Order 2 Rule 4 comes into effect only in a suit for recovery of immovable property whereas the prayers sought in this suit are for specific performance and in the alternative, for return of the advance moneys paid.

7 In the circumstances, the issue is answered in the affirmative.

8 Now coming to the notice of motion, by an order dated 28th April, 2014 this Court had directed defendants to maintain status quo as on that date in respect of the suit flat.

9 Mr. Kanade, counsel for applicant states that plaintiff will be happy with continuing the order as order in the notice of motion and the notice of motion can be disposed.

10 Mr. Divekar, counsel for defendant no.2 states that there is no relief sought against defendant no.2 in the plaint and therefore, the ad-interim order or interim order cannot extend against defendant no.2. I am in agreement with Mr. Divekar.

11 Therefore, the order of 28th April, 2014 is confirmed as order in this notice of motion with the clarification that the order of status quo will extend only against defendant no.1 and defendant no.3.

12 The notice of motion accordingly stands disposed.

13 Since Mr. Divekar pointed out that defendant no.2 has terminated the contract with defendant no.1 and defendant no.2 is in process of getting another Developer to redevelop the property, once the decision is taken by the Society, they shall give atleast four weeks notice to plaintiff at which stage, plaintiff may take further steps in the suit as advised.

(K.R. SHRIRAM, J.)