

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION ST. NO. 18849 OF 2017

Indravadan Purohit ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18851 OF 2017

Ranjitsingh Linga & Anr. ...Applicants

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18853 OF 2017

M/s. Giriraj Holdings & Estate Developers Pvt. Ltd. ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18855 OF 2017

M/s. A-1 Profile, a partnership firm ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

**WITH
MISC. CIVIL APPLICATION ST. NO. 18856 OF 2017**

Smt. Niru S. Shah & Ors. ...Applicants

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

**WITH
MISC. CIVIL APPLICATION ST. NO. 18857 OF 2017**

Glorimex Private Limited ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

**WITH
MISC. CIVIL APPLICATION ST. NO. 18858 OF 2017**

M/s. New Golden Transport Company ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18859 OF 2017

M/s. Bombay Interestate Transport Company ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18860 OF 2017

M/s.Purohit General Store ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18861 OF 2017

Indravadan PurohitApplicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

WITH

MISC. CIVIL APPLICATION ST. NO. 18863 OF 2017

Indravadan Purohit ...Applicant

Versus

Parwan Construction Pvt. Ltd. & Ors. ...Respondents

.....

Mr. Rahul Narichaniya, Senior Counsel a/w. Mr.Shishir Joshi i/b. Ms. Bhakti C. Jugal for the Applicants in all Misc. Civil Applications.

Mr. Vivek R. Walavalkar i/b. Mr. Sameer R. Bhalekar for Respondent No.1.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **MARCH 01, 2018**

P.C.:

1. These Applications are moved for transfer of Suit Nos. 4533 of 2010, 4537 of 2010, 4561 of 2010, 4534 of 2010, 7826 of 1996, 8015 of 1996, 7815 of 1996, 7821 of 1996, 4587 of 2010, 4767 of 2010 and 7814 of 2010 from the City Civil Court, Bombay to High Court, Bombay. All these Suits along with the Counter Claims were filed in the High Court, Bombay in the year 2010. However, due to enhancement of pecuniary jurisdiction in the year 2015, all Suits and Counter Claims were transferred to the City Civil Court, Bombay. Out of these Suits, Suit Nos. 2678 of 2010 and 4559 of 1995 remained with High Court. Hence, these Applications.

2. Learned Senior Counsel for the applicants has submitted that all these Suits are filed for specific performance of the shops under Maharashtra Ownership Flats Act, 1963 (MOFA) against respondent no. 1, who is main contesting party. He has further submitted that if

these Suits are transferred to the High Court, then it can be tried together and contradictory decisions can be avoided. He has relied on the order dated 12th January, 2012 passed by this Court in Writ Petition No. 8329 of 2011, which was filed between the same parties. He has pointed out that in the said Writ Petition, this Court has expressed that if the Suits are transferred to the City Civil Court on account of implementation of enhancement of pecuniary jurisdiction, then those Suits can be brought back. He has further pointed out that the order dated 28th October, 2015 passed by the learned Single Judge of this Court in Writ Petition No. 5038 of 2014 thereby confirming the decision of the learned Principal Judge of the City Civil Court of transferring all the Suits from different Courts to one Court and clubbing them in one Court only.

3. Per contra, the learned Counsel for respondent no.1 while opposing these Applications, has submitted that the reasons given for transfer are not bona fide clean, but the applicants are indulging into delay tactics. He has further submitted that the proceedings before the High Court are slower than the City Civil Court, Bombay and, therefore, the Suits transferred to the High Court will not be decided in a short period, but it will be delayed. He has further

submitted that in fact respondent no.1 has filed a Transfer Application No. 181 of 2013 before the learned Principal Judge, City Civil Court, Bombay for clubbing all the Suits, which were filed in other Courts of the City Civil Court, Bombay. However, the said Transfer Application filed before the learned Principal Judge, City Civil Court, Bombay was opposed by the present applicants. He has pointed out that another identical Civil Application (St.) No. 26636 of 2015 in Writ Petition No. 5038 of 2014 under Section 24 of the Code of Civil Procedure, 1908 was filed by the one of the applicants for transfer of the Suits pending before the various Courts in the City Civil Court, Bombay to one Court in the City Civil Court. However, the said Application was rejected and, therefore, this identical application will amount to *res-judicata*. Hence, these present Applications are to be rejected. He has further submitted that the Suits were transferred to the City Civil Court, Bombay due to the Government policy of enhancement of pecuniary jurisdiction so it will reduce the burden of the High Court and re-transfer will frustrate the same. He has further submitted that the reasons given in the applications for transfer of the Suits are not sustainable in law, but they are made with some ulterior motive to delay the matters, as the order passed by this Court in the year 2012 and the Applications for transfer were filed in the year

2017. He disputed the Suits filed under MOFA.

4. Heard submissions. Perused the order dated 12th January, 2012. This Court has expressed that all the Suits along with Writ Petition should be heard together so that they can be considered by a single Court. It has also mentioned that if all the Suits are transferred, steps for re-transfer can be taken. While confirming the order of clubbing the Suits passed by the learned Principal Judge, City Civil Court, Bombay, in the order dated 28th October 2015, the learned Single Judge of this Court has observed that it is well settled that the matters involving the same issue can be transferred to a single Court for a more convenient and advantageous disposal of the matters and also to avoid a conflict of decisions.

5. Admittedly, the parties to all the Suits are one and the same and the issues involved in all the Suits, which are pending before the City Civil Court, Bombay and two Suits i.e., Suit Nos. 2678 of 2010 and 4559 of 1995, which are pending before the High Court, Bombay are same. The Suits were earlier pending in High Court i.e., before enhancement of pecuniary jurisdiction of the City Civil Court. Thus, all the Suits are to be transferred to the High Court, Bombay so that

time of the Court can be saved so also duplication of the evidence or repetition can be avoided.

6. The learned Counsel for respondent no.1 by referring the order dated 28th October, 2015 has raised point of *res judicata*.

7. Earlier, the applicants have filed the transfer applications under Section 24 of the Code of Civil Procedure on identical ground. The said fact is not disputed by the applicants. On perusal of the order dated 28th October, 2015 passed by the learned Single Judge of this Court, it is clear that the said Civil Application was not decided on merits, but it was rejected on the point that the said Application was filed in Writ Petition No. 5038 of 2014, which was dismissed on the same date.

8. In view of this, I allow these Misc. Civil Applications. All the Suits pending before the City Civil Court, Bombay are to be transferred to the High Court, Bombay. All the Suits are to be tagged and clubbed with Writ Petition No.8329 of 2011, Suit Nos. 2678 of 2010 and 4559 of 1995 and placed it before a Single Court.

9. The learned counsel for respondent no.1 submitted that respondent no.1 wants to challenge this order before the Supreme Court and hence, he prays to stay the operation of this order for 6 weeks.

10. As the respondent no.1 wants to challenge this order before the Hon'ble Supreme Court, the operation of this order is stayed for a period of 6 weeks from today.

(MRIDULA BHATKAR, J.)