

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

MISC. CIVIL APPLICATION NO. 246 OF 2018

M/s. Wellbert Pharmaceuticals (Bombay)
Pvt. Ltd. through its Director ..Applicants

v/s.

M/s. Anchor Mark Pvt. Ltd. ..Respondents

Ms. Karuna Yadav for the Applicant
Mr. Raphael D'Souza for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 6th DECEMBER, 2018.**

P.C.

1. By this application under Section 24 of CPC the applicant has sought transfer of Summary Suit No. 2334 of 2012 pending before the City Civil Court, Dindoshi, Mumbai to the Court of Principal District and Sessions Judge (S.D.) at Dadra and Nagar Haveli at Silvassa.

2. Heard Ms. Yadav, the learned Counsel for the applicants. She submits that the suit being Special Civil Commercial Suit No. 21 of 2018, between the same parties and arising from same transaction is

pending before the Principal District and Sessions Judge at Silvasa. She submits that subsequent to filing of the said suit, the respondents herein filed a Summary Suit No. 2334 of 2012 before the Dindoshi Court for recovery of money. She submits that both the suits arise from the same transaction and are required to be tried together in order to avoid conflicting judgments.

3. Mr. D'Souza, the learned Counsel for the respondent submits that the Court at Dindoshi has jurisdiction to try the suit as the applicants as well as the respondents have their registered office at Mumbai, the entire cause of action accrued in Mumbai, and the parties had agreed to submit to the jurisdiction of Courts at Mumbai. He has further submitted that the suit which is sought to be transferred was filed in the year 2012. The applicants had initially not contested the suit and were marked ex-parte. Subsequently, the ex-parte order was set aside. The applicants had thereafter filed application contending that the suit was barred by principles of res-judicata, and later filed an application for stay of the suit. The said applications were dismissed and the suit is now at the stage of final hearing. He submits that having failed to get any order in their

favour, the applicants have filed the present application at the fag end only with an intention of delaying the decision in the suit. He has relied upon the following decisions:

(i) Kulwinder Kaur @ Gurcharan Singh v. Kandi Friends Education Trust & Ors. AIR 2008 SC 1333.

(ii) Patel Roadways Ltd, Bombay vs. Prasad Trading Company (Supreme Court in Civil Appeal Nos. 3050-3051 of 1991)

(iii) Amit Agrawal vs. Atul Gupta (Allahabad High Court)

and submitted that the applicants have not made out any ground for transfer of the application.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

5. The respondent had supplied various factory machineris and equipment at the factory address at Dadra and Nagar Haveli as per the requirement of the applicant. The applicant claimed that the material supplied by the respondent was defective and could not be put to use . The applicant claimed that refusal by the respondent to replace/repair the machinery resulted in loss of reputation, trauma and mental agony. Based on these pleadings, the applicant filed

Special Civil Suit No. 13 of 2012 for damages of Rs.5,70,56,99,425/- before the Court at Silvassa, Dadra & Nagar Haveli.

6. The respondent claimed that the machinery was duly installed and trial production was taken successfully. It is the case of the respondent that the applicant had made part payment and sought extension of time to pay the balance and stating that they needed time to arrange for bank finances. The applicants avoided making payment on a false pretext that the machinery equipments were defective. The respondents therefore filed S.C. Suit No. 2334 of 2012 before the Dindoshi Court, Mumbai for recovery of Rs.70,64,432/- with interest.

7. The facts averred in the two complaints indicate that Cause of action in both suits arise from the same transaction. The pleadings in suit for damages pending before the Court at Silvassa, Dadra & Nagar Haveli are in fact the grounds of defence in the suit for recovery of money, pending at Dindoshi. The issues for decision being substantially common, it would have been appropriate that both suits are tried by the same Court. However, in the instant case, it is seen that the suit for recovery of money pending before the Dindoshi

Court was filed in the year 2012. The applicant has submitted to the jurisdiction of the Court at Dindoshi. Both parties have adduced evidence, trial is concluded and the suit is at the stage of final hearing. Whereas the trial in the suit pending before the Court of Principal District & Sessions Judge, Silvassa, Dadra and Nagar Haveli is yet to commence.

8. In my considered view, grant of this application will delay disposal of the suit which is already at the stage of final hearing. Furthermore, if the applicant succeeds in proving its defence in the suit before Dindoshi Court, it can still proceed with the suit for damages. Hence, no prejudice will be caused to the applicant if the Suit No.2334 of 2012 pending before the Court at Dindoshi is not transferred and is disposed of by the Court at Dindoshi.

9. Considering the above facts and circumstances, in my considered view, it is too late in the day for the applicant to seek transfer of the said suit. Hence, the application stands dismissed.

(ANUJA PRABHUDESSAI, J.)