Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13973 of 2017

Shri Vijay Jagdish Chheda, ..Petitioner.

Vs

Ms. Dimple Vijay Chheda, ..Respondent.

Mr. A.V. Anturkar, Senior Advocate i/by Tanaji Mhatugade for the petitioner.

Mr. Abhijeet D. Sarwate, Advocate for respondent.

CORAM : SMT. BHARATI H.DANGRE, J.
RESERVED ON :- 22nd March, 2018.
PRONOUNCED ON :- 6th April, 2018.

JUDGMENT:

1 The present petition is filed by the petitioner, being dissatisfied by the judgment and order passed by the learned Family Court No.2, Pune on 21/9/2017 on an application at Exh.40 in P.A. No. 931/2016. By the said impugned order, the application preferred by the respondent on the ground of non-payment of court fees as required under the provisions of the Maharashtra Court Fees Act was

treated as inquiry under section 8 and direction was issued to the present petitioner to pay full ad-valorem court fees on the said amount.

2 In order to test the impugned order, it is necessary to cull out certain facts leading to the passing of impugned order. The petitioner before this Court is the husband and his marriage was solemnized with the respondent on 15/10/1995. The respondent wife filed a petition seeking dissolution of marriage, which came to be numbered as PA 931/2016. According to the petitioner, during subsistence of the marriage, a joint account came to be opened by the petitioner and the respondent in HDFC Bank bearing Savings Bank Account No. 0103000058319 along with the mother of the petitioner. It is the case of the petitioner that various amounts were deposited by him in the said joint account and the said amount was invested in various mutual funds to the tune of Rs.3,22,30,000/- and on its maturity the amount of Rs. 3,79,50,80,807/- was accumulated in the mutual funds. It is the case of the petitioner that the respondent

wife unilaterally redeemed certain mutual funds on or about 6/9/2017 and an accumulated amount of Rs.2,40,79,935.69 was deposited in the joint account. According to the petitioner, further funds were unilaterally redeemed and total amount of Rs.3,97,51,807/- was deposited in the joint account because of premature redemption of mutual funds. It is the specific case of the petitioner that investment in the mutual fund was to be utilized for the welfare of their three children being born out of the said wedlock.

The petitioner was aggrieved by the act of the respondent on unilaterally redeeming the mutual fund and depositing the amount in the joint account and further unilaterally transferring the amount of Rs.3,79,50,80,807/- by RTGS to her personal savings account in Axis Bank, Senapati Bapat Road, Pune on 6/9/2017 to the tune of Rs.3,79,51,579/- from the joint account. Being aggrieved by the said act of the respondent, the petitioner moved an application for interim relief in the pending P.A. No. 931/2016 filed by the respondent wife, requesting the court to issue necessary mandatory interim directions for re-transfer of the amount of Rs.3,79,51,579/-

from the personal savings account of the Axis Bank, Senapati Bapat Road, Pune to the joint account of the petitioner and the respondent along with their mother i.e. savings account No. 0103000058319 of the HDFC Bank. The said application was opposed by the respondent-wife by filing reply on merits. The respondent also moved another application Exh.40 on 18/9/2017 under the provisions of Section 8 of the Bombay Court Fees Act, 1959 read with Suit Valuation Act, 1887 and in the said application the respondent prayed that the requisite court fees be paid on ad-valorem basis, since the relief sought in the application was in the nature of a suit for the purpose of recovery of amount of Rs.3,79,51,579/- and therefore looking to the real nature of the application, it was prayed that the provisions of section 6 (i) and 6 (iii) of the Maharashtra Court Fees Act, 1959 are attracted. The said application was opposed by the present petitioner by stating that the provisions sought to be invoked were not applicable in respect of an interim application and was applicable only in respect of plaint. It is in this background, the impugned order came to be passed by the learned Judge of the Family Court on 21/9/2017 which is assailed in the present petition.

3 The petitioner is represented by the learned Senior Counsel Shri Anturkar and the respondent is represented by Shri Abhijeet Sarwate. The learned Senior Counsel for the petitioner would invite the attention of this Court to the application preferred by the petitioner and to the prayers made in the application seeking re-transfer of the amount of Rs.3,79,50,807/- from the account of the Axis Bank to the joint account of the petitioner/respondent, namely, the HDFC Bank, Ferguson College Road, Branch Pune. The learned counsel would submit that the said application did not seek any "substantive relief" and in fact the said application has been preferred as an application for interim relief in a petition filed under the Hindu Marriage Act and what has been sought by the said application is restoration of the status-quo ante, which is a prayer and relief only in an aid and assistance of the Family Court to pass a substantive relief under the Hindu Marriage Act at the time of final hearing. He would submit that if an application seeking monetary relief at an interim

stage are treated as applications within meaning of Article 7 of Schedule 1 of the Maharashtra Court Fees Act, it would result into disastrous consequences. The learned counsel Mr. Anturkar would submit that the words used in Statute are to be construed with reference to the context in which they have been put to use and it should not be permitted to be read in the manner which would defeat the purpose of the Statute and the intention of the legislature. The learned counsel would submit that by the application presented before the Family Court, what he sought was restoration of money into the joint account which was already in existence and intended to be maintained for the welfare of the children and it was the respondent-wife who had transferred the amount from the said account to her individual account and, therefore, he has only sought directions to revert the money to the original account in which it was deposited. The learned counsel would submit that, he in any case is not claiming any money and therefore he is not seeking any substantive relief but the relief was sought only by way of interim measure and he had thought it fit to file the proceedings in the

Family Court, since the wife had already instituted proceedings for divorce in the same court. Ultimately, according to him, at the most if the application would have been allowed, he would have been entitled only for re-transfer of the amount, which is quite distinct from he claiming the money by filing a suit.

The learned counsel would place reliance on the judgment of the Apex Court in the case of Bangalore Water Supply Board versus A. Rajappa and Ors reported in 1978 (2) SCC 213 and specifically he would place reliance on the specific observation made by Justice V.R.Krishna Iye. He would also rely on the judgment in the case of Balkrishna Ramchandra Kadam versus Geeta Balkrishna Kadam reported in 1997 (7)SCC 500 and judgment of the Gujarat High Court in the case of Inderlal Panwarmal versus Khialdas Shewaram and others reported in AIR 1971 Guj 86, wherein the Court has taken view that the Court fee provision applicable to a case must be fixed having regard to the substance and not the form of a plaint and a relief which is not sought cannot be imported so as to charge court fee thereon. According to the learned counsel, what is important is to take into consideration the relief sought in a case, before levying court fee on the said document.

4 Per contra, the learned Counsel Mr Sarwate would support the impugned order, which has been passed by the Family Court. According to the learned counsel the Court has to see as to what is the relief that is claimed and he would submit that the application preferred by the petitioner sought a relief which was in the nature of money suit and the learned counsel would submit that in any case the said application preferred by the petitioner would fall within Article 7 of Schedule I, which covers all such applications seeking substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss and according to him, since the petitioner has sought re-transfer of the amount from the saving account of Axis Bank to the joint account of the petitioner and the respondent in HDFC Bank and he also sought a restraint order from utilizing the transferring or exhausting the amount, it is nothing short of a money suit. According to the learned counsel, if at all the

claim was to be made in absence of any pending proceeding before the Family Court, the petitioner would have been required to institute a suit in the nature of money claim for the reliefs, which he has claimed in the application and for which he would have been required to pay amount of court fee in terms of Section 6 (i) of the Maharashtra Court-fees Act, 1959. According to the learned counsel, Shri Sarwate, an application has been intentionally preferred by captioning it as application in the nature of interim relief in order to avoid payment of court fee and according to the learned counsel the Judge, Family Court, has clearly unearthed this mischief and directed the petitioner to pay appropriate court fees stamp by applying Schedule I of the Maharashtra Court-fees Act. The learned counsel thus would support the impugned order and would pray that the writ petition deserves to be dismissed.

5 Learned Counsel Shri Sarwate relies on the judgment of Apex Court in case of Samsher Singh vs. Rajinder Prashad AIR 1973 SC 2384. He also relied on judgment of this Court in case of Gilda Finance & Investments Ltd. vs. Natenco Wind Power Pvt. Ltd. and in

case of M.W. Breweries Ltd. Vs. Oceanic I. & E. Corporation, 1980 Mh.L.J. 804.

It is admitted fact that the wife had filed proceedings before the Family Court, Pune seeking dissolution of marriage. In the said proceedings the petitioner has filed an application praying for the following reliefs;

> (a) that the petitioner may kindly be directed to retransfer forthwith the said amount of Rs.3,79,51,579/- from her said savings account at Axis Bank, Senapati Bapat Road, Pune, to the Joint Account of the petitioner, the Respondent and his mother namely Savings Account No. 01031000058319, HDFC Bank, Fergusson College Road Branch Pune;
>
> (b) that the Petitioner may kindly be restrained from transferring, using, utilizing or exhausting the said amount of Rs.3,79,51,579/- or part thereof, in any manner of whatsoever nature, from her savings bank account at Axis Bank, Senapati Bapat Road Branch, Pune, till the said amount is re-transferred to the Joint Account of the Petitioner, the Respondent and his mother namely Savings Account No. 01031000058319, HDFC Bank, Fergusson College Road Branch, Pune;
>
> (c) that the Petitioner may kindly be restrained

> from transferring any amount lying in joint account of the Petitioner and the Respondent namely Savings Account No. 01031000058319, HDFC Bank, Fergusson College Road Branch, Pune, during the pendency of the present petition;

On perusal of the application, it is seen that there was a joint account in the name of the petitioner, respondent and the mother of the petitioner in HDFC Bank, which is an operational account. Certain monies accumulated in the joint account came to be invested into HDFC Corporate Debt opportunities fund, ICICI P 121 Multicap Fund Growth and Multicap Fund Growth, which are mutual funds and the investment was to the tune of Rs.3,22,30,000/-. The said principal amount, however, had matured to the tune of Rs.3,79,50,807.17. It is the case of the petitioner that the said amount came to be unilaterally transferred by the respondent wife redeeming the mutual funds into her own individual account with the Axis Bank. The petitioner preferred the application titled as application for interim relief seeking re-transfer of the said amount to the joint account since the said amount was invested so as to secure the future of the three children born out of the wedlock and according to the petitioner, the wife had no exclusive right over the said money, specifically considering the fact that the same was deposited in the mutual funds. The petitioner in the application has categorically stated that the petitioner and the respondent was staying in the same house and the respondent was taking care of the household expenses as well as the expenditure of the school and studies of three children. According to the petitioner, the wife had clandestinely transferred the said amount to her own account and therefore a direction was sought to re-transfer the amount to the joint account and a prayer was also made to the effect restraining the wife from expending the amount.

On the interim application filed by the petitioner, the Family Court was pleased to pass an order of status-quo on 14/9/2017.

The respondent-wife preferred an application and stated that the petitioner-husband cannot claim the entire amount of money and he can only pray for his 1/3rd share. In any case, it was stated that when he claims the entire money to the tune of Rs.3,79,51,579/- by way of re-transfer, the Court fee is payable thereupon as per the amount claimed and the application therefore ought to have been accompanied with court fee of Rs.3 lakhs. The respondent wife alleged that the Court has committed illegality by entertaining the application and granting relief in favour of the petitioner in gross violation of Section 5 of the Maharashtra Court Fees Act. She prayed that any such order is void ab-initio and she also prayed that the application at Exh.36 be struck off the record.

6 The Maharashtra Court-fees Act, 1959 which deals with the payment of court fees taken into courts and public offices mandates payment of fee on the documents and as per Section 5 of the said Act, no document of any of the kinds specified as chargeable in the first or second Schedule of this Act, annexed shall be filed, exhibited or recorded, in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Section 6 of the Maharashtra Court-fees Act provides for computation

of the fees payable under the Act in the suits mentioned in the said Section and to be paid in the manner prescribed. Section 6 reads thus :

The amount of fee payable under this Act in the suits hereinafter mentioned shall be calculated as follows :

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) according to the amount claimed;

Two Schedules appended to the Act are distinguishable as Schedule I provides for ad-valorem fee, whereas Schedule II provides for fixed fees. Perusal of Schedule I would reveal that it provides for the fees to be levied on plaint, application or petition of various nature filed seeking reliefs of varied nature. Item 7 of Schedule I needs reproduction as under :-

Item No. 7:-	Proper fee:-
Any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or	A fee on the amount of the monetary gain, or loss to be prevented, according to the scale prescribed under Article 1.

prevention of monetary loss, including cases wherein application or petition is either treated as a plant or is described as the mode of obtaining the relief as aforesaid.	

According to Item 1, Schedule I, in any plaint or memorandum of appeal or, of cross objection presented to any Civil or Revenue Court, the ad-valorem fees shall be dependent on the actual amount or value of the subject matter in dispute and different stakes are indicated in item I – the provision the Item I, however, fixes a cap on the maximum fee leviable on the plaint or memorandum of appeal or cross objection to be 3 lakhs.

7 Perusal of the reliefs sought in the application by the petitioner, no doubt, reveal that he claims re-transfer of the amount and it is in the nature of a money claim. The Court has to see, what is nature of the suit and the reliefs claimed while applying the provisions under the Court-fees Act. If a substantive relief is claimed, though clothed in the garb of a declaratory decree with the consequential relief, the Court would be entitled to see the real

nature of the relief claimed and if it is satisfied that it is not a mere consequential relief but a substantive relief, then, it is duty bound to direct proper valuation of the document, whatsoever may be its caption/title.

The petitioner has moved the application in the proceeding presented by the wife seeking decree for dissolution of marriage. Under the Hindu Marriage Act, several reliefs of substantive nature can be claimed which includes the relief to be granted under Section 9, i.e. for restitution of conjugal rights, Section 10 prayer of judicial separation, Section 11 declaring a marriage as void, Section 12 voidable marriages and Section 13 decree of divorce.

The Hindu Marriage Act also contains a provision which would permit a party to claim ancillary reliefs like the one provided under Section 24 of the Act – "maintenance pendente lite" and expenses of the proceedings. Section 25 – Permanent alimony and maintenance, Section 26 custody of children and section 27 disposal of property. These reliefs can be claimed in any proceeding instituted under the

Hindu Marriage Act and are in the nature of interim reliefs. Though an attempt has been made by learned Senior Counsel Mr Anturkar to canvass that the application preferred by him is the one akin to Section 27, which deals with disposal of property and he would ultimately submit that the application preferred by him is only in aid and assistance of the Court to pass final and substantive relief claimed by the wife in her petition, at the time of final hearing, the aforesaid submission seems to be misconceived. It is not the case of the petitioner that the investment made in the bank account of HDFC Bank including any amount presented at or about time of marriage belonging jointly to both husband and the wife.

The reliance placed by the learned Senior Counsel in case of Balkrashna Ramchandra Kadam vs. Sangeeta Balkrishna Kadam, 1997 (7) SCC 500 is also misplaced. The Hon'ble Apex Court construed the term "at or about time of marriage" in Section 27 of the Hindu Marriage Act and has held that it would only cover the property presented at or about the time of marriage provided it is relatable to the marriage. However, the claim regarding presentation of such property has to be established on the basis of evidence.

The purport of Section 27 is to empower the Court to make such provision in the decree with respect to any property presented at or about the time of marriage, which may be jointly belonging to both husband and wife. In the present case, the petitioner husband and wife have invested certain amount in a joint account held by them along with his mother. In fact, perusal of the statement of account No 01031000058319, HDFC Bank , Fergusson College Road, Pune, reveals that the primary account holder of the said account is respondent Ms Dimple Vijay Chheda whereas the name of the husband Vijay Jagdish Chheda is reflected as a second holder and name of Ms Rashmi Chheda is reflected as a third holder. Thus, the contention of the petitioner that it was an account in which he and his mother were only depositing the amount from time to time do not appear to be correct. The account holder is the respondent and the petitioner is the second joint holder. However, since the account is jointly held by the parties, the amount could be deposited by either parties and can be withdrawn by either of the account holder. It is also seen that the mutual fund was linked to the bank account and whenever the redemption amount accrued on account of maturity funds were credited to the respective individual accounts, which includes the account of the respondent-wife. There were four mutual funds in which the amount was invested in and it was in usual course that the amount got deposited into the accounts to which they were linked. In any case, the petitioner is seeking the re-transfer of the amount which is nothing but relief in the nature of money claim and would clearly attract the provisions of Section 6 (i) where the court fees is to be paid according to the amount claimed and the maximum fee to be levied in such type of suits is the amount of Rs.3 lakhs.

8 Perusal of provisions of Section 7 of the Family Courts Act 1984, which provides for jurisdiction to be exercised by the Family Court, would reveal that the Family Court shall have jurisdiction to deal with suits or proceedings of various nature and it includes suit or proceeding between the parties to a marriage with respect of the property of the parties or either of them by virtue of Section 7 (1) (c).Thus, the Family Court has the jurisdiction to entertain a suit or

proceedings with respect to the property belonging to the parties or belonging to either of them. The Family Court therefore possess the jurisdiction to deal with any such application and since the Court is exercising its jurisdiction, which it is empowered to do, any such application is not liable to be entertained unless and until there has been paid a fee of an amount as indicated in the Maharashtra Court Fees Act, 1959.

Section 5 of the Maharashtra Court Fees Act has applied the word "Documents" and it mandates that no document of any kind as specified as chargeable either in the I or II Schedule of the Act shall either be filed, exhibited or recorded, or shall be received unless there has been paid a fee in terms of the provisions of Maharashtra Court Fees Act. Section 5 applies the term "document" in a wide sense covering documents of varied description, categorized in the Article 1 of Schedule I and therefore mere nomenclature of document would not be decisive factor to find out as to what court fee is to be paid but it will have to be ascertained from the nature of relief claimed in the application. If an application seeks a relief of substantive nature capable of valued in terms of monetary gain or where it prevents monetary loss, then item 7 of Article 1 is attracted. The claim made by the petitioner in the application is in the nature of money claim capable of being valued in terms of monetary gain or prevent monetary loss to him and he has sought a restraint order to prevent him from suffering any monetary loss and therefore such application must be accompanied with proper court fee so that the Family Court exercises its jurisdiction and entertain such an application to grant or refuse a relief, as has been claimed.

9 Arguments advanced by the learned Senior Counsel that the relief sought is not "substantive relief" is also not sustainable as even if it a substantive relief is camouflaged as a consequential relief, it is to be seen as to what is the nature of relief and in my considered opinion the relief which is sought by the petitioner is the one covered under section 6 (i) and if the petitioner intends to call upon the Family Court to exercise its jurisdiction under Section 7 (i) (c) then the said application, in terms of section 5 of Maharashtra Court-fees Act cannot be entertained unless and until the party invoking the

jurisdiction of the court has paid the fee of an amount indicated in the Schedule I of the Maharashtra Court-fees Act.

10 The learned Single Judge of this Court in the case of Bhagwan Gundu Mohite vs. Janabai Bhagwan Mohite in Writ Petition (Civil) No. 6705 of 2013 had an opportunity to construe Article 7 of Schedule I and the Court after referring to the judgment of the Bombay High Court in case of M.M. Breweries Limited vs. Oceanic I. & E. Corporation, 1980 Mh.L.J. 804 arrived at a conclusion that the suit claimed substantive relief of declaration and also sought an injunction restraining defendant from making any payment and from enforcing the bank guarantee, thereby preventing a loss to the plaintiff of the amount guaranteed under the two bank guarantees. The Hon'ble Court therefore held that the suit clearly fall within the purview of Article 7 of the Schedule I of the Act. The judgment of the Bombay High Court in case of M.M.Breweries (supra) had clearly laid down the position of law that the plaintiff who wanted to prevent loss of an amount filed a suit and claimed the relief, capable of being valued in terms of money and thus it would fail within the purview of

Section 6 of the Bombay Court-fees Act and the Division Bench held that the provision of Item 7 Schedule I is attracted. It was noticed by the Court that Article 7 of Schedule I covered either plaint, application or objection seeking the substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss.

The application preferred by the petitioner clearly falls within the purview of Article 7 of Schedule I. The reliance placed by Advocate Sarvate on the judgment of the Bombay High Court in case of Gilda Finance & Investment vs. Natenco Wind Power Pvt. Ltd. decided in W.P. No. 7461/2008 is completely justified. In the said judgment, the plaintiff had instituted proceeding restraining the defendant from enforcing bank guarantee till the rights of the plaintiff were settled in connection with the MoU. The learned Single Judge of this Court arrived at a conclusion that the substantive relief in the suit, being capable of value in terms of money would fall within the ambit of Article 7 of Schedule I, though it is not a suit for declaration which would fall under section 6 (iv)(j) of the Bombay

Court Fee Act. The Court had observed that once the suit is capable of being valued in terms of money and as Schedule I provides, it would fall within the ambit of Act. Another judgment on which the learned counsel Mr. Sarvate has placed heavy reliance. Judgment of the Hon'ble Apex Court in the case of Shamsher Singh Vs. Rajinder Prashad & Ors, AIR 1973 (SC) 2384 where the Hon'ble Apex Court has observed thus :-

> "As regards the main question that arises for decision it appears to us that while the court fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fall for failure to ask for consequential relief is of no concern to the Court at that stage the Court in deciding the question of court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for."

11 The impugned order passed by the Judge Family Court has treated the application filed by the respondent as the one instituted an inquiry under section 8 of the Maharashtra Court-fees

Act and on examination, the Family Court has come to the conclusion that the prayer made in the application seeks to recover an amount of Rs.3,79,51,579/- which is susceptible to monetary evaluation and hence governed by Section 6 (i) of Bombay Court Fees Act and has directed the petitioner to pay full ad-valorem court fees on the said amount. An application was also preferred by the respondent praying for invocation of Order VII Rule 11 Code of Civil Procedure, which the Family Court has declined to entertain, such being at premature stage. It cannot be said that the impugned order suffers from any illegality or perversity. The impugned order passed by the Family Court on 21/9/2017 is upheld and the present writ petition being without merits and substance deserves dismissal and is dismissed accordingly.

[SMT.BHARATI H.DANGRE, J.]