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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8266 OF 2017**

Rangavali No-1 CHS Ltd.

.....Petitioner

V/s.

M/s. Agarwal and Company and others

....Respondents

Mr. Satyajeet Rajeshirke for the petitioner.

Mr. Girish J. Paryani for respondent no. 1.

CORAM : NITIN W. SAMBRE, J.**DATE : 27th JUNE, 2018.****P.C.**

Petitioner/plaintiff initiated Special Civil Suit no. 674 of 2012 in which application exhibit 40 came to be moved under section 8 of Bombay Court Fees Act, 1959 (Hereinafter referred to as 'the Act') as the suit was under valued. Considering the prayer made in the plaint, the Civil Court vide impugned order dated 22/01/2014 directed the present petitioner/plaintiff to pay court fees as per the provisions of section 6 (iv) (ha) and section 6 (v) of the Act. It is this order which is under challenge on the ground that the suit property

of which the possession and declaration is sought is not susceptible to valuation under the Act.

2 According to the learned counsel for the petitioner, the declaration is sought in regard to a basement, which according to him is meant for all the members of the society and said basement is part and parcel of common amenities. That being so, the bundle of facts which are taken into account for the purpose of valuation of the suit claimed cannot fall within the domain of provisions of section 6 (iv) (ha) and section 6 (v) whereas the petitioner has rightly paid half of the ad-voluerum court fees pursuant to section 6 (ha) and not clause 6 (j). So as to substantiate his contentions, he would draw support from the following judgments.

Nahalchand Laloochand Pvt. Ltd vs Panchali Co-operative Housing Society Ltd.¹

Rajaram Bhagwati Tiwari & Ors vs. Municipal Corporation of Greater Bombay & Ors.²

Maria Phitomina Pereira vs. Rodrigues Construction³

1 2010 AIR (SC) 3607

2 2004 (Supp. 2) Bom.C.R. 891

3 1990 (2) Bom.C.R.77

Vrindavan (Borivali) Co-operative Housing Society Limited vs. Karmarkar Brothers & others⁴

3 According to him, even if there is a prayer for possession and declaration, the same is in the interest of all the members of a Co-operative Housing Society, considering the object with which the action is brought before the Court, it has to be held that the suit shall properly valued.

4 *Per contra* the learned counsel for the respondent/original defendant would urge that the declaration sought in regard to the suit property along with a prayer for possession is rightly ordered to be valued by the Court below under the relevant entries of the Act. According to him, it is not the case of the present petitioners that they had sought only declaration *qua* the suit property to be jointly enjoyable by all the members of the society. He submits that the valuation of the suit property is already produced on record.

5 Considered rival submissions.

4 1983 (2) Bom.C.R. 267

6 It is not in dispute that the plaint prayer reflects prayer for declaration, injunction and possession. Based on the nature of prayer made, the Court considered various entries under the Act and has ordered valuation of the suit claim and payment of court fees as observed in the impugned order.

7 The difference that can be drawn *qua* the Judgment cited by the petitioner referred above are in regard to declaration and enjoyment of the property in jointness by all the members of the apartment where they were residing. Whereas in the case in hand, a prayer in regard to Decree for possession of the basement which is admittedly sanctioned as an independent unit in the building in question is made.

8 That being so and having regard to the fact that there is a prayer for possession, in my opinion, the valuation as ordered under the Act does not warrant any interference.

9 So far as the case laws which are cited by the petition are concerned, it is worth to observe here that in none of all these Judgments *cited supra*, based on common right in the property, possession was claimed. As such, the Judgments will be of hardly any assistance.

10 There is no substance in the petition, same stands dismissed.

[NITIN W. SAMBRE, J.]