

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LEAVE PETITION NO. 302 OF 2017

Abhijit Vasant Rao Kabir ...Petitioner
Versus
Siddhivinayak Construction Pvt Ltd & Ors ...Respondents

Mr A Pai, i/b Bina R Pai, for the Petitioner.
Mr Vivek Kantawala, with Amey Patil, i/b M?s. Vivek Kantawala & Co., for the Respondents Nos. 1 & 2.

CORAM: G.S. PATEL, J
DATED: 7th February 2018

PC:-

1. The Petition is wrongly listed under the caption of Petition under Clause XII of the Letters Patent. It is actually a Petition for leave under Clause XIV combined with or read with leave under Order II Rule 4 of the Code of Civil Procedure 1908.

2. The Plaintiff claims under an Memorandum of Understanding (“MoU”) dated 17th August 2013 between him and the 1st Defendant. A copy of this MoU is at Exhibit “J” from page 347 onwards. Prayer clause (a) of the Plaint seeks first a decree of specific performance and then in sub-clauses (i) to (iv) certain specific directions and decrees. Prayer (a)(i) seeks a money decree of Rs. 15,43,00,000/- with interest at the rate 24% per annum as a monetary claim arising under the MoU itself. The Plaintiff claims this was unpaid remuneration due to him under the MoU. Prayer (b)

then seeks a charge over the various immovable properties of the 1st Defendant listed in Exhibit “A” for the payment of Rs.15,43,00,000/-.

3. Having regard to the provisions of Clause XIV and Order II Rule 4 the question is whether any part of such a Suit is one for “recovery of immovable property” under Order II Rule 4 or is a Suit for “land or other immovable property” under Clause XIV. Having regard to the averments in paragraphs 3 and 5 of the Plaint, and the manner in which the prayers are worded, I am *prima facie* of the view that this is not in essence a suit for land or other immovable property at all. What is sought to be done is to enforce the MoU at Exhibit “J” and certain rights flowing from it, including a money claim for remuneration said to be due to the Plaintiff. The charge in prayer clause (b) is only in furtherance of the claim in prayer clause (a)(i) to secure payment.

4. In my view, this is a case where leave ought to be granted. Paragraph 3 of the plaint makes out a case in respect of a distinct set of reliefs though also directed against Defendants Nos. 1, 2 and 10.

5. The case of the Defendants can be protected by leaving open to the final hearing of the Suit any remaining questions of maintainability or mis-joinder of parties and causes of action.

6. With these observations, leave granted. The Petition is made absolute.

(G. S. PATEL, J)