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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS (L) NO. 1504 OF 2018
IN
COMMERCIAL SUIT (L) NO. 1375 OF 2018**

Vinod Grover & Ors ...Plaintiffs
Versus
Videocom Realty & Infrastructure Ltd & Ors ...Defendants

Mr Janak Dwarkadas, Senior Advocate, with Bindi Dave, Sameer Pandit, & Madhupreetha Elango, i/b Wadia Ghandy & Co., for the Plaintiffs.

Mr Karl Tamboly, with Samit Shukla, Nausher Kohli & Harsh Gokhale, i/b DSK Legal, for the Applicants.

Mr Virag Tulzapurkar, Senior Advocate, with Simil Purohit, Ashok Paranjpe, Tushar Kadam & Shivani Vora, i/b MDP & Partners, for Defendant No. 2.

**CORAM: G.S. PATEL, J
DATED: 11th October 2018**

PC:-

1. The Chamber Summons seeks revocation of leave that I granted on 9th October 2018 to the Plaintiff under Clause XII of the Letters Patent of this Court. I am not commenting on the accuracy

or otherwise of the averments in the Leave Petition or even in the plaint.

2. The submission from Defendant No. 4, the Applicant in the Chamber Summons, is that, on a plain reading, the suit is one for specific performance of a contract but combined with the prayer for delivery of possession of immovable property. That immovable property is situated wholly outside the jurisdiction of this Court. Therefore, having regard to the judgments of the Supreme Court in *Adcon Electronics Pvt Ltd v Daulat & Anr*¹ and *Excel Dealcomm Pvt Ltd v Asset Reconstruction Company (India) Ltd & Ors*,² and the judgment of a learned Single Judge of this Court in *DG Kotak & Anr v Rajeshkumar alias Rajas R Doshi & Ors*,³ this is a 'suit for land' within the meaning of Clause XII of the Letters Patent. Therefore, no leave could ever have been granted.

3. Clause XII of the Letters Patent read thus:

"XII. Original jurisdiction as to suits. — And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said

1 (2001) 7 SCC 698.

2 (2015) 8 SCC 219.

3 2012 (3) Mh LJ 275.

High Court or if the Defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Bombay, or the Bombay City Civil Court."

4. The only question is whether a Suit that seeks specific performance and combines a prayer for decree for specific performance with a prayer for delivery of possession of immovable property is a suit for land. If it is, then it falls within the first part of Clause XII. This means, necessarily, that if the land is outside the jurisdiction of this Court then no leave can be granted. The decisions referred to above are abundantly clear.

5. In *Adcon Electronics*, immovable property at Indore (land and a building) were the subject of sale agreement between the parties to the suit. There followed a memorandum, also in regard to this property. Disputes arose. The purchasers brought suit in the Bombay High Court for specific performance of the agreement and memorandum. The plaintiff did *not* seek possession of the suit property. The plaintiffs obtained leave under Clause XII of the Letters Patent. The defendants filed a Chamber Summons for revocation of that leave. A single judge dismissed that Chamber Summons. An appeal failed. The defendants approached the Supreme Court, and this resulted in the *Adcon Electronics* decision. Analyzing, Clause XII, the Supreme Court said, first:

9. Thus, it is clear that under clause 12 of the Letters Patent, the High Court in exercise of its ordinary original jurisdiction will have power to receive, try and determine:

(1) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of the High Court; or (2) all other cases (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (b) if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (c) if the defendant dwells or carries on business or personally works for gain within such limits.

6. Every suit for specific performance of an agreement that *relates* to land is not, the *Adcon Electronics* Court said, ‘a suit for land’. Such a suit becomes a ‘suit for land’ only if it *also* claims relief related to title or possession of that land. The Supreme Court said:

10. The learned Single Judge while dismissing the chamber summons took the view that so far as the High Court of Bombay was concerned the law was well settled that suits for specific performance, even though they might relate to the land, were not suits for land. On appeal the order of the learned Single Judge was confirmed by the Division Bench opining that the suit for specific performance of an agreement for sale was not a “suit for land”.

11. **The question then arises as to what is meant by “suit for land”. This expression has been interpreted by different High Courts as well as by the Federal Court.**

... ..

15. **From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable**

property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; **where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a “suit for land”.** We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha* case [AIR 1950 FC 83 : 1949 FCR 849] .

18. In the instant case the suit is for specific performance of the agreement for sale of the suit property **wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a “suit for land”.**

19. We cannot also accept the contention of Mr Chitale that the suit is for acquisition of title to the land and is a “suit for land”. **In its true sense, a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract.** The title to the land as such is not the subject-matter of the suit.

20. In this view of the matter, we do not find any illegality in the order of the Division Bench of the Bombay High Court under challenge. The appeal is dismissed but in the circumstances of the case, without costs.

(Emphasis added)

7. This decision was followed in 2015 in *Excel Dealcomm*. Meanwhile, in 2012, a learned single Judge of this Court, in *DG Kotak* also followed *Adcon Electronics*, saying:

7. **In my view, a suit for specific performance of a contract of sale of an immovable property in which**

possession of the property is claimed in pursuance of the contract for sale or as a consequence of the sale deed to be executed in performance of an agreement of sale, is a suit for land. Such a suit would be covered by the first part of Clause XII of Letters Patent. Being so, the High Court of Bombay would not have jurisdiction to entertain and try the suit if the immovable property is situated outside the limits of its original jurisdiction. Leave to institute such as a suit in the High Court cannot be granted. Grant of such leave would be a nullity because the court itself does not have a power to grant leave in respect of a suit for land or immovable property.

(Emphasis added)

8. I am unable to accept Mr Dwarkadas's submission for the Plaintiffs that despite this clear position, I should prefer instead to follow the Division Bench decision of this Court in *Wimco Ltd v Matoshree Shelters Pvt Ltd*.⁴ There, a learned single Judge of this Court held that in view of certain prayers in the plaint, the suit was indeed a 'suit for land'. The lands in question were in Thane (as they are here). There was a Memorandum of Understanding between the parties. The defendants were put in possession. The plaint proceeded on the footing that the defendants were in breach. They brought suit: to have the MoU (and certain subsequent agreements) voidable, and sought a declaration to that effect; to have the MoU and other agreements delivered up for cancellation; for damages; *for delivery of possession as a consequence of termination and rescission*; and for a permanent injunction. The *Adcon Electronics* decision was cited before the Division Bench, which then said:

4 (2009) 5 Mah LJ 615 : 2009 SCC Online Bom 658.

20. It has been held by the Supreme Court that a suit for land is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein, where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land. It has been further held by the Supreme Court in the said judgment that in a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. In the aforesaid case, even though the disputed property was located in the State of Madhya Pradesh, ultimately it was held that a suit for specific performance was maintainable on the Original Side of the Bombay High Court. It was held that the suit for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such suit cannot be termed as a suit for land.

21. Learned counsel for the respondents submitted that since in the instant case possession is specifically claimed by the plaintiffs, the said suit should also be treated as a suit for land. **On the basis of the judgments of the Federal Court as well as the Supreme Court, which we have discussed above, it is required to be found out as to whether the suit in question is really a suit for title or essentially a suit for possession. In order to determine the said aspect, the Court is required to consider the averments made in the plaint as well as the nature of the transaction entered into between the parties. After**

considering the averments in the plaint as well as the documents of MoU, agreements and the Power of Attorney, one thing is certain that the soul of the transaction in question is the MoU which is a starting point of entering into the transaction between the parties. The MoU is the basis on which subsequent documents were executed by the parties i.e. agreements and the power of attorney. As per the agreements between the parties, the defendants were to carry out certain work on behalf of the plaintiffs. It cannot be disputed that the plaintiffs by entering into the said transaction has never lost its title over land in question and as such it is an admitted fact that the title has all throughout remained in the plaintiffs. The suit, therefore, in question can never be said to be a suit in connection with the title and the plaintiff has also not sought for any declaration of title. The entire transaction was entered into on the basis of MoU. If that be so, in our view, the defendants were put into possession on the basis of MoU and the possession can be said to be a mere permissive one. Looking to the prayer clauses (a) and (b) which we have noted in the earlier part of our judgment, it is clear that the main prayer of the plaintiffs is for a declaration to the effect that the MoU in question is inoperative and no longer binding on the plaintiffs. We may make it clear that we are not concerned with the merits of the said averments as ultimately that is a matter of trial. We are discussing this aspect only with a view to find out as to whether the jurisdiction of this Court can be said to be excluded under clause 12 of the Letters Patent simply because there is a relief for possession sought for by the plaintiffs in the suit. In a given case, if a suit is filed on the ground that the MoU is entered into by fraud or misrepresentation and if the prayer is made that such MoU is not binding on the plaintiffs, then such a suit can be said

to be maintainable under clause 12 before the Original Side of this Court. If, on the basis of the averment in the plaint, a prayer is sought for to the effect that the MoU has become inoperative on the ground that the defendants have committed breach of the conditions, we fail to understand as to how, even if an incidental prayer for possession is made which is based only on the basis of prayer clauses (a) and (b) of the suit, such a suit is not maintainable under clause 12 of the Letters Patent. As pointed out earlier, the entire transaction is based on the MoU and the subsequent agreements. In our view, so far as the prayer regarding possession is concerned, it is mainly and solely dependent upon the prayers (a) and (b). In case the plaintiffs fail to get relief in the suit in connection with the declaration sought for, naturally plaintiffs cannot get any relief in connection with handing over possession as the prayer for handing over possession is solely and mainly depend upon the relief claimed by the plaintiffs regarding declaration sought for in the suit in connection with the MoU and other agreements. It cannot be disputed that in case the said prayers have been rejected, the prayer for possession becomes redundant and no decree can be passed in that behalf.

22. **Considering the aforesaid aspect, in our view, the suit is essentially based on the prayer that the MoU has become ineffective or inoperative. The prayer in connection with the declaration sought for by the plaintiffs regarding MoU, in our view, is perfectly within the jurisdiction of the Original Side of this Court and, therefore, the suit is maintainable on the Original Side of the Bombay High Court. As pointed out earlier, it can never be said to be a suit for title nor essentially it is a suit for possession. Possession is a consequential prayer based on the prayer for declaration in connection with the MoU and agreements in question.**

As per the submission of the learned counsel for the appellants, the defendants were given only permissive possession for development on the basis of MoU and other documents. The possession of the defendants is solely based on the basis of an MoU between the parties. If the document is held to be void or inoperative, naturally the defendants possession cannot be said to be in any way legal or valid. In our view, simply because in subsequent prayers of the plaint, possession prayer is sought for, it cannot be said that the suit in question is a suit for land.

If a suit for specific performance is maintainable on the Original Side of this Court, even if the property is situated at a different place or in the different State, as the case may be, the suit of such a nature wherein declaration is sought for in connection with the MoU and agreement can certainly be said to be maintainable here as the defendant has given mere permission to get the possession only for enforcing MoU as well as subsequent agreements. For example, the defendants also could have filed a suit before this Court for the specific performance of the agreements. If such suit is maintainable, we fail to understand as to why suit wherein declaration for cancellation of MoU is sought for is not maintainable on the Original Side of this Court. Simply because an incidental prayer for possession is made which is dependent upon earlier prayers of the plaint, as held by the Federal Court even in a case of a mortgage of immovable property, the plaintiffs in a given case can give up his claim for security and such suit is still maintainable on the Original Side of the Bombay High Court as it can never be said that the suit is essentially for land.

(Emphasis added)

9. It is impossible from a close reading of this decision to arrive at the broader, more generalized proposition Mr Dwarkadas commends. Indeed, it seems to me that the *Wimco-Matoshree* decision turned very narrowly on the facts of that case. In fact, it was not a suit for specific performance at all, but quite the reverse; and, as the Division Bench said, if the defendants were put in possession pursuant to the MoU and other documents, and the plaintiffs succeeded in the suit and had the MoU and other deed declared void and delivered up for cancellation, the defendants could not possibly continue in lawful possession of the land. Mr Dwarkadas can succeed only if he is able to demonstrate that *despite* the Supreme Court decision in *Adcon Electronics*, the Division Bench in *Wimco-Matoshree* can truly be said to have permissibly taken the contrary view, viz., that in every case of specific performance, a relief for possession is always only a consequential relief. Indeed, the Division Bench could not have taken such a view, and it did not. The case before it was entirely different. The Division Bench followed *Adcon Electronics*, as it was bound to do. To accept Mr Dwarkadas's submission today, on his facts that are on all fours with *Adcon Electronics*, on the basis of the entirely different fact situation in *Wimco-Matoshree*, would be to hazard a wholesale abandonment of the *Adcon Electronics* principle and ratio.⁵

5 In *Sumer Builders Pvt Ltd v Narendra Gorani*, 2015 SCC Online SC 953, in the context of a petition under Section 9 of the Arbitration & Conciliation Act, and after earlier referencing *Moolji Jaitha*, *Adcon Electronics* and *Excel Dealcomm*, the Supreme Court said in paragraph 35:

35. The seminal issue is whether on the factual score which has been exposed, the application filed under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the agreement and the MoU it is clear as day that the development agreement

10. Having regard to these circumstances and prayers (a-i) and (a-iii) of the plaint, the Chamber Summons will have to be made absolute. The Chamber Summons is made absolute.

11. The leave granted on 9th October 2018 is revoked. The plaint will thus have to be returned, though not under Order 7 Rule 10 of the Code of Civil Procedure 1908, this being a Chartered High

indubitably had created certain interests in the land in favour of the appellant. The assertions made in the application along with the relief clause when read in entirety and appreciated in a holistic manner, it becomes luminescent that the core dispute pertains to possession of the land, for the appellant claims to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of “suit for land” as engrafted under Clause 12 of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible from the correspondences and the averments made in the application preferred under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of “suit for land” appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same.

Court, but under Rule 283 of the Bombay High Court Original Side Rules.

12. Finally, Mr Dwarkadas for the Plaintiffs urges me to make a note that his clients have diverse litigation strategies planned. This is perhaps a little more information than is strictly necessary. That said, I have no doubt that the Plaintiffs will follow Mr Dwarkadas's sagacious advice.

(G. S. PATEL, J)