

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 140 OF 2017

M/s. Shree Sita Developers and ors. .. Applicants
vs.
Sadashiv T. Raje Bahadur and ors. .. Respondents

Mr. Nitin Mulye for the Applicants.
Mr. M.M. Sathaye for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 9 APRIL 2019.

P.C. :-

1] Heard Mr. Nitin Mulye, learned counsel for the applicants and Mr. M.M. Sathaye, learned counsel for respondents.

2] This is the second attempt on the part of the applicants to stall the progress in the civil suit by alleging that the respondents have not paid appropriate Court Fees of the plaint. This is despite the fact that the respondents have paid the maximum Court Fees of Rs.3 lakhs, which is required to be paid in the suit.

3] Mr. Nitin Mulye, learned counsel for the applicants, by reference to the provisions in Order 2 Rule 2, Order 2 Rule 4, Order 7 Rule 1(e) and Order 7 Rule 8 of the CPC alleges that

the suit is based upon different and distinct causes of action and therefore suffers from multifariousness. Relying upon the provisions of section 18 of the Maharashtra Court Fees Act, 1959 (said Act) that since the suit is multifariousness, separate Court fees are required to be paid in respect of which all the distinct causes of action on basis of which reliefs applied for. He relies upon the long list of judgments, including the judgments which have referred in paragraph 9 of the impugned order.

4] Mr. M.M. Sathaye, learned counsel for the respondents, defends the impugned order on the basis of reasoning reflected therein. He points out that this is a case where the applicants have dishonoured cheques in an amount of Rs.4.50 Crores. He points out that these amounts are required to be paid in pursuance of agreement dated 11th April 2012. He points out that in the plaint, there is a challenge to this agreement and reliefs of damages and compensation have also been applied for. He submits that from reading of the paragraph 19 of the plaint, it is quite clear that the cause of action is one and the same and on

basis of a singular cause of action different reliefs may have been applied for. He submits that this is not at all a case of multifariousness. He submits that the applicants merely want to stall the progress of the suit and this is second occasion, they have attempted to do so. He urged that the Civil Revision Application may be dismissed with exemplary costs.

5] Th rival contentions now fall for determination.

6] There can be no quarrel with the basic proposition urged by Mr. Nitin Mulye, learned counsel for the applicants, if the suit is indeed multifarious in nature, then section 18 of the said Act will require the plaintiff to value the suit and pay the Court fees *qua* each of distinct causes of action, on which, the suit is based. However, the moot question is whether, in the facts and circumstances of the present case, there is any error in the view taken by the learned Trial Judge that the suit is not at all a multifarious suit.

7] According to me, there is no error in the view taken by the learned Trial Judge. The main cause of action for institution of the suit is to the execution of agreement dated 11th April 2012, in terms of which, the applicants were required to pay an amount of Rs.11 cores to the plaintiffs in the suit. The plaintiffs have alleged that out of this, cheques in an amount of Rs.4.50 Crores were in fact delivered, but the same were dishonoured. This is not the stage for going into correctness of the rival contentions or allegations. However, this is the cause of action which is pleaded in the suit. Based upon this cause of action, no doubt, different reliefs may have been applied for. However, merely, because different reliefs have been applied for in the suit based upon one and the same cause of action, it cannot be said that the suit suffers from multifariousness so as to attract the provisions of section 18 of the said Act.

8] From the reading of the plaint, including in particular paragraph 19 of the plaint, it is quite clear that the suit is not bad for multifariousness. The provisions referred to by Mr. Mulye concerned the joinder of causes of action or the

manner in which the pleadings in the suit are to be incorporated. In the present case, as noted earlier, the moot question is that whether the suit is indeed multifarious. For the reasons as indicated in the impugned order as well as endorsed herein above, it is difficult to agree with Mr. Mulye that the suit is multifarious.

9] Even the decisions relied upon by Mr. Nitin Mulye merely state that if the suit is multifarious, then valuation has to be made and the Court fees have to be paid by treating each cause of action as a distinct suit. In the present case, since there is no case made out to treat the suit as multifarious, obviously, the said decisions will not apply.

10] On the basis of such objections, the applicants have succeeded in stalling serious progress in the suit for the last five years, though, Mr. Nitin Mulye states that the suit is progressing. The Civil Court was required to spend considerable time and energy on two occasions only on this issue. This is despite the fact that the plaintiffs in the suit have valued each prayer distinctly and even paid maximum

Court fees of Rs.3,00,000/- payable in such matter.

11] Accordingly, this Civil Revision Application is dismissed with costs of Rs.50,000/- payable by the applicants to the respondents within a period of four weeks from today. Costs to be either directly paid to the plaintiffs or to be deposited before the learned Trial Judge within four weeks from today. The learned Trial Judge to ensure that the costs are indeed recovered and if there is default in payment of costs, then learned Trial Judge is at liberty to pass an appropriate orders including the orders for striking off the applicant's defence. No doubt, before such orders are made due opportunity will have to be given to the applicants by show cause as to why such orders should not be made.

12] Revision Application is accordingly dismissed with costs as aforesaid.

13] All concerned to act upon an authenticated copy of this order.

14] At this stage, Mr. Nitin Mulye seeks for stay only on the directions for payment of costs. Since already four weeks time has been granted to the applicants to pay costs, the request for any further stay cannot be considered.

(M. S. SONAK, J.)