

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No. 15/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Aditya Thakkar a/w. Deepak Shukla I/b. Vinod Mistry & Co. for the Applicant	

CORAM : K.K.TATED, J.
DATED : JUNE 28, 2019

P.C.

1 Heard. The learned counsel for the Applicant submits that the Respondents are duly served. In support of his contention he has filed an Affidavit of service dated 28.06.2019. Same is taken on record and marked "X" for identification.

2 In spite of service, none appeared for the Respondent.

3 This Application is filed by the Plaintiff under section 24 of the Code of Civil Procedure, 1908 for transfer of suit No.9128/1994 pending before the Bombay City Civil Court Mumbai to the Civil Judge, Senior Division, Jalna for hearing and final disposal on merits.

4 The learned counsel for the Applicant submits that initially the Applicant - Plaintiff had filed suit No.4653/1994 in High Court, on original side, after obtaining leave under clause 12 of the Letters Patent. He submits that at the time of filing the said suit, they made averments in the plaint in respect of the jurisdiction of the court, which reads thus:

“34. The Plaintiff submit that the loan was sanctioned by the Defendant No.1 to the Plaintiffs in Bombay. The Defendants have their office in Bombay. The Plaintiff says that the factory of the Plaintiff and the machinery of which the possession has been taken by the Defendant No.1 wrongfully as stated hereinabove, are at Jalna. The Plaintiff, therefore, submits that the substantial part of the cause of action has arisen in Bombay. The Plaintiff says that with leave of this Hon'ble Court having granted under clause 12 of the Letters Patent, this Hon'ble Court will have jurisdiction to entertain, try and dispose of the suit.”

5 The learned counsel for the Applicant submits that the matter is pending for hearing on merits since 1994 and now the Applicant is 75 years old and he is not keeping well. It is not possible for

him to travel from Jalna to Mumbai for giving instructions and/or attending the said suit. He submits that the Doctor has advised bed rest to the Applicant. To that effect the Applicant has made averments in paragraph 11 of the Civil Application.

6 The learned counsel for the Applicant submits that even the Respondent - Defendant has raised objection in the written statement that the court at Mumbai has no jurisdiction to entertain the suit filed by the Applicant. Paragraph 2 of the written statement filed by the Respondent - Defendant reads thus:

“Para 2 : At the further outset this Defendant says and submits that this Hon'ble Court has no jurisdiction to entertain and try this suit. In fact the leave granted by this Hon'ble Court under clause 12 of the Letters Patent is liable to be revoked. this Defendant says and submits that the entire transaction has taken place and the cause of action has arisen in Jalna, all the documents have been executed in Jalna, the unit and suit property is situated at Jalna. In fact the Plaintiff himself has filed a Writ Petition being Writ Petition No.4462 of 1991 prior to the filing of the suit before the Jalna Bench of this Hon'ble Court. The

advertisement for sale was also published in Jalna. The sale of Plant and Machinery was also completed in Jalna."

7 The learned counsel for the Applicant submits that in view of these facts and as the Jalna Court has jurisdiction to entertain the suit on merits, this Hon'ble Court be pleased to transfer said suit to the Civil Judge, Senior Division, Jalna for hearing and final disposal. He submits that if the Application is not allowed, irreparable loss will be caused to the Applicant.

8 Heard the learned counsel for the Applicant. When the Applicant had filed said suit, they had obtained leave under clause 12 of the letter patent because some cause of action arose at Jalna and also at Bombay. Now the Applicant is 74 years old and also the Doctor advised him bed rest, and it is not possible for him to attend the matter at Mumbai on every date.

9 Considering these facts and as none appeared for the Respondent in spite of service, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

10 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) which reads thus:

“(a) That this Hon’ble Court be pleased to transfer suit No.9128 of 1994 pending before the Hon’ble Bombay City Civil Court at Bombay to the Hon’ble Civil Judge, Senior Division at Jalna.”

b. The Misc. Civil Application stands disposed of accordingly.

c. No order as to costs.

(K.K.TATED, J.)