

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.285 OF 2019

Manjula Koshire Shah and Ors. .. Petitioners

vs.

Purnima Pravin Shah and Ors. .. Respondents

Mr.S.A.Jabbar I/b Mr.Tanvir A.H.Shaikh for the petitioner

Mr.H.T.Pawar for the respondent nos.1 to 3

Mr.Salil Dabake I/b M/s.Diwekar and Co. for the respondent no.4

**CORAM: K.K. TATED, J
DATED : JANUARY 31, 2019**

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner original defendant no.1 challenges the order dated 06.10.2018 passed by City Civil Court at Dindoshi, Borivali Division, Mumba below Exhibit-35 in Short Cause Suit No. 1449 of 2008 rejecting Petitioner's Application to decide the issue about valuation of the suit as well as pecuniary jurisdiction before deciding Notice of Motion No.2127 of 2013.

3 In the present proceedings, Respondent original plaintiff preferred Notice of Motion No.2127 of 2013 for direction to the

Court Receiver to pay sum of 50% of deposit amount by way of his share to the Respondent original plaintiff. At that time, defendant nos.1 to 4 raised objection by filing Application below Exhibit-35 raising preliminary objection prior to hearing of Notice of Motion No.2127 of 2013.

4 The learned counsel for the Petitioner submits that Trial Court ought to have decided the issue about pecuniary jurisdiction before deciding the Notice of Motion No.2127 of 2013. He submits that once the court held that court has no pecuniary jurisdiction, then there is no question of deciding any Application filed by the parties. In the present proceeding, respondent original plaintiff filed a Suit for his share in the partnership property. Defendant contended that the valuation of the suit is more than the pecuniary jurisdiction of the City Civil Court. Therefore, Defendant no.1 filed application below Exhibit 35. He submits that court below failed to consider these facts and rejected their application on the ground that Defendant No.1's objection about the pecuniary jurisdiction can be decided later on also. Therefore, said order is required to be set aside.

5 On the other hand, the learned counsel for the respondent original plaintiff submits that in view of subsequent development nothing survives in the present Writ Petition. He submits that Trial Court already decided Notice of Motion No.2127 of 2013 on 28.11.2018 after hearing both the sides. Therefore, petition is required to be dismissed on this ground only.

6 The learned counsel for the respondent further submits

that issue about pecuniary jurisdiction is already raised by the petitioner in earlier Civil Revision Application No.193 of 2009. He submits that this court by order dated 07.09.2009 rejected petitioner's contention and dismissed Civil Revision Application. He relies on paragraph 2 and 3 of the said order which reads thus:

“2. The learned counsel for the applicants contended that the valuation of the suit is more than Rs.50,000/- and therefore, the City Civil Court lacks inherent jurisdiction to try and entertain the suit, as the Court can try the suit only upto to Rs.50,000/- and not above the same. It is the case of the respondents/original defendants that the valuation of the suit property is about Rs.1 Crore.

3. The learned Trial Judge by the impugned order decided the preliminary issue in the suit. As regards issue No.1, it was found that the suit is maintainable and is not hit by Section 69 of the Indian Partnership Act. On the ground of jurisdiction, the learned Trial Judge found that the issue as to whether the Court has pecuniary jurisdiction to try and entertain the suit is kept open until inquiry under Section 8 of the Court fees Act, for valuation of the suit is completed. It is the aforesaid order which is impugned in this Civil Revision Application.”

7 On the basis of these submissions, the learned counsel for the respondent submits that there is no substance in the present Writ Petition and same is required to be dismissed with costs.

8 Admittedly, in the present proceeding, the main prayer of the petitioner below Exhibit 35 was that court should not decide

Notice of Motion No.2127 of 2013, without deciding the issue about pecuniary jurisdiction. But during the pendency of the present proceeding, trial court already decided Notice of Motion No.2127 of 2013 on 28.11.2018.

9 Considering these facts and the order passed by this court dated 07.09.2009 in Civil Revision Application No.193 of 2009, I do not find any substance in the present Writ Petition.

10 Hence, Writ Petition is rejected.

(K.K. TATED, J.)