

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 438 OF 2019

Indo-German Chamber of Commerce

..... Petitioner

VERSUS

United India Insurance Company Ltd. & Anr. Respondents

Mr.Harinder Toor, a/w. Mr.Sameer Chitnis, Ms.Madhura Kulkarni, i/b.
M/s.Chitnis & Company for the Petitioner.

Mr.V.Y.Sanglikar for the Respondent no. 1.

CORAM : R.D. DHANUKA, J.

DATE : 20th JUNE, 2019

P.C.

By this petition filed under Article 226 of the Constitution of India, the petitioner (original respondent) has impugned the order dated 25th October,2018 passed by the learned Estate Officer deferring the application dated 8th March,2014 filed by the petitioner on the issue of jurisdiction with a direction that the same may be dealt with in the final order. The learned Estate Officer has granted liberty to both the parties to lead the evidence on the issue.

2. The case was adjourned for continuation of the cross-examination of the witness of the respondent no.1 herein which was not completed in the month of February 2014.

3. Mr.Toor, learned counsel appearing for the petitioner invited my attention to the letter dated 4th June, 2019 issued by the office of the Estate Officer informing the learned advocate appearing for the parties

that the Estate Officer who was hearing the matter is superannuated. The appointment of the new Estate Officer is in process and once appointed, the date of hearing will be intimated to both the parties.

4. Learned counsel submits that in view of the admission on the part of the witness examined by the original applicant before the Estate Officer that the lease agreement entered into between the parties which are in force the possession of the petitioner in respect of the enquiry premises is prior to 16th September, 1958, the Estate Officer has no jurisdiction to proceed with the enquiry in question. He further submits that it is the duty of the Estate Officer to decide the issue of jurisdiction first based on the alleged admission on the part of the witness examined by the original applicant before the enquiry officer. It is submitted that in view of these facts, this court shall direct the Estate Officer to decide the issue of jurisdiction forthwith.

5. This court by an order dated 4th June, 2019 in ***Writ Petition (L) No.1210 of 2019*** in case of ***American Bureau of Shopping vs. The New India Assurance Company Ltd. & Anr.*** after considering the judgment of Hon'ble Supreme Court in case of ***Suhas H.Pophale vs. Oriental Insurance Company Limited & Its Estate Officer, reported in (2014) 4 SCC 657***, the judgment of Division Bench of this court in case of ***Dr.Preeti Bhatt vs. Central Bank of India, reported in 2017(6) Mh.L.J.330***, order dated 4th December, 2017 in case of ***Muncherji Nusserwanji Cama & Anr. vs. The Board of Trustees of the Mumbai & Ors.***, judgment of the Hon'ble Supreme Court in case of ***Ashoka Marketing vs. Punjab National Bank, 1990 (4) SCC 406***, judgment of

the Hon'ble Supreme Court in case of ***Srinivasa Rice Mills & Ors. vs. ESI Corporation reported in (2007) 1 SCC 705*** and in case of ***Arun Kumar & Ors. vs. Union of India & Ors., reported in (2007) 1 SCC 732*** has held that the issue of jurisdiction being a mixed question of fact and law and in view of the fact that the judgment of the Hon'ble Supreme Court in case of ***Pophale's case*** (supra) having been referred to larger bench has refused to interfere with the similar order of the Estate Officer. The Hon'ble Supreme Court in the referring order has clearly mentioned that the judgment in case of ***Pophale's case*** is contrary to decision of the Constitution Bench rendered in the case of ***Ashoka Marketing*** (supra). This court has held that the learned Estate Officer has not refused to decide the issue of jurisdiction but has only postponed the said issue to be decided along with the other issues.

6. Similar orders are passed by the Division Bench on 9th September, 2015 in ***Writ Petition (L) No.2532 of 2015*** in case of ***Alstom T and D India Ltd. vs. United India Insurance Co.Ltd. and another*** and by Single Judge of this court by an order dated 18th September, 2018, in case of ***Shapoorji Pallonji and Company Pvt. Ltd. vs. The New India Assurance Co. Ltd.*** in ***Writ Petition no.1811 of 2018*** rejecting the said similar contentions which are raised by the petitioner herein and dismissed the writ petition. Special Leave Petition arising out of the said order dated 18th September, 2018 passed by this court dismissed by the Hon'ble Supreme Court by order dated 10th December, 2018.

7. Mr. Toor, learned counsel appearing for the petitioner could not distinguished the judgments referred to aforesaid in this order though made an effort. I am not inclined to interfere with the impugned order passed by the learned Estate Officer at this stage. All issues relating to the jurisdiction are kept open.

8. If the learned Enquiry Officer decides the issue of jurisdiction along with the other issues on the merits in the final order, the petitioner if aggrieved will be at liberty to challenge both the orders by filing appropriate proceedings. It is made clear that this court has not expressed any views on the merits as well as on the issue of jurisdiction. All the contentions of both the parties are kept open.

9. The witness examined by the respondent no.1 shall remain present before the Estate Officer as and when the dates are fixed. The petitioner would be at liberty to cross examine the witness. None of the party shall seek an adjournment before the Estate Officer. The Estate Officer is directed to dispose of the enquiry proceedings expeditiously.

10. Since the matter is already pending since last eight years before the Estate Officer, hearing of the proceeding is expedited.

11. The parties to co-operate with each other and with the learned Estate Officer in deciding the matter expeditiously.

12. Writ petition is dismissed. No order as to costs.

[R.D.DHANUKA, J.]