

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.716 OF 2020

Agriculture Produce Market Committee,
Jamner,
A Body Constituted U/s 12 of the
Maharashtra Agriculture Produce Marketing
(Regulations) Act, 1963, through its
Secretary, having its Registered Office at
Jalgaon Road, Jamner, District Jalgaon.

Petitioner

Versus

01 Jeevan s/o Vinayak Jagirdar,
age: 55 years, Occ: Proprietor &
Owner of Darshan Constructions,
Jamner, R/o 60, Shivaji Nagar,
Jalgaon Road, Jamner,
Taluka Jamner, District Jalgaon.

02 K.G.Khadse & Associates,
through Harish K. Khadse,
Registered No.CA/2000/26439,
age: major, Occ: Architect,
R/o 'Ashirwad', Holy Cross
Covenant Road,
Akola 444 005.

Respondents

Mr.S.G.Chapalgaonkar, advocate for petitioners
Mr.K.B.Borde, advocate for Respondent No.1.

CORAM : ROHIT B. DEO, J.

DATE : 14th January, 2020.

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith and heard
finally by consent of learned Counsel for respective parties.

2 The petitioner is the defendant no.1 in Commercial Suit No.01 of 2019.

3 The suit brought by the plaintiff – Respondent No.1 is for recovery of amount and is filed in the year 2011.

4 The suit is transferred to the Commercial Court.

5 Concededly, this Court has directed the Commercial Court to expeditiously decide the suit and in any event, to decide the suit within six months from the date of first case management hearing.

6 The defendant is aggrieved by an order below Exhibit-260 passed by the Commercial Court, the operative part of which reads thus:

i] Both the parties shall comply the requirement as per provisions of Order 11 Rule 1 sub rules 3 and 9 of C.P.C.

ii] They shall also file the affidavit or admission or denial of documents thereafter so that first case management hearing should be scheduled.

iii] No order as to costs.

7 The defendant is aggrieved by the order dated 04.12.2019, the operative part of which is reproduced *supra*.

8 The short submission of the learned Counsel for the petitioner-defendant no.1 is that the order impugned is without jurisdiction and indeed is not capable of being implemented. The submission is that the suit is filed in the year 2011 and the Written Statement is filed in the same year. The learned Counsel for the petitioner-defendant no.1 does not dispute that clause [ii] of the operative order is capable of being complied with inasmuch as, what is directed, is to file an affidavit of admission or denial of documents. However, insofar as the direction issued vide clause [i], the learned Counsel for the petitioner would submit that since the Written Statement is already filed, the question of Written Statement containing declaration on oath, referred to in sub-rule (9) of Rule 1 of Order XI of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, “the Act of 2015”), thus, does not arise.

9 The learned Counsel would invite my attention to the provisions of Section 15 of the Act of 2015 and in particular to sub-section (3) thereof, which reads thus:

15 Transfer of Pending Cases :

(1)

(2)

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

10 The learned Counsel for the defendant would submit that since the Written Statement is filed, it cannot be said that there was some procedure, which was not complete at the time of transfer.

11 In my view, sub-section (3) of Section 15 would have to be read along with sub-section (4). The question is, whether the Commercial Court is denuded of its powers to direct the parties to file a declaration on oath, as is the mandate of sub-rule (9) of Rule 1 of Order XI of the Act of 2015, if the Written Statement is filed pre-transfer. The Commercial Court is empowered and is indeed expected to issue such further directions, as may be necessary, for speedy and efficacious disposal of the suit.

12 *Prima facie*, I am satisfied that the Commercial Court is not denuded of the power to direct the defendant to file a separate declaration on oath as regards the documents in the power, possession, control or custody of the defendant.

13 However, I am not inclined to record any definite finding on the issue, since the learned Counsel for the plaintiff-caveator points out that Section 8 of the Act imposes a bar against a Revision Application or Petition against an interlocutory order. The said provision reads thus:

8 Bar against revision application or petition against an interlocutory order:-

Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

14 The learned Counsel for the petitioner-defendant would submit that Section 8 cannot be understood to put fetter

on the power under Articles 226 and 227 of the Constitution. The submission is unexceptionable. It is trite law that the jurisdiction of the Constitutional Court can neither be obliterated nor diluted by a statutory provision akin to Section 8 of the Act of 2015. However, the statutory scheme is clear that a commercial suit shall be decided expeditiously and a decision on an interlocutory application should not be subjected to judicial scrutiny, since it is open to challenge such decision in an appeal against the decree, if the need so arises.

15 In view of the statutory scheme, I would desist from entertaining this writ petition.

16 However, the submission that, part of the order impugned cannot be implemented, is left open for the Commercial Court or the appellate Court to decide at an appropriate stage.

17 The defendant shall comply with that part of the order impugned, which, according to the petitioner, can be complied with.

18 It is made clear that if there is no compliance with

any part of the order impugned, the same shall be at the risk and consequences of the petitioner-defendant. The Commercial Court shall notwithstanding that the entire order is not complied with, hold the first case management hearing within seven days.

19 The issues shall be framed and the evidence shall be recorded on a day-to-day basis. The Commercial Court shall ensure that the time limit set out by this Court is scrupulously observed. The Commercial Court shall not adjourn the matter for any any reason whatsoever unless an extremely compelling or exceptional case is made out and if any adjournment is granted, same shall not exceed three days.

20 Rule is made absolute in the aforesaid terms.

**ROHIT B. DEO
JUDGE**

adb