IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3090 OF 2019

IN

FIRST APPEAL (STAMP) NO.2599 OF 2019

Lakhani Builders Pvt. Ltd. .. Applicants

Vs.

Waman Govind Gaikwad & Ors. .. Respondents

…

Mr. Akhilesh Dubey with Mr. Vagish Mishra, Mr. Nagendra Singh, Mr. Uttam Dubey and Mr. Siddhash i/b Nagendra Singh for the Applicants.

Mr. Pavan S. Patil for Respondent No.2 in Civil Application No.2803 of 2019 in First Appeal (St.) No.2599 of 2019.

Mr. Sachind S. Punde for Respondent Nos.4 to 6.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 13TH MARCH, 2020.

P.C:-

1. The First Appeal being listed, it is noted that the Office has made the following notings:

This order stands corrected as per speaking to the minutes order dated 11.08.2022.

> *"As per the Notification dated 01.09.2015, First Appeal having value upto Rs.1 Crore has to be transferred to Respective District Court. The Value of this First Appeal is Rs.1 Crore, District Pune."*

2. My attention was invited to the said office note. The parties have advanced their submissions on the maintainability of the First Appeal before this Court. A compilation of documents consisting of plaint, written statement and certain judgments relied upon, have been placed on record. The plaint and the relief sought has to be looked into since it is a settled position of law that while determining the valuation of the suit in the Appellate Forum, the valuation as originally set out in the plaint is to be taken into consideration and that could be the basis for determining the jurisdiction.

3. Perusal of the plaint would reveal that the valuation, according to the Plaintiffs, has been made at Rs.1 crore, the said suit being filed for specific performance and injunction. As far as the clause concerning Court Fees is concerned, it specifically recites that since the suit is for specific performance, it is valued at Rs.1 crore and the Court fee of Rs.1,33,230/- has been paid. Another recital to be found in the same clause is for the purpose of consequential restrain/injunction order, the suit is valued at Rs.1,000/- and the Court fee stamp of Rs.200/- is affixed.

This order stands corrected as per speaking to the minutes order dated 11.08.2022.

4. According to the learned counsel for the Appellant, the contents in the plaint and, in particular, the said clauses are indicative of the valuation of the suit and according to him, the Court fee has been tendered based on the said valuation by taking into consideration the fact that these are two distinct claims. Learned counsel for the Respondents, on the other hand, would submit that the relief of injunction is a consequential relief and, therefore, the noting by the Registry of this Court stating that the suit is valued at Rs.1 crore is a just and proper noting in terms of the relevant provisions of the Maharashtra Court Fees Act.

5. Pertinent to take note of the Suit Valuation Act, 1887, which prescribes the mode of valuing the suits for the purpose of determining the jurisdiction of the courts with respect thereto. Section 6 of the Suits Valuation Act specifically stipulates that the suits other than those which are referred to in the Court Fees Act, 1870, Section 7, paragraphs v, vi and ix and paragraph x as well as clause (d) where the Court fees are payable ad valorem under the Court Fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. Pertinent to note that, barring the aforesaid exceptions in Section 8 of the Suits Valuation Act, this section provides that for the purpose of computation of Court fees and the value for purposes of jurisdiction, the value as determinable would be the same.

This order stands corrected as per speaking to the minutes order dated 11.08.2022.

6. The manner in which the computation of fees payable in suits is determined as per Maharashtra Court Fees Act and Section 6 of the said Act prescribes the computation and types of suits and contingencies are found to be enumerated therein. As far as the suit for declaration is concerned, which is comprised in Section 6(j) where a declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by the said Act, ad valorem fee is payable, as if the amount or value of the subject matter was Rs.1,000/-. Section 6(xi) deals with computation of fees to be payable in a suit for specific performance and, it would be payable in a contract of sale - according to the amount of consideration; in case where the contract is of mortgage – according to the amount agreed to be secured or where the contract is of lease, according to the aggregate amount of fine or premium and of the rent agreed to be paid during the first year of the term. Section 18 of the Maharashtra Court Fees Act prescribes and contemplates a situation where there are multifarious suits in a sense where a suit embraces two or more distinct subjects, in such contemplation the plaint or memorandum of appeal would be chargeable with the aggregate amount of the fees to which the plaints or memorandum of appeal in suit embracing separately each of such subjects would be liable under the Act.

This order stands corrected as per speaking to the minutes order dated 11.08.2022.

7. Meaningful reading of the aforesaid provision would lead to an irresistible conclusion that for the purpose of determining the jurisdiction of the Court, in terms of Section 8 of the Act of 1887, the valuation would be the same. Reliance placed on the judgment of the Apex Court in the case of *S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar* reported in *AIR 1958 SC 245* which revolves around interpretation of Section 8 of the Suits Valuation Act, it conclusively settle the position of law. Further, as rightly pointed out and reliance being placed of the Madhya Pradesh High Court in the case of *Amolak Singh Tuteja v. Munni Bai Sharma* reported in *AIR 2017 Madhya Pradesh 87,* the Madhya Pradesh High Court has taken a similar view where a the suit was filed for specific performance and permanent injunction. On considering the provisions to which the reference has been made above, the Madhya Pradesh High Court has held that in the plaint, the relief which was sought for permanent injunction does not flow from the relief of specific performance and, therefore, it has to be separately valued. In terms of Section 18 of the Maharashtra Court Fees Act, there can be no discord as to the fact that when two distinct reliefs are sought in the suit and which are specifically valued at distinctly and distinct court fees have been tendered in terms of the recitals in Section 6 of the Maharashtra Court Fees Act, then the valuation of the suit for the purpose of determining

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where the appeal would lie would be a combination of the valuation and the distinct relief sought in one suit.

8. The plaint in the present suit makes it very clear that for the purpose of specific performance, the suit is valued at Rs.1 crore and court fee payable in terms of Section 6 has been tendered whereas, for the purpose of injunction, the suit is valued at Rs.1,000/- and, therefore, ad valorem court fee of Rs.200/- is paid. The valuation of the suit would be aggregate and, in any contingency, the valuation being more than Rs.1 crore, the first appeal would be entitled to be heard by this Court and the objection rendered by the office which do not take in to consideration the statutory and settled provisions of law, needs to be overruled.

9. List the First Appeal along with First Appeal (Stamp) No.17911 of 2019 for admission on 31/03/2020.

10. The statement made by learned counsel for the Respondent Nos.4 to 6 and which is recorded in the order dated 05/03/2020 to continue till the next date of hearing.

[SMT. BHARATI DANGRE, J.]

AJN

This order stands corrected as per speaking to the minutes order dated 11.08.2022.