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

WRIT PETITION NO. 3895 OF 2015

PRAKASH YASHVANT PATIL ..PETITIONER
VS.
MANISHA DINKAR HANDE & ANR. ..RESPONDENTS

Ms. Clarissa Miranda a/w Mr. Abhishek Patil i/b Mr. Rohan H. Barge, for Petitioner.
Mr. Rohit P. Sakhadeo a/w Mr. Pushkar Nagpurkar, for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 9, 2021

P.C. :

. Heard learned Counsel for the petitioner. This Court on 21/04/2015 had issued notice to the respondents, returnable on 28/04/2015. It was directed that notice to indicate that the matter may be heard and disposed of finally at the stage of admission. On 30/04/2015, there is appearance on behalf of the respondent no.1. Respondent no.1 who is contesting respondent is duly served.

2. I have heard learned Counsel for the petitioner and learned Counsel appearing on behalf of the respondent no.2. With the assistance of the learned Counsel, I have perused the necessary annextures and impugned order. The petitioner - original plaintiff challenges by this petition an order dated 31/03/2015 passed by the the trial Court directing the plaintiff to deposit full court fees as per market value of the suit property as applicable on the date of the institution of the suit. An application was made by defendant no.1 under section 9A of the Code of Civil Procedure, 1908 (for short 'CPC'). According to defendant no.1 the suit filed by the plaintiff is not maintainable under the law as Civil Judge, Junior Division has no pecuniary jurisdiction to entertain, try and decide the suit as the suit is not properly valued and suffering from defect of deficit court fees. According to the defendant no.1, the value of the suit property is more than Rs. 5 lakhs and he has produced on record valuation made by the Sub- Registrar to be Rs. 9,91,777/-

3. Say and reply was filed by the petitioner -

original plaintiff that the substantive relief claimed in the suit is for declaration that conveyance deed dated 22/05/2006, agreement for sale dated 07/10/2004 and affidavit dated 02/09/2005 have been duly cancelled. Further declaration is sought that transfer order dated 22/05/2006 issued by defendant no.2 is void and illegal and bad in law. The prayer clause 20(c) in the plaint sought direction to the defendant no.1 to quit and vacate the suit property immediately and hand over vacant and peaceful possession of the suit property to the plaintiff. According to learned Counsel for the petitioner prayer clause 20(c) only claimed ancillary relief.

4. The trial Court was of the opinion that though prima facie value of the suit property is more than pecuniary jurisdiction of trial Court at the time of filing of the suit and hence, suit is not properly valued. The Court was further of the opinion that if the plaintiff makes a correct valuation and the Court fees is paid as per correct valuation, in that contingency, jurisdiction of the trial Court

will be ousted. It is then observed that considering the valuation of the suit as per plaint, the trial Court is having jurisdiction to try and entertain the present suit. While deciding issue no.3, the trial Court observed that it is necessary to correct the valuation of the suit as per ready reckoner on the date of the institution of the suit. The trial Court was further of the opinion that plaintiff has not valued the suit as per provisions of Bombay Court fees Act, 1959 and hence, court fees deposited by the plaintiff is deficit. The plaintiff was given 30 days time to deposit the court fees and at the same time apply for complying the mandate Order VII Rule 1(I) of CPC.

5. Sub-section (1) of section 9A of CPC as it stood on the date of the filing of the application and passing of the impugned order provided that notwithstanding anything contained in the Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction appointment of a receiver or

otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit. I find that from the impugned order or the application, it is not clear that at what stage the application was filed and whether it is in consonance with the mandate of sub-section (1) of section 9A of CPC as the provision then stood.

6. In my considered opinion, the application has been decided by the trial Court without considering the mandate of the section 9A of CPC as it then stood. There is no appearance on behalf of the contesting respondent no.1 - original defendant no.1. In such circumstances, the impugned order calls for interference. Hence, petition is

allowed. The impugned orders dated 24/03/2015 and 31/03/2015 are quashed and set aside. Application made under section 9A below Exhibit 20 is remitted to the trial Court for considering the same afresh on its own merits and in accordance with law.

7. I may not be understood to have expressed any opinion on merits of the matter. All contentions are kept open including the one whether the application would now be governed by amended provisions of section 9A of CPC as amended on 27/06/2018 or section 9A of CPC as it originally stood on the date of filing of the application Exhibit 20.

8. The writ petition is disposed of.

(M. S. KARNIK, J.)