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

CIVIL REVISION APPLICATION 43 OF 2021

M/s. Kwaliti Food and Masala Products ... Applicant
Versus
Ahura Mazda Dairy Farm Pvt. Ltd. ... Respondent

Yahya Ghogari a/w Shivani Bhate i/by Sonal Doshi & Co. for the Applicant.

Ms. Swati Sagvekar for the Respondent.

**CORAM: ROHIT B. DEO, J.
DATE : 15th JULY, 2022**

P.C. :-

. The applicant is the plaintiff in Suit 8414 of 2000 which is instituted seeking a declaration that the agreement dated 2nd July, 1998 between the plaintiff and the defendant is not effective and binding in law. The further relief claimed is decree of possession directing the defendants to handover the possession of the factory building standing on portion of the suit property. Certain monitory relief is further sought.

2. The suit property is owned by the plaintiff and is described as Survey 2, Hissa 23 of Marol village, Andheri, Mumbai.

3. In the context of the order which I propose to pass, it would not be necessary to narrate in detail the averments in the plaint. Suffice it to note that the substratum appears to be the alleged failure of the defendant to perform its part of the agreement. However, it does not

appear to be a dispute that pursuant to the agreement certain amount was indeed received by the plaintiff. According to the plaintiff, it was in the context of such receipt of part consideration that part of the possession of the entire property was delivered to the defendant.

4. It is common ground that certain proceedings are initiated against the Director of the defendant under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act'). It is further not in dispute that the designated Court has directed attachment of the suit property. Again, elaborate reference to the proceedings under the MPID Act is not necessary. Suffice it to note that the defendant preferred an application invoking the provisions of Section 6 of the MPID Act seeking transfer of the civil suit to the designated Court.

5. Section 6 of the MPID Act, reads thus :-

*“6. **Designated Court**—(1) For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Bombay High Court by notification in the Official Gazette, constitute one or more Designated Court in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.*

(2) No court including the court constituted under the Presidency Towns Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920), other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.”

6. The issue which the learned Trial Judge was required to address was whether the provisions of Section 6 apply. The learned Trial Judge

was expected to record a finding on whether the provisions of the MPID Act apply to the subject matter of the suit. Unfortunately, all that is done by the learned Trial Judge is to leave all contentions open and transfer the suit to the designated Court on the premise that the issue will have to be addressed by the designated Court on its judicial side.

7. It is difficult to appreciate the approach of the learned Trial Judge. Suits cannot be transferred at the askance of litigants. Atleast a *prima-facie* finding was expected after considering the applicability of the MPID Act which the learned Trial Judge has failed to record.

8. I have no option but to set aside the order impugned and to request the learned Trial Judge to reconsider the application seeking transfer of the suit to the designated Court, after hearing the parties.

9. The learned Trial Judge is requested to decide the application seeking transfer within 30 days from the appearance of the parties.

10. The parties shall appear before the Trial Judge on 19th July, 2022 without expecting any formal notice.

11. The parties and the learned Trial Judge shall act on the authenticated copy of this order.

[ROHIT B. DEO, J.]