

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

WRIT PETITION 6900 OF 2022

M/S. J. P. MEHTA & ANR.

... Petitioners.

Versus

ASHWIN MEHTA

... Respondent.

Mr. Abhinav Chandrachud, Advocate a/w. Arun Mehta, Aniket Srivastav & Mittal Bhanushali i/by Akshar Laws for the Petitioners.

Mr. Ankit Rajput, Advocate i/by Rutvij Bhatt for the Respondent.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 15, 2022

P.C. :-

1. The challenge is to the order dated 22.04.2022 rendered by the learned Judge of the City Civil Court, Mumbai in Notice of Motion 2576 of 2021, taken out by the Plaintiff in Commercial Suit 845 of 2021, whereby the learned Judge partly allowed the Motion, held that the dispute is not dispute of commercial nature and directed the Registrar (Civil) to assign the suit to proper court.

2. Petitioners are the Defendants in the suit which the Plaintiff instituted as Summary Suit under Order 37 of the

Code of Civil Procedure, 1908 (“Code”) which subsequently was transferred to the City Civil Court as Commercial Suit. The Plaintiff moved the Motion on the premise that the dispute is not commercial dispute and ought to be tried as Summary Suit.

3. The Plaintiff contended that the suit claim is recovery of “friendly loan” and, therefore, the dispute is not a commercial dispute. Reliance was placed on the decision of this Court in **Bharat Shetty vs. Ahuja Properties and Developers** - (dated 13.07.2021 in Summons of Judgment No. 9/2021) to buttress the submission that the recovery of “friendly loan” will not be a commercial dispute. The Plaintiff also pressed into service the decision in **Glasswood Realty Pvt. Ltd., vs. Chandravilas Kothari** - (2022) 1 Bom. C.R. 527.

4. The Petitioners submit that the Defendants in their Affidavit-in-response contended that there was a business transaction between the parties and that it is manifest from the documents and correspondence placed on record by the Defendants that the suit claim does not pertain to friendly loan, as is alleged, and it emanates from the commercial

transaction.

5. The learned counsel for the Defendants fairly does not argue that the transaction of friendly loan would be a commercial transaction. The substratum of the submissions canvassed by the Defendants is that since the Motion is taken out by the Plaintiff, the learned trial Judge was not precluded from considering the affidavit in response and all the accompanying documents. In essence the submission is that the learned Judge committed serious error in restricting the consideration to the plaint averments to decide the jurisdictional aspect.

6. The learned counsel for the Defendants has fairly invited my attention to the decision in **Vaijanath Dayanand Kale & Ors. vs. Nerkar Properties LLP** (2021 (3) Mh. L.J. 202) and particularly to paragraph 4 of the said decision which reads thus :

"4. The question to be considered by a court when an application is made to it under Order 7 Rule 10 of CPC is a question of initial jurisdiction. Such jurisdiction depends on the case pleaded before the court by the plaintiff, such case having to be assessed on the averments made in,

as also documents produced with, the plaintiff. The case pleaded by the plaintiffs here indicates that disputes between the parties arise out of a construction and infrastructure contract. The plaintiffs aver their agreement with the defendants by which development rights available to the latter in respect of a certain immovable property were sought to be assigned to the plaintiffs in consideration of a share in the development potential in a certain stated proportion. The development envisaged by the parties is, admittedly, by way of construction of a building. In other words, the contract is for construction of a building. If that be so, there is no infirmity to be found in the impugned order so far as the court's assumption of initial jurisdiction is concerned. At that stage, the court is not really concerned with what is the defence to the action or what the defendants plead to be the nature of the dispute. It may well be that eventually, after a trial, after both parties are heard, evidence is led and the contract and its nature are finally assessed by the court, it may well turn out to be a case not involving a commercial dispute. In that case, however, it would be a matter for the defendants to allege in an appeal from the final order passed in the dispute; it does not offer any cause for return of the plaintiff under Order 7 Rule 10."

However, the learned counsel for the Defendants seeks to distinguish the observations, *supra*, on the premise that the situation would be different if the Motion is moved by the Plaintiff in which event the Court would be obligated to frame

a preliminary issue in exercise of the power under Order 14 Rule 2 of the Code.

7. It is difficult to agree with the submission canvassed. It does not matter who raises the issue of jurisdiction. The learned trial Judge has rightly held that a prima facie view will have to be taken only on the basis of the plaint averments. While deciding whether the dispute is a commercial dispute, the learned trial Judge was obligated to restrict the consideration to the plaint averments and the learned trial Judge has committed no error in holding that the dispute is not a commercial dispute.

8. I see no reason to interfere with the order impugned in the writ jurisdiction.

9. Petition is dismissed.

10. Needless to mention that no observation made herein shall influence the course of the trial.

(ROHIT B. DEO, J.)