

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

MISC. CIVIL APPLICATION 217 OF 2022

Kuniyur Janardhanan Srinivasan	...Applicant
vs.	
Halma India Pvt.Ltd.	...Respondent

Mr.Bhavesb Parmar with Rahul Gaikwad, Nikita Abhyankar, Aman Jhawar, Reshma Nair, Rajesh Sahani, Vivek Akshali i/b. Gravitas Legal for Applicant.

Mr.Vibha Joshi i/b. Zunjarrao & Co. for Respondents 7 and 10.

Mr.Soli Cooper, Senior Advocate i/b. Akash Menon for Respondent 9.

Mr.Rohan Kadam with Prassbant Beri i/b. Beri & co. for Respondent 8.

Dr.Birendra Saraf, Senior Advocate with Mr.Aviral Sahai, Sanika Gokhale & Pragya Chandak i/b. Cyril Amarchand Mangaldas for Respondent 1.

CORAM : ROHIT B. DEO, J.

DATED : 21 JULY 2022

P.C. :

1. This application is preferred by Mr.Kuniyur Janardhanan Srinivasan (Applicant) seeking transfer of Suit 4455/2013 and Suit 2902/2016 pending before the City Civil Court, Mumbai to the High Court, on its Original Side, where Civil Suit 582/2017 is pending.

2. It would be apposite to note the issues involved in Suit 4455/2013, Suit 2902/2016 and Suit 582/2017.

3. The Applicant is the plaintiff in Suit 4455/2013 which is

instituted against Mr.Kevin John Thompson, Mr.Allan Stamper and Halma India Pvt.Lt. seeking the following substantive reliefs.

“a. That this Hon'ble Court be pleased to declare that the "Resolutions by Circulation" dated November 15, 2013 and November 18, 2013 passed by Defendant Nos. 1 and 2 as Directors of Defendant No. 3 are bad in law, null and void and of no legal effect whatsoever;

b. That this Hon'ble Court be pleased to declare that Form No. 32 dated November 16, 2013 and Form No. 32 dated November 18, 2013 filed by Defendant No. 1 as Director of Defendant No. 3 with the Office of the Registrar of Companies, Mumbai are bad in law, null and void and of no legal effect whatsoever;

c. That this Hon'ble Court be pleased to restrain Defendant Nos. 1 and 2 from preventing the Plaintiff from discharging his functions as the Managing Director of Defendant No. 3 until removed following the due process of law;”

The prayer clauses (d) to (g) seek consequential injunctive relief.

4. In Suit 4455/2013, issues are framed on 14 December 2016 which read thus :

“1 Whether the plaintiff proves that he is entitled to continue as Managing Director of defendant No.3 company?

2 Whether the plaintiff proves that he is entitled to a permanent injunction restraining defendants from preventing the plaintiff from discharging functions as Managing Director?

3 Whether the plaintiff is able to establish that he is entitled to a declaration that the resolutions by circulation dated 15th November 2013 and 18th November 2013 of are bad in law, null and void and of no legal effect?

4 Whether the plaintiff proves that he is entitled to a declaration that the Form 32 dated 16th November 2013 and

the Form 32 dated 18th November 2013 filed by the defendant No.3 company with the ROC are bad in law?

5 Whether the plaintiff is able to prove that the defendants have acted with premeditated conspiracy, with a malicious intent and have coerced with the plaintiff and/or any other employee of defendant No.3 company?

6 What order and decree?"

It is common ground that Suit 4455/2013 is at the stage of recording of evidence.

5. Suit 2902/2016 is instituted by Halma India Pvt.Ltd. against the Applicant and the prayer clauses read thus :

“a) that this Hon"ble Court may pass a decree of permanent injunction, restraining the Defendant from associating his name directly or indirectly with the Plaintiff Company in any work whatsoever;

b) that this Hon'ble Court may pass a decree of permanent injunction, directing the Defendant to handover to the Plaintiff all confidential information/ company's database / clients' contacts in his possession and obtained by the Defendant during his employment with the Plaintiff Company;

c) that this Hon"ble Court may pass a decree of permanent injunction, restraining the Defendant from using the Company Owned Property such as two mobile phones, laptop, data card, car;

d) that this Hon'ble Court order and decree a total sum of INR 70,24,911/ along with interest thereon at the rate of 18% per annum as and by way of damages due to the losses caused due to retention of Company Owned Property of the Plaintiff Company and losses caused as a result of purchasing new assets for the 'subsequent Managing Director as particularized in the Particulars of Claim at Exhibit - U of this plaint from the

date of filing of the present suit until payment and/or realization is payable to the Plaintiff by the Defendant;

e) that this Hon'ble Court may pass an order for delivery up to the Plaintiff, of all the Company Owned Property including statutory records, two mobile phones, laptop, data card, portable hard disk and car;

f) this Hon'ble Court may be pleased to appoint such person/s as deem fit and proper by this Honble Court as Court Receiver over the properties listed below :

Sr. No.	Items	Specifications
1.	Car	Name: Skoda Superb Elegance Model: AT 118KW, TFSI Chasis No.: TMBBBE3T5CA301187 Engine No.: CDA312406 Colour: Amethyst Royal
2.	Mobile Phone	Apple I- Phone SN- 88126P8NA4S IMEI No.: 012746003956988
3.	Mobile Phone	Nokia E-63 IMEI No.: 354329046732249
4.	Laptop	ACER Mini N2600 with Windows 7 Pro 32 Bit Software, MS Office home and business and external Web Camera.
5.	Data Card	Airtel - post paid
6.	Portable USB Hard Disk	Seagate - 1 TB
7.	Statutory Records	Original Minutes of Board of Directors and Shareholders prior to January 3, 2014.

The ad-interim and interim reliefs are prayed in terms of prayer clauses (e) and (f) supra.

Special Civil Suit 2902/2016 is also at the stage of recording of evidence.

6. Suit 582/2017 which is pending in the High Court on its Original Side is instituted by the Applicant seeking money decree of Rs.60 Crores (Rupees Sixty Crores) along with interest thereon at the rate of 18% per annum as damages on the premise that the corporate career of the plaintiff is ruined and he is rendered jobless due to the alleged acts and omissions of the defendants and further amount of Rs.12 Crores (Rupees Twelve Crores) is sought by way of damages for defaming the plaintiff and causing mental trauma and harassment to the plaintiff and his family.

7. It would be relevant to note that in Suit 582/2017, several persons are impleaded, including legal practitioners, who are not party to the civil suits pending in the City Civil Court. The array of defendants in Suit 582/2017 reads thus :

1. Halma PLC, 2. Halma India Private Limited, 3. Mr. Kevin John Thompson, 4. Mr. Allan Stamper, 5. Mr. Andrew Williams, 6. Mr. Carol Chesney, 7. Mr. Sunil Dedhia, 8. Mr. Cyril Shroff, 9. Mr. Shardul Shroff, 10. Ms. Hetal Kudecha.

The Applicant avers that Suit 582/2017 which is pending in the High Court on the Original Side is at the stage of hearing of Notice of Motion.

8. The learned Counsel for the Applicant, Mr. Bhavesh Parmar, would argue that since the issues involved in the suits pending in the City Civil Court and the High Court on its Original Side overlap and are interconnected, and at least one important issue, which is the legality and validity of the removal and termination of the Applicant as the Managing Director, is common, the suits may be withdrawn from the City Civil Court and transferred to the High Court on its Original Side.

9. In rebuttal, learned Senior Counsel Dr. Saraf would submit that there is no commonality of issues in the suits pending in the City Civil Court. Dr. Saraf would submit that while Suit 4455/2013 is instituted by the Applicant *inter alia* seeking a declaration that resolutions dated 15 November 2013 and 18 November 2013 passed by the defendants are bad

in law, Suit 2902/2016 in essence seeks to restrain the Applicant herein from associating his name with the plaintiff company and claims money decree on account of loss caused due to the Applicant's retention of the property owned by the company. Dr.Saraf would argue, even it is assumed arguendo that the legality and validity of the resolutions may be in issue in the suits pending in the City Civil Court, there is no ground made out for transferring the said suits to the High Court on its Original Side jurisdiction. Several circumstances are highlighted by Dr.Saraf to buttress the submission that in the factual matrix the prayer for transfer is not bonafide and discretion under Section 24 of the Code must not be exercised.

10. Having heard the learned Counsel for the parties, I am satisfied that no case is made out for transferring the suits pending in the City Civil Court to the High Court on its Original Side.

11. Section 24 of the Code confers discretionary power. It is obvious, that while the discretion is not fettered by the provision, the discretion must be exercised judiciously. Notably, Section 24 does not spell out or prescribe the grounds on which the transfer can be ordered. Axiomatically, there cannot be a cut and right formula governing the

exercise of discretion. It is equally well settled that the Court is not obligated to pen an elaborate order or judgment justifying the exercise or refusal to exercise the discretion and suffice it if the reasons which have weighed with the Court are briefly indicated.

12. The first reason which impels me not to exercise the discretion is the conduct of the Applicant. While the learned Counsel for the Applicant has not argued that the transfer is sought on the ground of lack of faith in the City Civil Court, the application contains several averments which tend to lower the authority and majesty of the Civil Civil Court, which is rather unfortunate. I did indicate to the learned Counsel for the Applicant that his client may consider deleting the objectionable portions, particularly the following paragraphs 18.4 and 18.5, which read thus:

“18.4.It is pertinent to note that when the Applicant filed an Application under Order VII Rule 11 in Suit No. 2902 of 2016 and the same was pending, obscure and absolutely ludicrous Orders were passed against the Applicant including a no Written Statement Order and a subsequent Order dated January 4, 2019 directing the Applicant to file Written Statement. Whereas the law is applied in letter and spirit , and the same is adhered to when the Respondents seek for it.

18.5. A comprehensive view of the entire dispute at hand and the manner in which the Hon'ble City Civil Court has conducted the proceedings in that

regards is nothing but a mockery of the laws of this land and the procedures laid thereunder with an obvious prejudice being caused to the Applicant by reason of unequal applicability of laws against the Applicant.”

It appears that better sense has not prevailed.

13. I further note that there is no explanation forthcoming why the Applicant permitted Suit 4455/2013 and Suit 2902/2016 to proceed in the City Civil Court and chose to prefer the instant application in the year 2022. It was in 2017 that the Applicant instituted Suit 582/2017 in the High Court on its Original Side. The prayer for withdrawal of the civil suits pending in the City Civil Court could have been made in 2017 or in close proximity thereafter. As the situation stands today, Suit 4455/2013 and Suit 2902/2016 which are pending in the City Civil Court are at the stage of recording evidence. Considering the pendency in the High Court on its Original Side, there is no conceivable possibility of Suit 582/2017 culminating in near future.

One extremely relevant consideration for not exercising discretionary power under Section 24 of the Code would be the delay in seeking transfer. In the factual matrix, the period of five years after the institution of the Suit 582/2017 in the High Court on its Original Side has two facets. The delay reflects adversely on the conduct of the Applicant. The other

facet is during the period of five years from the institution, Suit 4455/2013 and Suit 2902/2016 in the City Civil Court have progressed significantly and affidavits in lieu of oral examination-in-chief are filed.

14. On a holistic view of the matter, I am not inclined to exercise discretionary power under Section 24 of the Code. It would be more appropriate if Suit 4455/2013 and Suit 2902/2016 which are pending in the City Civil Court are transferred to the same court since I am informed that the suits are pending in different courts.

15. Hence, I pass the following order:

(I) The prayer to transfer Suit 4455/2013 and Suit 2902/2016 pending before the learned City Civil Court, Mumbai to this Court, is rejected.

(II) The Principal Judge, City Civil Court, Mumbai shall by administrative order ensure that Suit 4455/2013 and Suit 2902/2016 are transferred to and tried by the same learned Judge.

(III) Hearing in Suit 4455/2013 and Suit 2902/2016 is expedited. No unnecessary adjournment shall be granted by the learned Judge and an endeavour shall be made to finally dispose of both the suits within the next nine months.

(IV) It is common ground that the question whether the two suits should be consolidated is pending for consideration before the appropriate Bench, and I have, therefore, not dilated on the said aspect.

(V) The Applicant shall file his affidavit in lieu of oral examination-in-chief in Suit 4455/2013 within the next four weeks, failing which the right to file affidavit in lieu of oral examination-in-chief shall stand forfeited.

(VI) The miscellaneous civil application is disposed of.

(ROHIT B. DEO, J.)