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

WRIT PETITION NO.4806 OF 2016

Ganaraj Enterprises Through Its Partner
Sanjay Valaku Ghorpade

... Petitioner

V/s.

Rajesh Vitthal Gavali & Ors.

... Respondents

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Mr. Rupesh Ramchandra Lanjekar for the petitioner.

Mr. Mayuresh S. Lagu for the respondent No.26.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 29, 2023

P.C.:

1. The petitioner/original plaintiff is challenging order dated 14th December 2015 passed by the 3rd Joint Civil Judge, Junior Division, Ulhasnagar, directing him to value the suit as per market value of the suit property and pay court fee stamp under section 6(iv)(ha) of Bombay Court Fees Act, 1959.
2. The Petitioner sought relief of injunction not to disturb rights conferred by agreement dated 14th April 1999. Second prayer was in relation to sale deed dated 7th October 2010. It is prayed that the said development agreement is not binding on the plaintiff.
3. The defendant in the said suit raised objection under the provisions of the Suits Valuation Act, 1887 and the Bombay Court Fees Act, 1959. The trial Court accepted the objection and directed

the petitioner to value the suit as per market value of the suit property. Said order is subject matter of present writ petition.

4. Learned advocate for the petitioner relied on Division Bench judgment of this Court in case of **Dilip Khushalchand (Srisrimal) Jain and Ors. vs. Hardik Deepakbhai Ramani and Ors.** in Writ Petition No.8968 of 2018 (Aurangabad Bench) decided on 5th May 2022. This Court in paragraph No.24 held as under:

“24. From the above discussion in our judgment, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the Plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation.”

5. In view of the said judgment, clause 2 of the order directing the plaintiff to value the suit under section 6(iv)(ha) is not sustainable. The suit is governed by under section 6(iv)(j) of the Bombay Court Fees Act, 1959. The trial Court is required to consider provisions of the Suits Valuation Act, 1887 to decide valuation of the suit as the suit is being trite by the Court having limited pecuniary jurisdiction.

6. Therefore, the first part of the order directing plaintiff to value suit as per market value of the suit property is quashed and set aside.

7. The proceedings are remanded back to the trial Court for the limited purpose of holding inquiry under the provisions of the Suits Valuation Act, 1887 to decide valuation of the suit in accordance with law.

8. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)