

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

**APPEAL FROM ORDER NO. 249 OF 2023
WITH
INTERIM APPLICATION NO. 3455 OF 2023**

Vidyasagar Sah ...Appellant

Versus

Survival Systems Limited & ors. ...Respondents

Mr. Nikhil Patil, a/w Gajanan Shinde, Rohini Kadam and Ekta
Mistry, for the Appellant.

Ms. Neha Achliya, i/b Sapna Rachure, for Respondent No.2.

Ms. Usha Singh, i/b Vyas and Bhalwal, for Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED : 12th JUNE, 2023

PC:-

1. An affidavit of service has been filed in respect of respondent No.1. None appears for Respondent No. 1.
2. For the reasons assigned in the application and to advance the cause of substantive justice and having regard to the short period of delay, the application for condonation of delay in preferring appeal stands allowed in terms of prayer Clause (a).
3. This appeal is directed against an order dated 23rd January, 2023 passed in Notice of Motion No.4667 of 2022 in Suit No.7849 of 2004.

4. Suit No.7849 of 2004 was initially instituted in this Court on the Original Side. Consequent to the enhancement of the pecuniary jurisdiction of the City Civil Court, the suit came to be transferred to the City Civil Court for trial and disposal in accordance with the law. It seems the plaintiff carried out amendment in the plaint and resultantly value of the suit claim exceeded the pecuniary jurisdiction of the City Civil Court. Thus a Notice of Motion No.4667 of 2022 seeking direction to transfer the suit to the High Court came to be filed.

5. By the impugned order, the learned Judge, City Civil Court, recorded a finding that in view of the enhancement in the value of the suit claim i.e. Rs.2,80,35,000/-, the claim exceeds the pecuniary jurisdiction of the City Civil Court. Notice of Motion thus came to be allowed and the plaint was ordered to be returned for presentation before the appropriate Court.

6. The learned Counsel for the appellant urged that though the order to return the plaint for presentation before the appropriate Court in view of the enhancement in the value of suit claim may appear justifiable and innocuous as well, yet the mere presentation of plaint would not serve the purpose. All the documents including the record and proceedings pending before

the City Civil Court are required to be transferred to the High Court.

7. The learned Counsel for respondent Nos.2 and 3 resisted the prayers of the petitioner.

8. The order to return the plaint cannot be faulted at. *Ex facie*, the value of the suit claim exceeds the pecuniary jurisdiction of the City Civil Court. On account of the enhancement in the value of the suit claim, the suit is required to be entertained, tried and decided by this Court. Thus, direction for presentation of the plaint before the appropriate Court appears impeccable.

9. However, in the light of the fact that the suit was initially instituted in this Court, and significant progress has been made therein, it may be appropriate to direct the City Civil Court to transfer the rest of the Record and Proceedings in Suit No.7849 of 2004. No prejudice whatsoever is likely to be caused to any of the respondents.

10. Appeal thus stands allowed in the following terms:

(a) The plaint be returned to the plaintiff for presentation before this Court, and simultaneously, the rest of the Record and Proceedings in Suit No. 7849 of 2004 be transferred to this Court.

(b) Upon the plaint being presented and the suit registered, the Record and Proceedings received from City Civil Court be kept alongwith the said plaint.

11. In view of the disposal of the appeal, interim application(s) do not survive and stand(s) disposed.

12. No order as to costs.

[N. J. JAMADAR, J.]