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

WRIT PETITION NO.5764 OF 2019

63 Moons Technologies Limited ... Petitioner
V/s.
Pricewaterhouse Coopers Private
Limited & Ors. ... Respondents

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Mr Rahul Sarda a/w Mr Vrushabh Vig, Ms Priya
Sharma & Mrs Vikrant Nalawade i/by M/s. Crawford
Bau/Ey, for the Petitioner.

Mr. P. G. Sabnis, for Respondent Nos.1 & 3.

Mr. Sameer Pandit a/w Ms Sarrah Khambati i/by Wadia
Ghandy & Co., for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 2023

PC.:

1. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 13 February 2018 passed by the City Civil Court refusing to grant leave under Order 2, Rule 2 of the Code of Civil Procedure, 1908 (for short 'CPC') to institute suit for damages.

2. The petitioner is the original plaintiff who filed SC Suit No.2360 of 2015, claiming relief of declaration and injunction. The declaration sought was in relation to a report prepared for defendant Nos.1 and 3. A consequential injunction was also sought

restraining defendant No.1 and any other person from using the said report. In the prayer clause, leave under Order 2, Rule 2 of CPC was sought.

3. During the pendency of the suit, the petitioner applied to Order 2, Rule 2. The defendants objected to granting the leave. The Trial Court, by impugned order, rejected leave mainly on the ground that the application seeking leave was filed after registration of the suit and the relief sought in the proposed suit exceeds the pecuniary jurisdiction of the Court.

4. The plaintiff, therefore, filed the present petition.

5. Learned Advocate for the petitioner submitted that the reasons assigned for the rejection of the application are *ex-facie* contrary to the parameters laid down by the High Court. According to him, the reasons assigned were contrary to precedents laid down by this Court. He submitted that in the present writ petition, the petitioner had supplied reasons for not seeking relief of damages in the suit. Therefore, the said reasons need to be considered while granting leave to the petitioner.

6. Per contra, the learned Advocate for the defendants submitted that the Court had rightly rejected the application without reasons to justify leave. According to him, such reason needs to be stated in the application for invoking the power of the Court, and in the absence of such reason, the Appellate Court could not have allowed the application. Therefore, according to them, the Trial Court has rightly rejected the application.

7. I have heard learned Advocates for the parties and perused

the pleadings. In my opinion, the application seeking leave does not contain any reason why the plaintiff is seeking leave to reserve the right to file the suit for damages.

8. The single Judge of this Court, in the case of **Prakash Balaram Nichani vs. Mohandas Parshuram Ahuja** reported in 2009 (2) Mh.L.J. 475 has held that while considering whether leave under Order 2, Rule 2 of CPC ought to be granted to the plaintiff or not, the Court is required to keep in mind the object of the legislature in enacting provisions of Order 2 Rule 1 also, which provides for bringing finality to the dispute and to prevent further litigation as far as practicable. The provisions in Order 2, Rule (3) for grant of leave is thus an exception to the general principle of law that multiplicity of suits should be avoided. It is a prayer for a concession from the Court. The grant of leave is thus at the discretion of the Court, and the Court will exercise such discretion with required caution and circumspection. The Court is to keep in mind the wastage of public time of Courts, which is more relevant in the present scenario in view of the large accumulation of cases in Courts. The Court is also duty-bound to verify whether the correct Court fee is paid or not and may refuse to leave in case it is found that leave is being sought with an oblique motive to avoid payment of the proper Court fee. Thus, it is only after weighing the pros and cons and upon its satisfaction that leave would be granted by the Court.

9. In the light of the law laid down by this Court, the plaintiff needed to supply a reason why the plaintiff could not have sought relief of damages on the date of the institution of the suit. Only

after such reason is furnished would the Court be required to consider the justiciability of such application and whether such reason is sufficient to grant leave under Order 2, Rule 2. In the absence of any reason, the Trial Court on any occasion to consider his justiciability and, therefore, exercised power by the Trial Court cannot be faulty.

10. In so far as the submission made on behalf of the petitioner that the justification directed in the present petition can be considered to grant relief is concerned, it is well settled that the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is confined only to see whether inferior Court or Tribunal has proceeded within the parameters of its jurisdiction. In exercising jurisdiction under Article 227 of the Constitution of India, the High Court does not act as a Trial Court or Tribunal and, therefore, cannot review or reassess the evidence upon which the inferior Court or Tribunal passed the order assailed before it.

11. The reason for not pleading before the Trial Court while exercising discretion cannot be substituted before this Court in a petition under Article 227, as the petition is against the decision-making process of the Trial Court.

12. However, the reasons assigned in the order are not satisfactory. However, in the absence of reasons in the application seeking leave, this Court cannot grant relief as such material was not available with the Trial Court. Therefore, in my opinion, no case of interference under Article 227 of the Constitution of India is made out.

13. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)