

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION 6886 OF 2021

ITS Coatings Pvt. Ltd. .. Petitioner
Versus
State of Maharashtra and Ors. .. Respondent

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- Mr. D. B. Pereira i./by Mr. B. S. Mahajan for Petitioner
 - Mr. P. P. Pujari, AGP for State – Respondent No.1
 - Mr. Prithviraj S. Gole for Respondent No.7

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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 13, 2023

P.C.:

- 1.** Heard Mr. Pereira, learned Advocate for Petitioner, Mr. Pujari, learned AGP for State – Respondent No.1 and Mr. Gole, learned Advocate for Respondent No.7.
- 2.** Perused the impugned order passed by the learned Trial Court below Stamp No.1032 of 2021 dated 27.07.2021.
- 3.** After hearing parties on 04.01.2023 this Court passed the following order:

“1. Heard Mr. Mahajani, learned Advocate for Petitioner; Mr. Pujari, learned AGP for Respondent No.1 - State and Ms. Amin, learned Advocate for Respondent No.6 for some time.

2. The order impugned in the present Writ Petition has been passed by the learned District Judge-2, Thane on 27.07.2021 rejecting the Application / contention of the Petitioner that the Suit proceeding filed by Petitioner is governed by the provisions of the Commercial Courts Act, 2015.

3. The learned Trial Court has referred to the definition of commercial dispute under Section 2 (c) of the

Commercial Courts Act, 2015 and referred to prayer clause 'b' of the suit plaint wherein the Plaintiff has sought a declaratory relief in respect of an immovable property. Perusal of the prayer clause in the Suit reveals that prayer clauses 'a' and 'c' would otherwise adequately cover the relief sought for by the Plaintiff in prayer clause 'b'. The sole ground for rejection of the Application is because of seeking a declaration of ownership of the Suit property.

4. *Ms. Amin submitted that she desires to file Affidavit-in-Reply. Let the Affidavit-in-Reply be filed on or before the next date with advance copy to the other side.*

5. *Stand over to 18th January, 2023."*

4. Today at the outset, Mr. Pereira, learned Advocate for Petitioner would submit that as observed by this Court in paragraph No.3 of the above order he has taken instructions, and on instructions the Petitioner is ready and willing to delete prayer clause 'b' from the suit plaint as filed by the Petitioner before the learned Trial Court. The statement is accepted

5. In view of the above statement, the observations made by the learned Trial Court in the impugned order, *inter alia*, pertaining to prayer clause 'b' being declaratory relief and that it would fall within the exclusive province of Civil Court stands complied with.

6. Petitioner is permitted to delete prayer clause 'b' from the suit plaint. Amendment shall be carried out in the plaint within two weeks from today in the Trial Court .

7. In that view of the matter, the impugned order dated 27.07.2021 therefore does not survive.

8. Writ Petition stands allowed in the above terms.

- 9.** Suit filed by Petitioner shall be registered as Commercial Suit.
- 10.** All contentions of parties are expressly kept open.
- 11.** With above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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