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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4400 OF 2022

M/s Binani Industries Ltd. & Ors. … Petitioners
V/s.
Maharashtra Wood Based Industrial Estate through Partner … Respondent

WITH
INTERIM APPLICATION NO.20203 OF 2022

IN
WRIT PETITION NO.4400 OF 2022

Maharashtra Wood Based Industrial Estate through Partner … Applicant
In the matter between
M/s Binani Industries Ltd. & Ors. … Petitioners
V/s.
Maharashtra Wood Based Industrial Estate through Partner … Respondent

Mr. Kailas S Dewal i/by Mr. Yash Dewal with Mr. Sham Thakur, for the Petitioners.

Mr. Darryl Peretra a/w Mr. Beverly Fernandes i/by Mr. B. S. Mahajani, for the Respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 5, 2023

P.C.:

1. The challenge in this writ petition under Article 227 of the

Constitution of India is to the order dated 17 March 2022 passed by the Trial Court granting an application under Order 1, Rule 10 and Order 6, Rule 17 of the Code of Civil Procedure, 1908. The Trial Court has also rejected the maintainability of suit as mandated by Order 7, Rule 11(d) of the Code of Civil Procedure,1908.

2. The facts giving rise to the present writ petition are as under:

The respondent is the original plaintiff who filed Special Civil Suit No.265 of 2021 for specific performance of the Memorandum of Understanding (MOU) dated 21 January 2019; the respondent filed suit on 26 April 2022. The petitioner, on 30 September 2021, filed a written statement contesting the suit *inter alia*, raising the issue of maintainability of the suit on the ground that the plaintiff, on the date of filing of the suit, was an unregistered firm and, therefore, the suit is barred under Section 69(2) of the Indian Partnership Act, as the plaintiff is seeking to enforce rights created under the contract against the third party;

3. On 9 September 2021, the respondent applied to amend the plaint to incorporate pleadings to bring on record subsequent conveyance executed by defendants in favour of third parties and add subsequent purchasers to the suit.

4. The petitioner contested the said application on two grounds, i.e., (i) the plaintiff failed to prove due diligence as required under proviso under Order 6, Rule 17 of the Code

of Civil Procedure, 1908; (ii) in a suit which was *ex facie* not maintainable, such prayer could not have been allowed.

5. The Trial Court rejected the application for dismissal of the suit on the issue of maintainability of the suit and allowed the application for amendment.

3. Aggrieved thereby, the petitioner has filed a present writ petition.

4. Learned Advocate for the petitioner submitted that the defect of non-registration of the partnership firm on the date of institution of the suit cannot be cured by subsequent registration of the partnership firm. He submitted that the respondent applied for registration of a partnership firm on 19 February 2019, the suit was filed on 26 April 2021, and a certificate of registration of partnership was issued on 28 January 2022. Therefore, subsequent registration of the partnership firm will not cure the defect of non-registration of the firm on the date of institution of the suit. He relied on the judgments in the cases of **Raptakos Brett & Co. Ltd. vs Ganesh Property**, reported in (1998) 7 SCC 184, **Haldiram Bhujiawala And Anr vs Anand Kumar Deepak Kumar And Anr**, reported in (2000) 3 SCC 250, **M/s Sai Nath Enterprises vs North Delhi Municipal Corporation & Another**, reported in 2015 SCC OnLine Del 14400, **Shreeram Finance Corporation vs Yasin Khan & Others**, reported in (1989) 3 SCC 476, **The Commissioner of Income Tax, Andhra Pradesh, Hyderabad vs M/s Jayalakshmi Rice and Oil Mills Contractor Co.**, reported in 1971 (1) SCC 280 and **Prithvisingh Devisingh vs Haji Hasandalli Vazirkhan & Anr.**, reported in AIR 1951 Bom 6.

5. It is submitted that the objection regarding maintainability of the suit needs to be decided at the inception of the proceedings, or wherever such objection is raised, the Trial Court cannot postpone such adjudication till the hearing of the suit. He relied on the judgments in the cases of **Patil Automation Private Limited & Anr. vs Rakheja Engineers Private Limited,** reported in (2022) 10 SCC 1, **Saleem Bhai & Others vs State of Maharashtra & Others**, reported in (2003) 1 SCC 557, **Popat and Kotecha Property vs State Bank of India Staff Association**, reported in (2005) 7 SCC 510, **Popat Jaysingh Rajpure vs State of Maharashtra & Others,** reported 2012 (5) Mh. L.J 884 and **Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) & Ors.**, (2020) 7 SCC 366.

6. On perusal of the impugned order, it appears that the cause of action for applying amendment appears to have accrued on 11 May 2021 when defendant No.1 executed conveyance in favour of the proposed defendant. The application for amendment was filed on 9 September 2021; therefore, in my opinion, no fault can be found with the order of the Trial Court to allow the amendment.

7. In so far as the objection regarding the maintainability of the suit and defect of the absence of registration of partnership is concerned, from the material on record, the following factual scenario emerges: (i) 19 February 2019 - application for registration of partnership firm (plaintiff) is filed;

(ii) 26 April 2021 - The suit is filed;

(iii) 28 January 2022 - The Registrar of the firm issued a certificate of registration in favour of the plaintiff.

8. At this stage, it is necessary to refer to an order of the Supreme Court passed on 10 January 2022 in Misc. Application 21 of 2022. The Apex Court took Suo Motu cognizance of the difficulties faced by the litigants in filing the proceedings before the Court, Quasi-Judicial Authorities and other Authorities. The Supreme Court issued the following directions which reads as under:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

9. On meaningful reading of clause 4 of the order, it appears that the Supreme Court not only directed exclusion of period of limitation under the Special Act but also extended outer limits (within which the Court or Tribunal can condone the delay) and termination of proceedings. The Registrar of Firms, while granting registration under the provisions of the Indian Partnership Act, acts as a Quasi-Judicial Authority; therefore, the benefit of the order of the supreme court can be extended to the plaintiff or not depending on factual adjudication is beyond the purview of order 7 Rule 11 of CPC. Hence, the prima facie opinion formed by the Trial Court that subsequent registration of partnership would cure the defect of registration on the date of filing of the suit needs to be adjudicated by granting the opportunity to both sides to lead oral evidence, cannot be termed as a perverse approach.

10. The judgments of the Apex Court relied upon by the petitioner lay down the proposition of law that it is the duty of the Trial Courts to decide applications under Order 7, Rule 11 of the Code of Civil Procedure, 1908, as expeditiously as possible.

However, on deeper scrutiny of the peculiar facts of the present case, in my opinion, no fault can be found with the order of the Trial Court to postpone such adjudication based on the evidence laid by the parties so that conclusive findings on the maintainability of the suit can be recorded.

11. On overall consideration of the impugned order, in my opinion, the exercise of discretion by the Trial Court cannot be termed perverse; therefore, interference under Article 227 of the Constitution of India is unwarranted.

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

13. In view of the disposal of the writ petition, nothing remains to be adjudicated in the interim application. The interim application stands disposed of.

14. At the request of the learned Advocate for the petitioner, ad-interim relief granted by this Court is continued for a period of four weeks from today.

(AMIT BORKAR, J.)