



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1032 OF 2024

BHARATI RAVINDRA CHIRMADE
VERSUS
NALINI WAMAN PATIL AND OTHERS

Mr. G. S. Rane, Advocate for the petitioner
Mr. G. V. Wani, Advocate for respondent Nos.1 and 2
Mr. A. P. Bhandari, Advocate for respondent No.3.

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. This petition takes exception to the order dated 9th October, 2023 passed by Civil Judge Senior Division, Jalgaon whereby the Commercial Suit bearing No. 2/2022 is directed to be registered as Special Civil Suit.

2. Learned counsel for the petitioner submits that though on the face of it the objection raised by the petitioner appears to be technical, however, according to him certain procedural aspects which were required to be taken in to account by the Trial Court are ignored. It is his contention that the respondents-plaintiffs have filed suit as a Commercial Suit with specific averments therein that the subject matter is amenable to the jurisdiction of the Commercial Court. Defendant apart from filing

of the written statement, defendant No.1 filed counter claim. In such circumstances if the Court comes to the conclusion that the suit in hand is not commercial suit, the only option available for the Court is to return the plaint for its presentation to proper Court. According to him, power under Section 151 of the Code of Civil Procedure could not have been exercised when specific provision is available under the Code of Civil Procedure to meet with such situation. To support his submission, he placed reliance on the judgment of the Hon'ble Supreme Court in case of ***My Palace Mutually Aided Co Operative Society Vs. B. Mahesh and Ors, AIROnline 2022 SC 1313***. He referred to the paragraph 28 which reads thus:

"28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC."

3. Learned counsel for the defendant No.2 adopted the arguments advanced by the learned counsel on behalf of defendant No.1. On the other hand, learned counsel for the plaintiff supported the impugned order.

4. There cannot be dispute made with regard to preposition of law that whenever there is specific provision available under the Code of Civil Procedure it would not be open for the Civil Court to exercise powers under Section 151 of CPC. The present case, however, stands on altogether different footing than as sought to be canvassed before this Court. It is pertinent to note that the Civil Manual mandates the clerk of the Court to scrutinize the plaint before its presentation before the Court and it is obligatory on his part to record all objections including objection with regard to the pecuniary jurisdiction of the Court. Herein this case, it seems that the Ministerial staff overlooked the fact that for the purpose of any suit to be done as a commercial suit the specified value thereof as contemplated by Section 3(1)(i) should be not less than 50 lakhs, as per the circular of Government of Maharashtra dated 3rd July, 2019. Thus, if the appropriate care was taken by the Ministerial authority and objection about the the suit would not have been registered as commercial suit.

5. Now admittedly, the valuation of the suit is below Rs.50 lakhs, thus the suit could not have been registered and continued as a commercial suit. In such circumstances, it is not the case wherein the Court was required to return the plaint to the plaintiff for its presentation before the appropriate Court but the proper course was to exercise the inherent powers and correct the mistakes committed by the Ministerial

staff which has been rightly done in this case. This Court finds no reason to interfere in the impugned order. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp