



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6963 OF 2024

Aj Organica Private Limited And Others
VERSUS
The State Of Maharashtra And Others

- Mr. R. R. Totala a/w Mr. Advait Raorane, Mr. S. V. Lohiya, Nasetali Rizvi, Advocates for the Petitioners
- Mr. S. N. Kendre, AGP for the Respondent No. 1/State
- Mr. Jamshed Master a/w Mr. S. V. Deshmukh, Advocate for the Respondent No. 2

CORAM : R. M. JOSHI, J
DATE : MARCH 10, 2025

PER COURT :

1. A short question arises in this Petition as to whether in the event Court finds no jurisdiction to entertain the subject matter, has to follow provision of Order VII, Rule 10 of Code of Civil Procedure (for short '**the Code**') or an order can be sought from District Judge by invoking provision of Sections 24 and 25 of the Code.

2. The facts of the case to the extent they are relevant for decision of issue involved in this Petition are as under:

The contesting Respondent filed suit being

Special Civil Suit No. 174/2023. Petitioners appeared in the suit raising various objections. The 4th Joint Civil Judge, Senior Division, Jalgaon while deciding application for temporary injunction vide Exh. 6 has arrived at conclusion that the subject matter of the suit is a commercial dispute as contemplated by Section 2(c)(xii) of the Commercial Courts Act, 2015 (for short '**the Act**'). After holding so, reference was made to the Principal District Judge, Jalgaon (for short '**PDJ**') for transferring the suit to the Commercial Court. Accordingly, PDJ, Jalgaon by order dated 12.03.2024 transferred the said suit to District Judge – 2, Jalgaon. Being aggrieved by these orders, present Petition is filed.

3. Learned Counsel for Petitioners submit that once it is held by the Civil Court that it has no jurisdiction over subject matter, the only option available for the Court is to return the plaint under Order VII, Rule 10 of the Code. There is no procedure contemplated for making reference to the PDJ who in exercise of powers under Section 24 of the Act can transfer such proceedings. To support his submissions,

he placed reliance on following judgments:

- i. Virendra Kumar vs. Rekha Bhayana, 2022 SCC OnLine Del 2678,
- ii. Narendra Kumar vs. Om Daily Needs Retailing Pvt. Ltd and Another, 2023 SCC OnLine Del 5618,
- iii. Ambalal Sarabhai Enterprises Ltd vs. K. S. Infraspace LLP and Another, (2020) 15 SCC 585,
- iv. Kiran Singh and Others vs. Chaman Paswan and Others, (1954) 1 SCC 710,
- v. Jsw Steel Limited vs. Kamlakar V. Salvi and Others, 2021 SCC OnLine Bom 3113,

4. Per contra, learned Counsel for contesting Respondent has drawn attention of the Court to the judgment of Coordinate Bench of this Court in case of Dinesh Gopal Keni vs. State of Goa and Another, 2023 SCC OnLine Bom 911. It is his submission that in the similar facts, this Court has granted permission for filing application under sub-section 5 of Section 15 of the Act. He also took assistance of the judgment of this Court in case of J. P. Realities Pvt Ltd and Others vs. Mahesh Chandrabhan Kingrani and Others, Civil Revision Application No. 30 of 2023. Thus, according to him, these judgment squarely applies to the present case. Similarly, he placed reliance on

following judgments to buttress his submission about confirmation of interim order in the event order of return of plaint under Order VII, Rule 10 CPC is passed.

- i. Sherawali Developers Llp vs. Majesty Homes and Others, 2024 SCC OnLine Del 3963,
- ii. Dinyar Behramji Irani vs. Kshirsagar Construction C. Pvt Ltd. Bombay, 1993 Mh.L.J. 1812,
- iii. Mahima Management Services Private Limited vs. Creative Property Developers Private Limited and Anr, 2015 SCC OnLine Cal 715.

5. In order to appreciate the submissions made across the bar, it would be relevant to take note of the provision of Order VII, Rule 10 of the Code, which reads thus:

"10. Return of plaint. (1) Subject to the provisions of Rule 10-A. The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint"

This provision clearly indicates that subject to provisions of Rule 10-A, suit can be return at any

stage of the suit to be presented to the Court in which the suit should have been instituted. Section 10-A provides for the procedure to be followed for the purpose of return of the plaint. For the sake of convenience, the said provision is reproduced thus:

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court--

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and

notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,--

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),--

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

The above provision clearly indicates that for the purpose of return of plaint, the specific application is not required and the same can be done at

any stage of the suit, when the Court is of the opinion that the suit should be return for its presentation to the Competent Court subject to further compliance of Rule 10A.

6. The above provisions, therefore, clearly indicate that said procedure is required to be followed mandatorily and the procedure prescribed by Rule 10A must be complied with, once the Court forms a opinion that plaint should be returned. Thus, even before actual order of return of plaint is passed, Court needs to record so to enable the Plaintiff to take further steps as contemplated by Rule 10A. In the instant case, no such procedure is followed. Needless to say that it is open for the plaintiff to file an Appeal against the order of rejection of plaint. By non compliance of order and by seeking direction for transfer of proceedings by making a reference to the PDJ, a Plaintiff has been practically denied the right to file an Appeal against such order. It is a different issue as to whether the Plaintiff would like to exercise such right or not.

7. It would also be relevant to take note of

Section 24 of the Code which empowers the District Judge (now PDJ) to transfer any proceedings from subordinate Court to another Court. Section 24 reads thus:

Section 24 - General power of transfer and withdrawal

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which 1[is thereafter to try or dispose of such suit or proceeding] may,

subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,--

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

8. A plain reading of this provision indicates that this is a power vested in a District Judge (Principal District Judge) to transfer any proceeding from one competent Court to another competent Court, subordinate to it. This power cannot be held to be a substitute for passing order of return of plaint. The question of invoking powers under Order VII, Rule 10 of Code and exercise of power under Section 24 by District Judge, would arise in altogether different

circumstances. Section 24 of the Code cannot be invoked when the proceeding is filed in the Court not having jurisdiction over the subject matter of the suit and in such eventuality, invocation of Order VII, Rule 10 is imperative.

9. Moreover, there would be different situations which may occur before the transferee Court in both cases. Such as, in case of transfer of proceeding under Section 24(2) of the Code, depending upon directions issued by the District Judge, transferee Court may or may not proceed from the point at which it is transferred or withdrawn. Whereas, altogether different procedure is contemplated in case of an order of return of plaint under Order VII, Rule 10 of Code.

10. At this stage, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in case of **EXL Careers and Another vs. Frankfinn Aviation Services Private Limited, (2020) 12 SCC 667.** The Hon'ble Supreme Court was posed with the question as to whether the return of the plaint by the Court lacking jurisdiction for presentation of Court having jurisdiction would permit such Competent Court to

proceed from the stage at which the plaint was return. After considering the diversion views of the Division Bench of the Hon'ble Supreme Court, it is finally held that on return of the plaint, the trial should be conducted *de novo* and not from the stage at which the order of return of the plaint has been passed. The observations of Hon'ble Supreme Court in paragraphs 20 and 21 are reproduced below:

"21. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme Under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence *de novo*.

22. For all these reasons, we hold that *Oriental Insurance Co.* (supra) does not lay down the correct law and over-rule the same. *R.K. Roja* (supra) has no direct relevance to the controversy at hand."

11. Learned Counsel for Respondent has sought to make submissions relying upon sub-section 5 of Section 15 of the Act to canvass that this provision enables

the transfer of the proceedings which are filed after coming into force of the Commercial Courts Act, 2015. He also placed reliance on the judgment cited supra. In order to appreciate the said submissions, it would be relevant to take note of Section 15 of the Act, which reads thus:

Section 15 - Transfer of pending cases

(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute

of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 1[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

12. A bare perusal of the provisions of Section
15(5) of the Act clearly indicate that the

proceeding/suit, which was pending at the time of coming into force of Act, 2015, transfer of such proceedings is covered. Sub-sections (1) and (2) specifically refer to the pending suit or application. Sub-section (3) deals with matter about compliance of procedure under Act; which were not completed at the time of transfer. Sub-section (4) also refers to the application of the procedure and fixation of new timeline etc. Coming to sub-section (5), it specifically states that "in the event such suit or application is not transferred", Commercial Appellate Division of High Court may on application transfer such suit or application which is pending to a Commercial Court. Thus, even sub-section (5) deals with the pending suit or applications and it cannot be allowed to be claimed that this procedure would apply to the suit or application filed after coming into force of the Act, 2015.

13. It must be kept in mind that since the suit or application, which was filed prior to 23.10.2015 i.e., date of Act of 2015 coming into force, were not pending before the Court having no jurisdiction and hence

legislature found it necessary to make provision of Section 15 for transfer of these pending proceeding to the Commercial Court, in view of subsequent change in the jurisdiction of the Courts. By no stretch of imagination this provision can be considered as power to transfer the proceeding/suit which has been filed after 20.10.2015. Any such proceeding filed before Court other than Commercial Court, would be without jurisdiction and only Order VII, Rule 10 could be appropriate provision available for return of plaint. In any case, power under Sections 24 and 25 of the Code cannot be exercised for the purpose of transfer of such proceeding pending in the Court having no jurisdiction.

14. In so far as judgment in case of Dinesh Gopal Keni (supra) is concerned, the judgment of Hon'ble Supreme Court in case of EXL Careers (supra) was not brought to the notice nor the issue of transfer was specifically agitated. Similarly, in case of J. P. Realities (supra) this Court has held that there could be order under Order VII, Rule 10 of Code of return of plaint but not rejection thereof. These judgments, therefore, would not come to the aid of Respondents to

support impugned orders.

15. As far as judgment relied upon in case of Good Luck Developers vs. Joaquim Santana Jose Almeida and Others, 2024 SCC OnLine Bom 1657, Sherawali Developers (supra) and Dinyar Behramji Irani (supra), it is premature to consider the said judgments and submissions of Respondents Counsel about extension of interim order on return of plaint. This submission is kept open for consideration by competent Court at relevant time.

16. Upshot of the above discussion is that when any Civil Court hold that it lacking jurisdiction over the subject matter of suit or application, it has to pass order under Order VII, Rule 10 of Code of return of plaint and procedure of transfer of proceeding under Section 24 of the Act cannot be invoked.

17. Herein this case, the Civil Judge, Senior Division has recorded the findings that the subject matter is commercial dispute which is not the subject matter of jurisdiction of the said Court. In such circumstances, the only option available for the Court

was to pass order of return of the plaint that too after complying Rule 10A of Order VII of Code and not to refer the matter to PDJ for invocation of Section 24 of the Code.

18. As a result of above discussion, the orders impugned cannot sustain. Hence, are set aside. Proceeding bearing Special Civil Suit No. 174/2023 is relegated back to the said Court for passing appropriate order in accordance with law.

19. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)