



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4866 OF 2024

**Tehsin Ahmed Khan Gulam Yasin Khan
VERSUS
Ganesh Nagorao Dudhgaonkar And Others**

Mr. H. I. Pathan, Advocate for Petitioner

Mr. D. M. Shinde, Advocate for Respondent Nos. 1 to 4

CORAM : R. M. JOSHI, J.

DATE : 24th April, 2025

PER COURT :-

1. By consent of both sides heard finally at the stage of admission.
2. This petition takes exception to the order dated 12.12.2023 passed by Trial Court in Regular Civil Suit No. 289/2023 allowing Application Exhibit 48 and returning the plaint for its presentation to the appropriate Court.
3. Petitioner is original defendant. He raises objection to the impugned order on two grounds. Firstly that once the suit has been stayed, question of Trial Court passing any order therein does not arise. Secondly, when there is application pending for amendment to the plaint, without deciding the said application Trial Court cannot presume that the application has been allowed and to proceed further to pass order of return of plaint, to

determine question of valuation of suit which is never raised.

4. Learned counsel for petitioner has drawn attention of the Court to the fact that in view of the occupancy of two difference suit on same subject matter i.e., Special Civil Suit No. 31/2023 and Special Civil No. 289/2023, the Trial Court by invoking provisions of Section 10 of the Code of Civil Procedure has stayed the proceeding of suit i.e., Regular Civil Suit No. 289/2023. It is his submission that once the suit is stayed question of taking up an application and passing order thereon does not arise.

5. This submission is opposed by learned counsel for contesting respondents by relying upon the provision of Section 10 of the CPC supported by position of law which states that the stay is contemplated to the suit under Section 10 to the trial of the suit, which does not prevent the Court from making interlocutory orders. To support these submission, he placed reliance on the judgment of Rajasthan High Court in case of **Surendra Sawhney vs. Murlidhar LAWS (RAJ)-2007-11-8.** Division Bench of this Court in case of **Senaji Kapurchand vs. Pannaji Devichand MANU/MH/0121/1921** has held that an order staying the suit under Section 10 of CPC does not prevent the Court from making interlocutory orders such as orders for the receiver or an injunction or an order of attachment before judgment.

6. The law laid down on this subject, therefore, clearly indicates that under Section 10 of CPC, what has been stayed is the trial of the suit on the principle that simultaneously two parallel suits cannot be permitted to be conducted and to avoid inconsistent findings on the matters in issue. There is no embargo on the Civil Court to pass any interlocutory order. Thus, the issue which are subject matter of trial cannot be decided once the suit is stayed and that such stay would not affect power of Court to pass orders which are interlocutory in nature. This Court, therefore, finds no substance in the objection raised by the learned counsel for petitioner with regard to the entertainment of the application by the learned Trial Court in spite of the stay of the suit under Section 10 of CPC.

7. On merit, it is a contention of learned counsel for the petitioner that the Trial Court ought not to have passed order impugned without plaintiff amending the plaint and incorporating the pleadings with regard to the enhancement of the valuation of the suit. It is his submission that no one has raised any objection with regard to the valuation of the suit and as such no occasion arose for the Trial Court to accept such contention of the respondent/original plaintiff and to pass order of return of plaint.

8. Learned counsel for respondents supported the impugned order by

drawing attention of the Court to the observations made in the impugned order to the effect that the defendant has not disputed the valuation.

9. In so far as the position of pleadings that stands as of today, the suit is valued at Rs. 2,000/- which is well within the pecuniary jurisdiction of Trial Court. Pertinently, application is filed by the plaintiff for amendment to the plaint under Order VI Rule 17 incorporating pleadings which would indicate the enhancement of the valuation of the suit. Without passing any order and permitting amendment to plaint, on presumption that once such application is filed, the same would stand allowed, order impugned seems to have been passed. There is neither notice issued by the Court to the plaintiff in respect of under valuation of the suit nor there is pleading in the plaint with regard to the valuation of the suit which is beyond pecuniary jurisdiction of the Trial Court. Thus, it was not open for the Trial Court to pass impugned order for return of the plaint on the ground of want of pecuniary jurisdiction. The order passed by Trial Court during pendency of application of amendment filed by plaintiff, is premature. Hence, cannot sustain. The impugned order, therefore is set aside.

10. Application Exhibit 48 filed under Order VI Rule 17 is relegated back to Trial Court for decision afresh. Application be decided after

appropriate order is passed on application for amendment filed by plaintiff.
Having regard to the fact that the issue of jurisdiction of the Court herein, Trial
Court is directed to decide these applications expeditiously.

(R. M. JOSHI, J.)

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