

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC CIVIL APPLICATION NO. 19 OF 2025

Nathoo Lalji Charity Trust through its
present trustees ...Applicants

Versus

M/s. Shri Ram Builder and ors. ...Respondents

Mr. Chetan Kapadia, Senior Advocate, a/w Mr. Yash Momaya
(through VC) i/b Mr. Krishkumar Jain, for the
Applicants.

Ms. Jesal Shah, i/b Daru Shah & Co., for Respondent Nos.1
and 3.

Mr. Ishaan Choudhry, i/b IC Legal, for Respondent No.24.

CORAM: N. J. JAMADAR, J.

DATED: 21st MARCH, 2025

ORDER:-

1. This application is filed seeking transfer of LC Suit No. 9806 of 1990 pending on the file of City Civil Court, Greater Bombay, to the High Court, Bombay, where Suit No.1390 of 2019 is pending. The applicants are the trustees of Nathu Lalji Charity Trust, a Public Charitable Trust, registered under the provisions of Maharashtra Public Trust Act, 1950. The applicants trustees are the plaintiffs in LC Suit No.9806 of 1990 (original High Court Suit No.1364/1990) pending before the City Civil Court, Greater Bombay, M/s. Shri Ram

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Builder and its partners – defendant Nos.1 to 4 are some of the defendants in the said suit.

2. The applicants – trustees had entered into a Licence Agreement with M/s. Shri Ram Builder – respondent No.1, on 22nd December, 1978. In Suit No.2624 of 1984 Consent Terms were entered into between the applicants – trustees, MCGM and M/s. Shri Ram Builder, confirming the said agreement dated 22nd December, 1978. Asserting that there was breach on the part of M/s. Shri Ram Builder to comply its obligations under the said agreement and the Consent Terms, the applicants terminated the said agreement dated 22nd December, 1978 and the Consent Terms. Thereupon the applicants instituted LC Suit No.9806 of 1990 against M/s. Shri Ram Builder and others seeking *inter alia* a declaration that the licence agreement, read with Consent Terms, has been validly terminated and the defendants in LC Suit No.9806 of 1990 are trespassers in respect of the suit property.

3. M/s. Shri Ram Builder – respondent No.1, herein, has instituted a suit being Suit No.1390 of 2019 before the High Court, Bombay, seeking, *inter alia*, a declaration that the licence agreement and the Consent Terms are valid,

subsisting and binding on the defendants in the said suit, comprising the trustees of Nathu Lalji Charitable Trust.

4. The applicants have thus preferred this application seeking transfer of LC Suit No.9806 of 1990 to this Court for trial and adjudication alongwith Suit No.1390 of 2019 asserting *inter alia* that the party defendants in 1990 suit are the parties to 2019 suit. Both the suits are, in a sense, cross suits in respect of the same property. The subject matter of both the suits is substantially one and the same. The reliefs sought in both the suits are overlapping. The outcome in one suit will have a direct bearing on the other suit. Since common question of law and fact would arise in both the suits and evidence that would be led by the parties would be similar and overlapping, there is a risk of conflicting and irreconcilable decisions if both the suits are tried by different Courts. It would, therefore, be necessary in the interest of justice to transfer LC Suit No.9806 of 1990 to the High Court, Bombay.

5. Respondent Nos.1 to 3 have resisted the application by filing an affidavit-in-reply. At the outset, respondent Nos.1 to 3 contend that the application is misconceived in as much as the value of the suit claim in LC Suit No.9806 of 1990 is

Rs.95,100/- only and, therefore, the High Court would not have the pecuniary jurisdiction to entertain, try and decide the suit. On this count itself the application deserves to be rejected as a Court cannot invest itself a jurisdiction which it does not possess.

6. Secondly, the respondents contend, if the plaint in each of the suits is read as a whole, it would become evident that the causes of action in both the suits are materially distinct. In 2019 suit, respondent Nos.1 to 3 have claimed reliefs in respect of the amended lay out, FSI and several reliefs against defendant No.23 – Shri Krishna Dharma Co-operative Housing Society Ltd., therein, who is not a party in 1990 suit. Likewise, several of the defendants in 1990 suit have not been impleaded as the defendants in 2019 suit. Thus, it cannot be said that the parties to both the suits are the same.

7. Respondent Nos.1 to 3 further asserted that the application has been filed *mala fide*. The applicants do not intend to prosecute 1990 suit. This application has been preferred when 1990 suit came to be posted for cross-examination. Referring to the orders passed by the City Civil Court, in the 1990 suit, the respondents contend that the application has been preferred with intent to further delay

the disposal of the 1990 suit. Respondent Nos.1 to 3 have categorically denied the grounds on which the transfer of 1990 suit is sought.

8. I have heard Mr. Kapadia, the learned Senior Advocate and Mr. Yash Momaiyya, the learned Counsel for the applicants, and Ms. Shah, the learned Counsel for respondent Nos.1 to 3 and Mr. Ishan Choudhary, the learned Counsel for respondent No.24, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

9. Mr. Kapadia, the learned Senior Advocate for the applicants, submitted that from the perusal of the averments in both the suits, especially the prayer clauses, it becomes evident that both the suits are, in a sense, cross suits. The principal relief in Suit No.1390 of 2019 is to declare the agreement dated 22nd December, 1978 read with Consent Terms dated 24th April, 1987 valid, subsisting and binding on the defendants. Conversely, in the suit instituted by the applicants a declaration is sought that the said agreement dated 22nd December, 1978 read with Consent Terms dated 24th April, 1987 has been duly and validly terminated by the plaintiffs. Mr. Kapadia would urge that the fact that there

are few additional parties in one of the suits or few of the parties to one suit are not impleaded as parties in the other suit is not of material significance. It is the identity of the subject matter of the dispute which is material. Mr. Kapadia further urged that the resistance to the transfer of 1990 suit, on the ground that the suit claim in the said suit is below the threshold of the pecuniary jurisdiction of this Court i.e. Rs.10 Crore, is not sustainable as Section 24 of the Code is meant to address such a situation.

10. In opposition to this, Ms. Shah, the learned Counsel for respondent Nos.1 to 3 took the Court through the averments in the plaint in both the suits and the prayers therein. Comparing and contrasting the prayers in each of the suits Ms. Shah made an endeavour to draw home the point that the subject matter of both the suits cannot be said to be same. It was further submitted that a suit cannot be transferred to a Court which otherwise does not have the jurisdiction. To buttress the submission that Court cannot confer jurisdiction where there is none nor can the parties confer jurisdiction upon a Court, by consent, Ms. Shah placed a strong reliance on a decision of the Supreme Court

in the case of *Rajasthan Road Transport Corporation and another vs. Bal Mukund Bairwa*¹.

11. In the rejoinder, it was submitted that the aforesaid decision would not govern the facts of the case as in the said case the question was of subject matter jurisdiction. In the case at hand, it cannot be said that the High Court does not have subject matter jurisdiction.

12. The aforesaid submissions now fall for consideration.

13. Under Section 24 of the Code of Civil Procedure 1908 (“the Code”), the High Court may at any stage withdraw any Suit, Appeal or other proceeding pending in any Court subordinate to it and try or dispose of the same.

14. The aforesaid general power of transfer under Section 24 can be exercised for withdrawal of a proceeding pending in any Court subordinate to the High Court. This brings in the element of the status of the City Civil Court, Bombay qua the High Court. The Bombay City Civil and Sessions Court Act, 1948 (“the Act of 1948”), under which the City Court came to be constituted, was incorporated as it was considered expedient to establish an additional Civil Court for the Greater Bombay. Section 5 of the Act of 1948 expressly

¹ 2009(4) SCR 161.

provides that the City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent of the High Court and of the Code. Thus, the primary requirement of the pendency of a proceeding before a subordinate Court stands satisfied.

15. Before advertng to deal with the principal challenge to the transfer on the ground of lack of pecuniary jurisdiction, it may be appropriate to examine whether the transfer of L.C. suit No. 9806 of 1990 is expedient in the interest of justice. The learned Counsel for the parties have taken the Court through the array of the parties in both the Suits, the material averments therein and, especially, the reliefs claimed. Indisputably, one of the parties in the Suit No.1390 of 2019 is not the party to the Suit No. 9806 of 1990. The cause of action for each of the Suits would naturally be distinct. However, it is the identity of the subject matter of the dispute that assumes critical salience.

16. The principal prayer in Suit No. 9806 of 1990 is that the Agreement dated 22nd December 1978 read with the Consent Terms dated 24th April 1987 have been duly and validly terminated by the plaintiffs and consequently the

defendants are trespassers upon or in respect of the suit properties and defendants be ordered and decreed forthwith to vacate and handover vacant and peaceful possession of the suit properties and all the building and structures erected therein etc to the plaintiffs.

17. Conversely, the principal prayer in Suit No. 1390 of 2019 is to declare that the very Agreement dated 22nd December 1978 read with Consent Terms dated 24th April 1987 is valid, subsisting and binding on the defendants. In addition, the plaintiffs are seeking a declaration that the amended layout plans sanctioned on 3rd August 1988 is not binding on the plaintiffs so far as the same is in breach of rights and benefits of plaintiffs under the aforesaid Agreement and Consent Terms and the sanctioned plan dated 3rd August 1988. The rest of the reliefs are essentially consequential to the aforesaid declaration.

18. On a holistic reading of the Plaints in both the Suits and the principal prayers therein, an inference becomes inexorable that both the Suits are, in a sense, cross-suits. The fate of Suit No. 9806 of 1990 hinge upon the Plaintiffs therein succeeding in getting a declaration that the Agreement dated 22nd December 1987 read with Consent

Terms dated 24th April 1987 has been lawfully and validly terminated. On the contrary the entitlement of the plaintiffs in Suit No.1390 of 2019 to have the consequential reliefs hinges upon the declaration that the said Agreement dated 22nd December 1978 read with Consent Terms dated 24th April 1987 is valid, subsisting and binding on the defendants.

19. The aforesaid being the nature of the Suits common question of facts and law would arise for determination in both the Suits. A finding in Suit No. 9806 of 1990 that the said Agreement has been lawfully and validly terminated may obviate the determination of the binding efficacy of the said Agreement on the defendants, in Suit No. 1390 of 2019. The submission that the challenge is to the amended layout plan principally, looses sight of the fact that the said challenge, in itself, rests on the rights and benefits which the plaintiffs claim to have acquired under the said Agreement dated 22nd December 1978. There is a specific reference to the said Agreement dated 22nd December 1978 read with Consent Terms dated 24th April 1987 as the foundation in prayer clauses (b), (c) and (f) of the Plaint in Suit No. 1390 of 2019.

20. In the aforesaid view of the matter, I find it difficult to accede to the submissions of Ms. Shah that the subject

matter of both the Suits is materially distinct. There is an imminent possibility of conflicting decisions if both the Suits are tried before the different Courts. In fact, a decision in one Suit may operate as *res judicata*, or in the least, as an issue of estoppel, in the other Suit. On the other hand, the trial of both the Suits by one and the same Court would promote the cause of orderly, complete and effectual adjudication of the disputes between the parties and thereby promote the interest of justice.

21. This leads me to the submission of Ms. Shah that since the value of the Suit claim in Suit No. 9806 of 1990 is below the threshold of the pecuniary jurisdiction of the High Court, the latter will not have jurisdiction to entertain, try and decide the Suit, and thus, eventually, the decree may be a nullity. To buttress this submission, a very strong reliance was placed on the Judgment in the case of ***Rajasthan Road Transport Corporation*** (supra).

22. In the said case in the context of jurisdiction of Civil Court to entertain Suits questing orders of termination passed against the respondents therein, the Supreme Court held that it is well settled principle of law that the Court cannot confer jurisdiction where there is none and neither

can the parties confer jurisdiction upon a Court by consent. If a Court decides a matter without jurisdiction, as has rightly been pointed out in **Rajasthan State Road Transport Corporation & Ors Vs Zakir Hussain**,² in view of the seven-Judge Bench decision of the Supreme Court in **A.R. Antulay Vs R.S. Nayak**³, the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases.

23. I am afraid the abovesaid pronouncement governs the facts of the case at hand. Evidently, the said pronouncement was in the context of subject matter jurisdiction. Undoubtedly, a transferee Court to which the proceeding is to be transferred must have pecuniary jurisdiction, though it may not possess territorial jurisdiction. Jurisdictional competence to try the Suit in the context of the subject matter and pecuniary jurisdiction is necessary. However, the withdrawal of a Suit from a subordinate Court to the High Court under Section 24 of the Code does not seem to be hedged by such limitation. The clause (b) of Sub-section of Section 24 uses an expensive expression, “withdraw any Suit, Appeal or other proceeding” pending in Court subordinate to

2 (2005) 7 SCC 447.

3 (1988) 2 SCC 602.

High Court and try or dispose of the same. Secondly, the High Court cannot be said lack inherent jurisdictional competence to try a Suit which is below the threshold of its pecuniary limits.

24. Thirdly, recourse to Section 12 of the Bombay City City and Sessions Court Act of 1948 also becomes necessary. Section 12 reads as under:

“12. High Court jurisdiction barred except in certain cases.—

Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court:

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the City Court.”

25. Though Section 12 begins with a non obstante clause that notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court, the proviso empowers the High Court for any special reason, and at any stage remove for trial by itself a Suit or proceeding from the City Court.

26. Thus power of withdrawal for trial by itself a Suit or proceeding from the City court, has been conferred on the High Court to address the exigency of the situation, albeit for

a special reason. The possibility of conflicting decisions and the element of expediency in the interest of justice which the trial of both the Suits by the High Court promotes, constitute a special reason.

27. Therefore, I am inclined to allow the application.

28. Hence, the following order:

: O R D E R :

- (i)** The application stands allowed.
- (ii)** Suit No.9806 of 1990 pending on the file of City Civil Court, Grater Bombay, stands transferred to the High Court, Bombay, for hearing and disposal in accordance with law alongwith Suit No.1390 of 2019, which is pending on the Original Side of High Court.
- (iii)** The learned Principal Judge, City Civil Court, shall transfer the record and proceedings in Suit No.9806 of 1990 with such dispatch that it reaches the High Court, Original Side, Bombay, within a period of three weeks from the date of communication of this order.
- (iv)** The parties are at liberty to seek appropriate directions for expedite hearing of both the suits.
- (v)** Application stands disposed.
No costs.

[N. J. JAMADAR, J.]