



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 339/1995

(Sandeep s/o Dinkarrao Soley Vs. Sharadkumar s/o Kunjilal Tiwar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Aniket Rangari, Advocate h/f Amol Mardikar, Advocate
appellant.

Mr. Digvijay G. Thakwale, Advocate for respondent.

CORAM: ROHIT W. JOSHI, J.

DATED : 09/05/2025.

Heard.

2. Mr. Digvijay G. Thakwale, learned counsel seeks
permission to file Vakalatnama on behalf of respondent.

3. Permission granted.

4. Vide order dated 13.08.1996, the present second
appeal came to be admitted on the substantial question of
law pertaining to pecuniary jurisdiction of learned First
Appellate Court. The First Appeal arose out of a suit for
specific performance of contract. The monetary evaluation
of the suit for the purpose of jurisdiction and Court Fees
was more than Rs. 1,00,000/-. However, instead of granting
a decree for specific performance of contract, learned Trial
Court had passed a decree for refund of amount of
Rs. 45,000/- which is the part of sale consideration received
by the defendant from the plaintiff pursuant to the
agreement of sale between the parties. At the relevant time,

pecuniary jurisdiction of learned District Judge was upto Rs. 1,00,000/-. The appeal was therefore, filed before the District Court.

5. In the present second appeal, a submission was made that the appellate jurisdiction of a Court depends upon the original valuation of the suit and not on the amount for which the decree is passed. Section 8 of the Maharashtra Civil Courts Act, 1869 (“Act of 1869”) provides that a District Court shall be the Court of appeal from all decrees and orders passed by the Subordinate Courts subject to exceptions provided under Sections 16, 17 and 26 of the Act of 1869. Section 16 provides for appellate jurisdiction of the District Judge against decrees or orders passed by learned Additional District Judge. Section 17 provides for appellate jurisdiction of an Additional District Judge. Section 26 of the Act of 1869 deals with pecuniary aspect of jurisdiction. Section 26 provides that in all suits decided by a Civil Judge of which the amount or value of the subject matter exceeds Rs. 1,00,000/- (at the relevant time), the appeal from such decision shall lie directly to the High Court. Thus, it is the valuation of subject matter of the dispute before the Civil Court will determine the appellate jurisdiction and not the value of decree passed in the civil suit.

6. It also needs to be mentioned under the scheme of the Act of 1869 as it is apparent from Sections 8 and 26, the ordinary Court of appeal against a decree passed by the Civil

Court is the District Judge. Appellate jurisdiction to High Court is provided by way of exception, on the ground of pecuniary evaluation of suit.

7. Since the value of the subject matter of the civil suit was more than Rs. 1,00,000/-, the first appeal would lie before the High Court. However, the appeal was filed and is decided by learned District Judge.

8. It is apparent from the record that objection pertaining to pecuniary jurisdiction of the learned District Judge was not raised during the course of hearing. This objection is raised for the first time in the present second appeal. In this regard, it is necessary to refer to Section 99 of the Code of Civil Procedure ("CPC") which provides that no decree shall be reversed or substantially varied in appeal on account of any error or defect or irregularity not affecting the merits of the case. It is also necessary to refer to Section 21(2) of the CPC which provides that objection with respect to pecuniary jurisdiction of the Court cannot be raised for the first time before the Appellate Court, if it is not so raised before learned Trial Court. Although plain reading of Section 21(3) indicates that the said provision will not apply to pecuniary jurisdiction of learned First Appellate Court, having regard to Section 21(2) read with Section 99, it will not be permissible to reverse a decree passed by learned First Appellate Court only on of ground of pecuniary jurisdiction, for two reasons, firstly objection in regard to pecuniary jurisdiction was not raised and secondly

no prejudice on account of want of pecuniary jurisdiction is pointed out.

9. It is also well settled that objection pertaining to pecuniary jurisdiction does not go to the root of the matter. Pecuniary jurisdiction, territorial jurisdiction etc. are procedural aspects of jurisdiction of a Court and therefore, this Court is of the considered opinion that, having regard to the mandate of Section 99 of the CPC, it will not be just and proper to reverse the decree passed by learned First Appellate Court only on account of want of pecuniary jurisdiction.

10. The second appeal is therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)