

(2013) 08 BOM CK 0032

In the Bombay High Court

Case No : Notice of Motion No. 1085 of 2011 in S.C. Suit No. 2393 of 2001

Asif Ahmedally Porbunderwalla

APPELLANT

Vs

Mrs. Daulat Akbarali Porbunderwalla and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 32, 9(A)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 4 Rule 1, Order 6 Rule 17, Order 7 Rule 10, Order 7 Rule 10(2)
Consumer Protection Act, 1986 — Section 14
Limitation Act, 1963 — Section 10
Railways Act, 1989 — Section 149

Citation : (2014) 3 ABR 450 : (2014) 1 ALLMR 378 : (2014) 2 MhLj 210

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : B. Colabawala assisted with Mr. Sachin Kudalkar instructed by Madekar and Co, for the Appellant; G.R. Rege a/w. Ms. Geetanjali Dutta in the Notice of Motion, for the Respondent

Judgement

R.D. Dhanuka, J.—By this Notice of Motion, defendant no. 7 seeks rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 and also seeks that the suit be summarily dismissed as not maintainable. Defendant no. 7 also seeks in the alternative that the issue of limitation be framed and decided as a preliminary issue by this Court. Some of the relevant facts for the purpose of deciding this Notice of Motion are as under:- Plaintiff claims to be one of the beneficiary under the Trust Deed dated 12th June, 1972 whereby a trust known as "Ali Mohamed K. Porbanderwala Family Trust" was set up in respect of the land and building situated at Bandra. Defendant nos. 1 to 4 are the trustees of the said trust. Defendant no. 5 is husband of defendant no. 1. Defendant nos. 6 and 7 are children of defendant no. 1 and defendant no. 5. Defendant no. 7 claims to be one of the beneficiary under the said trust. It is the case of the plaintiff that in 1976 defendant nos. 1 and 2 in exercise of their power under the

said trust deed and in collusion with defendant no. 5 constructed a industrial estate on the portion of the trust property by the name of Amar Industrial Estate. Plaintiff was not given any part of the sale consideration of the industrial units. On 20th June, 1979, defendant nos. 1 to 4 in their capacity of the said trust executed a lease deed in respect of the trust property in favour of defendant nos. 5 to 7 for a period of ninety nine years. According to the plaintiff, the said lease deed provided for payment of Rs. 3,000/- per month as lease rental which was totally inadequate. Value of the lease property according to the plaintiff at the material time was about Rs. 35,11,000/-. It is the case of the plaintiff that defendant nos. 5 to 7 were placed in possession of the trust property however, did not take any steps to obtain vacant possession of any construction or to construct any building as contemplated in the said trust deed. On 20th July, 1979, plaintiff's grandfather died. On 5th February, 1982, the family arrangement was executed by various members of the family including defendants herein.

2. In the year 1991, plaintiff filed a suit (8783 of 1991) in the City Civil Court, Bombay inter alia praying for various reliefs including direction to defendant nos. 1 to 5 to render accounts in respect of the said trust and for access to the records and documents of the said trust. Defendant nos. 6 and 7 herein were not parties to the said suit. In the written statement filed by defendant nos. 1, 2 and 5 in the said suit, those defendants denied that any accounts had been maintained by them in respect of the trust. Those defendants relied upon the lease deed alleged to have been executed by plaintiff's grandfather in favour of defendant nos. 5 to 7 herein in respect of the trust property. Those defendants however did not annex copy of the lease deed in the said written statement. In that suit, defendant nos. 1, 2 and 5 to the said suit raised an issue of jurisdiction. The City Civil Court, Bombay therefore framed an issue as under:-

Whether this court has jurisdiction to entertain and try the suit in view of the provisions of Indian Trust Act, 1882.

3. By an order dated 21st June, 1998 passed by the Additional Principal Judge of the City Civil Court, Bombay, it was held that the said suit filed before the City Civil Court, Bombay was in relation to the trust and therefore City Civil Court had no jurisdiction to entertain and try the said suit and this court would have jurisdiction to entertain and try the said suit. Learned 2nd Additional Principal Judge by the said order directed that the plaint be returned to the plaintiff for presentation to the proper court. It was directed that the plaintiff shall present the same within three weeks from the date of the said order. Relevant part of the said order reads thus:-

1. The issue of jurisdiction is answered holding that this Hon'ble Court has no jurisdiction to entertain and try the present suit.

2. In view of what has been stated above, the plaint is returned to the plaintiff for presentation to the proper court. The plaintiff shall present the same within 3

weeks from today. Notice to be given by the plaintiff to the defendants on any application being made to the Hon"ble High Court.

4. It is the case of the plaintiff that by a purported deed of rectification dated 7th February, 2001, defendant no. 1 purported to rectify the Deed of Conveyance dated 1st June, 1956. It is the case of the plaintiff that defendant nos. 1 to 5 had contrary to the terms of the said trust deed, provisions of the Indian Trust Act and contrary to the interest of the beneficiaries including the plaintiff purported to create leasehold right in favour of defendant nos. 5 to 7 herein. On 3rd July, 2001, the plaintiff filed Short Cause Suit (2393 of 2001) in this court against defendant nos. 1 to 5 who were parties to the said suit filed before City Civil Court, Bombay and joined defendant nos. 6 and 7 also as party defendants to the said suit inter alia praying for removal of defendant nos. 1 to 4 as trustees of the said trust and to appoint other persons as trustees, directing defendant nos. 1, 2 and 5 to render true and proper account, for a declaration that the said lease deed dated 20th June, 1979 was illegal, void and of no legal effect, for possession against defendant nos. 5 to 7 in respect of the trust property. In the alternative to prayers (c) and (d), plaintiff also sought for an order and declaration that defendant nos. 5 to 7 were trustees in respect of the trust property and hold the same for the beneficiary of the said trust including the trustees. Plaintiff also applied for an order and decree declaring that the deed of rectification dated 7th February, 2001 was illegal, void and of no legal effect.

5. On 22nd April, 2004, defendant nos. 1, 2, 5, 6 and 7 filed written statement in this suit and raised a plea of limitation on the ground that City Civil Court had returned the plaint to the plaintiff on 21st July, 1998 with a direction to present the same in the proper court within three weeks whereas the plaintiff has filed this suit after lapse of 1056 days and the claim thus made in the plaint is hopelessly time barred. Those defendants also raised a plea that the plaintiff had not taken leave of this court for such a long delay of 1056 days before filing the present suit and therefore the suit is liable to be dismissed. On 1st April, 2011, defendant no. 7 filed this Notice of Motion for rejection of plaint and for other reliefs.

6. Mr. Rege, learned counsel appearing for defendant no. 7 (applicant to the Notice of Motion) submits that though by an order dated 21st July, 1998, City Civil Court, Bombay had returned the plaint to the plaintiff for presentation to the proper court with a direction to file the same within three weeks from the date of the said order plaintiff filed this suit after for more than three years. It is submitted that in this suit, there is no reference to the earlier suit filed by the plaintiff. It is submitted that the prayers (c) and (f) claimed in this suit were not claimed in the said suit filed before City Civil Court, Bombay. Defendant nos. 6 and 7 who were parties to this suit were not parties to the said suit. Learned counsel invited my attention to Order VII Rule 10 and Rule 10(A) of the CPC which reads as under:-

10. Return of plaint.- (1) Subject to the provisions of rule 10A, 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.

Explanation: For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) Procedure on returning--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

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 not 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 the 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 for 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.

7. Learned counsel also placed reliance on Order VII Rule 11 of the CPC which reads as under:-

11. Rejection of plaint.- The plaint shall be rejected in the following cases:--

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

8. Learned counsel for applicant (defendant no. 7) would submit that the plaintiff has not complied with the provisions of Order VII Rule 10(A) by not presenting plaint returned by the City Civil Court in this Court within three weeks from the date of the said order. It is submitted that since the plaintiff did not file any appeal against the said order passed by the City Civil Court, the said order became final and was binding on the plaintiff. Instead of presenting the same plaint in this suit, plaintiff however filed this suit after three years. Learned counsel however fairly submits that this Notice of Motion filed by defendant no. 7 would not fall under Order VII Rule 11. It is submitted that this Notice of Motion for dismissal of suit has been filed on the ground of non-compliance of the provisions of Order VII Rule 10(A). It is submitted that Notice of Motion is filed praying for dismissal of suit in view of the non-compliance of the said provisions by the plaintiff and also the order passed by City Civil Court. Learned counsel placed reliance on the judgment of this Court in case of St. George Shipping Co. Ltd. vs. M.V. "Irene P" a foreign flag vessel and others delivered by the Single Judge of this court reported in St. George Shipping Co. Ltd. Vs. M.v. "Irene P" a foreign flag vessel and others, and in particular paragraphs 18 to 24 thereof in support of his submission that if the court has returned the plaint by referring the provisions of Order VII Rule 10, non-compliance thereof would be not only improper but would also be illegal. Paragraphs 18 to 24 of the said judgment reads thus:-

18. The next objection that was raised by Mr. Pratap was that the plaintiffs has filed a Regular Suit No. 611 of 1998 before the Civil Judge (Senior Division), Bhavnagar, for the same relief, but the Bhavnagar Court ultimately i.e. on 12-10-1998 passed an order holding that it has no jurisdiction to entertain and try the suit and consequently the plaint was returned to the plaintiffs for presentation before the Court having jurisdiction. Mr. Pratap contended that after this order of the Bhavnagar Court, it was obligatory on the plaintiffs to present the same plaint before this Court and it was not open to the plaintiffs to file a fresh suit. He also further contended that from this order of the Bhavnagar Court it was clear that Bhavnagar Court had taken note of the right of the defendant No. 4 as a purchaser of the ship i.e. defendant No. 1 and as such it was obligatory on the plaintiffs, if at all the plaintiffs wanted to file the same plaint to add the defendant No. 4 as defendant or when the plaintiffs chose to file a separate and fresh plaint before this Court to join the defendant No. 4 in the suit from the initial stage but according to Mr. Pratap the same plaint i.e. the plaint returned by the Bhavnagar Court was not presented by the plaintiffs before this Court to avoid joining of defendant No. 4 from the first stage, and this according to Mr. Pratap is a mala fide act on the part of the plaintiffs resorted with a view to obtain ex parte order against the interest of the defendant No. 4.

19. As against this, Ms. Sethna for the plaintiff relied upon the provisions of Order VII, Rule 13 of the C.P.C. Order VII, Rule 13 reads as under;

13. Where rejection of plaint does not preclude presentation of fresh plaint.--- The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

She therefore contended that after the Bhavnagar Court has rejected the plaintiffs' plaint by its order dated 12-10-1998, no illegality was committed by the plaintiffs in not presenting the same plaint in respect of the same cause of action.

20. I am unable to agree to the submissions made by Ms. Sethna. This submission was made by Ms. Sethna firstly because this is not a case where Bhavnagar Court rejected the plaint under Order VII, Rule 11 and secondly because the Order of the Bhavnagar Court about the return of the plaint is under Order VII, Rule 10 of the C.P.C. Order VII, Rule 10 reads as under:-

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.

(Explanation-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.)

(2) Procedure on returning plaint-On returning a plaint, the Judge shall endorse

thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rule 11 of Order VII provides for rejection of the plaint in the following cases, namely, where it does not disclose the cause of action where relief claimed is under valued or where the suit is barred by limitation. This order of rejection of plaint is totally different from order of return of the plaint which is done under Order VII, Rule 10 C.P.C. The order of the Bhavnagar Court will show that after the plaintiffs filed the Suit No. 611 of 1998 before that Court and the defendants appeared and raised objection to jurisdiction and thereafter the said objection to jurisdiction was decided as preliminary issue and consequently order of the return of the plaint was passed preceded by finding that Bhavnagar Court has no jurisdiction to try and entertain the suit and ad-interim order was also vacated. It is therefore clear that the Bhavnagar Court returned the plaint by resorting the provisions of Order VII, Rule 10. If this was so it was not only improper but it was also illegal because Order VII, Rule 10-A makes special provision about the procedure to be followed by the Court ordering return of the plaint. This procedure is very elaborate and it provides where, in any suit, after the appearance of the defendants, the Court is of opinion that the plaint should be returned, it has to intimate its decision to the plaintiffs. After receiving such an intimation, three options have been given to the plaintiff under Order VII, Rule 10(2) to make applications under any of the options. Sub-rule (3) of Rule 10-A further provides that if such an application is made by the plaintiffs and the plaint is returned on the ground that the Court has no jurisdiction then the Court can fix the date for appearance of parties in the Court in which the plaint is proposed to be presented and give to the plaintiff and the defendant notice of such date for appearance. Further provisions of Rule 10-A are about the contingencies where notice of the date of appearance is given.

21. All these provisions of Rule 10-A of Order VII will clearly show that the order of return of the plaint has to be followed by the mandatory procedure of Rule 10-A. This will also make it clear that the plaintiff has no option to file a fresh suit in that eventuality i.e. when the plaint is returned under Rule 10 of Order VII and particularly on the ground of jurisdiction. The submission made by Ms. Sethna that the plaintiffs was entitled to file a fresh suit under Rule 13 of Order VII cannot therefore be accepted.

22. The order of Bhavnagar Court particularly para 13 shows that the defendant No. 1 had brought it to the notice of the Bhavnagar Court that the defendant No. 1 has entered into a Memorandum of Agreement with one Mountain Shipping Ltd., of Gibraltar on 16-9-1998 to sell the vessel m.v. "Irene P" who then resold the vessel to Jai Bharat Steel Company, Bhavnagar, for demolition purpose and the vessel has arrived in Alang, Bhavnagar, on or about 23-9-1998 and the delivery was accepted on 4-10-1998. My attention was drawn on particular order of the Bhavnagar Court by Mr. Pratap in order to show filing of the fresh suit i.e. filing fresh plaint before this Court by the plaintiff (without submitting the plaint

returned by Bhavnagar Court along with the order of the Bhavnagar Court) was a deliberate, intentional and mala fide act on the part of the plaintiffs because the plaintiffs wanted to obtain an ex parte order by not joining M/s. Jai Bharat Steel Company as a defendant.

23. As against this, submissions of Ms. Sethna that because the plaint was required to be filed in the High Court, some changes were required to be made in the plaint and therefore the plaint returned by the Bhavnagar Court could not be presented before this Court, is not at all acceptable. The provisions of C.P.C. i.e. Order VII, Rule 10, 10-A and 13 are absolutely clear. No choice is given to the plaintiff when the plaint is returned under Order VII, Rule 10 or 10-A but to file the returned plaint before the proper Court. Needless to say that if such a returned plaint is to be filed before proper Court, the plaintiff will also have to file the order of that Court which returned the plaint and considering this legal aspect, the submissions of Ms. Sethna and explanation given by her cannot at all be accepted. It is prima facie clear that filing of the fresh plaint and not filing of the returned plaint and not filing the copy of the Bhavnagar Court order was done by the plaintiffs with a mala fide intention of getting orders behind the back of the defendant No. 4 and by keeping the defendant No. 4 in dark about the filing of the suit.

24. It is pertinent to note that in the plaint of the present suit, the plaintiffs has in para 8 given facts about filing of the suit before the Bhavnagar Court but nothing has been stated regarding the order dated 12-10-1998 of the Bhavnagar Court about returning of the plaint for presentation to proper Court. What the plaintiffs have stated that the ex parte ad interim order was vacated on an application of the defendant No. 1 strictly on the grounds of jurisdiction i.e. the Court at Bhavnagar do not possess admiralty jurisdiction so as to detain the defendant No. 1 vessel. This cannot be considered as a true statement of fact by the plaintiffs because Bhavnagar Court not only vacated the injunction but before doing that it ordered the return of the plaint for presentation before the proper Court or before the Court having jurisdiction.

9. Learned counsel for defendant no. 7 submits that plaintiff had no option to file a fresh suit in view of the return of the plaint by the City Civil Court and particularly on the ground of jurisdiction. It is submitted that the plaint returned to the plaintiff by the City Civil Court itself ought to have been presented to this court. No fresh suit could have been filed by the plaintiff.

10. Mr. Rege, learned counsel submits that there is no disclosure about the order passed by the City Civil Court in this plaint. It is submitted that since plaint in this case has been returned by the City Civil Court on the ground of lack of inherent jurisdiction, same plaint was to be lifted by the plaintiff and ought to have been presented in this court and amendment could be made subsequently. It is submitted that under Order VII Rule 10, plaintiff ought to have disclosed in plaint as to when cause of action had arisen and also the fact showing the jurisdiction which has not been done by the plaintiff in this plaint.

11. Mr. Colabawala, learned counsel appearing on behalf of the plaintiff on the other hand submits that in view of the statement made by Mr. Rege, learned counsel appearing for defendant no. 7 that Notice of Motion filed by the defendant no. 7 does not fall under Order VII Rule 11 of the Code of Civil Procedure, 1908, prayer (a) of the Notice of Motion does not survive and has to be rejected. As far as prayer (b) in the Notice of Motion is concerned, it is submitted by the learned counsel that if the case of the defendant no. 7 would have fallen under Order VII Rule 11 or u/s 9(A), the court cannot dismiss the suit at this stage. It is submitted that Order VII Rule 10 or Rule 10(A) does not give any power to the court to dismiss suit at preliminary stage and such issue has to be taken up at the final hearing. In so far as prayer (c) of the Notice of Motion that in the alternative to prayers (a) and (b), this court shall frame a issue of limitation and to decide the said issue as a preliminary issue is concerned, reliance is placed by the learned counsel on the Order dated 7th November, 2003 passed by Mr. Justice V.M. Kanade in Notice of Motion No. 1725 of 2001 filed by the plaintiff. This court after considering section 10 of the Limitation Act, which is applicable to the suit against the trustees and their representatives and after considering the judgment of the Supreme Court, this court considered the issue of limitation raised by defendant no. 7 in the said order. It has been held that though plaintiff in this suit had not given any reasons as to why this suit could not be filed within a period of three weeks, however looking at wording of section 10 of the Limitation Act, in view of non obstante clause, this suit cannot be held to be barred by law of limitation specially when it is a suit which is filed against the other proceedings challenging the lease deed in favour of defendant nos. 3 to 5 who are also trustees of the private trust. Mr. Colabawala, learned counsel appearing on behalf of the plaintiff further submits that in view of rejection of plea of limitation already raised in the said Notice of Motion No. 1505 of 2001 by defendant no. 7, said issue cannot be raised once again in this Notice of Motion. It is submitted that in view of section 10 of Limitation Act, such suit filed by the plaintiff herein shall not be barred by any length of time.

12. Mr. Colabawala, learned counsel appearing on behalf of the plaintiff invited my attention to the averments and prayers made in this plaint and submits that this suit is not against the same defendants who were parties to the suit filed before the City Civil Court, Bombay or for the same reliefs. Defendant nos. 6 and 7 in this suit were not parties to the said suit filed in City Civil Court, Bombay. It is submitted that except prayer (b), which is identical to prayer (d), all other prayers are different. Mr. Colabawala submits that there is new cause of action based on the lease deed which is subject matter of this suit. It is submitted that prayer (a) in this suit is for removal of trustees which relief was not claimed by the plaintiff in the suit filed in the City Civil Court, Bombay. It is submitted that even other reliefs claimed in prayers (c), (d) and (e) were not claimed in the City Civil Court suit.

13. In the alternative to the submission aforesaid Mr. Colabawala, learned counsel for the plaintiff submits that City Civil Court did not have jurisdiction to

return the plaint on the ground that City Civil Court did not have jurisdiction to entertain the subject matter of the said suit. It is submitted that City Civil Court could in such circumstances only dismiss the said suit and could not have returned the plaint for presentation in this court.

14. Mr. Colabawala, learned counsel for the plaintiff placed reliance on the judgment of the Supreme Court in case of Hanamanthappa and another Vs. Chandrashekharappa and others, and in particular paragraphs 2 and 3 in support of his submission that on return of plaint under Order VII Rule 10(A) of Code of Civil Procedure, 1908 by a court, plaintiff can either challenge the said order before an appellate forum or represent to the court having territorial jurisdiction to entertain the suit and the suit would be a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of court fees. Learned counsel would submit that this suit cannot be dismissed on the ground that the averments made by the plaintiff in this suit were not made in the suit filed before the City Civil Court, Bombay. Paragraphs 2 and 3 of the said judgment in case of Hanamanthappa and another (supra) reads as under:-

2. Admittedly, the respondents filed O.S. No. 158/94, in the Court of District Munsiff, Navalgund. On grounds of lack of territorial jurisdiction the plaint was returned for presentation to the proper Court. Accordingly, after making necessary amendment to the plaint the respondents represented the suit, which came to be numbered as O.S. No. 10/91, in Civil Court at Dharwad. The petitioners filed an application under Order VII, Rule 10, C. P. C. for dismissal of the petition on the ground that the plaint was materially altered, without seeking permission for amendment of the plaint as required under Order VI, Rule 17, C. P. C. The High Court dismissed the petition.

3. It is contended by Shri Kulkarni, learned Counsel for the petitioners, that since the petition had been filed with amended averments in the plaint, necessarily it must be treated to be a fresh plaint and not one after representation to the proper Court. We find no force in the contention. The object of Order 7, Rule 10A is that the plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the Court having territorial jurisdiction to entertain the suit. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee as had rightly been pointed out by the High Court. Therefore, it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the Court of District Munsiff, Navalgund. It is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17, C. P. C. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that (here is any error of law committed by the High Court in giving the above direction.

15. Relying upon the aforesaid judgment of the Supreme Court, learned counsel for the plaintiff would submit that judgment of the Single Judge of this Court reported in St. George Shipping Co. Ltd. (supra) is contrary to the principles laid

down by the Supreme Court in case of Hanamanthappa and another (supra) and thus judgment delivered by the learned Single Judge in that matter cannot be relied upon as a precedent.

16. Mr. Colabawala, then placed reliance on the judgment of this Court in case of Hirachand Succaram Gandhi Vs. G.I.P. Railway Company, and particularly paragraphs on page 421 and 422 which reads thus:-

It is urged on behalf of the appellants that Section 80 of the CPC has not been properly construed, that the suits were already instituted in the First Class Subordinate Judge's Court, that the suits in the District Court were merely continuations of those suits and therefore no notice u/s 80 of the CPC was necessary, and that the notice given u/s 149 of the Indian Railways Act was a sufficient notice. In support of the contention that the suit in the District Court was a continuation of the previous suit, reliance is placed on Order XXII, Rule 10, of the Civil Procedure Code, and the decision in Chunnilal v. Abdul All Khan. If the complaints had not been returned by the First Class Subordinate Judge for presentation to the proper Court and the suits had been tried by the First Class Subordinate Judge, it could have been said that the suits were continued against the Secretary of State, who was added as a party, under Order XXII, Rule 10. Jurisdiction is now given to the Subordinate Judge to try suits against State managed railway companies by Bombay Act VI of 1926, but in the present case the complaints were returned for presentation to the proper Court before Bombay Act VI of 1926 came into force. u/s 32 of Bombay Civil Courts Act, XIV of 1869, the First Class Subordinate Judge had no jurisdiction to try a suit in which the Government was a party. See The Secretary of State for India Vs. Narsibhai Dadabhai Patel, . The First Class Subordinate Judge was, therefore, justified in returning the complaints for presentation to the District Court under Order VII, Rule 10. When a complaint is returned for presentation to the proper Court and is in fact presented to the Court having jurisdiction, it cannot be said that the previous suit instituted in a Court having no jurisdiction was continued in the Court which had jurisdiction to try the suit. u/s 26 of the Civil Procedure Code, "every suit shall be instituted by the presentation of a complaint or in such other manner as may be prescribed." Under Order IV, Rule 1, "every suit shall be instituted, by presenting a complaint to the Court or such officer as it appoints in this behalf," and under Rule 2 "the Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits, and such entries shall be numbered in every year according to the order in which the complaints are admitted."

On presentation of the complaints in the District Court, the suits were entered in the register of civil suits of the District Court. The presentation, therefore, of the complaints in the District Court was an institution of the suits u/s 26 and the provisions of Order IV of the Civil Procedure Code. u/s of the Indian Limitation Act, the time occupied in prosecuting the previous suit shall be excluded in computing the period of limitation for the fresh suits instituted in the District

Court. In *Hedlot v. Karan*, it was held that the combined effect of Section 57 of the old CPC (corresponding to Order VII, Rule (10)), and Section of the Indian Limitation Act was at when the plaint was returned to be presented in a Court of competent jurisdiction, the suit was to be considered as instituted on the date of such presentation, and the plaintiff should amend the plaint so as to include all intermediate transactions between the date of the first presentation and the date of the presentation to the competent Court. To the same effect are the decisions in the cases of *Bimala Prosad Mukerji v. Lal Moni Devi* and *Mohidin Rowthen v. Nallaperumal Pillai*.

17. Mr. Colabawala, learned counsel placed reliance on the judgment of this Court in case of *Vshnu Horticultural Pvt. Ltd. and Another Vs. Shampiyani Viniyard Ltd. and Others*, and in particular paragraphs 9 and 13 in support of his submission that when the plaint is returned for the presentation to the proper court and is presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint is presented in that court. After the plaint is presented in the proper court, it cannot be treated as continuation of the proceedings of the court which had no jurisdiction, but a suit would commence from the stage of its institution on the date when the plaint would be presented to the proper court. It is submitted that after the return of the plaint, it is presented in the appropriate court, the suit would have to be treated as a fresh suit and it can proceed in accordance with law from the stage of its presentation subject to the provisions contained in Rule 10(A) of the Order VII of the Code of Civil Procedure, 1908. Reliance is placed on paragraphs 9 and 13 of the said judgment which read as under:-

9. In *Hanamantthappa's* case (supra) a civil suit had been filed. The plaint was returned for its presentation to the proper court. The plaintiff after making necessary amendment in the plaint represented it. The defendant took up the plea that amendment could not be made in the plaint. The Supreme Court held that it is a fresh plaint and the amendment could be made in the plaint presented. In paragraph 3 of the Judgment, the Supreme Court observed thus:-

The object of Order VII, Rule 10-A is that the plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the court having territorial jurisdiction to entertain the suit. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee as had rightly been pointed out by the High Court. Therefore, it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the Court of District Munsiff, Navalgund. It is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17, CPC. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that there is any error of law committed by the High Court in giving the above direction.

(emphasis supplied)

13. The law is now clear. When a plaint is returned for presentation to the proper court and is presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint is presented in that court. In other words, after the plaint is presented in the proper Court, it cannot be treated as continuation of the proceedings of the court which had no jurisdiction, but a suit would commence from the stage of its institution on the date when the plaint would be presented to the proper court. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction, and payment of the court fee. Such a suit cannot be dismissed on the ground that the plaintiff made averments in the plaint, which did not find place in the original plaint presented before the court which had no jurisdiction to entertain the same or which returned the plaint. Similarly a written statement also cannot be rejected on the ground that the defendant made averments in the written statement, which did not find place in the original written statement filed in the suit before it was returned. It is not always necessary either for the plaintiff or for the defendant to seek amendment of the plaint/written statement under Order VI rule 17 of CPC. In short, where, in any suit, after the defendant has appeared, the plaint is returned and it is presented in the appropriate court the suit will have to be treated as a fresh suit and it can proceed in accordance with the law from the stage of its presentation subject to the provisions contained in Rule 10-A of Order VII of C. P C.

18. Mr. Colabawala also invited my attention to the averments made in the plaint and in particular paragraphs 20 to 22 of the plaint in reply to the submissions made by Mr. Rege, learned counsel appearing for defendant no. 7 that there was no reference to the earlier suit filed by the plaintiff, written statement filed by defendants in that suit and the order passed by the City Civil Court, Bombay for return of the plaint in this suit. Learned counsel submits that the said submission made by the learned counsel for defendant no. 7 is on the face of it contrary to the averments made in paragraphs 20 to 22 of the plaint. It is submitted that the plaintiff has not only pointed out in detail about filing of the said suit in the City Civil Court, written statement filed by the defendants in the said suit but has also annexed copy of the order dated 21st July, 1998 passed by the City Civil Court to this plaint. It is submitted that in view of the subsequent events and in view of the plaintiff having obtained certified copy of the lease deed which was not annexed by the defendants to the written statement in the said suit, plaintiff has filed this suit for various reliefs.

19. Mr. Colabawala, learned counsel placed reliance on the judgment of the Division Bench of this court in case of Lt. Col. Anil Bhat, Sucheta Bhat and Nadiya Bhat of Delhi, Indian Inhabitant Vs. Citibank, N.A. (a National Banking Association duly constituted, registered and in existence in accordance with the law of the United States of America now in force), in support of his submission that City Civil Court once having taken a view that suit was barred on the ground that subject matter of the suit could not have been tried by the City Civil Court, such a suit ought to have been rejected and no order for return of the plaint under Order VII Rule 10 could have been passed. Paragraphs 6 to 8 of the said

judgment of the Division Bench reads thus:-

6. Let us consider the submission. An added submission is that even if the Civil Court holds that it has no jurisdiction over the subject matter then its jurisdiction to direct return the plaint is limited to those cases relating to want of territorial or pecuniary jurisdiction. The argument proceeds on the footing that if the Court has no jurisdiction over the subject matter, once it holds that it has no jurisdiction it can pass no further order. In a case of territorial or pecuniary jurisdiction the Court would have jurisdiction over the subject matter, but cannot entertain the proceedings because it does not have territorial jurisdiction or the claim is not within its pecuniary limits.

Such an issue had come up for consideration before the Supreme Court in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, .

The issue before the Supreme Court was whether on a proper interpretation of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the Court of Small Causes, Bombay, had exclusive jurisdiction to deal with the same. Relief sought in a Suit filed before the City Civil Court was that the plaintiff be declared to be in lawful possession and the Defendants had no right to enter into or remain in possession of the shop, injunction and other consequential reliefs. The defence raised was that the question involved in the suit related to possession of the premises as between landlord and tenant and the Court of Small Causes alone will have jurisdiction to entertain and try the suit. On these pleadings a preliminary issue was framed. The City Civil Court held in favour of the defendants and accordingly made an order that the plaint be returned to the plaintiff for presentation to the proper Court. In Appeal before the High Court the Court took a view that the City Civil Court had jurisdiction. Against that order Special Leave to Appeal was preferred from which the Appeal arose. Before the Court the issue was, if the defendant raised the claim or question as to existence of relationship of landlord and tenant as to between the defendant and the Plaintiff the jurisdiction of City Civil Court is ousted even though the plaintiff pleads that there is no such relationship and the only Court which has exclusive jurisdiction to try the suit is the Court of Small Causes. In answering the question the Court relied on the principle as explained in a Full Bench decision of the Allahabad High Court in *Mt. Ananti Vs. Chhannu and Others* . We may gainfully reproduce the said paragraph:

The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If...he frames his suit in a manner not warranted by the facts and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint as framed, would not justify the other kind of court to grant him the relief.... If it is found on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the

court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper Court. If, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety.

Relying on this principle the Court held, that the view taken by the High Court was correct. The proposition which follows is that the power of the Civil Court to direct return of the plaint is limited to those cases where it has no territorial or pecuniary jurisdiction. In case if it has no jurisdiction in respect of the subject matter then it cannot direct return of the plaint. If this principle is accepted on the facts of the case then the Tribunal would have no jurisdiction to direct return of the plaint as it came to the conclusion that it had no jurisdiction over the subject matter.

7. The next question that we are called upon to is to answer the issue is whether the D.R.T., can exercise all the powers of a Civil Court under the Code of Civil Procedure. Return of the plaint is governed by the provisions of Order 7 Rule 10. We have earlier reproduced the relevant provisions of Section 22(2) of the C.P.C. The power to return the plaint is not one such power which the Tribunal and the Appellate Tribunal has been conferred specifically. In the absence of conferring such power, can the Tribunal under the powers conferred on it u/s 22(1) direct return of the plaint. A similar issue had come up for consideration and stands concluded in the case of *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, . The question for consideration before the Court was whether the Tribunal under the RDB Act had jurisdiction to grant ad-interim ex parte order of injunction or stay against the defendant on an application filed by the bank or financial institution for recovery of debt. After considering the provisions the High Court had taken a view that the Tribunal had no jurisdiction to grant ex-parte order. The Supreme Court reversed the order of the High Court and observed as under:

We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a Court of Civil Procedure. Rather, the Tribunal can travel beyond the CPC and the only fetter that is part on its powers is to observe the principles of natural justice.

Considering the language of Section 22 the Court observed as under:

We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers of a Civil Court while trying a money suit. Further, when power is given to the Tribunal to make interim order by way of injunction or stay, it inherits in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of this Court

in Morgan's case which has been quoted above.

We need not refer to in detail the judgment in the case of Morgan Stanley Mutual Fund Vs. Kartick Das, . There the Court was considering Section 14 of the Consumer Protection Act, 1986, which section did not provide for grant of any interim relief or even ad-interim relief and provided only for final relief. The Supreme Court there laid down the principles to be taken into consideration by Court or Tribunal in granting ex-parte injunction. Apart from the other general principles the Supreme Court took the view that the ex-parte order should be granted only under exceptional circumstances and that grant of ex-parte order is not a rule but an exception." Considering the judgment in Grapco Industries Ltd. (supra) the proposition follows that even though there is no specific power conferred on a Tribunal under the RDB Act, considering Section 22(1) the Tribunal though not bound by the procedure laid down in the CPC is not extinguished of jurisdiction to exercise powers of a Court under the C.P.C., rather the Tribunal can travel beyond the scope of C.P.C., but in doing so, the only fetter is to observe the principles of natural justice. The Tribunal therefore, would have jurisdiction to direct return of the plaint but in cases limited to pecuniary or territorial jurisdiction.

8. Having said so the question still remains whether after having come to the conclusion that it had no jurisdiction over the subject matter considering the principles laid down in Raizada Topandas & Anr. (supra) the Tribunal could have directed the return of the plaint. The principle which the Supreme Court accepted in Raizada Topandas & Anr. (supra) was that if a plaint as drafted does not confer jurisdiction on the Court in respect of the subject matter, then it will have no jurisdiction to direct return of the plaint. In such a case it will have jurisdiction limited to the extent of a case of pecuniary and territorial jurisdiction. If this proposition is accepted then the learned Tribunal on determination of the issue as to whether it has jurisdiction over the subject matter could not have directed the return of the plaint.

20. Mr. Colabawala submits that under Order VII Rule 10-A, (i), if the court is of the opinion that the plaint should be returned, it should, before doing so, intimate its decision to the plaintiff before return of plaint. It is submitted that under Order VII Rule 10(A)(2), plaintiff has an option to make an application to the court, specifying the court in which he proposes to present the plaint after its return and to pray that the court may fix a date for the appearance of the parties in that court. It is submitted that no such application was admittedly made by the plaintiff when the City Civil Court passed an order for return of the plaint. There is thus no question of complying with any order passed by the City Civil Court in the said order as canvassed by defendant no. 7. It is submitted that under Order VII Rule 10(A) if such application would have been made by the plaintiff under sub-rule (2) and if so allowed by the court, in that event the plaintiff would not have been permitted to file an appeal against the order returning the plaint. Learned counsel submits that the plaintiff has prayed for

various reliefs which were not prayed in the City Civil Court suit except prayer (b). There is no substance in the submission made by the learned counsel appearing for the defendant no. 7 that the plaintiff ought to have filed an appeal against the said order passed by the City Civil Court.

21. In rejoinder, Mr. Rege, learned counsel appearing for defendant no. 7 submits that all parties to this suit except defendant nos. 6 and 7 are same. It is submitted that though wording of prayers in the plaint filed in this court are different the reliefs claimed in this suit and that suit are identical. Learned counsel placed reliance on the judgment of the Supreme Court in case of Pune Municipal Corporation Vs. State of Maharashtra and Others, in support of his plea that unless order passed by Bombay City Civil Court was set aside, it had course of law. Paragraph 36 of the judgment of the Supreme Court in case of Pune Municipal Corpn. (supra) reads as under:-

36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

The principle must be equally true even where the "brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the Court.

He further states:

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.

22. Mr. Rege, learned counsel made an attempt to distinguish the judgment cited by Mr. Colabawala, learned counsel appearing for the plaintiff on the ground that there was no liberty granted to the plaintiff by City Civil Court to file fresh suit.

REASONS AND CONCLUSION

23. As far as prayer (a) of the Notice of Motion i.e. for rejection of plaint under Order VII Rule 11 is concerned, in view of the submission made by the learned counsel appearing for defendant no. 7 that this Notice of Motion filed by defendant no. 7 does not fall under Order VII Rule 11, prayer (a) is rejected on that submission alone. Even otherwise on bare reading of Order VII Rule 11, plaint cannot be rejected on the ground of alleged non-compliance of order passed by court for return of the plaint under Order VII Rule 10 of Code of Civil Procedure, 1908 by invoking any of the provisions under Order VII Rule 11.

24. As far as prayer (b) for dismissal of suit is concerned, perusal of the plaint filed in this suit indicates that except prayer (b) in this suit, all other prayers were not subject matter of the said suit filed in the City Civil Court. Defendant nos. 6 and 7 who are parties to this suit were not parties to the said suit filed in the City Civil Court. Plaintiff in this suit has also applied for removal of defendant nos. 1 to 4 as trustees, for declaration that lease deed dated 20th June 1979 was illegal, void and of no legal effect has applied for vacant possession from defendant nos. 5 to 7, has applied for declaration that the deed of rectification dated 7th February, 2001 are illegal, void ab-initio and of no legal effect. The cause of action in this suit in my view is different. In my view there is no substance in the submission made by defendant no. 7 that since averments made in this suit were not made in the plaint filed before City Civil Court, this suit is not maintainable on that ground. There is also no substance in the submissions made by defendant no. 7 that in view of the order of return of plaint by the City Civil Court to the plaintiff for presentation before the proper court having jurisdiction, plaintiff ought to have lifted the plaint returned by the City Civil Court and ought to have presented the same plaint in this court without carrying out any amendment. This issue has been already decided by the Supreme Court in case of Hanamanthappa and another (supra) that the object of Order VII Rule 10-A is that plaintiff, on the return of the plaint, can either challenge the said order before appropriate forum or represent to the court having territorial jurisdiction to entertain the suit. It is held that the suit filed afresh should be subject to the limitation, pecuniary jurisdiction and payment of the court fee and therefore it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the court having no jurisdiction. It is held that it is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure, 1908. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. In my view plaintiff was not precluded from filing this plaint with addition of parties and with new cause of action. In my view, these proceedings would not be treated as proceedings in continuation of the proceedings filed before the City Civil Court by the plaintiff but would be a fresh suit subject to limitation, pecuniary jurisdiction and payment of court fees.

25. Learned Single Judge of this Court in case of M/s. Vishnu Horticultural Pvt. Ltd. & Anr. (supra) has followed the judgment of the Supreme Court in case of Hanamanthappa and another (supra) and has held that a suit filed after return of the plaint afresh would be subject to limitation pecuniary jurisdiction and payment of court fees and such suit cannot be dismissed on the ground that the plaintiff made averments in the plaint, it did not find place in the original plaint presented before the court which had no jurisdiction to entertain the same or which returned the plaint. Such suit will have to be treated as a fresh suit and can proceed in accordance with law from the stage of its presentation.

26. In my view, even if an averments made in this plaint were not made in the

earlier suit or the reliefs claimed in this suit were not made in the earlier suit, this suit can not be dismissed on such grounds. The plaintiff is entitled to file a fresh suit for different cause of action.

27. On perusal of the plaint, it is clear that the plaintiff has not only referred to the plaint filed before the City Civil Court, Bombay but has also referred to the written statement filed by the defendants in the said suit and has also annexed copy of the said order passed by the City Civil Court for return of the plaint. In my view, the submission made by the learned counsel appearing for the defendant no. 7 that there was no such reference in this suit about such proceedings is factually incorrect.

28. On perusal of the judgment delivered by the Division Bench in case of Lt. Col. Anil Bhat & Ors. (supra), it is clear that once the court has not returned the plaint on the ground of lack of pecuniary or territorial jurisdiction of that court but had come to the conclusion that the court did not have jurisdiction to entertain such suit on the ground that subject matter of the suit was beyond the jurisdiction of that court, such court could not have passed an order for return of plaint but ought to have dismissed the suit on the ground of lack of jurisdiction. In my view, Mr. Colabawala, learned counsel appearing for the plaintiff is right in his submission that the order passed by the City Civil Court for return of the plaint itself was contrary to the law laid down by the Division Bench of this court.

29. As far as issue of limitation raised by defendant no. 7 on the ground that the plaintiff did not file the suit within three weeks from the date of the order passed by the City Civil Court for return of plaint as directed in the said order, this suit is barred by law of limitation is concerned, this court has already negated such contention raised by defendant no. 7 in the Notice of Motion filed in the same suit by the plaintiff by order dated 7th November, 2003 in Notice of Motion No. 1725 of 2001. This court considered the judgment of the Supreme Court and also section 10 of the Limitation Act and held that in view of section 10 of Limitation Act, this suit was not barred by law of limitation. The said order passed by this court has not been challenged by defendant no. 7. In my view such plea cannot be raised once again in this Notice of Motion and therefore said plea as well as prayer (c) of the Notice of Motion is rejected.

30. As far as judgment of Supreme Court in case of Pune Municipal Corpn. (supra) relied upon by defendant no. 7 is concerned, it has been held by the Supreme Court that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. On perusal of the order passed by the Division Bench of this court in case of Lt. Col. Anil Bhat & Ors. (supra), it is clear that City Civil Court could not have passed order for return of plaint once having come to the conclusion that the subject matter of the said suit was beyond the jurisdiction of that court. In any event, plaintiff was not precluded from filing the fresh suit for a different cause of action. The judgment of the Supreme Court thus placed reliance upon by defendant no. 7 is of no assistance to the defendant no. 7.

31. On perusal of written statement filed by defendant no. 7 in this suit, it is clear that defendant no. 7 had filed written statement in this suit as far back as on 22nd April, 2004 in which those defendants have raised plea of limitation alleging non-compliance of the order passed by the City Civil Court whereas this Notice of Motion has been filed by defendant no. 7 on 1st April, 2011. In my view, in view of such gross delay on the part of the defendant no. 7 in filing this Notice of Motion, no relief can be granted by this Court in this Notice of Motion for dismissal of the suit on the ground setout in the affidavit in support or otherwise.

32. In my view, no case is made out for grant of any reliefs claimed in the Notice of Motion. Notice of Motion is thoroughly misconceived and deserve to be dismissed. I, therefore, pass the following order:-

- (a) Notice of Motion is dismissed.
- (b) Parties are directed to exchange draft issue within four weeks from the date of this order.
- (c) Suit to be placed on board for framing issues after six weeks from today.
- (d) No order as to costs.