(2000) 11 BOM CK 0004

In the Bombay High Court

Case No : Civil Rev. Application No. 477 of 2000

Om Plastic Industries, Dhule and others APPELLANT

Vs

Maharashtra State Finance Corporation, Mumbai and others RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6(iv)(j)
State Financial Corporations Act, 1951 — Section 29

Citation : (2000) 11 BOM CK 0004

Hon'ble Judges : B.B. Vagyani, J

Bench : Single Bench

Advocate : P.R. Katneshwarkar holding for M.H. Patil, for the Appellant; P.K. Joshi for Respondents Nos. 1 to 3 and S.R. Palnitkar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.B. Vagyani, J.—Heard Shri P. R. Katneshwarkar, learned Advocate holding for Shri M. H. Patil, learned Advocate for the petitioners, Shri P. K. Joshi, learned Advocate for the respondents Nos. 1 to 3 and Shri S. R. Palnitkar, learned A.G.P. for respondent No. 4.

2. Rule made returnable forthwith. With consent of the parties, the matter is taken up for final hearing.

3. The petitioners herein original plaintiffs in Regular Civil Suit No. 322 of 1999 had borrowed a loan of Rs. 6,80,000/- from the respondents Nos. 1 to 3 and executed a mortgage deed for Rs. 7,50,000/- in favour of respondents Nos. 1 to 3. The main relief in the suit is declaration to the effect that the mortgage deed is bad in law and, therefore, is not binding on the plaintiffs. The petitioners have paid Court fees of Rs. 460/- only.

4. The respondents herein raised objection with regard to payment of Court fees. According to the respondents, the dues payable to them comes to Rs .15,44,131/-. The respondents issued a notice u/s 29 of the State Financial

Corporations Act, 1951 to the present petitioners. In order to avoid payment claimed in the notice, the plaintiffs filed the suit. According to the respondents, the petitioners should have valued the suit at Rs. 15,44,131/- and should have paid the Court fees on the amount claimed in the notice issued u/s 29 of the State Financial Corporations Act, 1951.

5. It appears that the learned Trial Judge completely swayed away by the objections raised on behalf of the respondents and directed the petitioners (original plaintiffs) to value the suit at Rs. 15,44,131/- and to pay the Court fees thereon within 15 days from the date of order i.e. 6-12-1999. The correctness of this order is under challenge in this Civil Revision Application.

6. The learned Advocate Shri Katneshwarkar forcefully submitted that the impugned order under challenge is manifestly incorrect. The petitioners did not at all ask any declaration with regard to notice issued u/s 29 of the State Financial Corporations Act, 1951. Pointing out this factual aspect, the learned Advocate Shri Katneshwarkar submits that the Trial Court should not have directed the petitioners to value the suit at Rs. 15,44,131/- and to pay Court fees thereon.

7. On the other hand, the learned Advocate Shri Joshi for respondents Nos. 1 to 3 supported the impugned order passed by the Trial Judge.

8. I thoroughly considered the rival submissions. On perusal of the copy of the plaint, it is clearly seen that the plaintiffs have claimed relief of declaration to the effect that the mortgage deed is bad in law and consequently not binding on them. The learned Trial Judge, without taking into consideration the tenor of the suit and the relief''s claimed, accepted the objections raised on behalf of the respondents. The entire approach of the learned Trial Judge is wrong. The question with regard to Court fees must be considered always in the light of the allegations made in the plaint. The learned Trial Judge has completely gone out of track and directed the plaintiffs to value the suit at Rs. 15,44,131/-. In fact, there was no challenge to the notice issued by the respondents Nos. 1 to 13 u/s 29 of the State Financial Corporations Act, 1951. Under the circumstance, the learned Trial Judge should have taken into account the allegations made in the plaint and the relief''s claimed in the suit.

9. A reference with profit can be made to the case of S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, the Supreme Court has held that the question of Court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits.

10. The Single Judge of this Court has also taken a similar kind of view in the case of Art Commercia Advertising Pvt. Ltd., Bombay and Others Vs. Vicco Laboratories, Bombay and Another, . The plaintiffs in the said matter filed suit in the City Civil Court for declaration that the title and format of the T.V. serial "Yeh Jo Hai Jindagi" exclusively owned to them and the defendants had no concern

whatsoever and will have no right to produce or exploit the said serial to another third party under the same title. The consequential relief''s were claimed in the shape of injunction restraining the defendants from any manner making the serial under the same title or any episode belonging to the plaintiff to be displayed, which is already made or in respect of all episode which were to be produced in future.

11. The suit became ripe for hearing. The defendants therein raised preliminary objection with regard to maintainability of the suit on the ground of pecuniary jurisdiction of the City Civil Court. The question was raised as to whether the suit filed by the plaintiffs would fall under the provisions of section 6(iv)(b) read with Article 7 of Schedule I, as contended by the defendants or whether it is clearly covered by the provisions of section 6(iv)(j) of the Bombay Court Fees Act, 1959.

12. While dealing with this question, Single Judge of this Court has observed that it is well recognized and settled that for the purpose of determination of crucial aspect of this nature, it is the recital in the plaint that would be foremost consideration for construction where the defence and other aspect would pale in the background. It is further observed that it would be necessary in the context of this background to examine the frame of the suit. It is observed that the cause of action and the relief''s sought for are enough to resolve this kind of controversy. It is also said that it may be incidentally observed that whole tenor of the plaint is to be taken into account without concentrating on any stray recitals therein and consequently, it is the foundation or pivot of any plaint that should be examined in the search to find out the real nature of the suit and relief claimed and once that clue is discovered, then incidental reference to other aspect in the plaint would become inconsequential.

13. Bearing in mind the well settled legal position as discussed above, the impugned order under challenge cannot sustain in law. The learned Trial Judge has committed illegality. The direction issued by the learned Trial Judge is manifestly incorrect and, therefore, the impugned order is liable to be quashed and set aside.

14. In the result, Civil Revision Application is allowed. The learned Trial Judge is hereby directed to resolve the dispute with regard to valuation of the suit and payment of Court fees afresh as early as possible, preferably within a period of one month from the date of receipt of writ in the Trial Court. Rule made absolute accordingly.

