
(2004) 06 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 4284 of 2003

Vinod Vyankat Narsaiyya Gannu

APPELLANT

Vs

Sunil Poshettiwar and Others

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Bombay Court Fees Act, 1959 — Article 7, 6

Citation : (2004) 4 ALLMR 360 : (2004) 6 BomCR 732 : (2004) 4 MhLj 245

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : P.S. Sadawarte, for the Appellant; N.S. Badhe, for respondent No. 1, M. Rajkondawar and N.H. Shams, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—By way of present petition, the petitioner impugns the order dated 11th September, 2003 below Exh. 16 in Regular Civil Suit No. 806 of 2003, passed by the 4th Joint Civil Judge, Junior Division, Nagpur, thereby allowing the application filed by the respondent Nos. 2 and 3 u/s 9-A of the CPC and held that the court fee payable on the said suit was payable under Item No. 7 of Schedule-1 of the Bombay Court Fees Act, 1959 (hereinafter referred as the said Act) and not u/s 6(iv)(j) of the said Act.

The facts, in brief, out of which the present petition arises are as under :--That, the petitioner herein in partnership with the defendant No. 1 was carrying out the partnership business in the name of M/s P. G. Pharma. The said firm was carrying on the business of carrying and forwarding agency. The said firm was engaged by the respondent Nos. 2 and 3, herein the original defendants No. 2 and 3 as its carrying and forwarding agents.

3. It appears that since there was some dispute between the petitioner-plaintiff and the respondent No. 1/defendant No. 1 with relation to certain business transaction, it was agreed between them that they would dissolve the

partnership. The plaintiff and defendant No. 1, therefore, entered into Memorandum of Understanding dated 7th April, 2003. The relevant term, for the adjudication of the present matter in the said Memorandum of Understanding reads as under :--

"Mr. Sunil Poshattiwar agrees not to have similar business dealings directly or indirectly with the above parties in his personal name or in the name of any concern in which he or his family members are interested till at the deposits and receivables recovered from these companies by M/s P. G. Pharma and the account of Mr. Vinod Gannu is settled. That amount paid to M/s S. P. Pharma as deposit by Mr. Vinod Gannu to be returned to Mr. Vinod Gannu from the funds of M/s P. G. Pharma. As and when M/s S. P. Pharma gives the deposit to P. G. Pharma, the amount will be shared by the partners viz. Mr. Sunil and Mr. Vinod Gannu as per agreement. Mr. Sunil Poshattiwar agrees to fight the existing case for recovery of dues from M/s S. P. Pharma."

4. It is the allegation of the petitioner that in contravention of these terms, the respondent No. 1 herein addressed a letter to respondent Nos. 2 and 3, stating therein, that an amount of rupees ten lacs which was deposited by the said M/s P. G. Pharma, be treated as deposit by Dhanlaxmi Agency. It is the allegation of the petitioner that the said amount of rupees ten lacs was paid by the petitioner, as the petitioner was financing partner. The petitioner, therefore, submits that, by playing a fraud, the respondent No. 1 got transferred the said amount and continued the business with respondent Nos. 2 and 3, in utter violation of Memorandum of Understanding dated 7th April, 2003.

5. The petitioner, therefore, filed a suit being Regular Civil Suit No. 806 of 2003 for declaration and permanent injunction.

6. The main prayer in the said suit reads as under :--

"To declare that the defendant No. 1 is not entitled to carry out C and F agency business of defendants No. 2 and 3 which were being carried out by M/s P. G. Pharma of which plaintiff and defendant No. 1 are partners, either in the name of defendant No. 1 or in any other name or in the name of M/s Dhanlaxmi Medicaments of which he is the sole proprietor or in any other name in which defendant No. 1 or any member of his family is interested, to carry out C and F agency business of defendants 2 and 3 until entire accounts of firm M/s P. F. Pharma are settled amongst its both the partners i.e. plaintiff and defendant No. 1 are settled and defendant No. 1 is discharged from his liability by making entire payments due against defendant No. 1 are made by him."

Almost a similar prayer is made in prayer Clause (ii), thereby seeking a permanent injunction against the respondent No- 1 from continuing with carrying and forwarding business, till the accounts of the petitioner were settled and till the entire amount was paid to him.

7. On being noticed, the respondent Nos. 2 and 3 filed an application u/s 9-A,

thereby praying for framing the issue of jurisdiction and for trying it, as a preliminary issue, before hearing of the Application for Temporary injunction filed by the plaintiff.

8. The learned trial Court, after hearing the Counsel for the parties, allowed the application and directed the plaintiff to make proper valuation of the suit within the purview of Item 7 of Schedule-1 of the said Act and to make proper amendment in the plaint. The learned trial Court further directed that after making proper amendment by the plaintiff in the plaint, the plaint shall be returned to the plaintiff for presentation to the proper Court having pecuniary jurisdiction i.e. The Civil Judge, Senior Division, Nagpur.

9. Being aggrieved by the said order dated 11th September, 2003, the petitioner approaches this Court in its extraordinary jurisdiction under Article 227 of the Constitution of India. Vide order dated 15th December, 2003, this Court had issued notice for final disposal. Hence Rule is issued.

10. Rule is made returnable forthwith. Heard finally by consent of the learned Counsel for the parties. Shri N. S. Badhe, learned Counsel waives notice on behalf of the respondent No. 1, Shri M. Rajkondawar, learned Counsel waives notice on behalf of the respondent No. 2 and Shri N. H. Shams, learned Counsel waives notice on behalf of the respondent No. 3.

11. Heard the learned Counsel for the parties. Shri P. S. Sadawarte, learned Counsel for the petitioner submits that by way of the present suit, the petitioner has only sought for a declaration, that the respondent No. 1 was not entitled to carry on the carrying and forwarding business, until the petitioner's accounts were settled by him. He submits that the suit being for a declaration simplicitor; was liable to be valued as per Section 6(iv)(j) of the said Act and not as per Item No. 7 of Schedule-1 of the said Act. He further submits that the learned trial Court ought to have decided the issue of jurisdiction only on the basis of the averments in the plaint. He submits that on perusal of the averments in the plaint, it was clear that none of the reliefs sought in the suit pertains to a relief, capable of being valued in terms of monetary gain or prevention of monetary loss. The learned Counsel relied on the judgment of the Apex Court in the case of Neelavathi and Others Vs. N. Natarajan and Others, and in the case of Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, .

12. I have perused the impugned order so also the averments made in the plaint and the relevant provisions. Section 6(iv)(j) of the said Act reads as under :--

"6(iv)(j)for other declarations.

In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act [ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees;]

In all suits under Clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation."

Item No. 7 of Schedule-1 appended to the said Act reads as under:--

-----	Number	
Proper fee -----		1 2
3 -----		7. Any other
plaint, application A fee on the amount of the or petition (including memorandum monetary gain, or loss to of appeal), to obtain be substantive relief capable of being valued in prevented, according to scale prescribed under the Article 1. terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid.		

13. From the perusal of the averments made in the plaint, it can be seen that the plaintiff-petitioner has basically rested his claim upon the Memorandum of Understanding dated 7th April, 2003. The entire tenor of the averments show that the petitioner claims that unless and until his accounts are settled by the defendant No. 1, the defendant No. 1 should not be permitted to carry on, with the carrying and forwarding business with defendant Nos. 2 and 3. It is thus clear that under a camouflage of suit for declaration, the petitioner is trying to seek a relief for restraining the defendant No. 1 for carrying on his business, until his accounts are settled and the amount payable to him is paid. It is not disputed that the amount payable to the petitioner by the respondent No. 1, is capable of being calculated in monetary terms. In that view of the matter, I do not find that the learned trial Court has committed any error in allowing the application below Exh. 16 of the respondent Nos. 2 and 3.

14. Insofar as the reliance placed by the learned Counsel for the petitioner in the case of Neelavathi and Ors. v. N. Natarajan and Ors. (cited supra) is concerned, it cannot be disputed that the jurisdiction of the Court has to be decided on the basis of the averments of the plaint and not on the basis of the averments in the Written statement. From the perusal of the plaint itself, it can be seen that, under the pretext of suit for declaration, the petitioner is seeking to prevent the defendant No. 1, from carrying on the business, until his accounts are settled and which amount can be calculated in monetary terms. Therefore, in my view, the said authority would not be applicable to the facts of the present case.

15. Insofar as the judgment of the Apex Court in the case of Commercial Aviation and Travel Company and Ors. v. Mrs. Vimla Pannalal (cited supra), the ratio laid down therein is that in a suit for rendition of account the Court should normally accepts the valuation in the plaint and not try to calculate the valuation as per its own judgment while entertaining the suit. Inasmuch as, the present suit is only for declaration and not for rendition of account, the said authority would also be not applicable to the facts of the present case. The Court in the case of Mohan

Meakin Breweries Ltd. v. Oceanic Imports and Exports Corporation and Anr., reported in 1980 M.L.J. 803 has held that when the suit for declaration and injunction restraining Bank from making payment is filed the said suit would fall under item No. 7 of Schedule-I and not u/s 6(iv)(j) of the said Act. A similar view has been taken by this Court in the case of Berner Shipping Inc., Bombay and Anr. v. Mrs. Kala Ramchandran, reported in 2002(3) M.L.J. 501.

16. In that view of the matter, I find that the learned trial Court has rightly held that in the suit filed by the petitioner, the Court fee liable to be paid is as per item No. 7 of Schedule-1 of the said Act and not as per Section 6(iv)(j).

17. At the end of his submissions, Shri Sadawarte, the learned Counsel appearing on behalf of the petitioner, submitted that the petitioner has already filed a summary suit for settlement of accounts and recovery of money. He submits that the present suit can also be directed to be heard along with the said suit. However, since the issue pertains to the jurisdiction to entertain the suit, which goes to the very root of the matter, I am not inclined to accept the said request. The petition is, therefore, dismissed with no order as to costs. Rule is accordingly discharged.