

ORDER BELOW EXH.68 IN SPL. CIVIL SUIT NO.1140/2016
(Mukund Purandare V/s. Shantaram Kaspate and others)

1] This is application by defendant No.4 under Order-VII, Rule-11(b) of the Code of Civil Procedure for rejection of the plaint on the ground that plaintiff has not valued the suit properly and has not paid requisite Court fees thereon.

2] The application opposed by the plaintiff by filing detail say at Exh.71 with request to reject the application.

3] Considering rival contentions of the parties, following points arise for my determination and I have recorded my findings thereon with reasons as under:

Sr. No	Points	Findings
1	Whether plaintiff has improperly valued the suit?	In negative.
2	Whether plaint is liable to be rejected ?	In negative.
3	What order ?	As per final order

REASONS

AS TO POINTS NO.1 AND 2 :

4] I have heard arguments advanced by both parties at length.

5] The learned advocate of defendant No.4 submits that, plaintiff has illegally valued the suit in view of Section-6(iv)(j) of

the Maharashtra Court Fees Act. He also submits that subject matter of the suit is immovable property having market value more than Rs.50,00,00,000/- as per Ready Reckoner maintained by the Government of Maharashtra. He also submits that considering substantive relief of declaration sought by the plaintiff, suit ought to have valued according to Article-7 of Schedule-I of the Maharashtra Court Fees Act. He also submits that plaintiff has improperly valued the suit therefore suit is liable to be rejected. In support of said contention defendant No.4 relied upon following rulings :

- 1) Alahabad Bank Nagpur V/s. Hemantkumar Omprakash Malpani [AIR 2017 Bombay 208];
- 2) Nilma S. Navalkar V/s. Nipun I. Thakkar [2010(2) BCR 110]
- 3) Vijay Jagdish Chheda V/s. Dimble Vijay Cheda [2018(3) BCR 510];
- 4) Agricultural produce Market Committee V/s. Sahanavas Kasim Shaik, [Bombay High Court];
- 5) Gilda Finance & Investment Ltd. V/s. Natenco Wind Power Pvt. Ltd. [2009(2) BCR 129]
- 6) Medapa, C. J. and T. N. Mallappa J. and B. Vasudevamurthy J. [AIR 1955 Mysore 65]

6] On the other hand learned advocate on behalf of plaintiff submits that substantive relief sought by the plaintiff is regarding declaration in respect of grant of permission by defendants No.15 and 16 in favour of defendant No.17 and the said is not susceptible in monetary relief. He also submits that so far as relief of injunction and compensation is concerned, plaintiff has valued suit properly for all reliefs and paid requisite Court fees thereon.

7] I have considered submissions made on behalf of both parties. As this application is under Rule-11 of Order-VII of the Code of Civil Procedure so in order to decide same, only averments made in the plaint are required to be considered.

8] Admittedly suit is for declaration, permanent injunction and alternatively damages of Rs.5,13,000/-. In the prayer clause, plaintiff has sought relief of declaration that permission granted by the defendants No.15 and 16 in favour of defendant No.17 in respect of suit property is illegal, null and void and not binding. Next relief is regarding injunction restraining defendants No.14 and 17 from raising construction and transferring suit property and handing over possession thereof to any third party. Next relief is also for permanent injunction restraining defendants No.15 and 16 from issuing Completion Certificate in favour of defendants No.14 and 17 and alternatively for damages of Rs.5,10,000/-.

9] In Para No.33 of the prayer, suit has been valued Rs.1,000/- for the relief of declaration and Rs.2,000/- for injunction and Rs.5,10,000/- for alternative relief of compensation. There is no dispute that according to said calculation, plaintiff has paid requisite Court fees.

10] The main question is whether which relief is substantive relief and which relief is ancillary to the substantive

relief. I have gone through relevant Article-7 of Schedule-I. Article-7 provides that for any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief, capable of being valued in 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, and in respect of such relief Court fees on the amount of monetary gain or loss to be prevented, according to the scale prescribed under Article-1 is to be paid. On reading of plaint as whole, it appears that relief of declaration sought by the plaintiff against permission granted to defendants No.15 and 16 and same is obviously not susceptible in the monetary value. Therefore, it appears that valuation of the suit carried out by the plaintiff in Para-33 of the plaint is in accordance with Section-6(iv) (j) of the Maharashtra Court Fees Act and same is appears to be proper.

11] So far ruling relied upon by the defendant No.4 in Alahabad Bank Nagpur cited *supra* is pertaining to the discharge of liability arising out of Deed of Guarantee. So it appears that facts of that case and facts of the case in hand are all together different therefore, ratio laid down in the said ruling do not come to help the defendant No.4. In ruling Nilma S. Navalkar cited *supra*, there was issue regarding specific performance, declaration and to prevent the applicant from re-developing or transferring her right in the suit property. Facts of the case in hand are all together

different therefore, ratio laid down in the said ruling do not come to the help of defendant No.4. In ruling Vijay Chheda cited *supra*, dispute was in respect of maturity amount of Rs.3,79,50,80,807/-. So this ruling is also on different fact than fact in present suit therefore same also do not come to the help of defendant No.4. In the matter of APMC cited *supra*, there was issue of levy and imposed marketing fees and supervision charges in respect of goods imported in the Nasik city. Said suit was valued as per provisions of Section-6(iv)(j) of the Bombay Court Fees Act. However, in Para-5 of the plaint of that suit, there was a demand of refund of amount so calculated by petitioner till date was issued so application u/s.8 of the Bombay Court Fees Act was moved by the defendant. The Hon'ble High Court ordered re-hearing of the application in accordance with provisions of Bombay Court Fees Act. However, in this case there is no any recovery of money therefore ratio laid down in that ruling is not applicable to the case in hand.

12] In next ruling Gilda Finance cited *supra* is in respect of enforcing bank guarantee and settlement of rights in accordance with MOU. Facts of that case are also different than facts in this suit therefore ratio laid down is not applicable to this case. In last ruling Medapa cited *supra* it appears that issue involved in that suit was under provisions of the Mysore Court Fees Act and also facts are different from present case therefore ratio laid down in the ruling is not applicable.

13] Thus, considering aforesaid reasons and discussion, I found that plaintiff has properly valued the suit in accordance with Section-6(iv)(j) of the Maharashtra Court Fees Act and paid requisite Court fees thereon. So I answered negative findings on points No.1 and 2 and proceed to pass following order in reply to point No.3 :

ORDER

- 1] Application is hereby rejected.
- 2] Suit shall proceed further according to law.

Sd/-

(Deepak D. Almale)

3rd Jt. Civil Judge S.D. Pune.

Date : 23/01/2019

CNR No.MHPU02-005056-2016

CEERTIFICATE

I affirm that the contents of this P.D.F. file order is same word for word as per original order.

Name of Steno	: P.K.Kocharekar, Steno (Grade-III)
Court Name	: Shri. Deepak D. Almale
	: 3 rd Jt. Civil Judge Sr. Dvn., Pune.
Date of PDF	: 23/01/2019
Order signed by P.O. On	: 23/01/2019
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