

ORDER BELOW APPLICATION EXH. NO.24

(Passed on this 10th Day of February, 2017)

01] The plaintiff made this application Under Order XXIII Rule 01 sub rule 03 of Civil Procedure Code, 1908 (Act No. V of 1908) for permission to withdraw suit, with liberty to institute before Civil Judge Senior Division, Alibag.

02] It is contended that, the plaintiff filed suit for injunction. He came to know that, value of the suit is beyond jurisdiction of this court. Hence, he preferred present application.

03] The defendant No.01, 03 and 04 filed their Say. They submitted that, suit is for an injunction. The value of the suit claim do not exceed Rs.5 Lac. Hence, the present application is not tenable as suit is maintainable before this Court. Hence, they prayed for rejection of the application.

04] Heard Ld. Adv. Mr. Mohandas for the plaintiff, Ld. Adv. Mr. M. N. Shinde and Ld. Adv. Mrs. M. N. Manohar for defendants.

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05] Ld. Adv. Mohandas submitted that, the plaintiff came to know that, suit is beyond jurisdiction of this Court. Hence, plaintiff intends to institute it before competent Court. He submitted if suit is withdrawn then no prejudice will be caused to the defendants.

06] Ld. Adv. Shinde and Manohar submitted that, there is no specific reason or valuation of suit is mentioned in the plaint. The suit is for an injunction. The suit property is situated within territorial jurisdiction of this Court. Hence, the application is not maintainable.

07] Perused the application and say. Considered submissions of both sides.

08] The present application is governed by Order XXIII Rule 01 sub rule 03 of Civil Procedure Code, 1908 (Act No. V of 1908). Hence, I would like to jot down said provision for profitable reference.

Order XXIII Rule 01 :- Withdrawal of suit or abandonment of part of claim - (1) At any time after the institution of a suit, the plaintiff may as against all or

any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(3) Where the Court is satisfied,

(a) that a *suit must fail by reason of some formal defect*, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

09] It is clear from the language used in Order XXIII that, before allowing application for withdrawal the Court must be satisfied on the formal defect or sufficient grounds.

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10] Upon pondering over the contents of the present application it is clear that, there is only single statement to the effect that, *value of the suit is beyond jurisdiction of this Court*. The plaintiff did not mention how he calculated the valuation and what is the valuation of his suit in order to laid it before Civil Judge Senior Division. Thus, the application lacks elaboration about ousting jurisdiction of this Court.

11] In view of Sec.15 and 16 suit shall be instituted in the Court of the lowest grade where subject matter is situated. *Section 15 and 16 of Civil Procedure Code, 1908 (Act No. V of 1908)* runs as below.

15. Court in which suits to be instituted - Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Suits to be instituted where subject-matter situate -

Subject to the pecuniary or other limitations prescribed by any law.

In view of *Sec.24 of The Bombay Civil Courts Act, 1869* the pecuniary jurisdiction of the Civil Judge Junior Division extends to Rs.5 Lac.

12] It is clear from the application that, the plaintiff did not disclose formal defect or shown sufficient grounds for allowing him to withdraw the suit. The nomenclature of the suit is “Suit for injunction”. It is valued for Rs.1,000/-. The property is situated at village Varase within territorial jurisdiction of this Court. Thus, this Court is competent to try this suit on pecuniary as well as territorial side of the jurisdiction of the suit. Thus, merely because plaintiff intends to institute suit before Civil Judge Senior Division cannot be a ground to allow him to withdraw the suit with liberty to file afresh. Hence, the application needs to be rejected. Hence, I pass following order.

ORDER

1. The application **Exh.No.24** stands rejected with cost.

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(Subhash L. Phule)

Place : Roha. Civil Judge, Junior Division, Roha.
Date : 10.02.2017. District Raigad.