

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO. 19158 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO. 149 OF 2015**

Bindesh Shah ...Applicant
V/s.
Multiflex Laxmi Print Limited ...Respondent

**WITH
INTERIM APPLICATION (L) NO. 14547 OF 2023**

Mr. Tushar Kakalia with Ms. Bhakti Popat for the Applicant/org.
Defendent No.4 in IAL 19158/23
Mr. Mayur S. Sonawane i/b Mr. Paras N. Vira for the Respondent No.1
Ms. Samreen Allana i/b Siddhiqui & Associates for the Applicant in IAL
14547/23/ original Defendant No.3.

CORAM : ABHAY AHUJA, J.
DATE : 24th OCTOBER, 2024

ORAL ORDER :

1. Pursuant to the order dated 11th October, 2024, today when the matter is called out, Mr. Sonawane, learned Counsel appears for the Plaintiff in both the matters and tenders across the bar written submissions on behalf of the Plaintiff viz. the Respondents in the two Interim Applications.

2. Mr. Sonawane, fairly submits that since the present Interim Applications being applications to set aside the *ex-parte* decree would not be proceedings in a pending suit, the same would not stand

transferred to the Bombay City Civil Court. That, therefore, this Court hear the two Applications on merits.

3. Earlier, Mr. Kakalia had submitted with respect to the Interim Application (L) No. 19158 of 2023 that in view of the principle laid down by a Division Bench of this Court in the case of ***Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr¹***, albeit with respect to an earlier notification, that since there was no suit pending before this Court, the question of Application of Section 4A(1) and (2) of the Bombay City Civil Court Act, 1948 would not arise and that therefore, the Interim Application would be maintainable to be heard by this Court.

4. Ms. Allana, learned Counsel appearing for the Applicant in Interim Application (L) No. 14547 of 2023 on behalf of the Defendant No. 3 has also submitted that the said Interim Application is maintainable before this Court and cannot be transferred to the Bombay City Civil Court as no suit is pending in this Court.

5. I have heard and considered the submissions made by the learned Counsel on the maintainability of the two Interim Applications before this Court.

¹ Appeal No. 319 of 2014 dated 25th September, 2014

6. These Interim Applications filed under Order XXXVII Rule 4 or alternatively under Order IX Rule 13 of the Code of Civil Procedure, 1908 (the “CPC”) seek setting aside of an ex-parte decree passed in suit no. 149 of 2015 against the Defendants No. 3 and 4. It is to be noted that both the learned Counsel for the Plaintiff as well as for Defendants No. 3 and 4 have argued in favour of the maintainability of these Interim Applications before this Court although there is a contrary submission by the department as noted in an earlier order.

7. Although detailed written submissions have been filed by both the sides in support of the maintainability of these Interim Applications before this Court, in view of the decision of this Court in the case of *Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr. (supra)*, I deem it appropriate not to dwell on the other grounds in support of the maintainability argued before in as much as I am in agreement with the principle set out in the said decision. The only pertinent distinguishing feature in the facts of the decision of *Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr. (supra)* and this case is that in that case the Interim Application had sought restoration of a suit that had been dismissed for non prosecution, whereas in the facts of the present case, the Interim Applications have

been filed under under Order XXXVII Rule 4 or alternatively under Order IX Rule 13 of CPC to set aside the ex-parte decree. However, despite this distinguishing feature, the fact still remains that there was no suit pending on 28th January 2024 nor is it pending as on date before this Court.

8. Ergo, the fact that this case pertains to an exparte decree passed in a suit and that the case of *Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr (supra)*, dealt with a case where a Suit had been dismissed for non prosecution would in my view, not make any difference at all as in both the situations there is no suit or proceeding pending.

9. The exparte decree has been passed on 31st January, 2020, in Commercial Summary Suit No.149 of 2015. The Interim Application on behalf of the Defendant No.1 has been filed on 31st May, 2023, by Defendant No.3 and by Defendant no.4 around 10/13 July, 2023.

10. Section 4A of the Bombay City Civil Court Act, 1948 as amended by the Bombay City Civil Court (Amendment) Act, 2023 is usefully quoted as under:-

“4A. Transfer of suits and proceedings cognizable under section 3, to City Court.- (1) Notwithstanding anything contained in Section 9 of the Bombay City Civil Court and the Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986, all suits and proceedings cognizable by the City Court under section 3, and pending in the High Court on the date of coming into force of section 4 of the Bombay City Civil Court (Amendment) Act, 2023, not being suits or proceedings falling under clauses (a) to (d) of section 3, shall stand transferred to the City Court.

(2) Any suit or proceeding so transferred shall be heard and disposed of by the City Court and the City Court shall have all the powers and jurisdiction in respect thereof as if it had been originally instituted in that Court.

(3) In any such suit or proceeding institution fees shall be paid, credit being given to any court fee levied in the High Court and cost incurred in the High Court till the date of transfer shall be assessed by the City Court in such manner as the State Government may, after consultation with the High Court, determine by rules.”

11. Section 1(2) provided that the Amendment Act of 2023 would come into force on such date as the Government of Maharashtra appointed by way of notification in the Official Gazette. The Government of Maharashtra, by a notification dated 16th January, 2024, appointed 28th January, 2024, as the date on which the Amendment Act would come into force.

12. Pursuant to the Bombay City Civil Court Amendment Act of 2023, (i) the pecuniary jurisdiction of the Bombay City Civil Court was

increased from Rs.1 crore to Rs.10 crore; and (ii) all suits and proceedings pending on the file of this Court would, as a result of this increase, stand transferred to the Bombay City Civil Court on and from the appointed dated of 28th January, 2024.

13. As noted above, the Interim Applications seek setting aside of the decree dated 31st January, 2020, by which the Applicants (who were the Defendants No.3 and 4 in the Suit) were jointly and severally, along with Defendant No.2 held liable to pay the Plaintiff a sum of Rs.6,25,14,221.80 along with interest on the principal amount of Rs.4,03,52,190/- at the rate of 12% per annum from the date of the suit til realization. The Interim Applications as noted above have been filed under Order XXXVII Rule 4 or alternatively under Order IX Rule 13 of the CPC.

14. The effect of the Amendment Act of 2023 is that with effect from 28th January, 2024, all suits and proceedings pending on the file of this Court having valuation of upto Rs. 10 Crs would stand transferred to the Bombay City Civil Court.

15. In the decision of *Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr.(supra)*, the Division Bench of this Court had considered the impact of the earlier notification enhancing the pecuniary limits upto 1 Cr and considered the provisions of the Bombay City Civil Court Act as well as a similar notification and come to a conclusion that only if proceedings were pending in this Court that the question of transferring them would arise, however, where there were no proceedings pending, the question of transferring non-existing proceedings could not arise and therefore, the provisions of Section 4A (1) and (2) would have no application. In the facts of the present case as well, the two Interim Applications have been filed for setting aside the ex-parte decree dated 31st January, 2020 after which no suit or proceeding has been pending on the file of this Court. The suit was not pending on the file of this Court on 28th January, 2024, as the same has stood decreed in terms of the ex-parte decree. There was nothing to be transferred on 28th January, 2024. It is only upon the Interim Applications being allowed that the proceedings can be transferred as contemplated under Section 4A of the Bombay City Civil Court (Amendment) Act, 2023. Accordingly, following the principle laid down in the case of *Bharat Babulal Makwana and Ors Vs. Narottam V. Sheth and Anr.(supra)* I have no hesitation in holding that the provisions of Section 4A of the Bombay City Civil Court Act, 1948 as amended

by the Amendment Act, 2023 would not apply to the facts of this case and as there is no suit or proceeding pending before this Court as on 28th January, 2024 to be transferred to the Bombay City Civil Court.

16. Accordingly, the two Interim Applications are held to be maintainable. It goes without saying that in the event the *ex parte* decree is set aside after hearing the parties on merits, then the Suit would have to be dealt with in accordance with the provisions of Section 4A of the Bombay City Civil Court, 1948 as amended in 2023 Act and would need to be dealt with accordingly.

17. Learned Counsel for both the sides submit that the pleadings in the two Interim Applications are complete. Accordingly, list the two Interim Applications for hearing on **19th December, 2024**.

(ABHAY AHUJA, J.)