

: MHSCA2-003272-2013

IN THE COURT OF SMALL CAUSES, MUMBAI

ORDER BELOW EXHIBIT NO.31

IN

L.C. SUIT NO. 210/249 OF 2013

New India Assurance Company Limited]...Plaintiff.

V/s.

Edelweiss Financial Services Limited]
(Formerly known as Edelweiss Capital Limited)]... Defendant.

Navdeep Vora & Associates, Ld. Advocate for the Plaintiff.
M/s Thakore Jariwala & Associates, Ld. Advocate for Defendant.

Coram : Smt.J. S. Jagdale, Judge
Court Room No.20
Date: 24/10/2019

ORAL ORDER

Read application and say filed overleaf of application by the plaintiffs. Heard arguments of both the learned advocates. Perused record and roznama.

2. This is an application by defendants for framing additional issue on the point of jurisdiction. It is contended that, the plaintiff's have prayed for a sum of Rs.13,96,366/- towards arrears of unpaid Municipal property taxes with 18% interest till date of filing of the suit. Originally this suit was filed before the Hon'ble High Court, but due to enhancement

of pecuniary jurisdiction, the said suit transferred to the Hon'ble City Civil Court in year 2012 and numbered as SC Suit No.2894 of 2012. The defendants appeared and filed written statement. Thereafter, the plaintiffs had filed Notice of Motion No.2957 of 2013 for return of the plaint, as the defendants had raised objections under Section 9A of the CPC. Accordingly, as per order dated 11/10/2013, plaint was returned to the plaintiffs along with all notice of motion for filing before the proper forum. Thereafter, said suit has been filed and numbered as present suit.

3. On 28/01/2014, the defendants filed written statement and on 18/06/2015 issues are framed. The defendants have raised objection regarding maintainability of the present suit apart from valuation made by the plaintiffs as well as about jurisdiction. The defendants have raised objection that there was no perse relationship of licensor or licensee between the parties and therefore this court had no jurisdiction under Section 41 of PSCC Act. The plaintiffs have not pleaded about these facts. Said issue is not framed while framing issues. This issue is necessary to be framed. Therefore, the defendants have prayed to allow present application.

4. The plaintiffs have resisted the application in their say filed overleaf. The plaintiffs have stated that they have not received affirmed copy of application. The plaintiffs have prayed to reject the application.

5. Ld. Advocate for the defendants submitted that, the plaintiffs have pleaded in para no.21 of plaint (Ex.1) that the defendants have handed over possession to the plaintiffs on 14/06/2011. It is further

submitted that, the plaintiffs have claimed municipal taxes and interest but license has come to an end so this court has no jurisdiction under Section 41 of PSCC Act. Furthermore, there is no relationship of licensor or licensee after termination of leave and license agreement between the plaintiffs and the defendants. Recovery of municipal tax is not subject matter of said leave and license agreement. The defendants have pleaded in para no.3 and 4 of their written statement (Ex.18) about liability of property taxes of the year 2010, 2011 adjudicated in order dated 13/06/2016 in WP No.182 of 2012. Thus, it is clear that, the said issue as well as issue of jurisdiction is raised in the written statement. There are specific pleadings in written statement of defendants on this factum.

6. Considering pleadings of both the parties and issues (Ex.14), it will be proper to frame additional issue as the defendants have raised as the issue of law touching to the aspect of jurisdiction of this court. Therefore, it will be proper to allow this application. Accordingly, I pass following order;

ORDER

1. Application is allowed.
2. Accordingly, I proceed to frame additional issue.
3. Costs in cause.

Date : 24/10/2019

(J. S. Jagdale)
Judge, C.R. No.20