

(2003) 03 BOM CK 0121

Bombay High Court

Case No: Civil Revision Appln No. 125 of 1997

Manmohan Muttappa
Attavar, N. Krishna
Bhat, Dr. K.P.
Vasanth Shetty, Dr.
K.R. Bhandary and Dr.
Vishnu Swarup

APPELLANT

Vs

Harendra Sakarlal
Parikh, Mrs. Martha
Mamtha Attavar,
Santosh Manmohan
Attavar, Ms Rashmi
Manmohan Attavar,
N.N. Prashant and Ms
Kaveri N. Krishna Bhat

RESPONDENT

Date of Decision: March 31, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 15, 16, 17, 18
- Court Fees Act, 1870 - Section 7
- Suits Valuation Act, 1887 - Section 9

Citation: (2003) 3 ALLMR 98 : (2003) 6 BomCR 423

Hon'ble Judges: R.G. Deshpande, J

Bench: Single Bench

Advocate: Birendra Saraf and S. Tandon, instructed by Mustafa Motiwala, for the Appellant; D.S. Parikh, instructed by S.S. Balsari, for the Respondent

Judgement

R.G. Deshpande, J.

The order dated September 18, 1996 passed in Short Cause Suit No. 4419 of 1993 by the 2nd Additional Principal Judge, city Civil Court, Bombay is the subject matter of

challenge in this Civil Revision Application. By the judgment under challenge the learned Judge on the preliminary issues, held that he has pecuniary jurisdiction as also the territorial jurisdiction to entertain and try the suit.

2. The relevant and necessary facts are as under:-

Present Petitioners are original defendant Nos. 1, 5, 9, 10 and 11 respectively, Respondent No. 1 Harendra S. Parikh is the original plaintiff whereas rest of the Respondents are original defendant Nos. 2, 4, 7 and 8 respectively.

3. Respondent No. 1, plaintiff and original defendant Nos. 1 to 5, 9, 10 and 11 on the basis of Deed of Partnership were engaged into a trade under the name and style as "Indo American Exports" having its head office at Bangalore.

The nature of the business being cultivation and dealing in agricultural and horticultural plants and seeds in India and abroad.

4. The document of partnership deed, indicated that the original defendant Nos. 1 and 5 happened to be managing partners and its office at Bangalore. It is also clear from the terms of deed of partnership that accounts were to be maintained at the principal office i.e. at Bangalore and that too by the managing partners. By the passage of time, children of the managing partners have been introduced as members in the partnership firm. These much facts are clear to indicate that plaintiff definitely was not the managing partner in the firm, though it is also not disputed on the record that the plaintiff definitely has 7.5% share. Necessary it is also to mention that the partnership firm has its office at Bombay and management of the said office was being looked after by the plaintiff.

5. Because of certain differences and disputes between the partners, the plaintiff tendered his letter of retirement from the partnership firm on May 29, 1993. It was definitely forwarded to the head office at Bangalore and as it is also clear from the record which appears to have been accepted in Bangalore itself. To be precise, on June 29, 1993 original defendant No. 5 appeared to have written a letter to the plaintiff claiming certain dues from him. However, since matter appeared not to have been settled. Respondent No. 1 initiated Short Cause Suit No. 4419 of 1994 which was filed in the City Civil Court, Bombay claiming a declaration to the effect that the plaintiff had 7.5% share and further that he retired from the partnership firm on May 29, 1993. Plaintiff further sought for relief of rendition of accounts and a decree in pursuance thereof for the payment of the amount to the plaintiff on such settlement whatsoever be found due to the plaintiff from the firm. Allegations are made by the plaintiff that huge amounts were siphoned out by the Respondents from the partnership firm and further that there appeared to be considerable mismanagement in the business of the partnership firm.

6. During the pendency of the Suit, Notice of Motion was also taken out by the plaintiff praying for ad-interim reliefs in terms of prayer clause in that Notice of

Motion. Plaintiff along with his application filed an affidavit in support of the contents thereof indicating several figures of amounts which according to the plaintiff was due to him from the firm including an amount of Rs. 2,50,000/-, Rs. 20,000/-, Rs. 12,000/-, Rs. 14,861/- and Rs. 1533/-. A reference to this is made in the affidavit of the plaintiff dated October 6, 1993.

7. On notice the present Appellants original defendants put in their appearance and filed their defence by way of their reply, and initially raised a preliminary objection as regards the very territorial jurisdiction as also the pecuniary jurisdiction of the Court at Bombay. It is contended by the Appellants that the plaintiff valued the suit at Rs. 5,000/- only for the purposes of Court fees and jurisdiction which according to the Appellant was definitely incorrect and according to the appellants it was intentionally under valued. According to the Appellants, if the contents of the plaint are read minutely and in its proper perspective, it reveals that claim of the plaintiff was much more than what the plaintiff had shown by way of valuation. Even on the plain reading of the contents of the plaint it could conveniently be gathered, and even according to the plaintiff himself, he was entitled to receive in any case an amount more than Rs. 2,50,000/-. In view of these precise facts, it was the defence raised by the present Appellants that the suit was hopelessly under valued. If appropriate valuation would have been made, then, even if the exact share which ultimately would be found due to the plaintiff, even in that case, the present suit could have been in any case valued for an amount not less than Rs. 50,000/-. If the suit would have been properly valued, only on the basis of the so called claim made in the plaint, even then it would have been definitely out of the pecuniary jurisdiction of the learned Judge of the City Civil Court, Bombay.

8. Another objection raised by the present Appellants through their affidavit was regarding the territorial jurisdiction of the Court to entertain the suit. Contention of the Appellants is that the principal office of the partnership firm is situated at Bangalore. Entire business of firm is being controlled from Bangalore managing partners are at Bangalore, accounts of the company are maintained only at Bangalore, accounts are tendered at Bangalore, the agreement itself was entered into at Bangalore and is also registered at Bangalore. Merely because a office happened to be in Bombay of which the present Respondent No. 1 - original plaintiff happened to be a person looking after the business, according to the Appellants would not have been sufficient to confer a territorial jurisdiction on City Civil Court, Bombay. Along with other defences raised in the reply affidavit since preliminary objections were raised pertaining to maintainability of the suit, the Appellants sought that no interim relief whatsoever be granted to the Respondent-plaintiff. The interim relief which was already granted, the Appellants earnestly sought for its vacation in view of the reply and preliminary points raised by the Appellants.

9. The learned Judge of the City Civil Court, Bombay who dealt with the matter, in view of the defence raised, framed the preliminary issues on February 2, 1996, the

issues being:

- i) Do the defendants 1, 5, 9, 11 prove that this suit is beyond the pecuniary jurisdiction of this Court?
- ii) Do the defendants prove that this Court has no territorial jurisdiction to entertain and try the suit?

10. In support of their contentions, parties, no doubt adduced evidence in the nature of affidavits. The learned Judge of the City Civil Court, Bombay after scanning the whole record reached to the conclusion that the City Civil Court at Bombay had both pecuniary as well as territorial jurisdiction to entertain and try the suit. The learned Judge for arriving at this conclusion has given very many reasons to which necessary, reference will be made in this judgment at appropriate places. I however wish to deal with the 2nd point first pertaining to territorial jurisdiction.

11. While deciding issue No. 2, regarding territorial jurisdiction, the learned Judge observed that the defence put-forward by the defendants that it was virtually a suit for dissolution of partnership and for the purpose of determination of the territorial jurisdiction, according to the defendants, points which the learned Judge should have considered were, the place of entering into partnership agreement, principal place of business of partnership, place where the books of account of partnership being maintained indicating that the place where the plaintiff's resigned from partnership firm and the place where the said resignation was accepted by the firm. This particular mode of averments of the Appellants-defendants appeared to have not weighed with the learned Judge of the trial Court. In fact the above referred points according to the Appellants were the only relevant points to decide the territorial jurisdiction of the Court. According to the Appellants, there was no dispute that the partnership deed dated April 26, 1983 and subsequently added partnership deed dated April 1, 1991 were definitely executed at Bangalore itself. Principal place of business of the firm happened to be Bangalore. All the books of accounts were being maintained at Bangalore and if at all accounts at any other place i.e. at any other branch of the firm were there, the account of the said branches were also to be maintained and retained at Bangalore but for the convenience of the administration the sub office might have been allowed to retain the copies of the accounts sent to Bangalore. According to the Appellant, when each and everything regarding to the business was being looked after from, and maintained at Bangalore there was hardly any scope for the learned Judge to come to the conclusion that the learned judge of the City Civil Court, Bombay only had jurisdiction to entertain the present suit.

12. In support of his contention the defendant No. 1 argued before the learned Judge of the trial Court that when according to the partnership deed itself all necessary books of accounts and vouchers were regularly maintained at the office at Bombay and as plaintiff Respondent was managing the business at Bombay

merely because the original accounts were being sent and retained at Bangalore would not divest the court at Bombay of this jurisdiction. It is further contended that if there are branches at various places and business of the firm is being done and carried out at various places where the branches are there court at anyone place where branches are there had the jurisdiction to entertain the suit much less of the present nature. In support of this contention the plaintiff also relied upon a decision of a Privy Council contending that in a suit for dissolution of partnership and accounts of a partnership firm, the court in whose jurisdiction the partnership accounts were maintained, the central and/or principal place of business as also the place where the books of accounts of partnership were kept, that Court would be the court in which the plaintiff's cause of action could be said to have arisen and consequently that would have the territorial jurisdiction. Before the learned Judge of the trial Court, it is contended by the plaintiff that since business was also being done from Bombay office and accounts of that office were being maintained at Bombay, though the originals were forwarded to the principal place of business i.e. at Bangalore, by no stretch of imagination oust the jurisdiction of the Court at Bombay.

13. The learned Judge after appreciating the arguments and documents on record, however reached to the conclusion that the City Civil Court, Bombay has territorial jurisdiction to entertain the suit.

14. On the point of pecuniary jurisdiction the learned Judge observed that it was not at that stage of the suit possible for the plaintiff to have valued the suit exactly so as to find out as to where the plaintiff was supposed to file the suit either before the other competent forum and not the City Civil Court, Bombay who had limited pecuniary jurisdiction. The learned Judge of the court below while dealing with this aspect, no doubt dug out the reasons that when the accounts were yet to be struck, when the accounts were yet to be rendered and when the exact amount of the share was to be drawn, it would have been impossible for the plaintiff to have valued the suit exactly so as to enable the Court to decide otherwise so far as the regard pecuniary jurisdiction was concerned. The learned Judge appeared to be of the opinion that the valuation of the suit at Rs. 5,000/- could not be said to be intentional undervaluation, nor would it be arbitrary or whimsical valuation. From the tenor of the order passed by the learned trial Judge, it is apparent that the learned Judge appeared to be labouring under a notion that in any case, ultimately when dissolution would take place and accounts are rendered at that time the Respondent plaintiff definitely would be made liable to pay the court fees in accordance with law.

15. The defence which was raised by the present appellant-defendants that the suit was intentionally undervalued so as not to compel the Respondent to go to other forum for filing the suit. Another contention which was made by the Appellants-defendants was that the plaintiff by undervaluing the suit avoided to

make payment of court fees thereby causing substantial monetary loss to the State and further that in spite of there being sufficient material before the plaintiff himself, he in most arbitrary manner undervalued the suit just at Rs. 5,000/-. However the arguments of the Appellants appeared to have not weighed with the learned Judge of the trial Court who rejected the same by his order dated September 18, 1996.

16. It is this order of the learned trial Judge which is being assailed before this Court by the Appellants. The order passed by the learned Judge of the trial Court is tried to be defended by the Respondent No. 1.

17. Mr. Saraf, learned Advocate appearing on behalf of the Appellants contended that so far as regard the point of territorial jurisdiction is concerned, the learned Judge of the Court below committed an error in not appreciating the evidence on the record in proper perspective. According to Mr. Saraf, not even a part of the alleged cause of action arose within the territorial jurisdiction of Court at Bombay. He contended that the suit was for partnership account and declaration. According to Mr. Saraf, when admitted position was, that the agreement had taken place and was entered into at Bangalore which admittedly as happened to be a principal place of business of the firm, the question of getting the jurisdiction to Bombay Court was definitely a misnomer. Mr. Saraf contended that if the deed of partnership is looked into, it clearly reveals that that books of accounts of partnership were to be maintained at Bangalore and Bangalore only. The accounts of Bombay office were also to be forwarded to Bangalore though no doubt copies thereof were allowed to be retained at Bombay. According to Mr. Saraf, retention of copy or copies of the accounts of firm so far as accounts related to Bombay office only would not mean that accounts were to be maintained at Bombay also. Tendering the resignation by the plaintiff i.e. present Respondent is admittedly at Bangalore and acceptance thereof was also at Bangalore. The affairs of firm were being controlled from Bangalore and managing partners of the same are having their office at principal office at Bangalore. Mr. Saraf therefore tried to convince the Court by pointing out that the cumulative effect of all the aforesaid facts would render one and only one conclusion that no cause of action for initiation of the suit at Bombay arose, conferring the jurisdiction on the Court at Bombay.

18. In support of his above referred contentions, Mr. Saraf invited my attention to Clause 11 of the partnership deed which in unambiguous manner indicated that all the necessary and proper book of accounts and vouchers were to be maintained regularly by the managing partner at principal place of business and/or at such other places as the partners may determine. Mr. Saraf further argued that there is material brought on record to show that partners had agreed to maintain the books of account at no other place than Bangalore. It is pertinent to note that if the case of the Respondent is minutely read, it is not even his case that books of accounts were being maintained at Bombay at any time, except keeping the copies of the accounts

of Bombay office and accounts were being sent to Bangalore. The fact remains that accounts were at no point of time maintained and retained at Bombay. According to Mr. Saraf, no doubt, in the partnership deed there is an enabling clause which otherwise enabled the parties to maintain the accounts at its branch offices as would be decided by the partners. However, at the same time, it is to be kept in mind that no such decision was taken by the firm to maintain the accounts at any other business place, than Bangalore.

19. Mr. Saraf, learned Advocate further argued that the accounts to which reference is made in fact are supposed to be the final accounts of the firm and not some petty accounts which otherwise might have been maintained by the office at Bombay, strictly relating to the transactions of the Bombay which also ultimately were no doubt to be forwarded to the principal place of business i.e., Bangalore, retaining copies thereof at Bombay. In addition to the above said argument Mr. Saraf heavily relied on other factual aspect of the matter ie. the partnership firm was assessed to the Income tax at Bangalore only. Even as regards other dues to the Government were being assessed at Bangalore itself, and it was naturally because the accounts were being maintained at Bangalore. Keeping in view these points, it will have to be seen as to whether was it possible for the learned Judge of City Civil Court. Bombay to have entertained the suit assuming territorial jurisdiction.

20. As against this argument of Mr. Saraf, Mr. Parikh, the learned Advocate appearing on behalf of the Respondent-plaintiff argued that tendering of resignation by the Respondent at Bangalore or principal place of business of the firm being at Bangalore or accounts were being maintained at Bangalore or taxes levied against the firm at Bangalore would not by itself oust the jurisdiction of the Court at Bombay. Mr. Parikh, learned Advocate on behalf of the Respondent vehemently contended that once it is established on record that the partnership firm was having its office at Bombay and since the Respondent was the person in charge looking after Bombay office work, merely because the accounts of Bombay office were being forwarded to Bangalore, would not mean that the Court at Bombay would lose the jurisdiction over the matter. According to Mr. Parikh, it was the choice of the plaintiff where to institute the suit, if the institution could be said to be maintainable at both places. According to Mr. Parikh, no doubt Bangalore court also had territorial jurisdiction to have entertained the suit but, that itself would not oust the jurisdiction of the Court at Bombay. Mr. Parikh in support of his contention further argued that ouster of the jurisdiction of the Court has not to be readily accepted unless it is so ousted by a specific provision of the law or by implication. According to Mr. Parikh in the present matter, it would be incorrect to hold that the Court at Bombay had no jurisdiction to entertain the suit of the present nature.

21. In support of his contention, Mr. Parikh further invited attention of this Court to the fact that the Respondent-plaintiff is resident of Bombay and the suit could have been filed at the place where the plaintiff resides. According to Mr. Parikh,

therefore, no error is committed by the learned Judge of the trial Court in entertaining the suit at Bombay.

22. In support of their rival contentions, the learned Advocate on both sides relied on very many reported judgments on the point. Mr. Saraf, learned Advocate for the Appellants invited my attention to a decision in 1864 Weekly Reporter page 35 Sets Luchmeechund Radhakishen and Gobind Doss v. Sets Zorawur Mull and Ors. Mr. Saraf, heavily relied on this judgment. The point was, as to whether the Court at Rutlam had the jurisdiction to entertain the suit or the Court at Muttra. The facts indicate that a contract was entered into at Rutlam for the establishment of a partnership firm to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. The facts disclosed that major transactions were being carried on from Muttra, books of accounts were being maintained at Muttra. The partners would have recourse to those books for the purpose of ascertaining the state of the transactions between them was at Muttra and if at all anything was due or was to be recovered from the parties also would have been at Muttra itself. In view of this specific position Their Lordships held that appropriate court having jurisdiction was Muttra only. I feel it appropriate at this stage to reproduce paragraph of the said judgment, which in my opinion, definitely would cover the point which is being considered and decided in the present matter:

"Now, where can it be said that the cause of action, supposing it exists for that balance, properly arose? Muttra was undoubtedly the central place of business, at Muttra the partnership books were kept, at Muttra the partners would have recourse to those books for the purpose of ascertaining the state of the transactions between them; and if, in the result, a balance was due to the appellants, Muttra would be the place where the payment of that balance would have to be made. It therefore appears clear to their Lordships that, if there is a cause of action arising out of the balancing resulting from these partnership transactions, that cause of action arose at Muttra.

23. Mr. Saraf in support of his contention also invited my attention to yet another decision reported in [Subodh Kumar Gupta Vs. Shrikant Gupta and Others](#), . The facts of that case are, a partnership firm was registered at Bombay an its registered office was at Bombay and its factory at Mandsaur. Two defendants in that matter who happened to be the partners in the firm were resident of Mandsaur while third one i.e. plaintiff was at Chandigarh, where there was an office of the firm. It is also clear from the facts that so far as the agreement of dissolution of partnership was executed at Bhilai, and distribution of assets were to be made in pursuance of that. Plaintiff in that case filed a suit in the Court at Chandigarh for dissolution of the firm and rendition of accounts on the ground that the defendants at Mandsaur misappropriated partnership fund and that the agreement was void and had to be ignored. While dealing with the matter. Their Lordships of the Supreme Court

specifically observed that Chandigarh Court had no jurisdiction particularly as no part of the cause of action arose there. Their Lordships further observed that there did not appear any material on the record to indicate that there was a branch office of the firm at Chandigarh. Even otherwise it would not have conferred the jurisdiction on Court at Chandigarh. In view these decisions, according to the learned Advocate for the appellant it is only the Court at Bangalore and not Bombay who could have been said to have jurisdiction to entertain the suit.

24. Mr. Saraf further referred to the provisions of Sections 15 to 20 of the Code of Civil Procedure, while dealing with the subject of jurisdiction of the Court or place where the suit should be instituted. Section 15 of the CPC is as under:-

Section 15: Court in which suits to be instituted - Every suit shall be instituted in the Court of the lowest grade competent to try it. Section 16 thereof deals with the suit suits to be instituted where subject matter situate.

Section 17 deals about the suits for immovable property with which we are not concerned here. Section 20 is the material Section for the purpose of decision of the preset suit. Section 20 is sub divided in 3 clauses viz. (a), (b) and (c), alongwith explanation thereof. Clause (a) and (b) deals with various situation determining the jurisdiction of the Court depending on defendants in the suit and their resident. Sub-clause (a) and Clause (b) of Section 20 specifically talks about the residence of the defendants and carrying on business by the defendants. So far as regards the case in hand is concerned, there is no dispute that he defendants in the present suit are resident of Bangalore and doing their business at Bangalore. Sub-clause (c) of Section 20 deals with situation conferring the jurisdiction on the Court depending on cause of action wholly or in part where it arises. Mr. Saraf, learned Advocate for the Appellants heavily relied on these provisions and contended that the Appellants are resident of Bangalore and conducted the business from there only.

25. Mr. Parikh, learned Advocate appearing on behalf of the respondent invited my attention to two decisions on the point of territorial jurisdiction. Firstly, Mr. Parikh, invited my attention to a judgment in AIR 199 Allahabad 402(2) Niranjan Singh v. Kundan Singh and Ors. From the judgment cited above it is clear that Their Lordships of Allahabad High Court have taken a specific view that in absence of proof of an agreement that accounts should be taken elsewhere a suit for the taking of accounts of a partnership should be instituted in the Court within whose jurisdiction the business of the partnership was carried on. The facts of the case were that the parties to he suit had entered into a partnership to carry on business at a place called Jawalguin in the district of Jallaund which was within the jurisdiction of the Court of the subordinate Judge at Jhansi. Because the partnership was required to be dissolved, the claim as regards the accounts of partnership were to be taken and balance which might have been found due was to be distributed amongst the partners. The suit was instituted in the court at Jhansi, which was objected to by the defendants. The objection was the contract between the parties

that the final accounts should be rendered at Cawnpore and payments should be made there and that the Jhansi Court had therefore no jurisdiction to entertain the suit. The trial Court in that case dismissed the suit on that count which was upset by the first appellate Court and had remanded the matter. Their Lordships of Allahabad High Court on the basis of the facts of the case opined that since the business was carried on within the jurisdiction of the Court at Jhansi, the cause of action arose within the jurisdiction of the Court at Jhansi and the suit was maintainable at Jhansi. However, in the said judgment it is observed by their lordships of Allahabad High Court that if there was a specific contract between the parties that the rendition of accounts and the final settlement thereof should take place at Cawnpore and that payments should be made there and not at the place where the business was carried on, the Court at Jhansi would have no jurisdiction.

26. If we go through the terms of the Partnership Agreement, we see certain relevant provisions which specifically talk about maintenance of accounts at the very place i.e. Bangalore. Clause 3 of the Deed of Partnership is as under:

"the principal place of business of the firm shall be located in Channasandra village in K.M. Bansabakari - Kengeri Link Road, Bangalore South Taluk.

Clause 4 of the Partnership Deed specifically states:

"the firm shall carry on its cultivation activities in Ranebenur Village, Dharwar District, Karnataka or at such other place or places as the Partners may decide upon from time to time."

As per Clause 5 of the Deed of Partnership, partnership was also open to undertake any other activity/business as it may decide upon from time time. Taking into consideration, the activities of the partnership firm, one thing is absolutely clear that whatsoever agricultural or horticultural products were to be produced were to be produced in the area situated within the State of Karnataka. There does not appear any reference nor has it been brought on the record that any such production activities were being carried on in Bombay, where the present Respondent-plaintiff resides.

27. Before coming to the conclusion on this point, it would be relevant and very much necessary to know what is the keeping of accounts and its importance.

28. So far as the accounts kept by the branch office are concerned, it will have to be seen as to what is the purpose for keeping such accounts and what is the understanding between the parties so far as regards branch accounts are concerned. The whole idea of keeping branch account is nothing but keeping such accounts for the purpose the recording of the transactions/dealing between different branches of same concern. It is just as heart receiving and distributing/supplying blood through nerves and arteries where the head office plays the role of heart. No hard and fast rule can be laid down as defining distinction

between the branch and a department. In fact in many instances a system of accounting suitable for dealing with departmental activities will be entirely adequate for branches. As a general statement, it may be said that where a section of business is segregated physically from main section it is a branch, in other words, if the location of activities is separated from the main place or operation, there may be said as head office and branch. In spite of this statement it should be borne in mind that in the circumstances whether complete control is exercised over the activities of a subsidiary section, the management may, and often does, consider it in the light of mere department. These observations definitely indicates that accounting between the branches of firm ultimately for the purpose of showing relationship so far as it relates inter accounts are concerned. The main division of branch accounting are consequential upon the question of whether full accounting record are or are not kept at the branch. In the instant matter it is, already observed and rather it is not disputed that accounts of Bombay office are kept at Bombay by way of its copy and original accounts are sent or forwarded to the head office at Bangalore for being maintained, where all the books of accounts of the company are maintained are audited, and balance sheet is drawn. In my opinion, therefore, the location, the degree of control exercised by the head office the nature of activities and the goods dealt in, the character and status of the personnel and the number of branches will be determining factor in considering what system of accounting is adopted so as to find out whether the branch office though of a partnership firm is absolutely independent or the cord between the principal office and the branch office is yet not cut, the state of factual position, will decide the conferment of territorial jurisdiction on a particular court.

29. Generally the suits like the present one are the suits for account and dissolution. Even if the suit is only for accounts, the court would generally treat it one for accounts and dissolution. It is also open for the courts irrespective of the parties pleadings to call upon the plaintiff to amend his plaint suitably so as to include the prayer for account and dissolution. This naturally follows that without seeking dissolution, accounts ordinarily cannot be demanded. Whatever may be the nature of the claim of a partner against the firm or his copartners, whether it is to recover advance to the firm, or share of the profits or indemnity or contribution, dissolution is considered necessary. Even a view is there which is also largely accepted that there could not be suit between the partners without involving the need of for dissolution. However, for the purpose of present decision in my opinion, it would suffice to observe that the present suit, though is not asking for dissolution of partnership firm and is title only a suit for account would virtually be a suit for dissolution of the partnership particularly when according to the plaintiff he has withdrawn his resignation.

30. However, it is also clear that a general trend of the recent decisions is also that can a suit brought by one partner against another for recovery of certain amount relief sought should be given to him though it may arise out of partnership business

or connected with it and does not involve taking of general account. This view in fact is in existence right from the initial days when a decision was taken by the Privy Council in AIR 1922 P.C.115. From the aforesaid observations it is clear the present suit cannot be said to be a suit between two partners independently but the suit is specifically initiated against the partnership firm itself. Therefore, such a suit were one of the partners who was looking after certain transactions of the partnership firm at its Bombay office, cannot be said to be a person entitled to initiate the suit against the partnership firm at Bombay where but for a branch major activities were being carried out.

31. It is also important to note that the plaintiff in the plaint has not given any details about the activities and transaction of the business which are conducted and carried out from Bombay office. In the opinion of this Court this aspect also gathers importance here. It is also worth to note that in the plaint it is also not made clear whether at Bombay it is just a sub office or a branch office doing any major business activities.

32. In view of the above said decision, I have no hesitation to hold that the Court at Bombay has no territorial jurisdiction to entertain and to try the present suit.

33. The second point raised by the learned Advocate Mr. Saraf is as regards pecuniary jurisdiction of the Court below. According to Mr. Saraf, the learned Judge committed a glaring error in assuming the pecuniary jurisdiction in the matter thereby forgetting the fact that from the pleadings in the plaint itself and the tenor thereof, was enough to demonstrate that the plaintiff intentionally undervalued the suit so as to bring the suit within the pecuniary jurisdiction of the Court in which the suit is filed. Mr. Saraf, learned Advocate for the Appellants contended that it is the case of the plaintiff himself that the plaintiff has his 7.5% share in the profits of the firm and contents of the plaint do definitely demonstrate that according to the plaintiff the firm has been deriving huge profits. No doubt a specific amount of profits has not been shown but the contents of the plaint clearly indicate that the plaintiff knew that in the earlier years the company had earned profits in crores. Mr. Saraf has invited attention of this Court to the affidavit of the plaintiff dated 6th October 1993 wherein it is the case of the plaintiff himself that he had to receive Rs. 3,38,394-09 ps. from the firm, leave apart other claims of the plaintiff against the firm. This much statement in the affidavit of the plaintiff himself, in the opinion of this Court, is enough to reach to the conclusion that the suit is intentionally and arbitrarily under valued. It is no doubt true that the pecuniary jurisdiction of the Court has to be definitely decided on the basis of contents in the plaint itself, but that itself is not conclusive, and is subject to the objection as regards intentional under valuation, lack of bonafides, capricious or whimsical.

34. It is interesting to note that certain statements in the plaint demonstrate that plaintiff could have conveniently though not exactly, but approximately valued the suit nearer to the exact valuation of the claim, instead of simply valuing the same

just at Rs. 5,000/- as is done in the present case. In para 11 of the plaint the plaintiff no doubt says that a large and substantial profits were earned by the suit partnership in respect of several business activities which were carried on by the said partnership firm and according to the plaintiff, defendant Nos. 1 and 5 did not however credit the same to the personal account of the plaintiff or defendant Nos. 9, 10 and 11. So far as regards the deduction towards income tax is made, to which a reference is made by the plaintiff himself in this para also was sufficient for the plaintiff to have claimed that amount which according to the plaintiff was not credited to his account which is said to be found debited towards the tax. In para 13 of the plaint he has referred to the nature of the business of import of various items and installation of plants at various places referred to in the said para. He has also referred to erection of green houses at several places or poly houses to have approximate valuation of those houses for which the company must have spent the amount and on the basis thereof it was not much difficult for the plaintiff to have made valuation on approximate basis. Since the amount has been spent for the above said purposes was from the company then at least it could have been understood by the plaintiff that much amount definitely was earned by the company which company spent so as to draw an approximate profits of the company in which he was supposed to have his share at the rate of 7.5%. From the other contents of the plaint, it is clear that the plaintiff did not value the suit properly, and that too intentionally. In para 15 of the plaint, the plaintiff has specifically stated that a sum of about of Rs. 20 lacs was drained away from the suit partnership under fictitious invoices in a single year of 1989. In fact, by this the plaintiff wanted to suggest that, that much was the amount that the company could be said to have earned in which each partner had a share. It was, therefore, much easy for the plaintiff to have calculated his 7.5% share in the said sum of Rs. 20 lacs approximately which comes to Rs. 1.5 lacs. The details above clearly show that the plaintiff knew, that at least that much minimum amount was due to him from the company. Therefore, by no stretch of imagination the valuation could have been less than Rs. 1.5 lacs in any case.

35. There are certain other relevant statements also in the plaint which would suggest that the plaintiff had enough material at the time of filing of the suit to draw the valuation on approximate basis which definitely would have ousted the jurisdiction of the court. In para 18 of the plaint, the plaintiff himself has specifically mentioned that seeds sold by the firm to the dealers was at the rate of Rs. 12,000/- to Rs. 13,800/- per kg. resulting in net profit of about Rs. 6,000/- to Rs. 7,800/- per kg. If this much data was available with the plaintiff and plaintiff being in the business since many years past it was definitely not difficult for him to have approximately calculated the cost of such sale and profits therefrom and his share at the rate of 7.5% in the said profits which would have been much more than pecuniary jurisdiction of the Court below. In para 23 of the plaint, again the plaintiff has stated that in the year 1983-84 the firm had done the business of about Rs. 30 lacs and that

it had registered a phenomenal increase in the succeeding years, which if are taken into consideration then by the end of March 1993 it would have been to the tune of Rs. 5 crores and which according to the plaintiffs was on all time records for IAHS. In the opinion of this court, the contents of this relevant paragraph from the plaint are sufficient enough to suggest that the valuation made by the plaintiff at Rs. 5,000/- only in fact is done on no basis whatsoever and the valuation has to be labelled as either a most arbitrary one or valuation made in a most whimsical manner.

36. In support of his contention Mr. Saraf, learned Advocate for the Appellant invited my attention to the judgment of the Supreme Court reported in in the matter of Abdul Hamid Shamai v. Abdul Maji 1998 SC 1150d and Ors. Relying on this judgment, Mr. Saraf contended that though it was not expected from the plaintiff to have the exact valuation of the suit of the present nature, where the suit is for accounts and in fact where plaintiff is not obliged to show the exact amount which would result after taking of the accounts, however he is definitely supposed to make a tentative valuation of the suit, but is not permitted to chose an unreasonable and arbitrary figure of valuation. Their Lordships while dealing with the above said matter has specifically observed that in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is therefore allowed to give his own tentative valuation. Ordinarily the court shall not examine the correctness of the valuation, but the plaintiff cannot act arbitrarily in this manner. If plaintiff chooses whimsically a ridiculous figure, it would tantamount to not exercising his right in this regard. In such a case it is not only open to the court but it is duty to reject such a valuation. In the opinion of this court the judgment cited by Mr. Saraf is apt in every respect in the present situation.

37. Mr. Saraf also invited my attention to yet another decision of the Supreme Court reported in 1988 SC 1636 Commercial Aviation and Travel Co. and Ors. v. Mrs. Vimla Pannalal. The said judgment is also no doubt relied upon by the learned Counsel Shri Parekh for the Respondents. In the case referred to above the facts were respondent before the Supreme Court was a plaintiff who filed a suit against the Appellants therein inter alia for dissolution of partnership and for accounts and the suit was valued for the purpose of jurisdiction at Rs. 25 lacs and at Rs. 500/- for the purposes of Court fee. A preliminary objection was raised in that suit as regards its valuation. The objection being, the suit was grossly undervalued and therefore rejection of the suit was sought for in accordance with the provisions of Order 7, Rule 11 (b) of Code of Civil Procedure. The preliminary objection was over ruled by the trial Court and the same was also confirmed by the High Court. In [Sheila Devi and Others Vs. Kishan Lal Kalra and Others](#), , that was a decision be based on the provisions of Clause (iv) of Section 7 of the Court Fees Act, which gives the right to the plaintiffs in any of the suit mentioned in the clauses of that paragraph to place any value that he likes for the relief he seeks, subject to, however, to any rule made u/s 9 of the Suits Valuation Act and the Court has no power to interfere with the

plaintiff's valuation. Naturally because of these observations in the judgment to which a reference was made by Their Lordships of Supreme Court in the abovesaid judgment, Mr. Parikh, learned Advocate for the Respondent also appeared to have relied upon on the same judgment of the Supreme Court. In para 9 of the said judgment reference is made to Order 7 Rule 11(be) of CPC which provides inter alia that plaint shall be rejected where the relief claimed is under valued and the plaintiff is required by the court, to correct the valuation within a time to be fixed by the Court. And if fails to do so, it is manifestly clear from the above said provisions, that the Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires plaintiffs to correct his valuation within a time to be fixed by the Court. What would be implication if not complied with is referred to in further part of this para of the aforesaid judgment. Taking into consideration this judgment naturally the learned Advocate on both the sides tried to derive advantage from this judgment. However, as observed by Their Lordships of Supreme Court in para 16 of the said judgment it is clear that where there are objective standards of valuation or in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials the plaintiff will not be permitted to put arbitrary valuation dehors such objective standards or materials. In the opinion of this Court, there is enough material on record even from contents of the plaint itself that the plaintiff could have definitely reached to such a valuation which though may not be the exact but definitely closure to exact or the approximate estimated claim of the plaintiff. It is well known that when the matter pertains to the rendition of accounts and dissolution of partnership, the person suing, till the factual accounts are drawn and calculation are made, it is not possible for the plaintiff to exactly give the figure of his claim. However, that does not mean that it is to be left totally to the discretion of the plaintiff to value the suit as he wants. Such a valuation made in a most arbitrary manner may in a given case can be taken undue advantage of, for some ulterior motive including that of intentionally avoiding a particular court (this court is not observing that that could be the intention of the plaintiff in the present case) however that possibility of such a happening in a given case cannot be overruled.

38. If admitted approximate valuation is not done by the plaintiff, then the very provision of Order 11, Rule 7 of CPC would be rendered redundant.

39. Mr. Saraf invited my attention to yet another decision of the Supreme Court reported in [Sujir Keshav Nayak Vs. Sujir Ganesh Nayak](#), . Relying on this judgment Mr. Saraf contended that in a suit for account or dissolution of partnership filed in the court of limited pecuniary jurisdiction the plaintiff must take every care to disclose valuation which is not arbitrary etc. the plaint is liable to hampered, on being objected to by the defendant. He also pointed out on the basis of the observations in that judgment an contended that if the suit of such a nature is filed

before the courts of unlimited jurisdiction the valuation disclosed by the plaintiff may be accepted as correct. This however does not mean that the court's power to examine the correctness of valuation is taken away. Even in such cases having prima facie found that the valuation was not fair and valuation is arbitrarily made even in that case it is yet open for the court of unlimited pecuniary jurisdiction to direct the plaintiff to value it properly and to pay court fees accordingly. In the opinion of this Court the decision relied upon by Mr. Saraf is apt for the purpose of the decision of the matter in hand.

40. As against the argument of Mr. Saraf on the point of valuation of the suit, Mr. Parikh, learned Advocate for the Respondent invited my attention to the decision reported in [Kamaleshwar Kishore Singh Vs. Paras Nath Singh and Others](#), (2) AIR 1932 Bom. 111 *Ishwarappa Malleshappa Manvi v. Dhanji Bhanji Gujjar and Anr.* (3) [Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar](#), (4) I.L.R.1969 AP 1042 - *Chillakuru Chenchuram Reddy v. Kanupuru Chenchurami Reddy* (5) [Abdul Hamid Shamsi Vs. Abdul Majid and Ors.](#), (6) [Benudhar Jena Vs. Prabir Chandra Mazumdar and Others](#), (7) [S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar](#), (8) [Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal](#), (9) AIR 1947 Bom. 259 - *Shankar Maruti Girmé v. Bhagwant Gunaji Girmé and Ors.*, (10) [Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another](#), and (11) [Sri Ratnavaramaraja Vs. Smt. Vimla](#), I, first would like to deal with decision reported in [Kamaleshwar Kishore Singh Vs. Paras Nath Singh and Others](#), that being one of the latest on the point in question. This is the matter between Kamaleshwar Kishore Singh v. Paras Nath Singh and Ors. After having gone through the said decision, it is clear that the apex Court has also made it clear that it is substance of relief sought that is important while deciding the jurisdiction of the court so far as regards pecuniary jurisdiction is concerned and not the form of the suit. The Supreme Court has specifically observed, the Court has to begin with assumption that averments in the plaint are correct, but can interfere with an arbitrary valuation having no basis at all. Defence by the opponents may or may not be relevant for such valuation. The facts in the above said case related to a partition matter between the members of the family wherein on the basis of objection by the defendants therein, the Court had passed an order directing the plaintiff for payment of court fees appropriately in view of the objection. The matter had gone to the High Court by way of revision at the instance of the original plaintiff. The High Court dismissed the same. The matter was taken up to the Supreme Court. While remanding the matter to the High Court, their Lordships of the Supreme Court observed that the High Court did not take into consideration the real question which was for consideration before the Court i.e. whether the suit was properly valued and proper court fees have been paid. While remanding the matter certain observations were made by the Supreme Court which are to be borne in mind while deciding such matters. No doubt, Court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in

drafting the plaint, the plaintiff has attempted to evade payment of court fee or unless there is a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The Court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payable court fees. Keeping in view the observations of the Supreme Court, Mr. Parikh contended that it is the plaint which will determine the valuation of the suit and unless it is shown that the valuation was not correct for any reason, only then it is open for the Court to interfere in the same. Mr. Parikh contended that there could not be exact valuation for the purpose of pecuniary jurisdiction of the Court, particularly when the accounts were yet to be struck and balance was yet to be drawn to state the exact amount of share of the partners. Mr. Parikh, therefore, contended that it was not possible and it could not have been expected from the plaintiff to have valued the suit to a particular amount, when the accounts are yet to be rendered. Argument of Mr. Parikh based on the judgments cited by him, no doubt, per se, is appealable. This Court may even observe that this proposition cannot be disputed, however, if the observations made by the Supreme Court in the above said judgment are minutely read, it in an unambiguous manner suggests that yet it is open for the court to deal with the point at the very initial stage to find out whether the valuation is made capriciously in such manner so as to evade the payment of court fees at the initial stage itself. At the cost of repetition, this court would observe that very contents of the plaint itself are so clear that the plaintiff if would have brought the suit with appropriate care, would have himself reached to a conclusion that the valuation made by him was not correct. Let apart the exact calculation of 7.5% share but amount which according to him was to be recovered from the firm or which according to him he was liable to receive from the firm even that amount if taken together would readily oust the jurisdiction of the City Civil Court, Bombay where the suit is filed. I have no slightest doubt in my mind, about the incorrect valuation made by the plaintiff in the present case, may be for the reasons best known to himself.

41. Another decision cited by Mr. Parikh to which this Court would like to make reference is the decision reported in [Abdul Hamid Shamsi Vs. Abdul Majid and Ors](#), . Relying on this judgment, Mr. Parikh, learned Advocate for the Respondent contended that if tentative valuation is given by the plaintiff, then that is enough and sufficient for entertaining the suit as in the suit of this type i.e. in the suit for accounts and the plaintiff is not obliged to state the exact amount which would result after taking of the account and he may therefore put a tentative valuation

upon the suit but he is not permitted to choose an unreasonable and arbitrary figure for that purpose. Heavily relying on this judgment. Mr. Parikh further contended that in such a suit till the accounts are struck and exact amount to be paid to the partner is found out, till then it is open for the plaintiff to give his own tentative valuation and in ordinary course the court shall not examine the correctness of such valuation. However, a word of caution is given in this judgment by the Supreme Court when the Court observed that "but the plaintiff cannot act arbitrarily in this matter". If the plaintiff chooses whimsically a ridiculous figure it tantamount to not exercising his right in this regard. In such a case it is not only open to the Court but its duty is to reject such a valuation. In the case before the Supreme Court cited supra, the Court had reached to the conclusion that the valuation made by the plaintiff was arbitrary and unacceptable and the Supreme Court did remand the matter accordingly. In the opinion of this court the judgment cited by Mr. Parikh is supporting the appellants case here rather than of the respondent. More than enough material is available on record to come to the conclusion that the valuation made by the plaintiff for the purpose of pecuniary jurisdiction is hopelessly unreasonable grossly inadequate, arbitrary and whimsical valuation. This Court therefore without slightest vacillation of mind has reached to the conclusion that the valuation made by the plaintiff in the instant case cannot be said to be a bonafide and true valuation. It is not even a reasonable valuation made by the plaintiff. In the circumstances, if the valuation even as per contents of the plaint is to be made, it would readily oust the jurisdiction of the Court in which it is filed. This court, therefore, without any reservation, observe that the learned Judge of the trial Court committed a grave error in not approaching towards the matter with proper perspective, which has definitely resulted into miscarriage of justice when a substantial objection was raised by the defendants.

42. This Court is aware of the position that every conceivable grievance has not to be considered by the court but the grievance made here by the Appellants-defendants as regards an incorrect valuation appear to be right in the facts and circumstances of the case and has to be upheld.

43. In view of the two judgments cited by Mr. Parikh, this Court won't find it necessary to refer to other decisions cited by him as the view taken by the Courts time and again is the same that in an appropriate case it is open for the higher Courts to interfere in the matter when the valuation does not appear to have been made in a bonafide manner, but in an arbitrary capricious and in a whimsical manner.

44. Shri Parikh for the respondents further argued that, in its revisional jurisdiction shall not interfere in the matter. This court is aware of its limitation while exercising revisional jurisdiction. However, since manifest injustice appears there and since it goes to the very root of the case, in such circumstances, the revisional courts cannot turn a Nelsons eye towards it.

45. In the circumstances the judgment and order under challenge has to be quashed and set aside it is accordingly quashed and set aside. The rule is made absolute in the above said terms, however in the circumstances of the case no order as to costs.

46. The learned Judge shall return the plaint to the plaintiff for presentation to the proper court.

47. At this stage the learned Advocate Mr. Parikh for the Respondent stated that till the time Respondent take an appropriate steps in the matter in pursuance of this judgment or otherwise, the interim order which was passed by the learned Judge of the City Civil Court at Bombay below Notice of Motion No. 4657 of 1993 in the above said Suit No. 4419 of 1993 be continued so as to enable the Respondent plaintiff to approach the competent court.

48. Mr. Parikh contended that interim order was continued right from the year 1993 and in the fitness of things it be continued for some reasonable time further as no prejudice is likely to be caused to the Appellate defendants.

49. Mr. Saraf, learned Advocate appearing for the Appellants opposed the prayer for Mr. Parikh. However, in the opinion of this Court and keeping in view that the order was for all these period in operation, it will be proper to extend the same for three weeks more from the date of return of the plaint to the Respondent plaintiff.

Certified copy expedited.