

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.

A fee on the amount of the monetary gain or loss to be prevented, according to the scale prescribed under Article 1."

3. After considering the submission basically that the main Suit is a sort of injunction against the defendants that is subject to the settlement of his rights or disputes pursuance to MOU and, therefore, it is incapable of valuation as contemplated under Article 7 of Schedule I as reproduced as above.

4. This submission is unacceptable. The learned Judge has rightly considered this facet which is reproduced as under:

"16. In the case before this Court the plaintiff has executed two guarantees of Rs.47 lakhs in favour of defendant nos. 1 and 2. Now by this suit the plaintiff wants to restrain the defendants from encashing two guarantees of Rs.47 lakhs. It means the plaintiffs want to prevent loss of Rs.47 lakhs. Therefore, present suit is capable of being valued in terms of money and fall under Item 7 schedule 1 and not under Section 6(iv) (j) of Bombay Court Fees Act. Though the facts before the Hon'ble High Court in the case referred supra is some what different from this case, however, ratio is totally applicable tot his case as the plaintiff want to prevent the loss of Rs.47 lakhs."

5. The relief as claimed ultimately surrounding two bank guarantees of Rs.47,00,000/-. The order of injunction in the guise of order of injunction till the settlement of their dispute through MOU, ultimately preventing the loss of Rs.47,00,000/- and in the result gaining the same. The law pertaining to bank guarantee and any such injunction is settled. Once the conditions are complied with and there are breaches, the respective parties/basically bank is entitled to encash such bank guarantees. The prevention of such encashment till the decision of disputes as alleged, it is clear prevention of encashment of the amount involved. Therefore, on facts of these undisputed position on record merely because the suit is termed as simplicitor injunction that itself cannot be the reason to allow the parties/plaintiff to file the same by paying the court fee of Rs.200/- as per the Bombay Court Fee Act. The Court needs to see the sum & substance and the substantial reliefs claimed in the Suit.

6. In my view also, the substantive reliefs in present suit is capable of being valued in terms of money and falls under the ambit of Schedule I of

Article 7, though it is not a suit for declaration which falls under Section 6(iv) (j) of Bombay Court Fee Act. The point is once the suit is capable of being valued in terms of money and as Schedule I provides the same, it falls within the ambit of the Act. I see there is no reason to overlook the said provision and allow such plaint to be entertained without proper court fee. (Vide Mohan Meakin Breweries Ltd v. Oceanic Imports and Exports Corporation, 1980 Mah.L.J. 803; Gajanan Anandrao Dake & anr. v. Vishwanath Ahilaji Thembekar & anr., 1978 Mh.L.J. 30).

7. The Bombay Court Fee Act may not be interpreted and/or extended to collect the court fee when the provisions are vague. But in my view, the provision as referred above are clear and there is no ambiguity. I see no reason to interfere with the order passed by the courts below.

8. The petition is therefore dismissed. At the request of the learned counsel for the petitioner, time to deposit the requisite court fee is extended by two weeks from today.

(ANOOP V. MOHTA, J.)