

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 162 OF 2015

**1)SUMATILAL SHANTILAL BALDOTA AND OTHERS
VERSUS**

1)DEEPAK CHANDMAL VERMA AND OTEHRS

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Advocate for Applicants : Mr. Brahme Shailesh P.

Advocate for Respondent No.1 : Mr. D. K.Kulkarni

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CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. Mr. Brahme, learned counsel for the applicant submits that the suit instituted by the respondents is an abuse of the process of Court. The suit is not maintainable in view of section 149 of the Maharashtra Regional Town Planning Act. This aspect has not been considered by the Court in its correct perspective. It is only in case of jurisdictional error, the Civil Court can entertain the suit. In this particular case, there is no jurisdictional error. Under the valid permission, the applicant has constructed the suit property. The learned counsel relies on the judgment of the Apex Court in a case of **Shiv Kumar Vs. Municipal Corporation of Delhi, reported in 1993 (3) VOL SCC 161.**

2. Mr. Kulkarni, learned counsel for the respondent submits that the suit as is filed is perfectly maintainable. The trial court has properly considered the same and has rejected the application for rejection of plaint. The plaint, as it is, is only required to be considered. The

averments in the plaint are sufficient to invoke jurisdiction of the civil court.

3. With the assistance of the learned counsel, I have gone through the order and the averments made in the plaint.

4. While entertaining the application for rejection of plaint more particularly under Order 7 Rule 11(D) of the Civil Procedure Code, the pleadings in the plaint are to be construed as they are. The pleadings in para 5, if considered in its entirety, the said facts would certainly not entitle the court to reject the plaint under Order 7 Rule 11(D) of the Civil Procedure Code. Whether there is jurisdictional error or not in grant of permission for construction, etc. can only be considered after the parties have adduced their evidence and not at this stage. The issues are already framed. The issue no.1 framed by the Court is as under:

“Whether the suit is maintainable?”

The said issue would cover within its campus the factum of tenability of the suit by virtue of any provisions of law or on the basis of facts on record. The same would be decided by the court after the parties have adduced evidence. In the light of that no case for interference is made out. Civil Revision application as such is disposed of. No costs.

(S. V. GANGAPURWALA, J.)