

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.261 OF 2012

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Patil Milind, advocate for the Petitioners.
Mr.A.R.Nikam, advocate for Respondent Nos.2 and 3.

CORAM : S.V.GANGAPURWALA, J.
Date : 31.08.2015.

PER COURT :

1. Heard.
2. The Respondents-plaintiffs filed a suit for injunction. The present petitioners filed application U/o VII Rule 11 of the C.P.C for rejection of plaint on the ground that the basis of the present suit i.e. decree in RCS No.432/2000, which was an exparte decree is set aside. The said application is rejected. Aggrieved thereby, the present Revision.
3. Mr.Patil, learned counsel submits that the cause of action stated in the plaint itself does not survive. The plaintiffs want to stall the execution of the partition decree and i.e. the cause of action to file the present suit. Even the suits referred to in the plaint are dismissed. Learned counsel submits that when the exparte decree

in earlier suit on the basis of which the present suit is filed. The present suit is not tenable. The learned counsel further submits that even though the application U/o VII Rule 11 of the C.P.C does not state the other grounds for rejection of plaint, still, this Court shall consider the other grounds of which submissions are made and referred to in the Written Statement to reject the plaint. The learned counsel relies on the judgment of the Apex Court in a case of **“T. Arivandandam Vs. T.V.Satyapal”** reported in **1977 (4) SCC 467** and in the case of **“N.V.Srinivasa Murthy Vs. Mariyamma (Dead) By Proposed L.Rs.”** reported in **2005 (5) SCC 548**. According to the learned counsel, the Written Statement contains all the details as to how the previously instituted suit by the same plaintiffs has been dismissed and the suit filed by the defendants has been decreed, of which execution is pending. All these aspects are not considered by the trial Court.

4. I have also heard Mr.Nikam, learned counsel for the Respondent Nos.2 and 3.

5. The suit is filed for injunction raising various grounds. The application for rejection of plaint is filed solely on the ground that RCS No.432/2000, which was an exparte decree has been set aside. The plaintiff has no cause of action.

6. Apart from setting aside of the exparte decree in RCS No.432/2000, the application for rejection of plaint does not lay

down any details. It does not appear that the present petitioners placed all the other grounds before the learned trial Judge for consideration. For the first time in the present Revision, the petitioners are seeking to contend about dismissal of earlier suits, execution being stalled and further proceedings in RCS No.432/2000 i.e. the said suit being dismissed. None of these facts/aspects were raised before the learned trial Judge when the application was decided. It was the duty of the petitioners to bring it to the notice of the Court while deciding the said application. The tenor of the arguments of the petitioners is that the Court should suo-motu look into all these aspects, even though not raised by the party. The petitioners were not precluded from bringing it to the notice of the trial Court the pleadings in the earlier suits. Even application U/o VII Rule 11 of the C.P.C was restricted to the averments with regard to RCS No.432/2000. In the cases referred supra, the trial Court had considered all the aspects of the matter and dealt with the application.

7. Considering the above, I do not find any error committed by the trial Court while rejecting the application.

8. Needless to state, in case the petitioners desire to place on record the other grounds, which the petitioners seek to agitate, the petitioners are at liberty to take recourse to the provisions under the Civil Procedure Code by filing appropriate application.

9. The Civil Revision Application stands rejected. No costs.

(S . V . GANGAPURWALA, J .)

Dt.31.08.2015.
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