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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 708 OF 2014

Shri Prakash Vasudeo Deodhar and others .. Applicants

Vs.

Shri Mukesh J.Gupta and others .. Respondents

Mr.Suresh M.Kamble, Advocate for the Applicants.

Mr.S.R.Ganbawale a/w Mr.J.P.Mishra, Advocate for Respondent No.1.

Mr.Sunil I. Jayakar a/w Ms.Gunjan Jayakar i/b Mr.Miheer Jayakar,
Advocate for Respondents No. 2A to 2K.

CORAM : R. G. KETKAR, J.

DATE : 28th JULY, 2015

P.C. :

. Heard Mr.Suresh M.Kamble, learned Counsel for the applicants, Mr.S.R.Ganbawale, learned Counsel for respondent No.1, Mr.Sunil I. Jayakar, learned Counsel for respondents No. 2 through partners being respondents No. 2A to 2K at length.

2. Mr.Kamble orally applies for deleting respondent No.3 as no relief is claimed against it in the present Application. On the motion made by Mr.Kamble, respondent No.3 is deleted from the present proceedings. Amendment shall be carried out forthwith. Rule. Learned Counsel for respondents waive service. At the request and by consent of the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of

Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 1 to 5 have challenged the judgment and order dated 27/01/2014 passed by the learned Civil Judge, Senior Division, Panvel below Exhibit 39 in Special Civil Suit No. 80 of 2013. By that order, the learned trial Judge rejected the application filed by the defendants under Order 7 Rule 11 Clauses (a) &(d) of C.P.C. for rejection of the plaint.

4. In support of this Application, Mr.Kamble submitted that respondent No.1 hereinafter referred to as plaintiff has instituted Suit for declaration that original defendants No. 7 to 17 should make the plaintiff a partner in M/s.Dev Enterprises among other prayers. Defendants No. 1 to 5 took out application under Order 7 Rule 11(a) and (d) of C.P.C. One of the contentions raised by the defendants No. 1 to 5 is that as per Section 31 of the Indian Partnership Act, 1932 (for short 'Act'), subject to the contract, no person can be introduced in the partnership firm. In the present Suit, the terms and conditions of the partnership firm which is to be entered are absent. In other words, terms were not decided at all. Defendants No.1 to 5 contended that no person can be forced to enter into a contract whose relations have reached a point of complete loss of faith between the two. He submitted that the learned trial Judge has not adverted to this aspect at all in the impugned order. Mr.Ganbawale was not in a position to show that the learned trial Judge has considered this aspect in the impugned order. On this

count alone, the impugned order is required to be set aside.

5. Mr.Kamble submitted that plaintiff has filed application on 20/02/2015 for amending the plaint. He submitted that the learned trial Judge may be directed to decide the application filed by the defendants No.1 to 5 under Order 7 Rule 11 (a) & (d) afresh before deciding the amendment application. Having regard to the fact that application under Order 7 Rule 11 has to be decided only on the basis of the averments made in the plaint. I find that request made by Mr.Kamble is reasonable. Learned Counsel for the parties state that next date of hearing before the trial Court is 11/08/2015 and they will appear on that date and for that purpose, no fresh notice be issued to them. Hence, Civil Revision Application is disposed of in the following terms.

- I) The impugned order dated 27/01/2014 is quashed and set aside and application at Exhibit 39 taken out by the defendants No.1 to 5 under Order 7 Rule 11(a) &(d) is restored to the file of the trial Court.
- II) The learned trial Judge will decide this application first and thereafter proceed to decide application filed by the plaintiff on 20/02/2015 under Order 6 Rule 17 of C.P.C. for amending the plaint.
- III) The learned trial Judge will record findings on all the contentions that have been advanced including one under Section 31 of the Act.

IV) The parties shall appear before the trial Court on 11/08/2015 and for that no fresh notice be issued to them. The learned trial Judge is requested to decide the application under Order 7 Rule 11(a) & (d) within 4 weeks from the date of appearance of the parties.

6. All the contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)