

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REIVISION APPLICATION NO.492 OF 2010

Smt. Sunita Laxmanrao Shinde and others .. Applicants

Versus

Ashwini Co-operative Housing Society Ltd.

and others

.. Respondents

Mr. Sandeep A. Bhagwat, Advocate for the Applicants.

Mr. Prakash Anant Valame-Chairman of Respondent No.1- present in Court.

CORAM : R.M. SAVANT, J.

DATE : 30th JANUARY, 2015

PC.

1. The above Civil Revision Application takes exception to the order dated 09.09.2009 passed by the 3rd Joint Civil Judge, Senior Division, Pune, by which order the application Exh.288 for framing of preliminary issues filed by the Respondent No.1 came to be allowed and the following issues were framed-

“1. Whether this Court has jurisdiction to entertain and try the suit ?

2. Whether order passed by this Court dated 17/04/2009 is without jurisdiction ?

3. Whether the suit is liable to be rejected under Order 7

Rule 11(a) and (b) of the Code of Civil Procedure ?

4. What order ?”

The above Civil Revision Application had come up for admission before a Learned Single Judge of this Court, Shri. R. G. Ketkar, J on 21st September, 2010. The Learned Judge after hearing the learned counsel for the Petitioner has observed in paragraph 5 to the following effect -

“After hearing learned counsel for the petitioners, prima-facie, I am satisfied that the respondent no.1 has not made out any ground in support of his contention that the Court has no jurisdiction to entertain and try the suit. Even the respondent no.1 has not made out any ground in the said application for rejecting the plaint under Order 7 Rule 11(a) and (d). In view of this, issue notice before admission to the respondents, returnable after four weeks. The notice to indicate that the Court may endeavour to decide the petition finally at the stage of admission. In the meantime, there shall be ad-interim order in terms of prayer clause (c).”

2. In the light of the said observations, with the assistance of the learned counsel for the Petitioner and the Chairman of the Respondent No.1 Society who is appearing in person, I have gone through he application Exh.288. After having gone through the said application and also having heard the learned counsel for the Applicant as also the party in person, I am in respectful agreement with the prima-facie view expressed by Shri. R. G. Ketkar, J, in the order dated 21st September, 2010. Faced with this situation, the party in person i.e. the Chairman of the

Respondent No.1 Society states that he would withdraw application Exh.288 and file a fresh application for framing of preliminary issues invoking Section 9A and Order 7 Rule 11 of the CPC. In view of the said statement of the party in person, it is not necessary for this Court to consider the impugned order dated 09.09.2009 on merits. The impugned order would accordingly stand set aside. The party in person states that a fresh application would be filed by 5th February, 2015 when the suit is to come up before the Trial Court. If the said application is not filed by 5th February, 2015, the applicant in person may file the said application latest by 12th February, 2015 and serve upon the other side. If any such application is filed the Trial Court would decide the same within six weeks of 12th February, 2015 by giving proper opportunity to the parties. The Learned Counsel for the Applicants has no objection to the aforesaid course of action being followed. Needless to state that the application that would be filed would be decided on its own merits and in accordance with law and the contentions of the parties are kept open for being urged before the Trial Court. With the aforesaid directions the above Civil Revision Application is disposed of.

[R.M. SAVANT, J]