

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

CIVIL REVN. APPLICATION NO. 956 OF 2014

Mr.Dinshaw R. Mehta & ors. ... Applicants

v/s

Sir Jamsetjee Jeejeebhoy & ors. ... Respondents

Mr.P.S. Dani, senior advocate i/by Jui Nerurkar for the applicants.

Mr.F.E. De'vetre, senior advocate along with Ms.Naira Jejeebhoy
i/by Pritesh Vyas for Resp. Nos.1 to 12.

CORAM: NITIN M. JAMDAR, J.

DATED : 1ST APRIL, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2. By this application, the applicants challenge the order passed by the Small Causes Court, Mumbai, dated 18 July 2014 rejecting the application filed by the applicants under Order VII Rule 11 of the Code of Civil Procedure.

3. R.A.E. Suit No.1218 of 2002 is filed by the respondents seeking eviction of the applicants. The respondents are trustees of Sir Jamsetjee Jeejeebhoy Parsee Benevolent Institution. The property is situated at 209, Dr.Dadabhoy Naoroji Road, Fort,

Mumbai – 400 001. The applicants are trustees of Parsee Panchayat Funds & properties, which is also a Public Charitable Trust.

4. It is the case of the respondents that, the property was given to the applicants some time in the year 1872 and the rent presently being paid is around Rs.267/- per month. It is the case of the respondents that the applicants have unauthorizedly occupied an area which was not given to them and they are using it as a part of their office. The suit is filed on the ground of requirement of the Trust for the purpose of running an educational institutions. In the suit, the parties have adduced their evidence. Cross-examination of applicants' witness is conducted. At that time, the reply filed by the applicants to the application made by the respondents for production of documents, was treated as an application under Order VII Rule 11 of the Code of Civil Procedure. In this application, the applicants prayed that the suit needs to be dismissed as the cause of action, which is disclosed in the plaint, namely, requirement of the Trust, does not exist and in fact it is contrary to the object of the Trust.

5. The learned Small Causes Court Judge came to the conclusion that, at this stage, when no preliminary issue as to jurisdiction was framed and the parties opted to go for trial and major portion of the trial is over, the application cannot be considered.

6. This approach cannot be said to be illegal or unwarranted. The learned Small Causes Court Judge has, in fact, not considered the objection on merits and has kept it open to be considered at the time of trial. No prejudice is shown if this course of action is adopted. Therefore, it is not necessary to interfere with the impugned order as it suffers from no illegality or any error.

7. The civil revision application is accordingly disposed of by keeping the contention of all the parties open as regard the issue raised in the civil revision application, to be considered at the time of final hearing of the suit.

(NITIN M. JAMDAR, J.)