

Mr. Mahesh Londhe i/b. M/s. Sanjay Udeshi & Co. for Applicants.
Mr. Rakesh Piprodia i/b. RMP Legal for Respondent No.1.

P.C. :

Heard Mr. Londhe, learned Counsel for applicants and Mr. Piprodia, learned Counsel for respondent No.1 at length. On the oral application made by Mr. Londhe, respondent No.2 is deleted from this Application as no relief is claimed against him. Rule. Learned Counsel for respondent No.1 waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as defendants No.6 to 8, have challenged the judgment and order dated 21.03.2014 passed by the learned Judge presiding over Court Room No.31, Bombay City City Court at Bombay in Notice of Motion No.3943 of 2013 in Suit No.2789 of 2013. By that order, the learned trial Judge partly allowed the Motion and rejected the plaint as against defendants No.3 to 5 as it does not disclose cause of action as per Order VII, Rule 11(a) of C.P.C.

3. Mr. Londhe invited my attention to paragraph 3 of the impugned order and submitted that the learned trial Judge did not reject the Motion against defendants No.6 to 8 only on the ground that there are averments made in the plaint against them making them liable for suit claim. The learned trial Judge, however, has not adverted to assertions made in the plaint as also the documents annexed along with the plaint and the submissions advanced by the parties. Merely by bald statement, the learned trial Judge directed Suit to proceed against defendants except defendants No.3 to 5 on the ground that averments are made against defendants No.6 to 8 making them liable for suit claim. Mr. Londhe invited my attention to paragraph 3 of the affidavit dated 25.08.2015 filed on behalf of of the respondent No.1 wherein respondent No.1 accepted correctness of the trial Court's order whereby plaint is rejected qua defendants No.3 to 5.

4. Mr. Piprodia submits that as the learned trial Judge has not given reasons, the impugned order may be set aside thereby directing the learned trial Judge to decide the Motion afresh.

5. In view thereof, by consent of the parties, order dated 21.03.2014 rejecting the plaint qua defendants No.3 to 5 is restored to the file of the learned trial Judge. The learned trial Judge will find out whether defendants No.6 to 8 have made out a case for rejection of the plaint as it does not disclose cause of action as contemplated under Order VII, Rule 11(a) of C.P.C. In other words, the rest of the order directing Suit to proceed against defendants No.1 and 2 shall not be reopened. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)