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

CIVIL REVN. APPLICATION NO. 588 OF 2011

Mr. Rajnarayan Thakurdin Mishra. ... Applicant.

V/s.

Ashadevi w/o. Dineshchandra Gupta. ... Respondent.

Mr. U.S.R. Singh for the Applicant.

Ms. Harsha Shah a/w. Ms. Aditi Bhat for the Respondent.

CORAM : N.M. Jamdar, J.

14 October, 2016.

Oral Order :-

Heard learned Counsel for the parties. The Civil Revision Application is taken up for disposal by consent.

2. By order passed on 15 April 2011, the learned City Civil Court Judge has over-ruled the objection taken by the Applicant in respect of the valuation of the suit. The learned City Civil Court Judge has held that the suit is covered by residuary provisions of Item 23(f) to Schedule II of the Bombay Court Fees Act.

3. The Special Civil Suit No. 1722 of 2009 is filed in which a counterclaim is also lodged. In this counterclaim an objection to

valuation is taken. It was contended by the learned Counsel for the Petitioner that the residuary provision under Item 23(f) need not be resorted to as the suit falls within the provisions under Schedule I Item 6 and 7 of Maharashtra Court Fees Act. On the other hand, it is the contentions of the learned Counsel for the Respondent that these provisions are not applicable to the counterclaim and the learned Judge has rightly considered the same as falling under the residuary clause. It was also contended that the Notice of Motion taken out was not for valuation but the jurisdiction of the Court. The learned Counsel for the Respondent submitted that the jurisdiction of the Civil Court having been enhanced, the question of pecuniary jurisdiction no longer survives.

4. Perusal of the impugned order shows that the learned Judge has primarily confined himself to the valuation of the suit and has held that in the suit there is no specific provision under the Court Fees Act and therefore, for the suits of the present nature the residuary provision under Item 23(f) of Schedule II will have to be made applicable. Before resorting to the residuary provisions, the learned Judge will have to deal with the contentions as to how the provisions which are pressed into service by the Petitioner are not applicable and that no other provision is applicable. It is only after this satisfaction is recorded that the residuary clause can be resorted, because if the valuation of the suit is covered under a specific clause,

then it is trite that the residuary clause cannot be resorted. In the impugned order there is no such discussion as to whether the valuation of the suit does not fall in any of the clauses asserted by the Petitioner. This exercise will have to be carried out by the Court of first instance. There will have to be a specific finding as to why the valuation of the suit does not fall in the specific clauses of the Schedule before resorting to the residuary clause. As regard the pecuniary jurisdiction is concerned, even if that is accepted in favour of the Respondent, the issue still will remain regarding the valuation for the purpose of court fees.

5. In the circumstances, I am inclined to set aside the order passed by the learned City Civil Court Judge and restore the application. The learned City Civil Court Judge will decide the aspect of valuation by taking into account the observations made as above and also the question of pecuniary jurisdiction in light of the subsequent change in pecuniary jurisdiction of the City Civil Court. All contentions of the parties regarding the clause under which the prayers made in the suit to be valued, are kept open. The Civil Revision Application is accordingly disposed off. The interim relief granted on 4 October 2011 stands vacated. The learned Judge to take up the application as regard the valuation and the court fees at the earliest.

(N.M. Jamdar, J.)