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

CIVIL REVN. APPLICATION NO. 771 OF 2015

M/s. Shri Tradco India Pvt. Ltd. ... Applicant.

V/s.

M/s. Vijaya Enterprises. ... Respondent.

Mr. Rakesh Reddy for the Applicant.
None for the Respondent.

CORAM : N.M. Jamdar, J.

26 September, 2016.

Oral Order :-

By this Revision, the Applicant challenges the order passed by the learned City Civil Court, Mumbai dated 17 July 2015 rejecting the application filed by the Applicant under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint.

2. The Respondent filed a Short Cause Suit bearing No. 2114 of 2014 seeking a declaration that the Petitioners have committed a breach of the concluded contract and they are liable to pay damages which have been quantified and sought for. In this Suit

an application under Order 7 Rule 11 of the Code of Civil Procedure was taken out which has been rejected by the impugned order.

3. The learned Counsel for the Applicant submitted that the entire suit is based on an e-mail dated 10 April 2012 which does not indicate there has been any acceptance of the offer of the Respondent – Plaintiff. He submitted that there no consideration was paid and it is settled law that these ingredients must exist before concluded contract can be assumed. The learned Counsel submitted that therefore, the plaint itself discloses no cause of action and the learned City Civil Court Judge was in error in rejecting the Notice of Motion.

4. For this purpose, the averments in the plaint will have to be noticed. It has been urged by the Respondent – Plaintiff that there was a regular trade between the Applicant and the Respondent – Plaintiff and the orders were routinely placed on telephone to be followed by e-mail whenever necessary. It is the case of the Respondent – Plaintiff that in the present case also the order was placed on telephone and the acceptance was by way of an e-mail. Whether the Respondent – Plaintiff will succeed in the suit for seeking damages is not the criteria to determine whether the plaint discloses the cause of action. An oral contract is not impermissible in law and what is pleaded is an oral contract between the parties.

The learned City Civil Court Judge therefore was right in holding that the allegations made in the plaint of the regular trade between the parties wherein parties routinely placed orders on telephone, cannot be stated to be an impossible or improbable case. Therefore, the plaint at this stage itself cannot be rejected under Order 7 Rule 11, and the matter will require a trial. No jurisdictional error committed by the learned City Civil Court Judge in passing the impugned order. However, it is clarified that the suit will be decided on its own merits that the Applicant can advance all such contentions which are available in law and facts. The Revision Application is disposed of with this clarification.

(N.M. Jamdar, J.)