

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.166 OF 2016
WITH
FIRST APPEAL NO.446 OF 2015
IN
SPECIAL C.S. SUIT NO.357 OF 2013
WITH
CIVIL APPLICATION NO.1476 OF 2015
WITH
CIVIL APPLICATION NO.1070 OF 2016

Rajendra Laxman Khilari and Ors. ...Appellants

vs.

M/s. Rainbow Business Park Premises
Co-Operative Society Ltd. and Ors. ...Respondents

Mr. Arun Panicker a/w. Mr. Nitin Parkhe, for the Appellants.
Mr. Nishant Tripathi a/w. Mr. Vaibhav Bandgar and Mr. Somnath
Iyer i/b. M.Tripathi & Co., for the Respondent No. 10.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.**

DATE : JULY 14, 2017

P.C.:

. Heard learned counsel for the parties on the Civil Application No. 1070 of 2016 seeking amendment in the valuation clause of para 30 of the Plaint in Special Civil Suit No. 357 of 2013 in the decree and correct the valuation from Rs. 50 lacs to Rs. 8 Crores and to correct Court fees paid from Rs. 36,615/- to Rs. 3 lacs. Undisputedly the Appellants have paid the Court fees as per

valuation of Rs. 8 Crore. However, the amendment could not be applied or carried out by mistake and in the circumstances, this Civil application has been filed.

2. We have considered the submissions made by the learned counsel for the Appellants as also learned counsel for Respondent No. 10. We have also gone through the reply affidavit filed on behalf of Respondent No. 10.

3. We have asked specifically to the learned counsel for Respondent No. 10 as to what prejudice will be caused to Respondent No. 10 if the amendment as applied is allowed to be carried out. He stated that in fact, so far as the prejudice part is concerned except that the Respondent No. 10 will not have one Forum available of filing Appeal before the High Court.

4. We are of the view that this cannot be said to be prejudice when once the Suit has been tried and decreed as treating it as of valuation of Rs. 8 Crores. The alleged prejudice in fact is not a prejudice which on the other hand it will deprive the Appellants' right to get the matter adjudicated by the Forum which is in fact competent to decide the matter. We also find that leave to amend in the Memo of Appeal has already been granted. In the circumstances, we find no reason to disallow the application.

5. In the result, we allow the Civil Application in terms of prayer clause (a).
6. The amendment to be carried out within two weeks.
7. The Civil Application is disposed of as such.
8. List the Petition as per CMIS date.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)