

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

**CIVIL REVISION APPLICATION NO.315 OF 2017
with
CIVIL REVISION APPLICATION NO.326 OF 2017**

Sikandar Vasant Keni & Ors. ... Applicants

Vs.

Divyakshi Cooperative Housing
Society Ltd. & ors. ... Respondents

Mr.S.D. Patil i/b P.S. Gole for the Applicants
Mr.S.S. Patwardhan i/b Radheshyam M. Agarwal for Respondent
No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 28, 2017**

P.C. :

1. In these Civil Revision Applications, the order below exhibit 47 which was filed under Order 7 Rule 11 for rejection of the plaint on the ground of valuation and the order below exhibit 49 which was filed under section 9A of the Civil Procedure Code for rejection of the plaint on the ground of jurisdiction, are under challenge. The applicants, the original defendant Nos.6, 7 and 8, are the original land owners in RCS No.40 of 2016. Respondent No.1 Cooperative Housing Society is the plaintiff, which filed a suit under Maharashtra Ownership of Flats Act for execution of the

deed of conveyance of the land against the Developer and the owners. The present applicants moved these applications on the ground of jurisdiction and maintainability. The trial Court by its orders dated 18.3.2017 has rejected both the applications.

2. The learned Counsel for the applicants submitted that the trial Court ought to have considered the objection on the ground of maintainability as the suit is under-valued. He submitted that the plaintiff seeks conveyance of 2800 sq.mtrs. of land, which cannot be valued under section 6(iv)(j) but the plaintiff should have paid Court fees ad-valorem as per the market value of the suit property which comes to approximately Rs.4,61,55,000/- and the plaintiff should have paid the Court fees under section 6(iv) of the Bombay Court Fees Act. The learned Counsel further submitted that the trial Court did not take into account the valuation report which was filed by the present applicants.

3. The learned Counsel for the respondent No.1 while opposing the applications, has pointed out that earlier, one of the defendants i.e., defendant No.2 - the Developer, who is also power of attorney holder of defendant Nos.6 to 8 i.e., the present applicants, had earlier moved an application raising objection on the

maintainability in respect of proper valuation of the suit which was rejected by the order dated 8.12.2016 by the learned 9th Joint Civil Judge Senior Division, Thane and thereafter, the applicants filed another application raising same issue on 3.2.2017. He further submitted that the earlier application was filed by the Developers and the applicants and Developers are supporting each other and the Developers in fact are the power of attorney holders of the applicants. The learned Counsel submitted that the present applicants have not challenged rejection of exhibit 31 by the Court.

4. Perused the order passed by the learned trial Judge. Perused the relief sought by the original plaintiff. The view taken by the learned trial Judge in the orders under challenge is that at the time of recording of evidence if the Court comes to the conclusion that the suit is under valued, then, the Court may direct the plaintiff to pay the additional Court fees to meet the requirement under the law. This finding cannot be faulted with. It appears that the suit is tried by the learned Civil Judge, Senior Division, who is having unlimited pecuniary jurisdiction. Thus, it appears from the observations that the trial Court is open on the ground of valuation of the suit and if at all such evidence is brought

on record by the defendants and the plaintiff is unable to meet that evidence, then, the trial Court even at the time of final stage of the judgement shall consider this issue and pass order accordingly.

5. In the circumstances, the impugned orders are confirmed.
The Civil Revision Applications are dismissed.

(MRIDULA BHATKAR, J.)