

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***WRIT PETITION NO.12300 OF 2017
WITH
CIVIL APPLICATION NO.2608 OF 2017***

K.K.Welding Company
V/s.

.Petitioner.

Wed Enterprises

..Respondent.

Mr.Pankaj S.Shah for the petitioner.

None for the respondent.

CORAM: M.S.SONAK, J.

DATE : NOVEMBER 21, 2017

PC.:-

Heard Mr.Pankaj Shah, learned counsel for the petitioner.

2. Challenge in this petition is to the order dated August 3, 2017 which is a common order made by the learned trial Judge below Exhibits – 20 and 30 in Regular Civil Suit No.183/2013.
3. Vide application at Exhibit-30, the respondent-plaintiff

applied for leave to carry out the amendment. By application Exhibit-20, the petitioner had applied for rejection of the plaint under Order 7 Rule 11(b) of the Civil Procedure Code. The application Exhibit-30 has been allowed and application Exhibit-20 was rejected by the impugned order.

4. Mr.Shah, learned counsel for the petitioner submits that the amendment application filed by the plaintiff had been allowed but the plaintiff has failed to carry out the amendment. In such circumstances, the learned trial Judge was not justified in granting an indulgence to the plaintiff and permitting the plaintiff to carry out the amendment subject to payment of cost of Rs.500/-.

5. Mr.Shah further submits that in this case on perusal of the plaint and the relief applied therefor, it will be very clear that the plaintiff seeks cancellation of the Cancellation Deed in respect of the suit property. He submits that the valuation of the suit property even on conservative basis would be in excess of Rs.1.25 crores or thereabout. He points out that the plaintiff by way of alternate relief has sought liberty to seek compensation for an

amount of Rs.1.25 crores. He submits that the suit has been valued only at Rs.1,000/- and Court fees of only Rs.200/- has been paid. Mr.Shah submits that this is clearly gross under-valuation and, therefore, a case was made out for rejection of the plaint by resort to the provisions contained in Order 7 Rule 11(b) of the Civil Procedure Code.

6. On perusing the material on record, including in particular the plaint and the impugned order, it is clear that the plaintiff has not applied for cancellation of Cancellation Deed. The plaintiff asserted that they are in possession of the suit property and a declaration is applied for, to the effect that the Cancellation Deed is *non-est* and voidable for want of consideration and fraud, misrepresentation and undue influence. There is a clear statement in the plaint that there is no consideration whatsoever reflected in the Cancellation Deed. In fact, this is one of the ground for questioning the Cancellation Deed.

7. There is an alternate submission in the plaint reserving the liberty in terms of Order 2 Rule 2 of the Civil Procedure Code

to claim compensation for an amount of Rs.1.25 crores. The plaint states that a separate application is also filed along with the suit reserving that liberty. At this stage, therefore, there is no question of payment of Court fees on the claim of compensation.

8. In the peculiar facts and circumstances as aforesaid, it cannot be said that the provisions of Order 7 Rule 11 (b) of the Civil Procedure Code are attracted because this is not a case where relief claimed is under-valued. The impugned order also notes the averments in the plaint and correctly concludes that it is not a case of under-valuation. There is accordingly, no jurisdictional error in the making of the impugned order.

9. The order below Exhibit-30 merely extends the time for carrying out amendment and supply of copy of the amended plaint to the defendant, which is a discretionary order and discretion cannot be said to have been exercised perversely.

10. For the aforesaid reasons, there is no case made out to interfere with the impugned order.

11. The petition is accordingly dismissed. There shall be no order as to costs.

12. Civil Application seeking condonation of delay is disposed of since there is no period of limitation prescribed for institution of a writ petition.

(M.S.SONAK, J.)