

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1710 OF 2018

THE STATE BANK OF INDIA
THROUGH ITS MANAGER T S VERMA
VERSUS
VITTHAL CHINDU PATIL

Advocate for Petitioner : Shri D.M. Mane
h/f. Shri D.M. Pingale.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th February, 2018

PER COURT :

1. The Petitioner/Bank is aggrieved by the order dated 08.12.2017 by which, the Trial Court has rejected the plaint for failing to remove all office objections.

2. The learned Advocate for the Petitioner/Bank submits that on 04.10.2017, the Trial Court had directed the Petitioner to remove all office objections. That order was passed after several opportunities were granted to the Petitioner to remove all office objections. Finally, the impugned order dated 08.12.2017 was passed wherein, the Trial Court has noted that a letter was sent to the Bank Manager through post, as well as, the lawyer of the Plaintiff was also informed about the office objections, who sought an adjournment on 10.11.2017. Yet all office objections were not

removed. Hence, the plaint was rejected.

3. The learned Advocate for the Petitioner strenuously criticizes the impugned order and submits that the said order is without jurisdiction. Order VII Rule 11 of the Code of Civil Procedure, does not provide for rejection of the plaint for non removal of office objections.

4. I find that though Order VII Rule 11 does not specifically provide for rejection of the plaint on the ground of non removal of office objections, such rejection would amount to a decree as defined under Section 2(2) of the Code of Civil Procedure. The definition of the “decree” specifically provides that *“it shall be deemed to include the rejection of the plaint and shall not include any adjudication from which the appeal lies as an appeal from order or any order of dismissal for default....”*.

5. Considering the above, notwithstanding the strenuous submissions of the learned counsel for the Petitioner/Bank that the Trial Court has erroneously exercised its jurisdiction under Order VII Rule 11 of the Code of Civil Procedure in rejecting the plaint, the fact remains that the rejection of the plaint under Order VII Rule 11 would amount to a decree under Section 2(2). In this backdrop, the

Petitioner would have to prefer a First Appeal under Section 96 of the Code of Civil Procedure.

5. In that view of the matter, this petition is disposed of with liberty to the Petitioner to approach the Appellate Court for preferring an appeal. The time spent by the Petitioner in this Court from 09.01.2018, till the passing of this order, would be a good ground for seeking condonation of delay. Needless to state that all contentions of the petitioner are kept open.

(RAVINDRA V. GHUGE, J.)

S.P.C.