

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7508 OF 2014

Sunanda Jagjivanrao Deshmukh,
Age : 62 years,
Occupation : Household,
R/o 1575, Chimanbag,
Opposite Maharashtra Mandal,
Near Tilak Hotel, Pune,
Taluka and District Pune-30.

...Petitioner

-versus-

- 1 Jayshree Jaykrushnarao Deshmukh,
Age : 46 years, Occupation : Household.
- 2 Laxmikant Jaykrushnarao Deshmukh,
Age : 26 years, Occupation : Education.
- 3 Prajakta Jaykrushnarao Deshmukh,
Age : 24 years, Occupation : Education.
- 4 Mahesh Jaykrushnarao Deshmukh,
Age : 18 years, Occupation : Education.

Respondent Nos.1 to 4
R/o Madhavkrushna Sankul,
Beside Peoples Bank, Raver,
District Jalgaon.

- 5 Vijaykumar Jagjivanrao Deshmukh,
Age : 72 years, Occupation : Agriculture,
R/o Raje Deshmukhwada, Raver,
Taluka Raver, District Jalgaon.
- 6 Sandhya Ramesh Sabnis,
Age : 74 years, Occupation : Household,
R/o Garden Tower, 6th Floor,
Lokhandwala Complex,

Kandiwali (East), Mumbai-400101.

7 Smt.Padmja Vasant Kulkarni,
Age : 73 years, Occupation : Household,
R/o Adinlath Towers, F-603,
Nancy Colony, Opp. Bus Depot,
Borivali (E), Mumbai-400066.

8 Vaishali Sudhakar Vipat,
Age : 66 years, Occupation : Household,
R/o R-Sector No.28, Plot No.221,
3rd Floor, Washi,
New Mumbai-400705.

...Respondents.

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Advocate for the Petitioners : Shri Shendurnikar Pushkar S..
Advocate for Respondents 1 to 5 : Shri S.S.Dixit.
Advocate for Respondents 6 to 8 : Shri Kulkarni Ashutosh S..
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner, original Plaintiff in RCS No.11/2013, is
aggrieved by the order dated 15.04.2014 passed by the Trial Court,
thereby, disposing of the application Exhibit-38 filed by the Defendants
and has directed the Plaintiff to revalue the suit in terms of Section 6(iv)
(d) of the Maharashtra Court Fees Act.

3 I have considered the strenuous submissions of the learned

Advocates for the respective sides at length and have gone through the petition paper book with their assistance.

4 The issues that the Plaintiff has raised in this petition are as to whether, Order 7 Rule 11 of the Code of Civil Procedure while considering the valuation of the suit is to be read in tandem with Section 8 of the Maharashtra Court Fees Act and whether, the enquiry under Section 8 ought to precede the direction under Order 7 Rule 11 since an order under Order 7 Rule 11 is likely to cause the rejection of the plaint.

5 It appears from the impugned order that the contentions and issues canvassed by the learned Advocates in these petitions, were in fact not properly canvassed before the Trial Court and as such, no assistance was rendered to the Trial Court while dealing with the application Exhibit-38.

6 This Court, in Mukesh K. Bajapa vs. Municipal Corporation of Greater Mumbai, 2003 (2) Mh.L.J. 256, has concluded in paragraphs 3, 3A and 4 of its judgment as under:-

"3. *Being aggrieved by the impugned notice of 7th March, 1987 issued under Section 347 and 351 of the Act, the appellant filed a suit in the City Civil Court Bombay bearing suit No. 4212/90 inter alia, for a declaration that the order of regularization directing payment of the security deposit and penalty was illegal and also for a declaration that the impugned notice of demolition under Section 346 read with Section 351 of the Act was illegal and void. The appellant valued the suit under Section 6(iv)(j) of the*

Bombay Court Fees Act and paid a fixed court fees stamp of Rs. 30/- By an impugned order dated 20th January 1994, the learned City Civil Judge held that the suit has not been properly valued and valuation under Section 6(iv)(j) of the Bombay Court Fees Act. The learned trial judge however, did not hold nor indicated under which section of the Bombay Court Fees Act the suit fell. The learned City Civil Judge held that the appellant was seeking to avoid a payment of Rs. 1,71,350/(Rs. 1,50,000-/ security deposit and Rs. 21,350-/ penalty amount) and therefore, suit ought to have been valued at Rs. 1,71,350-/. Thereupon, the Court held that the suit was beyond its pecuniary jurisdiction and returned the plaint for presentation to proper court. This order is challenged in this appeal.

3A. *The learned counsel for the respondent was unable to show under what section of the Bombay Court Fees Act the suit would fall. On perusing the provisions of the Bombay Court Fees Act, Prima facie it appears the suit could fall under Section 6(iv)(a), if not under Section 6(iv)(j) of the Bombay Court Fees Act. Assuming that it fell under Section 6(iv)(a), the Court fee is 1/4th ad valorem of fee leviable on the amount of fine or penalty sought to be recovered. According to the scale prescribed under Article 1 of Schedule I. Again it must be remembered that out of the amount of Rs. 1,71,250-/, only a sum of Rs. 21,230-/ was claimed by way of penalty/fine and the balance of Rs. 1,50,000-/ was only the security deposit and the suit for injunction against recovery of the security deposit would not fall under Section 6(iv)(a) of the Bombay Court Fees Act. Under Section 8 of the Suits Valuation Act, valuation for the purpose of the Court Fees and valuation for the purpose of Jurisdiction is the same. Therefore, it cannot be said that the suit should have been valued in the sum of Rs. 1,71,350-/ for the purpose of Jurisdiction.*

5. *It may also be noted that Section 8 of the Bombay Court Fees Act prescribes that if Court is of the*

opinion that the subject matter of the suit has been wrongly valued, the Court can revise the valuation. The Court did not exercise the power under Section 8 of the Bombay Court Fees Act. If such power was to be exercised, obviously, the plaintiff would have to be given an opportunity of hearing. In the present case, no opportunity of hearing was given to the appellant and the order dated 21st January 1994 returning the plaint was passed without hearing the plaintiff. Thus, the learned trial court clearly erred in returning the plaint without first holding an enquiry under Section 8 and without giving the plaintiff an opportunity of being heard to show that the valuation was proper."

7 There can be no debate that when the Court invokes Order 7 Rule 11 and gives an opportunity to the Plaintiff to consider revaluation under clause (b) of Rule 11, the stage, thereafter, would be as to whether, the Court is convinced of the revaluation done by the Plaintiff. If the Court is not convinced, the Court, thereafter, can proceed to reject the plaint under Rule 11 of Order 7. If this sequence of events is to be followed, then there is no room for causing an enquiry under Section 8 of the Maharashtra Court Fees Act.

8 In my view, when an issue of improper valuation or undervaluation of the suit is raised before the Court, an order to be passed under Order 7 Rule 11 cannot render Section 8 of the Maharashtra Court Fees Act nugatory. It would be in the interest of the parties that the Court directs an enquiry under Section 8 of the Maharashtra Court Fees Act to assess the valuation of the suit property. Since none of these issues have

been considered by the Trial Court and notwithstanding the fact that the Court has lost sight of Section 8 of the Maharashtra Court Fees Act, I deem it appropriate to relegate Exhibit-38 to the Trial Court for enabling the parties to canvass their submissions on the aspects involved and the Trial Court may, thereafter, proceed to pass necessary orders keeping in view the law that would be cited by the litigating sides and especially the conclusions of this Court in Mukesh case (supra).

9 The learned Advocates for the Respondents have strenuously defended the impugned order by stating that though the Order 7 Rule 11 of the Code of Civil Procedure and Section 8 of the Maharashtra Court Fees Act does not find any mention in the impugned order, it appears that the Court intends to allow the Petitioner/ Plaintiff to revalue the suit property for the purposes of payment of the court fees under clause (b) of Rule 11 of the Order 7 and thereafter, if the parties or the Court is not satisfied, the Court may proceed to conduct the enquiry under Section 8 of the Maharashtra Court Fees Act.

10 I do not find that all these submissions put forth before me find place in the impugned order and as such, it would be improper to speculate or presume that the Trial Court had intended to do what is being submitted by the learned Advocates for the Respondents without a specific observation or direction in the impugned order.

11 Considering the above, this Writ Petition is partly allowed.

The impugned order dated 15.04.2014 is quashed and set aside and the application Exhibit-38 is relegated to the file of the Trial Court in RCS No.11/2013 to enable the litigating sides to canvass their submissions afresh and especially in the light of Order 7 Rule 11 of the Code of Civil Procedure and Section 8 of the Maharashtra Court Fees Act.

12 Needless to state, the Trial Court is expected to decide the said application as expeditiously as possible and preferably within a period of TWO MONTHS from the date of appearance of these parties before the Trial Court keeping in view that the suit has been stayed by the order dated 02.09.2014 passed by this Court.

13 The learned Advocates for the respective sides pray for causing an appearance before the Trial Court on 25.01.2018. The said request is accepted.

14 Rule is made partly absolute in the above terms.