

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

CIVIL REVISION APPLICATION NO. 167 OF 2018

**BHIVA DEORAM RASAL
VERSUS
JANABAI SUKHDEO LONDHE AND OTHER**

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Advocate for the Applicant : Shri A. S. Sawant
Advocate for the Respondents : Shri S. S. Jadhavar with
Shri S.R.Shirsat

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th OCTOBER, 2018.

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PER COURT :

1. This matter was heard at length on 23/10/2018 and Today as well.

2. The petitioner/original defendant is aggrieved by the order dated 06/08/2018, by which, the Trial Court has rejected application Exhibit 85 filed by the petitioner/defendant in RCA No.228/1990. The petitioner had prayed for rejection of the plaint under Order 7 Rule 11 of the CPC on the ground that prayer clause 'B' to the plaint would oust the jurisdiction of the Trial Court in the light of Section 36A of the Maharashtra Prevention of the Fragmentation and

Consolidation of Holdings Act, 1947.

3. After considering the extensive submissions of the learned Advocates for the respective sides, the learned Advocate for the plaintiff, in consultation and on instructions from the plaintiff who is now present in the Court, submits that prayer clause 6-B in the plaint can be modified. He proposes a prayer instead of 6B and submits that he would carry out the amendment in the plaint on the first date of hearing. As such, the following prayer is proposed so as to substitute the existing prayer 6B :-

"subject to the decision of the competent authority under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, defendant No.1 be restrained from alienating the property in his possession and creating third party interests/encumbrances."

4. The learned Advocate for the petitioner submits that as the existing prayer Clause 6B seeking an adjudication by the Trial Court on the issue of whether, the consolidation scheme was properly framed and implemented or not, would be barred

by Section 36A of the said Act, the plaint deserves to be rejected.

5. I find that the learned Advocate for the petitioner is right in contending an issue falling under the Consolidation Act pertaining to the framing of the consolidation scheme or its rectification, would not fall within the jurisdiction of the Civil Court in view of Section 36A. However, since the plaintiff has proposed a prayer to be substituted which is to be incorporated in place of existing prayer 6B, I find that the grievance of the petitioner is redressed.

6. In view of the above, this petition is disposed off. The plaintiff is directed to carry out the amendment in the plaint on the first approaching date by replacing prayer clause 6B with the prayer clause suggested and reproduced as above.

7. Since the suit is of the year 1990, I find it imminent to direct the Trial Court to decide RCS No. 228/1990 as expeditiously as possible and in any case on or before 28/02/2019. The Trial Court would give highest priority to

this matter. The litigating sides would be precluded from seeking adjournments on unreasonable and trivial grounds. If any party files an application which appears to the Trial Court, to be frivolous and in order to delay the adjudication, the Trial Court would be at liberty to impose heavy costs on such applicants.

(RAVINDRA V. GHUGE, J.)

shp/-