

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 4 OF 2018

Shri Vijayshankar Mulchand Mishra

Applicant

Versus

Shri Khakidas Baba (Maheswari)
Math Trust
through its trustees

Respondents

Mr. M.S. Kulkarni, advocate for applicant.
Mr. N.S. Jaju, advocate for respondents.

CORAM : M.S. SONAK, J.
DATE : 22nd JANUARY, 2018

PER COURT:

1. Heard Mr. Kulkarni, learned counsel for applicant and Mr. Jaju, learned counsel for respondents.
2. This Civil Revision Application challenges the order dated 27.09.2017 made by the learned Civil Judge Senior Division, Ahmednagar, dismissing applicant's application under Order VII Rule 11(d) of the Code of Civil Procedure, for rejection of the plaint.
3. Mr. Kulkarni, learned counsel for applicant submits that the suit is instituted by the trust through its alleged trustees. He submits that however, the so called trustees, are infact, not trustees of the trust. He submits that the dispute in this regard has been settled right upto High Court. On this basis, Mr.Kulkarni submits that the plaint deserves to be rejected.

4. The ground raised by Mr. Kulkarni is not the one, available for disposal of application under Order VII Rule 11(d) of the Code of Civil Procedure, which has been invoked by the applicant. The ground raised is in the nature of defence, which, requires adjudication. This is not a case where on the basis of some statement in the plaint, the suit, is said to be barred under any law. Accordingly, there is no infirmity or jurisdictional error in the impugned order.

5. However, it is clarified that none of the observations in the impugned order or the circumstances that the Civil Revision Application is not being entertained, shall be construed for or against any of the parties to the proceeding. The suit is to be decided on its own merits and in accordance with law. This is because, the observations are only in the context of deciding the application under Order VII Rule 11(d) of the Code of Civil Procedure and therefore, in any case, they are not to be construed as observations on the merits of the matter.

6. With the aforesaid clarifications, Civil Revision Application is disposed of. There shall be no order as to costs.

(M.S. SONAK, J.)