

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4208 OF 2017

Alexzandar George Tone & Ors. ... Petitioner

vs.

Kishor Mavji Shah & Ors. ... Respondents

Mr. Mehul Shah a/w Ms. Shehal Dukhale, Advocates for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 27 MARCH 2018

P.C :

- 1] After this matter was argued for sometime, learned counsel for the petitioner expressed apprehension that in view of the observations in the impugned order dated 30.08.2016, it is possible that the petitioner may not permitted to raise objections in the context of Section 69 of the Indian Partnership Act, 1932 at the stage of final disposal of the suit. He submits that in case these apprehensions are suitably addressed, the petitioner, will not press the present petition seeking rejection of the plaint in the exercise of powers conferred by O.VII R.11 of CPC.
- 2] The observations in the impugned dated 30.08.2016, are undoubtedly in the context of considering the petitioner's application under O.VII R.11 of CPC.. The parameters for considering the application under O.VII R.11 of CPC are quite different. All parameters in the suit itself are taken up for final hearing. In the former case, the Court, is requested to reject the plaint as if demurrer. However, later on, the issue is about decreeing or

dismissal of the suit on merits and after considering the rival contentions, including any particular defence, which defendant may choose to raise in the suit.

- 3] Thus construed, there is no necessity for the petitioner to apprehend that any of the observation in the impugned order, which are in fact made, in the limited context of considering the petitioner's application under O.VII R.11 of CPC to come in their way at the stage of final hearing of the suit. In any case, it is clarified that none of the observations made in the impugned order will come in the way of any of parties at the stage of final hearing of the suit. In view of the aforesaid clarification, all the contentions of the parties to be determined by the Trial Court at the time of final hearing of the suit.
- 4] The writ petition is disposed of as not pressed. There shall be no order as to costs.

(M. S. SONAK, J.)