

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.812 OF 2016

Maulesh Builders Pvt. Ltd.,
Fort, Mumbai.

.... Appellant

V/s.

Mohammed Afzal Iqbal Khan and Ors.

.... Respondents

Mr. Salik Khan for the Appellant.

Mr. S.P. Srivastava for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH SEPTEMBER, 2018.

P.C. :

1. Heard Mr. Khan, learned counsel for the Appellant, and Mr.Srivastava, learned counsel for Respondent No.1.

2. This Appeal takes an exception to the order dated 5th July 2016, whereby the City Civil Court, Mumbai has dismissed the application filed by the present Appellant, under Order 7 Rule 11 and Section 9-A of the CPC, for rejection of the plaint and for framing of preliminary issue.

3. Even a cursory glance to the order passed by the Trial Court goes to show that, there is absolutely no merit in this Appeal. The rejection of

the plaint was sought on the ground that it has not disclosed the cause of action. The Trial Court has considered necessary averments made in the plaint, disclosing the cause of action of reasonable apprehension of demolition of the suit structure. The rejection of the plaint is also sought on the count that, the Suit is barred under section 42 of the Slum Act and there is no structure in existence. The Trial Court has considered that whether the structure is in existence or not or whether it comes under the purview of the Slum Act, so as to be barred under Section 42 of the Slum Act, are the questions to be decided at the time of hearing of the Suit and on that count, the plaint cannot be rejected.

4. In view thereof, as the rejection of the plaint is also sought on the count that the Suit is undervalued, the Trial Court has considered the said aspect also and found that the valuation is properly made under Section 6(iv)(j) of the Bombay Court Fees Act.

5. In view thereof, no case is made out to interfere in the said order. The Appeal, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]