

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.132 OF 2017

Jaykumar s/o Vijayji Sharma
Aged about 37 years, Occ. Business,
R/o Farshi Stop, Amravati,
Tq. and Dist. Amravati.

... Applicant.

-vs-

Prashant s/o Kawduji Kakde
Aged about 46 years, Occ. Business/Agriculturist,
R/o Sai-Sharan Kuti, Sudampuri, Wardha.

... Non-applicant.

Shri A. S. Dhore, Advocate for applicant.
Shri D. M. Surjuse, Advocate for non-applicant.

CORAM : A.S.CHANDURKAR, J.
DATE : September 05, 2018

P.C.

The original defendant is aggrieved by the order passed below Exhibit-10 that was filed under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint. The suit as filed is for perpetual injunction with the averments that in the light of agreement dated 21/10/2013 the plaintiff was put in possession. According to the defendant the said agreement is unregistered and hence there is no legal basis for seeking the relief of perpetual injunction. For said purpose reliance is placed on the decision in *Abdul Wahid vs. Manish Hansraj Chandaria 2012 (5) AIR 191*. It is further submitted that while passing the impugned order

the trial Court has referred to the averments in the written statement and that aspect has also vitiated the impugned order. The cause of action as pleaded is illusory and the plaint was liable to be rejected.

2. The learned counsel for the non-applicant supported the impugned order by referring to the averments in the plaint. It is submitted that the cause of action was clearly disclosed and rejection of the plaint was not warranted.

3. Perused the plaint and the impugned order. The trial Court has observed that the cause of action is disclosed in paragraphs 6 to 9 of the plaint. Though it is true that the trial Court has observed that the defendant had raised various pleas in his written statement and those pleadings had been taken into consideration, that by itself would not vitiate the impugned order. A finding has been recorded in terms of paragraphs 6 and 9 of the plaint that the cause of action has been disclosed. The legal effect of the agreement dated 21/10/2013 being unregistered is a matter to be considered at the trial.

4. Thus by clarifying that it is open for the defendant to raise all possible defences and by further clarifying that observations made in this order are only for deciding the present Civil Revision Application, same stands

dismissed with no order as to costs. The proceedings in the civil suit are expedited.

JUDGE

Asmita