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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.168 OF 2018

Dayanand Vishwambhar Patil

APPLICANT

VERSUS

Satish Vasantrao Survase

RESPONDENT

.....
Mr. Swapnil S. Rathi, Advocate for the applicant
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 30th JANUARY, 2019

ORDER :

1. Heard learned advocate for the applicant.
2. Mr. Rathi, learned advocate appearing on behalf of the applicant vehemently submits that going by the recitals in the sale deed and the averments in the plaint which are incompatible will have bearing and in the circumstances, application Exhibit-17 for rejection of plaint pursuant to Order VII, Rule 11 (A) ought to have been allowed.
3. Learned advocate for the applicant insists upon to have a look at the recitals, however, position of law which is fairly certain goes to consider that it is the plaint and averments in the plaint alone which are germane to be considered while

considering such applications.

4. Trial court has observed in paragraphs No. 7, 8 and 9 of the impugned order, thus,

“ 7. On perusing the contention of the defendant in the application at this stage it is not disputed to the defendants that the sale deed is executed by the plaintiff. The dispute between the parties is regarding receiving of the consideration amount. As per the contention of the plaintiff, he has not received the amount and as per the contention of the defendant the payment is received by the plaintiff. No doubt, as per section 92 of the Evidence Act no oral evidence is admissible against the documentary evidence. But provisos as provided to section 92 of the Evidence Act, permit the party to adduce the oral evidence in certain situations. Therefore, whether the plaintiff received the consideration amount or not is a matter of trial. At this prima facie stage there is no reason to disbelieve the contention of the plaintiff about the not receiving the payment to him.

8. Further though the plaintiff has not produced the cheque of Rs. 4,00,000/- but he has filed the copy of cheque of Rs.2,48,000/- of which the payment is stopped by the defendant. The plaintiff has also specifically mentioned the reason why he has not filed the original cheque in the Court. Whether the cheque of Rs. 2,48,000/- was issued towards the part consideration of Rs.3,48,000/- or it was issued towards other economic transactions is a matter of trial and at this stage it cannot be presumed that said

cheque was issued towards different transactions.

9. Further, whether the plaintiff is entitled for the relief of cancellation of sale deed is entirely depend upon the evidence adduced by the parties during trial. Whether the contract is void. Whether the same can be cancelled due non payment of consideration amount? All these questions are also the issue of trial. Therefore at this stage suit cannot be rejected merely by presuming the contents for the sale deed as true. ”

5. Having regard to aforesaid, it is not the case wherein indulgence can be given to the request made in the civil revision application. Civil revision application, as such, stands rejected.

**[SUNIL P. DESHMUKH]
JUDGE**