

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.332 OF 2018

Sou.Vinaya Nitin Hundekari and ors. : Applicants.
Versus
Pandurang Dhondiram Vadgaonkar & anr. : Respondents.

Mr. Satyajeet M Mirajkar for the Applicants.
Mr. Nitesh P Hinduja for the Respondent Nos.1 and 2.

CORAM: K.K. TATED, J
DATED : FEBRUARY 01, 2019

P.C. :

1 Heard the learned counsel for the parties.

2 By this Civil Revision Application the Applicants/original Defendants are challenging the order dated 22/01/2018 passed by the learned 6th Joint Civil Judge, Senior Division, Kolhapur below Exhibits – 37 and 41 in Special Civil Suit No.188 of 2017 rejecting the application under Order VII | Rule 11 of the Code of Civil Procedure.

3 The learned counsel Mr.Satyajeet Mirajkar appearing for the Applicants submits that by applications Exhibits 37 and 41, they prayed before the Trial Court that Special Civil Suit No.188 of 2017 filed by the Respondents/original Plaintiffs be dismissed on the grounds of limitation and non-payment of court fee. He submits that the Trial Court erred in coming to

the conclusion that the Plaintiffs filed the suit within time. He further submits that instead of rejecting the plaint, the Trial Court granted time to the Respondents/original Plaintiffs to pay the requisite court fee. Hence the Applicants have filed the present Civil Revision Application.

4 On the other hand the learned counsel Mr.Nitesh Hinduja appearing for the Respondents/original Plaintiffs submits that as per the impugned order dated 22/01/2018 passed by the Trial Court, they have already paid the requisite court fee stamp within the time. He further submits that the question of limitation is a mix question of facts and law and that cannot be decided as a preliminary issue. Hence there is no substance in the present Civil Revision Application and the same is required to be dismissed with costs.

5 I heard both the sides at length.

6 Reading of the impugned order dated 22/01/2018 shows that the Trial Court directed the Respondents/original Plaintiffs to rectify the mistake in payment of court fee and that has already been rectified by the Plaintiffs within time.

7 In so far as the question of limitation is concerned, the same

requires to be decided on the basis of the averments in plaint. Paragraph 5 of the plaint clearly shows that the Plaintiffs' cause of action arose in 2016 when they received notice from the revenue department for mutation entry of suit land. The Plaintiffs filed the suit on 30/06/2017.

7 Considering these facts and the reasons given by the Trial Court, I do not find any reasons to interfere with the present Civil Revision Application.

8 The Civil Revision Application is rejected accordingly.

9 No order as to costs.

(K.K. TATED, J.)