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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.605 OF 2018

Peer Raje Boxer Darga and Mulani Masjid
Tanang through its Trustee Shri Haneef
Gulab Mulani

..Applicant.

V/s.

Mahadev Aakaram Patil & Ors.

..Respondents.

Mr.Dushyant S.Pagare for the applicant.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 12, 2019

P.C.:-

Heard Mr.Pagare, learned counsel for the applicant.

2. Challenge in the revision application is to the order dated August 21, 2014 by which learned trial Judge has dismissed the applicant's application under Order 7 Rule 11(d) of the Code of Civil Procedure ('the CPC' for short).

3. Mr.Pagare, learned counsel for the applicant submits that in this case respondent-plaintiff has suppressed the fact that the suit property was a Wakf property. He submits that suppression is a good ground to reject the plaint under Order 7 Rule 11(d) of the CPC. He submits that the suit property is a Wakf property. He submits that

under section 88 of Wakf Act, a civil court has no jurisdiction to decide any suit concerned with a Wakf property. For all these reasons, he submits for rejection of the plaint by resort to the provisions of Order 7 Rule 11(d) of the CPC.

4. Order 7 Rule 11(d) of the CPC provides that a plaint can be rejected when the suit is barred or the statement in the plaint is barred under any law. In the present case, learned counsel for the applicant has been unable to point out any statement in the plaint on the basis of which it can be said that the suit is barred under any law. On the contrary, the contentions of learned counsel for the applicant is that the plaintiff has suppressed material particulars that the suit property is a Wakf property.

5. In the aforesaid circumstances, it is not possible to uphold the contention of learned counsel for the applicant that the plaint is required to be rejected by resort to the provisions of under Order 7 Rule 11(d) of the CPC. Also as to whether the suit property is a Wakf property and the issue that the plaintiff has suppressed material particulars are all matters of defence to be raised in the written statement. It is settled position of law that in a case of deciding an application under Order 7 Rule 11(d) of the CPC, there is no question of adverting to the written statement or defence in the written statement. If only on the basis of a statement in the plaint, the suit

seems to be barred under law, resort can be made to the provisions under Order 7 Rule 11(d) of the CPC.

6. For all these reasons, there is no infirmity in the impugned order. Accordingly, the revision application is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

7. However, it is made clear that the objection of the applicant, including the objection relating to jurisdiction of the civil Court, are kept open to be decided along with other issues which arise in the suit. The observations in the impugned order or for that matter in the present order are only for the purpose of deciding the application under Order 7 Rule 11(d) of the CPC and for no other purpose. The trial Judge need not be influenced by the same while deciding the suit on its own merits and in accordance with law.

8. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)