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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.152 OF 2019

WITH

CIVIL APPLICATION NO.90 OF 2019

Shamrao Moreshwar Kulkarni & Anr. ..Applicants.

V/s.

Arun Sampatrao Patil & Ors. ..Respondents.

Mr.Dattatraya Godbole for the applicants.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

P.C.:-

Heard Mr.Dattatraya Goddbole, learned counsel for the applicants.

2. Challenge in this petition is to the order dated January 9, 2019 by which learned trial Judge has dismissed the applicants' application seeking rejection of the plaint by resorting to the provisions of Order 7 Rule 11 of the Code of Civil Procedure (the CPC').

3. Mr.Godbole, learned counsel for the applicants initially insisted that this is case where there is no case against the applicants. However, lateron, he submits that this is a case of failure to disclose any

cause of action. He points out that the suit for specific performance of the agreement by the applicants i.e. original defendant Nos.12 and 13 are not parties to the agreement. He submits that the issue that respondent Nos.1 to 11 are the tenants in respect of the suit property had already been decided and the said decision has attained finality. He submits that this is a case where the suit is required to be dismissed as the plaintiff has no case against the applicants. For all these reasons, he submits that the plaint is required to be rejected by resorting to the provisions of Order 7 Rule 11 of the CPC.

3. There is a distinction between 'no cause of action' and "failure to disclose cause of action". It is only in the later contingency can a plaint be rejected by resorting to the provisions of Order 7 Rule 11 of the CPC.

4. The second principle in such matters is that, the Court has focus only upon the averments in the plaint and there is no scope for entering into the defence of the defendant.

5. In this case, there are specific averments with relation to the role of the petitioners. There are specific reliefs prayed for against the petitioners. The contentions as regards the legal status of original defendant Nos.1 to 11 cannot be looked into at this stage, but it will have to be considered once the parties complete their pleadings and the issues are framed. This is clearly not a case of failure to disclose cause

of action so as to exercise jurisdiction under Order 7 Rule 11 of the CPC.

6. Learned trial Judge correctly appreciated the limits of his jurisdiction while deciding the application under Order 7 Rule 11 of the CPC. There is no jurisdictional error so as to exercise revisional jurisdiction under section 115 of the CPC.

7. Besides, it is made clear that the observations in the impugned order or for that matter in the present matter is confined only for deciding the application under Order 7 Rule 11 of the CPC. Therefore, none of the observations shall influence the trial Judge while deciding the suit on merits.

8. For all the aforesaid reasons, the revision application is dismissed. There shall be no order as to costs.

9. Since the civil revision application is dismissed, the civil application does not survive and the same is also disposed of.

(M.S.SONAK, J.)