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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3096 OF 2019

Priya Co-operative Housing Society Ltd.	..Petitioner.
V/s.	
M/s. Aessen Pvt. Ltd.	..Respondent.

Mr.Roshan S.Tanna for the petitioner.

Ms.Srajita Saharia with Mr.Ajay Kohli I/b. Rignya & Associates LLP
for the respondent.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

ORAL JUDGMENT

Heard Mr.Rohan Tanna, learned counsel for the petitioner and Ms.Srajita Saharia, learned counsel for the respondent.

2. Rule. Rule made returnable forthwith. By consent of the parties, the petition is finally heard and disposed of.

3. Challenge in this petition is to the order February 18, 2019 by which the learned trial Judge has rejected the petitioner's application under Order 7 Rule 11 of the Civil Procedure Code

seeking directions to the respondent (original plaintiff) to value the suit properly and pay the Court fees thereon.

4. Mr.Roshan Tanna, learned counsel for the petitioner submits that the correct valuation of the suit should have been Rs.4 to R.5 crores and appropriate Court fees are required to be paid thereon. He submits that the respondent-plaintiff has incorrectly valued the suit at Rs.1,000/-. He submits that if the reliefs in the plaint are perused, it is obvious that the reliefs are capable of being evaluated in monetary terms. He points out that the plaintiff claims certain right in relation to the apartment of re-developed property. He submits that such a relief is susceptible to monetary valuation and, therefore, learned trial Judge was not right in relying on 6 (iv) (j) of the Bombay Court Fees Act ('the Act' for short). Mr.Tanna, relied upon the judgment of this Court in the case of *Gulam Mohamed Mohamed Yunus and another V/s. Lalcxhand Chellaramand others*¹.

5. Ms.Saharia, learned counsel for the respondent defends the impugned order on the basis of the reasoning reflected therein. She points out that the respondent does not claim any new rights.

¹ A.I.R. 1976 Bom. 389

She points out that the relief as claimed was only for declaration that there will be no development without settling the existing rights of the respondent. She, therefore, submits that the suit was correctly valued at Rs.1,000/-.

6. The rival contentions now fall for determination.

7. If the prayer clauses in the plaint are perused, it will be clear that the plaintiff has not claimed any new rights. However, it has prayed for a declaration that the petitioner has no right to develop the suit property without settling the existing rights of the plaintiff. On the basis of this basic declaration, the plaintiff has applied for the relief of injunction as well.

8. There does not seem to be any error in the decision taken by the learned trial Judge as the relief of declaration is not susceptible to monetary valuation and, therefore, reliance is placed on section 6(iv) (j) of the Act which is in the sense residuary section. There is no jurisdictional error in the view taken by the learned trial Judge so as to warrant interference.

9. In the reported case, the plaintiff had applied for setting aside the mortgage deed and in this context the Division

Bench of this Court ruled that the relief was susceptible to monetary valuation. In the present case, there is no such relief sought for by the respondent-plaintiff. Accordingly, the decision in the case of *Gulam Mohamed Mohamed Yunus (supra)* is not attracted in the fact situation of the present case.

10. There is no jurisdictional error in the impugned order. There is no case made out to interfere in exercise of jurisdiction under article 227 of the Constitution of India.

11. The petition is, therefore, dismissed.

12. There shall be no order as to costs.

(M.S.SONAK, J.)