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

CIVIL REVISION APPLICATION NO. 520 OF 2015

Shubhda Yashwant Sapre

..Applicant

vs.

Bhau Vaghu Gaikwad (since deceased)
through his legal heirs 1A) Dvarkabai
Narayan Kemse & ors.

..Respondents.

....

Shri Sanjay Kshirsagar for applicant.

Shri Amit Singh I/b. Abhay Nevagi & Associates for respondent
Nos. 7A,7B and 7C.

....

CORAM : M.S.KARNIK, J.

DATE : 27th AUGUST, 2019

P.C. :

Heard learned counsel for the applicant and learned
counsel for respondent No.7(A) to (C).

2. The applicant is the original plaintiff. Respondent
Nos.7A to 7C are heirs of defendant No.6 who along with
defendant Nos.8,12 to 15,17 to 19, 21 and 22 filed the
application Exhibit 147 under Order 7 Rule 11 of the Code of
Civil Procedure, 1908 for rejection of the Plaint as the suit is not
properly valued for the payment of Court fees.

3. Learned counsel for the applicant states that all the contesting respondents who had filed the application under Order 7 Rule 11 are duly served and an affidavit of service has already been filed.

4. By filing an application under Order 7 Rule 11 the original defendant Nos.6, 8,12 to 15,17 to 19,21 and 22 prayed for rejection of the Plaint on the ground that the valuation of the suit property mentioned in the suit is not correct and the plaintiff be directed to pay proper Court fees. The trial Court by the impugned order partly allowed the application.

5. The applicant – original plaintiff filed the suit for specific performance. It was her case that pursuant to the agreement of sale the applicant was put in possession. It is further her case that in case it is held that the applicant is not in possession then the possession be handed over to the applicant.

6. Learned counsel for the applicant states that the applicant had filed the suit for specific performance of the agreement of sale and for possession. According to him, the

applicant has correctly valued the suit in terms of Section 6(xi) (a) of the Bombay Court Fees Act, 1959. Inviting my attention to the provisions of the Suits Valuation Act, 1887 and the Bombay Court Fees Act, 1959, learned counsel would submit that if the suit is filed for specific performance of contract, the valuation has to be decided in terms of Section 6(xi)(a). He relies upon the decision of this Court in the case of **Dilip Bastimal Jain vs. Baban Bhanudas Kamble & ors.** reported in **2001 (3) Mh.L.J. 730** in support of his submission. He would therefore submit that the suit has been properly valued on the basis of the agreement of sale. He would further submit that the trial Court has committed an error in proceeding on the footing that the suit has to be valued under Section 6(v) of the Bombay Court Fees Act.

7. Per contra, learned counsel for the respondents would submit that the applicant has prayed for relief for possession. Inviting my attention to the Bombay Court Fees Act more particularly Section 6 (xi), learned counsel for respondent

No.7 would contend that the trial Court has not committed any error in directing the plaintiff to compute the fee payable as per section 6(v) of the Bombay Court Fees Act. He would invite my attention to the findings of the trial Court while coming to the conclusion. He has also relied on the decision of this Court in the case of **Chandrika Chunilal Shah vs. Orbit Finances Pvt. Ltd. & ors.** reported in **2011 (1) Mh.L.J. 898**. He would therefore submit that no interference is warranted in the order passed by the trial Court.

8. I have heard learned counsel for the parties.

9. The suit is filed by the plaintiff for specific performance of the agreement of sale and for possession. In my opinion, the controversy involved in the present Petition is squarely covered by the decision of this Court in **Dilip's case**. It may be pertinent to refer to paragraph 6 of the order of this Court in **Dilip's case** especially the reliefs claimed in the suit which forms the basis of the decision in **Dilip's case**. The relevant portion of the relief is thus :

“(i) The Defendant No.1 may be directed to execute a Sale Deed of the suit land in favour of the plaintiff by accepting the remaining consideration and be further directed to hand over the possession for the suit land of the plaintiff.”

10. Considering the various provisions of the Section 8 of the Suits Valuation Act and the provisions of the Section 6 (xi)(a) of the Bombay Court Fees Act, this Court in **Dilip's** case was of the opinion that in such matters the computation of the Court fees in the suit falling under Section 6(xi) (a) is as per amount of consideration of the transaction. In my opinion and as mentioned earlier, the present case is squarely covered under the decision of **Dilip's case**.

11. The decision relied by learned counsel for respondent No.7 in the case of **Chandrika** has no application to the facts of the present case. This Court in the case of **Chandrika** was considering the issue of payment of Court fees in a suit for enforcement of obligation cast upon respondent No.1 Promoter under Maharashtra Ownership Flats Act. The said decision therefore has no application to the facts of the present case.

12. In this view of the matter, the order passed by the trial Court calls for interference. The order is set aside. The application below Exhibit 147 stands rejected. The Civil Revision Application is allowed with no order as to costs.

13. The suit to proceed. The trial Court is requested to expedite the hearing of the suit. The observations made in this application are limited to the order passed under Exhibit 147.

(M.S.KARNIK, J.)