

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

**APPEAL FROM ORDER (ST.) NO. 14036 OF 2019
WITH
CIVIL APPLICATION (ST.) NO. 14039 OF 2019**

Sudhir Yeshwant Surve & Anr.	...	Appellants
V/s.		
Krupal Maniar & Anr.	...	Respondents

Mr.Navin Tiwari i/b. Mr.V.V. Khanolkar for Appellants.
Mr.Kapil Shah i/b. MK Juris Associates for Respondents.

CORAM : A.S. GADKARI, J.
DATE : 4th November 2019.

PC. :

1] The appellants-original defendant Nos.1 and 2 have impugned Order dated 1st April 2019 passed by the learned Adhoc Judge, City Civil Court, Borivali Div. Dindoshi, Mumbai, in Notice of Motion No. 3891 of 2018, dismissing the said motion, filed by the appellants under Order 7 Rule 11 of the Civil Procedure Code, for rejection of plaint.

2] The respondents have filed the aforesaid suit for specific performance of agreement dated 9th January 2007 in respect of the suit property more particularly mentioned in the body of the plaint. It is the contention of the appellants that the pleadings in the plaint does not make out any cause of action to file the said suit.

3] Learned counsel for the appellants submitted that, the Trial Court

has committed an error in not allowing the said motion. He submitted that, the findings recorded by the Trial Court in para No.5 of the impugned Order are erroneous. He therefore prayed that, the present appeal may be allowed by setting aside the impugned Order inter-alia this Court may be pleased to dismiss the suit filed by the respondents.

4] Perusal of record would indicate that, the appellants also had filed a suit for cancellation of the said same agreement, dated 9th January 2007, executed between the appellants and the respondents and the said suit was subsequently withdrawn by the appellants from the concerned Court. It is thus apparent that there is no dispute about the execution of agreement dated 9th January 2007 between the parties interse. A bare perusal of the plaint filed by the respondents would indicate that, sufficient cause of action has been elaborated in the body of the plaint, with a specific prayer for grant of decree of specific performance of agreement dated 9th January 2007 in respect of the suit property mentioned therein.

5] In view thereof, I find no merit in the present Appeal.

Appeal is accordingly rejected.

6] In view of dismissal of the Appeal, nothing survives in the Civil Application and it is accordingly disposed off.

[A.S. GADKARI, J.]