

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 299 OF 2007

Prabhakar M. Kondhalkar and anr. .. Applicants
vs.
Prakash V. Pawar and ors. .. Respondents

Mr. S.S. Kulkarni for the Applicants.
Mr.S.D. Rayrikar I/b Mr. S.N. Chandrachud for Respondent
No.1.

CORAM : M. S. SONAK, J.
DATE : 04 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. S.S. Kulkarni, learned counsel for the applicants and Mr. S.D. Rayrikar, learned counsel for respondent No.1.

2] The challenge in this revision application is to the order dated 4th March 2006 by which the learned Trial Judge has dismissed the applicants' application under Order 7 Rule 11 of CPC for rejection of the plaint.

3] Mr. Kulkarni, learned counsel for the applicants, submits that the issue as to whether the plaintiff ought to have been admitted as a member of the Society or not is an issue which is required to be agitated by adopting special

provisions under section 23 of Maharashtra Cooperative Societies Act, 1960 (MCS Act) or in any case by raising a dispute under section 91 of the MCS Act. He submits that such an issue cannot be raised by instituting a suit. Further, he submits that in any case, the suit was barred by limitation and even the valuation of the suit was improper.

4] Based upon the record, it cannot be said that the view taken by the learned Trial Judge suffers from jurisdictional error. However, it is necessary to note that the learned Trial Judge has treated the application under Order 7 Rule 11 of the CPC as an application for framing of preliminary issues on the aforesaid aspects adverted to by Mr. Kulkarni.

5] Taking into consideration the fact that the suit is of the year 2002, the interests of justice will be met if the learned Trial Judge is directed to frame the issues *inter alia*, aspect of jurisdiction, valuation, limitation and thereafter to decide all these issues along with other issues which arise in the suit. The learned Trial Judge is directed to do so and dispose of the suit, on its own merits and in accordance with law. It is

made clear that the observations in the impugned order or the fact that this Court has also observed that the impugned order is not in excess of jurisdiction, will in no manner influence the learned Trial Judge whilst deciding all the aforesaid issues on their own merits and in accordance with law. The observations in the impugned order or for that matter the observations in the present order is made only in the context of deciding whether a case was made out for exercising of powers under Order 7 Rule 11 of the CPC and not for any other purpose.

6] Therefore, by clarifying the aforesaid position, this Civil Revision Application is disposed of.

7] The applicants to appear before the learned Trial Judge on 16th April 2019 and file an authenticated copy of this order. Based upon the same, the learned Trial Judge to proceed to dispose of the suit by framing all the aforesaid issues. The learned Trial Judge is directed to dispose of the suit as expeditiously as possible.

8] This Civil Revision Application is disposed of in the aforesaid terms. There shall be no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)