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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.24430 OF 2019  
WITH  
CIVIL APPLICATION NO.1148 OF 2019

|                         |                |
|-------------------------|----------------|
| Swaliha P. Aajid Sayyad | ...Appellant   |
| V/s.                    |                |
| Sajid J. Sayyad & Ors.  | ...Respondents |

Mr.Bhooshan R. Mandlik for the Appellant.

Mr.Amit B. Borkar for the Respondent Nos.3 and 4.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 17TH SEPTEMBER, 2019.**

**P.C. :-**

1. Heard learned counsel appearing for the appellant and the respondent nos.3 and 4. The respondent nos.3 and 4 are the contesting respondents (original defendant nos.3 and 4). The respondent nos.1 and 2 are the formal parties to this appeal. No reliefs are sought against those respondents.

2. Admit on the following question of law :-

i). Whether learned trial Court could have dismissed the suit only against the defendant nos.3 and 4 under order VII Rule 11(d) of the Code of Civil Procedure, 1908 or not ?

3. Learned counsel for the parties agree that the issue

involved in this regard is concluded by the judgment in case of **Madhav Prasad Aggarwal and another vs. Axis Bank Limited and another (2019) 7 SCC 158.**

4. In my view, since the judgment of the two Courts below is clearly contrary to the judgment of the Supreme Court in case of **Madhav Prasad Aggarwal and another**(supra) thereby rejecting the plaint insofar as the defendant nos.3 and 4 is concerned, the same deserves to be set aside. Substantial question of law framed by this Court is accordingly answered in negative. The judgment and decree dated 11<sup>th</sup> March, 2019 passed by the learned Second Joint Civil Judge (Senior Division), Kolhapur below Exhibit – 16 in Special Civil Suit No.58 of 2019 is set aside. The judgment and decree passed by the learned District Judge – 1, Kolhapur in Regular Civil appeal No.121 of 2019 is set aside. Special Civil Suit No.58 of 2019 is restored to file. Application below Exhibit – 16 filed by the defendant nos.3 and 4 is dismissed.

5. Interim protection granted by the first Appellate Court in Regular Civil Appeal No.121 of 2019 which was continued by an order dated 29<sup>th</sup> July, 2019 to continue for a period for a period of six weeks from today. The plaintiffs would be at liberty to apply for interim relief in the pending suit. If any such application is filed by the plaintiffs for interim relief, the same shall be decided on its own merit and without being influenced by the fact that the first Appellate Court had granted interim protection in favour of the plaintiffs during the

pendency of Regular Civil Appeal No.121 of 2019.

6. Insofar as payment of Court fees is concerned, my attention is invited to the judgment of this Court in case of **Ramila Rajnikant Kilachand vs. Harsh Rajnikant Kilachand & Ors., 2004(6) Bom.C.R. 75** by the learned counsel for the appellant in support of the submission that the appellant is entitled to exemption from payment of Court fees under a notification dated 1<sup>st</sup> October, 1994 and 23<sup>rd</sup> March, 2000. A perusal of prayers in the plaint filed by the appellant clearly indicates that it does not fall within the terms and conditions of the exemption notification dated 1<sup>st</sup> October, 1994 and 23<sup>rd</sup> March, 2000. The judgment of this Court in case of **Ramila Rajnikant Kilachand** (supra) would not assist the case of the appellant. The appellant in this case had applied for share in the property alleged to have been purchased by her own funds and thus the dispute would not be governed by these two notifications. The appellant is accordingly directed to pay the differential amount of Court fees within two weeks from today. It is made clear that the relief granted by this Court in this order shall not be effective till such time the appellant pays the differential amount of Court fees within two weeks from today.

7. The second appeal is allowed on aforesaid terms.

8. In view of disposal of the second appeal, Civil Application no.1148 of 2019 does not survive and is accordingly dismissed.

9. The learned trial Court shall make an endeavor to dispose of the application for injunction, if made by the appellant within six months from today.

***(R.D. DHANUKA, J.)***