

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5446 OF 2018

Balasaheb B. Wagh and ors. .. Petitioners
vs.
Madhukar M. Wagh and ors. .. Respondents

Mr. Sachin Gite for the Petitioners.

CORAM : M. S. SONAK, J.
DATE : 02 MAY 2019.

P.C. :-

- 1] Heard Mr. Gite, learned counsel for the petitioners.
- 2] Mr. Gite presses only for the alternative prayer in prayer clause (d) of the petition, which reads as follows:

“d] In the alternative and without prejudice to above, this Hon’ble Court may be pleased to direct the Learned Joint Civil Judge, Senior Division at Nashik to decide the application filed below Exh. 141 and below Exh. 146 in Special Civil Suit No. 199 of 2008 as expeditiously as possible within some time as may be stipulated by this Hon’ble Court.”

- 3] According to me, if the petitioners have filed applications at Exhibits-141 and 146 seeking rejection of the plaint under Order 7 Rule 11 of CPC, such applications are required to be disposed of on their own merits and in accordance with law. Learned Trial Judge cannot refuse to

dispose of such applications by merely recasting the issues and framing of issue as to whether suit is maintainable under Order 7 Rule 11 (d) of CPC or not. In fact, such an issue can never be framed, because if a case is made out for rejection of the plaint under Order 7 Rule 11 (d) of CPC, then the plaint itself has to be rejected and there is no question of framing of such issue in the matter.

4] Therefore, without going into the merits of the matter, learned Trial Judge is directed only to dispose of the petitioners' applications at Exhibit-141 and 146, which are applications seeking rejection of the plaint under Order 7 Rule 11 of CPC as expeditiously as possible and in any case within a period of three months from today.

5] The petitioners to place an authenticated copy of this order before the learned Trial Judge on or before the next date or in any case on 4th June 2019.

6] Since, the only direction is being issued to dispose of the aforesaid applications, no notices have been issued to the

respondents. Learned Trial Judge to therefore, give full opportunity to the respondents to contest the applications under Order 7 Rule 11 of CPC. It is once again made it clear that this Court has not examined the merits of the such applications and therefore, all issues which arise in such applications will have to be dealt with by the learned Trial Judge on their own merits and in accordance with law.

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

(M. S. SONAK, J.)