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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.26 OF 2019

M/s. Shah and Associates	..Applicant.
V/s.	
Smt. Chandrabai Nagesh Patil & Ors.	..Respondents.

Mr.Rakesh Kumar with Kajal Thallapalli with Rakhi Dubey i/b. Kumar & Associates for the applicant.

Mr.Ajit D.Hon for respondent Nnos.1 to 9.

CORAM : M.S.SONAK, J.

DATE : APRIL 10, 2019

ORAL JUDGMENT

On January 18, 2019, this Court made the following order:-

“ *Second time the learned counsel for the Applicant has mentioned the matter for fixing an early date of hearing.*

2. *Considering the submissions made by the learned counsel for the Applicant and the reasons disclosed in the praecipe and the CMIS date is of June 2019, I do not find any urgency in the matter.*

3. *Hence, S.O. to CMIS date.”*

2. Despite the aforesaid, it appears that this matter was

mentioned for circulation without bringing notice of this order dated January 18, 2019 to the Court. It is most improper.

3. Learned counsel for the applicant now seeks to give some reasons as to why this matter was mentioned. The reason may or may not be genuine. However, what is not appreciated is the fact that the order dated January 18, 2019 was suppressed.

4. Accordingly, the applicant is directed to pay costs of Rs.5,000/- in favour of the Legal Services Authority within a period of one week from today.

5. Learned counsel for the applicant states that the said costs will be positively paid within a period of one week from today.

6. Mr.Rakeshkumar, learned counsel for the applicant now points out that there is urgency in the civil revision application. He explains the urgency is, the *status quo* order has been granted in the suit as a result of which, construction on the suit property is stalled or rather, the entire process leading to the construction has been stalled. According to me, this does not constitute urgency to take up the matter out of turn and that too when the applicant has suppressed the previous order.

7. Notwithstanding, Mr.Rakeshkumar, learned counsel for the applicant was heard on merits in this revision.

8. Mr.Rakeshkumar submits that in this case, the respondents

had applied for specific performance of the development agreement and in the alternative has applied for compensation / damages. He submits that in terms of section 14(1)(a) of the Specific Relief Act, 1963 ('the Act' for short) the relief of specific performance in respect of the development agreement can never be granted. He submits that in so far as the issue of compensation / damages is concerned, the suit can proceed and the applicant is also ready and willing to deposit in the Court the amount of Rs.70 lakhs, which is the principle amount claimed in the suit. He submits that on this ground, the plaint is required to be rejected by resort to the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure ('the CPC' for short). In the alternative, he submits that the directions be issued for expeditious disposal of the suit.

9. Mr.Ajit Hon, learned counsel for respondents-plaintiff defends the impugned order on the reasoning reflected therein.

10. According to me, the civil revision application is entirely misconceived. A plaint can be rejected Order 7 Rule 11(d) of the CPC only where, on the basis of a statement in the plaint, the suit is bad under any law. The contention of Mr.Rakeshkumar does not relate to the maintainability of the suit or even the maintainability of the part of the suit. At the highest, the contention relates as to whether or not any specific performance ought to be granted in the suit or not.

11. Besides, the issue as to whether the agreement in question

is a development agreement or not is required to be determined in the course of trial. The mere nomenclature in such matters is totally irrelevant when the contents of the agreement has to be examined and the parties are further entitled to lead evidence on the aspect of the intention in the event there is any ambiguity in any of the terms. In any case, at the stage of deciding an application under Order 7 Rule 11 of the CPC, there is no question of adverting to the defence of the defendants. In the present case, it cannot be said that on the basis of the statement in the plaint, the suit is barred under any law or that the suit is barred under the provisions of the Act. The alternative relief of damages / compensation has also been prayed for in the suit. In order to decide whether the such relief is true or not, the suit is required to proceed for trial.

12. The applicant can always make application before the learned trial Judge for depositing the compensation / damages, if the applicant so desires. However, on the said basis, neither the plaint or even part of the plaint can be rejected.

13. There is no infirmity in the impugned order. Accordingly, civil revision application is liable to be dismissed and is hereby dismissed.

14. The applicant, as noted aforesaid, to pay costs of Rs.5,000/- within a period of one week from today and also file affidavit of

compliance both before this Court as well as before the learned trial Judge within a period of three weeks from today. If no such affidavit of compliance is filed before the learned trial Judge, learned trial Judge to consider whether any order should be made against the applicant, including orders of striking off defence.

15. In so far as relief of expediting the suit is concerned, the said relief is also equally misconceived. This is not an urgent case which should jump the queue. The suit, therefore, be disposed by its own turn.

(M.S.SONAK, J.)