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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.199 of 2019

Rajendra S.Shivdasani

..Applicant.

V/s.

Sunrise Build Mark Pvt. Ltd.

..Respondent.

Mr.Rajiv Singh with Yuvraj K.Singh I/b. M/s. Desai & Diwanji for the applicant.

Mr.A.S.Pandey for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 12, 2019

P.C.:-

Heard Mr.Singh, learned counsel for the applicant and Mr.Pandey, learned counsel for the respondent.

2. Challenge in the revision application is to the order dated August 29, 2018 by which learned trial Judge has rejected the applicant's notice of motion seeking rejection of plaint under Order 7 Rule 11 and under section 151 of the Code of Civil Procedure ('the CPC' for short).

3. Mr.Singh, learned counsel for the applicant submits that it is the case of the applicant that on account of the subsequent developments, the suit has been rendered infructuous. He points out

that on the basis that there is an alleged memorandum of understanding (MOU), the respondent is alleged to have made payment of Rs.1.35 crores to the petitioner. He points out that the suit is for permanent injunction simplicitor and no other relief has been claimed in the plaint. He points out that the applicant through the banking channels refunded an amount of Rs.1.35 crores. He submits that upon acceptance of such refund, the substratum of the suit was taken away and the suit for the relief claimed was rendered infructuous. He submits that in such circumstances, learned trial Judge was required to reject the plaint *inter alia* on the ground that the same has been rendered infructuous.

4. Mr.Pandey, learned counsel for the respondent defends the impugned order on the reasoning reflected therein.

5. According to me, this is clearly not a case for rejection of the plaint by resort to the provisions of Order 7 Rule 11 and section 151 of the CPC. Though there might not be any dispute as regards the refund of amount of Rs.1.35 crores, rest of the issues involve very serious dispute on facts.⁸ There are dispute as to the very execution of the MOU and in any case, regarding the return of payment and refund of Rs.1.35 crores. There are disputes as to whether the payment was made towards some loan transaction or it was a consideration for purchase of an immovable property. In these circumstances, it cannot

be said that the relief in the suit has been rendered infructuous. The plaintiff seeks permanent injunction relying upon not just the issue of payment but also the terms of the MOU. Whether the plaintiff will ultimately be in a position to make good the pleadings in the plaint or not is not the consideration to be gone into at this stage. However, there is no case made out to reject the plaint by resort to the provisions of Order 7 Rule 11 and section 151 of the CPC.

6. Accordingly, there is no jurisdictional error in the view taken by learned trial Judge. This revision is, therefore, dismissed. There shall be no order as to costs.

7. However, it is made clear that the observations in the present order are only in the context of deciding the application for rejection of plaint. Therefore, the observations need not influence the learned trial Judge while deciding the suit on its own merits and in accordance with law. All contentions of the parties are expressly kept open.

8. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)