

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2137/2019

Sudhir S. Joshi
..VS..
Shradha S. Joshi & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.M. Vaidya, Adv h/f Shri A. Parchure, Adv for the petitioner
Shri A.S. Shukla, Advocate for the respondents

CORAM : Z.A.HAQ, J.
DATED : 30/08/2019

The original defendant no. 1 has challenged the order passed by the trial Court by which the application (Exh. 36) filed by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the plaint by deleting part of the relief sought by the plaintiffs is allowed.

According to the petitioner – defendant no. 1, the plaintiffs filed the application (Exh. 36) after the defendant no. 1 had filed an application (Exh. 23) under Order 7 Rule 11 of the Code of Civil Procedure seeking rejection of the plaint on the ground that the plaintiffs had not properly valued their claim and it was under valued, and therefore the application (Ex.36) cannot be considered until the application filed by the petitioner – defendant under Order 7 Rule 11 of the Code of Civil Procedure is decided.

The learned advocate for the respondent – plaintiffs has pointed out the judgment given by this Court in

the case of Pramod S/o Manoharrao Konge vs. Shantaram Balkrushna Dhok reported in 2017 (3) Mh.L.J. at page 223 in which, relying on the judgment given by the Hon'ble Supreme Court in the case of R.K. Roja vs. U.S. Rayudu and another reported in 2016 (5) ALL MR at page 446 (SC), this Court held that in such a situation, the application under Order 6 Rule 17 of the Code of Civil Procedure should be decided before taking up for consideration, the application under Order 7 Rule 11 of the Code of Civil Procedure.

I find that the learned trial Judge has rightly taken up the application (Exh. 36) for consideration before the application (Exh. 23) filed by the defendant no. 1 under Order 7 Rule 11 of the Code of Civil Procedure.

As far as merits of the order passed on the application (Exh. 36) are concerned, I find that the defendant no. 1 has not been able to point out any legal impediment which prohibits the plaintiffs from seeking amendment as proposed by the application (Exh. 36). The amendment application came to be filed even before framing of issues.

In the above facts, I see no reason to interfere with the impugned order.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE