

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.15121 OF 2019

Sitaram Bateshwarrao Rai,
Age 58 years, Occ. Business,
R/o. Yashwantnagar New Ceat
Road Ranjangaon, Tq. Gangapur,
Dist. Aurangabad.

... Petitioner.
(Orig. Defendant)

VERSUS

Pintookumar Arvind Prasad Pal,
Age 28 years, Occ. Business,
R/o. Gut No. 54, Yashwant Nagar
New Ceat Road, Ranjangaon, Waluj
MIDC, Tq. Gangapur, Dist. Aurangabad.

... Respondent.
(Orig. Plaintiff)

...

Advocate for the Petitioner : Mr. Bhandari Anand P
Advocate for the Respondent : Mr. Pathan Yunus Basheer.

CORAM : MANGESH S. PATIL, J.
DATE : 15.11.2021.

ORAL JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The defendant is impugning the orders passed by the Trial Court on his applications (Exh. 24 an 25) whereby he prayed rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure for under valuation and for framing issues regarding valuation, pecuniary jurisdiction and non-joinder of necessary parties, respectively. The learned Judge by the impugned orders has rejected both these applications.

3. As can be seen from the papers and the impugned orders, as far as the application (Exh. 24) for rejection of plaint is concerned, in fact the respondent/plaintiff in his say to that application had expressed his readiness to correct the valuation and to pay necessary deficit court-fees. Not only that but he even made a further request to transfer the suit, as post such correction in the valuation the Court would lose pecuniary jurisdiction to try and decide the suit.

4. True it is that there cannot be any estoppel against law. Whether the suit has been correctly valued or not is a matter to be decided by the Trial Court. However, the learned Judge even has not adopted that course. She has rejected the applications simply on the ground that the suit has been properly valued and that the application was filed at a belated stage when the suit was awaiting cross-examination of the respondent. Needless to state, it is a matter that ought to have been considered by the trial Judge by framing appropriate issue.

5. Be that as it may, there was no direction to pay deficit court fees by correcting valuation and consequently the plaint could not have been rejected under Order XII Rule 11 of the Code of Civil Procedure.

6. Pertinently, however, the learned Judge has not considered as to why even an issue regarding valuation should not be framed and decided at the trial. She has simply refused to frame the issue leave alone its consideration at an appropriate stage.

7. Again, the application (Exh. 25) has been rejected under the assumption that it is nothing but a repetition of the prayers being made in the application (Exh. 24). Importantly, the issue regarding non joinder of necessary parties was also sought to be framed and decided but there is absolutely no whisper in the impugned order as to why the issue could not be framed even when there is specific pleadings in paragraph No. 4 of the written statement.

8. All in all, the learned Judge seems to have failed to exercise the jurisdiction vested in it in framing the issues and deciding it with the suit more so, when the alleged valuation goes to the root of the pecuniary jurisdiction. No prejudice was likely to be caused to the respondent if at least the issues were directed to be framed and decided. It is to be borne in mind that the petitioner was not insisting that the issues to be framed and decided as preliminary one.

9. In view of the above, the Writ Petition is partly allowed. The impugned order passed on the application (Exh. 25) is quashed and set aside. The Trial court shall now allow that application and frame the three issues proposed in that application and decide it along with the suit.

10. Writ Petition to the extent it challenges the order passed on application (Exh. 24) is rejected.

11. Leave granted to the respondent to file additional affidavit in lieu of examination-in-chief.

12. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-