IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6942 OF 2019

Dr. Ghulam Ahmed Ahmed Khan and others … Petitioners
Vs.
M/s. Arihant Promoters and Developers through its
Proprietor Dharmesh Vasantrai Shah and others … Respondents

Mr. Santaram Tasale i/b. Ms. Geetanjali Shinde for Petitioners.
Mr. Dormaan Dalal i/b. Mr. Abhishek Srinivasan for Respondent No.1.

CORAM : BHARATI DANGRE, J.
DATE : NOVEMBER 23, 2021

P.C. :

Heard learned counsel for the petitioners / original plaintiffs and learned counsel for respondent No.1. The plaintiffs instituted a suit numbered as Special Civil Suit No.1331 of 2013 for possession with the following prayers:-

> “(a) This Hon’ble Court be pleased to call for records and proceedings of the impugned judgment and order dated 25th February 2017, passed by learned Civil Judge Senior Division, below Exhibit-87 filed by Respondent No.1 in Special Civil Suit No.1331 of 2013 under provisions of Order 7 Rule 11(b) read with Section 6(ii) and 6(v) of the Maharashtra Court Fees Act, 1959 and after perusing its legality, validity and propriety be pleased to quash and set aside the same;
>
> (b) This Hon’ble Court may be pleased to stay further proceedings of Special Civil Suit No.1331 of 2013 pending before learned Civil Judge Senior Division, Pune till the final disposal of present Petition;”

2. Defendant No.1 thereupon moved an application for rejection of plaint in terms of Order VII, Rule 11(a) of the Code of Civil Procedure, 1908 on the ground that the suit is not properly valued for the purpose of court fees. The submission was that the plaintiffs had sought possession of six flats and sought damages of Rs.9,00,000/- per month and in the light of the said relief, the flats ought to have been evaluated as per the market value of the flats in terms of section 6(v) of the Maharashtra Court Fee Stamp Act. It was also prayed that damages ought to have been valued in terms of Section 6(ii) of the said Act instead the court fee was paid by taking into account the valuation of the suit at Rs.81,69,501/-. On the said objection being raised by defendant No.1, the learned Joint Civil Judge, Senior Division, Pune on 25.02.2017 passed the following order:-

> "1. The plaintiffs are directed to make proper valuation of the suit and pay proper court fees thereon within 15 days from today, failing which the plaint shall stand rejected as per Order 7 Rule 11(b) of the Code of Civil Procedure."

3. It is not in dispute that the necessary compliance was never undertaken by the plaintiffs by properly valuing the suit and paying proper court fees leading to an inference that on compliance being failed, within 15 days as directed by the Court, the plaint was to stand rejected.

4. The counsel for the respondent / defendant No.1 raised a preliminary objection about the maintainability of the writ petition and his submission to the effect that when the plaint has been rejected, it amounts to a decree and would fall within the purview of Section 2(2) of the Code of Civil Procedure; necessarily thereupon, on rejection of the plaint, the remedy that would be available is of preferring of an appeal. He has placed reliance on the latest judgment of the Apex Court in the case of *Sayyed Ayaz Ali Vs. Prakash G.*

Goyal, **(2021) 7 SCC 456** to buttress his submission that since the plaint is rejected by taking recourse to Order VII, Rule 11(d) and since the deficit court fee on its proper valuation has not been rendered, the remedy available is by way of an appeal since an appeal would lie against a decree in terms of Section 2(2) of C.P.C.

5. Relying upon paragraph 19 of the said decision wherein it has been held that the definition of 'decree' in section 2(2) "shall be deemed to include the rejection of a plaint" and the further observation of Their Lordships in paragraph 19 to the effect that the order of the trial court rejecting the plaint is subject to a first appeal under section 96 of C.P.C. and the writ petition filed by the appellant was liable to be rejected on that ground, in my considered opinion, the aforesaid wordings of the Highest Court of land determine the controversy and the objection raised by the counsel for the respondent justifies its existence.

6. Though the learned counsel for the petitioners has vehemently argued to the effect that the valuation which was directed by the impugned order is in fact not correct as taking into consideration the nature of the reliefs sought, section 6(iv)(j) ought to have been invoked and accordingly he had valued his suit based on the said provision. He placed reliance on the decision of this Court in the case of *Rajaram Bhagwati Tiwari Vs. M.C.G.M.*, **2004 (3) Mh.L.J. 290**. There cannot be any doubt about the fact that the plaintiff is always entitled to challenge the order directing him to pay the necessary court fee after the effective valuation which according to him is not correct. But the only question that remains is in what proceedings the said order shall be called into question. Since the order at page 92 makes it clear that on failure to pay court fees on proper valuation of the suit within a period of 15 days, the plaint shall stand rejected as per Order VII, Rule 11(d) of C.P.C. and particularly on reading of the

proviso appended to Order VII, Rule 11, it is not permissible for the court to grant extension of time on expiry of the said period of 15 days, in the contact of clauses (b) and (c) of Order-7, Rule-11.

7. In the wake of the aforesaid, though it is open for the plaintiffs to assail the legality of the said the order, they will have to assert it in an appeal filed under Section 96, since rejection of the plaint amounts to a decree within a meaning of the C.P.C. and therefore, writ petition is not maintainable. Writ Petition, therefore, deserves to be dismissed and is accordingly dismissed with liberty to the petitioner to avail the remedy of appeal, if it is so available to him.

(SMT. BHARATI DANGRE, J.)

Minal Parab