

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CIVIL REVISION APPLICATION NO.145 OF 2021

JALGAON CITY MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER SATISH PANDITRAO KULKARNI AND OTHERS
VERSUS
PRADIP NIVRUTTINATH KULKARNI AND OTHERS

...
Advocate for Petitioners : Mr. L.V. Sangit
...

CORAM : MANGESH S. PATIL, J.

DATE : 5TH JANUARY, 2022

PC :

Heard learned Advocate Mr. Sangit for the revision petitioners, who are the defendants.

2. In an unusual proceeding, in a suit instituted by the respondent, seeking a declaration about having a right to enforce the provisions of section 63 of the Maharashtra Municipal Corporations Act, 1949 in the light of the judgment of Division Bench of this Court in Public Interest Litigation no. 71 of 2013 (Principal Seat), the defendant Corporation filed an application for rejection of plaint (Exhibit - 46) under Order VII Rule 11 (d) of the Code of Civil Procedure. By the order under challenge in this Revision under section 115 of the Code of Civil Procedure, the trial Court has rejected the application.

3. The learned Advocate Mr. Sangit would submit that though in the Public Interest Litigation no. 71 of 2013, a citizen has been held

entitled to enforce right to have pothole free roads and has held it to be a fundamental right, the petitioner - Corporation was not a party to that litigation and even pursuant to a direction given in that judgment, the State Government has never issued any direction to it. He would, therefore, submit that apart from the fact that the respondent - plaintiff intends to enforce a fundamental right, appropriate remedy for him was to either file a writ petition or to seek enforcement of the judgment in the Public Interest Litigation.

4. I am afraid, the submission of the learned Advocate Mr. Sangit is misplaced. The petitioner - Corporation by filing application, on which the order under challenge is passed, was seeking rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure which states that a plaint can be rejected if from any statement in it the suit is not maintainable being barred by any law.

5. Apart from the above state-of-affairs, the learned Advocate for the petitioner could not demonstrate any express or even implied bar to the jurisdiction of the civil Court, as is required by the decision in the case of **Dhulabhai and others Vs. State of Madhya Pradesh and others ; AIR 1969 SC 78.**

6. Going by the plain reading of the plaint, at several places, the respondent no. 1 has disclosed as to what circumstances compelled him to file the suit, and the existence of cause of action. Further, as has been held in the Public Interest Litigation no. 71 of 2013, it is a

fundamental right of every citizen to have pothole free roads. Apparently, the respondent is seeking to enforce such right, which according to the trial Court, is also a civil right, enforceable at law.

7. Mr. Sangit could not point out any specific statement from the plaint which would disclose any bar to the suit.

8. In view of the above state-of-affairs, I find no error or illegality in the order under challenge rejecting the application Exhibit - 46. There is no merit in the Revision. It is dismissed in limine.

[MANGESH S. PATIL, J.]

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