

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 146 OF 2016

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Nyati Builders Pvt. Ltd.

..Applicant

Versus

Mr. Rajat Dinesh Chauhan & Ors.

..Respondents

Ms. Gauri Godse, for the Applicant.

None for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd MARCH, 2022

PC.

1. This application is by the defendant No.1, to suit for specific performance being Special Civil Suit No.1449 of 2008, wherein the prayer of the applicant under Order VII Rule 11(b) of the CPC for rejection of plaint on the ground of under valuation of the suit claim and non-payment of Court fee came to be rejected vide impugned order dated 30th December, 2015.

2. Submissions of learned counsel for the petitioner are, the pleadings in the plaint and the challenge in relation to the sale-deed executed by applicant/defendant No.1 in favour of defendant Nos.2 and 3 if appreciated, the suit has to be termed as under valued as valuation above aforesaid claim is not done and court fee is not paid. According to her, the fact that, the property was transferred in favour of defendant Nos.2 and 3 by defendant No.1 was initially not subject matter of suit. It was never agreed to transfer in favour of the plaintiffs suit property. In such an eventuality, the suit claim ought to have been valued having

regard to the claim put forth, being the suit in relation to cancellation of transfer of rights executed by the petitioner/defendant No.1 in favour of defendant Nos.2 and 3. So as to substantiate the said claim, reliance is placed on the pleadings in the plaint and also the judgments of this Court which are also referred in the order impugned.

3. I have appreciated the said submissions.

4. The sum and substance of the submissions of learned counsel for the defendant No.1 while praying rejection of plaint on the ground of under valuation of suit claims is, relief claimed in prayer clause (bb) which reads thus :-

“(bb) It be declared that the indenture dated 19th July 2008 executed by and between defendants, registered in the office of Sub-registrar Haveli 10 III, Pune at Sr.No.5816 and possession receipt dated 30th September 2008, passed by the defendant No.1 in favour of defendant Nos.2 & 3 is illegal, null and void and the same may kindly be directed to be cancelled.”

is not properly valued and appropriate fee not paid. So as to substantiate the said claim, reliance is placed on the judgments of this Court in the matter of ***Abdul Sattar Gulabbhai Bagwan Vs. Vaibhav Lxmangiri Gosawi and Ors.*** reported in ***2012(1) Bom. C.R. 1***, and ***Prism Reality Vs. Govind Yashwant Khalade and Ors.*** reported in ***2015(2) Mh.L.J. 472***.

5. Ms. Gauri Godse, learned counsel has drawn support from the provisions of Section 6(iv)(ha) of the Bombay Court Fees Act. As far as the aforesaid judgments are concerned, this Court is required to appreciate that the claim in the present suit for setting aside indenture

sale dated 19th July, 2008 is not based on allegation of fraud but same is based on principal claim of grant of specific performance. It is specifically pleaded by the respondents/ plaintiffs that present applicant/ defendant No.1 has agreed to transfer the said property and has accepted part payment which was subsequently sold to defendant Nos.2 and 3 vide sale indenture.

6. In the aforesaid background, it cannot be inferred that the respondents/plaintiffs are party to the sale indenture dated 19th July, 2008, which was fact in the aforesaid both judgments cited by the applicant.

7. In that view of the matter, computation of court fees as per amount of consideration involved in the contract for specific performance appears to be quite justified in the backdrop of provisions of Section 6(xi) (a) of the Bombay Court Fees Act. The aforesaid issue is already no more *res-integra* as in the judgment of Bombay High Court in the matter of *Dilip Bastimal Jain Vs. Baban Bhanudas Kamble and Ors.* reported in *2001(4) Bom.C.R. 374* has already settled the said issue.

8. In that view of the matter, no case for interference is made out as no error of jurisdiction or failure to exercise jurisdiction is noticed.

9. The revision application as such fails, dismissed.

[NITIN W. SAMBRE, J.]