

Dusane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10007 OF 2022
IN
FIRST APPEAL (L) NO.12092 of 2022

Prathamesh Infrarealty Pvt Ltd ...Applicant
Versus
Anusayabai Maruti Jitekar & Ors ...Respondents

BHALCHANDRA
GOPAL
DUSANE

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Mr Alankar Kirpekar , *a/wi Susmit Phatale, Sagar Kasar, Chaitali*
Bhogle i/b Susmit Phatale, for Applicant/Appellant.
Mr S Murthy, *i/b Abhishek Patil for Respondents.*

CORAM **G.S. Patel &**
 Madhav J. Jamdar, JJ.
DATED: **11th July 2022**

PC:-

1. Admit.
2. By consent, the appeal is taken up for final hearing immediately.
3. The appellant filed Special Civil Suit No.193 of 2014 seeking specific performance of an agreement of 11th September 2013. That agreement was between the appellant, a private limited company,

and the defendants. It seems that in the cause title of the Suit of the plaintiff, the Plaintiff was shown as a private limited company but below that was an endorsement that it was a proprietorship (“*malaki sanstha*”). The Plaintiff applied for an amendment under Order 6, Rule 17 CPC. This was rejected. The defendants sought a rejection of the plaint under Order 7 Rule 11 CPC and, by the impugned order dated 31st March 2022, the Joint Civil Judge, Senior Division, Panvel allowed that Order 7 Rule 11 application.

4. The impugned order is unsustainable. The name of the company is correctly shown. It is only an endorsement below that which is found to be incorrect. In fact a Senior Advocate has filed an affidavit accepting that the error was inadvertent and was his oversight.

5. Parties are not to be disadvantaged on such inadvertent errors and technicalities.

6. The impugned order is quashed and set aside. The Suit is restored to file.

7. We are told that against the rejection of the Order 6, Rule 17 application, a separate Writ Petition has been filed. It is for this reason that we do not allow the amendment, which we would otherwise have immediately done.

8. We are also make it clear that we are making no observations on the merits of the case. Whether are not the Plaintiff is entitled to interim relief or even a decree is to be decided on merits.

9. The First Appeal is disposed of in these terms. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)