

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

**APPEAL FROM ORDER NO. 718 OF 2022
WITH
INTERIM APPLICATION NO. 16549 OF 2022
IN
APPEAL FROM ORDER NO. 718 OF 2022**

Smt. Gomiben Hirabhai Patel and Ors. ...Appellants

V/s.

Smt. Gangaben Laxmanbhai Tandel and Ors. ...Respondents

Mr. A. M. Saraogi, for the Appellants.

Mr. Mayuresh Lagu, for the Respondent Nos.5 to 7.

CORAM : C.V. BHADANG, J.

DATE : 25 JULY 2022

Digitally
signed by
MAMTA
AMAR
KALE
Date:
2022.07.29
12:04:51
+0530

P.C.

. By this appeal, filed under Order XLIII of the Code of Civil Procedure (CPC), the Appellants / original Plaintiffs are challenging the order dated 27 April 2022 below Exh.18 passed by the Civil Judge Senior Division, Daman in Special Civil Suit No.29/2019. By the impugned order, the application (Exh.18) filed by the Appellants under Order VII Rule 11(d) of the CPC for rejection of the plaint, interalia on the ground of it being

barred by limitation, has been allowed and the plaint is rejected.

2. The learned counsel for the Respondents / Defendants has raised a preliminary objection to the maintainability of the appeal as the impugned order is not appealable under Order XLIII Rule 1 of CPC.

3. I have heard the learned counsel for the parties.

4. A bare perusal of Order XLIII Rule 1 shows that an order of rejection of plaint under Order VII Rule 11 does not find place, as an order, which is appealable under Order XLIII read with Section 104 of CPC. Quite to the contrary, the definition of 'decree', as contained in Section 2(2) of CPC shows that a decree includes an order of rejection of plaint against which a regular appeal under Section 96 of the CPC may lie.

5. Mr. Saraogi, the learned counsel for the Appellants submitted that the valuation of the suit as is disclosed from the plaint is Rs.3,000/- for the purpose of both Court fees and jurisdiction. He submits that the Appellant may approach the District Court in an appeal under Section 96 of CPC against the impugned order.

6. In view of the statement so made, the present appeal is disposed of, as not maintainable.

Needless to mention that it would be open for the Appellants to approach the learned District Judge in an appeal challenging the impugned order, if so advised. If such an appeal is filed seeking condonation of delay, if any, the District Judge shall have due regard to the provisions of Section 5 read with Section 14 of the Limitation Act and pendency of this appeal from 23 June 2022.

Pending civil applications, if any, are disposed of. There shall be no order as to costs.

C.V. BHADANG, J.