

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 59 OF 2022

Rajat Durgadas Agrawal__ Vs. __ Pralhad Rambhau Basatwar and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. B.G.Kulkarni, Advocate for applicant
Mr. Amit Kukdey, Advocate for the non-applicant No.1.

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/10/2022

1] Heard Mr. Kulkarni, learned counsel for the applicant and Mr. Kukdey, learned counsel for the non-applicant No.1.

2] The application challenges the order dated 23.6.2022 whereby the application under Order VII Rule 11b of the CPC filed by the defendant has been rejected. By the said application it was prayed that the suit filed by the non-applicant/plaintiff which is valued at ₹.2000/-, be appropriately valued in consonance with the provisions of the Maharashtra Court Fees Act and proper Court Fee be paid thereupon.

3] It is not in dispute that there was an agreement between the applicant and non-applicant and under the terms of it, the non-applicant was entitled to develop the land belonging to the applicant, under the terms of which the non-applicant was entitled to 45% of

the FSI and the applicant land owner to 55% of the same. By a notice dated 25.3.2022 (page 42) the applicant had terminated the agreement, as a result of which the suit came to be filed.

4] The prayer clause in the suit seeks revival of the agreement and the entitlement of the non-applicant/plaintiff to continue with the obligation thereunder, considering which the suit cannot be said to be one under Section 6(4)(j) of the Maharashtra Court Fees Act. The learned trial Court has failed to take into consideration the effect of the relief which is claimed by the plaintiff/non-applicant, which has the result of revival of the agreement and the enforcement of the terms of the contract, in case the relief is granted and therefore, the claim ought to have been valued under Section 6 (4)(xi) of the Maharashtra Court Fees Act for the reason that in case the prayer is granted, the same would result in the enforcement of the agreement in question. The impugned order therefore which does not consider this position is hereby quashed and set aside and the non-applicant/plaintiff is directed to value the claim in the suit under Section 6(4)(xi) of the Maharashtra Court Fees Act and to pay the appropriate Court fees thereupon. The same be done within the period of 30 days from today. In case the same is not done, the plaint shall stand rejected under Order VII Rule 11d of the CPC.

(3)

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5] Civil revision application is allowed in above terms. No costs.

JUDGE

Rvjalit