

VRJ

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

CIVIL REVISION APPLICATION (ST.) NO.14783 OF 2022

Sandesh Ashok Gundecha & Ors. ... Applicants
V/s.
Satish Shrimant Aargade & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.17963 OF 2022
IN
CIVIL REVISION APPLICATION (ST.) NO.14783 OF 2022**

Sandesh Ashok Gundecha & Ors. ... Applicants
V/s.
Satish Shrimant Aargade & Ors. ... Respondents

Mr. Ashitosh M. Kulkarni with Mr. Akshay Kulkarni for
the applicants.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

P.C.:

INTERIM APPLICATION NO.17963 OF 2022

1. For the reasons stated in the interim application, the interim application is allowed.

CIVIL REVISION APPLICATION (ST.) NO.14783 OF 2022

2. The respondent No.1 is original plaintiff who filed Special Civil Suit No.45 of 2017 for recovery of amount of Rs.1,09,00,000/-. The suit is based on oral agreement between the

parties .According to the plaintiff, there was concluded contract between the plaintiff and the defendants. Part amount was paid by the defendants, however, balance amount was not paid and, therefore, the plaintiff filed suit for recovery of amount.

3. In the said suit, the applicants original defendant Nos.1 to 3 filed an application under Clause (a) of Order 7 Rule 11 of the Civil Procedure Code, 1908. According to the applicants, the plaint does not disclose cause of action. In addition to provisions under Order 7 Rule 11 of the Civil Procedure Code, 1908, the defendants prayed for framing of preliminary issue.

4. The Trial Court, by the impugned order, rejected the application holding that the cause of action needs to be proved at the time of final conclusion of the suit after considering evidence on record.

5. On perusal of the impugned order and the copy of the plaint, it appears that necessary facts which give rise to the cause of action are pleaded by the plaintiff. The truth or otherwise of the averments in the plaint need not be gone into at this stage. The scope of inquiry under Order 7 Rule 11 of the Civil Procedure Code, 1908 is to ascertain where, accepting the averments of the plaint as true, the plaintiff is entitled to relief or not. Therefore, in my opinion, on prima facie reading of the plaint, it discloses cause of action.

6. However, it is made clear that the observations made above are only for the purpose of holding an inquiry under Order 7 Rule 11 of the Civil Procedure Code, 1908, which shall not influence the

Trial Court while deciding the suit on merits. It shall be open for the applicants to raise all necessary contentions during trial of the suit and if such contentions are raised, the Trial Court shall decide such contentions in accordance with law. With this clarification no interference in the impugned order is called for.

7. The civil revision application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)