

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

CIVIL REVISION APPLICATION NO. 161 OF 2023

Suneet Ramniklal Shah

..Applicant

Versus

Rajesh Ramniklal Shah

..Respondent

Mr. Vaibhav Jagdale i/b. Shailesh Kharat for Applicant.

Mr. Sudip Mallick i/b. Chetan S. Damre for Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 23 MARCH 2023

PC :

1. Learned counsel Mr. Sudip Mallick appears and states that, he will file his Vakilpatra within a period of one week from today. With his consent and with the consent of learned counsel for the Applicant, this application is decided finally.

2. The Applicant has challenged the order dated 21/09/2022 passed by 5th Jt. C.J.S.D., Malegaon, below Exhibit-63 in Special Civil Suit No.71 of 2015. By that order, the Trial Court had rejected the Applicant's application under O.7, Rule 11 of the C.P.C. The Applicant is the original Defendant No.1 and the Respondent herein is the original Plaintiff. The suit is filed by the

Plaintiff for partition, for 1/5th share of the Plaintiff and also for the possession of his share. Learned Trial Judge rejected the Applicant's i.e. original Defendant's application under O.7, Rule 11 of the C.P.C. for deficit court fees on the ground that the market valuation of the suit can be done during the course of trial and the Plaintiff can be directed to deposit the deficit court fees, if required, at the end of the trial. In the plaint, the pleading is taken that the value of the suit property was Rs.24,99,000/- and the Court fees of Rs.43,230/- was paid.

3. Learned counsel for the Applicant submitted that the impugned order is not correct because the valuation of the suit property will have to be considered and decided by the Trial Court at the stage of deciding the application under O.7, Rule 11(b) of the C.P.C. itself. This question cannot be left to be decided at the end of the Trial.

4. Learned counsel for the Respondent – original Plaintiff submitted that, he is willing to deposit the balance court fees as per valuation made by the Court.

5. Considering that the Plaintiff is willing to pay the Court fees as per valuation made by the Court, it would be proper if the Trial Court is directed to decide the valuation of the suit property and to fix the amount of the court fees which is to be paid. Hence, the impugned order needs to be set aside.

6. Hence, the following order:

O R D E R

i) The impugned order dated 21/09/2022 passed by 5th Jt. C.J.S.D., Malegaon, below Exhibit-63 in Special Civil Suit No.71 of 2015, is set aside.

ii) The Trial Court is directed to decide the question of valuation of the suit property and if the court fees is found to be in deficit, the Plaintiff shall be directed to pay the balance court fees.

iii) With these directions the Civil Revision Application is disposed of.

(SARANG V. KOTWAL, J.)