

Nikita

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

CIVIL REVISION APPLICATION NO.433 OF 2023

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Date: 2023.11.07
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Raghunath Mahadev Satuse

... Applicant

V/s.

Ravindra Narhar Sakekar @ Kulkarni
and Ors.

... Respondents

Mr. Sandeep Koregave a/w Ms. Pallavi A. Karanjkar for
the Applicant.

Mr. Manoj A. Patil for Respondent No.1

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2023

P.C.:

1. The petitioner/original defendant file an application under Order 7 Rule 11 in Clause (b) of the Code of Civil Procedure, 1908 contending that if the suit for injunction not to disturb possession over the suit property is converted into suit for possession of constructed portion, the plaintiff needs to pay Court fee on the subject matter in relation to which the plaintiff is seeking relief of possession.

2. Such application under Order 7 Rule 11 Clause (b) of Civil Procedure Code, 1908 is not maintainable. The Court first needs to adjudicate on the liability of the plaintiff to pay the Court fee and on direction to pay Court fee being not complied with, the

defendant gets right to file application under Clause (b) of the Order 7 Rule 11 of the Code of Civil Procedure, 1908. Hence, the application filed by the defendant was not maintainable. However, it will be open for the defendant to file application for raising objection on deficit Court fees before the Trial Court and on such application being filed, the Trial Court shall decide such application in accordance with law.

3. The civil revision application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)