

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15268 OF 2023
IN
WRIT PETITION NO.6925 OF 2022

Shaikh Tanveer Alam ...Applicant

In the matter between
Shaikh Tanveer Alam ..Petitioner

Versus

Siraj Ahmed N. Khan and Ors. ...Respondents

....
Ms Dhanashree Hublikar i/b. M/s. YMK Legal for the
Applicant/Petitioner.
Mr. Saurish Shetye with Advocate Bharna S. and Mr. Swarup D. Patil
for Respondent Nos.1 to 3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th OCTOBER, 2023.

P. C. :-

1. By this application, the Applicant seeks following relief:-

“(i) That this Hon’ble Court be pleased to correct the findings recorded in paragraph No.15 of the Order dated 04.07.2022 passed by His Lordship Mr. Justice Rohit B. Deo in the present Civil Writ Petition No.6925 of 2022;”

2. Heard Ms Hublikar, learned counsel for the Applicant and Mr. Shetye, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records reveal that the Applicant herein, who was Defendant in the suit has filed application under Order 7 rule 11 of the CPC. Said application was dismissed by the Trial Court by order dated 14/02/2022. The Applicant challenged the said order in Revision Application No.85 of 2022. The Revisional Court considered the question whether the application filed by the Applicant was within the scope and purview of Order 7 Rule 11 of the CPC and whether any interference is warranted in the order of the Trial Court. The Revisional Court upon hearing learned counsel for the Applicant observed that the plaint can be rejected on the basis of the averments made in the plaint and not on the basis of the defence set up. It was observed that the plaint cannot be rejected on the ground that the Respondent -Plaintiff had suppressed some facts from the Court. The Revisional court also took into consideration the submissions made by the counsel for the Applicant that the Court had no jurisdiction to try

the suit and observed that Section 9A of the Code has been deleted in view of Order 14, Rule 2 and the jurisdictional issue will have to be decided on merits after considering the evidence adduced by the parties. In view of these findings, the revisional Court held that the order of the Trial Court is not against law and does not warrant any interference and accordingly dismissed the revision application.

4. It is not in dispute that the Applicant herein had not annexed the said order alongwith the Writ Petition. In Paragraph 7 of the Writ Petition, the Applicant /Petitioner had made the following statement:

“7. The Petitioner states that the Impugned Order dated 14th February, 2022 was notified to the Petitioner on 17th February, 2022 and thereafter, immediately the Petitioner through his Advocate made an application for certified copy of the order dated 17th February, 2022, which was read on 21st February, 2022. The Petitioner states that, the Petitioner thereafter had filed a Revision Application No.85 of 2022 in the Hon’ble Small Causes Appeal Court, Mumbai against the

Impugned Order dated 14th February, 2022. The Petitioner further states that, the Hon'ble Small Causes Appeal Court rejected the Revision Application No.85 of 2022 at the prior to admission stage vide order dated 22nd March, 2022 on technical grounds and the Revision Application No.85 of 2022 was never adjudicated, in the view of the fact that this writ is maintainable.”

5. On going through the order of the revisional court, it is evident that the revision application was not dismissed on technical grounds as alleged. It is in such circumstances that this Court was compelled to observe that the Petitioner-Defendant No.1 has suppressed the order dated 22/03/2022 rendered by the Appellate Bench of the Small Causes Court confirming the order of the Trial Court. There is no error apparent on the face of the records. The application is devoid of merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)