

Nikita

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

WRIT PETITION NO.10896 OF 2023

Vilas Eknath Nandgude

... Petitioner

V/s.

Shree Ganesh Constructions and Ors.

... Respondents

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Ms. Vrushali U. Kabare for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 6, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India the petitioner/Original plaintiff is challenging order dated 15th March 2023, passed by Joint Civil Judge Senior Division Pune, in Special Civil Suit No.1155 of 2022.

2. The petitioner filed a suit for cancellation of the development agreement and power of attorney dated 20th June 2007, to be void-ab-initio and not binding on the plaintiff along with the relief of canceling the same. The consequential injunction not to disturb the possession of the plaintiff over the said property and restraining them from creating third party interest in the said property based on development agreement and power of attorney was also sought.

3. The office raised an objection for non payment of requisite

Court fee. On failure to remove objection, the Trial Court had passed impugned order in exercised of power under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

4. Since, the impugned order is passed before the issuance of summons to the defendant, it is not necessary to issue notice of present petition to the respondents.

5. On perusal of Clause (b) of Order 7 Rule 11, it is clear that power under Clause (b) can be exercised only after the direction of the Court to pay the Court fee has not been complied with. The Trial Court is yet to issue summons to the defendant. There is no order issued by the Trial Court to the plaintiff to pay requisite Court fee. Objections raised by the office does not constitute an order of Court to pay fee as contemplated under Clause (b) of the Order 7 Rule 11. Therefore the Trial Court could not rejected the plaint in exercise of power under Order 7 Rule 11 of the Code of Civil Procedure, 1908. Hence following order:

a) Impugned order dated 15th March 2023, passed by Joint Civil Judge Senior Division Pune in Special Civil Suit No.1155 of 2022 is set aside.

b) The suit is restored to the file of the Trial Court.

6. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)