

VRJ

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

CIVIL REVISION APPLICATION NO.535 OF 2023

Padmavati Residency Partnership Firm

Through Their Partners

... Applicants

V/s.

Durvel Appa Lokhande & Ors.

... Respondents

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Mr. Vijay V. Nene for the applicants.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

P.C.:

1. This is an application under section 115 of the Civil Procedure Code, 1908, rejecting application under Order 7 Rule 11(b) of the Civil Procedure Code, 1908.

2. The applicants are original defendants in a suit for declaration and consequential injunction. In the said suit, the applicants filed an application under Order 7 Rule 11(b) raising issue of non-payment of necessary court fees based on provisions of section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959. According to the applicants, considering prayer clause 20(b), the conveyance in question is executed for consideration of Rs.19 lakhs. It is, therefore, prayed that balance court fee of Rs.2,99,400/- needs to be directed to be paid by the plaintiffs.

3. On perusal of the application, it appears that the objection

raised by the defendants is based on objection of payment of deficit court fees.

4. To decide the objection it is necessary to consider provisions of Order 7 Rule 11(b) of the Civil Procedure Code, 1908, which reads as under:

“11(*b*) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;”

5. On meaningful reading of Clause (b) of Rule 11 of Order 7, it appears that the said clause is applicable in a case where relief claimed is under valued and the applicants fail to correct such valuation within a time fixed by the Court and it is only on failure to comply with said direction, the cause of action for filing application under Order 7 Rule 11(b) accrues. In the facts of the case there is no adjudication by the Trial Court before filing of application by the present applicants. In the absence of adjudication by the Trial Court on the point of either under valuation or deficit court fees, the cause of action for filing such application is absent. Therefore, adjudication on such application being premature, I find no error in the impugned order to reject such application.

6. Hence, civil revision application is dismissed. No costs.

(AMIT BORKAR, J.)