

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2206/2023
Rao Yashpal Harishchandra Arya and another
...Versus...
Rahul Suryalal Jaiswal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Rohit Joshi, Advocate for petitioners

CORAM : AVINASH G. GHAROTE, J.
DATE : 05/06/2023

1. Heard Mr. Rohit Joshi, learned counsel for the petitioners.

2. The present petition has been filed by the petitioners challenging the order dated 13/03/2023 passed by the 9th Joint Civil Judge Senior Division, Nagpur, in Special Civil Suit No.938/2021 rejecting the application filed by the petitioners at Exh.29, under Order VII Rule 11(a) and (d) r/w Order I Rule 10(2), Rule 13 and Sections 151 and 153 of the Code of Civil Procedure ("CPC" for short hereinafter) for rejection of the plaint on account of the same not disclosing any cause of action and being barred by limitation and so also for deletion of the names of the petitioners from the array of defendants.

3. Insofar as the plea under Order I Rule 10 (2), Rule 13 and Sections 151 and 153 of the CPC is concerned, which is raised in the application below Exh.29, which is in

addition to the plea under Order VII Rule 11 (a) and (d) of the CPC, a similar plea raised by the petitioners by way of the application under Exh.42 in Writ Petition 2205/2023 between the same parties has already been rejected by me by the order dated 05/06/2023, considering which, the same would equally be applicable in the present matter to the said plea.

4. That takes me to the plea under Order VII Rule 11 (a) & (d) of the CPC. The order of rejection of an application for rejection of a plaint is a revisable order under Section 115 of the CPC, considering which, Mr. Joshi, learned counsel for the petitioners, at this stage, upon instructions, seeks leave to withdraw the petition insofar as the challenge to the order below Exh.29, insofar as this plea under Order VII Rule 11 (a) and (d) of the CPC is concerned with liberty to file a revision in that regard.

5. The statement is accepted. The writ petition is therefore dismissed insofar as the other challenges are concerned as indicated above. However, insofar as the challenge to the order below Exh.29 as to the plea under Order VII Rule 11 (a) and (d) of the CPC is concerned, the writ petition is permitted to be withdrawn with liberty to file a revision. No order as to costs.