



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 13 OF 2023

Murad Chotubhai Deshmukh And Others

VERSUS

Shaikh Habib Abdul Karim And Another

.....

Mr. Yuvraj S. Choudhari, Advocate for Applicant

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[CORAM : S. G. CHAPALGAONKAR, J.]

DATE : 21st NOVEMBER, 2024

ORDER :

1. The applicant takes exception to the order dated 29.04.2022 passed below Exhibit-33 in Special Civil Suit No.271/2021, pending before 7th Civil Judge, Senior Division, Ahmednagar, by which his prayer for rejection of plaint in exercise of order 7 Rule 11 of the Code of Civil Procedure has been rejected.

2. Mr. Yuvraj Choudhari, learned advocate appearing for applicant submits that the applicants are defendants in Special Civil Suit No.271/2021. Respondent No.1 is original plaintiff. He claimed the relief of specific performance of contract based on the alleged agreement to sale dated 06.10.1995 in relation to the suit property bearing Gut No.104/A and 104/B situated at Savedi, District Ahmednagar. The plaintiff contends that

there were several disputes in respect of the suit property. The plaintiff borne all expenses to clear the litigation and in consideration of the same, it was agreed by defendant to transfer the part of the property. In that view of the matter, the applicants had filed an application under order 7 Rule 11(d) of the Code of Civil Procedure for rejection of plaint on the ground that, the suit is barred in view of section 14 of the Specific Relief Act. The consideration shown in the agreement is *prima facie* illegal. The applicant given his say by filing application Exhibit-37. However, the trial Court rejected said application on erroneous ground. He would submit that when agreement itself is invalid, the plaintiff could not have a cause of action.

3. Having considered the submissions advanced, the issue that arises for consideration is limited to the extent as to whether for the reasons stated in the application Exhibit-37, filed by applicants (original defendants), the plaint can be rejected under Order 7 Rule 11 of the Code of Civil Procedure. The trial Court recorded the elaborate reasons for not entertaining the application relying upon the judgment in case of *Govind Goverdhandas Daga and another Vs. Field Mining and Ispat Ltd. Nagpur, 2009 (6) Mh.L.J., 398*. The defendants

argued that there is no prayer for alternative relief of recovery of amount of expenditure made in the litigation so also no details of payment made towards advocate fees and expenditure are mentioned. In absence of such pleadings, the agreement would not be enforceable. The trial Court observed that Section 10 and 14 of the Specific Relief Act and section 23 of the Contract Act does not create bar to file a suit. The question, whether the contract is enforceable in law or not will have to be decided on the basis of evidence tendered into service during the trial. The trial Court rightly relied upon the observations in case of *Govind Daga* (supra) and concluded that the issue raised by defendants in their application cannot be considered for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure. No fault can be found in the order passed by the trial Court. Hence, there is no merit in civil revision application, the same is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE