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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 51 OF 2023

Pushpabai Mohanlal Bhalgat And Ors

....Petitioner

VERSUS

Ajay Sampatrao Mohite

.....Respondent

.....

Advocate for the Petitioner : Mr. Bora Satyajit S.

Advocate for Respondents : Mr. Adv Vijay P Latange Adv For Caveator For
R/sole

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 2nd DECEMBER, 2024.

P.C. :-

1. Heard Mr. Satyajit Bora, learned advocate for the applicants.
2. The applicants are original defendants in the suit instituted by respondent seeking specific performance of contract on the basis of agreement to sale dated 14.1.2022. The defendants appeared in the suit and filed an application, purportedly under Order 7 Rule 11 of CPC. and prayed for rejection of the plaint being sans cause of action.
3. The trial court observed that under the provision of Order 7 Rule 11(a), the plaint can be rejected if it does not disclose cause of action. However, for that purpose, the contents of the plaint are only relevant.

4. Mr. Bora, learned advocate for applicants submits that although there was execution of agreement to sale and payment of earnest amount, lateron, the amount was refunded or paid back to the plaintiff. In that view of the matter, he places reliance on Section 25 of the Contract Act which stipulates that an agreement without consideration is void unless it is in writing and registered. Mr. Bora would submit that the agreement, which is subject matter of suit is not registered and it is without consideration. Hence, no cause of action would accrue in favour of the plaintiff.

5. Having considered the submissions advanced, it can be observed from the averments of the plaint that the parties have entered into agreement to sale and amount of Rs. 45 Lakhs was paid by way of earnest. The total consideration was fixed at Rs. 1,17,39,460/-. Although the defendants are contending that said amount of earnest money was refunded, the fact remains that the agreement was for consideration. The unilateral act of defendant to refund earnest money itself would not vitiate the entire contract and even otherwise, that would be a question to be determined by the trial court, after recording evidence. Therefore, the trial court was justified in rejecting the application filed under order 7 Rule 11 of C.P.C.

6. No case is made out for interference. Civil revision application stands summarily dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-