



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

CIVIL REVISION APPLICATION NO. 105 OF 2024

Nanaji s/o Bhagwan Vansinge and ors.

Vs.

Waman s/o Bhagwan Vansinge and ors.

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

Court's or Judge's orders.

Mr. Mayank S. Sharma, Advocate for the applicants.

CORAM : G.A. SANAP, J.

DATE : 06.12.2024

Heard learned Advocate for the applicant
at the stage of notice.

2. The perusal of the application itself shows that it was not maintainable. It seems to have been filed under the misconception of the law. The applicants, who are defendant Nos.2, 3, 5 and 6 before the learned 2nd Joint Civil Judge Junior Division, Warora, have challenged the jurisdiction of the Civil Court to entertain and try the suit. They have relied upon the provisions of Section 26 of the Coal Bearing Area (Acquisition and Development) Act, 1957 (for short, 'the Act of 1957'). Learned

Advocate submitted that the remedy provided in such a case for redressal of the grievance is before the competent authority. It is submitted that the plaintiff should have filed the application before the competent authority constituted under the Act.

3. I have perused the plaint, written statement and the order passed by the learned Judge. It is to be noted that there is a marked difference between two terms i.e. maintainability and jurisdiction. The terms maintainability and jurisdiction are not interchangeable. In this case, relying upon Section 26 of the Act of 1957, the jurisdiction of the Civil Court has been challenged. Even if it is accepted that Civil Court lacks the jurisdiction, the plaint cannot be rejected. In such a situation, the plaint has to be returned to the plaintiffs for presentation before the proper forum.

4. In my view, therefore, the application made by the defendant Nos.2, 3, 5 and 6 under Order VII Rule 11 of the Code of Civil Procedure contending that Civil Court has no jurisdiction to

entertain and try the suit was not maintainable. It is further seen that the prayer for rejection of plaint was made on two more grounds, namely the limitation and improper valuation of the suit for the purposes of the Court fee. Learned Judge has dealt with both these contentions. Learned Judge has recorded a finding that the issue of limitation is a mixed question of law and fact and therefore, the contention of the defendant Nos.2, 3, 5 and 6 could not be entertained at this stage. Learned Judge has also observed that the plaint cannot be rejected on the ground of improper valuation of the plaint inasmuch as the Court would be required to conduct inquiry as to the valuation of the suit as provided under Section 9 of the Maharashtra Court Fees Act, 1959.

5. It is undisputed that a written statement has been filed by the defendant Nos.2, 3, 5 and 6. In this factual background, the provisions of Order 14 of the Civil Procedure Code would become applicable. As per Order 14 Rule 2 of the C.P.C. the issue of jurisdiction can be decided first before

proceeding to decide other issues. In this case, at the stage of framing of the issues, the defendants can make a prayer before the learned Judge for deciding the issue of jurisdiction before other issues of facts are decided.

6. In view of the above, I conclude that there is no substance in the application. The application is **dismissed**.

7. It is made clear that the observations made by the learned trial Judge as well as by this Court while deciding the application made by the defendants for rejection of plaint shall not influence the trial Court while deciding the suit on merits.

JUDGE