



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRA NO. 172 OF 2024

M/S. LAHOTI PROPERTIES THROUGH ITS PARTNER AJAY SHRINIWASJI
LAHOTI AND ORS.

VERSUS

GANGABHISHAN MADANGOPAL BHUTADA AND ORS.

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Mr. S. S. Rathi a/w. Mr. N. N. Jaju, Advocate for the Applicants

Mr. Z. Z. Hussaini, Advocate for Respondent No.1

Mr. S. C. Swami Chakurkar, Advocate for Respondent Nos.4b to 4d

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CORAM : SHAILESH P. BRAHME, J.

DATE : 03.12.2025

PER COURT :-

. Heard both sides.

2. Applicants, who are original defendant nos.1 to 5 have assailed order dated 25.10.2024 passed below Exhibit-41, rejecting application preferred under Order VII Rule 11 of C.P.C. in Special Civil Suit No.216 of 2023.

3. Mr. S. S. Rathi, learned counsel for the applicants submitted that earlier suit bearing Special Civil Suit No.482 of 2022 was withdrawn with a specific liberty, which has been availed by filing Special Civil No.216 of 2023 on additional cause of action, additional reliefs which is impermissible. He

submitted that an application Exhibit 41 was filed under Order VII Rule 11 of C.P.C. on various grounds. The plaint was objected on ground of limitation, Order II Rule 2 of C.P.C., clever drafting and illusory cause of action. It is submitted that learned Trial Judge did not deal with the objection pertaining to Order II Rule 2 of C.P.C. and only considering the objection regarding limitation, application was rejected. It is submitted that the application has not been dealt with all the grounds and therefore impugned order is sustainable.

4. Learned counsel for the respondents submitted that the learned Judge dealt with the earlier withdrawal of the suit as well as filing of the suit with additional prayers. He submitted that respondent was permitted to withdraw the earlier suit and that order was confirmed by the High Court. The Trial Court rightly considered the scope of Order VII Rule 11 of C.P.C. The conclusions drawn by the learned Judge that the grounds raised by the applicants are mixed question of law and facts and cannot be faulted with. It is further submitted that the ground of limitation cannot be made applicable.

5. I have gone through the application Exhibit-41 and the impugned order carefully in paragraph Nos.5 and 9. Applicants incorporated specific pleadings regarding objection pertaining to Order II Rule 2 of C.P.C., besides other grounds contemplated by Order VII Rule 11 of C.P.C. The objection in

respect of Order II Rule 2 of C.P.C. has not been dealt with specifically in the impugned order.

6. Pertinently, the facts are very peculiar as on previous occasion, respondent had filed Special Civil Suit No.482 of 2022 for possession and alternatively for refund of amount. The suit was sought to be withdrawn vide submitting application Exhibit-31. It was objected by the applicant-plaintiff. It was allowed on 21.10.2023 by speaking order. Then, it was challenged by the applicants in Writ Petition No. 14806 of 2023 and the petition was dismissed. Respondent was granted permission to withdraw the suit with liberty to file fresh suit on same cause of action. It reveals from the plaint of present Suit that some additional reliefs are also prayed. The cause of action, apparently, cannot be said to be identical as that of earlier round of litigation. It can be said to be extended cause of action or elaborated cause of action. In view of these circumstances, it was imperative on the part of the learned Trial Judge to examine the cause of action, prayers of both the suits and then deal with the objection of Order II Rule 2 of C.P.C.

7. There is no expressed discussion on the grounds referred above. I find that the matter needs to be remitted to the Trial Court for reconsideration of application Exhibit-41.

8. Civil Revision Application is allowed partly quashing the impugned order and relegating the parties to the Trial Court to decide application Exhibit-41 afresh by extending opportunity of hearing.

9. The exercise shall be completed within a period of two (2) months. The parties shall cooperate for expeditious disposal of application Exhibit-41.

10. Needless to mention that the learned Judge shall take into account all the grounds raised by the applicants in application Exhibit-41.

(SHAILESH P. BRAHME, J.)