

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.264 OF 2024

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SUBHASH
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VISHAL SUBHASH
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Deepak Vyankatrao Ingale ...Applicant
vs.
Vijaymala Jaysingrao Rajebhosale-Chavarekar ...Respondent
Mr. Yuvraj Narvankar, for the Applicant.
Mr. Sudhir Prabhu, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 16, 2025

P.C:

1. This revision application is directed against an order dated 26th February, 2019 passed by learned Civil Judge, Senior Division, Kolhapur on an Application (Exh. 301), whereby the said application preferred by the petitioner/defendants for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 came to be rejected.
2. The respondents have instituted the suit for dissolution of partnership firm "Shivraj Enterprises" and accounts. The respondents have also prayed for a decree to deliver possession of the premises described in paragraph No. 1 of the plaint, which they claimed was given without consideration for the use of the partnership business. The defendants disputed the said claim of the plaintiffs and asserted that they are the tenants of the said premises.

3. Initially, the defendant filed an application, purportedly, under section 8 of Maharashtra Court Fees Act. 1959 seeking direction to the plaintiff to pay the Court fees on the market value of the said property. By an order dated 26th February, 2019, the learned Civil Judge rejected the said application. The defendants simultaneously preferred an application for rejection of the plaint seeking an order to correct the value of the suit claim and pay the proper Court fee thereon and, in the event of default pass an order rejecting the plaint under the provisions of Order VII Rule 11(b) and (c) of the Code.

4. By the impugned order, the learned Civil Judge was persuaded to reject the said application as well opining, inter alia, that already issues in respect of correct valuation of the suit claim and proper Court fee has been framed and the plaintiff commenced the evidence. Thus, the said issue of correct valuation of the suit claim and appropriate Court fee thereon would be a matter for adjudication at the stage of the trial. Thus, there was no cause for the defendants to seek the rejection of the plaint.

5. Mr. Yuvraj Narvankar, learned counsel for the petitioner, would urge that since the plaintiff has claimed possession of the suit property, described in paragraph No. 1 of the plaint, it was incumbent upon the plaintiff to value the suit claim,

commensurating with the market value of the suit property. Instead, the plaintiff has nominally valued the claim at Rs. 200/- as if it is a suit for dissolution of partnership and accounts only. Even in case of suit for accounts, the plaintiff cannot value the claim at his sweet will.

6. To buttress this submission, Mr. Narvankar placed reliance on the decision of the Supreme Court in the case of **Abdul Hamid Shamsi vs. Abdul Majid and Ors.**¹ wherein it was enunciated that, “it is true in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the Court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the Court but its duty to reject such a valuation.”

7. There can be no quarrel with the aforesaid proposition of law. In the case at hand, from a meaningful reading of the plaint, it becomes prima facie evident that the suit is for dissolution of partnership firm and accounts, primarily. The plaintiff has

¹ (1998) 2 Supreme Court Cases 575.

categorically asserted that the suit property was given for the use of the partnership firm, the term of which was fixed by the agreement between the parties. Thus, the question as to whether the plaintiff has correctly valued the suit claim and paid the proper Court fees, arises for determination and the trial Court has already framed the issue to that effect. The said issue would warrant adjudication based on the evidence which the parties may adduce.

8. It is not the case that from the perusal of the plaint, ex facie, a finding can be recorded that the relief claimed is undervalued. Therefore, the learned Civil Judge committed no error in law in rejecting the application for rejection of the plaint on the premise that the issue of correct valuation and proper Court fees warrants adjudication at the trial.

9. Before parting, it is necessary to note that the suit has been instituted in the year 1990. It appears the suit could not be proceeded expeditiously on account of various interlocutory applications. It is, therefore, necessary to request the trial Court to hear and decide the suit as expeditiously as possible.

Hence, the following order.

ORDER

1] The application stands dismissed with costs.

2] The learned Civil Judge seized with R.C.S. No. 294 of 1990 is requested to make an endeavour to hear and decide the suit as expeditiously as possible.

(N. J. JAMADAR, J.)