



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.132 OF 2025**

Farhat Anjum Farooque Ahmed Momin and Anr. ... Applicants
versus
Rizwan Hasan Anwar Raza Momin and Ors. ... Respondents

Mr. Sameer A.K.Fouzi, for Applicants.
Mr. Raju Suryawanshi, for Respondent Nos.1 to 3.

CORAM: N.J.JAMADAR, J.

DATE : 2 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this application is to an order dated 16 January 2025 passed by the learned Civil Judge, Jr. Division, Bhiwandi, whereby the application preferred by the applicants – original Defendant Nos.3 and 4 for rejection of the plaint primarily on the ground that the suit claim has not been properly valued, came to be rejected, along with the application for rejection of the plaint preferred by Defendant Nos.1 and 2 (Exhibit 23).
3. Learned Counsel for the Applicants submitted that there was no privity of contract between the Plaintiff and Defendant Nos.3 and 4. Defendant Nos.1 and 2 had entered into an Agreement with the Plaintiff. Defendant Nos.3 and 4 had no concern with the said agreement. In fact, in the agreement executed between Defendant Nos.3 and 4 and Defendant No.1, it was specifically provided that the owner shall not be liable to any of the

parties to another suit which was subjudice.

4. Learned Counsel for the Applicants further submitted that the suit has been undervalued by resorting to clever drafting. Inviting attention of the Court to the averments in the suit that Defendant Nos.1 to 3 have obtained revised permission for the construction from BN MC, it was submitted that the suit claim can be computed in terms of money. The learned Civil Judge, thus, committed an error in holding that the suit claim has not been undervalued and the Plaintiff is not required to pay the court fees on the market value of the suit property.

5. Evidently, the suit is instituted for specific performance of the contract executed in favour of the Plaintiff. A number of documents have been executed between the parties. The question as to whether Defendant Nos.3 and 4 are liable to specifically perform the contract entered into by Defendant Nos.1 and 2 in favour of the Plaintiff would turn upon the construction of all the agreements executed between the parties. At any rate, the plaint cannot be rejected in part against a particular defendant. Therefore, the submission on behalf of the applicants that the plaintiff has no cause of action qua Defendant Nos.3 and 4 and, for that reason, the plaint is required to be rejected qua Defendant Nos.3 and 4 does not merit countenance.

6. So far as the aspect of the undervaluation of the suit claim, since the Defendants have raised the said objection in the Written Statement, it would

be in the fitness of things that the issue regarding the incorrect valuation of the suit claim is framed and decided by the trial Court along with the other issues that arise for determination. The observations made by the Trial Court in the impugned order shall not influence the trial Court in deciding the said issue about the correct valuation of the suit claim and the payment of the deficit court fee, if any, at the time of final adjudication of the suit.

7. Subject to the aforesaid clarification, the Application stands dismissed.

(N.J.JAMADAR, J.)