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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 347 OF 2025**

M/s. Built Charms and Ors ... Applicants

VS.

Divya Srikant Pai ... Respondent

Mr. Yatin Shah i/b. Mr. M.D. Dorkar for Applicants.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2025

ORDER:

1. This Civil Revision Application is filed by the original defendants to challenge the order rejecting their application under Order VII Rule 11(a) and (d) of the Civil Procedure Code, 1908 ('CPC') for rejection of the plaint. By the impugned order, the prayer to reject the plaint is disallowed; however, the plaintiff is directed to carry out proper valuation of the suit and pay the necessary court fees.

2. Learned counsel for the applicants submits that the suit is filed for recovering the amount as per the Memorandum of Understanding('MOU') by an advocate. Learned counsel for the applicant submits that in view of Section 35 of the Advocates Act 1961, a practicing advocate would not be entitled to seek any

brokerage and thus, the suit would be barred. He further submits that, in the absence of any declaration in the plaint, the prayers for injunction would not be maintainable. He thus, submits that the plaint should have been rejected by the trial court for want of a meaningful cause of action and prayers being barred by law.

3. I have perused the papers of the Civil Revision Application. The suit is filed by the respondent, who is a practicing advocate seeking specific performance of MOU dated 14th June 2021. There is also a prayer for injunction restraining the respondents from creating any third party rights. The cause of action pleaded in the suit is with reference to the terms and conditions of the MOU. The suit is filed on 16th July 2024 for specific performance of the MOU dated 14th June 2021. The cause of action pleaded is dated 15th July 2022, which is explained in paragraph no.3 of the plaint. The plaintiff pleads in paragraph no.3 of the plaint that as per MOU, the defendant had agreed to execute and register the agreement in respect of two flats on or before 15th July 2022. Since, the defendants failed to comply with the terms of the contract, the suit is filed.

4. In the facts of the case, the issue of limitation would not arise for rejecting the plaint at the threshold. With reference to the prayers with regard to the two flats, the trial court held that the plaintiff is seeking monetary consideration and thus, the suit

needs to be properly valued as per Section 6(xi)(a) of the Maharashtra Court Fees, Act. The trial court thus, held that the plaint cannot be rejected, on the ground of cause of action or limitation; however, the plaintiff is directed to correctly value the suit and pay necessary court fees.

5. In view of the pleadings regarding execution of the MOU and the particulars pleaded in the plaint, the reasons recorded in the impugned order cannot be faulted. In view of the specific pleadings regarding the execution of the MOU and the terms and conditions raising cause of action to file the suit, the suit cannot be held as barred by limitation at this stage. I do not find any substance in the argument that the suit would be barred in view of Section 35 of the Advocates Act. The Advocates Act deals with the conduct of the advocate and punishment to the advocate for misconduct. There is no provision under the said Act, that would create a bar to file the said suit. The issue regarding plaintiff's entitlement in seeking injunction in the absence of any declaration, cannot be made subject matter of the application under Order VII Rule 11 of the CPC. The defendants would always be entitled to raise all possible contentions by filing a written statement and the same can be dealt with at the time of settlement of the issues and in the trial.

6. It is a well established principle of law that the power

conferred on the court to terminate a civil action is drastic and the conditions enumerated in Order VII Rule 11 of the CPC are required to be strictly adhered to. In the present case, considering the pleadings in the plaint and the prayers, none of the grounds raised for rejection of the plaint under clause(a) or clause (b) of Rule 11 of Order VII of the CPC would be applicable to reject the plaint at the threshold. The material particulars pleaded by the plaintiff would warrant a trial.

7. I do not find any illegality or perversity in the reasons recorded by the trial court in rejecting the application under Order VII Rule 11 of the CPC.

8. Hence, the Civil Revision Application is dismissed.

9. It is however, clarified that the observations and findings in the impugned order and this order are restricted to the decision of the application under Order VII Rule 11 of the CPC. Hence, all rival contentions of the parties on merits of the suit are kept open to be decided in the trial.

(GAURI GODSE, J.)