

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 166 OF 2025

Sherona John Rodrigues

..Petitioner

Versus

Khozema Firoz Sager & ors.

...Respondents

Ms. Neeta P Karnik, Sr. Advocate, a/w Ms. Sharwari Lopes, for
the Applicant.

Mr. A R Gole, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : 08th JUNE 2026

Oral Order :

1. Heard the learned Counsel for the parties.
2. The challenge in this Revision Application is to an order passed by the learned Civil Judge whereby the application preferred by the applicant/defendant for rejection of the plaint on the ground that, the power of attorney has no right to make pleadings and the suit claim was not correctly valued and the requisite court fee was not paid, came to be rejected.
3. The learned Civil Judge was of the view that, the principal relief in the suit was of a decree for specific performance of the contract for sale dated 16th December, 2024, executed by the Defendant No. 2 in favour of the plaintiff and the relief of

possession and declaration that the deed of cancellation dated 20th April, 2019 and agreement dated 30th April, 2019 in respect of the suit property, executed among the defendants were illegal and not binding upon the plaintiffs, were the consequential reliefs, and, thus, the suit claim was properly valued.

4. In regard to the objection to the maintainability of the suit on the ground that, the power of attorney was not lawfully notarized, the learned Civil Judge of the view that, after the death of the first power of attorney, the plaintiff had executed power of attorney in favour of Sakina Firoz and a pursis was filed ratifying the acts done by the power of attorney and, thus, the plaint was not liable to be rejected on that ground.

5. Ms. Karnik, the learned Senior Advocate for the applicant, would urge that, the learned Civil Judge did not properly appreciate the issues that were canvassed on behalf of the defendants. It was submitted that, since the power of attorney was not lawfully notarized, the very institution of the suit was infirm and the same could not have been ratified by executing a subsequent power of attorney.

6. It was further submitted that, since the plaintiffs were seeking the avoidance of the instrument executed among the

defendants on 20th April, 2019 and 30th April, 2019, the Court fee was required to be paid under Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (“the Act. 1959”).

7. So far as the ground of incorrect valuation of the suit claim, first and foremost, it is necessary to note that, in view of the provisions contained in Section 15 of the Specific Relief Act, specific performance of the contract can be enforced against the person who has entered into the contract for sale of the property and all other persons claiming under him by a title arising subsequently to the contract, except a transferee for consideration without notice.

8. It is well settled that, a subsequent purchaser is required to be joined in the suit so that he can be directed to execute the instrument and convey complete title in favour of the plaintiff. Moreover, since the plaintiffs are not parties to the instruments in respect of which declaration is sought, in view of the Division Bench judgment of this Court in the case of *Dilip Khushalchand (Srisrimal) Jain & ors. Vs. Hardik Deepakbhai Ramani & ors.*¹, a suit for declaration of the sale deed to which the plaintiff is not a party that the sale deed is not binding on him, and for

¹ WP/8968/2018 dt. 05/05/2022

consequential injunction would be governed by Section 6(iv)(j) of the Act, 1959. Thus, the plaintiffs were not required to pay the court fees in relation to the instruments in respect of which they were seeking declaration, apart from the court fee on the consideration for which the Defendant No. 2 agreed to sale the suit property.

9. The alleged defect in the institution of the suit on account of the power of attorney not having been lawfully notarized, is essentially a curable defect. In view of the decision of the Supreme Court in the case of *Union Bank of India Vs. Naresh Kumar & ors.*², such defect in the institution of the suit, can be rectified by issuing a fresh authorization or filing a fresh power of attorney.

10. In the case at hand, the plaintiffs have filed a pursis ratifying the actions of their agents. Moreover, from the averments in the application for rejection of the plaint, it becomes evident that, at that stage, the issue of the suit being not maintainable on account of the defect in the notarization of power of attorney was not raised. On the contrary, it was

² 1996 SCC OnLine SC 92

contended that, the plaint is liable to be rejected as the power of attorney has no right to make the pleadings.

11. In view of the above, the learned Civil Judge has taken a correct view of the matter. No ground for rejection of the plaint was made out. Thus, in exercise of the revisional jurisdiction, this Court does not find any jurisdictional error or material irregularity in exercise of the jurisdiction by the trial Court.

12. Resultantly, the Civil Revision Application stands dismissed.

[N. J. JAMADAR, J.]