



ORDER BELOW EXH.17 IN SPECIAL CIVIL SUIT NO.22/2022.

Shri.Lingraj Ramchandra Keripale.

V/s.

Ravikiran Mohan Tavadare.

Defendant has moved the present application for rejection of plaint by taking recourse to Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 contending therein that plaintiff has filed the suit for specific performance of the contract, in which he has over valued the suit but according to him, valuation is less than Rs.5,00,000/-, due to which present suit would become regular civil suit and has to be tried by the Court of Civil Judge Junior Division and so defendant has sought rejection of the plaint on that ground.

2. The next ground on which defendant has sought rejection of the plaint is to the effect that, the Court has framed issues below (Exh.10) to which issue No.2 is in respect of existence of tenancy relationship between plaintiff and defendant, which cannot be tried by this Court but, by the Court of Civil Judge Junior Division as per section 33 of Maharashtra Rent Control Act. In short, as per defendant suit is not properly valued / over valued and issue of tenancy is framed which has to be tried by the Court of Civil Judge Junior Division as per section 33 of Maharashtra Rent Control Act and so defendant has filed the present application for rejection of the plaint

vide Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908.

3. Plaintiff has filed the say below (Exh.18) and strongly resisted the contention putforth by defendant in application. According to plaintiff, application is false one and filed only to delay the trial of present suit and harass the plaintiff. So, plaintiff has requested for it's rejection with costs.

4. From rival contentions of the parties, following points arise for my determination on which I have recorded my findings thereon with reasons to follow.

Sr. No.	Points		Findings
1.	Whether present suit is liable to be rejected vide Order 7 Rule 11 (d) of The Code of Civil Procedure, 1908 ?	...	In the negative.
2.	What order ?	...	As per final order.

5. Heard learned counsels for both sides. Perused record.

REASONS

As to point No.1 & 2 :-

6. The defendant has filed this application by taking recourse to Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 in which the Court has to see whether the suit appears from the statement in the plaint to be barred by any law. While deciding the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 the Court has only to look the averments made in the plaint and documents annexed therewith.

It cannot while the determination of this application, look into the defence set up by defendant.

7. The first contention raised by the defendant is to the effect that suit is over valued and valuation of the present suit is within the span of Rs.5,00,000/- and so has to be tried by the Court of Civil Judge Junior Division and not by the Court of Civil Judge Senior Division. It is important to note that if the Court of Civil Judge Junior Division is having power to try the suit, it does not mean that the Court of Civil Judge Senior Division ceases to have the said power. It is the plaintiff, who has to make the valuation as per the relief claimed in the plaint and under valuation is the ground for rejection of the plaint and the over valuation whatever it may be, the Court cannot take into consideration, the defence set up by defendant because scope of the Order 7 Rule 11 of the Code of Civil Procedure, 1908 is limited one. In view of above observations, further ground raised by defendant is also not sustainable and becomes inconsequential. Hence, I have no hesitation to hold that plaint cannot be rejected on the grounds set up by defendant in his application. Hence, I answer point No.1 in the negative and in response to point No.2 pass the following order.

ORDER

1. Application is hereby rejected.
2. Costs in cause.

Jaysingpur.
Date : 08/07/2024.

(Y. H. S. Deshmukh)
Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.