R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CIVIL REVISION PETITION NO.12 OF 2024 (IO)

BETWEEN:

SHRI ADMAR MUTT KALIYA
MARDANA KRISHNA DEVARU,
SRI ADMAR MUTT, CAR STREET,
UDUPI – 576 101
REPRESENTED BY ITS PEETHADHIPATHI
SRI SRI VISHWAPRIYA THEERTHA SWAMIJI
REPRESENTED HEREIN BY ITS MANAGER
H.V. RAGHAVENDRA BHAT
S/O. LATE H. VASUDEVA BHAT
AGED ABOUT 59 YEARS. ... PETITIONER

(BY SRI ANANDARAMA K., ADVOCATE)

AND:

1. SMT. VISHALAKSHI
AGED ABOUT 72 YEARS,
D/O. LATE RATHNAVATHI AMMA
W/O. P.S. SHIVAKUMARA
R/AT H.NO.2-1-31, GUNDIBAIL UDUPI,
PRESENTLY RESIDING AT:
NEAR LAXMINARAYANASWAMY TEMPLE,
KRISHNARAJAPET (RURAL),
MANDYA – 571436
KARNATAKA.

2. YASHODA M. ACHARYA
AGED ABOUT 73 YEARS,
D/O. LATE RATHNAVATHI AMMA
W/O. MADHWACHAR
R/O. #58, CENTRAL EXCISE COLONY,
2ND CROSS, GOKUL ROAD,
HUBLI, UDYAMNAGAR,
HUBLI, DHARWAD – 580 030.

3. USHA ACHAR
AGED ABOUT 74 YEARS,
W/O. (LATE) DR. K. RAMACHANDRA,
R/O. #141/111B, SRIRAMAKRUPA,
SIDDHARUDH NAGAR, NEAR R.K. NAGAR,
DHARWAD – 580 003.

4. RAGHURAM ACHAR
AGED ABOUT 40 YEARS,
S/O. (LATE) DR. K. RAMACHANDRA
R/O. #14/111B, SRIRAMAKRUPA,
SIDDARUDH NAGAR, NEAR R.K. NAGAR,
DHARWAD – 580 003.

5. GEETHA ADHIKARI
AGED ABOUT 37 YEARS,
D/O. (LATE) DR. K. RAMACHANDRA
R/O. #14/111B, SRIRAMAKRUPA,
SIDDARUDH NAGAR, NEAR R.K. NAGAR,
DHARWAD – 580 003.

6. SRINIVASA
AGED ABOUT 25 YEARS,
S/O. SMT. VISHALAKSHI,
R/AT H.NO.2-1-31, GUNDIBAIL,
UDUPI – 576 102.

7. SHARADA
AGED ABOUT 66 YEARS,
D/O. SATYABHAMA
W/O. GOAPALA KRISHNA BHDYA
#39, VINAYA MARGA, PANCHASHILA BLOCK,
BEML LAYOUT, 3RD STAGE,
RAJARAJESHWARI NAGAR,
BENGALURU – 560 098.

8. ANIL KUMAR SHETTY
AGED ABOUT 42 YEARS,
S/O. KRISHNA SHETTY
DOOR NO.5-297, "ARYANVI",
ANANTHA NAGAR, MANIPAL – 576 104. ... RESPONDENTS

(BY SRI RAJASHEKAR S., ADVOCATE)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CPC., AGAINST THE ORDER DATED 28.11.2023 PASSED ON IA NO.V IN O.S.NO.138/2020 ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE AND ACJM, UDUPI, REJECTING THE IA NO.V FILED UNDER ORDER 7 RULE 11 OF CPC., FOR REJECTION OF PLAINT.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking the following reliefs:

> *"a) Call for records in O.S.No.138/2020 pending on the file of the Court of II Additional Senior Civil Judge and ACJM, Udupi;*
>
> *b) Set aside the Order dated 28.11.2023 (Annexure A) passed by the Court of II Additional Senior Civil Judge and ACJM, Udupi on I.A. No.V in O.S.No.138/2020, and consequently allow I.A.No.V in O.S.No.138/2020 in the interest of justice and equity.*
>
> *c) Grant costs of the proceedings;*
>
> *d) Grant such other reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case."*

2. Petitioner had filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint filed in O.S. No.138/2020 on

the ground that the said plaint is not properly valued and a proper Court fee has not been paid. The application came to be rejected by the impugned order dated 28.11.2023 on the ground that a written statement had not been filed by the petitioner, who is defendant No.3 and without a claim being raised in the written statement as regards the adequacy or otherwise of the Court fee, an application under Order VII Rule 11 of the Code of Civil Procedure could not have been filed.

3. Sri Anand Rama .K, learned counsel for the petitioner would submit that it is not necessary for the defendant to file a written statement before filing an application under Rule 11 of Order VII and the application filed under the said provision could have been considered without a written statement by defendant.

4. Sri S. Rajashekar, learned counsel for respondent Nos.1, 2, 3 and 6, on the other hand, submits that in

terms of Section 11(2) of the Karnataka Court Fees and Suit Valuation Act, 1958, there is a requirement for the Court to consider the statements made in the written statement to arrive at whether the Court fee paid is proper or not.

5. Having heard both the counsel, the short point that would arise for consideration in the present matter is:

> "*Whether a written statement is required to be filed by a defendant to contend that the Court fee paid is not proper and therefore, the paint is required to be rejected under Rule 11 of Order VII?*"

6. Order VII Rule 11 (b) provides for rejection of the plaint in the event of the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time fixed by the Court, fails to do so and clause (c) provides for where the relief claimed is properly valued but the plaint is written upon paper insufficiently

stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so.

7. Thus, there is a two stage approach required to be followed by the Court under clauses (b) and (c) of Rule 11 of Order VII. Firstly, the determination of the proper Court fee to be paid and to provide an opportunity to the plaintiff to make payment of the Court fee. Secondly, if the determined Court fee is not paid within the fixed time, then reject the plaint. Clauses (b) and (c) of Rule 11 Order VII do not make any reference to the written statement. Furthermore, it is trite law that for consideration of application filed under Rule 11 of Order VII, only the averments made in the plaint are required to be considered and not that in the written statement.

8. In the present matter, the Trial Court dismissed the application under Rule 11 of Order VII (b) and (c) on the ground that the written statement has not been

filed. There being a bar for the Court to look into the written statement while considering an application under Rule 11 of Order VII, it is not permissible for the Trial Court to dismiss the application on the ground that the written statement was not filed.

9. Hence, I answer the point raised by holding that, insofar as filing an application under Rule 11 of Order VII is concerned, there is no requirement to file a written statement prior thereto. It is, however, made clear that irrespective of whether an application under Rule 11 of Order VII is considered or not, the time period fixed under the Code of Civil Procedure 1908, as amended, for filing the written statement would continue to hold and the written statement would have to be filed within the time frame prescribed.

10. In the present matter, the Trial Court, having come to the conclusion that the application under Rule 11 of Order VII could not be considered without a

written statement being filed by referring to sub-section (2) of Section 11 of the Karnataka Court Fees and Suit Valuation Act, 1958, is *ex-facie* erroneous. The filing of a written statement is not a condition precedent for considering an application under Rule 11 of Order VII.

11. Hence, I pass the following:

ORDER

i. The writ petition is ***allowed***.

ii. The impugned order dated 28.11.2023 at Annexure-A passed by II Additional Senior Civil Judge and ACJM, Udupi on I.A.No.V is set aside.

iii. The matter is remitted back to II Additional Senior Civil Judge and ACJM, Udupi to consider the application under Rule 11 of Order VII in terms of the above observations.

Sd/-
JUDGE

MBM
List No.: 1 Sl No.: 14