

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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20 CIVIL REVISION APPLICATION NO. 234 OF 2013

MEDICAL COLLEGE AND HOSPITAL THIRD GRADE EMPLOYEES SAH-
GRIHA NIRMAN SANSTHA

VERSUS

SK. MUKHATAR SK. SHAKUR AND OTHERS

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Advocate for Applicant : Mr. Vaidya Ameet R.
Advocate for Respondents 1 to 4 : Mr. G. C. Navandar
Advocate for Respondents 11 to 15 : Ms. Fatema Kazi
h/for Mr. S.S. Kazi

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CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. Mr. Vaidya, learned counsel for the applicant submits that application for rejection of plaint filed by the present applicant- original defendant No.19 under Order 7 Rule 11(D) of the Code of Civil Procedure has not been considered by the Court in its proper perspective. The suit is instituted without notice under Section 164 of the Maharashtra Cooperative Societies Act. In absence of notice under Section 164 of the Maharashtra Cooperative Societies Act, the suit against the present applicant is not tenable. The Court ought to have considered the said aspect in its correct perspective. Learned counsel submits that the plaint can be rejected at the threshold. It is not necessary

to go on with the long-drawn process. Learned counsel relied on the recitals of the plaint.

2. Mr. Navandar, the learned counsel for the respondents-plaintiffs supports the order and submits that the issue is framed with regard to maintainability of the suit in absence of notice under section 164 of the Maharashtra Cooperative Societies Act. While deciding Application Order 7 Rule 11(D) of the Code of Civil Procedure, only recitals in the plaint are required to be considered.

3. The court has framed an issue as regards the tenability of the suit in absence of notice under section 164 of the Act. Prayers in the plaint do not show any relief being claimed against the present applicant. What would be the effect of non issuance of notice under section 164 of the Act can be taken into consideration while deciding the issue of tenability of the suit in absence of the notice. The Court has already framed the said issue. The parties will have opportunity to adduce evidence. It is not that the case put forth by the present applicant about non tenability of the suit in absence of notice under

section has been negatived. The court would be required to consider the aspect as raised by the applicant in the instant application while deciding the said issue. However, as has been observed by this Court, at this stage, it would not be proper to reject the plaint on the said count as on the face of it, no relief is claimed against the present applicant. The suit appears to be suit for partition and separate possession. It would be for the applicant to establish the necessity of issuance of notice under section 164 of the Maharashtra Cooperative Societies Act in such case.

4. In the light of above, the civil Revision application is accordingly rejected. However, it is made clear that while deciding the issue of tenability of the suit in absence of notice under section 164 of the Maharashtra Cooperative Societies Act, the present order would not come in the way. No costs.

(S. V. GANGAPURWALA, J.)

JPC