

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4912 OF 2011**

M/s. Truly Creative Developers  
Pvt. Ltd

Petitioner

Vs

Samta Nagar Co-op. Hsg Soc  
Union Ltd and Ors

.. Respondents

Mr.G.N.Salunke, Advocate for Petitioner.

Mr. Pramod N. Patil, Advocate for Respondents no.1 and 2.

CORAM : R.G.KETKAR,J.

DATE : 02/05/2016

**PC:**

1. Heard Mr.G.N.Salunke, learned counsel for the petitioner and Mr. Pramod N. Patil, learned counsel for the respondents no.1 and 2.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 7.5.2010 in Notice of Motion No.1285 of 2009 in S.C.Suit No. 1782 of 2008. By that order, the learned trial Judge allowed the notice of Motion taken out by defendant no.4 for rejection of plaint under Order VII, Rule 11 of C.P.C. on the ground that without issuing notice under section 164 of the Maharashtra Cooperative Societies Act, 1960, plaintiff has instituted suit against defendant no.1 which is a co-operative housing society.

3. Mr. Patil raises preliminary objection on the ground of maintainability of the petition. He submitted that in view of the definition of the expression 'decree' in section 2(2) of C.P.C.,

rejection of plaint is deemed to be a decree and, therefore, the petitioner has a remedy to file substantive Appeal under section 96 of C.P.C.

4. In view thereof, Mr. Salunke seeks permission to withdraw this petition with liberty to file appeal. On the motion made by Mr Salunke, Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the case. All contentions of the parties are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)