

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION ST. NO. 13403 OF 2018

Mr. Abhijeet Mohite ...Applicant

Versus

Mrs.Mansi Mandar Date & Ors. ...Respondents

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Mr. Prasad Dani, Senior Advocate I/b. Mr. Sagar G. Talekar for the Applicant.

Mr. Pankaj Thatte a.w, Ms. Sucheta Joshi for Respondent Nos. 1 and 2.

Mr. Nitin Gangal for Respondent Nos. 4 to 6.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 06, 2018**

P.C. :

1. This Civil Revision Application is directed against the order dated 12th April, 2018 passed by the learned 2nd Joint Civil Judge, Senior Division, Raigad, Alibag below Exhibit 1 in Special Civil Suit No. 106 of 2016. The applicant is the original defendant No.5. Respondent Nos. 1 and 2 are the original plaintiffs. Respondent Nos. 3 to 6 are the original defendants.

2. A challenge was given by defendant No.5 by filing an application below Exhibit 25 under Section 9A and Order 7 Rule 11

(d) of the Code of Civil Procedure, 1908 (hereinafter referred to as “the C.P.C.”) and also by respondent Nos. 3 to 6 by filing an application below Exhibit 35 under Section 9A of the C.P.C.

3. The original plaintiffs have filed a Special Civil Suit No. 106 of 2016 for declaration, mandatory injunction and damages under Section 4 read with Sections 7 and 11 of the Maharashtra Ownership of Flats Act, 1963 (hereinafter referred to as “the MOFA”) and under Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as “the said Act”). The plaintiffs have purchased a flat in the suit building, which was constructed by respondent No.3. The plan was approved by defendant No.5 i.e., the present applicant and respondent Nos. 4 to 6, who are the authorities from the Municipal Council. It was contended that the suit is barred under Section 149 of the Maharashtra Regional and Town Planning Act, 1966 and it is not maintainable.

4. The learned Senior Advocate for the applicant and the learned Counsel for respondent Nos. 4 to 6 have submitted that the MOFA is not applicable to Roha Taluka and, therefore, the suit is not maintainable. The challenge given to the approved plan so

also the plaint cannot be entertained by the Civil Court under the Maharashtra Regional and Town Planning Act, 1966.

5. The learned Counsel for respondent Nos. 1 and 2, who are the original plaintiffs, has supported the order passed by the learned Judge of the trial Court.

6. Perused impugned order. Also perused plaint and the prayers made therein. There are many pleadings and claimed right under the said Act and also under the MOFA. There are also prayers in respect of challenging approved plan and seeking declaration for the same. Some of the prayers may not be granted finally by the trial Court, however, some reliefs of declaration and possession of the suit flat or mandatory injunction can be granted by the Civil Court. Under such circumstances, the order dated 12th April, 2018 passed by the learned 2nd Joint Civil Judge, Senior Division, Raigad, Alibag cannot be faulted with. Hence, Civil Revision Application is disposed of.

7. During the course of arguments, the learned Senior Advocate for the applicant has made submission that the

applicant, who is defendant No.5, is in fact not a proper party to the suit and, therefore, if at all he moved an application for want of cause of action against him or his deletion from the array of party defendant, then that is to be decided by the trial Court independently without getting influenced by any other order.

8. Such application can be moved by the authorities/defendants at any time and the learned Judge of the trial Court may decide it accordance with law. It is to be noted that respondent Nos. 4 to 6 have not challenged the impugned order by filing a separate Civil Revision Application.

(MRIDULA BHATKAR, J.)