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

CIVIL REVISION APPLICATION NO.578 OF 2016

New Heavens Park No.2 Co-op Hsg
Soc.

... Applicant.

V/s.

Vijaykumar Devraj Mehta
and anr

... Respondents

Mr. Drupad S. Patil, for the Applicant.

Mr. Sagar Kursiga, I/by T.D. Deshmukh, for the
Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 9TH APRIL, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned
counsel for the respondents.

2] By this Revision Application filed under Section 115 of
Code of Civil Procedure, the petitioner is challenging the order dated
7th May, 2018, passed by the Jt. Civil Judge Senior Division, Pune,
below application Exh.55, in Special Civil Suit No.1242 of 2012.

3] Application Exh.55, was filed by the present petitioner,
who is defendant No.7, before the trial Court for rejection of the plaint
on the ground that the statutory notice as required under Section 164

of the Maharashtra Co-operative Societies Act, was not given by respondent No.2 plaintiff before institution of the suit and secondly on the ground that there is no compliance of order VII Rule 3 of the Code of Civil Procedure.

4] As regards first ground that the statutory notice as required under Section 164 of Maharashtra Co-operative Societies Act, admittedly plaintiff No.1 has given such notice. Only plaintiff No.2, who is wife of plaintiff No.1 has not given such notice and in view thereof, it is submitted that the plaintiff No.1 has already filed an application before the trial Court for transposing plaintiff No.2, as defendant in the suit.

5] In view thereof the first contention no more remains.

6] As regards the second contention that there is non compliance of order VII Rule 3, learned counsel for respondent draws the attention of this Court to the application filed by respondent under Order VI Rule 17 read with Section 151 of C.P.C., for carrying out necessary amendment in the plaint, in order to attach rough sketch of the encroached portion as required under Order VII Rule 3 of C.P.C. It is submitted that the said application is yet to be decided by the trial Court. Therefore, on this ground also, if there is non compliance of order VII Rule 3, now respondent is seeking compliance of the said provision and hence only after the trial Court decides

respondent's application for amendment, if any, cause of action will occur to the present petitioner. At this stage, such cause cannot be entertained. Hence the impugned order passed by the trial Court Court does not call for any interference.

7] The Civil Revision Application, therefore, stands dismissed.

8] Needless to state that all the contentions raised by the respective parties are kept open to be decided by the trial Court on its own merits at appropriate stage.

[DR.SHALINI PHANSALKAR-JOSHI, J.]