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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**3 CIVIL REVISION APPLICATION NO.98 OF 2019**

JINDAL PROP BUILDERS AND DEVELOPERS LLP JALNA  
THROUGHITS PARTNER MANOJ JAIBHAGWA  
VERSUS  
MOHD YAKUB MOHD GAUS AND OTHERS

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Advocate for Petitioners : Mr. SP Brahme, Adv. h/for  
Mr. Sonwane Mahesh R.  
Mr. Adv Dhage Babasaheb V.For R-1 To 4.

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**CORAM : P.R. BORA, J.**  
**DATED : 24<sup>th</sup> June, 2019.**

**PER COURT:-**

1. With consent of learned counsel appearing for the parties, the present civil revision application is taken up for final disposal.

2. Order dated 26<sup>th</sup> March, 2019 passed by 6<sup>th</sup> Joint Civil Judge, Senior Division, Jalna, below application at Exh.26 in RCS No.460/2018, is challenged in the present civil revision application. The aforesaid application was filed by the revision applicant, who is defendant No.1 in the said civil suit, praying for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure.

3. Heard learned counsel for the parties.

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Perused the impugned order and the other material placed on record. Perusal of the plaint in RCS No. 460/2018 reveals that the relief claimed in the said civil suit by the plaintiffs in the said suit, is based on the decree passed in RCS No.388/1989 decided on 30<sup>th</sup> October, 1991. The plaintiffs in RCS No.460/2018 claimed themselves to be the legal representatives of the plaintiffs in RCS No. 388/1989. In the application filed by the revision applicant, it was his precise contention that the decree passed in RCS No.388/1989 was set aside by the District Court, vide order dated 3<sup>rd</sup> May, 1997 passed in RCA No.15/1997 and was substituted with the decree drawn in terms of the compromise arrived at between the parties at Exh.10 in the said appeal. It was brought to my notice by learned counsel Shri Brahme, appearing for the revision applicant that the decree passed in RCA No.15/1997 was fully satisfied and the decree holders in RCS No.388/1989 had, therefore, withdrawn Regular Darkhast No.11/1993 on 28.2.2000 and hence it was dismissed by the Executing Court. In this context, it was the contention of the learned counsel appearing for the revision applicant that, nothing

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remained to be executed of the decree passed in RCS No.388/1989, which was substituted by the decree passed in RCA No.15/1997. The learned counsel submitted that the trial court, however, has failed in appreciating these aspects and has erroneously rejected the application filed by the revision applicant.

4. As against it, it was the contention of learned Counsel Shri Dhage, appearing for Respondent Nos. 1 to 4 that, the compromise arrived at in RCA No.15/1997 was restricted to the appellant therein and the decree passed in RCS No. 388/1989 was modified to that extent only. The learned counsel further submitted that the subsequent developments, which had occurred in the meanwhile period, demonstrate that the legal heirs of the decree holders in RCS No.388/1989, got their further share in the properties of the other defendants excluding the appellant in RCA No. 15/1997. It was also contended by Shri Dhage that while considering the application under Order VII Rule 11 of the Code, the court is supposed to look into the averments of the plaint alone and not the

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pleas raised in the written statement or the objection raised by the other side. According to the learned counsel, the trial court has rightly rejected the application filed by the revision applicant.

5. After having considered the submissions advanced by the learned counsel appearing for the parties and on perusal of the impugned order and the other material placed on record, it is apparently revealed that the learned trial court has not bothered to take into account the order passed in RCA No.15/1997 whereby the decree passed in RCS No.388/1989 was set aside. The trial court also does not seem to have appreciated the fact that Regular Darkhast No.11/1993 filed by the original decree holders was withdrawn by them by filing a pursis in that regard, contending therein that the matter has been settled amicably and hence the decree holders were not intending to proceed with the said execution proceedings. Though it is true that while considering the application under Order VII Rule 11 of the Code, the Court is not supposed to take into account the defences raised

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in the written statement and the averments in the plaint are only material, it does not mean that even after it is brought to the notice of the court that the averments so raised in the plaint are factually incorrect, the Court shall ignore the said contention.

6. In the present matter, as I noted herein above, the rights, which are claimed in RCS No. 460/2018, originate from the decree passed in RCS No.388/1989 and in the circumstances, if it is brought to the notice of the court that the decree passed in RCS No.388/1989 was set aside and was substituted by the decree passed in RCA No. 15/1997, the court was under obligation to look into both the aforesaid orders before arriving at any conclusion whether or not RCS No.460/2018 was liable to be dismissed under Order VII Rule 11 of the Code.

7. The learned counsel for Respondent Nos. 1 to 4 has not disputed that in the order passed in RCA No.15/1997 on 3<sup>rd</sup> May, 1997, the judgment and decree dated 30<sup>th</sup> October, 1991 passed by the lower

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court in RCS No.388/1989 was set aside and it was substituted with the decree in terms of compromise at Exh.10 in the said RCA. Though it was sought to be contended by Shri Dhage that the said compromise was restricted to the appellant in the said appeal, perusal of the terms of compromise at Exh.10, nowhere suggest or mean that the said compromise was restricted only to the share of appellant therein.

8. The material on record, however, also reveals that subsequently Regular Darkhast No.13/1999 was filed for execution of the decree passed in RCS No.388/1989 and that was proceeded further. It has also been brought to my notice by Shri Dhage that precept under Section 54 of the Code was sent to the Collector and the legal heirs of the decree holders in RCS No. 388/1989, have partly succeeded in securing the possession of some more land in addition to the land given to their share in execution of Darkhast No.11/1993.

9. After having considered the aforesaid facts and the facts brought to my notice by Shri

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Brahme, learned counsel appearing for the revision applicant, I have reached to the conclusion that the entire material relevant for deciding the controversy was either not placed before the trial court while deciding the application at Exh. 26 in RCS No.460/2018 or if it was submitted before it, the same has not been properly considered by the said court. In the circumstances, without going into merits of the rival contentions raised by the parties in the present revision application, I deem it appropriate to pass following order, -

ORDER

i. Order dated 26<sup>th</sup> March, 2019 passed by 6<sup>th</sup> Joint Civil Judge, Senior Division, Jalna, below application at Exh.26 in RCS No.460/2018, is quashed and set aside;

ii. The matter is remitted back to the trial court to decide it afresh by giving due opportunity to the parties concerned to place before it the entire facts, starting from filing of RCS No. 388/1989 and the subsequent proceedings, which had taken place in the said matter.

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iii. The parties are directed to appear before the trial court on 2<sup>nd</sup> July, 2019, which I am informed is the next scheduled date before the said court in Darkhast proceeding.

iv. The trial court, by giving an opportunity to the parties, shall decide the application at Exh.26 afresh, as expeditiously as possible

v. The Revision Application stands disposed of in the aforesaid terms.

**(P.R. BORA)**  
**JUDGE**

BDV