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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 33 OF 2020**

M/s Jhala and Kodre Associates and Ors.

..... Applicants
(Original Defendant
Nos. 1 to 6)

V/s

Rajyog B Co-operative Housing Society Ltd.
and Others

..... Respondents.

Mr. G.S. Godbole i/b Drupad Patil for the Petitioner.

Mr. Prasad Avhad i/b Mr. Chetan Nagare for Respondent Nos.1, 2 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 4, 2021

P.C.:-

1] This Revision is by the Defendants to Regular Civil Suit No.355 of 2018 questioning the order impugned passed below Exhibit-44, an application preferred under Order VII Rule 11(a) read with Order VI Rule 16 of the Civil Procedure Code.

2] The claim of the Petitioners/Defendants are, since the bundle of facts mentioned in the Plaint does not disclose cause of action, the suit is liable to be rejected under the provisions of Order VII Rule 11 (a) of

the CPC.

3] Petitioners are Defendant Nos.1, 1A, 1B, and 2 to 6 to the aforesaid suit which is for partition and cancellation of various Conveyance Deeds.

4] According to Mr. Godbole, learned Counsel appearing on behalf of the Petitioners, pursuant to the proceedings taken out by the Respondents/Plaintiffs, Competent Authority in exercise of powers under Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereinafter referred to for the sake of brevity "MOFA") had already passed an order conveying the land to the extent of 7052.79 sq.mtrs and constructed area of 17702.20 sq.mtrs in favour of the original Plaintiffs. According to him, as such, it was for the Plaintiffs to get the conveyance deed registered in their favour which they have failed to. He would invite attention of this Court to the nature of relief claimed in the Plaint which is for larger area than the one which is conveyed and that being so, according to him, suit is not disclosing correct cause of action. By taking me through various clauses of the

Plaint, he would urge that even if one appreciates the bundle of facts pleaded in the plaint same does not disclose any cause of action and that being so, Plaint is liable to be rejected under Order VII Rule 11 of the CPC.

5] Mr. Avhad, learned Counsel appearing on behalf of Respondent Nos. 1 to 3 would support the order impugned, as according to him, the Plaint discloses cause of action based on bundle of facts pleaded.

6] Considered rival submissions.

7] Though the authority under MOFA has passed an order on 9/6/2016 in favour of the Plaintiffs thereby granting deemed conveyance for the land and the constructed area to the tune of 7052.79 sq.mtrs and 17702.20 sq. mtrs respectively, admittedly registered conveyance is not yet executed by the Respondents/Plaintiffs in relation to the said land as their claim was for large piece of land as reflected in the prayer clauses of the Plaint i.e. 18091 sq.mtrs of open land and constructed area of 17702 sq.mtrs. It appears that claim of the Plaintiffs was not granted as

present Petitioners have created interest by executing other conveyances which are challenged in prayer clauses (c), (d) and (e) of the Plaint.

8] For raising such challenge in the prayer clauses, cause of action has been specifically pleaded in paras 43 and 44 of the Plaint. In support of the said cause of action, specific pleadings are raised by the Respondents/Plaintiffs in the Plaint giving details of entire property, various transactions entered into between the parties to the suit, rights agreed to be created and the illegality committed by the Petitioners by not honouring the commitments. As such, bundle of facts pleaded in the plaint disclose the very cause of action and it cannot be inferred upon plain reading of the Plaint that same is not disclosing any cause of action.

9] Apart from above, the fact that the Plaintiffs have not got registered the deemed conveyance in their favour will be hardly of any consequence, particularly when same is challenged in the plaint as smaller area is sought to be conveyed in favour of the Plaintiffs than the one to which they are entitled to.

10) Admittedly, this Court is not required to appreciate the evidence of the Petitioners/Defendants while dealing with the prayer for rejection of the Plaint under Order VII Rule 11(a) of the CPC. That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)