

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

CIVIL REVISION APPLICATION NO.106 OF 2021

Kothari Builders and Developers

Through Prasanna Kumar Vinay Kumar Kothari

Age; 29 years, Occ; Agriculture and business,

R/o. Near Statue of Chatrapati Shivaji Maharaj,

Jalna, Taluka & District; Jalna.

...APPLICANT.

(Original Defendant No.1)

VERSUS

Janardhan Ganpatrao Rathod

Age; 58 years, Occ; Service,

R/o; Kothari Hills, Devmurti, Jalna

Taluka & District; Jalna.

...RESPONDENT

(Original Plaintiff)

...

Advocate for Applicant : Mr.Sonawane Mahesh Ramnath

Advocate for Respondent : Mr. Sudhir K. Chavan

...

CORAM : VINAY JOSHI, J.

DATE : 17th FEBRUARY, 2022.

ORAL JUDGMENT :

1. Heard finally by consent of both the learned counsel.
2. This revision petition is of original defendant, challenging the order dated 22.09.2021, passed by the Second Joint Civil Judge,

Junior Division, Jalna at Exh. 11 in R.C.S. No. 155 of 2021. The applicant/defendant has filed said application for rejection of plaint in terms of Order VII Rule 11 of the Code of Civil Procedure, by contending that the plaint which is filed in representative capacity, was not in conformity with the provisions of order I Rule 8 of the Code of Civil Procedure (for short 'C.P.C.'). Moreover, the construction is complete and the suit has become infructuous.

3. It reveals that the respondent/plaintiff has filed simplicitor suit for injunction restraining defendant from raising any sort of construction. It appears that the suit is filed in representative capacity. The respondent's learned counsel would submit that by the time the respondent has published a paper publication in compliance with the order **8 Rule 2** of C.P.C. Moreover, by placing the reliance on the decision of this Court in the case of **Hubli Panjarapole And Others vs. Saraswatevva Bayappa Kala Ghatki – 1953 (55) Bom. L.R. 227** it is argued that technical compliance about seeking permission of Court can be obtained during the pendency of the suit, however, that cannot be a reason for rejection of the plaint.

4. On the other hand, the applicant's learned counsel submitted that by the time the construction is complete and the suit has become infructuous. He has also placed reliance on **Shipping**

Corporation of India Ltd vs. Machado Brothers and others – AIR 2004 SC 2093 to contend that the Court has to take into account the subsequent events brought on record by filing application, and on that basis after making necessary inquiry can dismiss the suit.

5. So far as, non compliance of the provisions of order I Rule 8 of C.P.C. is concerned, the said permission can be obtained during the pendency of the suit. The trial Court has not committed any error while rejecting the said contention. So far as the subsequent development is concerned, it is settled law that at this stage the Court can see only the averments made in plaint and not the defence. Therefore, the rejection of said application cannot be faulted with. However, the defendant is at liberty to bring subsequent events to the notice of trial Court by moving an application, which shall be considered in accordance with law. In view of the above observations the revision application/petition stands dismissed.

(VINAY JOSHI, J.)