

Anand

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

WRIT PETITION 495 OF 2022

Swargiy K. C. Vagyan Lokmanya Nagri .Petitioner
Sahakari Patsanstha Maryadit, Ashta

Vs.

Mrunalini Deepak Patil & anr. .Respondents

Mr. A. B. Vagyan a/w Ms Kanchan Chindarkar i/b.
Mr. Prashant P. More, Advocate, for the Petitioner
Mr. Kuldeep U. Nikam, Advocate, for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 12.07.2022

P. C.

. The Petitioner is the Defendant 2 in R.C.S. 455 OF 2015 and is aggrieved by the order dated 04.03.2021, whereby the learned trial Court has rejected the Application under O. VII, Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC').

2. The only reason, if at all the observations can be reasons in the eyes of law, is thus :-

“5. Issues are already framed on 05.01.2018. Section 9(A) of the Code of Civil Procedure is now repealed. Now,

there is no provision as such to frame preliminary issue at this stage of suit. Suit is now for hearing. Issue of jurisdiction is framed by me today. It is not mentioned in the application, under which provision this application is filed. Issue of jurisdiction can be tried along with main suit. To sum-up, I pass following order.

ORDER

Application is hereby filed.”

3. I have no hesitation in recording that the order impugned is bad-in-law.

4. The Application under O. VII, Rule 11 of the CPC is preferred on the assertion that the suit is barred by the provisions of the Maharashtra Co-operative Societies Act, 1960. I am consciously refraining from considering the averments in the plaint in the context of which the Application under O. VII, Rule 11 is preferred, lest there is any prejudice to the parties.

5. Suffice it to observe that the learned trial Court was obligated to consider the Application under O. VII, Rule

11 of the CPC on merits and could not have refused to exercise the jurisdiction by observing that Section 9A is repealed and that there is no provision to frame preliminary issue.

6. The order impugned is manifestly erroneous and is set aside.

7. The learned trial Court shall decide the Application under O. VII, Rule 11 of the CPC preferred by the Defendant on its own merits and in accordance with law.

8. Needless to observe that all the contentions are kept expressly open.

9. The Petition is disposed of in the aforesaid terms.

(ROHIT B. DEO, J.)