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

CIVIL REVISION APPLICATION NO.96 OF 2011

Shri Omkar Pandit Bankar  
Age – 45 years, Occ : Business, Agriculture  
R/o Pahur, Taluka Jamner, Dist. Jalgaon

... Petitioner

*Versus*

1. Shri Ashok Laxman Jadhav  
Age – 45 years, Occ – Agriculture,
2. Shri Suklal Baliram Bari  
Age – 47 years, Occ : Agriculture,
3. Shri Kiran Ratan Jadhav  
Age – 22 years, Occ : Labour

All residing at Pahur, Tq. Jamner,  
Dist. Jalgaon.

4. The Gram Panchayat Pahur Kasabe  
Gram Panchayat Pahur Kasabe Office,  
R/o Pahur Kasabe, Tq. Jamner,  
Dist. Jalgaon

... Respondents

...

Mr.M.M. Bhokarikar – Advocate for Petitioner  
Mr. R.V. Gore – Advocate for respondent nos.1 to 3.  
Mr.V.P. Latange– Advocate for respondent no.4

....

**CORAM : GAURI GODSE, J.**

**RESERVED ON : 5<sup>th</sup> January, 2023**

**PRONOUNCED ON : 7<sup>th</sup> February, 2023**

**JUDGMENT :****FACTS IN BRIEF:**

1. This civil revision application is filed by the original defendant no.1 for challenging the order dated 21<sup>st</sup> March, 2011 passed by learned Civil Judge, Junior Division, Jamner below Exhibit-24 in Regular Civil Suit No.30 of 2011 as well as order dated 14<sup>th</sup> March, 2011 passed by learned Civil Judge, Junior Division, Jamner on an application made under Section 91 of the Code of Civil Procedure 1908 (“CPC”). By order dated 21<sup>st</sup> March, 2011, an application at Exhibit 24 filed by the present petitioner under Order VII Rule 11 of CPC was rejected. By order dated 14<sup>th</sup> March, 2011, an application filed by respondent nos.1 to 3 under section 91 of CPC was allowed, thereby granting permission to them to institute the suit. Pursuant to the permission granted under section 91 of CPC, respondent nos.1 to 3 instituted Regular Civil Suit No.30 of 2011 against the petitioner and respondent no.4, praying for a declaration that the applicant had no right to carry out new construction and/or carry out repairs and/or use the suit property in any manner. Respondent nos.1 to 3 also prayed for a decree directing the petitioner to demolish

the construction on the suit property. Suit property described in the plaint is city survey no.2016, Gram Panchayat Property No.791 admeasuring 239.25 square feet situated at, Mauje Pahur Kasabe Gram Panchayat, Taluka Jamner, District Jalgaon (“the suit property”).

2. Respondent nos.1 to 3 filed an application under section 91 of CPC, thereby contending that the respondent no.4 – Gram Panchayat was trying to alienate the suit property without following any due process and the petitioner has started carrying out unauthorized construction on the suit property. It was contended by the respondent nos.1 to 3 that the suit property is owned by the Gram Panchayat and it is for the purpose of benefit of the public and hence, it had to be used only for public purpose. It was further contended that the suit property is situated at the entrance of the village and is used for ingress and egress as well as for common public purpose. With these contentions, the permission was sought under section 91 of CPC to institute the suit in public interest on the ground that due to the unauthorized use of the suit property, there was likelihood of public nuisance.

3. The application filed by respondent nos.1 to 3 was allowed on the same day and Regular Civil Suit No.30 of 2011 was instituted. The petitioner was served with the suit summons and he appeared in the suit and filed his written statement on 19<sup>th</sup> March, 2011. On the same day, the petitioner also filed an application under Order VII Rule 11 of CPC praying for rejection of the plaint on the ground that there was no cause of action to file suit, and that, the suit was not properly valued. Respondent nos.1 to 3 filed their reply and opposed the said application.
4. Respondent Nos.1 to 3 had also filed an application at Exhibit-25 praying for appointment of a Court Commissioner for the purpose of local inspection of the construction on the suit property. By order dated 21<sup>st</sup> March, 2011, the said application was also allowed and Court Commissioner was appointed for the purpose of local inspection of the suit property.
5. After hearing all the parties, the learned Trial Judge rejected the application filed by the petitioner under Order VII Rule 11 of CPC. Feeling aggrieved by the said order dated 21<sup>st</sup> March, 2011, applicant has filed the present civil revision application. By way of this civil revision application, the petitioner has also

challenged the order dated 14<sup>th</sup> March, 2011, granting permission to respondent nos.1 to 3, under section 91 of CPC for instituting the suit. Civil revision application was admitted for final disposal.

**SUBMISSIONS ON BEHALF OF PETITIONER:**

6. Learned counsel appearing for the petitioner submitted that there was no application of mind at the time of allowing the application filed by respondent nos.1 to 3 under section 91 of CPC. There was no notice issued to the petitioner and no opportunity of hearing was given to the applicant before allowing the application under section 91 of CPC. It was further contended that the scope of granting permission under section 91 of CPC required the learned Judge to record reasons for granting such a permission, as the same is restricted only with respect to public nuisance and in the public interest. It is the contention of the petitioner that the applicant is in long standing possession of the suit property and respondent nos.1 to 3 without any cause of action had filed the said application under section 91 of CPC seeking permission to institute the suit on the ground of alleged public nuisance.

7. With respect to the application under Order VII Rule 11 of CPC, it was submitted that perusal of the plaint showed that there was no cause of action for filing the suit and valuation of the suit was not made as per prayers in the suit. In support of the contentions raised on behalf of the petitioner, learned counsel relied upon the decision of this Court in the case of *Municipal Council, Jalna through its Chief Officer and others Vs. Eknath S/o Narayan Shankar Pelli and others*<sup>1</sup>. By relying upon the said decision, it was submitted that before granting permission under section 91 of CPC, it was mandatory that the power to grant such a permission ought to have been exercised judiciously and not in any arbitrary manner, as has been exercised by the learned trial Judge in the present case. It was, thus, submitted that the permission under section 91 of CPC can be granted only by a reasoned order, which will indicate application of mind for the purpose of grant of such permission. It was, thus, submitted that perusal of the order passed by the learned Trial Judge under section 91 of CPC, would show that there was absolutely no reason recorded for allowing the application, and that, there was no application of mind with respect to whether such a permission could have been granted for instituting the suit. In

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1 2000(1) Bom.C.R. 888

support of the same submissions, learned counsel also relied upon the decision of Rajasthan High Court in the case of *Kanti and others Vs. U.I.T. Bikaner and others*<sup>2</sup> as well as Allahabad High Court in the case of *Ku. Aamina Saadat Ali Vs. Municipal Board, Bahraich*<sup>3</sup>.

8. In support of the submissions with respect to the application under Order VII Rule 11 of CPC, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others*<sup>4</sup>. By relying upon the said decision of the Hon'ble Supreme Court, learned counsel submitted that on the plain reading of the plaint, it was clear that there was absolutely no reason for filing the suit and hence, the plaint deserves to be rejected for want of cause of action. Learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of *Kamala and others Vs. K.T. Eshwara Sa and others*<sup>5</sup> in support of the submission that suit as filed by the respondent nos.1 to 3 was barred by law. Though, learned

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<sup>2</sup> AIR 1998 RAJASTHAN 108

<sup>3</sup> AIR 1980 ALLAHABAD 376

<sup>4</sup> AIR 2021 SC 4594

<sup>5</sup> AIR 2008 SC 3174

counsel sought to make submissions on the ground that the suit was barred by law, nothing was argued in support of said submissions that the suit was barred under which provisions of law. In support of the submissions, on the application under Order VII Rule 11 of CPC, learned counsel also relied upon the decisions of the Hon'ble Supreme Court in the cases of *T. Arivandandam Vs Satyapal and another*<sup>6</sup>, *Dhruv Green Field Ltd Vs Hukum Singh and others*<sup>7</sup> and decision of this Court in the case of *Village Panchayat, Antora through its Member Vs Wasudeo Ramchandraj Mohod and another*<sup>8</sup>.

9. Thus, by relying upon the aforesaid decisions, learned counsel for the applicant submitted that this Court was required to examine the question as to whether, there was any public nuisance, which gave a locus-standi to the respondent nos.1 to 3 to invoke section 91 of CPC and whether there was any special damage, nuisance and/or any right of ingress and egress to any person with respect to the suit property. Learned counsel for the petitioner also submitted that in view of the rights available to the respondent no.4 – Gram Panchayat under the provisions of

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<sup>6</sup> AIR 1977 SC 2421

<sup>7</sup> AIR 2002 SC 2841

<sup>8</sup> 2014(5) Mh.L.J. 189

the Maharashtra Village Panchayat Act, 1958, the Civil Court would not have any jurisdiction to entertain the suit, as framed by the respondent nos.1 to 3.

10. Learned counsel for the applicant, thus, submitted that in effect the reliefs claimed by the respondent nos.1 to 3, amounted to challenging the resolutions passed by the Gram Panchayat, thereby granting a lease with respect to the suit property in favour of the applicant and hence such suit could not have been entertained by the Civil Court. Thus, learned counsel for the petitioner submitted that the order passed under section 91 of CPC was an unreasoned order and showed complete non-application of mind on the part of the learned Trial Judge and hence, the impugned order dated 14<sup>th</sup> March, 2011 deserves to be quashed and set aside and the application under section 91 of CPC is required to be rejected. Learned counsel for the petitioner further submitted that even otherwise, the application filed by the petitioner under Order VII Rule 11 of CPC clearly showed that on the basis of the pleadings of respondent nos.1 to 3, it was clear that there was no cause of action to file the suit, suit was barred in view of the provisions of the Maharashtra

Village Panchayat Act, and the suit was barred by limitation, thus, is required to be rejected.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS.**

**1 TO 3:**

11. Learned counsel appearing on behalf of respondent nos.1 to 3 contended that admittedly, the suit property is owned by respondent no.4 – Gram Panchayat and the same can be used only for public purpose, and that, the petitioner is unauthorizedly using the suit property for his own personal benefit. The petitioner has unauthorizedly carried out the construction on the suit property and hence, there is public nuisance created due to the use of the suit property by the petitioner and hence, by taking into consideration the case made out by respondent nos.1 to 3 in the application filed under section 91 of CPC, learned trial Judge rightly granted permission allowing the respondent nos.1 to 3 to institute the suit against the petitioner and respondent no.4. It was submitted that the unauthorized alienation of the suit property had created a public nuisance and there was a likelihood of creating the further public nuisance due to the unauthorized use of the suit property by the petitioner. He, therefore, submitted that the

prayers in the suit were with an intention to avoid any public nuisance and to protect the suit property, which is meant for public purpose. Learned counsel on behalf of respondent nos.1 to 3 further submitted that there was no merit in the contentions raised by the petitioner praying for rejection of the plaint under Order VII Rule 11 of CPC. He submitted that there was a specific cause of action pleaded in the suit, that the suit was properly valued and court fees were paid, the suit was not barred by any provisions as sought to be contended by the applicant, hence the learned Trial Judge rightly rejected the application filed by the applicant under Order VII Rule 11 of CPC.

12. Learned counsel for respondent nos. 1 to 3, further submitted that the purpose of filing the suit by seeking permission under section 91 of CPC was for protecting the suit property owned by respondent no.4 – Gram Panchayat and prevent any public nuisance by wrongful act committed by respondent no.4 and the petitioner, which were affecting the rights of the public. With these submissions, the learned counsel supported both the impugned orders and further submitted that there was no merit in the present civil revision application and the same deserves to be rejected.

**SUBMISSIONS ON BEHALF OF RESPONDENT NO. 4:**

13. Learned counsel appearing on behalf of respondent no.4 – Gram Panchayat submitted that the dispute raised in the suit was infact a private dispute between the rival parties and there was no issue with respect to any public nuisance. He further submitted that respondent no.4 had filed written statement and specifically contended that suit property is owned by the Gram Panchayat and the applicant's name is entered into record of the Gram Panchayat as owner of the structure on the suit property, and that, respondent nos.1 to 3 were well aware with respect to the record of the Gram Panchayat with respect to the suit property. Learned counsel for respondent no.4 further submitted that respondent nos.1 to 3 were members of the Gram Panchayat during the period from 30<sup>th</sup> September, 2005 to 12<sup>th</sup> September, 2012 and during the said period, respondent nos.1 to 3 never raised any complaint with respect to the records of the Gram Panchayat, whereby the name of the petitioner was entered with respect to the suit property. Thus, the learned counsel submitted that the suit was instituted only due to a private dispute between the rival parties.

**CONSIDERATION OF THE SUBMISSIONS:**

14. I have heard learned counsel for the parties at length. Perused the record of the civil revision application. The challenge in the civil revision application is twofold. Petitioner is challenging the dismissal of his application under Order VII Rule 11 of CPC, as well as order passed under section 91 of CPC, granting leave to institute the suit.
15. The petitioner was served with suit summons and accordingly, he appeared in the suit and filed his written statement. The petitioner thus, chose to appear in the suit and contest the suit on merits by filing written statement. Apart from filing a written statement dealing with the suit on merits, the petitioner also filed an application under Order VII Rule 11 of the CPC praying for rejection of the plaint.
16. The question, therefore, to be decided is whether such conduct on behalf of the petitioner would amount to accepting the order dated 14<sup>th</sup> March, 2011 passed by the Trial Court thereby granting permission under section 91 of CPC to institute the suit against the petitioner and whether it will be open to the petitioner to now challenge the order under section 91 of CPC. Nothing was argued on behalf of the petitioner to show that

inspite of filing the written statement and an application under Order VII Rule 11 of CPC, it is open to the petitioner to challenge the order passed under section 91 of CPC, at this stage. It is not in dispute that the petitioner had never applied for revocation of the leave granted under section 91 of CPC, by order dated 14<sup>th</sup> March 2011.

17. Before dealing with the rival submissions, it is necessary to understand the object and scope of section 91 of CPC, which reads thus:

**“91. Public nuisances and other wrongful acts affecting the public-** [(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

18. Section 92 of CPC is a pari materia provision, which provides for a similar requirement of seeking a leave to institute suit. Section 92 of CPC, reads thus:

**“92. Public charities.**—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cypres* in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

### **CONCLUSIONS:**

19. Both under sections 91 and 92 of CPC, at the threshold before filing a suit leave of the court is required, when individuals are

seeking to file suit. That is how the law laid down by the Hon'ble Supreme Court dealing with the issue of grant of leave under section 92 of CPC will apply to grant of leave under section 91 of CPC. The Hon'ble Supreme Court in the decision of *R.M. Narayana Chettiar and another Vs N. Lakshman Chettiar and others*<sup>9</sup>, has examined in detail the scope of section 92 of CPC and has explained the object of the requirement of the grant of leave to institute suit. The Hon'ble Supreme Court in paragraphs 17 and 18 has held as follows:

“**17.** A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. **Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give**

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9 (1991) 1 SCC 48

notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

18. We may mention that although clause (ffa) of a Section 104(1) of the Code provides that an appeal shall lie against the refusal of grant of leave, that cannot lead to the conclusion that it is obligatory on the part of the court to give notice to the proposed defendants before granting leave because an appeal lies only against the refusal of leave and not against the grant of leave. Before refusing leave the proposed plaintiffs are bound to be heard and it is the plaintiffs and not the defendants who could be prejudiced by refusal to grant such leave.”

**Emphasis applied**

20. The object of the provisions is to permit an interested or affected party to institute a suit in public interest. The Hon’ble Supreme Court has held that though normally notice should be issued before the grant of leave to institute suit under section 92 of CPC, issuance of notice is not mandatory. Thus, from the principles laid down by Hon’ble Supreme Court, it is clear that issuance of notice will depend on the facts and circumstances of each case. The principles laid down by the Hon’ble Supreme Court in the case of *R.M. Narayana Chettiar* are followed by the Hon’ble Supreme Court in subsequent decisions in case of *B.S.*

*Adityan and others Vs B. Ramchandran Adityan and others*<sup>10</sup> as well as in the case of *Bhupinder Singh Vs Joginder Singh*<sup>11</sup>.

21. Thus, for examining the correctness of the order for grant of leave, what is to be seen is whether it is a reasoned order and whether there is application of mind before grant of leave. Considering the object of section 92 being similar to the object of section 91, there is no reason for not applying the principles laid down by the Hon'ble Supreme Court, in interpreting the provision of section 92 of CPC and the scope of its applicability to the provision of section 91 of CPC.
22. The decision of this Court in the case of *Municipal Council, Jalna through its Chief Officer and others*, relied upon by the learned counsel for the Petitioner also holds that the power to grant leave under section 91 of CPC is to be exercised judiciously by passing reasoned order.
23. Perusal of the application under section 91 of CPC shows that the ground raised by the respondent nos.1 to 3 was with respect to the alienation of the property of Gram Panchayat in favour of the petitioner and alleged unauthorized construction and illegal use of the suit property by the petitioner. With these pleadings a

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<sup>10</sup> (2004) 9 SCC 720

<sup>11</sup> (2020) 18 SCC 243

permission was sought under section 91 of CPC to institute a suit on the ground of public nuisance. Admittedly, the suit property is owned by the Gram Panchayat. The learned Trial Judge granted leave, by recording that the suit property being a public property, its alienation is likely to create public nuisance, and hence, after considering the pleadings of the plaintiff on oath, it is necessary to grant leave under section 91 of CPC. Thus, it cannot be said that the order granting leave is an unreasoned order or that the powers are not exercised judiciously. The leave has been granted on the grounds which are relevant for the exercise of the power to grant leave.

24. On the aspect of requirement of issuance of prior notice to the defendant, the Hon'ble Supreme Court in the case of *R.M. Narayana Chettiar*, has held that though normally notice should be issued before grant of leave to institute suit, issuance of notice is not mandatory. The Hon'ble Supreme Court has also held that the grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law. In the present case, it is not in dispute that the

Petitioner never applied for revocation of the leave granted. In fact the Petitioner chose to defend the suit by filing written statement and also filed an application under Order VII Rule 11 of CPC. Therefore, even otherwise, at this stage, I do not see any valid reason to non-suit the respondent, by setting aside the order granting leave to institute the suit. The Hon'ble Supreme Court in the decision of *B.S. Adityan*, has held that grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendant, and thus it was always open to the proposed defendant either to apply for the revocation of leave granted or establish during the course of the proceedings of the suit, that the suit does not fall within the scope of section 92 of CPC. I have already held that the provision of section 92 of CPC is *pari materia* to the provision of section 91 of CPC. Thus, it was always open to the petitioner to apply for revocation of leave granted. Since the petitioner never chose to apply for revocation of leave, it will be always open for the petitioner to establish during the course of the proceedings of the suit, that the suit does not fall within the scope of section 91 of CPC. The findings or observations made in the impugned order granting leave are never conclusive and

do not bind the Court while deciding the suit finally. Even if leave is granted all defences of the defendant on merits of the suit remain open. Hence, there is no reason to interfere with the order of the trial court granting leave to the respondent nos. 1 to 3, to institute the suit.

25. The decision of the Rajasthan High Court in the case of *Kanti and others* as well as the Allahabad High Court in the case of *Ku. Aamina Saadat Ali*, relied upon by the learned counsel for the petitioner are pertaining to the scope of challenge to the final decision in the suit filed under section 91 of CPC. Thus, the same are not applicable to the facts of the present case.
26. For the purpose of examining the challenge to the order dismissing the petitioner's application for rejecting the plaint under Order VII Rule 11 of CPC is concerned, I have perused the copy of plaint. Plain reading of the plaint, specifically reveals that cause of action for filing the suit, has been pleaded in paragraphs 6 and 7 of the plaint. It is specifically pleaded that the petitioner started carrying out construction in the suit property, which is a public property and the same has caused obstruction to ingress and egress to the general public. Apart from objection raised regarding cause of action, the petitioner

has raised objections that the suit is not valued for payment of court fees and that the state government is not made a party. Perusal of copy of plaint shows that the suit is valued at Rs. 2000/- for the relief of declaration and mandatory injunction and Rs. 400/- is paid towards court fees. In the facts of the case the issue of valuation of the suit, if any, can be decided only after holding a proper inquiry under section 8 of the Maharashtra Court Fees Act. Taking the averments in the plaint as it is, it cannot be said that the suit is not valued for the purpose of court fees. Thus, issue of valuation of the suit for the purpose of court fees is kept open to be decided at appropriate stage. The Gram Panchayat is made a party defendant as the suit property is owned by the Gram Panchayat. Non-joinder of necessary party cannot be a ground for rejection of plaint. For considering the ground of joinder of necessary party the defence in the written statement is required to be considered, which cannot be done at the stage of considering the application under Order VII Rule 11 of CPC. Thus, I do not find any merit in the grounds of objection raised by the petitioner for rejection of plaint. The learned Trial Judge has rightly rejected the application of the petitioner filed under Order VII Rule 11 of CPC.

27. The decisions of Hon'ble Supreme Court relied upon by the learned counsel for the petitioner on the proposition of law laying down on the scope of rejection of plaint under Order VII Rule 11 of CPC, are of no assistance to the Petitioner. The Hon'ble Supreme Court in the case of *Rajendra Bajoria* has held that the power conferred on the court to terminate a civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. The Hon'ble Supreme Court has also held that the duty is cast upon the court to determine whether the plaint discloses any cause of action, by scrutinising the averments in the plaint and supporting documents to the plaint. In the present case plain reading of the plaint reveals the cause of action for filing the suit. The Hon'ble Supreme Court in the case of *Kamala*, relied upon by the petitioner, has held that the issue of merit of the matter which may arise between the parties would not be within the realm of the provisions of Order VII Rule 11 of CPC. Thus, the submissions made by the learned counsel for the petitioner on the merits of the cause of action pleaded, cannot be examined at this stage.

28. For the reason stated above, I do not find any merit in the arguments made on behalf of the petitioner. There is no illegality and/or perversity found in the impugned orders. As stated above issue of maintainability of suit and issue of valuation of the suit for the purpose of court fees is kept open. Hence, I do not see any reason to exercise the limited jurisdiction under section 115 of CPC. Hence, Civil Revision Application is dismissed. There will be no order as to costs.

**[ GAURI GODSE, J. ]**

Later on learned counsel appearing for the applicant requests for extension of interim relief that was passed when the matter was admitted. By way of interim relief, further proceedings of the suit was stayed. The said order of stay to the further proceedings will continue for a period of four weeks.

**[ GAURI GODSE, J. ]**