

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

927 CRA NO.150 OF 2023

SHRINIKETAN NIYOJIT SAHAKARI GRUHANIRMAN SANSTHA
MARYADIT THR. MR. CHANDRAKANT GANGARAM
SUMSHETTE
VERSUS
SAU. SANGITA MADHUKAR GUTTE AND ANOTHER

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Advocate for Petitioners/Applicants : Ms. A. S. Jadhav.
Advocate for Respondent No.1 : Mr. Rajendrraa Deshmukha
(Senior Counsel) i/b Mr. Devang R. Deshmukh a/w
Ms. Rakshanda R. Jaiswal.

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CORAM : S. G. MEHARE, J.
DATE : 06.09.2023

PER COURT :-

1. Heard the respective learned counsels.
2. A short question has been raised that the learned Civil Judge Junior Division, Parli Vaijnath, did not record his observations as regards the objection to nonjoinder and misjoinder of the parties in the application along with other objections as regards the cause of action and Section 9A of the Civil Procedure Code.
3. Learned counsel for the applicant would submit that the petitioner has no grievance against the order, not considering the objection under Order VII Rule 11 and Section 9A of the Civil Procedure Code (Maharashtra Amendment Act).

However, she has vehemently argued that the Court should have recorded the findings on the objection as to the nonjoinder and misjoinder of parties as provided under Order I Rule 13 of the Civil Procedure Code. She has referred to the impugned order of the learned Civil Judge Junior Division and prayed to allow the revision application.

4. Per contra, learned senior counsel would submit that the Court has correctly observed that there was a cause of action to file the suit. The cause of action goes to the root of the suit, showing concern with the opponents. Therefore, such an issue cannot be decided as a preliminary issue. It is a matter of fact-finding. Hence, the impugned order is correct and proper.

5. The impugned order shows that the core issue, as per the objection raised, was that there was no cause of action. Hence, his prayer is liable to be rejected under Order VII Rule 11 of the Civil Procedure Code. Learned Trial Court has examined the facts of the case and correctly recorded that the plaintiff disclosed its cause of action against all the defendants. Since there was a cause of action against the defendants, he correctly recorded the findings, rejecting the application which has been impugned before the Court. As far as raising the objection as to nonjoinder and misjoinder is concerned, the parties shall take

such objections at the earliest possible opportunity and, in all cases, where issues are settled at or before such settlement. The reason given in the said rule is that if such objections are not taken at the earliest possible opportunity, any such objection shall not taken subsequently, and it shall be deemed to have been waived. Since the learned Trial Judge has held that there is a cause of action, the Court is of the view that the impugned order is legally proper and correct. However, it has been stated that the written statement has been filed, but the learned counsel has no instructions on whether this objection of misjoinder has been raised therein. If objection on misjoinder or nonjoinder of the necessary party has not been raised in the written statement filed by the present petitioner. In that case, to make a justice, leave is granted to add such objections by way of amendment within reasonable time without having any adverse effect under Order I Rule 13.

6. Civil Revision Application stands dismissed. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-