

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

37 WRIT PETITION NO.13641 OF 2023

KAMALBAI POPAT DOMALE AND OTHERS
VERSUS
THE COLLECTOR AND OTHERS

...
Advocate for Petitioners : Mr. D.R. Markad
h/f. Mr. Badakh Vishal S.
AGP for Respondent Nos. 1 & 2 : Mr. S.N. Kendre
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 06th NOVEMBER, 2023

PER COURT :

Heard learned counsel for the petitioner.

2. An order dated 05th August, 2023, passed below exhibit 101 in RCS No. 41 of 2018 is quashed. The petitioners who are original defendant nos. 3 to 6. Their application under Order VII Rule 11 of Code of Civil Procedure (for short 'CPC'), has been turned down by the impugned order.

3. The respondent nos. 3 and 4 are original plaintiffs who have filed RCS No. 41 of 2018, for declaration and injunction against respondent nos. 1 and 2 and present petitioners. The respondent nos. 1 and 2 have filed written statement cum say. Present petitioners have also filed written statement and say to interim application exhibit 5. The present petitioners filed application exhibit 101 under Order VII

Rule 11 of CPC, contending that the suit is not maintainable for want of notice under Section 80 of CPC. Though, respondent nos. 3 and 4 – plaintiffs filed application under Section 80 Sub-Section 2 of CPC, for dispensing with the notice, no order has been passed. The application is opposed by the petitioners. By the impugned order, it is rejected.

4. The judgment rendered in the matters of *Islimiya Junior School Versus State of U.P.*, **1985 0 Supreme (All) 40**, *Chandrashekhar Rathi Versus State of Maharashtra*, **2002 (2) Mh.L.J. 181** and *Avtarsingh Versus State of Maharashtra*, **2008 (5) Mh.L.J. 584**, have been considered in the impugned order. It is held that the objection of want of notice under Section 80 of CPC, was not raised earlier and in view of the order below exhibit 9, notice has been dispensed with.

5. Learned counsel for the petitioners has placed on record a copy of application exhibit 9 and order passed on or about 19th January, 2018. It reveals that by the order, learned Trial Judge has dispensed with notice under Section 8 of CPC, at that stage.

6. I am of the considered view that to succeed any application under Order VII Rule 11 of CPC, the parameters of the said provision needs to be followed strictly. A very drastic step has been provided under Order VII Rule 11 of CPC. No case is made out to attract Order VII Rule 11 of CPC. Learned Judge has taken a plausible

view considering the judgment cited at bar. There is no illegality or perversity in the impugned order.

7. Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]

spc/