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

WRIT PETITION NO.6771 OF 2018

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Girish Sahakari Griharachana Sanstha
Maryadit Through Chandrashekhar
Bhagwat Deshpande Chairman &
Secretary ... Petitioner

V/s.

Shanu Ranchhoddas Patel & Ors. ... Respondents

**WITH
WRIT PETITION NO.6772 OF 2018**

Girish Sahakari Griharachana Sanstha
Maryadit Through Chandrashekhar
Bhagwat Deshpande Chairman &
Secretary ... Petitioner

V/s.

Shanu Ranchhoddas Patel & Ors. ... Respondents

Mr. S. S. Patwardhan with Ms. Mrinal Shelar for the
petitioner.

Mr. V. H. Narvekar for respondent Nos.1 to 3, 6 & 7.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 5, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioner is original disputant who filed dispute application bearing No.466 of 1997 seeking a relief of removal of

encroachment and declaring resolution of general body dated 3rd July 1998, lease deed dated 10th January 1993 and unilateral conveyance deed of 18th April 2009 as illegal. The relief of possession of property in dispute and injunction restraining defendants from encroaching over the property and compensation was also sought.

3. The opponent No.2 filed an application under Order 7 Rule 11(a) and (d) of the Civil Procedure Code, 1908 for dismissal of dispute. The Cooperative Court, by order dated 19th January 2017, partly allowed the application and rejected the plaint against opponent No.2 only.

4. Aggrieved by the said order, opponent No.2 filed Revision Application No.21 of 2017. The petitioner raised an issue of maintainability of revision application before the Appellate Court. The Appellate Court, by the impugned order, held that the revision at the instance of opponent No.2 is maintainable.

5. During pendency of the revision application, the respondents who were original opponent Nos.3, 6 & 7 filed an application for transposing them as revision-applicant in an revision filed by opponent No.2-Trust. By the order impugned in Writ Petition No.6772 of 2018, the Appellate Court allowed the application for transposition of opponent Nos.3, 6 and 7. It is not in dispute that the petitioner has filed appeal against the order of rejection of plaint which is pending before the Cooperative Appellate Court.

6. Learned advocate for the petitioner submitted that the revision application was not maintainable as the order of rejection

of the plaint is appealable and the opponent No.2 cannot be termed as aggrieved person. Moreover, opponent Nos.3, 6 and 7 have not filed an application for rejection of the plaint cannot be termed as aggrieved person.

7. Per contra, learned advocate for the respondents submitted that the application was filed by trust on behalf of opponent Nos.3, 6 and 7 and, therefore, he is aggrieved person as the dispute is continued against opponent Nos.3, 6 and 7. He submitted that since opponent Nos.3, 6 and 7 are aggrieved by continuation of proceeding against them, they have right to transpose themselves as opponent No.2, is the applicant in revision application who has no objection to transpose opponent Nos.3, 6 and 7.

8. On perusal of the record, it appears that the application under Order 7 Rule 11(a) and (d) of the Civil Procedure Code, 1908 was filed only by opponent No.2. The Cooperative Court allowed the application dismissing dispute against opponent No.2. Therefore, relief at the instance of opponent No.2 stands granted. Hence, opponent No.2 cannot be termed as aggrieved person.

9. Moreover, original application under Order 7 Rule 11(a) and (d) of the Civil Procedure Code, 1908 was filed only by opponent No.2. Opponent Nos.3, 6 and 7 having been failed to file such application, there was no question of considering relief of rejection of plaint against opponent Nos.3, 6 and 7. As the opponents have been failed to invoke jurisdiction of the Cooperative Court under Order 7 Rule 11(d) of the Civil Procedure Code, 1908, and only opponent No.2 have been invoked jurisdiction of the Cooperative

Court which was allowed, the opponent Nos.3, 6 and 7 cannot be termed as aggrieved person by grant of relief in favour of opponent No.2. Therefore, opponent Nos.2, 3, 6 and 7 failed in satisfying their locus as person aggrieved. Therefore, revision at their instance was not maintainable.

10. Learned advocate for the opponents submitted that the petitioner did not plead or make submission before the Revisional Court that opponent No.2, 3, 6 and 7 had no locus. However, since the point is pure question of law, this can be urged before this Court while entertaining petition under Article 227 of the Constitution of India. Hence, there is no merit in the submission.

11. Hence, the revision at the instance of opponent No.2 cannot be entertained by the Appellate Court. Hence, following order:

Rule made absolute in terms of prayer clauses (a) and (b).

12. The Appellate Court shall decide the Appeal No.21 of 2007 within eight weeks from today.

13. The writ petitions stand disposed of. No costs.

(AMIT BORKAR, J.)