



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.162 OF 2024

Kalika Nagri Sahakari Patsanstha
Maryadit,
Sahaji Road, Ahmednagar
Through its
Special Recovery Officer

.....APPLICANT
(Ori. Defendant no.2)

VERSUS

1. Vitthal Marayan Lakhpati
Age: 67 years Occ. Retired servant
R/o. Shri Roop Bangla, Plot no.14,
Behind Phulari Petrol Pump,
Dharmadhikari Mala, Savedi,
Ahmednagar.
2. Mukund Narayan Lakhpati
Age: 52, Occ. Driver,
R/o Plot no.-52B, Padmanagar,
Pipeline road, Savedi,
Ahmednagar.

.....RESPONDENTS
(R.No.1 Ori. Pltff
R.No.2- Ori.Dft.No.1/Guarantor)

Mr. Abhijeet C. Darandale, Advocate for Applicant
Mr. V. B. Bhagwat & Mr. A. C. Sisodiya & Mr. N. S. Sisodiya,
Advocates for respondent nos.1 and 2.

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 14TH OCTOBER, 2025
PRONOUNCED ON : 17TH OCTOBER, 2025

JUDGMENT (Per Court) :-

. Feeling aggrieved by an order dated 29.06.2024 passed by the Id.Civil Judge Senior Division, Ahmednagar in Regular Civil Suit No.157 of 2024 below Exhibit-15 whereby petitioner's application under Order VII, Rule 11-d of Civil Procedure Code has been turned down, the defendant No.2 has preferred present Civil Revision Application. The petitioner, *inter alia* prays for rejection of the plaint.

Parties are referred to their factual status for the sake of convenience.

Core issues involved:

(i) While Section 163 of the Maharashtra Co operative Societies Act bars any challenge in Civil Court against any Orders, Decisions, Awards passed in accordance with the Maharashtra Co Operative Societies Act 1960, Challenge to an Attachment Order and Auction Proceeding conducted in recovery proceedings under 'MCS' Act in a Civil Suit is absolutely barred.

(ii) Where in a suit containing multiplier prayers, 'due to some prayer seeking predominant relief' suit is expressly barred by any Law; Order VII Rule 11 of CPC for rejection of plaint can be invoked if balance prayer also expressly arises out of the same cause of action i.e. not on any different/separate cause of action.

Facts in brief:

2. Petitioner is a co-operative society (hereinafter referred as 'Petitioner Society' for the sake of convenience) registered under the Maharashtra Co-operative Societies Act, 1960 (for the sake of convenience, hereinafter referred to as 'the MCS Act'). The main object of the petitioner society is to accept deposits from its members, to disburse credits to the members and as such to do the banking business within the parameters of the State Act as well as the guidelines framed by the Reserve Bank of India, if any.

3. In 2007 the petitioner Society disbursed loan of Rs.60,000/- to one of its member namely 'Priyanka Amit Deshmukh'. The respondent no.2/defendant no.1 stood 'Guarantor' to the said loan (hereinafter referred as 'Guarantor').

4. As the Borrower turned bad-master to repay the loan, the petitioner society initiated recovery proceeding under Section 101 of the MCS Act. A recovery certificate for Rs.3,38,961/- was also issued under Section 101 of the MCS Act against the Borrower and the Guarantor. In furtherance of it, charge was created on the subject matter-property i.e. plot No.52B, Survey No.33/3, Savedi, Ahmednagar owned by the Guarantor I.e. R.No.2/Deft. No.1.

5. Failure on the part of the Borrower and Guarantor to repay the loan amount constrained the petitioner society to place in service execution of the recovery certificate under Section 156 r/w Rule 107 under the MCS Act. During the execution proceedings, the Special Recovery Officer of the society attached the suit property on 11.12.2019. Pursuant to the proposal filed by the society, the Deputy Registrar Co-operative Societies, Ahmednagar fixed the upset price for the suit property. The plaintiff lodged his objection before the Deputy Registrar and the upset price was fixed after hearing him.

6. Resultantly, the Special Recovery Officer published an Auction Notice in a newspaper on 03.01.2024.

7. Contending the “cause of action” to file the suit is the Auction Notice dtd.03-01-2024, the civil suit i.e. Regular Civil Suit No.157 of 2024 came to be instituted by present respondent no.1 against his brother i.e. Guarantor@defendant No.1 and the Petitioner for declaration and injunction. The plaintiff contended that he had no concern with the Society, nor he had been borrower or mortgagor or guarantor to anybody against any loan, if granted by the Society. The sum and substance of the suit was that the petitioner society could not have attached the suit property nor could have put it for auction as having been owned by the brother- Guarantor.

With this, the plaintiff sought prayer for ,

(a) Declaration that the mutation in the name of defendant no.1 is illegal and that the defendant no.1 has no right in the suit property;

(b) That the attachment order dated 31.12.2019 and the auction notice dated 03.01.2024 passed under the MCS Act and Rules thereunder be declared as illegal and invalid; and

(c) Perpetual Injunction that the Society should not conduct auction of the suit property nor should transfer it, etc.

8. The Society appeared in the suit and denied the averments in the plaint. The Society pleaded its right to attach the property and to auction the same. Demonstrating the right accrued in favor of it, the Society explained the cause of action to conduct the recovery proceeding and its execution. The Society specifically submitted that in view of Section 163 of the MCS Act, the suit was not maintainable in the Civil Court and that the Civil Court had no jurisdiction to entertain the suit. That the remedy against the recovery proceeding and execution under the MCS Act is provided in the MCS Act itself which specifically bars the jurisdiction of the Civil Court to entertain the prayers made in the Suit.

9. The petitioner-society specifically pleaded that even the suit was barred under Section 164 of the MCS Act for want of mandatory notice. The Society averred that the suit is apparently filed in collusion with the Guarantor which is evident from the recitals in the plaint itself. That, it was also pleaded in the plaint that the mutation entry was passed 31 years way back and was never challenged.

Its only when the Society has put in motion the execution proceedings, a vexatious suit is filed. With such pleading the petitioner/society prayed to dismiss the suit.

Petitioner society also submitted that apparently on the clear terms of same cause of action i.e. Auction Notice dtd. 03-01-2024, a 31 years old mutation has also been challenged which was not permissible by law.

10. During the pendency of the suit the petitioner filed an application below Exhibit-15 under Order VII, Rule 11 (d) of the CPC for rejection of the plaint on two grounds i.e. (i) a suit in the Civil Court was absolutely barred under Section 163 of the MCS Act in view of the plain reading of the facts narrated in the Plaint and the prayers made therein; and also (ii) for want of mandatory notice under Section 164 of the MCS Act the suit was barred and was not maintainable.

11. The sum and substance of the application filed by the petitioner is that apparently from the recitals of the plaint itself, it was an admitted fact that the plaintiff challenged the Recovery Proceeding and the execution of the Recovery Certificate that was initiated by the petitioner/society under Section 101 , Rule 107 r/w Section 156 of the 'MCS Act'.

Section 163 of the MCS Act clearly puts a bar on any Civil Suit in the Civil Court challenging any such proceeding including the one undertaken by the petitioner/society under Section 101 followed by Section 156 r/W Rule 107 under the MCS Act.

Also issuance of notice under Section 164 is a condition precedent for instituting a Challenge to the action/Order of Recovery under the MCS Act. Exclusion to the mandate laid down in Section 164 of the MCS Act bars institution of any Suit/Challenge. As such, the petitioner sought rejection of plaint under Order VII, Rule 11 (d) of the Civil Procedure Code, as the pleading in the plaint itself demonstrated that it has to be non-suited without allowing to proceed further.

12. The plaintiff opposed the application that under Section 9 of the Civil Procedure Code the Civil Court would exercise jurisdiction to try even the present suit as one of the prayer in the suit was challenge to the Mutation Entry, and that the application was liable to be dismissed.

13. Upon hearing both the parties, the learned 16th Joint Civil Judge, Senior Division Ahmednagar pleased to reject the application. The learned Trial Court observed that the plaintiff was neither member of the society nor a creditor of the society. Its observed that the dispute also cannot be said to be under Section 91 of the MCS Act and as such it won't be barred under Section 163 of the MCS Act. Observing this, the learned Trial Court rejected the application vide its order dated 29.06.2024.

As such while the Society is making every endeavor to demonstrate that the plaint must be rejected u/o VII Rule 11 (d) of the Civil Procedure Code, the Plaintiff is justifying the jurisdiction of the Civil Court as also the maintainability of the Civil Suit.

Discussion

14. Admit. Heard both the parties at length for final disposal of the Civil Revision Application by their consent and request.

15. In order to adjudicate the controversy raised in the present matter, the following important legal provisions are referred:

Section 9 of CPC

9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Order VII, Rule 11 of CPC:

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- [(e) where it is not filed in duplicate;]*
- [(f) where the plaintiff fails to comply with the provisions of rule 9:]*
- [Provided that]*

Section 101:**101. Recovery of arrears due to certain societies as arrears of recovery of land revenue.**

(1) Notwithstanding anything contained in section 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947 or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance or for other agricultural purposes as aforesaid or by a crop-protection society for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them, or by a Taluka or Block level village artisans multi-purpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues, or by a co-operative housing society for the recovery of arrears of its dues, or by a co-operative dairy society advancing loans for the recovery of arrears of any sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, or by salary-earners co-operative society for the recovery of arrears of its dues, or by a fisheries

co-operative society for the recovery of arrears of its dues), or by any such society or class of societies, as the State Government may, from time to time, notify in the Official Gazette, for the recovery of any sum advanced to, or any subscription or any other amount due from, the members of the society or class of societies so notified; and on the society concerned furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears:

Explanation.-For the purposes of this sub-section, the expression "other agricultural purposes" includes dairy, fisheries and poultry.

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears, the Registrar may, of his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society Concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorized by Sections 140 to 144 of the Bombay Land Revenue Code, 1879 or any law or provisions corresponding thereto for the time

being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.

Section 154:

154. Revisionary powers of State Government and Registrar—

(1) The State Government or the Registrar, suo-motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings, if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2-A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

Section 156:

156. Registrar's powers to recover certain sums by attachment and sale of property.—

(1) The Registrar or any officer subordinate to him and empowered by him in this behalf or an officer of such society as may be notified by the State Government, who is empowered by the Registrar in this behalf may, subject to such rules as may be made by the State Government, but without prejudice, to any other mode of recovery provided by or under this Act, recover—

(a) any amount due under a decree or order of a Civil Court obtained by a society;

(b) any amount due under a decision, award or order of the Registrar, Co-operative Court or Liquidator or Co-operative Appellate Court;

(c) any sum awarded by way of costs under this Act;

(d) any sum ordered to be paid under this Act as a contribution to the assets of the Society;

(e) any amount due under a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or under subsection (1) of section 137; together with interest, if any, due on such amount or sum and the costs of process according to the scales of fees laid down by the Registrar from time to time, by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

(2) The Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section, or when passing any orders on any application made to him for such recovery, to be Civil Court for the purposes of Article 136 in the Schedule to the Indian Limitation Act, 1963.

Section 163:-

163. Bar of jurisdiction of Courts.— (1) *Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—*

(a)

(b)

(c)

(2)

(3) *All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever.*

Section 164:

*“164. **Notice necessary in suits.**— No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”*

16. It is pertinent to note that the status of the petitioner Society is undisputed so also the transaction in between the Society, the borrower and the Guarantor is also undisputed. Its also an admitted fact that no notice u/s 164 of the MCS Act was ever issued by the Plaintiff to the Society.

The plaintiff has submitted that the defendant no.1 might have been shown as Guarantor to the loan transaction, but in any case the defendant no.1 had no concern with the suit property. That, as such the Society could not have proceeded against the Suit Property.

The petitioner in the sense submits that the defendant no.1 was initially a dummy owner of the suit property but later grabbed it behind the back of the Plaintiff. On the other hand, the Society mobilized the recovery proceeding under the 'MCS Act' taking recourse to Section 101 R/w 156 and the following provisions including Rule 107. The prayer clauses nos. B and C of the suit would demonstrate that the plaintiff has predominantly challenged the action of Society that was under Section 101 of the MCS Act with Rule 107 thereunder.

17. It is not in dispute that the action of the Society is covered by the provisions of the MCS Act i.e. Section 101 and Rule 107 r/w Section 156. A challenge to the action of a society under Section 101 , 156 , Rule 107 has a remedy under the MCS Act u/s 154 . Section 163 puts express bar on the jurisdiction of the Courts providing at sub Section 3 as follows:

“All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified revised or declared void in any Court upon the merits or upon any other ground whatsoever”

18. It is abundantly and apparently clear that the prayer clauses B and C of the Civil Suit demonstrate that those are hit by Section 163(3) of the Act. A profitable reference can be made to a view expressed by this Court in the case of ***Satguru Construction Co. Pvt. Ltd. & Ors. V/s Gr. Bombay Co-operative Bank Ltd***, reported in ***2007(5) All M.R. 628*** as under:

9. The provisions of law comprised under Section 156 of the said Act r/w Rule 107 of the said Rules therefore clearly provide that when any recovery certificate is issued under section 101 of the said Act, the execution or the actual recovery of the amount in terms of such certificate has to be in the manner prescribed under the rules framed by the State Government under the said Act and in fact the Government has framed rules in that regard, and not under any other provision, nor by the authority other than the one specified under the said Act and the said Rules. The provisions of Rule 107 of the said Rules clearly incorporate the detailed procedure for execution of such recovery certificate.

10. Section 163 of the said Act clearly provides that save as expressly provided under the said Act, no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required to be referred to the Co-operative Court, for decision, and all orders, decisions or awards passed in accordance with the said Act or the rules made thereunder shall be final and not liable to be challenged or set aside or modified or

revised or declared void by any Court upon the merits or upon any other ground whatsoever. It is settled law that the execution proceeding is continuation of a suit. Once it is clear that no suit is maintainable for settling dispute which could be referred to the decision of the Co-operative Court, and further the provisions of law comprised under section 101 r/w. section 156 clearly provide that recovery certificate issued thereunder is executable in terms of the provisions of law comprised under section 156 and the rules made in that regard by the Government, and the Government having made rule in that respect being Rule 107 of the said Rules, it would not be open for the parties to adopt a mode different than the one specifically provide the mode for execution of a recovery certificate and to recover the dues in terms of such certificate, then it is not open for the parties to choose a totally different mode and ignore the mandate of section 163 of the said Act. The jurisdiction of the Civil Court clearly stands ousted in that regard.

19. It is also a trite law that a suit or a challenge to any action of a society under the MCS Act is barred for want of a notice under Section 164. In the present case, undisputedly the plaintiff has not issued any notice to the Society under Section 164 of the MCS Act. This fact is evident from the pleadings of plaintiff only.

Therefore, in view of the law laid down by this Court in the case of *Devgiri Nagari Sahakari Bank Ltd. & Anr Vs. Smt. Zubidabegum w/o. Asadulla Khan & Ors*, reported in 2012(7) All M.R. 571 as also in the case of *Tirupati Ginning & Pressing Factory Vs. M/s. Balaji Ginning & Pressing Industry & Ors.*, reported in 2008(4) All MR 578, the present suit is not at all maintainable for want of mandatory notice under Section 164.

20. It is not in dispute that the business of the Society is to advance loans and to effect recovery of the credited amount. The property allegedly attached and put to auction of the execution of recovery certificate is under Section 101 of the MCS Act. Hence, as observed by this Court in the case of *Devgiri Nagari Sahakari Bank Ltd.* (supra) at its paragraph no.9, the suit is hit by Section 164 of the MCS Act, as under:

9. In the instant matter also, the business of the petitioner-society is to advance loan and to effect recovery of the amount. The property allegedly attached and sold in execution of the recovery certificate issued by the Registrar under the provisions of section 101 of the M.C.S. Act. The subject matter of the suit touches to business of the society. The objection raised by the petitioners to the maintainability of the suit therefore needs to be upheld. The Civil Revision Application deserves to be allowed and the same is accordingly allowed. The order passed by 4th Joint Civil Judge Senior Division, Aurangabad on 02.12.2011 is set aside.

21. The same observations are recorded by this Court in the case of *Tirupati Ginning & Pressing Factory* (supra) at paragraph no.13 and 17, which are reproduced as follows:

13. In the present case, when admittedly, it is duly demonstrated that the dispute touches the business of society, a suit without notice, as contemplated by Section 164 of the Maharashtra Co-operative Societies Act, is barred.

17. In the result, it is a clear case where the suit directly touched the business of Society. Question of bar apart, the suit could not have been entertained in the absence of compliance of Section 164 of the Maharashtra Co-operative Societies Act. The application of the defendant no.3-present petitioner, objecting the maintainability of the suit, which was liable to be allowed, has rather been wrongly rejected.

22. It is trite law that while considering a case under Order VII, Rule 11 of the Civil Procedure Code, only the averments contained in the plaint must be read as a whole to find out whether same disclose case of action and also to find out if the suit appears to be barred by law. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defense, “fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped”.

At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. Keeping in mind this settled principle of law I have dealt the case put up by the Petitioner Society.

23. In the present matter although the plaintiff has articulated the prayers posing the challenge to the mutation entry prayer clause 'A', yet challenge to the action undertaken by the Society under Section 101, Section 156 r/w Rule 107 is predominant and substantive relief prayed therein. Pertinently, the cause of action for all the prayers is obviously one and the same i.e. Auction Notice. The plaintiff in unequivocal terms has pleaded that Auction Notice published in newspaper has given cause of action to file the suit.

Mere sequence of prayers won't prevail over the principles governing maintainability of a suit and the statutory bars, nor a mutation is a continuous cause of action.

24. My observations would fall short to conclude the findings if I miss to record that ‘the substantial cause of action for all the prayers in the plaint is only one i.e. publication of Auction Notice dtd.03-01-2024’. The only factor for desisting to place in service Order VII Rule 11 (d) of the CPC could have been the challenge to a 31 years old mutation entry, if had made on the basis of a different and separate cause of action. However, plaintiff’s clear pleadings as to the ‘cause of action’ to file the suit is predominantly the publication of the Auction Notice dtd.03-01-2024. The plaint has to be read in whole. Hence the case is perfectly caught in the teeth of the law laid down by the Hon. Supreme Court in the case of **“Vinod Infra Developers ltd. Vs. Mahaveer Lunia & ors.** reported at **2025 INSC 772**’.

“9.6. However, the High Court erred in treating the second cause of action – pertaining to the sale deeds registered on 19.07.2022 – as merely “academic”, and proceeded to reject the plaint in its entirety without undertaking a judicial examination of this distinct issue. This approach is contrary to the well settled legal principle that a plaint may be rejected under Order VII Rule 11 CPC only if, on a plain reading of the plaint, it discloses no cause of action or falls within the other narrowly defined grounds under the said provision, such as under-valuation, insufficient

court fees, or bar by any law. In this context, we may place reliance on the judgment in Central Bank of India (supra), wherein, this Court while examining the jurisdiction of civil courts in disputes involving immovable property and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, held that a plaint cannot be rejected in its entirety merely because one of the prayers or reliefs sought is legally untenable, so long as other reliefs are maintainable and based on independent causes of action. The relevant paragraphs are extracted below:

“15. The plaintiff in her suit has prayed for 3 reliefs: a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati. b) The second relief is in relation to a mortgage deed executed by Parmeshwar Das Prajapati in favour of the bank. c) The third relief is for being handed over the possession of the suit property.

24. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order VII, Rule 11 of the CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order VII, Rule 11 of the CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court’s jurisdiction. Hence, the plaint cannot be rejected under Order VII Rule 11 of the CPC. 25. If the civil court is of the view

that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.”

Therefore, the High Court’s wholesale rejection of the plaint, without appreciating that the reliefs claimed flowed from multiple and distinct causes of action – particularly one arising after the revocation of the power of attorney – amounts to an improper application of Order VII Rule 11 CPC. Selective severance of reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts.”

As such the suit can not be proceeded once having seen that the substantive prayers were barred by the MCS Act in the Civil Court and even for other prayer, the substantial cause of action is only one i.e. publication of the Auction Notice. Merely addition that after learning the Auction Notice, mutation entry was needed to be challenged doesn’t create different cause of action to challenge the mutation entry.

25. In view of above I find that,

(i) the learned Trial Court has not appropriately given consideration to Section 101, 154, 163(3) of the MCS Act and Rule 107 thereunder.

(ii) Ld. Trial Court erred in observing that as the dispute is not covered by Section 91, it won't be referable to Section 163 of the MCS Act. Ld. Trial Court ought to have considered that Section 163 is an independent and comprehensive provision which at its sub section (3) clearly consists bar on challenge to all such orders, decisions and Awards which are passed in accordance with the provisions of the MCS Act.

(iii) The action undertaken by the Society is u/s 101, Rule 107 r/w Section 156 of the MCS Act that arises out of its category of 'Business' mentioned in Section 164 of the MCS Act, and hence Ld. Trial Court ought to have dealt with the Society's objection accordingly.

(iv) Ld. Trial Court has misread Section 9 of the CPC. Ld. Trial Court ought to have appreciated that Section 9 of the CPC also identifies bar on the jurisdiction of the Civil Courts in respect of the suits of which their cognizance is either expressly or impliedly barred.

Bare pleadings in the plaint and the prayer clauses demonstrate that prohibitory provision u/s 163 of the MCS Act r/w Section 9 of the CPC hold field so far as subject matter of the present suit between the parties is concern.

(v) Publication of Auction Notice is the only & common Cause of action for all prayers in the suit.

26. In view of this, I am of the considered view that the plaintiff has made out a case under Order VII, Rule 11 (d) of the Civil Procedure Code and the plaint is liable to be rejected for having barred firstly by the Section 163 as also by Section 164 of the Maharashtra Co-operative Societies Act in the peculiar facts of the case. Hence, I pass following order:

ORDER

- a. Civil Revision Application stands allowed.
- b. Application below Exhibit-15 filed by the Revision Petitioner in Regular Civil Suit No.157 of 2023 pending in the Court of learned Civil Judge Senior Division, Ahmednagar stands allowed and the order dated 29.06.2024 passed by the learned 16th Joint Civil Judge Senior Division, Ahmednagar below Exhibit 15 in Regular Civil Suit No.157 of 2024 is quashed and set aside.

c. Pending Civil Application, if any, stands disposed of.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2025