



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

APPEAL FROM ORDER NO. 40 OF 2024

1. Shivaji S/o Kundalik Chunchekar,
Age : 65 Years, Occu. : Business,
2. Sau. Rukhmini (Rakhamani) W/o
Shivaji Chunchekar,
Age : 60 Years, Occu. : Business,
3. Shailesh Shivaji Chunchekar,
Age : 21 Years, Occu. : Education
and business,

All Appellants R/o D-714 Shishaki CHS
Building No. 15, Aakruti Road, near
MTNL telephone exchange, Mahada
Colony, Lokhandwala,
Mumbai – 400 101.

.. Appellants

Versus

1. Manoj S/o Madanlal Mutha,
Age : 52 Years, Occu. : Business
and Agriculture,
R/o Gopalpura, Modhikhana Jalna,
Tq. and Dist. Jalna.
2. Sau. Purnima W/o Dinesh Barlota,
Age : 46 Years, Occu. : _____,
R/o Saklecha nagar, Near
Bhokardan naka, Jalna,
Tq. and Dist. Jalna.
3. Sau. Pravita W/o Sanjay Jain,
Age : 48 Years, Occu. : Agril. & Business,
R/o Near Chatrapati Shivaji
Maharaj Statue, Jalna,

Tq. and Dist. Jalna.

4. Sunilkumar S/o Laxman Khurde,
Age : 55 Years, Occu. : Business,
R/o Room No. 84, M.I.G.
Infront of Dhoot Hospital, CIDCO,
Chhatrapati Sambhajanagar.
5. Vikas S/o Rambhau Mule,
Age : 50 years, Occu. : Business,
R/o Plot No. 93, G-n 220/229,
Shirpad Colony, Jatwada Road,
Chhatrapati Sambhajanagar.
6. Pradeep Patil @ Balasaheb Chadidaar,
Age : 45 Years, Occu. : Business,
R/o Bhivgaon, Tq. Devulgaonraja,
Dist. Buldhana.
7. Wahiruddin Syed S/o Kamiruddin Syed,
Age : 70 Years, Occu. : Business,
R/o Old MIDC, Durga Mata Temple Road,
Jalna, Tq. and Dist. Jalna.
8. Sachin S/o Pralhad Londhe,
Age : 40 Years, Occu. : Business,
R/o MIDC Road, Jalna-Aurangabad
Road, Jalna, Tq. & Dist. Jalna. .. Respondents

Shri Balbhim R. Kedar, Advocate for the Appellants.

Shri Chaitanya V. Dharurkar, Advocate for the Respondent No.

1.

**WITH
CIVIL REVISION APPLICATION STAMP NO. 29362 OF 2024**

1. Shivaji S/o Kundalik Chunchekar,
Age : 65 Years, Occu. : Business & Agril.

2. Sau. Rukhmini (Rakhamani) W/o
Shivaji Chunchekar,
Age : 60 Years, Occu. : Business,
3. Shailesh Shivaji Chunchekar,
Age : 21 Years, Occu. : Education
and business,

All Appellants R/o D-714 Shishaki CHS
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Shri Balbhim R. Kedar, Advocate for the Petitioners.
Shri Chaitanya V. Dharurkar, Advocate for the Respondent No.
1.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 18.07.2025
JUDGMENT PRONOUNCED ON : 23.07.2025

JUDGMENT :-

. Heard Mr. Balbhim R. Kedar, learned counsel for the appellants in appeal from order and revision petitioners in civil revision application and Mr. Chaityanya Dharurkar, learned counsel for the respondent No. 1 in both matters, who is the

contesting party. None appears for other respondents.

2. Parties, facts and circumstances are common, hence I propose to decide appeal from order and civil revision application by this common judgment and order. Both the learned counsel appearing for the contesting parties consented for the final disposal of the matters.

3. Appellants/petitioners in both matters are original defendant Nos. 1, 7 and 8. The respondent No. 1 in both the matters is original plaintiff No. 1. Appellant/petitioner No. 1 is the husband of the appellant/petitioner No. 2 and father of the appellant/petitioner No. 3. Other respondents did not contest the matter in the Trial Court and they have not caused appearance. Parties are referred by their original status in Spl. C. S. No. 338 of 2024.

4. Respondent Nos. 1 to 3/original plaintiffs have filed Spl. C. S. No. 338 of 2024 for specific performance of contract, declaration and injunction. Application Exhibit 05 was filed for two fold reliefs of injunction namely not to disturb the possession of the plaintiffs and not to create third party interest. Their application Exhibit 05 was partly allowed vide order dated 05.09.2024, granting injunction not to create third party interest in the suit land, hence defendant Nos. 1, 7 and 8 have preferred appeal from order.

5. Revision petitioners/defendant Nos. 1, 7 and 8 filed application Exhibit 23 under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C. P. C."), which was rejected on 04.06.2024, hence they have preferred civil revision application.

6. Defendant No. 1 – Shivaji is the owner of land gut No. 548 admeasuring 2H 85R situated at Waghul Jahangir, which is the subject matter. He along with his wife and son are resident of Mumbai. The plaintiffs who are joint purchasers are claiming to be transferee under agreement to sale. As per contentions of both parties, the defendant No. 2 - Sunilkumar, who acted as agent is imposter and fraudster.

7. It's a case of the plaintiffs that the brokers proposed them to purchase suit land belonging to the defendant No. 1 – Shivaji. Plaintiff No. 1/Manoj was introduced with the defendant No. 2 – Sunilkumar as owner of the land, personating defendant No. 1 – Shivaji. A unregistered agreement was executed on 04.07.2023 between the plaintiffs and the defendant No. 1. Plaintiffs agreed to purchase the land for consideration of Rs. 21,51,000/- per acre. Accordingly, two cheques of Rs. 5,00,000/- each were handed over and Rs. 20,00,000/- were parted in cash by the plaintiffs.

8. On 28.09.2023 on the demand of the defendant No. 2 – Sunil further amount of Rs. 67,00,000/- was parted by the plaintiffs. In all according to the plaintiffs Rs. 97,00,000/- was

paid to the defendant No. 2 – Sunil. An agreement to sale was registered on 28.09.2023 disclosing the transaction of Rs. 71,00,000/-. A separate receipt of payments was also executed. The defendant No. 2 impersonated the plaintiffs to be defendant No. 1 – Shivaji. During the registration when finger prints did not match an excuse was given for updating of the Aadhar card. Lateron, it was disclosed to plaintiff No. 1 that the person with whom the agreement was executed was not real defendant No. 1 – Shivaji, but imposter defendant No. 2 – Sunil.

9. A ransom was demanded for not registering the offence. On inquiry, plaintiffs realized that they were being defrauded by the defendant No. 2 – Sunil. A police complaint was filed on 20.12.2023 against the defendants. By intervention of the of the Court offence bearing CR. No. 1055/2023 was registered.

10. It was transpired that defendant No. 1 – Shivaji executed Memorandum of Understanding (for the sake of brevity and convenience hereinafter referred as to the 'M.O.U.') on 06.07.2023 with the defendant No. 2 for purchasing the suit land for Rs. 3.15 crores with an understanding to execute sale deed within two months. It was further transpired that cheque of Rs. 5,00,000/- bearing No. 269159 was given by the defendant No. 2 to the defendant No. 1. It was encashed by the defendant No. 1.

11. It is further pleaded in the plaint that on 31.10.2023, defendant No. 1 executed registered gift deed in favour of the

defendant Nos. 7 and 8, who are wife and son respectively. It is contended that defendants acted in collusion and made them to part huge amount. They claimed to be in possession in pursuance of registered agreement. Defendants are alleged to have dogged the execution of the sale deed, hence suit is filed for specific performance of contract, declaration that gift deed is null and void and injunction.

12. Defendants have a case that the defendant No. 2 – Sunil got executed agreement to sale of the suit land on 04.07.2023 for Rs. 1,50,03,225/-. Defendant No. 2 obtained the two cheques of Rs. 5,00,000/- from the plaintiffs and cash of Rs. 20,00,000/-. He impersonated as defendant No. 1 – Shivaji. Defendants – original owners were not aware of transaction of 04.07.2023. Thereafter defendant No. 2 approached defendant No. 1 and MOU was executed on 06.07.2023. That time they agreed to sale the suit land for Rs. 3.15 crores and a cheque of Rs. 5,00,000/- bearing No. 269159 issued by plaintiff No. 1 – Manoj Mutha was given to defendant No. 1 – Shivaji representing that Manoj is his partner for purchasing the land. The sale deed was agreed to be executed within two months only. The forged Aadhar and PAN cards of the defendant No. 1 – Shivaji were prepared. Defendant No. 2 impersonated the plaintiffs as defendant No. 1 – Shivaji and agreement to sale was executed on 28.09.2023 and it was registered. The defendant No. 1 forfeited the amount of Rs. 5,00,000/- given by the defendant No. 2 by cheque as the sale deed was not executed within two months. As the earlier

contract was rescinded, the defendant No. 1 executed gift deed in favour of his wife and son.

13. It further transpired by the defendants that by bogus and forged Aadhar and PAN cards, defendant No. 2 – Sunil opened a saving account with Deogiri Nagari Sahkari Bank, Aurangabad in the name of the defendant No. 1 – Shivaji. The cheques issued in the name of the defendant No. 1 – Shivaji were credited in the said account and got encashed by the defendant No. 2. Defendant Nos. 1, 7 and 8 have denied agreement dated 04.07.2023, registered agreement dated 28.09.2023 and payment receipt dated 28.09.2023. Those were prepared by impersonation. They have denied to have received Rs. 97,00,000/-. It is contended that defendant No. 2 – Sunil is acting in collusion with the plaintiffs. A false offence bearing CR No. 1025/2023 was being registered by suppressing material facts. No agreement was ever executed by them to sale the suit land to the plaintiffs. It is further contended that whatever amount received by the defendant No. 1 in pursuance of M.O.U. was due to the representation of the defendant No. 2 – Sunil.

14. When defendant No. 1 – Shivaji learnt about registered agreement to sale dated 28.09.2023, he approached the police and filed written complaint on 26.10.2023. The cognizance was not taken, hence he was required to approach the criminal court. By intervention of the Court FIR was registered bearing CR. No. 01/2025.

15. On the above backdrop litigating parties advanced the submissions. Two offences are registered due to their cross complaints. Common accused/defendant No. 2 – Sunil Khurde is absconding. Charge sheet is filed in CR No. 1055/2023.

16. Though there is rival claim for possession over the suit land, it is categorically found by the Trial Court while considering application Exhibit 05 that possession of the suit land is with the defendant No. 1 – Shivaji. Application Exhibit 05 was partly allowed. The relief of injunction not to obstruct possession is refused holding that plaintiffs are not in possession. Against denial of the relief, no revision is filed by the plaintiffs.

Submissions and reasoning in Appeal from Order :

17. Learned counsel Mr. Balbhim Kedar for the defendant Nos. 1, 7 and 8 submitted that there was no privity of contract between his clients and the plaintiffs. So called agreement dated 04.07.2023, registered agreement dated 28.09.2023 and payment receipt were not executed by the defendant No. 1 – Shivaji, but those were got executed by impersonation due to overt act of the defendant No. 2 – Sunil, hence the claim of specific performance is misconceived. It is contended that there was no cause of action for the plaintiffs against his clients. More specifically when as per M.O.U. sale transaction was to be executed within two months only i. e. upto 06.09.2023. There was no reason for his

clients to execute agreement on 28.09.2023, when no compliance was made as per M.O.U. dated 06.07.2023. It is submitted that plaintiffs and defendant No. 2 – Sunil acted in collusion and deceived his clients. Behind his back agreements were executed by impersonation showing inconsistent and different amounts of transaction. It is submitted that amount of Rs. 5,00,000/- received through cheque on 06.07.2023 was under the pretext that the drawer of the cheque i. e. plaintiff No. 1 – Manoj Mutha was the partner of defendant No. 2. The said amount was not towards the earnest amount from the plaintiffs.

18. Learned counsel vehemently contended that the defendant No. 2 – Sunil fraudulently opened account with Deogiri Nagari Sahkari Bank Ltd. Aurangabad by misusing photographs on the basis of forged Aadhar and PAN cards. He got credited cheques and withdrawn the amount personating that he is defendant No. 1 – Shivaji. It is submitted that no sooner than mischief is disclosed, complaint was made on 26.10.2023 and thereafter FIR was lodged. Plaintiffs and the defendant No. 2 are fraudsters and wanted to grab the suit land of the defendant No. 1. It is submitted that learned Judge committed perversity in clamping the injunction when defendant Nos. 1, 7 and 8 are in dire need of money for the medical treatment of the son. The hardship and irreparable loss for not providing treatment to the son is totally lost sight of. It is further submitted that gift deed was required to be executed to protect the suit land.

19. Per contra, learned counsel Mr. Chaitanya Dharurkar submitted that the fact that the defendant No. 1 accepted the cheque of Rs. 5,00,000/- which was issued by the plaintiff No. 1 – Manoj Mutha and encashed it in his account of a bank at Bombay shows that he was also involved with other defendants. It is vehemently contended that plaintiffs parted with huge sum. Besides that two offences are registered against the parties. The registered agreement dated 28.09.2023 on which the claim for specific performance is founded showed the privity of contract. It is further contended that defendant No. 1 – Shivaji and defendant No. 2 – Sunil are acting in collusion. Other cheques issued by the plaintiffs were encashed by defendants. The execution of the gift deed creates doubt on the conduct of the defendants. It is vehemently submitted that the defendant Nos. 1 to 7 have filed separate R.C.S. No. 174 of 2024 after rejection of application Exhibit 05 for declaration and injunction with application Exhibit 05. It is submitted that huge stakes are involved and the plaintiffs have suffered great hardship, hence to avoid the complications trial Court is justified in granting injunction.

20. I have considered rival submissions of the parties. I am guided by the principles laid down by the Supreme Court in the matter of Wander Ltd. and another Vs. Antox India Pvt. Ltd. reported in *1990 (Suppli) (1) SCC 727*. The jurisdiction under Order XLIII of the C. P. C. is that of principle. The appreciation of evidence is not permissible. The inference is imperative in the case of

perversity, patent illegality or lack of jurisdiction. Both the learned counsel forceably made rival submissions. Those are disputed questions of facts.

21. There are cross complaints and the investigation is completed in one of the offences. The criminal liability would be adjudicated before the competent forum. In the present civil proceedings, it would be very difficult to castigate either of the parties as fraudsters at this stage. Two civil suits are pending to resolve disputed questions of facts. What transpires from record is that defendant No. 2 – Sunil Khurde is the fraudster, who is absconding and he has played predominant role in the deception.

22. Agreement dated 04.07.2023 was executed showing consideration of Rs. 1,50,03,225/- in between plaintiff No. 1 Manoj and defendant No. 1 – Shivaji. Defendant No. 1 is disputing the execution of the agreement and payment of earnest amount. M.O.U. was executed on 06.07.2023 between defendant No. 1 and defendant No. 2 showing consideration of Rs. 3.15 crores, at that time a cheque of Rs. 5,00,000/- bearing No. 269159 was handed over to the defendant No. 1 – Shivaji, which was encashed. Defendant No. 1 claims to have repudiated the said contract.

23. The registered agreement dated 28.09.2023 shows the consideration of Rs. 71 Lakhs. On the same day payment receipt was also executed by the defendant No. 1 – Shivaji to plaintiff

No. 1 – Manoj Mutha disclosing acknowledgment of payment of Rs. 97 Lakhs. Both these documents are vehemently disputed by the defendant Nos. 1, 7 and 8. Both the parties are attributing collusion and fraud against each others

24. In such a peculiar circumstances, Trial Court refused to grant injunction of not to obstruct the plaintiffs, but granted injunction of not to create third party interest. Trial Court is mainly influenced by the receipt of Rs. 5,00,000/- issued by the defendant No. 1, which he could not account for satisfactorily. The execution of gift deed by the defendant No. 1 has been treated to be the intention to create third party interest.

25. It is very difficult at this juncture to arrive at a conclusion as to whether there was privity of contract between defendant No. 1 – Shivaji and plaintiffs. Agreement dated 04.07.2023 as well as registered agreement dated 28.09.2023 apparently show the signature of the defendant No. 1. The possession receipt also shows signatures. The photographs are appearing on the documents. The theory of impersonation put forth by the learned counsel Mr. Kedar cannot be accepted as a gospel truth, when criminal proceedings are underway. These are hotly disputed facts in issue, which are required to be gone into during full fledged trial of both the suits.

26. Further submission of Mr. Kedar that by impersonation and on the basis of forged document account of the defendant No.

1 – Shivaji was opened in Deogiri Bank also needs in depth scrutiny. Objective scrutiny is required to be undertaken to come to the conclusion as to whether defendant No. 1 and defendant No. 2 acted in collusion or plaintiffs with defendant No. 2 acted in collusion or all the defendants acted in collusion.

27. I find that observations of the Trial Court for holding that *prima facie* case is made out, cannot be faulted. When in respect of suit land two offences and two civil proceedings are subjudice, it is necessary to restrain the parties from creating third party interest so as to avoid further complications and multiplicity of litigation. The view taken by the learned Judge is plausible and cannot be termed as patently illegal, perverse or without jurisdiction.

28. After hearing both sides, I find that *prima facie* case, balance of convenience and irreparable loss tilt in favour of the plaintiffs. The conduct of the defendant No. - 1 Shivaji is doubtful and learned counsel Mr. Kedar is unable to satisfy this Court on following aspects of the matter :

- (i) When after executing M.O.U. on 06.07.2023 cheque of Rs. 5,00,000/- bearing No. 269159 was handed over to the defendant No. 1 – Shivaji it was not drawn by the defendant No. 2 – Sunil, but plaintiff No. 1 – Manoj. The theory that defendant No. 2 - Sunil represented that Manoj was his partner is not spelt out in the written complaint

dated 26.10.2023 and criminal application U/Sec. 156(3) of the Code of Criminal Procedure.

- (ii) No steps appear to have been taken by the defendant No. 1 after receiving the amount of Rs. 5,00,000/-, as to know how the drawer of the cheque claims to be the purchaser.
- (iii) The defendant No. 1 needed huge amount for medical treatment of his son, then why gift deed was executed on 31.10.2023, which did not fetch any consideration and it is stated in the deed that no proceedings in the police station, court or Government offices are pending. This is apparent lie, when already defendant No. 1 had approached police on 26.10.2023 with a written complaint.
- (iv) The defendant No. 1 has encashed Rs. 5,00,000/-, which he claims to be forfeited. He is held to be in possession of the suit land. As against that the plaintiffs have parted with huge amount nearing Rs. 97,00,000/-. They are not in possession of the suit land. They have suffered greater hardship than the defendant No. 1.
- (v) Considering comparable hardship, if the suit land is permitted to be alienated, plaintiffs are likely to suffer irreparable loss.
- (vi) Defendant Nos. 1, 7 and 8 have also filed R.C.S. No. 174 of 2024 with application Exhibit 05 for the self same relief, which is lost sight of.

29. For the reasons stated above, I am not inclined to interfere in the impugned order. Appeal from order sans merit and it is dismissed.

Submissions and Reasoning in Civil Revision Application :

30. Defendant Nos. 1, 7 and 8 filed application Exhibit 23 under Order VII Rule 11 of the C. P. C. Said application is rejected on 04.06.2024. Learned counsel Mr. Kedar submitted that there was no privity of contract. There was no cause of action. Learned counsel adopted same submissions which were canvassed in the appeal from order. Reliance is placed on the following judgments of the Supreme Court and Coordinate Bench of this High Court.

I **T. Arvindandam Vs. T. V. Satyapal** reported in *(1977) 4 SCC 467*.

II **Judgment dated 28.08.2024 in Civil Revision Application No. 164 of 2023 in the matter of Anil Hiralal Patil Vs. Rajesh Vijay Patil and others.**

31. As against that learned counsel Mr. Dharurkar supports impugned order. He would advert my attention to the plaint which discloses cause of action in para Nos. 24 and 25. He submits that R.C.S. No. 174 of 2024 has also been filed. It is further submitted that only defendant Nos. 1, 7 and 8 have filed application U/O VII Rule 11 of the C. P. C. out of other eight

defendants. A plaint cannot be rejected qua few defendants only. He places reliance on following judgments of the Supreme Court and High Courts.

- (i) Kum. Geetha D/o Late Krishna and others Vs. Nanjundaswamy and others reported in *2023 Livelaw (SC) 940*.
- (ii) Central Bank of India and another Vs. Smt. Prabha Jain and another reported in *2025 INSC 95*.

32. I have gone through the plaint. It is not understood as to whether defendant Nos. 1, 7 and 8 have filed written statement or not. Learned counsel Mr. Kedar was unable to make a statement to that effect. The application Exhibit 26 contains various pleas, which are sought to be raised by the defendants to counter the claim in the suit. The cardinal principal of enquiry U/O VII Rule 11 of the C. P. C. is that plaint and the documents annexed to it are only to be gone into.

33. Petitioners have tendered a copy of say to Exhibit 05 on record. The tenor of the submissions of learned counsel Mr. Kedar is founded on say. Those can be said to be various pleas likely to be raised by the defendants in the written statement. However, plaint cannot be rejected on the basis of these submissions.

34. I have gone through the plaint. Plaintiffs are soliciting relief of specific performance of contract, which is founded on

registered agreement to sale executed on 28.09.2023. The said document shows that it was being executed by defendant No. 1 – Shivaji in favour of plaintiffs. It is a registered instrument. *Prima facie*, it establishes the privity of contract. It would be matter of trial to decide as to whether the signatures are forged and there was no parting of payment. At this juncture the contents of the agreement have to be accepted.

35. I have already recorded that both the parties have filed cross complaints alleging fraud and cheating. The criminal trial would decide criminal liability. The submissions of Mr. Kedar based on M.O.U. dated 06.07.2023, possession receipt and alleged fraud and forgery in opening account in Deogiri Nagari Sahkari Bank at Aurangabad cannot be entertained in the enquiry under Order VII Rule 11 of the C. P. C. Those are disputed questions of facts and needed to be examined during the course of trial. The cause of action is stated in para No. 20 to 25. Considering overall circumstances and the transaction between the parties referred in the plaint, I find that cause of action is properly described. The contention of the defendants that the cause of action is illusory and its outcome of cleaver drafting holds no merit.

36. Mr. Kedar, learned counsel has relied on the judgment of the Supreme Court in the matter of T. Arvindandam Vs. T. V. Satyapal (supra) to buttress the submission that if clever drafting of the plaint created illusion of a cause of action, it is to be nipped in the bud and a bogus litigant should be shot down at the earliest

stage. Principles laid down by the Supreme Court cannot be doubted. Those cannot be made applicable to the present case. The cause of action cannot be said to be illusory. Defendants' plea of want of privity of contract cannot hope of cause of action.

37. Further reliance is placed on the judgment of the Coordinate Bench of this Court in the matter of **Anil Hiralal Patil Vs. Rajesh Vijay Patil and others** (supra). In that case also for want of privity of contract, plaint was sought to be rejected u/o VII Rule 11 of the C. P. C. That was a suit for specific performance of contract. The defendant therein had already filed suit for the declaration that there existed no agreement of sale between the parties. In that context the observations were made in para No. 6 of the judgment holding that plaint was liable to be rejected for want of privity of contract. The plaintiff did not appear before the High Court to contest the revision. In present case I have already recorded that *prima facie* there is privity of contract between the parties and it would be a matter of full fledged trial in civil as well as criminal proceedings to find out as to whether agreement was ever executed by the defendant No. 1 – Shivaji. The said judgment would not enure to the benefit of the appellants/petitioners.

38. There are in all eight defendants. Application Exhibit 23 is filed by defendant Nos. 1, 7 and 8. If the application Exhibit 23 is allowed, plaint would be rejected as against defendant Nos. 1, 7 and 8, partially. Such a partial rejection of plaint is

impermissible. For that purpose reliance is placed on the judgment of the Apex Court in the matter of Central Bank of India and another Vs. Smt. Prabha Jain and another (supra). Relevant extract of para No. 10 of the judgment *inter alia* referred to judgment of Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311 is as follows :

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256]* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.”

39. Further reliance is placed on the judgment in the matter of

Kum. Geetha D/o Late Krishna and others Vs. Nanjundaswamy and others. I have gone through para No. 11 which is on the same line. The Supreme Court inter alia relied on the judgment of Madhav Prasad Agrawal Vs. Axis Bank Ltd. reported in *(2019) 7 SCC 158*. Learned counsel Mr. Dharurkar is right in his submissions that if application Exhibit 23 cannot be allowed.

40. For the reasons assigned above, I find no merit in the civil revision application. The trial Court has rightly rejected the application Exhibit 23. The civil revision application is dismissed.

[SHAILESH P. BRAHME J.]

bsb/July 25