

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

FIRST APPEAL NO. 162 OF 2024

Anita Vidyadhar Haval

.... Appellant

Versus

Baliram Pandurang Kavade And Ors.

.... Respondents

Mr. Chetan G. Patil a/w Mr. Bhooshan Mandalik, Advocate for the Appellant.

Adv. Poras Shah, Advocate for the Respondent Nos.1, 2, 3 & 6.

Mr. Ashutosh Kale, Advocate for Respondent Nos.7 & 8.

Mr. Prithviraj S. Gole, Advocate for Respondent No.11.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th SEPTEMBER, 2025.

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P.C. :

1. By this appeal, the Appellant has challenged the order and decree dated 2nd December, 2023 passed by the learned Joint Civil Judge, Senior Division, Kolhapur below Exhibit-68 in Special Suit No.479 of 2022, (for short, “said suit”). By the impugned order, the learned trial Court has allowed the application filed by Respondent No.11 under Order 7 Rule 11 of the Code of Civil Procedure, 1973 (for short, “CPC”), thereby rejecting the plaint of the Appellant (Original Plaintiff).

2. It is contention of learned counsel for the Appellant that the Appellant had filed Civil Suit against the Respondents for partition and declaration claiming relief against the Respondents. Out of all the Respondents, the Respondent No.11 was The Karad Urban Co-operative Bank Ltd. The allegations against the Respondent No.11 were that, one of the Respondent had mortgaged the property with Respondent No.11 without ascertaining the shares of the Appellant. During pendency of the Suit, the Respondent No.11 had filed an Application under Order 7 Rule 11 of the CPC before the learned trial Court, praying for rejection of the plaint on the ground that no proper procedure was followed against Respondent No.11 before filing the Suit.

Learned counsel further submitted that after hearing on the said Application, the learned trial Court has rejected the plaint, not only against Respondent No.11 but also against all Respondents, which is erroneous. Learned counsel further submitted that let the Appellant be permitted to adopt proper procedure against the Respondent No.11 and file appropriate proceeding before the learned trial Court, after completing that procedure.

Learned counsel further submitted that as the impugned

order against other Respondents is erroneous, the plaint cannot be rejected against other Respondents. The aggrieved party is only the Respondent No.11. The Appellant be permitted to delete the Respondent No.11 as a party Respondent and the Appellant shall take appropriate steps against the Respondent No.11.

3. Learned counsel for the Respondent No.11 vehemently submitted that the Appellant failed to take steps as provided under Section 164 of the Maharashtra Co-operative Societies Act, 1870 (for short, "MCS Act"). The learned trial Court has passed a well-reasoned order, no interference is required in it, and requested to dismiss the appeal.

4. Learned counsel for Respondent Nos.1 to 10 and 12 submitted that the order passed by the learned trial Court is legal and valid, and no interference is required in it, and requested to dismiss the appeal.

5. I have heard all learned counsel, perused the impugned order.

6. While passing the impugned order, the learned trial Court has observed that the Respondent No.11 is a Co-operative Bank. As per Section 164 of MCS Act, the Appellant had to issue pre - suit

notice against the Respondent No.11, but it was not issued. On that ground, the learned trial Court has rejected the plaint. I do not find infirmity in it. In my view, while passing the impugned order, the learned trial Court has rejected the plaint against all Respondents, which is erroneous. The learned trial Court should not have rejected the plaint against other Respondents except the Respondent No.11.

7. Considering these facts, I pass following order:

ORDER

- i. The Appeal is partly allowed.
- ii. The impugned order passed by the learned Joint Civil Judge, Senior Division, Kolhapur below Exhibit-68 in Special Civil Suit No.479 of 2022 is quashed and set aside.
- iii. The Appellant is permitted to delete the Respondent No.11 as party defendant in the Special Suit No.479 of 2022 pending before Civil Judge, Senior Division, Kolhapur.
- iv. If Appellant files any proceeding against the Respondent No.11, the trial Court shall decide the said application on its own merit, and in

accordance with law.

- v. The Suit against Respondent Nos.1 to 10 & 12 be tried as per procedure of law.
 - vi. The Appellant is entitled for refund of Court fees as per Section 15 of the Court Fees Act, 1870.
 - vii. The interim order passed by this Court shall continue for four weeks till both the parties appear before the learned trial Court. The same shall not be operated against the Respondent No.11.
8. In view of the aforesaid terms and conditions, the appeal is partly allowed and disposed off.

(SHIVKUMAR DIGE, J.)