

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.210 OF 2023

The Chairman,
Vita Urban Co-operative Credit
Society Limited, New Bhaji Mandaye,
Mayani Road, Vita,
Tal.: Khanapur, Dist.: Sangli.

.....Applicant

Vs.

1. Vanita Kumar Madane,
Age: 40 years, Occu.: Housewife
& Agriculture, R/o. Kanharwadi,
Tal.: Kadegaon, Dist.: Sangli.
2. Vasant Bandu Patole,
Age: 70 years, Occu.: Agriculture.
3. Ashok Vasant Patole,
Age: 47, Occu.: Agriculture,
4. Sunita Shivaji Jadhav,
Age: 45 years, Occu.: Housewife
& Agriculture.
5. Anil Vasant Patole,
Age: 43 years, Occu.: Agriculture.
6. Balu Bandu Patole,
Age: 67 years, Occu.: Agriculture.
7. Akkatai Sadashiv Mane,
Age: 56 years, Occu.: Agriculture,
R/o. Gharniki, Takl.: Atapadi,
Dist.: Sangli.
8. Sanjay Rajaram Patole,
Age: 49 years, Occu.: Agriculture.

9. Kanta Tanaji Madane,
Age: 52 years, Occu.: Housewife &
Agriculture. R/o.Athgaon,
Tal.: Kadegaon, Dist.Sangli.
10. Vijaya Sahahaji Madane,
Age: 51 years, Occu.: Housewife,
R/o. Kuroli, Tal.: Walwa,
Dist.: Sangli.
11. Suvarna Shivaji Patole,
Age: 60 years, Occu.: Housewife.
12. Ashwini Shivaji Patole,
Age: 35 years, Occu.: Housewife,
R/o. Pusesawali, Tal.: Khatav,
Dist.: Satara.
13. Lalita Shivaji Patole,
Age.33 years, Occu.: Household,
R/o. Ghoti, Tal.: Khanapur.
Dist.: Sangli.
14. Durga Shivaji Patole,
Age: 30 years, Occu.: Housewife,
R/o. Shivne, Tal.: Kadegaon,
Dist.: Sangli.
15. Saubai Raghunath Patole,
Age: 55 years, Occu.: Housewife.
16. Rupali Raghunath Patole,
Age: 35 years, Occu.: Housewife,
R/o. Visapur, Tal.: Tasgaon,
Dist.: Sangli.
17. Umesh Raghunath Patole,
Age: 28 years, Occu.: Agriculture.
18. Dipali Raghunath Patole,
Age: 33 years, Occu.: Housewife,
R/o. Malangaon, Tal.: Tasgaon,
Dist.: Sangli.

.....Respondents

Mr. Siddharth Shitole with Mr. Rushikesh Thakur, for the Applicant.
Mr. Nagesh Y. Chavan with Ms. Ankita Chindage, for the Respondent No.1.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 17th SEPTEMBER 2025

PRONOUNCED ON : 25th SEPTEMBER 2025

JUDGMENT :-

1. Present Revision Application takes exception to order dated 11th January 2023 passed by learned Civil Judge, Junior Division, Vita in Regular Civil Suit No.497 of 2022, thereby declining to entertain Applicant's application under Order 7 Rule 11 of Code of Civil Procedure (For short, '**CPC**') for rejection of plaint.

2. Respondent No.1 instituted Regular Civil Suit No.497 of 2022 before Civil Judge, Junior Division, Vita seeking relief of partition and separate possession of 1/5th share in the suit property and declaration that Mortgage Deed No.563 of 2014 and order passed by Tahsildar, Vita under Section 107 of Maharashtra Co-operative Societies Act, 1960 (For short, '**MCS Act**') is not binding on her share. Plaintiff further prayed for perpetual injunction against defendants from taking possession of suit property to the extent of her share. The Applicant-bank is defendant No.18 in the suit.

3. In pursuance to suit summons, Applicant caused appearance and filed written statement refuting claim of plaintiff, so also filed an application below Exhibit 40 under Order 7 Rule 11 of CPC seeking rejection of plaint, on the ground that plaintiff has no cause of action against defendant No.18. Further, suit instituted against Applicant-Co-operative Credit Society without prior notice under Section 164 of the MCS Act, is barred by law. It is contention of Applicant that suit raising challenge to the action initiated under Sections 101 and 107 of MCS Act is expressly and impliedly barred by law.

4. The trial Court rejected Applicant's application observing that none of the ground contemplated under Order 7 Rules 11(a) to (f) of CPC is made out.

5. Mr. Siddharth Shitole, learned Advocate appearing for Applicant would submit that Applicant-Society had advanced loan in favour of Respondent Nos.2 and 3. They had mortgaged suit land towards security with Society. Since they defaulted in repayment of loan amount, recovery proceeding was taken up against them under Section 101 of MCS Act. The Competent Authority issued certificate dated 5th February 2021. Eventually, Special Recovery Officer made

application under Rule 107 of MCS Rules to District Magistrate for possession of mortgaged property of Respondent Nos.2 and 3. When Circle Officer gave notice to Respondent Nos.2 and 3 for taking possession, present suit is filed.

6. Mr. Shitole submits that in light of Section 164 of MCS Act, suit instituted by plaintiff seeking declaration against bank is barred for want of prior notice. In support of his contention, he relies upon observation of this Court in case of *Devgiri Nagari Sahkari Bank Ltd. Aurangabad & Anr. v. Zubida Begam w/o. Asadulla Khan & Ors.*¹

7. Per contra, Mr. Nagesh Chavan, learned Advocate appearing for Respondent No.1/plaintiff submits that bar under Section 164 of MCS Act would not attract in present case, when suit is instituted claiming share in the ancestral property asserting independent civil right.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it is apposite to refer to provisions of Order 7 Rule 11 of CPC, which reads thus:

¹ 2012 (6) Mh.L.J. 457.

“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 so 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 written 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 the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-

paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. Apparently, Court possesses power to reject the plaint, where it *sans* cause of action or suit appears from statement in plaint barred by law, apart from other grounds as enumerated in Clauses (b) (c) (e) and (f). In present case, since Applicant seeks rejection of plaint on ground of non-compliance of mandate under Section 164 of MCS Act, this application needs to be considered in touchstone of sub-clause (d) of Rule 11. This Court while considering object purported under Section 164 of MCS Act, in case of *DNS Bank Ltd. (supra)*, observed 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 2-12-2011 is set aside.

10. The plaintiff shall have liberty to avail of the remedy for protection of her interest, after complying with the mandatory requirements of the M.C.S. Act. It would also be open for the defendants, if the plaintiff proceeds to file appropriate proceedings, to raise all legally sustainable objections. Rule is accordingly made absolute. There shall be no order as to costs.”

10. Similarly, this Court had occasion to consider the aforesaid issue in case of ***Shilpa Co-operative Housing Society v. Smt. Janabai Gulabrao Wangal Through LRs. & Ors.***,² wherein following observations are made:

“That, the expression "any act touching the business of the society" occurring in Section 164 above, is required to be carefully considered. It is clear that Section 164 is attracted only when a suit is filed against the society relating to an act touching the business of the society and not otherwise. The word 'act' must be construed to mean 'legal act'. In the facts of the present case, what is clear to me is that the suit was filed by the sisters claiming declaration, partition and separate possession of the ancestral property in which they had 1/7th share each. The body of the plaint and the prayers made in the suit do not have anything to do with any act touching the business of the society. The submission made by Mr Vaidya, learned counsel for the appellant-society that it is

² Second Appeal No.417 of 2010 dated 11th August 2014 (Nagpur Bench).

a business of the society to purchase lands, carve out plots and sell them to the members of the society and, therefore, the suit property having been purchased for the same purpose, it will have to be held that it was an act touching the business of society does not at all appeal to me. The plaint averments could be decisive in the first place and, secondly, even if the defence is considered, the fact remains that it cannot be said to be the business of the society to purchase the properties illegally and without legal and proper saleable title. In the instant case, the suit filed by the plaintiff was for claiming their share, namely, 1/7th share each and that is their independent civil right and such a suit for exercising independent civil right before the Civil Court must be held to be without any prohibition contemplated by Section 164 of the MCS Act. The plaintiffs have no concern whatsoever with the appellant-society which purchased the suit property without there being any partition of the suit property. The act of the society in purchasing such a property in the absence of any partition between coparceners cannot be said to be a legal act or even the act touching the business of the society.”

11. In light of aforesaid exposition of law, if pleadings and prayer clauses in plaint in present case are considered, plaintiff is asserting her own right in the suit property and seeks partition and separate possession. It is her contention that suit property is ancestral

property of defendant Nos.1 to 17. There is no partition by metes and bounds. She asserts that defendant Nos.1 and 2 obtained loan from defendant No.18-Society. However, it was not for legal necessity or for benefit of joint family. Mortgage Deed was executed without consent of plaintiff and other coparcener. They had no legal rights to execute mortgage deed or create third party interest in the suit property. Looking to averments in plaint, it is evident that Respondent No.1 has asserted her individual right in the suit property.

12. In light of aforesaid background, Section 164 of MCS Act, which mandates prior notice for institution of suit against society or its officer in respect of acts touching to the business of Society, would not apply.

13. Primarily, suit is filed seeking relief of partition against coparcener or joint family member of plaintiff. Applicant is added as party for ancillary relief of declaration that Mortgage Deed executed by defendant Nos.2 and 3 and consequential action taken by bank is not binding over rights of plaintiff.

14. In that view of the matter, Section 164 of the MCS Act would not bar the suit. Trial Court has rightly observed that none of the clauses under Rule 11 of Order 7 would attract from the pleading in the plaint.

15. In result, Civil Revision Application *sans* merit. Hence, dismissed.

16. However, looking to the nature of controversy, learned trial Court shall endeavour to decide suit expeditiously.

(S. G. CHAPALGAONKAR, J.)

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RAJU
DAITATRAYA
GAIKWAD
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