

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.12478 OF 2024**

Naim Abdulshakur Kachhi
Age: 39, Occu: Businessman
r/o. 2845, B-Ward, Datta Colony,
Jawahar Nagar, Kolhapur.

..Petitioner
(Orig. defendant)

Versus

Eknath Ramchandra Patil
Age: 41, Occu: Businessman
r/o. Survey No.911, 607/608, 6th floor,
C-Wing, Yashwant Building B, C CO-operative
Housing Society Ltd, New Tarabai Park,
Behind Dream World Water Park,
Kasaba Bawada, Kolhapur-416 006.

..Respondent
(Orig. Plaintiff)

...

Mr. Ramesh Badi, Advocate for Petitioner.

Mr. Drupad Patil i/by Mr. Dheeraj Patil, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 14th NOVEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 21.03.2024 passed by Civil Judge Senior Division, Kolhapur below Exhibit-8 in Special Civil Suit No.18/2022, by which petitioner's application for rejection of plaint has been rejected.
3. The respondent filed suit for specific performance of agreement to sale in respect of suit property. The petitioner appeared in suit and filed application below Exhibit-8 under Order VII Rule 11 of Code of

Civil Procedure seeking rejection fo plaint contending *inter alia* that sale or purchase transaction is not appended to plaint. The valuation of suit is not proper and requisite Court Fees is not deposited. The Trial Court rejected said application vide impugned order dated 21.03.2024.

4. Mr. Ramesh Badi, learned Advocate appearing for petitioner submits that it was mandatory on part of plaintiff to file alleged agreement to sale, for which he is seeking specific performance. The Trial Court could not have registered suit in absence of crucial documents. He would further submit that document nos.3 and 4 issued by Society has been cancelled. Therefore, plaintiff has no cause of action. Mr. Badi fairly concedes that plaintiff has filed suit for recovery of amount of Rs.30,00,000/- and paid Court Fees. Therefore, he restricted his contentions for rejection of plaint on first ground.

5. Mr. Drupad Patil, learned Advocate appearing for respondent would submit that petitioner/defendant could not make out any ground as contemplated under Order VII Rule 11 of Code of Civil Procedure for rejection of plaint. The plaintiff has specifically pleaded that document of agreement to sale is in possession of defendant. Therefore, plaint cannot be rejected on that count.

6. It is trite that, application under Order VII Rule 11 of Code of Civil Procedure can be entertained only on grounds enumerated in

Clauses (a) to (e) of Rule 11 of Order VII of Code of Civil Procedure. The petitioner filed application on ground that non-filing of agreement to sale in suit for specific performance would entail dismissal of suit. Secondly, suit is undervalued.

7. As observed in aforesaid paragraphs, plaintiff has appropriately valued suit and paid Court Fees. So far as non-filing of copy of agreement to sale alongwith plaint, plaintiff has clearly pleaded that said document is in possession of defendant. Therefore, going by contents of plaint it is difficult to hold that plaintiff has no cause of action. The contentions raised in written statement by way of defence cannot be considered while deciding application under Order VII Rule 11 of Code of Civil Procedure. It is true that, plaintiff's case is based on agreement to sale dated 07.07.2017. The plaintiff claims that he is put into possession of suit property in month of July-2017 and paid amount of Rs.15,00,000/- to defendant in pursuance to said agreement till end of November-2019.

8. The plaintiff has pleaded that he was admitted as member of Society and paid arrears towards maintenance, but defendant threatened him to dispossess. Hence, cause of action arose to file suit. The defendant is denying existence of agreement to sale and also raises contentions that false documents in nature of no objection certificate given by Society is relied by plaintiff. However, such defences are not germane at the stage of considering application for rejection of plaint.

It is for respective parties to lead their evidence and Trial Court will have to rule on merits of contentions after full-fledge trial.

9. In that view of matter, impugned order needs no interference in exercise of Writ jurisdiction. In result, Writ Petition stands dismissed.

10. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/November-2025