

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.784 OF 2023**

Amar Life Space LLP	...	Applicant
versus		
Andheri Samir CHS Ltd. and Ors.	...	Respondents

**WITH
INTERIM APPLICATION NO.13983 OF 2024
WITH
INTERIM APPLICATION NO.1894 OF 2025**

Mr. Venkatesh Dhond, Sr. Advocate with Mr. Rohan Savant, Mr. Yadunath Choudhari, Mr. Rajib Shaikh, Ms. Chinmaya Acharya i/by Kevin Pereira, for Applicant.

Mr. Rajiv Narula with Mr. Tarang Jagtiani i/by Jhangiani, Narula and Associates, for Respondent No.1.

Mr. S.C.Naidu with Ms.Divya Yajurvedi, Mr. Pradeep Kumar i/by Samiksha Rao, for Respondent Nos.2 to 4.

Mr. Vijay Purohit with Mr. Sanket Jain i/by P&A Law Offices, for Respondent No.5.

Mr. Joel Carlos with Mr. Ravindra Sirsikar, Mr. Anand Khairnar, Mr. Rushikesh Bhagwat i/by Ms. Komal Punjabi, for Respondent No.7.

CORAM: N.J.JAMADAR, J.

DATE : 17 APRIL 2025

ORDER.

1. This revision is directed against an order dated 17 October 2023 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, in Notice of Motion No.1823 of 2023 in L.C.Suit No.778 of 2023 whereby the Notice of Motion taken out by the applicant – Defendant No.4 for rejection of the plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908

(“the Code”) came to be rejected.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court.

2.1 The Plaintiff is the society of the Apartment Owners registered under the Maharashtra Co-operative Societies Act, 1960 (the Act of 1960). Defendant Nos.1 to 3 are the legal representatives of late Chimanlal M. Javeri, original holder of the land, bearing Survey No.61B and Survey No.137, corresponding CTS No.417, 417/1, 417/2, 418, 419, 420, 421, 422, 423, 424, 425 admeasuring 6271.87 sq. meters (the larger property). Defendant No.4 is the successor in title of Defendant Nos.1 to 3 in respect of a portion of the larger property. Defendant No.5 is the successor in interest of Caltex (India) Ltd., a lessee of a portion of the plot bearing Survey No.61B (part) corresponding to CTS No.417 (Part), where the latter was operating a petrol pump. Defendant No.11 is the promoter who had constructed a building and sold apartments therein to the members of the Plaintiff Society. Defendant Nos.6 to 9 are the instrumentalities of the State.

2.2 Late Chimanlal Javeri, original holder of the larger property, had granted a lease of a portion of the larger property admeasuring 1604 sq. yards equivalent to 1341 sq. meters from Survey No.61/B (part) having

corresponding CTS No.s 417, 417/1, 417/2 to Caltex (India) Ltd., under the Registered Indenture of Lease dated 18 July 1961. Under three unregistered Agreements dated 15 January 1976, Mahendra Javeri, Subhadra Javeri and Ashish Javeri agreed to sell to Chitranjan D. Shah 5897.13 sq. yards equivalent to 4930 sq. meters out of the larger property along with the benefit of the excess FSI available in respect of the land leased to Caltex (India) Ltd (leased property).

2.3 Chitranjan Shah constructed a building (Samir Apartment) on the said portion of the land admeasuring 4930 sq. meters. Building plan to construct Samir Apartment was submitted for the entire area of the larger property by utilizing FSI available of the larger property, excluding FSI of 144.91 sq. meters already consumed for the construction of the petrol pump and subject to handing over set back area of the land under the proposed road widening of S.V.Road, etc. and keeping RG space and internal road areas free as per the then prevailing DC Regulations.

2.4 The promoter constructed Samir Apartment in accordance with the approved and sanctioned building plan dated 4 December 1975 ("Building Plan 1975"). The promoter sold the apartments in the said building to the members of the said society. The development was subject to the undertaking that the larger plot will not be sub-divided and the entire FSI of the larger

property, including the leased property, was consumed for the construction of Sameer Apartment.

2.5 As the developer and the owners failed to execute conveyance in respect of the larger property in favour of the society, the Plaintiff instituted a Suit before the City Civil Court, being S.C. Suit No.881 of 2008, seeking, *inter alia*, a direction and order to the developer and owners to execute a Deed of Conveyance and thereby convey larger property admeasuring 6271.84 sq mtrs along with buildings standing thereon in favour of the Plaintiff and to restrain the Defendants therein from alienating, parting with possession or disposing of the larger property. Eventually, the said Suit came to be dismissed on 12th August 2013 for want of prosecution.

2.6 The Plaintiff-Society, thereafter, preferred an application before the Deputy Registrar, Cooperative Societies and the competent authority for an order of deemed conveyance in favour of the Society under the provisions of the Maharashtra Ownership Flats Act 1963. By an order dated 3rd September 2016, the competent authority, however, granted deemed conveyance in favour of the society for an area admeasuring 4639.4 sq mtrs only. The Plaintiff filed an Application for issuing a corrigendum to the said order and sought conveyance of a larger property. By an order dated 6th January 2017, the competent authority rejected the said Application.

2.7 The Plaintiff filed a Writ Petition being Writ Petition (L) No. 18573 of 2022 assailing the order of the competent authority rejecting the Application for amendment in the area. After withdrawal of the said Writ Petition, the Plaintiff filed another Writ Petition being Writ Petition No. 6156 of 2023 with regard to the orders of deemed conveyance. The said Petition is sub judice.

2.8 In the meanwhile, the lease in favour of Defendant No. 5 expired by efflux of time. Defendant Nos. 1 to 3 filed a Suit for eviction against Defendant No.5. In the year 2022, consent terms were arrived at between Defendant Nos. 1 to 3 and Defendant No.5. Out of the leased property 545 sq mtrs of land was given to Defendant No.5. Eventually, under the registered Deeds of Conveyance dated 9th June 2014 and 3rd December 2020, the Applicant-Defendant No.4 acquired the entire right, title and interest of Defendant Nos. 1 to 3 in respect of the leased property.

2.9 As Defendant No. 4 commenced development of the leased property, the Plaintiff took umbrage and there was exchange of notices between the parties. The stand of the Plaintiff was that the entire FSI of the larger property was consumed for the construction of Samir Apartment, there was an undertaking not to subdivide the larger plot and thus Defendant No.4 was not entitled to develop the leased property as if it was an independent plot of land, and the commercial exploitation and utilization of the FSI for the development

of the leased property would impinge upon the rights of the Plaintiff to carry out redevelopment of the society and exploit the FSI admissible qua the entire larger property.

2.10 The Plaintiff thus instituted the instant Suit seeking, *inter alia*, declaration that the Building Permission 1975, the undertaking furnished by the owners and the approvals for development granted pursuant thereto, were valid, subsisting and binding on the Defendants; Defendant No.4 is entitled to an area admeasuring 1341 sq mtrs (corresponding to leased property only) and after reduction of road set back area, Defendant No.4 was entitled to only 483 sq mtrs of land out of the leased land; that the conveyance deeds of the year 2014 and 2020 in favour of the Defendant No.4 were illegal, bad-in-law and not binding on the Plaintiff, if they allow area of the leased property beyond 1341 sq mtrs and consumption of the development potential of the leased property in contravention of the building permission 1975, that the Consent Terms and Decree dated 23rd December 2022 permitting Defendant No.5 to utilize the development potential of the leased land contrary to the building permission 1975 was illegal, non-est and did not bind the Plaintiff and that the leased land cannot be treated as an independent plot and the sanctioned building plan of the year 1975 cannot be amended without the written consent of the Plaintiff.

2.11 In the said Suit, Defendant No.4 took out a Notice of Motion seeking rejection of the Plaint on the grounds, *inter alia*, that there was no cause of action for the institution of the suit and the suit was also barred by the provisions of Section 149 of the Maharashtra Regional Town Planning Act 1966 (“the MRTP Act 1966”). A fresh Suit was barred under the provisions of Order IX Rule 9 of the Code as the previous suit being Suit, No. 881 of 2008, was dismissed for want of prosecution.

2.12 The Notice of Motion was resisted by the Plaintiff.

2.13 By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Notice of Motion opining, *inter alia*, that the Plaint does disclose the cause of action, the ground of bar under Order IX Rule 9 of the Code was procedural and warranted investigation into facts, the Plaint in Suit No. 881 of 2008 cannot be looked into as it constituted a foreign material and the bar under Section 149 of the MRTP Act 1966 was not attracted as the Plaintiff was seeking substantial relief of declaration regarding the actions of the Defendants which impinge upon rights of the Plaintiffs to develop the suit property. The learned Judge was also of the view that the Plaint was not liable to be rejected on the ground that it was barred by law of limitation as it was a mixed question of law and facts and warrants adjudication at the trial.

3. Being aggrieved the Defendant No.4 has invoked the revisional

jurisdiction.

4. I have heard Mr. Dhond, the learned Senior Advocate, for the Applicant-Defendant No.4, Mr. Naidu, the learned Counsel for the Respondent Nos. 2 to 4 and Mr Narula, the learned Counsel for the Plaintiff-Respondent No.1, at some length. The learned Counsel took the Court through the pleadings in the instant Suit and the Complaint and the documents annexed thereto in Suit No. 881 of 2008 and the material on record.

5. Mr. Dhond, the learned Senior Advocate for the Applicant, would urge that the impugned order suffers from the vice of non-application of the principles of law, which govern the rejection of the Complaint, despite copiously extracting those principles. The learned Judge, City Civil Court, simply did not examine the grounds raised by Defendant No.4 and discarded each of the grounds by observing that the grounds were not sustainable. Mr. Dhond would urge that the learned Judge, City Civil Court ought to have read the Complaint and the documents annexed thereto in a meaningful manner. The Complaint in Suit No. 881 of 2008 and the documents annexed thereto form part of the Complaint in the instant Suit. Yet, curiously, the learned Judge observed that the Complaint in Suit No. 881 of 2008 was a foreign material.

6. The learned Judge, City Civil Court completely lost sight of fact that the basis of the previous suit forms the substratum of the claim in the instant Suit.

The Plaintiff had resorted to the device of clever drafting to make out an illusion of cause of action. The substance of the claim of the Plaintiff was that the entire FSI of the larger property was consumed in the construction of Samir apartments, and, therefore, they were entitled to conveyance of the larger property. That is the very basis of the claim of the Plaintiff in the instant Suit. Though the Plaintiffs have cleverly drafted the Complaint, especially the prayers, the cause of action remains the same, urged Mr. Dhond.

7. Mr. Dhond made a strenuous effort to take the Court through the pleadings in the previous Suit and the Complaint and the averments in the instant Suit to draw home the point that the very right which forms the foundation of cause of action in the previous Suit as well as the instant Suit, is one and the same.

8. Mr. Dhond further urged that the explanation sought to be offered in the Complaint regarding the institution and dismissal of the previous Suit itself shows that the Suit is based on the same cause of action. The endeavour of the Plaintiffs to show that the Suit is based on the continuous cause of action is clearly untenable. Thus, the interdict contained in Order IX Rule 9 operates with full force.

9. Mr. Dhond would further urge that, at any rate, the bar under Section 149 of the MRTP Act is clearly attracted. The thrust of the challenge of the

Plaintiffs is to the building plans which have been sanctioned. The fact that the Plaintiffs have made undisguised attempt to camouflage the said challenge ought to have been considered by learned Judge, City Civil Court. A challenge to the legality, validity of the building plans sanctioned in respect the leased property is clearly hit by the provisions contained in Section 149 of the MRTTP Act.

10. To bolster up the submission that successive violation of the right will not give rise to a fresh cause and the Suit will be liable to be dismissed if it is beyond period of limitation counted from the date when the right to sue first accrued, Mr. Dhond placed reliance on a judgment of the Supreme Court in the case of **Khatri Hotels Private Limited & Anr Vs Union of India & Anr.**¹

11. Mr. Naidu, the learned Counsel for Respondent Nos. 2 to 4, supplemented the submissions of Mr. Dhond. Mr. Naidu would urge that the learned Judge, City Civil Court was clearly in error in observing that the documents annexed to the Plaint which included the Plaint in the previous Suit could not be taken into account to appreciate the prayer for rejection of the Plaint. Mr. Naidu, placed a very strong reliance on the judgment of the Supreme Court in the case of **Dahiben Vs Arvinbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and Ors**² wherein it was, *inter alia*, enunciated that under

1 (2011) 9 SCC 126.

2 (2020) 7 SCC 366.

Order VII Rule 9, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the Suit is barred by any law.

12. Mr Naidu also pressed into service the decision of the Supreme Court in the case of **K. Akbar Ali Vs K. Umar Khan & Ors**³ wherein the said principle was reiterated.

13. Mr. Naidu, also placed reliance on the observations of the Supreme Court in the case of **D Ramachandran Vs R.V. Janakiraman & Ors**⁴ and urged that even on the principle of demurrer, the averments in the Plaint if read in conjunction with the documents annexed to the Plaint, especially the plaint in the previous Suit and the copy of the model agreement executed under Section 4 by the members of the Plaintiff-Society (Item 15 at the list of the documents), would clearly indicate that the subsequent suit is based on the same cause of action. The model agreement clearly indicates an area admeasuring 4929.89 sq mtrs only was to be conveyed. The previous Suit as well as the instant Suit have been instituted with an oblique motive to lay claim over the development rights which never belonged to the Plaintiffs, urged Mr. Naidu.

3 2021(14) SCC 51

4 (1999) 3 SCC 267.

14. Lastly, Mr. Naidu placed reliance on a judgment of the learned Single Judge of this Court in the case of **Madhav Atmaram Sahakari and Ors Vs Sumitra Govind Panshikar & Ors**⁵ wherein, in the facts of the said case, this Court held that the second Suit seeking precisely the same reliefs as claimed in the previous Suit which was dismissed in default, precludes the Plaintiff therein from filing a fresh Suit.

15. Mr. Joel Carlos, the learned Counsel for Respondent No.7, submitted that claim of the Plaintiffs that the development of the leased property impairs the rights of the Plaintiffs is palinly unfounded. Attention of the Court was invited to the Affidavit in Reply on behalf of the Municipal Corporation to demonstrate that FSI has become admissible on account of change in DCR, and despite the grant of building permission to develop the leased property still a seizable FSI is available for development of the larger property.

16. In opposition to this Mr. Narula, the learned Counsel for Respondent No.1-Plaintiff, submitted that the Application for rejection of the Plaint was wholly misconceived. Neither the bar under Order IX Rule 9 of the Code is attracted nor the interdict contained in Section 149 of the MRTP Act comes into play. Mr. Narula would urge that the Application for rejection of the Plaint is required to be appreciated on the premise that the averments in the Plaint

⁵ 2019 (3) Mh.L.J. 376.

are true and, yet, the Plaint either does not disclose a cause of action or it is otherwise barred by any law. In the case at hand the objection of the Defendants is rather premised on the merits of the matter.

17. To lend support to these submissions, Mr. Narula placed reliance on the judgments of the Supreme Court in the cases of **Church of Christ Charitable Trust And Educational Charitable Society represented by its Chairman Vs Ponnamman Educational Trust represented by its Chairperson/Managing Trustee**,⁶ **D. Ramachandran Vs R.V. Nanakiraman & Ors**⁷ and **Shakti Bhog Food Industries Limited Vs Central Bank of India & Anr.**⁸

18. Taking the Court through the pleadings in the previous Suit, especially, the prayers therein, Mr. Narula would urge that the previous Suit was for a direction to the developer and the owners to execute a conveyance in favour of the Plaintiff-Society. In the said Suit, the Plaintiff could not have sought the reliefs which are prayed in the instant Suit. Nay, there was no occasion for the Plaintiff-Society to seek those reliefs. After the institution of the said Suit, there was transfer of interest in favour of the Defendant No. 4. The building permission which is in derogation of the building plan of 1975 and thereby impairs the rights of the Plaintiff, was granted in the year 2022. Development activities over the leased property commenced in the year 2021-2022. Thus by

6 (2012) 8 SCC 706.

7 (1999) 3 SCC 267.

8 (2020) 17 SCC 260.

no stretch of imagination it can be said that the Plaintiffs could have sought the reliefs in the previous Suit. Thus, the instant Suit cannot be said to be based on the same cause of action. Resultantly, the purported bar under Order IX of the Code is not all attracted.

19. Mr. Narula would further urge that the bar under Section 149 of the MRTP Act does not come into play as the Plaintiff is seeking reliefs of declaration which are required to be adjudicated by the civil Court. The reference to the building plans in the instant Suit, does not necessarily imply that the challenge is restricted to the building plans only. The Plaintiff is, in fact, asserting the civil rights of the Plaintiff-Society. Therefore, the provisions contained in Section 149 of the MRTP Act cannot be pressed into service to non-suit the Plaintiff.

20. To this end, Mr. Narula placed reliance on the judgment of the Division Bench of this Court in the case of **Raja Bahadur Motilal Poona Mills Ltd And Anr Vs State of Maharashtra & Ors⁹** wherein it was enunciated that under Section 149 of the MRTP Act what is barred is the questioning of an order made under the Act, in the civil Suit. It does not bar any Suit whereby a party to it can be prevented from acting on an action and order made under the Act. The bar spelt out by Section 149 is, therefore, very limited.

⁹ 2002 SCC OnLine Bom 679.

21. Mr. Nurula further submitted that the purported bar under Order IX Rule 9 of the Code is akin to the bar of res judicata as it would warrant investigation into facts to determine whether the previous Suit was based on the same cause of action. A Plaint cannot be rejected on the ground of such a bar. Analogy was sought to drawn by Mr. Narula on the basis of the judgment of the Supreme Court in the case of **Srihari Hanumandas Totala Vs Hemant Vithal Kamat & Ors**¹⁰ wherein it was enunciated that since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

22. I have given careful consideration to the aforesaid submissions. The legal position as regards the determination of a plea of rejection of the Pliant under Order VII Rule 11 of the Code is well-settled by a catena of decisions. In the case of **Dahiben (Supra)** on which reliance was placed by Mr. Naidu, the Supreme Court has elaborately considered the governing provisions and the earlier precedents. The Supreme Court, *inter alia*, enunciated that the underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action was disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the Plaintiff to unnecessarily protract the proceedings

¹⁰ (2021) 9 SCC 99.

in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. The test for exercising the bar under Order VII Rule 11 is that if the averments made in the Plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The Supreme Court after adverting to the an earlier decision in the case of **T. Arivandandam Vs T.V. Satyapal**¹¹ observed that while considering an application under Order VII Rule 11 of the Code what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. The Plaint is required to be read in a meaningful manner and not a formalistic manner. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court. At the stage of consideration for rejection of the Plaint, the pleas taken by the Defendant in the Written Statement and Application for rejection of the Plaint on the merits, would be irrelevant and cannot be adverted to, or taken into consideration.

23. It may be superfluous to multiply the authorities which were cited

¹¹ (1977) 4 SCC 467.

across the bar by the Counsel for the parties.

24. The principal grounds on which rejection of the Pliant was sought on behalf of Defendant No. 4 were, the absence of cause of action., the bar under Order IX Rule 9 of the Code, the bar under Section 149 of the MRTP Act and the Suit being ex-facie barred by law of limitation.

25. Out of these grounds, the plea that there was no cause of action for the institution of the Suit need not detain the Court. The Plaintiff has referred to the developments which have taken place subsequent to the dismissal of the previous Suit, including the grant of deemed conveyance, the challenge thereto by the Plaintiff on the premise that an area larger than the property in respect of which the deemed conveyance has been granted ought to be conveyed, the transfer of interest in favour of Defendant No.4 by the co-Defendants, the development started by Defendant No. 4 over the leased property and the perceived impact of the said development on the rights of the Plaintiff, cumulatively make out a cause of action for the Suit.

26. The leaned Judge, City Civil Court was thus within her rights in observing that a reading of the Plaint as a whole would indicate that the Plaint does diclose a cause of action to institute the Suit.

27. On the aspect of the bar of limitation also, in my considered view, an elaborate examination is not required. On the own showing of Defendant

No.4, the Defendant No.4 has acquired interest in the leased property pursuant to the Deeds of Conveyance executed in the year 2014 and 2020. The developments over the leased property purportedly commenced in the year 2021.

28. The substance of the claim in the Plaint is that FSI admissible qua the leased property has also been consumed for the development of Samir Apartments and thus the development potential of the leased property cannot be further exploited and it is the Plaintiff-Society who is entitled to utilise the development potential of the entire larger property. The cause of action to restrain the development in derogation of such right, claimed by the Plaintiff, would arise when such development commences.

29. Therefore, the submission on behalf of the Defendants that since the first Deed of Conveyance was executed in the year 2014, the Suit instituted in the year 2023 is barred by law of limitation does not merit countenance.

30. This takes me to the thrust of the submission on behalf of the Defendants that the Suit is barred by the provisions of Order IX Rule 9 of the Code. It reads as under:

9. Decree against plaintiff by default bars fresh suit.—(1) Where a Suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of

action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

31. It would be contextually relevant to note the provisions contained in Section 12 of the Code. It reads as under:

“12. Bar to further suit.— Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court of which this Code applies.”

32. A plain reading of the aforesaid provisions would indicate that the bar to the institution of a fresh Suit is in respect of the same cause of action. The identity of the cause of action in the previous Suit (which came to be dismissed for default under Order 9 Rule 8) with the cause of action in the subsequently instituted Suit is the foundation on which the bar under Rule 9 operates. It has to be, thus, clearly demonstrated that the cause of action in the

previous Suit and the subsequently instituted Suit is one and the same. The text of Section 12 makes this position even more clear. It uses the expression, “a further Suit in respect of any particular cause of action”. What a party is, thus, precluded from is, instituting a fresh Suit on the basis of the very same cause of action, for which the previous Suit was instituted.

33. I have carefully perused the averments in the previous Suit and the Complaint in the instant case.

34. First and foremost, it is necessary to note that the previous Suit was instituted singularly for an order and decree to direct the developer and owners to execute a Deed of Conveyance, albeit in respect of a larger property than the one which is described in the Schedule of the model agreement. As a consequential relief, the Plaintiff Society had prayed for an injunction to restrain the developer and owner from alienating, parting with possession or disposing of the Suit property.

35. Mr. Dhond made an endeavour to take the Court through the averments in the Complaint in the previous Suit to urge that the claim for the larger property ademasuring an area of 6271.84 sq mtrs, based on the building plan of 1975 and the purported undertaking given by the owner formed the basis of said Suit. The instant Suit is also based on the said building plan and undertaking not to subdivide the plot. Thus, according to Mr. Dhond, the

underlying cause of action in both the Suits is the same.

36. I am unable to persuade myself to agree with the aforesaid submission.

37. The two claims of the Plaintiffs, namely, first that they are entitled to conveyance of a larger property admeasuring 6271.84 sq mtrs and, second, that the Plaintiff Society only is entitled to exploit the development potential of the larger property of 6271.84 sq mtrs, stand on a different footing. The historical facts referred to by the Plaintiffs in the previous Suit and the instant Suit might not change. However, those historical facts cannot be construed as the very cause of action for both the Suits. The Plaintiff might not succeed in establishing its claim that it is entitled to a larger property admeasuring 6271.84, yet the Plaintiff might on the basis of the building plans of 1975, undertakings given by the owner while obtaining the sanction for development and the approvals, assert that the Plaintiff society alone is entitled to the entire development potential except the FSI then consumed for the development of the leased property.

38. Therefore, the submission on behalf of the Defendant that since the claim of the Plaintiff is based on the building plan 1975, undertaking and approvals, the cause of action for filing the Suit is the same cannot be accepted. The previous Suit was to enforce the obligations of the owners and develoer under MOFA, 1963 to execute conveyance of the land and buildings.

The instant Suit is to enforce the claim of the Plaintiff that only the society is entitled to exploit the development potential of the entire larger property in view of the building plan 1975, undertaking of the owners and the conditions subject to which the approvals were granted.

39. I find substance in the submission of Mr. Narula that in the previous Suit, there was no occasion for the Plaintiffs to claim the reliefs which are sought in the instant Suit. The whole body of developments, which took place in the intervening period, was simply not existent when the previous Suit was instituted for an order for deemed conveyance. It is the transfer of interest in the leased property and the subsequent development of the leased property by Defendant No. 4 that essentially furnishes the cause of action for the instant Suit.

40. On the aspect of the bar under Section 149 of the MRTP Act, it is not the legality and validity of the particular building plans sanctioned by the Defendant Nos. 6 and 7 in favour of Defendant No.4, which is the subject matter of the instant Suit. The Plaintiff-Society is asserting that it is the Plaintiff-Society alone which is entitled to utilise the entire development potential of the larger property. The permission to develop the leased property beyond the FSI which was then consumed for development of the leased property, according to the Plaintiff, impairs the rights of the Plaintiff to utilise

the FSI and development potential of the entire large property. Whether the Plaintiff-Society is entitled to lay such claim and restrain the Defendant No4 from utilising the said FSI to develop the leased property is a matter which squarely falls within the jurisdictional competence of the civil Court.

41. The learned Judge, City Civil Court was, thus, justified in recording a finding that since the sanction for development by Defendant No. 4 involves question of utilisation of the development rights of the property over which the Plaintiffs lay a claim, such a claim can be adjudicated by a Civil Court and the bar under Section 149 of the MRTP Act does not operate.

42. In the totality of the circumstances, in my view, the challenge to the tenability of the Plaint on the ground of bar of Order IX Rule 9 as well as Section 149 of the MRTP Act 1966 does not merit acceptance.

43. The learned Judge, City Civil Court was justified in rejecting the Notice of Motion for rejection of the Plaint.

44. Hence, the following order :

ORDER

- (i) The Civil Revision Application stands rejected.
- (ii) Interim Applications also stand disposed.
- (iii) No costs.

(N.J.JAMADAR, J.)

1. At this stage, Mr. Sawant, the learned Counsel for the applicant, seeks continuation of the ad-interim order passed by this Court on 29th April, 2024.
2. Having regard to the reasons recorded in this order, the prayer for continuation of ad-interim relief, which would imply that the trial court would be precluded from proceeding with the suit, does not appear justifiable.
3. Thus, oral application for continuation of ad-interim relief stands rejected.

(N.J.JAMADAR, J.)