

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 513 OF 2025

M/s. SGC Housing Through Its Partners Sandeep B Shinde and Dhiraj A Khinvasara ..Applicant

Versus

Dattatraya S Vibhute & Ors ...Respondents

Mr. Prasad B Kulkarni, for the Applicants.

CORAM: N. J. JAMADAR, J.

DATE : 7th NOVEMBER 2025

ORDER:

1. Heard Mr. Prasad B Kulkarni, the learned Counsel for the Applicant.
2. This Revision Application is directed against an order dated 22nd July 2025 passed by the learned Civil Judge, Senior Division, Pune whereby an Application preferred by the Applicant-Defendant for rejection of the Plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), came to be rejected.
3. The Respondent No.1 has instituted the Suit for injunction to restrain the Applicant-Defendant No.1 and its agents, attorneys and persons claiming through the Defendant No.1 from disturbing the vacant and peaceful possession of the Plaintiff over the suit property 1(A) posing it to be property 1(C), creating third party interest in suit property 1(A) posing it to be suit property as 1(C) or otherwise, for a

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declaration that the proposed building plan dated 6th January 2018 and or the consequential revised plan sanctioned by the Respondent No.2-Municipal Corporation of the City of Pune, are illegal and void and not binding on the suit property 1(A) and to restrain the Defendant Nos. 1 to 3 from acting upon the said building plan.

4. The Defendant No.1 has preferred an Application for rejection of the Plaint primarily on the ground that the suit seeking a declaration qua the Plan sanctioned by the Defendant No.2-Municipal Corporation is barred by the provisions contained in Section 149 of the Maharashtra Regional And Town Planning Act, 1966 (“the MRTP Act”).

5. By the impugned order, the learned Civil Judge was persuaded to reject the Application for rejection of the Plaint observing *inter alia* that the Plaintiff claims that, the Defendant No.1 and the predecessor-in-title of the Defendant No.1 have illegally and wrongly projected the suit property 1(A), over which the Plaintiff claims proprietary title, as suit property 1(C), and apart from the declaration regarding the legality and validity of the sanctioned plan on the ground that there is misdescription of the property in respect of which the plans have been sanctioned, the Plaintiff has prayed for reliefs of injunction and damages and, therefore, the Plaint cannot be rejected as being barred by the provisions contained in Section 149 of the MRTP Act.

6. Mr. Kulkarni, the learned Counsel for the Applicant, submitted that the principal relief in the Plaint is that of a declaration in respect of the building plan sanctioned by the Respondent No.2-Municipal Corporation. A suit seeking such a declaration is clearly barred by the provisions contained in Section 149 of the MRTP Act. To buttress the submission that such a suit is barred by the provisions of Section 149 of the MRTP Act, Mr. Kulkarni placed reliance on the judgments in the cases of **Satish Gayacharan Trivedi Vs Dr Gopal Ramnarayan Mundhada & Ors,**¹ **Sujala Yeshwant Nitsure & Ors Vs The Municipal Corporation of City of Pune & Ors**² and **Arihant Construction Vs Subhash Kesharmal Barlota & Ors.**³ Reliance was also placed on the judgments of the Supreme Court in the case of **Nikhila Divyang Mehta & Anr Vs Hitesh P Sanghvi & Ors**⁴ and **Correspondence, RBANMS Educational Institution Vs B Gunashekar & Anr,**⁵ to bolster up the case for rejection of the Plaint by invoking the bar under Order VII Rule 11 of the Code.

7. I have perused the averments in the Plaint carefully. It is trite in an Application for rejection of the Plaint only the averments in the Plaint are required to be considered along with the documents annexed with the Plaint. The contentions of the Defendant in the Application for

1 2015(5) Mh.L.J. 463.

2 1995 SCC OnLine Bom 317.

3 2015(6) Mh.L.J. 262.

4 2025 SCC OnLine SC 779.

5 2025 SCC OnLine SC 793.

rejection of the Plaintiff and the defences of the Defendant are not germane for the determination of the Application for the rejection of the Plaintiff. The Plaintiff is required to be read as a whole and that too in a meaningful and not formalistic manner. If an effort is made to show a cause of action, where none exists or to circumvent the bar to the maintainability of the suit by resorting to the clever drafting or camouflaging the real nature of the suit, such an effort is required to be nipped in the bud.

8. At the same time, it is settled by a catena of decisions that a Plaintiff cannot be rejected in part. If even one of the reliefs survives the Suit must go for trial. It is not open to reject the Plaintiff qua a particular property or a particular Defendant or in respect of a part of the cause of action.

9. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of **Sejal Glass Limited vs Navilan Merchants Private Limited**⁶, wherein after adverting to the various judgments of the High Courts, it was enunciated that if the plaintiff survives against certain defendant and/or properties, Order VII Rule 11(d) will have no application at all, and the suit as a whole must then proceed to trial.

10. This position was reiterated by the Supreme Court in the case of **Madhav Prasad Aggarwal and another vs. Axis Bank Limited and**

6 (2018) 11 Supreme Court Cases 780.

another⁷. The observations of the Supreme Court in paragraphs 10 and 12 are of material significance; they read as under:

“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) of 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 Order 7 Rule 11 (d) of 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 the case of *Sejal Glass Limited* (supra) 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 No.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) of CPC will have no application at all, and the suit as a whole must then proceed to trial.

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-

compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the suit concerned is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.”

(emphasis supplied)

11. On the aforesaid touchstone reverting to the facts of the case, from the perusal of the averments in the Plaint it becomes abundantly clear that the principal grievance of the Plaintiff is that the Defendant No.1 and the predecessor-in-title of the Defendant No.1, have illegally and wrongfully posed the suit property 1(A), over which the Plaintiff claims proprietary title, as suit property 1(C) and got the building plan sanctioned; the Defendant No.1 has started to cause obstruction to the possession and enjoyment of the Plaintiff over the suit property 1(A) claiming it to be suit property 1(C), and has also sought compensation for the damage to the suit property 1(A).

12. There can be no quarrel with the proposition that the Civil Court's jurisdiction with regard to the matters covered by the provisions of Section 149 of the MRTP Act is expressly barred. However, in the case at hand, the essential dispute between the parties appears to be over the identity of the suit properties 1(A) and 1(C) and, consequently, the proprietary title over the suit properties. In the facts of the case, the relief of injunction based on the claim of possession would survive *dehors* the prayer of declaration in respect of the sanctioned plan. Thus, at best, the prayer of the Defendant No.1 for rejection of the Plaint falls in the realm of rejection of the Plaint in part with regard to the prayer of declaration in respect of the sanctioned building plan.

13. In the aforesaid view of the matter, the learned Civil Judge was within his rights in rejecting the Application for rejection of the Plaint.

14. There is neither any jurisdictional error nor material irregularity in the exercise of the jurisdiction by the learned Civil Judge. Resultantly, the Revision Application deserves to be rejected.

15. Hence, the following order:

: O R D E R :

The Civil Revision Application stands rejected.

No costs.

[N. J. JAMADAR, J.]