

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 564 OF 2025**

Saurabraj Srivastava & Anr. ..Applicants

**Versus**

Nyati Highland Eastern Foundation & Anr. ...Respondents

Mr. Yogesh Patil, for the Applicants.

**CORAM: N. J. JAMADAR, J.**

**DATE : 01<sup>st</sup> DECEMBER 2025**

**P.C.:**

1. Heard Mr. Yogesh Patil, the learned Counsel for the applicants.

2. This Civil Revision Application is directed against an order dated 1<sup>st</sup> November, 2025 passed by the Civil Judge, Junior Division, Pune whereby an application preferred by the applicant/Defendant Nos. 1 & 2 for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.

3. Mr. Yogesh Patil, the learned Counsel for the applicants submitted that, the learned Civil Judge, did not consider the

aspect of express bar to the suit under the provisions of Section 149 of the Maharashtra Regional & Town Planning Act, 1966, which was specifically raised by the defendants in view of the prayer in the suit that the Municipal Corporation be directed to revise the sanctioned plan in respect of Plot No. D-02 , of which the defendants are the owners.

4. I have perused averments in the plaint carefully. The foundational premise of the suit is that in the agreement for sale executed by the Nyati Builders Pvt. Ltd., who developed the scheme of 58 plots, there is a covenant that, the purchaser shall construct a residential bungalow/structure with a height of not more than 30 feet on the side plot, in accordance with the building regulations in force. The Defendant Nos. 1 & 2 who acquired the Plot No. D-02 from Mrs. Aparna Jha & Mr. Chandraketu Jha, the original purchasers, have surreptitiously obtained permission to construct a bungalow on the subject plot having a height of 45 Sq. feet. Hence, the defendants be restrained from carrying out construction in excess of 30 feet height. It is true, the plaintiffs have also prayed for a direction to the Planning Authority to revise the sanctioned plan in respect of the suit premises so as to restrict the height of the building to 30 feet.

5. Section 149 of the Maharashtra Regional & Town Planning Act, 1966 gives finality to the orders passed by the State Government, Regional Board, Planning Authority or Development Authority under the provisions of the said Act and declares that, such order or direction shall not be questioned in the suit or the legal proceedings.

6. In the case at hand, the suit is essentially for enforcement of the contractual obligations between the developer and the purchasers. The principle prayer in the plaint is to restrain the Defendant Nos. 1 & 2 from committing breach of the said contractual obligation; by which the Defendant Nos. 1 & 2, like all other purchasers of the plots, are bound. Thus, it cannot be said that, there was no cause of action. Nor the suit can be said to be *ex facie* barred by the provisions of Section 149 of the Maharashtra Regional & Town Planning Act, 1966.

7. It is trite, a plaint cannot be rejected in part. Even if, one of the prayers survives, the suit must go for trial. Thus, the learned Civil Judge was justified in rejecting the application for rejection of the plaint.

8. 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*<sup>1</sup>, wherein after adverting to the various judgments of the High Courts, it was enunciated that if the plaint 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.

9. Civil Revision Application, therefore, stands dismissed.

[N. J. JAMADAR, J.]

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**1** (2018) 11 SCC 780.