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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO. 4373 OF 2025

IN

SUIT NO. 81 OF 2025

Kayas Ilyas Khatri .. Applicant.

IN THE MATTER OF:

Tasneem Khatri and Ors. .. Plaintiffs

Versus

Yunus Ilyas Khatri and Ors. .. Defendants

Adv. Subhash Jha a/w Adv. Siddharth Jha, Adv. Sumeet Upadhaya
and Adv. Ashish Saxena i/b Law Global for the Plaintiffs.

Adv. Dharam Jumanani a/w Adv. Mihir Nerulkar and Adv. Vijeet Trivedi
i/b Ganesh & Co. for the Org. Defendants/Applicant in IA/4373/2025.

CORAM: FIRDOSH P. POONIWALLA, J.

RESERVED ON : SEPTEMBER 10, 2025

PRONOUNCED ON : SEPTEMBER 23, 2025

JUDGEMENT :

1. This Interim Application has been filed by the Defendants seeking rejection of the present suit under Order VII Rule 11 of the Code of Civil Procedure, 1908 (herein after referred to as “the CPC”).
2. The Plaintiffs have filed an Affidavit in Reply dated 3rd September, 2024 of Plaintiff No.1 to oppose the Interim Application.

3. The first ground on which the Defendants have sought rejection of the Plaint under Order VII Rule 11 of the CPC is that the Plaint does not disclose any cause of action.

4. Before we consider the rival contentions of the parties on whether the Plaint discloses any cause of action or not, it would be relevant to refer to the contents of the Plaint.

5. The Plaintiff was married to Defendant No.8 and out of the said wedlock Plaintiff Nos. 2 to 5 were born. Defendant Nos. 1 to 9 are brothers and sons of Ilyas Khatri, who passed away on 19th April, 2020. Defendant Nos. 10 to 12 are the partnership firms in which Defendant Nos. 1 to 9 and the deceased Ilyas Khatri were partners.

6. By the present suit, the Plaintiffs seek a declaration that they are entitled to a 1/11th share, right, title and interest in the properties standing, either jointly and/or singularly in the name of the Defendants and/or the late Ilyas Khatri, and/or in the name(s) of other entities/individuals not known to the Plaintiffs.

7. It is the case of the Plaintiffs that, in 2012, Defendant No.8, the husband of Plaintiff No.1, abandoned the Plaintiffs and got married with Anam, the wife of Defendant No.9, who is his own brother, and since then the Plaintiffs and Defendant No.8 are residing separately. It is the case of the

Plaintiffs that Defendant No.8 did not spend even a single farthing on the Plaintiffs since 2012.

8. Further, it is the case of the Plaintiffs that, during his lifetime, Ilyas Khatri made Defendant No.8 execute a Memorandum of Understanding (MoU) dated 10th July, 2013 and a Declaration-cum- Undertaking dated 10th July, 2013. Further Ilyas Khatri himself executed an Affidavit on 10th July 2013 in which he stated that he had removed his son Defendant No.8 from all his movable and immovable properties.

9. It is further the case of the Plaintiffs that all the aforesaid documents are in the nature of family arrangements and all the children of Ilyas Khatri, who are Defendants in the Suit, are bound by the said documents.

10. It is also the case of the Plaintiffs that, by the aforesaid documents, it was agreed amongst the family members, that the share in the various properties of Defendant No. 8 would go to the Plaintiffs. The Defendants, on account of there being *inter se* disputes and in fighting, are contemplating to dispose of the various properties spread in different locations to the detriment of the Plaintiffs and/or without accounting for the same. It is in these circumstances, the Plaintiffs were constrained to file the present Suit seeking a declaration in respect of a 1/11th undivided share. Similarly, the Plaintiffs are seeking a decree of partition by metes and bounds of their 1/11th share of the properties. The Plaintiffs are also praying for an order and decree

to put the Plaintiffs in separate and exclusive possession of their 1/11th share in the properties.

11. Mr. Dharam Jumani, the learned counsel appearing on behalf of the Applicants/Original Defendants, submitted that the Plaintiffs had claimed 1/11th share in the joint family properties of the Defendants. He submitted that the Plaintiffs case is that the properties belong to the father-in-law of the first Plaintiff and upon his death they devolve equally upon the 9 sons such that each son gets 11% of the share. Mr. Jumani submitted that the same is claimed on the basis of documents which are referred to in the Plaint.

12. Mr. Jumani further submitted that, in paragraph 10 of the Plaint, it is the Plaintiffs' own case that her husband, i.e. Defendant No.8, was dis-entitled to the properties of the late Ilyas Khatri by virtue of the MoU dated 10th July, 2013, the Declaration-cum-Undertaking dated 10th July, 2013 and the Affidavit dated 10th July, 2013 executed by Ilyas Khatri. Mr. Jumani submitted that if Defendant No.8 himself was dis-entitled to any properties of late Ilyas Khatri, then the Plaintiffs would not be entitled to any share in the said property as they were claiming through Defendant No.8.

13. Further, Mr. Jumani, submitted that the suit was based on the concept of Joint Family Property and that there was no concept of Joint Family Property in Mohamedan Law. In this context, Mr. Jumani referred to a judgement of the Delhi High Court in ***Mohd. Nadeem Vs. Mohd. Rafi 2020***

SCC Online Delhi 1818. Mr. Jumaní submitted that, for all these reasons, the Plaintiff does not disclose any cause of action.

14. On the other hand, Mr. Subhash Jha, the learned counsel appearing on behalf of the Plaintiffs, referred to the MoU dated 10th July, 2013, the Declaration-cum-Undertaking dated 10th July, 2013 and the Affidavit executed by late Ilyas Khatri on 10th July 2013. Mr. Jha submitted that these documents were binding on the Defendants and the claim of the Plaintiff was based on these documents. Mr. Jha, submitted that, in these circumstances, the Plaintiff definitely disclosed a cause of action.

15. In support of his submissions that the Plaintiff discloses a cause of action, Mr. Jha referred to the Judgement of a single Judge of this Court in ***Ajay Kumar Garg (Interim Application (L) No. 9684 of 2021 in Suit No. 1131 of 2021)***, a Division Bench Judgement of the this Court in ***Ajay Kumar Garg (Appeal (L) No. 15935 of 2022)*** and a Judgement of the Karnataka High Court in ***Samuilla Khan & Ors. Vs. Sirajuddin Macci Manu / KA/ 1248/2025***.

16. The Judgement of the Single Judge of this Court in ***Ajay Kumar Garg (supra)*** lays down the contours of the provisions contained in Order VII Rule 11 of the CPC. Paragraph 29 of the said Judgement is relevant in that regard and is set out here under :

“29. The contours of the provisions contained in Order VII Rule 11 of the Code which empower the Court to reject the Plaintiff for the causes set out in clause (a) to (f) of sub-rule (1) are fairly well recognized. The power under Order VII Rule 11 can be

exercised by the Court at any stage of the suit. The stage of the proceeding does not matter. What is of decisive significance is the averments in the Complaint. To arrive at a decision as to whether a complaint is required to be rejected, for not disclosing a cause of action or being barred by any law, only the averments in the Complaint are germane. The pleas in defence are wholly irrelevant. The Complaint is required to be read as a whole. The averments in the Complaint are required to be read in a meaningful manner. It is not the formal reading of the Complaint but a meaningful reading which would serve as the light-house to find out whether the Complaint discloses a cause of action. These principles are well settled by a catena of decisions.”

17. As held by this Court in the said Judgement, to arrive at a decision as to whether a Complaint is required to be rejected for not disclosing a cause of action or being barred by law only averments in the Complaint are germane. Further, the Complaint is required to be read as a whole and the averments in the Complaint are required to be read in a meaningful manner. It is not a formal reading of the Complaint but a meaningful reading which would serve as a light house to find out whether the Complaint discloses a cause of action.

18. Applying these principles to the present case, it is very clear that, in the present Suit, the Plaintiffs have sought reliefs on the basis of the MoU dated 10th July, 2013, the Declaration-cum-Undertaking dated 10th July, 2013 and the Affidavit executed by late Ilyas Khatri on 10th July, 2013. It is the case of the Plaintiffs that, on the basis of these documents, they are entitled to the claims made by them in the present Suit. In my view, therefore, if the Complaint is read as a whole and in a meaningful manner, it is very clear that the Complaint discloses a cause of action. The cause of action is a bundle of facts which

entitles the Plaintiffs to sue. In the present case, the cause of action is based on the aforesaid three documents. Therefore, it cannot be said that the Plaint does not disclose a cause of action. Obviously, whether the Plaintiffs are entitled to the reliefs sought in the Suit on the basis of the said documents is an entirely different question and depends on the merits of the matter, which will be decided at the trial of the Suit.

19. For all the aforesaid reasons, in my view, the Plaint cannot be rejected under Order VII Rule 11 on the ground that it does not disclose a cause of action.

20. The second ground on which the Defendants have sought rejection of the Plaint under Order VII Rule 11 of the CPC is that the Plaintiffs have not paid the requisite Court Fees for the present Suit. Mr. Jumani, the learned counsel appearing on behalf of the Defendants, submitted that, though the Plaintiffs have mentioned the properties in the Suit to be worth more than Rs. 5,000 Crores, and the Plaintiffs are claiming 1/11th right in these properties, the Plaintiffs have not paid the maximum amount of Court fees of Rs. 3,00,000/- which they are bound to pay under Maharashtra Court Fees Act, 1959. Mr. Jumani submitted that the Plaintiffs are claiming exemption from payment of Court fees under Maharashtra Government Notifications dated 1st October, 1994 and 23rd March, 2000 respectively, which according to them exempts woman litigants from payment of Court fees. Mr. Jumani

submitted that it is the case of the Plaintiffs that, since Plaintiff No.1 is a woman, and since on the date of filing of the Suit, Plaintiff Nos. 4 and 5 were minor children, the Plaintiffs were exempted from payment of Court fees.

21. Mr. Jumani submitted that a bare perusal of the said notifications dated 1st October, 1994 and 23rd March, 2000 make it clear that the exemption is applicable to only those woman litigants, whose property disputes arise out of matrimonial matters. Mr. Jumani submitted that these notifications have been interpreted by this Court in several judgements which have held that the intention of the legislature and the Government is to restrict the exemption only to property disputes that arise out of matrimonial matters. Mr. Jumani submitted it is now settled law that a woman litigant who has filed a suit for partition of property is not entitled to exemption of Court fees under the above notifications.

22. Further, Mr. Jumani submitted that Plaintiff Nos. 2 and 3, who are adult males, and even Plaintiff Nos. 4 and 5, are not entitled to seek exemption from payment of Court fees. Mr. Jumani further submitted that the adult male children of Plaintiff No.1, being Plaintiff Nos. 2 and 3, are liable to pay the full Court fees for their share of the claim.

23. Mr. Jumani, submitted that, in these circumstances, the Plaint filed in the present suit ought to be rejected under Order VII Rule 11 of the CPC for non payment of Court fees.

24. In support of his submissions, Mr. Jumanı relied upon a decision of this Court in *Harsha Pradeep Patil Vs. Sayankabai Ragho Patil 2016 SCC Online Bom 8918* and to the decision of this Court in *Aarti Vs. Vijay 2019 (1) Mh. L. J. 650*.

25. On the other hand, Mr. Jha, the learned counsel appearing on behalf of the Plaintiff, relied upon the judgements of this Court in *Vidya Shivajirao Patil 1992 (2) Maharashtra Law Journal 643* and *Majlis Manch Vs. Registry Family Court at Bandra (Public Interest Litigation 72 of 2016)* and submitted that, according to these judgements, these notifications have to be given a broader and purposive interpretation, and if the same is done, then the Plaintiffs will be entitled to exemption from payment of Court fees.

26. Notification dated 1st October, 1994 exempts woman litigants from payment of Court fees in respect of cases relating to

a) maintenance, b) property disputes, c) violence and d) divorce.

27. The Notification dated 23rd March, 2000 has clarified that the expression “property disputes”, in the notification dated 1st October, 1994 shall mean property disputes arising out of and concerning matrimonial matters.

28. In *Harsha Pradeep Patil, (supra)* this Court has considered both the aforesaid notifications and has come to a conclusion that a Suit for partition by a woman litigant would not be entitled to exemption from payment of

Court fees under the said Notifications. Paragraphs 2, 7 and 8 of the decision in *Harsha Patil (supra)* are relevant and are set out here under :

“2. Both the sides placed reliance on some reported cases in which there is interpretation of the two notifications issued by the State Government. The notifications are as under : -

“REVENUE AND FORESTS DEPARTMENT

Mantralaya, Bombay 400032, dated 1st October, 1994.
Bombay Court Fees Act, 1959.

No. STP. 1094/CR-859/M-1 - Whereas, the Government of Maharashtra has recently announced a policy with a view to promote the welfare of the woman;

And whereas, the same welfare policy for woman, inter alia, provides for exemption of Court fees for woman litigants in cases relating to maintenance, property right, violence and divorce;

And whereas, section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), empowers the State Government by notification in the Official Gazette to reduce or to remit any of the fees mentioned in the First and Second Schedules to that Act;

Now, therefore, in exercise of the powers conferred by section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby remits the fees payable by woman litigants on any of the complaints, applications, petitions, Memorandum of appeals or any other documents specified in the First and Second Schedules to the said Act, to be filed in any Civil, Family or Criminal Courts in respect of cases relating to (a) maintenance, (b) property disputes (c) violence and (d) divorce.

By order and in the name of the Governor of Maharashtra.

HARSHAWARDHAN GAJBHIYE
Deputy Secretary to Government.”

“REVENUE AND FORESTS DEPARTMENT

*Mantralaya, Bombay 400032, dated 23rd March, 2000
Bombay Court Fees Act, 1959.*

No. S. 30/2000/673/CR-199/M-1 - in exercise of the powers conferred by section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby amends the Government Notification, Revenue and Forests Department No. STP.1094/CR-859/M-1 dated the 1st October, 1994, as follows : -In the said Notification, the following Explanation shall be added at the end, namely : -

“Explanation - The expression “property disputes” shall mean property disputes arising out of and concerning matrimonial matters.”

By order and in the name of the Governor of Maharashtra.

*P.G. CHHATRE
Deputy Secretary to Government.”*

7. In the case reported as 2013 (7) ALL MR 138 (Shrinivas v. Savitribai) learned Single Judge used the observations made by the Division Bench at paragraph 26-D, quoted above, and held that woman litigant, who has filed suit for partition against her in-laws after the death of her husband, is not entitled to exemption of Court fees under the aforesaid Government Notifications.

8. This Court would like to use the observations made by the Division Bench, quoted above, and also the interpretation of the decision made by the learned Single Judge in the case of Shrinivas (cited supra). This Court holds that when suit is filed by woman litigant for relief of partition against her in laws, she cannot get the benefit of the aforesaid Government Notifications as the matter is not between the woman litigant and her husband and such matters are excluded due to explanation added to the Notification in the year 2000. So, this Court holds that no interference is warranted in the order made by the learned Judge of the trial Court. In the result, the petition stands dismissed.”

29. Further, the same view has been taken by this Court in ***Aarti Vs. Vijay (supra)*** wherein this Court has again held that a dispute relating to partition is not a “property dispute” within the meaning of the 1994 notification. Paragraphs 6, 7 , 9 and 10 of the judgement in ***Aarti Vs. Vijay (supra)*** are relevant and are set out here under :

“6. In the aforesaid case, the application had been filed by the woman for issuance of Probate of the Will of her deceased husband. The Division Bench held that such an application would not be covered by 1994 notification as the clarification issued in the year 2000 made it clear that it is only those property disputes which arise out of and which concern matrimonial matters which enjoy such remission. In the opinion of the Division Bench, an application filed for issuance of Probate of deceased husband's Will is not a dispute concerning matrimonial matter. The observations of the Division Bench made in paragraph 26 are relevant and they are reproduced as under:

“C) Furthermore it is pertinent to differentiate between matrimonial matters and matrimonial relationship as the two terms are not synonymous and hence the term ‘matrimonial matters’ arising in the Notification of 23-3-2000 cannot be replaced by ‘matrimonial relationship’ so as to bring a petition filed by a widow for probate of her deceased husband's Will, within the ambit of the Notification.

D) Lastly, the words, ‘property dispute arising out of or concerning ‘matrimonial matters’ should be given their plain and simple meaning, that is, a dispute arising between parties to a marriage, (attention may be brought to the reference made by Deshmukh, J. to the Family Courts Act sub-section (1) section 7, to elucidate the meaning of the term ‘matrimonial matters’) and should therefore exclude testamentary petitions wherein not only is there an absence of a dispute, other than in cases when somebody files a caveat, it is not a matter between two parties to a marriage.”

7. *In the case of Harsha Pradeep Patil v. Sayankabai Ragho Patil, reported in 2016 MhLJ Online 87 = 2017 (1) Bom.C.R. 86, learned Single Judge of this Court while deciding the similar issue held that a suit filed by the widow against her brother-in-law seeking partition of property in which her husband was a coparcener is not covered by 1994 Notification in view of the clarification later on given by the Government. Similar are the judgments rendered by several other Benches of this Court presided over by respective learned Single Judges.*

9. *Learned counsel for the petitioner also relies upon the case of Manoramabai Keshav Joshi v. Arun Keshav Joshi and another, reported in 2008 (1) Mh.L.J. 905, in which, it has been held that the scheme of 1994 notification and 2000 clarification being beneficial for woman, a liberal view while understanding the meaning of the term “property dispute” be taken and accordingly a dispute in respect of property, having its basis in the matrimonial relationship between the woman and her husband, was seen in that case as a property dispute between the mother and the son. This judgment also does not take into account the law laid down by the Division Bench of this Court in the case of Girish (supra) and, therefore, has to be considered as a judgment rendered per incuriam.*

10. *In view of above, the impugned orders dated 14-3-2016 and 23-6-2016 passed by the Courts below taking a view that the present dispute between the parties, a dispute relating to partition is not a property dispute within the meaning of 1994 notification cannot be held to be incorrect or illegal. There is no merit in this petition.”*

30. In my view, in the light of these judgements holding that a woman litigant is not entitled to exemption from payment of Court fees in a suit relating to partition as the same is not a suit relating to a “property dispute” falling within the 1994 notification, Plaintiff No.1, who has sued for partition, is not exempted from payment of Court fees and would be required to pay the full Court fees of Rs. 3,00,000/-. Further, in any case, Plaintiff Nos. 2 and 3

are adult males, and for that reason also, these Plaintiffs would not be entitled to exemption from payment of Court fees under the said Notification.

31. In my view, in the light of the aforesaid judgements, clearly holding that a woman litigant, who has filed a suit for partition, is not entitled to exemption from payment of Court fees under the aforesaid notifications, the judgements in ***Vidya Shivajirao Patil (supra)*** and ***Majli Munch (supra)*** relied upon by Mr. Jha do not take the case of the Plaintiff any further.

32. For all the aforesaid reasons, the Plaintiffs would be required to pay Court fees of Rs.3,00,000/- as they have claimed that the Suit properties are worth Rs.5,000 crores and that they are entitled to 1/11th of the suit properties.

33. Order VII Rule 11 (c) of the CPC reads as under :

“(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.”

34. As per the provisions of Order VII Rule 11 (c), a Plaint can be rejected on the ground that no Court fees have been paid or the Court fees paid are deficit if the Plaintiffs, on being required by the Court to pay requisite Court fees within a time to be fixed by the Court, fail to do so. In paragraph 9 of their Affidavit-in-Reply to the Interim Application, the Plaintiffs have offered

to pay the Court fees if this Court comes to the conclusion that they are liable to pay the Court fees. In these circumstances, the Plaintiffs will have to be given an opportunity to pay the requisite Court fees of Rs. 300,000/- within a period of time fixed by the Court, and, if the Plaintiffs fail to do so, then the present suit would be liable to be rejected under Order VII Rule 11 (c) of the CPC.

35. For the aforesaid reasons, I hereby pass the following Order :

- (a) the Plaintiffs are directed to pay Court fees of Rs. 3,00,000/- within a period of 4 weeks from the date of uploading of this Order.
- b) If the Plaintiffs fail or neglect to pay the court fees of Rs.3,00,000/- within a period of 4 weeks from the date of the uploading of this Order, then the Plaint will stand rejected under Order VII Rule 11(c) of the Code of Civil Procedure 1908.
- c) In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONTIWALLA, J.]