



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

APPEAL AGAINST ORDER NO.09 OF 2019

1. Branch Manager,
Nishant Multi State Co-op.
Credit Society Limited,
Akola, Branch Ranpise Nagar,
Akola, Jawahar Nagar Square,
Akola, Tq. & Dist. Akola.
2. Special Debt Recovery Officer,
Nishant Multi State Co-op.
Credit Society Limited, Akola,
at Nishant Tower Akola, Tq. And
dist. Akola

.....APPELLANTS
On RA

...V E R S U S...

1. Devanand Ramrao Pethkar,
(Deceased through L.Rs.)
 - A] Smt. Arti Wd/o Devanand
Pethkar, Aged about 32 years,
Occ. Household work,
 - B] Sai S/o Devanand Pethkar,
Aged about 6 years, Occ: Edu.
Minor through natural
Guardian mother Smt. Arti Wd/o
Devanand Pethkar
Both R/o Duplex No.1, Swami
Samarth Vihar, Trivedi Layout,
Moti Umari, Akola,
Tq.and Dist.
2. Ajabrao s/o Ramrao Tale,
Aged about 51 years,
Occ: Business, R/o 1st Floor
Sanmitra Complex,
C/o M/s. Tale Constructions
1st Floor, Sanmitra complex,
Mahasul colony, Akola,
Tq. And Dist. Akola.

Amended as per
Court's order
dated 06.02.2023.

3. Sunil Rajaram Lagad (dead),
Through LRs

3-a. Sunanda Rajaram Lagad,
Aged about 60 years, Occ: Service,

3.b Saurabh Sunil Lagad,
Aged about 35 years, Oc: Business,
Both R/o Vidya Nagar, Gaurakshan Road, Akola.

3.c Sonal Sanjay Jhapparde,
Aged about 26 years, Occ: Housewife,
R/o Shivaji Nagar, Akola.

.....**RESPONDENTS**

On R.A.

Shri J.B. Gandhi, Advocate for appellant.

Shri A.M. Tirukh, Advocate for respondents.

CORAM: M.W. CHANDWANI, J.

DATED : 31.07.2025

ORAL JUDGMENT:

1. Heard. **Admit.**

2. The appellants have challenged the order dated 15.10.2018 passed by the learned District Judge, Akola in Regular Civil Appeal No.107/2017, thereby remanding the matter for fresh consideration.

The brief facts of the case are as under:

3. Respondent no.1-Devanand Petkar (original plaintiff) filed a suit against respondent nos.2 and 3 – owner and developer (original defendant nos.1 and 2) for specific performance of contract. Thereafter, the plaint was amended and appellants – Multi State Cooperative Credit Society came to be joined as

defendant nos.3 and 4 and prayer 2(a) was also added seeking a declaration that the appellants have no right to claim any propriety over the suit property on the basis of mortgage-deed. The appellants filed an application under Order VII Rule 11 of the Code of Civil Procedure before the trial Court on the premise that the original plaintiff did not issue any statutory notice contemplated under Section 164 of the Maharashtra Cooperative Societies Act, 1960 (for short "**MSC Act**"). The learned trial Court appreciated the submissions made by the appellants and rejected the plaint in its entirety. Feeling aggrieved, the original plaintiff filed an appeal before the learned District Judge, Akola. During the pendency of the appeal, an application under Order XLI Rule 27 came to be filed to produce the notice issued by the original plaintiff to the appellants and the reply given by the appellants to the said notice.

4. The learned District Judge, after considering the notice issued to the appellants observed that the application for rejection of plaint requires reconsideration. However, in the operative order, the learned District Judge directed the trial Court to proceed in the matter and decide the suit on merits by providing an opportunity to both the parties to the suit. The appellants are aggrieved by the directions given by the first

appellate Court in the operative order for deciding the suit on merits.

5. Shri Tirukh, learned counsel for the respondents fairly submits that in its observation, the first appellate Court is of the opinion that the application under Order VII Rule 11 requires reconsideration in wake of the statutory notice issued to the appellants and the reply given by it. Therefore, the trial Court needs to reconsider the application under Order VII Rule 11 of the CPC afresh and to that extent, the operative order of the first appellate Court requires modification.

6. I find substance in the submissions of the learned counsels appearing for the respective parties that in fact, the first appellate Court ought to have mentioned that the trial Court shall proceed to determine the application afresh in explicit terms so that the trial Court should not get confused by the directions in the operative and should not proceed to decide the suit on merits without considering the application filed under Order VII Rule 11.

7. To that extent, the appeal succeeds. The anxiety expressed by the learned counsel for the appellants is that, the copy of notice and its reply produced by the plaintiff is not a notice within the meaning of Section 164 of the MSC Act and the trial Court should not get carried away with the order of the first

appellate Court allowing the document to be produced on record, treating it as a notice under Section 164 of the MSC Act.

8. With the assistance of Mr. Tirukh, learned counsel for the respondents, I have gone through the order. I find substance in his argument that nowhere the first appellate Court has held it as a notice under Section 164 of the MSC Act. It is for the trial Court to decide whether the copy of notice produced by the respondents herein, is a notice within the meaning of Section 164 of the MSC Act. The contention in this regard is kept open for both the parties to be argued before the trial Court alongwith all other grounds which have been raised in this appeal.

9. In the abovesaid terms, the appeal is disposed of. No order as to costs.

JUDGE

Wagh