



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

**CIVIL REVISION APPLICATION NO. 92 OF 2024**

Narayan S/o. Pannalal Agrawal,  
Aged about 65 years, Occupation : Business,  
R/o. N. P. Trading, Near Agriculture  
Produce Marketing Committee,  
Civil Lines Risod, Tahsil Risod and  
District : Washim.

**... APPLICANT**  
(Ori. Def. No.3 on R.A.)

**...VERSUS...**

1. Santosh s/o. Rambhau Narwade,  
Age 52 years, Occupation : Business,  
R/o. Samartha Nagar, Near Tahsil Office,  
Risod, Tahsil Risod and District : Washim. (Ori. Plaintiff on R.A.)
2. Administrator, Agriculture Produce Marketing  
Committee, Civil Lines, Risod,  
Tahsil Risod and District : Washim. (Ori. Def. No.1 on R.A.)
3. Secretary, Agriculture Produce Marketing  
Committee, Civil Lines, Risod, Tahsil : Risod  
and District : Washim. (Ori. Def. No.2 on R.A.)

**...NON-APPLICANTS**

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Mr. V. B. Gawali, Advocate for Applicant.  
Mr. B. T. Parwe, Advocate for Non-applicant No.1.  
Mr. K. P. Mahalle, Advocate for Non-applicant No.3.  
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**CORAM : MRS. VRUSHALI V. JOSHI, J.**  
**JUDGMENT RESERVED ON : 09.07.2025**  
**JUDGMENT PRONOUNCED ON : 05.08.2025**

**JUDGMENT :**

1. **Rule.** Rule is made returnable forthwith. Heard finally by  
consent of learned Counsel appearing for the parties.

2. This revision application is preferred by the applicant/original defendant No.3, challenging the order dated 28.07.2023 passed by the learned Joint Civil Judge Junior Division, Risod, District Washim below Exhibit-17 thereby rejecting the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint/dismissal of suit i.e. Regular Civil Suit No.26/2023.

3. The facts in brief are stated as under :-

The applicant/defendant No.3 and the non-applicant No.1/plaintiff are lease holders of open space granted by non-applicant Nos.2 and 3. The applicant is having lease hold right on 3 feet lane adjacent to his constructed shop. In Regular Civil Suit No.26/2023, filed over the dispute of measurement of dimensions of the plot involving execution of lease deed for the purpose of calculation of years of lease to be kept on hold which is for 51 years as of now, the applicant/defendant No.3 filed an application on 16.03.2023 for rejection of plaint on the ground that the jurisdiction of Civil Court is barred in view of the provisions of Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (A.P.M.C. Act). It is averred by the applicant/defendant No.3 that non-applicant No.1/plaintiff claims for the dimensions of 23 x 40 feet which is equal to 920 sq.ft. however, it is 20 x 40 feet, i.e., 800 sq.ft. of the said lane as per

the lease deed executed by non-applicant Nos.2 and 3 in favour of non-applicant No.1/plaintiff.

The non-applicants Nos.2 and 3 conducted spot inspection on 27.11.2021 in view of the complaint made by the applicant/defendant No.3 post their execution of lease deed in favour of the applicant on 21.09.2020 with respect to open space having dimensions 40 x 25 feet that comes to 1000 feet. Furthermore, the non-applicant Nos.2 and 3 have not responded to request of the applicant, an additional complaint was made to the District Deputy Registrar, Washim for supplying the report of measurement conducted by Engineer of Nagar Parishad, Risod. On another complaint made by the applicant on 27.01.2023 due to non-action of the said non-applicants, a communication was issued inviting objections, if any, from the applicant and non-applicant No.1 towards the possession of 3 feet lane.

4. The learned Counsel on behalf of the applicant, Mr. Gawali, submitted that, the learned Trial Court failed to consider that there is an appeal filed by non-applicant No.1 which is still pending before the statutory authority. In the present case, notice has not been issued by the non-applicant No.1 under Section 55 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, before filing a suit. It was further contended by the learned Counsel on behalf of

the applicant that, Section 52B creates a bar to file a suit, as an alternate and efficacious remedy is provided under the said Act. It was specifically pleaded that, in view of the provisions of Section 32(e) of the said Act, by giving an opportunity of hearing to the concerned, the non-applicant Nos. 2 and 3 are authorized to remove encroachment from the land of Market Committee. They already have initiated the action for the said purposes which cannot be questioned before the Civil Court.

5. Per contra, learned Counsel on behalf of the non-applicant No.1 strongly opposed the arguments advanced on behalf of the applicant. The learned Counsel for the non-applicant No.1/original plaintiff, Mr. Parwe, submitted that Regular Civil Suit No.26/2023 falls within the ambit of Section 38 of the Specific Relief Act. Considering the nature of suit, the non-applicant No.1 is not barred to avail remedy before the Civil Court. There is no express or implied bar in A.P.M.C. Act to file suit for injunction. No any order of A.P.M.C. is challenged by the applicant in the said suit. He further submitted that, Section 55 of the A.P.M.C. Act is not applicable to file suit for injunction under Section 38 of the Specific Relief Act. He further contended that the complaint before Market Committee is yet to be decided and it is pending.

6. Heard both the learned Counsel for the parties.

7. The applicant has filed the application under Order VII Rule 11 of the Code of Civil Procedure. It is a half page application. The objection raised by the applicant is that the Civil Court has no jurisdiction to entertain the suit in view of the provisions of Section 52B of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (A.P.M.C. Act). It appears from the plaint that, the plaintiff has made party to the Agricultural Produce Marketing Committee and the suit is for the permanent injunction. The only relief in respect of permanent injunction is prayed by the plaintiff. The dispute is about the lane of 3 ft. between the property of the plaintiff and the defendant No.3. The defendant Nos.1 and 2 have taken a decision vide Resolution dated 11.02.2002 thereby resolving the right of the plaintiff over the said lane and its possession was given to the plaintiff. Since then, the plaintiff is in possession of the said piece of land. There is one iron staircase in the said lane. The plaintiff is having apprehension that the defendants dispossessed him or disturb his possession by removing his staircase from the said lane.

8. It appears from the record that the defendant No.3 has already filed the complaint before the defendant Nos.1 and 2, which is pending. Still the decision is not taken by the defendant Nos.1 and 2 on the complaint filed by the defendant No.3. Though non-applicant No.2 has heard the plaintiff and defendant No.3, since 2023 the matter is

pending before the defendant Nos.1 and 2 for orders. Section 53B of the A.P.M.C. Act is the proper remedy which is already availed by the defendant No.3.

9. There is bar under Section 55 of the said Act to file suit in absence of notice. It is not mentioned in the plaint that the prior notice is issued to the defendant Nos.1 and 2. Therefore, the applicant has correctly pointed out that the Civil Court has no jurisdiction to entertain the suit against the A.P.M.C. Act.

10. The complaint is already pending for its decision before the non-applicant Nos.2 and 3. The applicant has relied on the judgment of this Court in the matter of *Punjab National Bank, Ballarpur Vs. Shaikh Jumman Shaikh Guljar* reported in **2010(4) Mh.L.J. 133** wherein this Court has observed about the filing of the application under Order VII Rule 11 of the Code of Civil Procedure. Reliance is also placed on the judgment of this Court passed by the Aurangabad Bench in the case of *Shantaram S/o. Waghu Sonawane Vs. Agricultural Produce market Committee, Jalgaon and Ors.* reported in **2011(3) All MR 313**, wherein this Court has observed in paragraph No.7 as Under :

*“7. Section 52-B is a provision in the Act and it permits any person aggrieved by a decision or order passed under any of the provisions of A.P.M.C. Act to prefer an appeal to the Director and to the State Government. The appeal to Director is permitted when such decision is taken or order is passed by Marketing Committee, its Chairman or office bearers. Appeal to State*

*Government is envisaged when such decision is taken or order is passed by Director. Section 52-B therefore is a general provision which permits "any person" to prefer an appeal and Rule 104 is a specific provision which appears in Chapter VI of the A.P.M.C. Rules 1967 dealing with the officers and servants of the Market Committee. Again it is therefore apparent that the different forums of appeal or different avenues therefor are not contemplated in the matter as nothing in Rule 104 militates with section 52-B of the Act. Appeal of petitioner is styled as one under section 52-B and Rule 104 of Rules."*

In the case in hand, by Resolution the non-applicant Nos. 2 and 3 has handed over the possession of lane in favour of the plaintiff and objection raised by the applicant/defendant is pending before the said authority.

11. The learned Counsel for the applicant has also relied on the judgment of the Hon'ble Apex Court in the matter of *Horil Vs. Keshav and Anr.* reported in **2012 AIR SCW 1307**, wherein it is observed in paragraph No.12 as under :

*"12. It is also well settled that under section 9 of the Civil Procedure Code, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority."*

12. Considering the provisions of A.P.M.C. Act, as the complaint is already pending before the non-applicant Nos.2 and 3 and there is a bar to file a suit without issuance of notice as per Section 55 of the

A.P.M.C. Act, the interference at the hands of this Court is required.

Hence, I pass the following order :

- i] The Civil Revision Application is allowed.
- ii] The impugned order dated 28.07.2023 passed by the Jt. Civil Judge Junior Division, Risod, District Washim in Regular Civil Suit No.26/2023 is hereby quashed and set aside.
- iii] As a result, the application filed by the defendant No.3 for rejection of the plaint under Order VII Rule 11 of the C.P.C. is allowed.

Rule is made absolute in aforesaid terms. No costs.

**(MRS. VRUSHALI V. JOSHI, J.)**