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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.335 OF 2024

- | | | | |
|------|-----------------------------------|---|----------------------|
| 1. | Shankar Laxman Sutar |] | |
| | Age: 69 years, Occ.: Labour |] | |
| | R/o- Sahitya Colony, Ujlaiwadi |] | |
| | Tal.: Karveer, Dist.: Kolhapur |] | |
| 2. | Sou. Pushpadevi Ramchandra |] | |
| | Sutar [deceased] |] | |
| | Through legal heir/representative |] | |
| 2-a. | Shri. Sudhakar Ramchandra Sutar |] | |
| | Age: 55, Occ.: Service |] | |
| | R/o- Sahitya Colony, Ujlaiwadi |] | |
| | Tal.: Karveer, Dist.: Kolhapur |] | Applicants |
| | | | Orig. Def. No. 1 & 2 |

V/s

- | | | | |
|----|-----------------------------------|---|----------------------|
| 1. | Sou. Manisha Bijal Shah |] | |
| | Age: 53 years, Occ.: Household |] | |
| | R/o- 33, E ward, Halake compound, |] | |
| | Tarabai Park, Kolhapur. |] | Orig. Plaintiff |
| 2. | Gahininath Nagari Sahakari |] | |
| | Patsanstha Marya. | | |
| | Kagal, Dist- Kolhapur through |] | |
| | Special Recovery Officer |] | Respondents |
| | | | Orig. Def. No. 3 |

Mr. Manoj A. Patil a/w. Mr. Shubham R. Dhenge & Ms. Ankita D. Mali
i/b. Mr. Akash M. Murudkar for the Applicants.
Mr. Yuvraj Narvankar a/w. Mr. Rahul Patil for the Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 9th FEBRUARY, 2026

ORAL JUDGMENT :

1. Heard learned counsel for the parties. Perused the record.

2. Revision Applicants/Defendant Nos. 1 & 2 had filed an application under Order VII Rule 11 of Civil Procedure Code, 1908 ("the CPC", for short) praying for rejection of the plaint filed by the Respondent No.1/Sole Plaintiff. By the impugned order dated 24.08.2022 passed below Exh.26 in Regular Civil Suit No.829 of 2021, the said application is rejected, thereby refusing to reject the plaint.

3. Respondent No.1 has filed the said suit seeking declaration that the Revision Applicants have not repaid the loan taken from Defendant No.3-Co-operative Credit Society (Patsantha) and that they have no right in the suit property. A prayer is made for declaration that the Revision Applicants have no right to create third party interest and sale the suit property. Perpetual injunction is also sought against the Revision Applicants from creating third party interest for encumbering the suit property. A further prayer is made restraining Revision Applicants from obstructing the Respondent No.1's ownership right under sale deed dated 18.04.2009.

4. Learned counsel Mr. Patil for the Revision Applicants submitted as under.

4.1. That the plaint itself in paragraph No.4 proceeds on the footing that the auction in favour of Respondent No.1/Plaintiff is canceled and therefore, the very basis of the claim in the suit is not available to the Plaintiff as the sale deed was a consequence of auction purchase.

4.2. That the cancellation of the auction was challenged and under order of this Court dated 07.03.2018 passed in Writ Petition

Nos.1965 & 2126 of 2013, the petitions filed by the Respondent No.1/Plaintiff are dismissed. He submitted that this order was challenged in the Hon'ble Supreme Court by Respondent No. 1/Plaintiff, however, the SLP is disposed of as withdrawn with liberty to file review of the order of the High Court.

4.3. That all these subsequent events after cancellation of the auction have been suppressed and therefore, the plaint deserves to be rejected.

4.4. That the suit is barred under provisions of Sections 164 and 163(1)(b) of the Maharashtra Co-operative Societies Act, 1960 ('MCS Act' for short), in as much as, the statutory notice is not given to Defendant No.3 Society and the dispute is required to be referred to Co-operative Court and there is bar to the jurisdiction of Civil Court.

4.5 That there is no cause of action to Respondent No.1/Plaintiff in view of cancellation of auction and dismissal of the writ petitions. He relied upon a judgment of **Dhruv Green Field Ltd. Vs. Hukam Singh and Ors. [(2002) 6 SCC 416]** in support of his case.

5. On the other hand, Mr. Narvankar, learned counsel for Respondent No.1/Plaintiff submitted as under.

5.1. That no relief is sought against Defendant No.3 Society and therefore, notice under Section 164 is not necessary.

5.2. That argument regarding Section 163(1)(b) of MCS Act as well as Plaintiff not having any cause of action do not reflect to be

advanced from the impugned order and cannot be entertained for the first time in revision application.

5.3 That since Defendant Nos.1 & 2 tried to take advantage of the loan account being Nil/repaid by the funds of the Plaintiff, it was necessary to file the suit to protect the suit property from being disposed of.

5.4. That the registered sale deed in favour of Respondent No.1 is still in existence and is not challenged in any Court of law. That even if the auction is canceled, it does not amount automatic cancellation of a registered document.

5.5. That he is not a member of the Defendant No.3 Society and as such, this is no a dispute which can be tried by the Co-operative Court. He relied upon the judgments of **Janak Raj Vs. Gurdial Singh and Anr. [1966 SCC OnLine SC 63]**, **Kumar Tarachand Laungani Vs. Deepak Tarachand Laungani and Anr. [2015 SCC OnLine Bom 6440]** and **B.Y. Chavan & Anr. Vs. Association of Tenants of the Bombay Catholic Housing Society and Ors. (Chamber Summons No.641 of 2011 decided on 05.05.2011)** in support of his case.

6. I have considered rival submissions and perused the record.

7. Its trite law that at the stage of decision about rejection of the plaint, it is only the averments in the plaint and documents produced along with plaint can be considered. The possible defence by the Defendant cannot be considered at the stage of rejection. Evidence is not to be considered at the stage of Order VII Rule 11 of CPC. To

reject the plaint at threshold, requires clear pleadings from which statutory requirements under one of the sub-clauses of Order VII Rule 11 can be made out.

8. Perusal of the impugned order shows that the parties have argued the present application below Exh.26 only as related to bar under Section 164 MCS Act. The application was not contested for non-disclosure of the cause of action or regarding bar under Section 163(1)(B) of the MCS Act. In that view of the matter, the consideration of the present Revision Application is limited to bar considered by the Trial Court under Section 164 of the MCS Act.

9. The Trial Court has held that Respondent No.1/Plaintiff has not sought any relief against Defendant No.3 Society. The trial Court also considered that subject matter of the suit cannot be said to be touching the business and management of the society and therefore, it is held that plaint cannot be rejected on that count.

10. I have perused the plaint. In paragraph No.4 thereof, Respondent No.1 has taken a clear stand that though the auction in her favour is cancelled, the registered documents in her favour is not challenged in any Court and the same stand unchallenged. It is specifically pleaded that under the sale deed, the suit property is held by Plaintiff as owner in possession and such possession is not taken away. It is also further pleaded that the Revision Applicants by taking advantage of repayment of the loan-account using Plaintiff's money are trying to dispose of the property and therefore the suit is filed. From the averments in the plaint, it reveals that Respondent No.1 is

not claiming relief against Respondent No.3 Society and the prayers are against present Revision Applicants as private Defendants.

11. Since the argument about bar under Section 163(1)(b) of MCS Act as well as non-disclosure of the cause of action was not argued before the Trial Court, those arguments cannot be consideration for the first time in the limited jurisdiction of this Court under section 115 of CPC.

12. For the reasons recorded above, the impugned order does not suffer from any apparent illegality or perversity. There is no jurisdictional error. Hence there is no need to interfere. The revision application is accordingly dismissed.

13. Needless to mention that observations in this order shall not prejudice either party and the suit shall be decided on its own merits in accordance with law. All contentions of both sides on merits are kept open.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)