

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2907 OF 2026

Devnarayan Ramdular Jaiswal & Ors. ... Petitioners

V/s.

The Chairman / Secretary
Silent Valley Cooperative Housing
Society Ltd. & Ors. ... Respondents

Mr. Vishwajeet Kapse a/w Mr. Dhananjay Kadam, for
the Petitioners.

Mr. Subhradeep Banerjee i/b Mr. M. A. Sayed, for
Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 27, 2026

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- The present challenge in this petition is arising from an application moved by the respondent society under Order VII Rule 11(d) of the Code of Civil Procedure, 1908. By said application, prayer was made that the suit itself is not maintainable and therefore plaint deserves rejection at threshold as being barred by law. The respondents submit that both the Courts below have proceeded on footing that non joinder of necessary parties itself creates such legal bar.

3. This approach, upon close examination, does not appear in consonance with settled principles governing scope of Order VII Rule 11. Said provision permits rejection only when from statements in plaint itself, without entering into disputed inquiry, it becomes clear that suit is barred by some law in express manner. Mere allegation that some persons who ought to have been joined are not impleaded, by itself, does not automatically amount to statutory prohibition against entertainment of suit. No enactment, rule, or binding provision has been pointed out before this Court showing that omission to join certain parties necessarily results in rejection of plaint under clause (d). At highest, such objection may invite consideration under provisions relating to addition of parties or proper framing of issues.

4. Ordinarily speaking, whether a person is necessary party depends upon nature of relief claimed, rights likely to be affected, surrounding transactions, and necessity for complete adjudication. Such inquiry requires examination of pleadings, documents, and sometimes conduct of parties. For this reason, issue of necessary party is commonly a mixed question of law and fact. Unless case is of rare kind where plaint itself shows that suit is barred by statutory command for non joinder, rejection under Order VII Rule 11(d) cannot be resorted to. The provision is drastic in nature because it terminates lis at inception. Therefore, it must receive strict application. Both Courts below, in treating plea of non joinder itself as legal bar, appear to have widened limited compass of clause (d).

5. Further, there seems some mixing up between two distinct notions, namely maintainability and jurisdiction. In practice these expressions are many times loosely spoken as if same, but in legal understanding they operate in separate fields. This Court, in *Deepak Manaklal Katariya v. Ashok Motilal Katariya and Ors.*, 2025 SCC OnLine Bom 4345, has clarified the distinction between the two. Further, in *Bank of India Staff Panchsheel Co-operative Housing Society Ltd. v. Jitendra Kumar Jani* (Writ Petition No. 8889 of 2024, decided on 19 December 2025), this Court in paragraphs 19 and 20 observed as under:

“19. It is therefore essential to keep these two concepts separate. Jurisdiction flows from the statute and defines the court’s power. Maintainability depends on whether the party has fulfilled the legal conditions for invoking that power. When jurisdiction is absent, everything that follows is void. When maintainability fails, only that particular proceeding ends; the court’s general authority remains untouched. Jurisdiction thus concerns the court’s authority. Maintainability concerns whether the dispute, as presented, satisfies legal requirements. This distinction is crucial while applying Order VII Rule 11(d). That provision applies only where the plaint itself shows a clear and absolute statutory bar. It does not apply where the court has jurisdiction and the objections raised require examination of facts or evidence.

20. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the

society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Co operative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.

6. This distinction assumes importance while invoking Order VII Rule 11(d). That clause is not meant to decide every preliminary objection treated as bar of law. It applies where plaint itself discloses clear bar. If determination of objection requires looking beyond plaint interpreting bye laws, resolving contested facts, or appreciating evidence, matter goes beyond Order VII Rule 11. In such cases Court may frame issue, permit evidence, or decide at proper stage, but cannot reject plaint summarily.

7. The reasoning in *Panchsheel* case further shows that when issue depends on objects of society, resolutions passed, conduct of members, or contents of bye laws, same becomes mixed question of law and fact. Without relevant documents being part of plaint, no conclusive finding can be recorded merely at threshold stage. This principle squarely supports present matter. Here also objection regarding non joinder and maintainability is not one

capable of decision only from bare reading of plaint. It requires factual context as to whose rights are directly affected, whether effective decree can be passed, whether defect is curable, and whether addition of parties can protect interest of all concerned. These are trial related matters. Therefore, use of Order VII Rule 11(d) in such situation was legally misplaced.

8. In view of aforesaid legal position, the impugned order cannot be sustained. The Courts below have exercised jurisdiction upon incorrect understanding of scope of Order VII Rule 11(d), and have treated an arguable procedural objection as though it were an express statutory bar. When law confers right to have dispute examined in ordinary course, rejection of plaint can be only in cases plainly covered by statute. Present case does not satisfy that test. Consequently, interference in writ jurisdiction becomes necessary to correct jurisdictional error apparent on record.

9. It is however necessary to clarify that setting aside of impugned order shall not be taken as any pronouncement on merits of rival claims between parties. This Court has examined matter only from limited angle whether plaint could have been rejected under Order VII Rule 11(d). All substantive disputes remain open for consideration before competent forum in accordance with law. If any application for interim relief is pending, same shall be decided independently on its own merits, after hearing concerned parties, and without being influenced by observations made in present order, which are confined only to challenge against rejection of plaint.

10. Hence, Rule is made absolute in terms of prayer clause (a).
11. There shall be no order as to costs.

(AMIT BORKAR, J.)