



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

WRIT PETITION NO.2707 OF 2026

Dr. Shabeena Bano Khan Salabat Khan

Vs.

Yahya Khan Baba Khan Pathan and Others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. S.S. Dhone, Advocate for the Petitioner.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATED : 06th APRIL, 2026

1. Heard learned counsel for the petitioner.
2. Petitioner's challenge is to the order dated 29.01.2026 passed by the Trial Court in Special Civil Suit No.200/2024 thereby, rejecting the application for rejection of plaint under Order VII Rule 11 of the CPC.
3. The petitioner is original defendant and respondents are original plaintiffs in the suit for specific performance of contract which was filed by the plaintiff before the Trial Court. The defendant appeared in the suit and filed her written statement on record. Thereafter, the plaintiffs amended the plaint and restricted the relief to refund of money by deleting the prayer for specific performance of contract. The defendant therefore, filed an application under Order VII and Rule 11 of CPC, seeking rejection of the plaint. The said application came to be rejected vide Order dated 29.01.2026, which is subject matter of challenge by way of the instant petition.
4. The only contention canvassed on behalf of the petitioner is that the suit for refund of earnest amount with damages, without seeking the relief of specific performance of contract is not

maintainable and therefore, the plaint ought to have been rejected under Order VII and Rule 11 of CPC.

5. The Trial Court has rejected the application by observing that the plaintiffs had initially filed the suit for specific performance of contract with relief of refund of money and during the pendency of the suit, the subsequent purchasers were added as party defendants. It is also recorded that in view of the subsequent developments in the suit, particularly, due to an amicable settlement between the plaintiffs and the subsequent purchasers, the plaintiffs have restricted the suit to the relief of refund of money only.

6. As such, it is clear that the issue of maintainability of the suit and the entitlement of the plaintiffs to seek refund of amount would be adjudicated in the suit on the basis of evidence to be led by the parties.

7. Thus, at this stage, the contentions canvased by the petitioners for rejection of plaint under Order VII Rule 11 of the Code, are not acceptable. Perusal of the impugned order shows that the Trial Court has given due consideration to the legal and factual aspects and the same does not show any perversity warranting indulgence under Article 227 of the Constitution of India.

8. In view of this, the writ petition is **dismissed** with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

Privel