

ORDER BELOW EXH.22.

1] This application under Order VII Rule 11 of The Code of Civil Procedure pertains to the rejection of plaint as prayed by defendant no.3. Material contentions are that, if averments in the plaint are considered, according to the plaintiff, defendant no.1 and 2 are the owners of the suit property. They entered into the Memorandum of Understanding. The terms and conditions on which the agreement to sell is to be executed are not decided between the parties. The term suit property is not defined anywhere in the suit. But described as larger property. Claim of plaintiff as regards execution of power of attorney and the purpose of power of attorney is not disclosed. Plaintiff is seeking cancellation of registered development agreement between defendant no.1 and 2. Hence, reading of the plaint shows that, it does not disclose any cause of action to bring the suit. Hence, the plaint is liable to be rejected.

2] Vide application Exh.24, plaintiff resisted the application on the grounds assigned therein. It is contended that, cause of action consists bundle of facts which giving rises to enforce and seek redress through law courts. Defendant no.1 and 2 had executed the Memorandum of Understanding on 24/11/2002 in favour of the plaintiff. On execution plaintiff paid the payment of consideration and defendant no.1 and 2 received consideration of Rs.10,00,000/- Further, agreement dated 25/01/2004 came to be executed in favour of plaintiff and corresponding to that, plaintiff paid Rs.6,00,000/- in total plaintiff paid Rs.16,00,000/- to defendant no.1 and 2 for assigning rights, title and interest of the suit property in favour of the plaintiff. Defendants despite receiving the amount of part consideration and having assigned rights, title and interest in respect of suit property refused to perform their part plaint disclose cause of action. Hence, prayed for dismissal of this application.

3] To substantiate the objection and prayer of rejection of plaint, the Ld. Advocate for the defendant has submitted that, plaintiff has given events, the cause of action is given in paragraph no.23 of the plaint. Only contention and no document have been referred for specific performance. The formal pleading for cause of action is made. Per contra to this, Ld. Advocate for plaintiff submitted that, suit is predominantly directed for specific performance of contract, declaration, injunction as regards documents referred in the plaint.

4] Considering the contention in the plaint after giving thoughtful consideration to the submissions by both sides. Under Order VII Rule 11 of The Code of Civil Procedure, plaint shall be rejected when it does not disclose a cause of action. In view of Paragraph no.23 particular as well as other contentions certainly the cause of action is the bundle of facts which give rises to the civil action in favour of the plaintiff. When plaintiff makes a contentions and claim a specific performance against defendant, it is contended that, defendant received amount of Rs.16,00,000/- on execution of 2 documents. Those documents are dated 24/11/2002 and 25/11/2004 whether the performance can be granted in accordance with law, whether it was refused, it is a question of trial. The cause of action is shown to be arose in the month of January 2016 when plaintiff demanded specific performance of contract which was refused by defendant no.1 and 2. Plaintiff got knowledge about the illegal execution of alleged documents in favour of defendant no.3 by defendant no.1 and 2. Plaintiff was threatened by defendants to create further third party interest. In view of the statement, averments in the plaint it cannot be said that, plaint does not disclose cause of action. As regards legality and validity of the documents is has to be established by the plaintiff. Therefore,

certainly plaint cannot be rejected under Order VII Rule 11 of The Code of Civil Procedure. In the result, following order;

ORDER

- 1] An application below Exh.22 is rejected.
- 2] Suit to proceed further.

Thane.
Date: 03/03/2017.

(Prashant H. Ingale)
8th Jt.Civil Judge, S.D.,Thane.