


MHAH180010872025 	<b><u>Reg. Civil Suit No. 174/2025</u></b>  Kishor Chandrakant Korde.  Vs.  Rahuri Taluka Doctores and chemist Urban Co-operative Credit Society.
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**ORDER BELOW EXH. 21**

Defendant has filed this application under O.7 R.11 (d) of the C.P.C. Application is supported by an affidavit.

**02.** It is submitted by Defendant that, Defendant is society registered under the Maharashtra co-operative society act. Its main business is to accept deposit and to disburse loan to its members. Plaintiff father is 'B' category member of co-operative society. Balasaheb Karbhari Mangurde had taken loan of Rs 17,50,000/- from defendant society. Plaintiff father and mother stood as a guarantors for him. Accordingly they executed document in favor of defendant society. Plaintiff father executed mortgage deed of 3 R land having building out of survey No 184/2/1 situated at Rahuri towards security of loan amount. Principal Debtor Balasaheb Karbari Mangurde and father of plaintiff failed to repay the loan amount. Therefore, defendant obtained certificate under sec 101 of the Maharashtra Co-operative Societies Act. Plaintiff father remained absent in the said proceeding. Accordingly, defendant started execution against plaintiff father and other guarantors. The suit property was attached in that proceeding. Thereafter, on dated 13/3/2022, 19/4/2022 and 20/5/2022 proclamation by public

auction proceeding of suit property was going on but property, could not be sold in auction. Defendant obtain transfer certificate in proscribed format from Assistant Registrar, Rahuri. The suit property has been transfer in the name of defendant through transfer certificate and accordingly defendant name was muted to the suit property as per mutation entry no 49960.

**03.** Defendant further contended that, defendant society submitted an application to the District Deputy registrar Co-operative society, Rahuri regarding possession of suit property. The plaintiff father filed suit bearing RCS No 172/2021 in respect of suit property for perpetual injunction in the court of civil judge senior division, Ahmednagar, but injunction is not granted. The suit property is in the name of defendant. Plaintiff has no concern with the suit property. The plaintiff has no right the file suit against defendant. As per sec 91 of Maharashtra Co-operative Society act, any dispute regarding member, past member, surety of societies No civil court has jurisdiction to entertain suit. The co-operative court has power to deal with the dispute between the members and the society and as per sec 363 of the co-operative societies Act this court has no jurisdiction to deal with this suit.

**04.** Plaintiff filed say below Exh-23 and denied all the contention of application. Plaintiff submitted that, he is not member of society. Defendant has tried to dispossess the plaintiff from the suit property with collusion with co-operative department. Defendant is misrepresenting the provision of law. Suit property is joint possession of plaintiff, his father and mother from many years. Principal debtor

and defendant cheated to the plaintiff and his family. Plaintiff is not member of defendant society. The auction process and actual possession for recovery of suit property by defendant is suspicious. Plaintiff and his joint family member has purchased suit property at market price as per compromise decree in RCS No 259/2016. the mortgage deed is itself illegal. Plaintiff has issued registered notice to defendant earlier regarding not taking possession of suit property. Plaintiff has filed this suit for protect his peaceful possession of suit property. Plaintiff is not member of society, therefore application is not maintainable and liable to be rejected. Lastly, plaintiff prayed for reject the application.

**05.** Perused the application and say. Heard Ld. Advocate for plaintiff Shri. M.D.Kakani and Ld. Advocate for defendant no. A.B.Kinkar at length. Ld. Adv. For plaintiff rely upon authority of Shriram Dattu Chaudhari and Ors. Vs. Madhavdas (2014) 2 Bombay CK 0046 Nagpur Bench. Ld. Adv. For defendant rely upon authority of Canara Bank Vs. P. Selathal and Ors. Civil appeal no. 1863-64 of 2020 Supreme Court. Gone through the citation and document filed by both parties.

**06.** After perusal of application it reveals that the Plaintiff has filed this application for rejection of plaint under order VII rule 11 (D) of C.P.C. Before going in to discussion it is necessary to take into consideration of the relevant provision of Order 7 Rule 11 of C.P.C. which is as under-

**07.**      Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law'
- (e) where it is not filed in the duplicate.
- (f) [where the plaintiff fails to comply with the provisions of rule 9;]  
[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

**08.**      It is settle principle of law that, For rejection of plaint the defendant must satisfied to this court that, the suit is hit by the grounds mentioned in clause (a) to (d) of Order 7 Rule 11 of C.P.C. Moreover, it is settled principle of law that, application under Order 7 Rule 11 of C.P.C. should be decided at the face of plaint. No need to

consider defendants grounds of defence in written statement. Plaintiff has filed this suit for perpetual injunction. The content of plaint shows that, plaintiff and his father obtained possession of suit property as per compromise decree in RCS No 259/2016. In the year 2016, defendant sanction loan amount to Balasaheb Karbhari Mangurde and without informing the details of transaction to the plaintiff father, the suit property was mortgage by defendant society for loan amount. From the contention of plaint it is also seen that, defendant created charge over the suit property and proceeding was going on for auction by proclamation. In para no 9 plaintiff stated that, the certificate obtained by defendant from Assistant Registrar co-operative society, Rahuri is illegal. The mortgage deed and entries by revenue authority is illegal.

**09.** from the contention of plaint it is seen that, plaintiff is not member of society but his father is member of society as a guarantor for loan amount. The certificate under sec 101 of Maharashtra Co-operative societies act has been issued against plaintiff father and mother. Section 91 of the Maharashtra Co-operative Societies Act provides that, any dispute between the member and the society a suety of a member, past member or deceased member whether such surety is or is not a member of a society, touching the constitution, election of the committee, conduct of general meetings, management or business of society shall be referred to the Co-Operative Court. Here in this case plaintiff is not member of society but plaintiff father who is guarantor for original debtor. Defendant has obtained certificate under sec 101 of

Maharashtra co-operative societies act the auction proceeding is going on. As per para no 9 of the plaint, plaintiff prayer for declaration of certificate obtained by defendant from Assistant Registrar cooperative society, Rahuri is illegal. This it self shows that, plaintiff challenging the order of Assistant Registrar co-operative society, Rahuri. Therefore, the dispute has to be referred to the co-operative Court. However, instead of filling the suit before co-operative court the plaintiff has filed this suit.

10. Sec. 363 of Maharashtra Co-operative Society act expressly provides that, no civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the co-operative court. The main dispute in the suit is in respect of proceeding before deputy registrar co-operative society Rahuri. As per sec. 363(3) of Maharashtra co-operative Society Acts provide that, all the orders, decisions or award passed in accordance with this act or the rule shall subject to the provision of appeal or revision in this act be final and no such order, decision or award shall be liable to be challenge, set aside or modified in any court upon the merits or upon any other ground whatsoever.

11. Ld. Adv for plaintiff argued that, plaintiff is not member of society therefore application is not tenable against plaintiff. The Ld. Adv. For defendant rely upon the authority of **Canara Bank Vs. P Selathal and others. Civil appeal no. 1863-1864 of 2020** Supreme court in this case Hon'ble supreme court relying the authority of **Church of Christ Charitable Trust and educational charitable society vs. ponniamman education trust (2012) 8 SCC 706**. The Hon'ble

court observed that, “*while scrutinizing the plaint averments, it is burden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff they right to relief against the defendant. Every facts which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meanings of the words “Cause of Action”. A cause of action must issued some act done by the defendant since in the absence of such an act no cause of action can possible accrue. The Hon’ble supreme court also relying upon the authority of **Sopan Sukhdev Sabale** in that case supreme court observed that, the basic question to be decided while dealing with an application filed under order 7 rule 11 of CPC is whether real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of order 7 rule 11 of the court.*”

12. In this present case while scrutinizing the cause of action in plaint para no. 10 it is seem that, plaintiff stated for cause of action to this suit by way of fraud played by principal debtor and defendant at the time of execution of mortgage deed and proclamation of suit property by defendant before deputy assistant co-operative society Rahuri. In this suit plaintiff challenges the certificate issued to the defendant by deputy assistant co-operative society Rahuri without seeking relief in prayer clause. Moreover it is to be notice that, the father of plaintiff filed similar suit before Civil Judge Senior Division, Ahmednagar bearing RCS No. 172/2021 in

respect of suit property which was dismissed by court under order 7 rule 11 (d) of C.P.C. on dated 19/08/2023. The copy of order is filed by defendant on record. The suit is filed after two years. The plaintiff has willfully suppress said fact in the plaint. The dispute regarding fraud played by defendant of society is to be decided by co-operative court only. The suit is expressly bared in accordance with the provisions of the Maharashtra Co-operative Societies Act. Therefore the plaint needs to be rejected. Hence I pass the following order.

**ORDER**

1.	Application (Exh.21) is hereby allowed.
2.	Plaint is rejected under O.7 R.11 (D) of the Code of Civil Procedure.
3.	Decree be drawn up accordingly.

Rahuri.  
Date:- 04/04/2026

[ P. H. Patil ]  
**2<sup>nd</sup> Jt. Civil Judge (J.D.)**  
**Rahuri**