

**Order Below Exh-76.**  
(Passed on 30.04.2021)

CNR-MHAK090002742012



1. Defendant No. 2 has filed this application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC" for brevity) for rejection of the plaint on the ground of bar of limitation, no locus standi, without cause of action, waiver of relief, futile decree, etc.
2. In order to avoid repetition I have not mentioned the contention of application and say of plaintiff herein but I have mentioned same in reasons whenever required hereinafter. Read application and say of plaintiff vide Exh. 87. Application proceeded without say of defendant No. 1 as MIDC failed to file say.
3. Also perused written notes of argument on behalf of defendant No. 2 vide Exh. 88 ( filed in RCS No. 12/2018) and written notes of argument on behalf of plaintiff vide Exh. 85.
4. Heard Learned Advocate Shri. R. T. Madankar for defendant No. 2 and Learned Advocate Shri. D. B. Marwal for plaintiff at length.

**Both Learned Advocate relied on various citations.**

**Learned Advocate for defendant No. 2 has relied upon citations :-**

- 1) Union of India ...Vrs... M/s. Vidharbha Co-op. Marketing Soc. Ltd.  
2008 (3)–All MR-772-BOMBAY H.C., BENCH NAGPUR
- 2) Eureka Builders and others..Vrs.. Gulabchand through Lrs and others  
2018 (8)- SCC- 67- SC

- 3) A. V. Papayya Sastry ..vrs.. Government of Andhra Pradesh  
2007- CJ- (SC)- 14 – SC
- 4) Shiv Kumar ..Vrs.. Santosh Kumari 2008 (3)- Mh. L.J. - 593 – S.C.
- 5) Shri. Xavier D’Souza & Anr. ..Vrs.. Shri. Luis D’Souza & Anr.  
2009 (2) ALL M.R. - 397 – BOMBAY HIGH COURT.
- 6) Aralappa Son of Chowrappa, Major ..Vrs.. Jagannath Son of Late  
Chikka Hullurappa, Major and others 2006 - CJ (KAR) – 45 – H.C.  
OF KARNATAKA
- 7) Rangubai Wd/o Bhanudas Saudar ..Vrs.. Ramkrishna Abaji Jadhao  
2007 - CJ (BOM) – 1147 – H.C. BOM. NAGPUR BENCH
- 8) Xavier D’Souza ..Vrs.. Luis D’Souza 2008 - CJ (BOM) – 3270 – H.C.  
BOM. PANJI BENCH
- 9) Smt. Pushpa w/o Aidan Kalantri & ors. ..Vrs.. Purushottam  
Champalalji Rathi 2010 – (3) All M.R. -70 -BOM. H.C. NAGPUR  
BENCH
- 10) Colgate-Palmolive (India) Ltd. & Ors ..Vrs.. Rajendra s/o Vinayakrao  
Ayachit 2012 – (2) All M.R. -225 -BOM. H.C. AURANGABAD  
BENCH

I have gone through all above case laws and carefully scrutinize the same. The facts and circumstances mentioned therein are not ditto or similarly applicable to present facts and circumstances of case in hand. But I have considered the ratio laid down therein.

**5. Learned Advocate for plaintiff has relied upon citations :-**

- 1) Sopan Sukhdeo Sable & ors ..Vrs.. Assistant Charity Commissioner.
- 2) Shakti Bhog Food Industries ..Vrs.. Central Bank of India  
2020(5)MhLJ.
- 3) Common Piru Chaudhari ..Vrs.. Berubai Chendu Radhiwale & ors.
- 4) 2015 SAR (Civil) 385 Supreme Court PV. Guru Raj Reddy ..vrs.. P.  
Neeradha Reddy & Ors. Etc.

5) 2014 SAR (Civil) 350 Supreme Court Surjit Kaur Gill & Anr. ..vrs..  
Adarsh Kaur Gill & Ors. Etc.

6. I have gone through all above case laws and carefully scrutinize the same. The facts and circumstances mentioned therein are not ditto or similarly applicable to present facts and circumstances of case in hand. But I have considered the ratio laid down therein.

7. Considering contents of application and the argument of both the advocates, following points arise in my mind to which I have given my findings along with its reasons.

<b>Point</b>	<b>Findings.</b>
1. Whether the provisions Maharashtra Industrial Development Act, 1961 and the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 are applicable to present suit ?	<b>Yes</b>
2. Whether the defendant No. 1 in plaint is the Regional Officer appointed under section 12 of the Maharashtra Industrial Development Act, 1961 and as per section 2(e) of the Maharashtra Industrial Corporation Disposal of Land Regulations, 1975 ?	<b>Yes</b>
3. Whether suit is barred by Limitation ?	<b>Yes</b>
4. Whether plaintiff has locus standi to the present suit ?	<b>No</b>
5. Whether there is cause of action to the plaintiff for institution of suit ?	<b>No</b>
6. Whether the suit is tenable ?	<b>No</b>
7. What order ?	<b>As per final order</b>

**As to point No.1 :-**

8. The defendant No. 2 has raised objection that for facts and circumstance of the plaint the provisions of Maharashtra Industrial Development Act, 1961 and the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 are applicable. For the purpose of the same he relied upon provisions of Maharashtra Industrial Development Act, 1961 (herein after referred to as MIDC) and Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 (herein after referred to as MIDC DLR ). The plaintiff has denied the objections raised by the defendant No. 2 and submitted that provisions of MIDC Act and MIDC DLR are not applicable for present set of facts. Perused the whole plaint in title clause defendant No.1 is Maharashtra Industrial Development Corporation. Through its Regional Manager, Amravati. Industrial Area, Badnera Bypass Road, Amravati, Tq. & Dist. Amravati.

9. In plaint para No. 1 introduction of defendant No. 1 not mentioned by the plaintiff. But after carefully perusal of whole plaint of plaintiff instant suit is filed against the Corporation. Plaintiff having main grievance against the order of cancellation of allotment of plot no. A-47 by MIDC i.e. defendant which was informed by defendant to the plaintiff by letter dated 06.10.2009. Plaintiff has prayed declaration, permanent and mandatory injunction against defendant No. 1 and 2.

10. Specifically the grievance of the plaintiff about cancellation of allotment of plot No. A-47 by defendant No. 1 by order dated 06.10.2009 passed by Regional Officer of defendant No.1 MIDC i.e. a body constituted under the provisions of MIDC Act which reads as under -

As per section 2(d) "Corporation" means that Maharashtra Industrial Development Corporation established under section 3.

**Section 3 Establishment and incorporation :-**

- 1) For the purposes of securing and assisting in the rapid and orderly Establishment and organization of industries in industrial areas and industrial estates in the State of Maharashtra there shall be established by the State Government by notification in the Official Gazette, a Corporation by the name of the Maharashtra Industrial Development Corporation.
- 2) The said Corporation shall be a body corporate with perpetual succession and a common seal, and may sue be sued in its corporate name, and shall be competent to acquire, hold and dispose of property, both movable and immovable and to contract and do all things necessary for the purposes of this Act.

11. Therefore, automatically provisions of MIDC Act and MIDC DLR are also applicable to the present set of facts, circumstances of the case i.e. Plaintiff. Considering aforesaid reasons and discussion I answer point No.1 in the affirmative.

**As to point No.2 :-**

12. The defendant No. 2 has raised objection in para No. 7 of the application that Regional Officer of MIDC is the Government officer appointed as per provision of section 12 of the Maharashtra Industrial Development act 1961 & as per Rule 2(e) of the Maharashtra Industrial Development Corporation disposal of Land Regulation 1975. On the request letter of surrender of Lease dt. 31.05.2009 and 24.06.2009 presented by plaintiff the Regional Officer Amravati accepted the same and vide his order dt. 06.10.2009 allotment of suit plot is duly cancelled by him. Said order of cancellation dt. 06.10.2009 has been duly admitted by the plaintiff in para No. 3 of plaintiff, he has also admitted that on 10.11.2009 he had received cheque No. 040374 date 09.11.2009 from

Account Officer, Nagpur for refund of amendment of Rs. 02,17,497/- with proper explanation of deduction of order date 06.10.2009 in plaint para No. 4.

13. As against this plaintiff has in his say contended that Regional Officer can't be treated as a Government Officer in manner stated by the plaintiff. Formal denial made by the plaintiff but neither submitted any provision that Regional Officer, Amravati of MIDC is not a Government Officer or public servant.

14. The defendant No. 2 has relied upon Section 12 of MIDC Act which reads as under -

**Section 12 Officers and Servants of the Corporation :-**

- 1) The State Government shall appoint a Chief Executive Officers, [ One or more Deputy Chief Executive Officers ] and a Chief Accounts Officer of the Corporation.
- 2) The Corporation may appoint such other officers and servants, subordinate to the officers mentioned in sub-section (1), as it considers necessary for the efficient performance of its duties and functions.
- 3) The conditions of appointment and service of the officers and servants and their scales of pay shall -
  - (a) As regards the Chief Executive Officer, [ the Deputy Chief Executive Officer or Officers] and the Chief Accounts Officer, be such as may be prescribed, and
  - (b) As regards the other officers and servants, be such as may be determined by regulations made under this Act.

15. He further relied upon section 2 (e) Chief Executive Officer,

definition mentioned in Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 i.e. MIDC DLR.

16. Eventhough the plaintiff has denied about Regional Officer is a Government Officer but documents filed by the plaintiff alongwith plaint vide list Exh. 4 perused that in all that communication letters by plaintiff are addressed to the Regional Officer, Amravati MIDC. Therefore, in view of finding recorded as to point No. 1 the defendant No. 1 in plaint is the Regional Officer appointed under section 12 of the MIDC Act and section 2 (e) of MIDC DLR. Hence, in view of provisions of section 12 of MIDC Act defendant No. 1 Regional Officer, Amravati MIDC is a Government Officer and servants of Corporation. Therefore, in view of aforesaid provisions of law I hold substance in objections raised by defendant No.2. Hence, I answer point No.2 in the affirmative.

**As to point No.3 :-**

17. The defendant No. 2 has raised objection in para No. 3 of the application that schedule first Division part IX Art 100 provide the one year limitation to alter set aside any act or order of an officer of Government in his official capacity, from the date of act or order of the officer. So the act of the order of Regional officer MIDC, Amravati dated 06.10.2009 has not been challenged by way of any substantive or procedural remedies on or before one year i.e. 06.10.2010, in any Court of law & hence the order dated 06.10.2009 become unchallenged. Plaintiff by rule of limitation extinguish his right to exhaust any remedy under any law. Hence plaintiff having nor any locus standi and right to sue survive after 06.10.2010 i.e. after one year as per Article 100 of the Limitation Act. So as per point of submission suit is hopelessly barred by Law of Limitation. So also the Right to sue and locus standi to avail remedies after

06.10.2010 has been not survived against the plaintiff and defendant No. 1 and 2. Therefore, plaint needs to be rejected as barred by limitation any subsisting cause to file suit.

**18.** As against this plaintiff has in his say contended that provision of Scheduled First Art 100 Limitation Act does not apply in the fact of present case. Plaintiff further submitted that issue of the limitation is a mixed question of law and facts and as such it is necessary to grant opportunity to the parties to lead evidence and to file documents and argue the matter on facts and stage. Thus, the objection in respect of bar of limitation is misconceived and misinterpreted.

**19.** After perusal of whole plaint the order of the cancellation of allotment of suit plot No. A-47 is communicated by the defendant No.1 to the plaintiff as per his request letters dt. 31.05.2009 and 24.06.2009 and after deduction total amount of Rs. 82,503/- (in words – Eighty Two Thousand Five Hundred Three) towards 5 % Service charges and rent amount; remaining amount of Rs. 2,17,497/- (in words - Two Lack Seventeen Thousand Four Hundred Ninety Seven) shall be refunded to the plaintiff by cheque. Said receipt of letter is admitted by the plaintiff in his plaint and the annexure at Sr. No. 1 of list Exh. 4. However, thereafter also the plaintiff had made several communication through letters to the defendant No. 1 that he is not going to accept the refund of amount and not going to return back the plot and he has to install a factory on said plot till the receipt of letter dated 23.09.2011 issued by defendant No. 1. That letter is shown the cause of action by the plaintiff for filing said suit. Reading the plaint as a whole, and after hearing both the learned counsel for the parties, it is explicit that there was no change in order of cancellation of allotment of suit plot passed by Regional Officer, Amravati

MIDC after 06.10.2009 but plaintiff has communicated the defendant No. 1 through various letters however he could not send any legal notice to the defendant No. 1 as per provisions of law. Lastly plaintiff has sent letter dt. 05.09.2011. Which is also addressed to -

१. मा. ना. श्री. नारायणराव राणे,  
उद्योगमंत्री, महाराष्ट्र शासन, मंत्रालय, मुंबई
२. मा. आमदार श्री. सुधीर मुनगंटीवार,  
अध्यक्ष - भारतीय जनता पार्टी महाराष्ट्र प्रदेश
३. मा. श्री. मुख्य कार्यकारी अधिकारी (श्री. शिवाजी साहेब)  
MIDC, मुंबई
४. मा. श्री. लेखा अधिकारी साहेब  
MIDC, उद्योगभवन, नागपूर
५. मा. आमदार श्री. गोपीकिशनजी बाजोरीया, अकोला
६. मा. आमदार श्री. हरिषभाउ पिंपळे, मुर्तिजापूर

20. Thereafter, defendant No. 1 has lastly answer/reply the letter of plaintiff on 23.09.2011 by detailed reasons and references of letters were mentioned in it and the order dt. 06.10.2009 not modified or altered in any way. Reading this reply letter from any corner and angle, it does not save the limitation as the plaintiff desired. It does not constitute the acknowledgment of liability. The reply letter is inconsequential for the period of limitation. However, plaintiff has shown said letter as a cause of action is 23.09.2011 when the plaintiff received reply from defendant No.1 and said contention made in para No. 8 of the plaint. Curiously, in plaint there is no averment of such communication dt. 23.09.2011 to give effect of any saving of limitation in favor of plaintiff. But order dated 06.10.2009 was issued by Regional Officer MIDC, Amravati i.e. the officer and servant of the Corporation is not challenged by the plaintiff before proper authority. Schedule first Division part IX Art 100 of Limitation Act provides the one year limitation to alter set aside any act or order of an officer of

Government in his official capacity, from the date of act or order of the officer.

**21.** The legal position is, by issuance of letters or notices or reply, it will not save the limitation, as the plaintiff desire in para no. 8 of the plaint. The plaintiff was consciously aware of order dt. 06.10.2009 of Regional Officer defendant No.1 i.e. communication/transaction between parties were settled on 06.10.2009 and it is ultimately terminated in 2009, as clearly referred in the plaint.

**22.** The overall survey, reading plaint and annexures, the claims between the plaintiff and defendant No. 1 are settled in the year 2009. Consequently the suit should have been filed up to 06.10.2010. The provisions of order VII Rule 11 (a) to (d) of CPC are in the field to put an end and to prohibit the claims which are barred by law. The plaintiff has no cause of action on date of suit. Taking these aspect into consideration, Provisions of Article 100 of Limitation Act, and documents/annexures, filed alongwith list Exh. 4 I hold substance in the objection of defendant No.2. Hence, I came to conclusion that order dt. 06.10.2009 is not challenged by plaintiff but by showing reply letter dt. 23.09.2011 of defendant No. 1 as a cause of action for institution of suit. The suit ought to have been filed on or before 06.10.2010 but plaintiff fails to do so. Accordingly, considering the whole pleading in plaint, provisions of Article 100 of Limitation Act, and in view of finding recorded as to point No. 1 and 2 the plaintiff miserably failed to show cause of action on 23.09.2011. Hence, provisions of Order VII Rule 11 (d), of CPC is not extended to bar under the Law of Limitation. Looking to the reliefs claimed in the suit for which limitation provided under Article 100 of Limitation Act is of one year, in the facts of present suit taken at their face value Order VII Rule 11

(d), Civil Procedure Code would be attracted. In result I answer point No. 3 in the affirmative.

**As to point No.4 & 5 :-**

23. The defendant No. 2 has raised objection in para No. 7 that on due consideration point of limitation plaintiff having no locus standi to sue and plaint need to be rejected. As herein above I have recorded finding in respect of law of limitation and the suit is barred by law of limitation. Therefore, the plaintiff has no locus standi The defendant No. 2 objected that on 02.03.2021 plaintiff without any locus stands and totally base on frivolous untenable cause of action dt. 23.09.2011 for permanent injunction from disturbing the possession and restraining defendant No.1 MIDC from allotting suit property and executing any documents to create third party interest and mandatory injunction for executing necessary documents and permit to construct on suit property with diclaration about plaintiff had landholder and allotter of suit property. The defendant No. 1 MIDC who is in his written statement cum reply vide Exh. 12 in para No. 14 specifically alleged about allotment of suit plot to another person and in letter 23.09.2011 defendant No. 1 MIDC specifically clarified in the form of explanation that, the defendant No. 1 MIDC has already by its order dated 06.10.2009 canceled the allotment order on surrender of lease in plaintiff vide his letter 31.05.2009 and 24.06.2009. Plaintiff is well verse aware with allotment of suit plot to another person (defendant No.2). But he has without cause of action filed said suit. In view of finding recorded as to point no. 1 to 3, I came to conclusion that at the date of suit plaintiff hold no cause of action against defendant No. 1 MIDC. Hence, I answer point No. 4 and point No. 5 in the Negative.

**As to point No.6:-**

24. Defendant No. 2 has raised objection that, plaintiff has not claim any possession of suit property, so mere declaration without possession is nothing but unnecessary exercise of adjudication to pass futile decree. Such non-executable decree is perverse to the rule of adjudication and such adjudication is not tenable in the eyes of law of precedent laid down by Hon'ble Apex Court and Hon'ble Bombay High Court. So efficacious remedy available but not claim such suit without possession. Suit for mere declaration is not tenable as per section 41 of Specific Relief Act. Hence, suit is not tenable in the eyes of law and prayed for dismissal of suit with compensation cost of Rs. 5,00,000/- to the defendant No. 2.

25. As against this plaintiff has contended that he is in actual possession of suit plot. The suit is most legal and proper in accordance with the law. Even for deciding the same it is necessary to frame issue, to documents and argue the suit on merits on facts as well as law points. Hence, there is no question of rejection of plaint. Objection is malafied and prayed for rejection with cost.

26. On perusal of whole plaint and annexures filed along with list Exh. 4, it is seen that on 06.10.2009 order of cancellation of allotment of plot from plaintiff but only pleading is there for having possession but nothing placed on record to shows the possession with plaintiff either by document or by photographs. Therefore, mere declaration without possession is not tenable in the eyes of law. Hence, I answer point No. 6 in the negative.

**As to point No.7:-**

27. Therefore, considering the finding recorded as to point no. 1 to 6 herein above, discussion, reasons and also perusing ratio laid down in the

authorities which are filed from both sides and in view of the provisions of Order VII Rule 11 (a) and (d), Civil Procedure Code mentioned above, I came to conclusion that the defendant No. 1 MIDC is a legal entity created under special statute i.e. MIDC Act, 1961. Order passed by Regional Officer, MIDC is not challenged as per provisions of Article 100 of Limitation Act and on the date of suit there is no cause of action available to be plaintiff but by clever drafting has created the illusion of a cause of action and suit is filed on the basis of same inspite of knowledge and aware of order of Regional Officer dt. 06.10.2009 which ought to have challenged within limitation prescribed under the limitation Act. But plaintiff failed to do so. The provisions of VII Rule 11 (a) are mandatory in nature. Even if after framing of issues, the basic defects in the plaint persists namely absence of cause of action, Order VII Rule 11 of CPC does not place any restriction or limitation on the exercise of court's power. Therefore, in my concluded opinion that, the suit is barred by limitation and hold no cause of action. Hence, plaint is liable to be rejected as per provisions of C.P.C. In result, application deserves to be allowed and in answer to point no. 7, I pass the following order :-

**Order**

1. The application at Exh-76 is allowed.
2. The plaint is rejected as per provisions of Order VII Rule 11 (a) and (d), Civil Procedure Code.
3. Necessary order passed below Exh. 1.

Sd/-

Murtizapur.  
Date: 30.04.2021.

**(Smt. J. B. Goyal)**  
Civil Judge (Jr.Dn.), Murtizapur.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file are same word for word as per the original order.

Name of Steno :- N. K. Shah,

Court name :- Smt. J.B.Goyal, Jt. C.J.J.D. & JMFC., Murtizapur.

Date :- 30.04.2021

Signed by P.O. On :- 30.04.2021

uploaded on :- 04.05.2021