



This is an application filed by the defendant No.3 under **Order VII Rule 11(d)** of the Code of Civil Procedure, 1908 (In short 'the C.P.C.'). It is contention of the defendant No.3 that the suit is liable to be rejected on the grounds that the suit is barred by law. It is further contention of the defendant No.3 that the defendant No.1 has borrowed a loan from society and recovery proceedings have been initiated against him. It is further contended that plaintiffs have not complied with the mandatory provision of issuing pre-suit notice under section 164 of the Maharashtra Co-operative Societies Act, 1949 [In short MCS Act]. As no statutory notice was served before institution of the suit, hence, the plaint is liable to be rejected. Ld.Advocate for the defendant No.3 relied upon Mohan Meakin Limited, Bombay V/s. The Pravara Sahakari Sakhar Karkhana Ltd., 1987 Mh.L.J.503.

2. Plaintiffs resisted this application by filing his say at **Exh.21** and raised strong objection. It is contended by plaintiffs that, prior institution of the suit i.e. on 20/01/2025, he had issued notice to the defendant No.3 society. It is contended that present suit is filed for partition and separate possession in respect of the ancestral property. Therefore, according to plaintiffs the objection raised by the defendant No.3 is not tenable. Hence, prayed for rejection of the application. Ld.Advocate for plaintiffs to substantiate their submission, placed reliance on the case laws as under:-

- a. Madhav Prasad Aggarwal and Ors. V/s. Axis Bank Ltd. and Ors. in Civil Appeal No...of 2019 (Arising out of SLP (C) No.31579 of 2018) of Hon'ble Supreme Court of India.

b. Special Recovery Officer/Sales Officer Dr.Annasaheb Chougale Urban Co-operative Bank Ltd. V/s. Suhas Balkrishna Shete and Ors, 2014 3 MhLJ 859.

3. Heard Ld.Advocates for both sides. Perused material on record. This suit is filed by plaintiffs for partition and separate possession of ancestral property. It is well settled principle of law that while deciding application under Order VII, Rule 11 of the CPC, the only averments in the plaint and documents relied upon by plaintiffs can be considered. The defence raised by defendants cannot be considered at this stage. It appears that the defendant No.3 society has been impleaded on the ground that the defendant No.1 has borrowed a loan and recovery proceedings have been initiated against his share. The main relief of partition, separate possession and perpetual injunction is sought against defendant Nos.1 and 2 and not against the defendant No.3 society.

4. Ld.Advocate for the defendant No.3 argued that pre-suit notice under section 164 of MCS Act, ought to have been served on the Registrar and that notice to the society is not sufficient. It is pertinent to note here that, whether the notice is already issued by plaintiffs amounts to due compliance with statutory provisions. Whether such notice was required in facts of the present case, and whether provisions are under section 164 are attracted to the suit of the present nature are questions to be decided after full fledged trial on merits. These issues cannot be conclusively determine merely in this application. The plaint does not prima facie, disclose that the suit is barred by any provision of law. Even for sake of argument it is assumed that there is defect regarding service of the pre-suit notice. The same is not apparent from the plaint so as to dismiss the same. Therefore, I am of the opinion that no ground is made for rejection of the plaint. With due respect to the ratio laid down in the cited case laws filed by plaintiffs and the defendant No.3 but as the facts

of the present case and that in the case laws are different same are not applicable. Accordingly, in view of above discussion, I pass following order:-

ORDER

1. Application **Exh.15** is hereby rejected.
2. No order as to costs.

[Dictated and pronounced in open Court]

Date:09/07/2026.

(**R. D. Kharate**)
Jt.Civil Judge, Jr. Division, Ichalkaranji.