

MHKO110002272023



**Reg. Civil Suit No. 31/2023.**  
(CNR No.MHKO110002272023)

**ORDER BELOW EXH.15.**

01. The defendant made the instant application vide Order VII, Rule 11 of The Code of Civil Procedure, 1908 (in short “C.P.C.”).

02. It is the contention of the defendant that, plaintiffs before instituting the present suit filed an application before Tahsildar Hatkalanagle under section 5 of Mamlatdars Courts Act. As, plaintiffs initiated a proceeding under section 5 of Mamlatdars Courts Act, before instituting the present suit, this court has no jurisdiction to entertain the present suit, as per section 26 of the Mamlatdars Courts Act. Defendant further submitted that, if any proceeding under section 5 of Mamlatdars Courts Act, then as per section 26 of said act, Civil Court has not jurisdiction to entertain the suit. Hence, he made the present application.

03. The plaintiffs filed their say vide **Exh.19** and resisted the application on the various grounds. The plaintiffs submitted that, the present application is false, illegal and vexatious. They further submitted that, the prayer sought in application made under section 5 of Mamlatdars Courts Act and prayer sought in the present suit are different from each other. So, the suit is not barred by as per section 26(b) of Mamlatdars Courts Act. They finally submitted that, the proceeding initiated under section 5 of Mamlatdars Courts Act is not yet finally decided. So also, this Court has jurisdiction to entertain the present suit. They finally submitted that, only with the ill intention, to drag the proceeding, defendant made the present application. Hence, they finally submitted to reject the application.

04. Perused the application and say thereon. Heard both the parties.

05. After considering the rival contentions, following points arose for my determination. I have recorded my findings and reasons thereon as under :-

<b>Sr. No.</b>	<b>Points.</b>	<b>Findings</b>
1.	Whether the suit is liable to be rejected vide Order VII Rule 11 of C.P.C. ?	<b><i>In the Negative.</i></b>
2.	What order ?	<b><i>As per final order.</i></b>

### **REASONS**

#### **AS TO POINT NO.1 AND 2:**

06. Before proceeding to deal with the application, it is necessary to consider here the grounds on which suit shall be rejected. For that purpose now let's take the recourse of Order VII, Rule 11, of C.P.C., which runs as follows,

*“Rejection of Pleint – The pleint 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 pleintiff 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 pleint is written upon paper insufficiently stamped, and the pleintiff 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 pleint*

*to be barred by any law;*

*(e) Where it is not filed in duplicate;*

*(f) Where the plaintiff fails to comply with the provisions of rule 9;”*

07. By keeping in mind supra cited provision of C.P.C., now let's deal with the instant application.

08. Learned advocate appearing for the defendant argued that, as plaintiff initiated a proceeding under section 5 of the Mamlatdars Courts Act, before instituting the present suit, this Court has no jurisdiction to entertain the present suit as the same is barred by section 26(b) of the Mamlatdars Courts Act. Per-contra, learned advocate appearing for the plaintiffs submitted that, as the proceeding initiated by them under section 5 of the Mamlatdars Courts Act, is not yet decided. So, this Court has jurisdiction to entertain the suit. Plaintiffs, relied upon the judgment of Hon'ble Bombay High Court Bench Aurangabad in **Viswanath Rambhaji Bhalerao and another Vs. Usha Pralhad Kasabe (Writ Petition No.4027 of 2009)**. In the said judgment Hon'ble Bombay High Court held that, *“Section 26 opens with sentence “No suit shall lie under this Act” It creates a bar for entertaining a suit to be filed under the said Act and it does not take away the jurisdiction of the Civil Court to entertain, try and decide the suit in respect of matters covered by clause (b) of section 26 above. On the contrary, if it shown that, a Civil Suit is filed in respect of Matter covered by section 26(b) of the said Act, prior to initiation of proceedings under section 5 of the Mamlatdars Courts Act, then there is a bar to entertain the suit under the provisions of Mamlatdars Courts Act. It is then urged, that section 26(b) would be attracted only in case where there is already a decision of a Civil Court, as the phraseology used therein is “that has been the subject of previous proceedings” in a Civil*

Court.”

09. In the present case in my hand also, even though it is admitted fact that, plaintiff initiated a proceeding under section 5 of Mamlatdars Courts Act, before instituting the present suit. But, the same is not finally adjudicated. So, on perusing the present fact, in the light of supra cited judgment, it is seen that, only a proceeding is pending under section 5 of the Mamlatdars Courts Act, will not be the ground to held that, the Civil Court has no jurisdiction to entertain the suit. On the other hand, it is not the submission of the defendant that, prior to institution of the present suit, any suit was instituted under section 26(b) and the same was decided, so also the jurisdiction of this Court is not barred by section 26(b) of the Mamlatdars Courts Act. On the other hand, the reliefs claimed by the plaintiffs in the application initiated under section 5 of the Mamlatdars Courts Act and reliefs claimed under present suit is different from each other. So, considering the present application in the light of supra cited judgment, it is crystal clear that, the present suit is not barred by any law either expressly or impliedly. So, I answer point no.1 in negative, and to answer point no.2, I proceed to pass the following order -

**ORDER.**

01. Application vide **Exh.15**, is hereby rejected.
02. Application vide **Exh.15**, is disposed off accordingly.

Date : 21/06/2024.

( **L. M. Pathan** )  
Civil Judge Junior Division,  
Peth-Vadgaon.