

**IN THE COURT OF JT. CIVIL JUDGE JR. DN. AND
JUDICIAL MAGISTRATE FIRST CLASS, AT KAMPTEE.**

(Presided over by Smt. S. A. Patil)

RCS No. 80/2015.
Agrawal Bhawan Society
Trust Vs. M/s Motiram
General Stores & Ors.

ORDER BELOW EXH.17

(Passed on 2nd August, 2017)

This is an application moved by the defendants for dismissal of the suit. It is strongly opposed by the learned advocate for the plaintiff by filing his say below Exh. 18.

2] Heard the learned advocate Miss. M.D.Bhambhwani for the defendants and learned advocate Shri. R. I. Agrawal for the plaintiff.

3] The learned advocate for the defendants argued that the suit is not maintainable as the plaintiff has deliberately avoided to receive the rent from them from April, 2015. It is her contention that the defendants are regularly depositing the rent in the Court. She further submitted that the suit property does not require immediate repairs nor it is required to be demolished and the plaintiff has breached the consent decree dated 8/10/2010. Therefore, she prayed for dismissal of the suit on the above mentioned grounds.

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4] On the other hand the learned advocate for the plaintiff argued that in the present case already the issue regarding maintainability of the suit is framed. He further argued that defendants have stopped paying rent from the period 1/04/2015 and they are in huge arrears of the rent. He further submitted that he has brought the present suit as the defendants have breached the compromise deed dated 8/10/2010 which provides for the remedy of filing of the eviction suit. Therefore, he prayed for rejection of the said application.

5] The learned advocate for the plaintiff in support of his contentions has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Bhau Ram Vs. Janak Singh and Ors. 2012 (6) Mh.L.J. 758**. In this case the Hon'ble Apex Court held that in an application under Order VII, Rule 11 for rejection of plaint only the averments in the plaint can be looked. Pleas taken by the defendants in the written statement would be irrelevant. He further relied on the judgment of the Hon'ble Bombay High Court in the case of **Hilton Builders and Textiles Pvt. Ltd. Vs. Special Paints Ltd. and another 2014(7) ALL MR 188**. In this case the Hon'ble High Court has observed that while deciding the application under Order VII, rule 11(a) for non disclosure of cause of action only facts pleaded in the plaint are to be taken into account. Court must presume those

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facts are true and cannot look into defence set out by the defendant in the written statement. The Court needs to consider, whether on facts pleaded by the plaintiff, treating them to be true, a cause of action is disclosed or not. He further relied on the judgment of the Hon'ble Bombay High Court, Nagpur Bench in the case of *Prabhudayal s/o Ramkhilawan Pande Vs. Shantabai wd/o Shyamsunder Pande and Ors. 2016(1) Mh.L.J. 262*. In this case the Hon'ble High Court has observed that provision under Order VII, Rule 11 of the Code of Civil Procedure and Order XIV operate at different stages of the suit and also the trial Court has power of rejecting the plaint at any stage of the suit, the principles of law which are required to be considered by the Court in respect of decision to be taken under Order VII, Rule 11 of the Code of Civil Procedure are different than the principle of law which the trial Court must abide by after having frame the issues on the basis of written statement.

6] Perused the record. The present suit is for ejection, possession, fair rent and recovery of mesne profit filed under Section 15(1),15(3),16(1)(g)(h)(i)(j) r/w Section 33 of Maharashtra Rent Control Act, 1999. It seems that in the present suit issues are already framed by my Ld. Predecessor vide Exh.15 and the matter is fixed for the evidence of the plaintiff. It is settled position of law that only the averments in the plaint needs to be considered. From the perusal of the

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avernments in the plaint it seems that the defendants have failed to pay the rent to the plaintiff as per the compromise deed. The compromise decree dated 8/08/2010 shows that on breach of the conditions mentioned therein party no. 2 that is the plaintiff can bring suit against the defendants. It is the contention of the plaintiff that the defendants have breached the terms and conditions of the compromise-deed as they have failed to pay the rent. The contention of the defendants that the plaintiff is not accepting the rent from them and suit property does not require immediate repairs cannot be considered at this stage. These issues can be decided on merit. Therefore, after carefully going through the avernments of the plaint prima-facie it seems that there is a cause of action to the plaintiff for bringing the present suit. Therefore, this application is devoid of merit. Hence, I proceed to pass the following order-

ORDER

- 1) Application is hereby rejected.
- 2) Costs in cause.

Kamptee
Date : 2/8/2017.

(Smt. S. A. Patil)
Jt. CJJD & JMFC,
Kamptee.