

Order below Exh.117 in R. C. S. No.04/2022

CNRNOMHOS120000292022

Nature of application -

1. Present application is filed by defendant no. 2 & 3 under Order VII Rule 11(d) of C.P.C for rejection of plaint on ground of bar of law.

Grounds of application -

2. It is averted that, plaintiff has filed suit for declaration, recovery of possession, injunction and mesne profit. Plaintiff is claiming injunction against defendant No.3 that entries made by him in Gram Panchayat record shall be deleted. The suit is barred by the provisions contemplated under Section 180 of the Maharashtra village Panchayat Act, 1959 (Hereinafter referred to as Village Panchayat Act) and under Section 280 the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (Hereinafter referred to as Panchayat Samiti Act). Upon meaningful reading of the averments made by plaintiff in his plaint in their entirety, the suit is manifestly vexatious, without any merit and is barred by law and said suit is without any cause of action. If present application is allowed and suit filed by plaintiff is rejected no any loss would be suffered by plaintiff. On the other hand if present application is rejected then certainly it would cause hardship to present defendant as present litigation is meaningless, bereft of merit and would certainly waste the judicial time of the court. Suit is not maintainable as per law. Hence, this application.

Stand of plaintiff -

3. Plaintiff has submitted her say to the application at Exh.119. She has submitted that application is false and against the provision of law. Defendant No.2 and 3 have not filed their W.S. Plaintiff has not filed the suit for declaration and possession against defendant No.2 and 3. The notice under

Section 180 and 280 of M.L.R.C. has been given to them before filing the suit. The suit is not barred under any provision of the law. Defendants have submitted this false application at late stage to prolong the matter on the say of other defendants. She has prayed to reject the application.

Arguments -

4. Ld. Advocate for Defendant No.2 & 3 has argued in line with contents of present application. He has submitted that suit is filed before expiration of period mentioned under Section 180 of Village Panchayat Act and Sec. 280 of Panchayat Samiti Act. He also submits that, as such the suit is barred by law. He has prayed to reject the plaint by allowing the application. He has relied upon following rulings to buttress his submission in **Civil Revision Application No.186 of 2024 of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad.**

5. Ld. Advocate for plaintiff argued that, main prayer of the plaintiff is against defendant No.3. He has also argued that, mandatory notice is given to the defendant No.2 & 3. He has next submitted that, waiting period mentioned in the notice can be waived. It is his further submission that defendant No.2 & 3 have not filed their W.S., so they have no right present application. He has also canvassed submission that, application is filed at belated stage. He has prayed to reject the application. He has relied upon judgment of Rajasthan High Court in the case of **Nemichand Vs. Gram Panchayat, Thanvla on 16 March, 1973 AIR 1974 RAJ1.**

6. Considering the contention of the rival parties following points arise for my consideration and I record my findings thereon for the reasons mentioned below therein-

Sr. No.	Points	Findings
1.	Whether the suit appears from the statement in the plaint to be barred by any law?	Yes.
2.	What order?	Application is allowed. Plaint is rejected.

Reasons

As to point No.1:

7. It is apposite to refer here Order VII Rule 11(d) of the C.P.C. which provides thus-

Order VII Rule 11

The plaint shall be rejected in the following cases

a-----

b-----

c----

d. Where the suit appears from the statement in the plaint to be barred by any law.

8. It is settled principle of law that while deciding an application under Order VII Rule 11 of C.P.C. only the averments in the plaint is required to be considered and not the defence put-up by defendants. Perusal of the plaint shows that defendant No.2 is Chief Executive Officer, Zilla Parishad, Osmanabad and defendant No.3 is Gramsevak, Grampanchayat Office, Satwaiwadi, Tq. Washi, Dist. Osmanabad. Plaintiff has sought relief of declaration of ownership of suit properties. Plaintiff has contended that, defendant No.4 to 81 have made illegal encroachment and construction over the suit properties. She has sought recovery of vacant possession of encroachment land. She has further claimed mesne profits from the date of

filing of the suit till recovery of possession. She has further claimed relief of mandatory injunction against defendant No.3 to issue direction to him to delete the name of defendant No.4 to 81 from revenue record.

9. It is opt to refer here Section 180 of Village Panchayat Act. It reads thus-

Sec.180.

Bar of action against panchayats, etc. and previous notice before institution.—

(1) No action shall lie against any member, officer, servant or agent of panchayat acting under its direction, in respect of anything in good faith done under this Act or any rule or by-law.

(2) No action shall be brought against any panchayat or any member, officer, servant, or agent of such panchayat acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the panchayat and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any panchayat or person to whom a notice under sub-section (2) is given shall, before an action is brought, tender sufficient amends to the plaintiff and pay into court, the amount so tendered, the plaintiff shall not recover more than the amount so tendered.

The plaintiff shall also pay all costs incurred by the defendant after such tender.

Section 280 The Panchayat Samiti Act, 1961 reads thus-

Section 280-

280. Limitation of suits, etc.— (1) No suit shall be commenced against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.

(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

10. From plain perusal of Section 180 of the Act it reflect that, three months prior notice under Section 180 of the Act is necessary to be issued to village panchayat and its official before filing the suit claiming relief in respect of any act done by it or purported to be done by it. It is averred by plaintiff that defendant No.3 without any legal authority have mutated name of defendant No.4 to 81 to revenue record of the suit properties and by its act plaintiff right is violated. She has also

contended that she had issued notice prior to filing suit against defendant No.3. Perused the copy of notice filed along with list at Exh.104. The notice appears to be of 26.11.2021. It further appears from document at Exh.60 that those notices were sent by R.P.A.D. on the same day. There is reference of said notice in the plaint. Plaintiff has sought waiver of the period mentioned in Section 180 of the Act. It is apparent from record that, the suit has been filed prior to expiration of three months of notice period under Section 180 of the Act.

11. Argument of Ld. Advocate for plaintiff that defendant without filing any W.S. has no authority to move an application under Order VII Rule 11 of C.P.C. has no force, as there is no mandate in law to file W.S. prior to moving an application under Order VII Rule 11 of C.P.C. It transpires from the section that the application can be moved at any stage.

12. In a Nemichand (Supra) decision relied upon by Ld. Advocate for plaintiff the question arose before the Hon'ble High Court was whether before filing a suit against the Grampanchayat a notice was necessary to the Panchayat under Section 79 (2) of the Rajasthan Panchayat Act. In that case the suit was dismissed by the trial court holding that it was necessary for the plaintiff to have given such notice to the Grampanchayat before filing the suit. The Hon'ble Rajasthan High Court had uphold the view taken by the trial court and had dismissed the appeal.

13. In present case the question is regarding issuance of notice under Section 180 of the Village Panchayat Act and Sec. 280 of Panchayat Samiti Act and its waiting period. In Nemichand case issue was regarding notice under Rajasthan Panchayat Act. Facts of the case

in hand and ruling relied upon by plaintiff are different being based on different Acts. So, also considering the finding recorded in the ruling relied upon by Ld. Advocate for plaintiff I find that the ruling is not of any assistance to him.

14. In ruling relied upon by Ld. Advocate for defendants, order of trial court rejecting an application under Order VII Rule 11 of C.P.C. for want of notice under Section 280 of the Zilla Parishad Act and Sec. 180 of Panchayat Samiti Act was assailed before the Hon'ble High Court by way of revision. The Hon'ble Bombay High Court in para no. 14 has held that granting waiver of the notice period is not within jurisdiction of the trial court, so far as notice under Section 280 of Zilla Parishad Act and notice under Section 180 of Village Panchayat Act are concerned. In that case the Hon'ble High Court had allowed the revision and rejected the plaint for want of the notices.

15. There is no provision unlike Section 80 of C.P.C. in Section 180 of Village Panchayat Act and Section 280 of Panchayat Samiti Act empowering the trial court to dispense with the period of notice while entertaining challenge to the action of the authorities under the said Acts. The authority relied upon by Ld. Advocate for defendant is directly refers to the question involved in the suit and squarely applicable to the facts of the case.

16. It is apparent from remark on the suit that it has been instituted on 28.01.2022, the notice under Section 180 and 280 of the both Acts seems to have been issued to defendant No.1 to 3 on 26.11.2021. It is also evident that no application seeking exemption from waiting period was filed along with the suit. More over, in view of ratio in the decision relied upon by Ld. Advocate for defendant such

waiver is not permissible. Considering the date of issuance of notice under Section 180 and 280 of both Acts, it is evident that the suit has been filed prior to expiration of three months waiting period after issuance of same.

17. Considering the aforesaid discussion I find that the suit is barred by Section 180 Village Panchayat Act and Section 280 Panchayat Samiti Act 1961. So, I answer point No.1 in the “Affirmative”.

As to Point No.2:

18. In view of finding recorded on point No.1, plaint is liable to be rejected under Order VII Rule 11 of the C.P.C. In the result I pass following order:

ORDER

1. The application is allowed.
2. Plaint is rejected under Order VII Rule 11 of the C.P.C.
3. Decree be drawn up accordingly.

Date- 22-06-2026

(Rahul D. Dange)
Jt. Civil Judge Sr. Division, Bhoom.

CERTIFICATE

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

Name of Stenographer	---	Mr. Sayyad R.M. Stenographer - Grade II
Court	---	Mr. R.D. Dange Jt. Civil Judge, Senior Division, Bhoom, District - Osmanabad.
Date	---	22/06/2026
Order signed by the Presiding Officer on	---	22/06/2026
Order uploaded on	---	22/06/2026