

MHSO070007142019



ORDER ON EXH. 24 IN R.C.S. No.570/2019
(Passed on 12th September 2025)

1. This application is filed by defendants under Order 7 Rule 11(d) of Civil Procedure Code (hereinafter referred as “C.P.C.” for the sake of convenience). The plaintiff has filed say at Exh. 32 and objected the application. Heard Advocates for both sides. Perused the record.

2. It is submitted by defendants that, present suit is filed for specific performance of the agreement. Defendants have denied all contention in the pleadings. After considering pleadings in paragraphs No. 3 to 5 of the plaint, plaintiff has purchased suit properties in the name of defendants No. 1 and 2 and he has paid amount of consideration to the original owner of those properties. Considering these statements, the transaction is *benami* transaction and therefore, suit is barred by Prohibition of *Benami* Property Transactions Act, 1988. (*hereinafter referred as “ the Benami Act” for the sake of convenience*). Therefore, it is prayed that suit is barred by provision under section 4 of *the Benami Act*.

3. The plaintiff objected the application by stating that contentions raised are incorrect and raised by interpreting the provisions of law incorrectly. Plaintiff was Advocate for defendant and therefore, they have mutual fiduciary relationship between them. Therefore, out of this trusted relationship, in certain circumstances transactions have occurred and by stating those facts

plaintiff has sought reliefs. The transactions executed by plaintiff falls within exception under section 4 of *the Benami Act*. Therefore, this application is not maintainable and prayed to reject it. The Advocate for the plaintiff relied on judgment by Hon'ble Supreme Court in **Sri Marcel Martins Vs. M.Printer & Others 2012 C.J.(SC) 1680 dated 27.04.2012.** The Hon'ble Supreme Court while discussing section 4(3) of *Benami Act* stated that *the expression fiduciary capacity is not defined in the Act. Further from various dictionaries the definition of fiduciary capacity are elaborated. It is held that in determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. It clearly stated that this is a question of fact.* By relying on this ratio, the Advocate for the plaintiff submitted to reject the application.

4. It is well settled principle of law that while considering the rejection of a plaint under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.), the court must solely focus on the plaint and its averments only. The court cannot consider the defendant's written statement, evidence, or any other external factors including the application itself which is filed for rejection of plaint. The court's examination is limited to whether the plaint, on its face, discloses a cause of action, is properly valued and stamped, is not barred by any law, and complies with procedural requirements. It is submitted by the defendants to reject the plaint on the ground that

this Court has no jurisdiction to try and entertain this suit being expressly barred by provision under section 4 of *Benami Act*.

5. The plaintiff categorically stated that he and deceased defendant No.1 had very good relationship. Plaintiff is Advocate by profession. Deceased defendant was money-lender and he had purchased properties from various borrowers and after conclusion of their transactions, he had exempted document of sale in the favour of borrower. When the plaintiff in the year 1998, was intended to purchase suit property No.1, to avoid ceiling limit from holding any land by the family of plaintiff, he was in conflict to purchase the suit property. However, deceased defendant suggested him to purchase the property in his name. Thereby suit property No.1A was purchased in the name of deceased defendant Jangonda, suit property No.1B and 1C were purchased in the name of Rajendra i.e. defendant No.2. Therefore, these properties were purchased by plaintiff in the name of defendants in fiduciary capacity. The consideration is paid by the plaintiff. Suit properties are in possession of plaintiff since the purchase and he has developed these properties and their value is enhanced.

6. Plaintiff demanded to buy back these properties from defendants. Deceased defendant was sick and therefore, it was decided after he became well, sale-deed will be executed. However, on 15.11.2008 defendant Jangonda died. Thereafter, defendants No. 2 to 4 avoided and later on they refused to execute sale-deed in favour of plaintiff. Therefore, this suit came to be filed. The plaintiff has claimed that he has purchased the property in the name of

defendants but they have fiduciary relationship as he was their Advocate. Advocate-client is a fiduciary relationship. Therefore, considering exemption under section 4 of *the Benami Act* prohibition is not applicable to the present suit.

7. The Advocate for the defendants argued that by way of amendment exemption provided under section 4 of the bename Act has been omitted. Section 4(3) of *the Benami Act* is no longer applicable to claim the benefit. Section 4 of *the Benami Act* provides prohibition of the right to recover property held *benami*. However, section 4(3) of *the Benami Act* provides that prohibition stated in sub-sections 1 and 2 of the section 4 are not applicable to certain relationship namely where property is held in the name of Karta of Hindu undivided family or where the person holding the property is trustee or he is in fiduciary capacity with the person for whose benefit the property is purchased. By way of amendment act and with effect from 01.11.2016 section 4(3) of *the Benami Act* has been omitted.

8. *The Benami Act* defines *benami* property and *benami* transaction under sections 2(8) and 2(9) of the Act. *Benami* property is the property which is the subject matter of *benami* transaction whereas *benami* transaction is a property held by a person in respect of whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person. In such circumstances, whether a property is a *benami*, has to be

considered not in the light of section 4 of the *Benami Act* alone, but also in connection with sections 2(8) and 2(9) of the said Act i.e. whether the property is *benami* or falls in exception. It is only whether the property is *benami* and does not fall within the exception contained in section 2(9) of the Act that a suit may be said to be barred. However, the issue whether the property is *benami* and is not covered by the exception or whether it is covered by exception is an issue to be decided based on evidence and not simply upon the averments made in the plaint. The defendants have denied existence of any such fiduciary capacity which plaintiff has averred specifically. Therefore, this is the mixed question of law and fact. Thus, it cannot be decided by plain reading. Thus, the objection raised that suit is barred under section 4 of the *Benami Act* is not maintainable at this stage. As stated above alongwith section 4, section 2(8) and 2(9) of the Act are required to be read together. Therefore, mixed question of law and fact cannot be adjudicated by invoking provision under order 7 rule 11 of the C.P.C. It requires adjudication on merit. For the reasons mentioned above, following order is passed:

ORDER

1. Application at Exh. 24 is rejected.
2. No order as to costs.

Date:- 12.09.2025.

(Smt. S.S.Raul)
Jt. Civil Judge Junior Division,
Pandharpur, Dist. Solapur.

CERTIFICATE

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

Name of Steno.	:-	D.S.Landage, Stenographer (Grade-III)
Court Name	:-	Jt.Civil Judge (Jr.Dn.) Pandharpur, Dist. Solapur.
Date	:-	12.09.2025.
Order signed by the presiding officer on	:-	12.09.2025.
Order uploaded on	:-	12.09.2025.