

R.C.S. No.538/2020.

Manisha Pawar Vs. Aatmaram Salunkhe  
& Ors..

CNR NO.MHST-05-000262-2020

**Order Below Exh.49**

Defendant no.9-(Dyandeep Co-operative Credit Society) has moved the present application for rejection of plaint by taking recourse of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908, contending therein that, defendant no.1 and 2 has obtained a loan of Rs. 50,00,000/- from defendant no.9 on 21/03/2017 by executing registered mortgage deed in its favour. As defendant no.1 and 2 failed to repay the loan and so, defendant no.9 has instituted the proceeding as per Section 101 of the Maharashtra Co-operative Societies Act, 1960 and recovery certificate is issued on 01/06/2018 after following due procedure of law. According to the present defendant, in order to cause impediment in the recovery proceeding, plaintiff alongwith members of her family with collusion filed the present suit for partition without issuing notice u/s. 164 of the Maharashtra Co-operative Societies Act, 1960 which is mandatory. According to the present defendant, prior notice as contemplated u/s.164 of the Maharashtra Co-operative Societies Act, 1960 has not been issued by the plaintiff and so, present suit is barred and liable to be rejected in view of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

02. The present application is opposed by plaintiff

vide say below Exh.52, in which it is contended that, the plaintiff no.9 has illegally advanced the loan to the defendant no.1 and 2 without ascertaining the fact that, suit property is partitioned or not. As per plaintiff, she is having undivided share and right in the suit property and she did not know about the advancement of loan which is not binding upon her. As per plaintiff, defendant no.9 is going to attach the suit property in which she is having undivided share and so, she has filed the present suit for partition and separate possession alongwith application for temporary injunction. In short, as per the plaintiff, defendant no.9 has advanced loan to defendant no.1 and 2 illegally and without her knowledge and so, it is not necessary for her to issue notice u/s.164 of the Maharashtra Co-operative Societies Act, 1960 and so, application is liable to be rejected.

03. From rival contention of parties, following points arise for my determination on which I have recorded my findings thereon with reasons to follow.

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether suit is liable to be rejected against defendant no.9 in view of Order 7 Rule 11(d) of the Code of Civil Procedure ?	...In the affirmative.
2.	What order ?	...As per final order.

**REASONS**

04. Heard learned counsel for the defendant and learned counsel for the plaintiff. Perused record.

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

05. Contention of defendant no.9, as it appears from their application is to the effect that, defendant no.9 has advanced loan of Rs.50,00,000/- on 21/03/2017 to defendant no.1 and 2 in view of execution of registered mortgage deed. As defendant no.1 and 2 failed to repay the loan and so, they have instituted a proceeding under provisions of the Maharashtra Co-operative Societies Act, 1960 and accordingly certificate as contemplated u/s.101 of Maharashtra Co-operative Societies Act, 1960 has been issued and now recovery is in progress. As plaintiff has not issued prior notice u/s.164 of the Maharashtra Co-operative Societies Act, 1960 and so, present suit is liable to be rejected by taking recourse to Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

06. As per clause (d) of Order 7 Rule 11 of the Code of Civil Procedure, 1908, where the statement made by the plaintiff in the plaint shows that, suit is barred by any law inforce, then it is liable to be rejected. So, it is clear that for the application of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 it is the plaint which has to be seen for the decision. On perusal of the plaint it appears that, plaintiff has in para no.4 of the plaint has pleaded that, defendant no.1 and 2 has obtained loan of Rs.50,00,000/- from defendant no.9 in the year 2017 which is due and also mentioned that, defendant no.9 has obtained a recovery certificate u/s. 101 of the Maharashtra Co-operative Societies Act, 1960 and process of recovery is going on. In

the rest of the plaintiff has claimed that, she has undivided right in the suit property being daughter of defendant no.1 and sister of defendant no.2. Now, it has to be seen whether advancement of loan by society in the present case touches the business of the society or not. Here, it appears that defendant no.9 is co-operative credit society and its main business is to advance the loan. Plaintiff has specifically mentioned about the said loan transaction in her plaint para no.4 and even it appears that, plaintiff has issued notice u/s.80 of the Code of Civil Procedure, 1908 to other defendant no.11, 12 and 13 but, has not issued notice as contemplated u/s.164 of the Maharashtra Co-operative Societies Act, 1960 to the present defendant no.9. Section 164 of the Maharashtra Co-operative Societies Act, 1960 is reproduced below-

“No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

07. Here, on bare perusal of plaint it becomes clear that, plaintiff has specifically mentioned in plaint para no.4 that defendant no.1 and 2 has obtained loan of Rs.50,00,000/- (who is her father and brother) from

defendant no.9 and even defendant no.9 has obtained a recovery certificate under provisions of of the Maharashtra Co-operative Societies Act, 1960 but, has not issued notice as contemplated u/s.164 of the Maharashtra Co-operative Societies Act, 1960. Here, no doubt advancement of loan is main business of defendant no.9 which is co-operative credit society and they have advanced loan in view of registered mortgage deed executed by defendant no.1 and 2 and when said defendants have failed to repay the loan, proceeding under the provisions of of the Maharashtra Co-operative Societies Act, 1960 has been initiated and recovery certificate as contemplated u/s.164 of the Act has been obtained.

08. Here, eventhough suit of the plaintiff is for partition and separate possession of specific share which according to her is 1/21 but, she has claimed the specific relief of injunction against the defendant no.9 in respect of the act of advancement of loan and its consequent recovery which is the act touching the business of society for which in my opinion notice u/s.164 of the Maharashtra Co-operative Societies Act, 1960 is necessary.

09. In these circumstances it becomes clear that, notice as contemplated u/s.164 of the Maharashtra Co-operative Societies Act, 1960 is mandatory. Even though plaintiff has issued a specific notice as contemplated u/s. 80 of the Code of Civil Procedure, 1908 to defendant no.11, 12 and 13 but, for the reason best known to her has not issued notice as contemplated u/s.164 of the Maharashtra

Co-operative Societies Act, 1960 and so, in my opinion suit is hit by Order 7 Rule 11(d) for non issuance of mandatory notice u/s.164 of the Maharashtra Co-operative Societies Act, 1960. Consequently, I answer point no.1 in the affirmative and in respect to point no.2 pass the following order.

**ORDER**

- 1) Application is allowed.
- 2) Plaint is rejected against defendant no.9 vide Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.
- 3) Status-quo order if any against the present defendant, stands vacated.

Karad.  
Date :- 18/01/2022.

(Y.H.S. Deshmukh)  
Jt. Civil Judge Senior Division,  
Karad.