ORDER BELOW EXH. 60 IN R.C.S. NO. 30/2014.

CNR NO. : MHST07-000197-2014

01. This is an application under Order 7 Rule 11(d) of Civil Procedure Code filed by the defendant nos. 1 and 2 seeking rejection of plaint on the count that suit appears from the statement in the plaint to be barred by law.

02. Perused record. Heard both the Advocate at the length. Order 7 Rule 11(d) states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Hence, it would be necessary only to considered the averments in the plaint and not the defence or contentions of defendants. Here it would be profitable to rely on the case of **M/s. Candolim Developers Pvt. Ltd. Vs. Mr. Pravin Grover and Ors.** reported in **2017 (2) ALL MR 117**.

03. According to defendant nos. 1 and 2, they had purchased Survey No. 72/1B by way of sale-deed dated 24.11.2000 from defendant no. 5 Yashwant Kelkar. Thereafter, defendant nos. 1 and 2 have filed R.C.S. No. 351/2001 against plaintiff company, defendant nos. 3 and 4 for possession and recovery of rent. On 03.11.2001 the suit was compromise between the parties. On the basis compromise Darkhast bearing No. 61/2013 was filed, which is still pending. At present the plaintiff company in plaint has claim the relief of declaration that the compromise decree in R.C.S. No. 351/2001 has been obtained by fraud and not binding on the plaintiff company. Thus, it was argued on behalf of defendants that

plaintiff company had knowledge about these acts. The plaintiff company cannot challenged the compromise decree by filing separate suit. The objections can be taken in R.D. No. 61/2013 and no separate proceeding or suit shall maintainable. The aforesaid question can be decided under section 47 of C.P.C. Hence, the suit is barred by law. To lend support to his submission reliance was place on the case of **Mohanlal s/o Gowaradhan Baid and another Vs. Khandelwal Brothers Ltd.** reported in **2002(3) Mh.L.J. 835,** wherein it has been held that "all question whatsoever between the parties to the suit in which a decree has been passed, have to be determined by the Court executing the decree in the same sit and not by way of a separate suit." With due respect aforesaid observation **Mohanlal** (Supra) would not be applicable as the suit was for recovery of amount which was decided ex-parte. Thereafter, Darkhast was filed against J.D. One of the J.D. had field another suit setting aside the decree. Hence, the suit is not maintainable. In the case in hand as per the plaint, the compromise decree obtained in R.C.S. No. 351/2001 was by fraud without following the provision of company law. Therefore, a separate suit would be maintainable. Here it would be profitable to rely on the case of **Latitabai w/o Ishwarprasad Chopra Vs. Pundlik Dayaram Rangari through his Lrs. Shantabai wd/o Pundlik Rangari and others** reported in **2007(1) Mh.L.J. 782**, wherein it was postulated separate suit for declaration that the decree obtained by fraud was maintainable. In view of aforesaid legal position, in the instant there is specific pleading in para 11 of the plaint that the compromise decree is obtain by fraud and not binding on the plaintiff company. The provision of section 293 of Company Act was not followed. Thus, the aforesaid questions need to be dealt with separate suit as it is a part of evidence and not under section 47 of C.P.C. Hence, it cannot be said that the suit is barred by law.

04. On the aspect of limitation and knowledge of the sale-deed dated 24.11.2000 to defendant no. 4 it was argued on behalf of defendant nos. 1 and 2 that defendant no. 4 being one of the director of the plaintiff company had knowledge of the compromise decree in R.C.S. No. 351/2001. No pains were taken by defendant no. 4 for cancellation the sale-deed dated 24.11.2000 till today. Thus, the present suit filed on 21.01.2014 is barred by limitation. On the point of limitation reliance was place on the cases of :-

1) Janhangir @ Jawahar Kaikashrau Karanjia (since deceased) Smt. Mehbi Karanjia and others Vs. Maureen De Sequeira reported in 2017(6) Mh.L.J. 270.

2) Naginchand s/o Devichand Buccha Vs. Shri. Vinon s/o Tarachand Gupta & Ors. reported in 2017(6) ALL MR 380.

3) Umed Realtors, Wani, Dist. Yavatmal and others Vs. Shobha wd/o. Mahadeo Deshpande and others reported in 2017(3) Mh.L.J. 308.

There can be no dispute in respect of the settled principles in the said cases. However, the facts and circumstances in the said cases are not identical with those in present case at hand. Hence the said case laws adduced by defendants cannot be made squarely applicable to the present case as per the plaint the plaintiff company had knowledge about the compromise decree passed in R.C.S. No. 351/2001 after receiving summons of R.D. No. 61/2013 on 23.07.2013. Therefore, according to plaint under Article 59 the suit is within limitation. At this juncture it would be imperative to note that the suit involving knowledge and starting point of limitation is question of fact and law can be gone into only at trial. In this context it would be profitable to rely on the cases of :-

1) M/s. Boshan Developers Pvt. Ltd. Vs. Communidade of Bordem, Thr. Its Special Attorney & Ors. reported in 2015(6) ALL MR 868.

2) Smt. Sushilabai wd/o. Bomenshaw Byramji Vs. Smt. Kamlarukh wd/o. DPR Cassad through Lrs. & Anr. reported in 2014(2) ALL MR 629.

In view of aforesaid legal position the point of limitation being question of fact and law can be gone into only at trial. It is the part of evidence which will decide whether the suit is barred by limitation or not. Hence, on going through the para no. 13 of the plaint there is specific pleading about the knowledge of decree in R.S.S. No. 351/2001 on 23.07.2013 after receiving copy of summons of R.D. No. 61/2013. Resultantly, on the point of limitation and knowledge to defendant no. 4 the suit is not barred by any law.

05. On the aspect of authority to file the instant suit it was argued on behalf of defendant nos. 1 and 2 that the plaintiff company is closed since 1980. No general meeting has been taken place for appointment of Mukund Kadam as additional director. The

power of attorney dated 30.03.2012 is in valid as principal plaintiff company would not be liable for the acts of attorney or agent. The power of attorney dated 04.09.2013 and resolution dated 11.04.2012 appointing Mukund Kadam as Additional Director of plaintiff company is not by following procedure under the Company Act. Moreover, the Additional Director hold office for the period of one year i.e. till next general meeting. As there was no general meeting held, the term of additional director was completed on 10.04.2013 while the suit is filed on 21.01.2014. Hence, it was argued that Mukund Kadam had no authority to act as Additional Director or constituted attorney on behalf of plaintiff company. So also the provision of section 4 of the Power of Attorney Act, 1882 was not followed. Amplifying his submission he place reliance on the cases of :- 1) **The Sangli Bank Ltd. Vs. Kanishka Investments Ptv. Ltd.** reported in **1991(1) ALL MR 556** with deals with authorization to sign the plaint and it's proof and 2) **Subhiksha Trading Services Ltd. and another Vs. Azim Premji** reported in **2015 (4) ABR 269**. with deals with the plaint has to be signed by authorised officer.

06. In retort, it was argued on behalf of plaintiff that the plaintiff company is defunct company and not dissolved company. Mukund Kadam has been appointed as power of attorney holder on the basis of power of attorney dated 04.09.2013. So also, he is the Additional Director as per the resolution passed by plaintiff company on 11.04.2012. Moreover, it is the part of evidence by framing proper issue on the point of authorization the aspect can be decided. He place reliance on the case of United Bank of India VS. Naresh Kumar and others reported in AIR 1997 SC 3, wherein it

has been postulated that, where suits are instituted or defended on behalf of public corporation like bank, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the mater should not be permitted to defeat a just cause.

07. Here it would be imperative to note that a company is a juristic entity. It can duly authorized any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14. A person may be expressly authorized to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence there of and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer. Thus, in the instant case it is the part of evidence which will decide the point of authorization by framing a proper issue. Hence, the suit filed by power of attorney holder and Additional Director Mukund Kadam would be sufficient compliance on the Order 29 Rule 1 of C.P.C. and Order 6 Rule 14 of C.P.C.

08. With regard Order 23 Rule 3-A of C.P.C. it was argued on behalf defendant nos. 1 and 2 that a separate suit challenging the consent decree on the ground of fraud is not maintainable. The

plaintiff had separate remedy which they have not avail. In order to buttress this submission reliance was place on the cases of :-

1) Dr. Damodar Tukaram Gaunkar Vs. Shri. Gopinath Rama Gaunkar & Ors. reported in 2006(3) ALL MR 88.

2) R. Rajanna VS. S. R. Venkataswamy and others reported in AIR 2015 SC 706.

In this contrast, it was argued in behalf of plaintiff that judgment, decree or order obtain by playing fraud on court is a nullity and non est in the eyes of law. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In support of these submission reliance was place on the cases of :-

1) A. V. Papayya Sastry & Ors. Vs. Government of A.P. & Ors. reported in Appeal (civil) 5097-5099 of 2004.

2) Ram Chandra Singh Vs. Savitri Devi and Ors. reported in Appeal (civil) 8215 of 2003.

From this stand point it would be pertinent note that, a separate suit challenging a compromise decree is not barred where the decree is challenged by pleading fraud and impersonation. Agreement or compromise which are not lawful are referred to in Order 23 Rule 3A in general terms, but the Explanation appended to Order 23 Rule 3 makes it clear that if the agreement or compromise is not the result of consensus of mind of two persons in respect of certain matters, viz. When the consent of one of them to the terms is obtained by the other by some illegal means, namely, by fraud, coercion or undue influence, there is in fact no compromise. Hence, it cannot be said that the suit is barred by law i.e. Order 23 Rule 3A of C.P.C.

09. As stated above, on perusal of the plaint, it cannot be said that the suit is barred by any law whereby plaint needs to be rejected under Order 7 Rule 11(d) of C.P.C. Hence, application is liable to be rejected. In the result, I pass the following order :-

O R D E R

(01) Application Exh.60 is rejected.

(R. T. Ghogle)
Date :- 11-01-2018. 2 nd Jt. Civil Judge J.D., Karad.