

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 146 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER Sd/-**

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Approved for Reporting	Yes	No
	Yes	
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THE PURUSHOTTAM FARMS COOPERATIVE COTTON & ANR.

Versus

GUJARAT RAJYA KHEDUT SAMAJ

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Appearance:

MR VC VAGHELA(1720) for the Applicant(s) No. 1,2

MS.MEGHA JANI, ADVOCATE with MS.AISHWARYA GUPTA for

MR AJ YAGNIK(1372) for the Opponent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 09/09/2025****ORAL JUDGMENT**

1. With the consent of learned advocates appearing for the respective parties, matter is taken up for final disposal. Hence, Rule returnable forthwith. Ms. Gupta, learned advocate waives service of notice of Rule on behalf of Respondent.
2. Present Revision Application has been filed challenging the order dated 17.02.2024 passed below Exh.20 in Regular Civil Suit No.437 of 20203 by 7th Additional Civil Judge, Surat, whereby the application filed by the present Petitioner under Order VII Rule 11 of Code of Civil Procedure, 1908 ('cpc', for short) has been rejected

by the trial Court.

3. For the sake of brevity, the parties referred herein are as per their original status as that of before the trial Court.
4. The brief facts of the present Revision Application are that the Plaintiff filed civil suit against the Defendants on the ground that Defendant No. 1 executed a Lease-Deed for a period of 51 years on 06.02.2017. Monthly rent of said suit premises was Rs.500/- each for Room No. 3 and Room No. 4 and that the Plaintiff is in possession of the suit property.
5. In view of the fact and the fact that Defendants were trying to take possession of Room Nos.3 and 4, which have been given to the Plaintiff for a period of 51 years on rent and in view of the fact that there were notices / corresponding, the Plaintiff apprehended that the Defendant may take possession of Room Nos.3 and 4 without due process of law, and the Defendants have illegally issued Resolution, the suit was filed for declaration that Defendants do not have right to take possession of Room Nos.3 and 4 in view of the said fact that rooms were given on rent by way of lease-deed and the suit is also filed for ancillary relief of injunction for restraining the Defendants from taking away possession of Room Nos.3 and 4, without due process of law.
6. Learned advocate for the Petitioner - Defendant argued that the Defendants appeared in the said suit and filed application vide Exh.20 under the provisions of Order VII Rule 11 of 'CPC' mainly on the ground that Defendant being co-operative society registered

under the Gujarat Co-operative Societies Act, 1961 ('the Act, 1961', for short) and, therefore, as per provisions of Section 167 of 'the Act, 1961', as no notice is served under the said provision, the suit is barred by Law.

7. Moreover, it has been argued by learned advocate for the Defendant that in view of the fact that the Plaintiff himself has referred in the Plaint, Plaintiff uses the Room Nos. 3 and 4 as cotton offices and, therefore, it clearly falls as a "dispute touching business of Defendant" and, therefore, no suit can be instituted against the Defendant until the expiration of two months after notice in writing to be delivered / to be left to the Registrar stating the cause of action, name, description and place of residence of the Plaintiff and the relief which is claimed.
8. Only after issuance of the said notice stating all these facts in the Plaint that the notice has been so delivered, the suit can be filed and in view of the said fact, it has been argued that the Plaint is required to be rejected and the trial Court could not have dismiss the application filed under the provisions of Order VII Rule 11 of the CPC.
9. *Per Contra* learned advocate for the Plaintiff has mainly argued that suit that has been filed by the Plaintiff is solely on the ground that the Plaintiff has been handed over the suit property by way of lease-deed for a period of 51 years and it is the case of the Plaintiff that the Plaintiff is in possession of the property by way of said lease deed. Therefore, the relief that has been sought by the Plaintiff is for

a declaration with respect to the said possession of the Plaintiff in the suit property and the fact remains that Defendant is Cotton Ginning and Processing Society Ltd. and there is nothing on record to show and prove in the Plaint and the documents annexed with the Plaint that business of the Defendant is of giving premises on rent and entering into lease-deed with respect to property that belonged to the Defendant and, therefore, the trial Court has rightly held that no notice under Section 167 of 'the Act, 1961' is mandatory before institution of suit as the dispute that is stated in the Plaint is not touching business of the society and, therefore, trial Court has rightly rejected Plaint under the provisions of Order VII Rule 11 of the CPC.

10. Heard learned advocates for the parties and perused the record. Though in the Plaint, the Defendant has sought for rejection of the Plaint on other grounds, but while arguing the present Civil Revision Application, learned advocate for the Petitioner has stated that he wants to canvas his argument only with respect to provisions of Section 167 of the 1961 Act. The said provision reads as under.

“167. Notice necessary in suits.

- Save as otherwise provided in this Act, 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.”

11. In view of the above referred provisions of law, the fact which requires to be ascertained is that whether the dispute that is stated in the Plaint touches the business of Defendant or not. In this background, if the averments of the Plaintiff are taken into consideration, the following things will emerge.
 - i. The Plaintiff is claiming to be in possession of the property by virtue of lease-deed executed on 06.02.2017;
 - ii. The said lease-deed is for a period of 51 years;
 - iii. The said lease-deed states that two rooms i.e. Room Nos.3 and 4 are given on lease to the Plaintiff
 - iv. Rent that has been stated in the Plaint is Rs.1000/- per month for both the premises;
 - v. Suit that has been filed by the Plaintiff is for protection of the possession of the suit premises and for declaration that the Defendant may not take away possession of the suit property without due process of law; and to declare the Resolution passed by the Defendant as illegal and for ancillary reliefs with respect to possession.
12. When the plaint is examined in its entirety, there is nothing therein to indicate that the Defendant Society conducts the business of leasing out premises. The objection regarding maintainability, raised on the basis of non-service of a statutory notice under Section 167, was one which could have been ascertained only on basis of the bye-laws placed on record by the Plaintiff or from averments in the Plaint. In the absence of such material, the issue cannot be even prima facie determined at the threshold stage and, if at all, will

require leading of evidence in due course.

13. It is a matter of record that the bye-laws were never presented before the Trial Court by way of documents of the Plaintiff. The legal position is clear that whether a particular controversy falls within the scope of “business of the society” depends upon the society’s objects, rules, and bye-laws. It is trite law that to exercise power under Order VII Rule 11, Court can look at Plaintiff or documents produced along with the Plaintiff. When from both of these, it is not possible to ascertain that business of the society was touching the subject matter of the suit, no conclusion thereon is possible without leading of evidence.
14. In the present case, the bye-laws of the defendant society have not been produced before the Trial Court. The determination, therefore, can only proceed on the basis of the averments contained in the plaintiff and the documents annexed thereto.
15. This Court is conscious that the dispute relates to the the suit property claimed by the society, pursuant to which a lease has been executed in favour of the plaintiff. However, while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Court is confined to the averments in the plaintiff. It would be premature to hold that this controversy in the suit “touches the business of the society” without examining the bye-laws, which are indispensable for such a conclusion.
16. Equally, the plaintiff cannot be prejudiced merely because the opposing party is a cooperative society. Whether granting leases

forms part of the society's activities, and whether the transaction in question falls within its objects, are matters that can only be ascertained through the bye-laws. Since Section 167 is mandatory in character, its operation presupposes a finding that the dispute bears some nexus, however marginal, to the society's business an inquiry which necessarily requires scrutiny of the bye-laws and cannot be done at the threshold in the present circumstances.

17. Therefore, in this Court's opinion, the Ld. Trial Court has not committed any error by rejecting the Application under Order VII Rule 11 in the present facts and circumstances.
18. In view of the above referred facts, the present Revision Application is required to be dismissed and it is dismissed accordingly. Rule is discharged. No order as to costs.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AMIT VISHNUPRASAD MISHRA(HC00187), Principal Pvt. Secretary, at High Court of Gujarat on 10/09/2025 11:19:01