



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.57 OF 2020
WITH
INTERIM APPLICATION NO.18333 OF 2022
IN
CIVIL REVISION APPLICATION NO.57 OF 2020

1. Laxmi Charitable Trust
2. Samir Chinai
3. Sudhir Mehtra
4. Rohit Adalja
5. Mathuradas Vissanji Femal
Education Trust
6. Smt. Arati H. Vissanki
7. Miss Ameeta A. Parpia
8. Shalin S. Divatia
9. Hemant P. Vissanji (deceased)
10. Arvind Dalal (deceased)

**...Applicants
(Orig. Defendant Nos.3 to 13)**

V/s.

1. Laxmi Estate Co-op. Housing
Society Ltd.
2. Andheri Varma Nagar Co-op. Hsg.
Soc. Ltd.
3. Amita Mandir Co-op. Hsg. Soc. Ltd.
4. the Wallace Four Mill Company
Ltd.
5. Municipal Corporation of Greater
Mumbai.
6. The Charity Commissioner,
Mumbai.
7. Ajit C. Shah
8. Virendra G. Bhatt

...Respondents

**WITH
CIVIL REVISION APPLICATION NO.18 OF 2020
WITH
INTERIM APPLICATION NO.18332 OF 2022
IN
CIVIL REVISION APPLICATION NO.18 OF 2020**

Wallace Flour Mills Company Ltd.

**...Applicant
(Orig. Defendant No.1)**

V/s.

1. Laxmi Estate Co-op. Housing Society Ltd.
2. Andheri Varma Nagar Co-op. Hsg. Soc. Ltd.
3. Amita Mandir Co-op. Hsg. Soc. Ltd.
4. Laxmi Charitable Trust
5. Samir Chinai
6. Sudir Mehta
7. Rohit Adalja
8. Ajit C. Shah
9. Virendra G. Bhatt
10. Sir Mathuradas Vissanji Female Education Truste
11. Smt. Aarti H. Vissanji
12. Miss. Ameeta A. Parpia
13. Shalin Divatia
14. Municipal Corporation of Greater Mumbai.
15. The Charity Commissioner, Mumbai.

...Respondents

Mr. V.R. Dhond, *Senior Advocate with Mr. Akshay Kolse Patil & Mr. Rohit Vaishya i/b. M/s. YMK Legal for the Applicants in CRA/57/2020 & for Respondent Nos.4 to 7 and 10 to 13 in CRA/18/2020.*

Mr. Akshay Patil *with Mr. Rishir Daulat, Mr. Mohanish Patkar, Ms. Ashita Chhibber, Ms. Riddhi Natekar & Ms. Meenakshi Pajuja i/b. M/s. TRD Associates for the Applicant in CRA/18/2020 & for Respondent No.4 in CRA/57/2020.*

Mr. Pradeep Thorat *with Mr. Vishal Kanade, Ms. Tanaya Patankar & Mr. Anil R. Mishra for Respondent Nos.1 and 3.*

Mr. Suraj Swami *for Respondent No.2 -Andheri Varma Nagar Co-op. Hsg. Soc. Ltd.*

Mr. Santosh Mali *for Respondent No.14- MCGM.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 21 AUGUST 2026.

Judgment pronounced on: 02 SEPTEMBER 2026.

JUDGMENT:

1) These Revision Applications are filed by the Applicants, who are original Defendant Nos. 1 and 3 to 13 challenging the order dated 7 October 2019 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, rejecting Notice of Motion Nos.3338 of 2018 and 3346 of 2018 filed for rejection of Plaint under Order VII Rule 11 (a), (c) and (d) of the Code of Civil Procedure, 1908 (**the Code**).

2) The Plaintiffs are cooperative housing societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) and have filed L.C. Suit No.3712 of 2017 before the City Civil Court

seeking declaration that they are joint owners of the suit property, which forms amenity area and facility on the layout and seeking conveyance in respect of recreation ground (**R.G.**). The Plaintiffs have also sought a declaration that they are entitled to all benefits in the suit property including FSI advantage admeasuring 1936.20 sq.mtrs. being part of internal access road. The Plaintiffs have also sought consequential injunctive reliefs against Defendant Nos.1, 3 and 10.

3) Defendant Nos.1 and 3 appeared in the Suit. Defendant No.1 took out Notice of Motion No.3338 of 2018 and Defendant Nos.3 to 13 took out Notice of Motion No.3346 of 2018 seeking rejection of the Plaint under Order VII Rule 11 (a) (c) and (d) of the Code *inter-alia* on the grounds viz., that (i) the Plaint does not disclose cause of action, (ii) that the Court does not have pecuniary jurisdiction to try and entertain the Suit, (iii) that the Suit is undervalued, (iv) the Suit is barred by principle of *res judicata*, (v) that the Suit is barred under the provisions of Section 34 of the Specific Relief Act, 1963 and (vi) that the Suit is barred by limitation.

4) The Plaintiffs opposed the Motions by filing their affidavits-in-reply. By a common order dated 7 October 2019, the learned Judge of the City Civil Court has proceeded to reject both the Motions filed by Defendant Nos.1 and 3 to 13. Aggrieved by the common order dated 7 October 2019, Defendant No.1 has filed Civil Revision Application No.18 of 2020 and Defendant No.3 and its Trustees (Defendant Nos.4 to 13) have filed Civil Revision Application No.57 of 2020.

5) Mr. Dhond, the learned Senior Advocate appearing on behalf of the Applicants in Civil Revision Application No.57 of 2020 submits that the City Civil Court has grossly erred in dismissing the Motion filed by Defendant No.3-Laxmi Charitable Trust seeking rejection of the Plaint. That the Plaint does not disclose any cause of action. That the alleged Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (**MOF Rules**) had never been notified and had not come into effect. That by registered Conveyance Deed dated 14 September 1962, Plot-E has been conveyed in favour of Sir Mathuradas Vissaji Female Education Trust (Defendant No.10), whereas Plot-D is transferred to the Laxmi Charitable Trust (Defendant No.3) vide registered Conveyance Deed dated 6 November 1963. That both the conveyances are not challenged by the Plaintiffs in the Suit. That Defendant No.1 (Wallace Flour Mills Co. Ltd.) did not have any right, title or interest in Plot Nos. E and D, which were owned by the two Trusts. That Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) came into force on 12 December 1963 and was made applicable to Greater Mumbai from 10 February 1964 i.e. after acquisition of ownership in Plots- D & E by the two Trusts. That the Trusts are admittedly not promoters and did not have any statutory obligation to convey land and building in favour of the Plaintiff-Societies. That therefore the Suit filed by the Plaintiffs purportedly for enforcement of MOFA rights cannot lie against the two Trusts. That even if the suit property is treated to be governed by the provisions of MOFA, the Plaintiffs have no right to seek conveyance thereof since Plot Nos. D and E are owned by the two Trusts.

6) Mr. Dhond further submits that the Suit is based on alleged Rule 9 of the MOF Rules, which never came into force and does not exist in the Rule Book. That therefore no cause of action is disclosed in the Plaint. That the Plaint lacks necessary averments disclosing any cause of action in respect of Plots D and E. Thus, upon plain reading of averments in the Plaint, it is clear that no cause of action is disclosed in the Plaint.

7) Mr. Dhond has submitted that the Plaint contains several admissions making out a clear case for rejection of the Plaint by reading averments therein. That the Plaintiffs have admitted title of the Applicants prior to coming into effect of MOFA. That paragraph 4(e) of the Plaint contains admissions that ownership of Defendant No.1 was restricted to land admeasuring 36,742 sq.mtrs., which is a figure reflected in the first schedule of all the three package deals. That the Plaint also contains admission of separate ownership and title of each of the Plots as well as distinct user. That there are admissions about MOFA agreements being executed with individual societies and rights being restricted to individual Plots, that the cause of action is based only on statute and not on the basis of the contract. That there is also admission that the Applicants are not the promoters. Mr. Dhond has submitted that stray averments in paragraphs 4(i) and 4(o) in the Plaint are falsified by sanctioned layout and the sanctioned plans which are annexed to the Plaint and which are the basis of averments in the Plaint. That a covenant of maintenance of particular area as R.G. area cannot be converted into an obligation of conveyance. That obligation to develop or maintain land as open space is planning obligation, which does not create right of conveyance. That none of the sanctioned building plans and IODs of 10 buildings draw any FSI from Plots -D, E and F. That

therefore, averments in paragraph 4 of the Plaint stand falsified by documents on which Plaintiffs relied upon. On the other hand, package deal Agreement confined each society to its own block/plot. In support of his contention that a vexatious suit can be rejected under Order VII Rule 11, Mr. Dhond relies on judgment of the Apex Court in **Dahiben V/s. Arvinbhai Kalyanji Bhanushali (Gajra) dead through legal representatives and others**¹

8) Mr. Dhond further submits that the Suit is otherwise barred by provisions of the Limitation Act, 1963 since the Societies were registered in 1973, 1982, 1987 and have filed Suit in the year 2017 i.e. after 30 years of date of registration of the Plaintiff-Societies.

9) Mr. Patil, the learned counsel appearing for the Applicant /Defendant No.1 in Civil Revision Application No.18 of 2020 adopts submissions of Mr. Dhond. Additionally, he submits that the Suit seeks to enforce non-existing legal rights and mere clever drafting cannot save the same from rejection. That the Applicant has already transferred the suit property to Educational Trusts and therefore there is no question of application of provisions of MOFA. That having secured deemed conveyance of their due land, the Plaintiffs cannot maintain a Suit for same cause of action, which is clearly barred by principles of *res judicata*.

10) Mr. Thorat, the learned counsel appearing for Respondent Nos.1 and 3/Plaintiff Nos.1 and 3- Societies opposes the Revision Applications submitting that the City Civil Court has rightly rejected the baseless Motions filed by Defendant Nos.1 and 3-Trusts. That the Suit is

¹ (2020) 7 SCC 366

essentially for enforcing statutory obligations of promoter under the MOFA. That the Plaintiffs-Society seek joint enjoyment of common amenities in the form of recreational ground and roads in the common layout. That the Suit proceeds on the basis that while sanctioning the layout, the Municipal Corporation has considered R.G. area as a common amenity to all Plots A to F. That the Plaint contains necessary averments in this regard. He therefore, submits that in the light of requisite averments in the Plaint disclosing clear cause of action, the Plaint cannot be rejected under Order VII Rule 11 of the Code. In support, he relies on judgments of the Apex court in *Kum. Geetha D/o Late Krishna and Ors. V/s. Nanjundaswamy and others*² and *P. Kumarakurubaran V/s. P. Narayanan and Others*³. Mr. Thorat accordingly prays for dismissal of the Revision Applications.

11) Mr. Swami, the learned counsel appearing for Respondent No.2-Society submits that Respondent No.2-Society is no longer associated with Plaintiff Nos.1 and 3 Societies and has already agreed for arrangement entered into with some of the Defendants.

12) Rival contentions urged on behalf of the parties now fall for my consideration.

13) The Applicants are aggrieved by rejection of their Motions by the City Civil Court seeking rejection of the Plaint under Order VII Rule 11 of the Code. The main ground on which rejection of the Plaint was sought is that the Plaint does not disclose a cause of action to sue.

² (2024) 14 SCC 390

³ 2025 SCC OnLine SC 975

14) The Plaintiffs are three cooperative societies whose buildings are constructed on sub-plots- A, B and C respectively. They have already secured deemed conveyance of land forming parts of Plot Nos. A, B and C through orders passed by the Competent Authority on 30 May 2017 conveying Plot Nos. A and B in favour of Plaintiff Nos.1 and 2-Society respectively and by order dated 27 November 2015 conveying Plot No. C in favour of Plaintiff No.3-Society. The Plaintiffs now contend that they are also entitled to jointly own the property described in Exhibits-B and C. They have also sought conveyance of recreation garden on Plots D and E of the layout as more particularly shown and described in Exhibits-B and C to the Plaint. They have also sought FSI advantage admeasuring 1936.20 sq.mtrs being part of internal access road of the layout. Substantive prayers sought in the Plaint are as under:-

(a) That this Hon'ble Court be pleased to declare that Plaintiffs Societies are Joint owners of Suit Property that is Common Amenities area and facilities of Layout as more particularly shown and described in Exhibit "B" & Exhibit "C" annexed hereto, under MOFA 1963 and MOF Rules 1964.

(b) That this Hon'ble Court order and direct Defendant no. 1, Defendant no. 3 trust and its trustees through Defendant no. 2 AND Defendant no. 10 Trust and its trustees through Defendant no. 2, to execute conveyance in respect of Recreation Garden on Sub-Plot D and Sub-Plot E of Layout being part Suit Property and which is part (a) and (b) of Suit Property being Common amenities and areas and facilities of Layout as more particularly shown and described in Exhibit "B" & Exhibit "C" annexed hereto in favour of plaintiffs society jointly under MOFA 1963 & of MOF Rule 1964.

(c) That in failing to execute the conveyance by Defendant No. 1 and their Directors, Defendant no. 3 and 10 Trusts and their respective trustees, than this Hon'ble Court be pleased to order and direct the Registrar and/or any other fit and proper officers of this Hon'ble Court to execute the conveyance for common amenities areas and facilities in layout, being Recreation Garden on Sub-Plot D and Sub-Plot E of Layout, being part Suit Property and which is part (a) and (b) of Suit

Property as more particularly shown and described in Exhibit "B" & Exhibit "C" annexed hereto in favour of plaintiffs society jointly.

(d) That this Hon'ble court be pleased to declare that Plaintiff Societies are jointly entitled to all and / or any benefits in lieu of Suit Property including FSI advantage admeasuring 1936.20 Sq. mtrs., in lieu of CTS no. 104/3b, 104/5b & 104/6b, being part internal access Road of Layout and being part of Common Amenities and areas and facilities of Layout Plan SE/LO/26-K.

(e) That this Hon'ble Court be pleased to declare that the act of Defendant no. 1 of getting issued the Development rights / FSI admeasuring 1936.20 Sq. mtrs. in lieu of part (c) of the Snit Property by suppressing and not disclosing to Defendant no. 14 about Plaintiffs Societies entitlement and taking advantage of Defendant No. 1 name in property card is contrary to MOFA 1963 and is illegal, unlawful and not binding on Plaintiffs Societies.

(f) That this Hon'ble Court be pleased to declare that the act of the Defendant no. 1, Defendant No. 3 Trust & Defendant No. 10 Trust of creating obstruction in use, occupation and possession of Recreation Garden on Sub-Plot D and Sub-Plot E being part of Suit property, being common areas and facilities in Layout by the members of Plaintiff Societies is illegal, unlawful.

(g) This Hon'ble Court be pleased to permanently restrain defendant No. 1, Defendant No. 3 & Defendant No. 10 from obstructing and/or creating any hurdle in peaceful use, occupation & possession of common area and facilities in layout plan as more particularly shown and described in Exhibit "B" & Exhibit "C" annexed hereto.

15) Exhibit-B to the Plaint is the schedule of suit property, which is described as under:-

SCHEDULE OF SUIT PROPERTY

Sr. No.	CTS Nos. At Village Gundavali, Taluka Andheri, MSD	Description of Properties
(a)	104/4(Part)	Recreation Grounds being part of CTS 104/4 (Sub-Plot D) admeasuring 5270 square yards equivalently 4406.4 sq.mtrs.
(b)	104/7(Part)	Recreation Garden being part of CTS 104/7 (Sub-Plot E) of Layout admeasuring 2956 Square yards, equivalently 2471.60 sq.mtrs.
(c)	104/3b, 104/5b, 104/6b	Part internal access road of the said layout bearing CTS no.104/3b,

		104/5b and 104/6b (Sub-Plot F) of Layout admeasuring 1936.20 sq.mtrs.
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The suit property in respect of which the prayers are sought in the plaint thus essentially the RG in Sub Plots D and E and part of the internal access roads forming part of Sub-Plot F. Plaintiffs have also produced at Exhibit-C to the Plaint a map indicating location of the suit property as described in Schedule-B.

16) I now proceed to examine the averments in the Plaint to examine whether the same discloses cause of action in support of the prayers in the Suit. The broad averments in the Plaint are as under:

- (i) In paragraph 4(a), the Plaintiffs have admitted that in the year 1963, Plot No. D was sold to Defendant No.3-Trust and in the year 1962, Plot No. E was sold to Defendant No.10-Trust. Thus, there is an admission of acquisition of title in respect of Plot Nos. D and E by Defendant Nos.3 and 10- Trusts in the years 1962 and 1963. The year of acquisition assumes importance in the light of the fact that provisions of MOFA were made applicable to Mumbai on 10 February 1964. Thus, there is specific admission in paragraph 4(a) of the Plaint that the Defendant Nos.3 and 10 acquired ownership in respect of Plots D and E prior to introduction of MOFA.
- (ii) In paragraph 4(b) of the Plaint, it is averred that a layout plan was sanctioned by MCGM on 16 January 1967, which was amended on 3 July 1967, which was the final plan.

- (iii) It is averred in paragraph 4(c) of the Plaint that based on sanctioned and approved layout, the amalgamation and sub-division of the land was made into Sub-Plot Nos. A, B, C, D, E and F.
- (iv) It is further averred in paragraph 4(e) of the Plaint that Defendant No.1- Wallace Flour Mills Co. Ltd. remained owner only in respect of 36,742 sq.mts. (43,621.23 sq.yards) forming part of Sub-Plot Nos. A, B, C and F. It is thus, admitted that Defendant No.1 was no longer owner in respect of Sub-Plot Nos. D and E.
- (v) The Plaint further contains averments in paragraphs 4(f) and (g) that separate 7/12 extracts are created in respect of Sub-Plot No. D (*admeasuring 13,745.22 sq.yards equivalent to 11,492.75 sq.mtrs*) in the name of Defendant No.3-Trust and Plot E (*admeasuring 6597.33 sq.yards equivalent to 5516.20 sq.mtrs.*) in the name of Defendant No.10-Trust.
- (vi) In paragraph 4(i) of the Plaint, the Plaintiffs have averred that as per the sanctioned layout, the area marked as Plot-F was maintained as internal access road of the layout and the area marked in green in the layout plan admeasuring 11,270 sq.yards was to be maintained as R.G. area of the entire layout.
- (vii) It is further averred that R.G. area is spread across entire Sub-Plot Nos. A, B, C, D and E of the layout.
- (viii) It is averred in paragraph 4(j) of the Plaint that sub-plots A, B and C are for residential purpose, on sub-plot D there is college building and on sub-plot E there is school building. Thus, there is an averment of separate and distinct user on Sub-Plot Nos. A, B and C on one hand and Plots D and E on the other.

- (ix) Paragraph 4(k) of the Complaint contains reproduction of condition Nos. 5,7 and 11 of the sanctioned layout.
- (x) In paragraph 4(l) it is averred that on the basis of the layout plan and as owner of Sub-Plot Nos. A, B, C and F, Defendant No.1 sold its entire holding to Mr. Keshavlal K. Verma vide Agreement for Sale dated 23 November 1971 and that the sale was with all the available FSI of the layout (*including that of sub-plot D and sub-plot E*).
- (xi) It is further averred in paragraph 4(m) that Shri Keshavlal Verma as the owner of land of Sub-Plot Nos. A, B, C and F, alongwith development rights of balance FSI of layout, sold Sub-Plot Nos. A, B and C to Plaintiff Nos.1, 2 and 3-Societies respectively with all 10 to be constructed buildings as per approved building plan/ Agreement for Sale commonly known as Package deal Agreement dated 29 January 1972 (Plaintiff No.1), 10 July 1972 (Plaintiff No.2) and 10 July 1972 (Plaintiff No.3). Thus, there are specific averments in paragraph 4(m) of the Complaint that the land owner sold specific and distinct Sub Plot Nos. A, B and C to the Plaintiffs-Society possibly indicating that their rights were restricted to individual plots alone.
- (xii) The Complaint further avers in paragraph 4(o) that all computations, calculations, submissions of already consumed FSI and balance available FSI were done on the basis of one whole layout of Plots A, B, C, D and E and internal access road (Plot F).
- (xiii) It is further averred in paragraph 4(p) that on each plan, portion of RG areas, which is spread across all five sub-plots of layout A, B, C, D and E, is measured and marked clearly and

distinctly. The Plaintiffs have accordingly produced at Exhibit-N collectively copies of building plans and IODs issued by Building Proposal Department of BMC for all buildings of the Plaintiffs-Society.

- (xiv) In paragraph 5 of the Plaint, Plaintiffs have quoted provisions of MOFA and MOF Rules and have relied on Rule 9 sub-rules (2) and (3) of the MOF Rules.

16) On the basis of the above pleadings, the Plaintiffs have sought declaration of joint ownership in respect of RG forming part of Sub-Plot Nos. D and E as well as internal access road forming part of Plot-F.

17) It must be observed at once that entire Suit is premised on quoted provisions of sub-rules (2) and (3) of Rule 9 of MOF Rules, which are recited in paragraph 5 of the Plaint. It would be apposite to reproduce the relevant quotations in paragraph 5 which read thus:

5. ... Further amended MOF 1964 Rule 9, sub-section 2 & 3 reads thus:

"(2) In case of Layout Plot, the promoter / Land Owner shall convey to the legal entities within the specified time, the exclusive rights, title and interest in the building/s and the structure of the promoter, managed by them and the proportionate undivided share, title and interest in the Layout Plot, common areas and the facilities provided or to be provided calculated based on the total FSI permissible on such Layout Plot as per the prevailing law in force at the time of approval of plans for constructions of such building/s by the local authorities or the town planning rules or the Development control Rules. Notwithstanding the above, on the date of conveying the properties to the legal entities, if there is any balance FSI available or any benefits of Development rights in respect of unutilized FSI, the same shall be available to the promoter for development on such Layout Plot without any hindrance by the flat purchaser/s and which has been disclosed at the time of purchase of such flats. The promoter cannot withheld the conveying the land and the building to the legal entities for want of further development in unutilized area / FSI or for

want of formation of Federation or Apex by the legal entities on such Layout Plot.

(3) Where the legal entities functioning in a Layout Plot have formed the Apex Body or the Federation, the conveyance, if desired by such legal entities can be executed in favour of Apex Body or the Federation. The Apex Body or the Federation also can be formed by the legal entities on a Layout Plot to manage and administer the common areas and the facilities without having any legal rights, title and the interest in the property in such a Layout Plot and all such legal rights, title and the interest is transferred in the respective legal entities as described in sub-rule(2) above.

18) However, there are no such sub-rules (2) and (3) in Rule 9 of MOF Rules. Rule 9 of MOF Rules provided thus:

9. Period for conveyance of title of promoter to organisation of Flat purchasers.

If no period for conveying the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which co-operative Society or the company is registered or, as the case may be, the association of flat takers is duly constituted.

When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registered a Declaration as required by Section 2 of that Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered into possession of his apartment.

The promoter shall file with the Competent Authority as copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.

19) Thus, the Plaintiffs have quoted imaginary Rule 9, which does not exist in the Rule Book. There is no provision in Rule 9 of MOF Rules, which provides for conveyance of common area and facilities in the layout plan as sought to be suggested by the Plaintiffs. The Suit is thus premised on nonexistent provisions of Rule 9 of MOF Rules.

20) Coming back to the averments in the Plaint, there are express admissions given in several paragraphs thereby admitting the title of Defendant Nos.3 and 10-Trusts in respect of Sub-Plot Nos. D and E as well as specific admissions about restrictive rights of Plaintiffs in respect of Sub-Plot Nos. A, B and C alone. The entire Plaint claiming rights in RG located in Sub-Plot Nos.D and E and internal road in Sub-Plot No. F is premised on:

- (i) averment that the sanctioned layout plan mandates maintenance of RG admeasuring 11,270 sq.yards, which is spread across sub plots of layout A, B, C, D and E and for use of entire layout;
- (ii) averment that computation of FSI for construction of buildings on Plots A, B and C is made by taking into consideration FSI flowing out of Sub-Plot Nos. A to F; and
- (iii) Sub-rules (2) and (3) of of Rule 9 of MOF Rules provide for conveyance of common areas in the layout plot.

21) The averment regarding compulsion to maintain RG admeasuring 11,270 sq. yards for use of the entire layout [*Point No. (i)*] is to be found in paragraph 4(i), which reads thus:-

4(i) As per the conditions levied by BMC while approving the layout plan bearing file SE/LO/26-K dated 16-01-1967 & as per the Sanction Order issued by Office of Collector, BSD in response to application submitted jointly by Defendant No. 1, Defendant no.3 and Defendant No. 10, Area marked as Plot F of Layout and belonging to Defendant No. 1. shall be maintained as internal access Road of Layout. Further, as per condition of approval of Layout, Area marked in Green in Layout Plan and collectively admeasuring about 11270 Square yards (equivalent to around 9423.15 square meters) shall be maintained as Recreation Garden of entire Layout This recreation Garden Area is spread across all the Sub-Plots of Layout being Sub-Plots A, B, C, D &

E which were collective holdings of Defendant No. 1, Defendant No. 3 & Defendant No. 10.

Sub-Plot F of Layout was demarked and reserved as internal access rond of Layout. As per conditions laid down by BMC while approving the layout plan, the said area admeasuring 11270 Square yards marked in green as Recreation Garden on layout plot shall be maintained as Recreation garden for allt he time to come by the defendant No.1 along with Defendant No.3 & 10 Trusts.

22) Averments about FSI computation being made in respect of entire layout [*Point No. (ii)*] are to be found in paragraph 4(o) of the Plaint, which reads thus:

4(o) Furthermore, all the application to the Building Proposal department of BMC for construction of 10 Buildings in the Layout, were made relying and based on the approved and sanctioned layout plan SE/LO/26-K dated 03-07-1967. All the Applications and Plans submitted for approval were on the basis approved Building Plan and Sanctioned layout Plan. All the computations, calculations, submissions of already consumed Floor Space Index (FSI) and Balance available FSI were done on the basis of one whole Layout of Plots A, B, C, D & E AND internal access road F.

23) The averments about Sub-rules (2) and (3) of Rule 9 of MOF Rules providing for conveyance of common areas in the layout plot [*Point No. (iii)*] are to be found in para 5 of the Plaint which is already reproduced above.

24) Thus, the above averments in paragraphs 4(i) and 4(o) are the two pillars, in addition to support in the form of provisions of sub-rules (2) and (3) of Rule 9 of MOF Rules, on which entire edifice of the Suit is balanced. The Suit would ordinarily float on the basis of the above quoted averments in paragraphs 4(i) and 4(o). However, it is well settled position that while deciding application for rejection of the Plaint under Order VII, Rule 11 of the Code, the Court must undertake holistic reading of all the averments in the Plaint as well as documents annexed thereto.

25) As observed above, the Plaintiffs have annexed the sanctioned layout at Exhibits F and F1 to the Plaint. The Plaintiffs have reproduced the relevant conditions of the sanctioned layout in paragraph 4(k) of the Plaint. Condition No.7 as reproduced in paragraph 4(k) of the Plaint reads thus:-

7. That the Plots together admeasuring 11,270 sq.Yards and shown in Green Colour on the Plan shall be developed and maintained as Recreational Ground.

26) As opposed to the above condition No.7, the Plaintiffs have added the words '*of entire layout*' in paragraph 4(i) of the Plaint, which does not exist in Condition No.7. Condition No.7 merely mandated development and maintenance of RG admeasuring 11,270 sq.yards and it nowhere mandated that same should be maintained for entire layout. This is clear from the following:

Averment in para 4(i)	Condition No. 7 of layout
Further, as per condition of approval of Layout, Area marked in Green in Layout Plan and collectively admeasuring about 11270 Square yards (equivalent to around 9423.15 square meters) shall be maintained as Recreation Garden <i><u>of entire Layout.</u></i>	That the Plots together admeasuring 11,270 sq.Yards and shown in Green Colour on the Plan shall be developed and maintained as Recreational Ground.

27) Further averment in paragraph 4(i) '*This recreation Garden Area is spread across all the Sub-Plots of Layout being Sub-Plots A, B, C, D & E which were collective holdings of Defendant No. 1, Defendant No. 3 & Defendant No. 10.*' is also clearly falsified by condition No.7 in addition to contradictions by Plaintiffs under the admissions in paragraphs 4(a),

4(e), 4(f), 4(g) as well as 7/12 Exhibit-I colly with Plaintiff, which do not indicate any collective holding. There are admissions in the Plaintiff about separate and distinct holdings.

28) Furthermore, the Sanctioned Layout No.2182 dated 9 November 1966 produced by the Plaintiff at Exhibit E to the Plaintiff clearly records separate plots for school and colleges by Defendant Nos.3 and 10 -Trusts and Sr. No.6 of MCGM Resolution dated 9 November 1966 (Page No. 52) records that '*some of the vacant plots were amalgamated and formed into one part of college and another school*'. Thus, the layout sanction plan proceeded on an express footing that Plots -D and E were separately owned by two Trusts and Plot -F was owned by Defendant No.1 for internal roads. Thus, averment made in paragraph 4(i) of the Plaintiff is contradicted by the documents on record.

29) Coming to the second pillar of the edifice in the form of averments in paragraph 4(o) of the Plaintiff, the same is also clearly falsified by the sanctioned plans. The Plaintiffs have produced at Exhibit-N collectively, building plans and IODs issued by Building Proposal Department in respect of buildings of the Plaintiffs-Society. Perusal of the said plans would indicate that separate plans were submitted and have been sanctioned in respect of Sub-Plot Nos. A, B and C. This is clear from the following:

- (i) For Sub-Plot No. A, separate IOD is issued in respect of area of 15,380 sq.yards (12,857 sq.mtrs). There is a separate garden area indicated in respect of Sub-Plot No. A admeasuring 1200 sq.yards /852.72 sq.mtrs and 500 sq.yards /418 sq.mtrs.

- (ii) In respect of Sub-Plot No. B, separate plan is sanctioned on 8 July 1972 for plot area admeasuring 11,005 sq.yards (9218 sq.mtrs.). Two separate gardens are indicated in respect of Sub-Plot No. B.
- (iii) Similarly, a separate and distinct plan was submitted and sanctioned in respect of plot 'C' on 17 September 1974 for plot admeasuring 7,995 sq.yards (6683.82 sq.mtrs.). Again, in the said plan a separate garden is indicated for Sub-Plot No. C.

30) Thus, not only lands bearing Plot Nos. A, B and C are distinctively sub-divided, but plans in respect thereof are also individually, distinctly and separately sanctioned. The FSI computation is made distinctly for each Plots A, B and C. This is clear from the following:

- (i) For Sub Plot No. A area admeasuring 12,857.68 sq.mtrs, after deducting RG area of 1270.72 sq.mtrs, the net plot area is 11,586.96 sq. mtrs., for which permissible BUA is sanctioned as 11,586.96 sq. mtrs. There is nothing to indicate that for sanctioning buildings of Sub Plot No. A, any part of FSI forming part of Sub Plot Nos. B, C, D, E and F is taken into consideration.
- (ii) Similarly, *qua* Sub Plot No. B, for area admeasuring 9200.18 sq. mtrs, 15% RG area of 613.62 sq. mtrs is deducted, internal roads admeasuring 90.29 sq.mtrs is deducted leaving net plot area of 8456.98 sq.mtrs. for which BUA of 8456.98 sq.mtrs. is sanctioned. Thus, for sanctioning building plans for Sub Plot

No. B, no part of FSI of Sub-Plot Nos. A, C, D, E and F is taken into consideration.

- (iii) Lastly, for sanctioning plans for building Sub-Plot No. C from area admeasuring 6683.82 sq. mtrs, 15% RG area of 668.80 sq. mtrs. is deducted and for balance plot area, BUA 6015.02 sq.mtrs is sanctioned. Thus, for construction of Sub Plot No. C, no part of FSI of Sub-Plot Nos. A, B, D, E and F is taken into consideration.

31) More importantly, while sanctioning plans for construction of buildings on Plots A, B and C, mandatory 15% RG area corresponding to size of each plot is separately carved out. Thus 15% RG area is not carved out in respect of the entire layout land. Such deduction and specification of RG is individual *qua* each of the sub-divided plots. Thus the plans clearly contradict contentions in paragraph 4(p) of the Plaint that '*On each plan the portion of Recreation Ground (R.G.) which is spread across all the 5 Sub-Plots of Layout A,B. C. D & E is measured and marked clearly and distinctly.*' As a matter of fact, on the plans, RG carving out is 'plot specific'. For Sub Plot No. A, 15% RG (*1270.70 sq.mtrs*) is separate, for Sub-Plot No. B, 15% RG (*613.62 sq. mtrs*) is separate and for Sub-Plot No. C 15% RG (*688.80 sq. mts*) is separate.

32) Thus, the two pillars in the form of averments in paragraph 4(i) [*maintaining RG of 11,270 sq.yards for all layout plots*] and in paragraphs 4(o) [*computations for FSI purposes being done on the basis of one whole layout of Plots A to F*] clearly collapse upon considering the

condition No.7 of sanctioned layout and individual plans for Sub-Plot Nos. A, B and C.

33) The third pillar in the form of sub-rules (2) and(3) of Rule 9 of MOF Rules has no legs to stand since no such Rule exists in the Rule Book.

34) Thus, on a holistic reading of the entire Complaint, it is more than apparent that the Suit discloses no cause of action. As aforesaid, the Plaintiffs have already secured conveyance in respect of Sub-Plot Nos. A, B and C on 27 November 2015 and 30 May 2017. They are now seeking to establish rights in respect of what is being operated by Defendant Nos.3 and 10 Trusts as college and Girls' schools. It is unfortunate that the playground used by college and Girls' schools are sought to be claimed by the Plaintiffs-Society. The suit is thus clearly vexatious. In *Dahiben* (supra) the Apex Court has discussed the principles for deciding application under Order VII Rule 11 of the Code and has held as under:

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding

the application under Order 7 Rule 11(a). **When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.**

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.13. **If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.**

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

24.2. In *T. Arivanandam v. T.V. Satyapal* this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

“5. ...The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ...”

24.3. Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal* held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

(emphasis and underlining added)

35) Applying the above principles to the facts of the present case, it is seen that the documents attached with the Plaint are the basis for filing of the suit. Perusal of the conditions of sanctioned layout and development permissions granted *qua* Sub Plot Nos. A, B and C leaves no manner of doubt that there is no cause to sue. The suit is also based on non-existent provision of MOF Rules. On a meaningful reading of the Plaint together with the documents attached therewith indicates that there is no remote chance of the Plaintiffs succeeding in the Suit. The entire Plaint is essentially premised on two averments, which are demonstrably false and are cleverly drafted to make a picture of accrual of a cause of action, which none actually exists. The Suit is manifestly vexatious as the same is based on pleadings which are contrary to documents accompanying Plaint or on non-existent provision of law.

36) In my view, the Trial Court ought to have rejected the Plaint. The Trial Court has failed to take into consideration the documents annexed with the Plaint and has merely reproduced some of the averments in the Plaint for the purpose of holding that the Plaint discloses right of the Plaintiffs in respect of the suit property. On the other hand, various admissions given in the Plaint and clear falsity in averments in paragraphs 4(i) and 4(o) of the Plaint as demonstrated from the documents annexed with the Plaint, it is clear that there is absolutely no cause of action for the Plaintiffs to maintain the Suit. In my view therefore, the Plaint does not disclose any cause of action. The same is vexatious to the core and lacks any merits apart from not disclosing right to sue. The Trial Court ought to have nipped such vexatious Suit in the bud.

37) Provisions of Order VII Rule 11 of the Code are enacted for the purpose of bringing to an immediate halt a manifestly vexatious suit, which disclosed no cause of action. In *Dhananjay Shivram Mapare and Ors. V/s. Vilas Eknath Kapre and Ors.*⁴ this Court has held in paragraph 11 as under:-

11. The issue of consideration is if the Court notices that the suit is gross abuse of process of law and is filing for oblique purpose of forcing the Defendants for settlement in absence of any real cause of action, whether the Court would remain a mute spectator and allow the judicial process to be misused by a vexatious litigant. **The Court is not supposed to blindly accept the averment in the Plaint about accrual of cause of action.** It must also necessarily enquire whether there is any cause of action for filing the suit. The concept of 'cause of action' serves as the cornerstone upon which a suit is built. The term 'cause of action' refers to the set of facts or circumstances that give rise to a legal claim, forming the basis for initiating the suit. **The Court therefore must enquire whether the bundle of facts pleaded in the plaint make out Plaintiff's right to sue. For that purpose, reading**

4 CRA No.87 of 2019, decided on 11 November 2025

of the plaint cannot be 'formal'. It needs to be 'meaningful'. This is because Plaint drafted by a lawyer is most likely to have an averment of accrual of cause of action. Such averment is not to be plainly accepted by formal reading of the plaint. **The Court must satisfy itself that the cause of action pleaded is not a creation of fiction.** If the Court makes a meaningful reading of the Plaint and comes to the conclusion that the suit is manifestly vexatious without exhibiting Plaintiff's real right to sue, such suit needs to be nipped in the bud instead of making the Defendants undergo the ordeal of the lengthy trial. These legal principles have been stated in various judgments of the Apex Court. It would be apposite to refer to few of them. ...

(emphasis added)

38) In *M/s. Kumar Beharay Properties LLP through its authorised signatory V/s. Shri Rajesh Chandrakant Shinde and Others*⁵ this Court has followed the judgments in *Dahiben* and *Dhananjay Shivram Mapare* (supra) and has held in paragraphs 15, 16, 25 and 26 as under:

15. It is well settled legal position that while deciding application under Order VII Rule 11 of the Code, the Court has to consider only the pleadings in the Plaint and documents produced therewith. However mechanical reading of the averments in the plaint is not sufficient and what the Courts need to undertake is an exercise of meaningful reading of the averments in the entire Plaint. If after meaningful reading of the averments in the entire plaint, it can be gathered that there is real cause of action for filing the suit, as contradistinct from a mere illusion of cause of action and that the suit prima facie appears to be not barred by limitation or by any express provisions of law, the Court can proceed to reject the application under Order VII Rule 11 of the Code. The provision for rejection of the plaint under Order VII Rule 11 of the Code is made with the objective of throwing out vexatious litigation at the threshold rather than making the Defendant undergo the ordeal of a lengthy trial. Particularly when the Courts encounter a clever pleading in the plaint, about Plaintiff acquiring knowledge of an event on the pleaded date or about accrual of cause of action on the pleaded day, aimed essentially at saving the plaint from being rejected, the court is not bound to accept that statement as a gospel truth and retain the suit on its file. To paraphrase, mechanical reading of averment about cause of action is not expected for ruling in favour of retention of the plaint. If the suit is instituted after long delay, but the plaint therein is attempted to be saved by lawyer's drafting ingenuity, the court is not expected to accept the clever pleading on the face and to take the suit for

⁵ CRA No.27 of 2017 decided on 8 December 2025

trial. In such cases, where the suit appears to be vexatious, court needs to be cautious and must read the entire plaint meaningfully to find out whether the pleadings make the cleverly pleaded case of acquisition of knowledge even believable. If it can be gathered from reading of the averments in the entire plaint, and documents produced therewith, that the cause of action had arisen much earlier than the cleverly pleaded date, Court is not bound to accept the pleaded date and send parties to the ordeal of long trial. If accrual of cause of action can be gathered from pleadings, leading of evidence becomes unnecessary and in such cases, plaint cannot be retained by invoking the general principle of limitation being a mixed question of law and facts.

16. At the same time, causally filed applications seeking rejection of plaint under Order VII Rule 11, aimed essentially at delaying the decision of the suit, equally need to be rejected in an expeditious manner once the Court is satisfied on a meaningful reading of the averments in the plaint, together with the documents produced therewith, that there is some cause of action for taking the suit to trial or that the suit is not barred by express provision of law or that the ground of limitation raised by Defendant is either baseless or requires leading of evidence.

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25) Recently in *Dhananjay Shivram Mapare and Ors. Versus. Vilas Eknath Mapare* and Ors., I have highlighted the need for nipping in the bud vexatious litigation. This Court has directed rejection of plaint by having recourse to the provisos of Order VII Rule 11 after noticing that the real intention behind filing of the suit was to bring the Defendants to settlement table. This Court considered the judgment of the Apex Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (Gajra) dead through legal representative K. Akbar Ali Vs. Umar Khan⁹ and *Shree Mukund Bhavan Trust* (supra) and held in para-11 as under :-

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26) In the present case also, it is abundantly clear that the suit instituted by the Plaintiff is a vexatious litigation initiated under the hope of bringing Defendants to settlement as they had already commenced construction of 11 storey buildings on the land. Court's jurisdiction cannot be permitted to be abused for the purpose of filing of such a vexatious litigation which is ex-facie barred by limitation. The trial court has erred in not appreciating this position. In every case, the issue of limitation cannot be brushed aside holding that the same is a mixed question of law and fact. In the present case, it is difficult to comprehend as to how the issue of limitation would depend on leading of evidence. Plaintiff's father did not take any steps for specific performance of MOU dated 15 January 1982 during his lifetime for over 31 long years. After his death, the Plaintiff has instituted the suit which is hopelessly barred by limitation as Plaintiff's father must have secured notice of execution of several registered instruments

during his lifetime. The prayer for cancellation of instruments of 11 May 1989 and 28 January 2009 is also barred by limitation. The prayer for cancellation of sale-deed dated 26 March 2013 is premised on challenge to the main instrument of 11 May 1989. If prayer for challenging Development Agreement dated 11 May 1989 is barred by limitation even the prayer for challenge to sale-deed dated 26 March 2013 would not survive.

39) In the present case as well, one cannot blindly accept the averments in the plaint which are demonstrably contrary to the documents annexed therewith. Once it becomes clear that the averments in the plaint about RG being carved out in respect of entire layout and the entire layout land being considered for sanction of development permission for construction of buildings on Plots A, B and C are found to be contrary to the documents attached to the plaint and once it is found that Rule 9 quoted in the plaint is not a part of MOF Rules, the very cause for which the suit is sought to be filed evaporates and what remains is a document aimed at merely vexing the Defendants and burdening the judicial system. In my view, therefore, it is the duty of the Court to nip in the bud the present vexatious piece of litigation initiated by the Plaintiffs, which has absolutely no merit and which does not disclose any cause of action.

40) Since the Plaint can be rejected on the ground of absence of cause of action, I am not inclined to go into the issue of limitation, especially, in view of the fact that MOFA obligations give rise to a continuous cause of action [SEE: Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd.⁶ and Sushma Tulsidas Adhav V/s. Pradeep D. Shah⁷]. Since the plaint is manifestly vexatious and does not

⁶ (2022) 4 SCC 103

⁷ First Appeal No.1278 of 2012 decided on 20 September 2024 Bombay High Court.

disclose any cause of action, it is not necessary to go into other contentions raised in the Motions about Respondents judicata, bar under Section 50 of the Maharashtra Public Trusts Act, 1950 etc.

41) In view of the above discussion, I am of the view that the Trial Court has egregiously erred in rejecting the Motions filed by Defendant Nos.1 and 3 to 13 seeking rejection of the Plaint. The impugned order passed by the City Civil Court is indefensible and liable to be set aside.

42) I accordingly, proceed to pass the following order:

(i) Order dated 7 October 2019 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, rejecting Notice of Motion Nos. 3338 of 2018 and 3346 of 2018 is set aside and both the Motions are allowed.

(ii) The Plaint in L.C. Suit No.3712 of 2017 is rejected under Order VII Rule 11 of the Code.

(iii) Consequently, L.C. Suit No.3712 of 2017 is dismissed.

43) Civil Revision Applications are **allowed and disposed of** in above terms. Considering the facts and circumstances of the case, there shall be no order as to costs.

44) In view of disposal of the Civil Revision Applications, the Interim Applications do not survive and hence stand disposed of.

[SANDEEP V. MARNE, J.]