HIGH COURT OF JUDICATURE AT BOMBAY
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 16 of 2021

1. Aurangabad Smart City Development Corporation Limited,
through its Additional Chief Executive Officer,
Smart City Office, War Room,
Dr. Babasaheb Ambedkar Research Centre,
near Aam Khas Maidan, Aurangabad - 431001

2. The Municipal Corporation,
Aurangabad
Through its Commissioner,
Municipal Corporation Office, Aurangabad. ...Applicants

VERSUS

The Maharashtra State Board of Waqf,
through its Chief Executive Officer,
Panchakki, Aurangabad ...Respondent

Mr. V.D. Sapkal, Senior Advocate, i./by Mr. P.D. Jarare, Advocate for applicants
Mr. Y.B. Pathan, Advocate for respondent

CORAM : N.J. JAMADAR, J.

Closed for Judgment on : 15th March, 2021

Pronounced on : 23rd April, 2021

J U D G M E N T :

The legality, propriety and correctness of an order passed by the Maharashtra State Waqf Tribunal, Aurangabad, dated

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11th February, 2021 on an application (Exhibit No. 21) preferred by the applicant No.2 – defendant No.1 for rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure (Code), whereby the said application came to be rejected, is assailed in this revision application.

2. Shorn of unnecessary details, the background facts leading to this application can be stated as under:

a) The respondent-plaintiff is the Board constituted under the provisions of the Waqf Act, 1995 (Act 1995). It is a supervisory authority over the Waqf Institutions and properties throughout the State of Maharashtra. The land bearing Survey No. 210 which admeasures 28 acres 39 *gunthas*, including CTS No. 2340 admeasuring 10168.25 square meters (suit property), is the Waqf Property dedicated for the services of *Jama Masjid*, Aurangabad. In the record of rights, the suit property was shown in the name of Mohammad Azeemuddin, Mutawalli, who was caretaker of the land of the *Jama Masjid*. Pursuant to the survey of Waqf conducted under the provisions of the Waqf Act, 1995, in the Government Gazette published on 17th May 1973, *Jama Masjid*, Aurangabad, was included as Waqf Property.

b) The plaintiff avers that while implementing the City

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Survey Scheme, probably in the year 1971, the name of defendant No.1-Municipal Corporation is recorded as owner and occupant of the suit land without any legal mandate. The mutation of the name of defendant No.1 – Municipal Corporation in the City Survey record, however, neither divests the ownership over the suit land of the Waqf Institution nor confers any right, title and interest in the suit land upon the defendant No.1-the Municipal Corporation.

c) The plaintiff-Board, thus, initiated the proceedings under Section 40 of the Waqf Act, 1995. After providing an opportunity of hearing to the concerned parties, the Board passed an order on 25th June 2013 declaring that the suit property is a Waqf property. Accordingly, the suit property came to be registered as a Waqf Property vide registration No. MSBW/ABD/526/2013.

d) The defendant No.1-Municipal Corporation, being aggrieved by the aforesaid order of the plaintiff-Board, filed an application before the Waqf Tribunal being Misc. Application No. 3 of 2014. The defendant No.1-Corporation, however, did not prosecute the said application and, thus, it came to be eventually dismissed for want of prosecution by order dated 4th January 2017. The order passed by the Board on 25th June 2013 declaring the suit property as the Waqf Property, thus, remained intact.

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e) The plaintiff avers that the defendant No.1-Corporation has erected construction over the portions of the suit land. However, the defendant No.1-corporation has no legal right to erect further construction upon the land. The defendant No.2 - Aurangabad Smart City Development Corporation Limited is an agency of the defendant No.1. The defendant No.1 is in the process of transferring the suit land in favour of defendant No.2. Defendants No.1 and 2 have threatened to commence construction of War Room office of the Smart City Development Corporation over the suit land despite the order of the plaintiff-Board declaring the suit land to be the Waqf Property. Hence the suit for perpetual injunction restraining the defendants from making any sort of construction over the suit land or creating third party interest therein.

f) The defendants appeared in response to the suit summons. The defendant No.1-Municipal Corporation preferred an application for rejection of the plaint (Exh. 21) contending, inter-alia, that from the averments in the plaint it becomes evident that the plaintiff is not in possession of the suit property and the defendants are in possession thereof and, thus, a suit for perpetual injunction simpliciter without the substantive relief of possession is barred. It was further contended that the suit is also barred by the provisions

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of Section 487 of the Maharashtra Municipal Corporation Act, 1949 (Act, 1949) for want of mandatory notice thereunder to the Municipal Corporation.

g) The plaintiff-Board resisted the application on the score that the notice U/S. 487 of the Act 1949 was not at all warranted as the defendant-Municipal Corporation has unlawfully encroached over the suit property and threatened to commit unlawful acts and, thus, the said act of the defendant-Municipal Corporation cannot be said to be done or purported to be done in pursuance or execution of the Act, 1949. It was denied that the plaintiff is not in possession of the suit property.

h) After appraisal of the averments in the plaint and the rival contentions in support of the application for rejection of the plaint and in opposition thereto, the Tribunal was persuaded to reject the application by the impugned order. The Tribunal was of the view that though there was no clear pleading that the plaintiff-Board is in possession of the suit property, yet, it did not imply that the plaintiff has admitted the possession of the defendant. Thus, the principle that a suit for prohibitory injunction simpliciter by a person, who is not in possession of the suit property, without seeking the relief of possession, did not apply with equal force of the facts of the

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case. Even otherwise, according to the Tribunal, the plaintiff-Board has an option to amend the plaint and seek the relief of possession, if found necessary. The Tribunal repelled the challenge to the tenability of the suit for want of notice under Section 487 of the Act, 1949 by observing that, in the facts of the case, notice U/S. 487 was strictly not warranted and, in fact, the plaintiff-Board had addressed a letter on 25th September 2020 to the Commissioner, Municipal Corporation, Aurangabad, which amounted to notice U/S. 487 of the Act, 1949.

i) Being aggrieved by and dissatisfied with the aforesaid approach of the Tribunal, the defendants have invoked the revisional jurisdiction of this Court.

3. I have heard Mr. V.D. Sapkal, the learned Senior Counsel for the applicants-defendants and Mr. Y.B. Pathan, the learned Counsel for the respondent-plaintiff. With the assistance of the learned Counsels for the parties, I have also perused the material on record, especially, the plaint in *Waqf* Suit No. 14 of 2021 and the order impugned herein.

4. Mr. Sapkal, the learned Senior Counsel for the applicants, strenuously urged that the Tribunal committed a manifest error in

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completely misreading the averments in the plaint. From a plain reading of the plaint, according to Mr. Sapkal, it becomes abundantly clear that the plaintiff-Board has admitted in unequivocal terms that the defendant No.1-Municipal Corporation is in possession of the suit property and has erected multiple structures thereon. Thus, the Tribunal could not have observed that the plaintiff has not admitted the possession of the defendants over the suit property, especially after observing that there is no clear pleading to the effect that the plaintiff is in possession of the suit property. Secondly, according to Mr. Sapkal, the Tribunal misdirected itself in rejecting the application for rejection of the plaint on the premise that the plaintiff can amend the plaint and incorporate the relief of possession. This view vitiated the entire reasoning of the Tribunal, urged Mr. Sapkal.

5. It was further submitted that the bar envisaged by the clause (d) of Rule 11 of Order VII of the Code need not be statutory alone. It is well recognized principle of law that a suit for prohibitory injunction simpliciter by a person who is not in possession of the suit property, without seeking the relief of possession, is not tenable. Though, the attention of the Tribunal was invited to a binding precedent of the Supreme Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. and Ors., AIR 2008 Supreme***

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Court 2033, the Tribunal misconstrued the ratio of the said judgment and allowed the plaintiff-board to wriggle out of the situation by observing that the plaintiff can amend the plaint. Lastly, Mr. Sapkal would urge that the Tribunal had fallen into an error in observing that the notice to the Municipal Commissioner constituted a notice to the Municipal Corporation.

6. Mr. Y.B. Pathan, the learned Counsel for the respondent-plaintiff joined issue by canvassing a submission that the provisions of Section 487 of the Act, 1949 were not at all attracted as the plaintiff has invoked the jurisdiction of the Civil Court against the unlawful act of defendant No.1-corporation. To commit encroachment and usurp the *Wakf* Property can never be an act done or purported to be done in pursuance or execution or intended execution of the Act, 1949, stoutly submitted Mr. Pathan. On the aspect of nature of relief in the suit, Mr. Pathan would urge that in the peculiar facts of the case, it is not open to the defendant No.1-Municipal Corporation to question the character of the suit property. The Board, in exercise of the powers vested in it U/S. 40 of the Waqf Act, 1995, has lawfully made a declaration that the suit property is the Waqf Property. A challenge thereto at the instance of defendant No.1-corporation has since been abandoned. In this state of affairs,

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the suit seeking the relief of injunction is perfectly in order, submitted Mr. Pathan. In order to lend support to this submission, Mr. Pathan placed reliance on a judgment of the Gujarat High Court in the case of *Mahulbhai Bipinbhai Tamboli Vs. Akshaybhai Ramanbhai Thakkar, dated 26th April 2019 in R/Second Appeal No. 66 of 2016.*

7. Before adverting to deal with the rival contentions, it may be apposite to note the facts which are, by and large, not in dispute. The fact that the suit property is declared a Waqf Property U/S. 40 of the Waqf Act, 1995, is not in dispute. In fact, the defendant No.1-Corporation had preferred Waqf Misc. Application No. 3 of 2014 against the said declaration. The said application came to be dismissed for want of prosecution by the Tribunal by order dated 4th January 2017. This implies that the character of the suit property as the Waqf Property cannot be questioned unless the order dated 20th June 2013 passed by the Waqf Board is set aside or varied by the Tribunal. The necessary corollary is that the plaintiff-Board is not required to seek a declaration that the suit property is the Waqf Property. Conversely, from the averments in the plaint, it becomes explicitly clear that defendant No.1-Municipal Corporation has erected structures over the suit property and they are put to use

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for various purposes.

8. In the aforesaid fact situation, the question as to whether the suit is tenable in the present form wrenches to the fore. The thrust of the submission on behalf of the defendants is that a simpliciter suit for prohibitory injunction without seeking the relief of possession is barred by law. To bolster up this submission, Mr. Sapkal placed reliance on a judgment of the Rajasthan High Court in the case of Kundan Mal and others Vs. Thikana Siryari and others, AIR 1959 Rajasthan 146, wherein it was held that where plaintiff is not in possession of the property in dispute, he cannot sue for injunction simpliciter. A strong reliance was also placed on the judgment of the Supreme Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. And Ors., AIR 2008 Supreme Court 2033***, wherein the Supreme Court elaborately considered the scope of a suit for prohibitory injunction in different situations. The observations of the Supreme Court in paragraphs No. 11 to 14 are instructive and, thus, extracted below:

> "*11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them*

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briefly.

11.1 Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2 Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

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12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a

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comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

13. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed ? In such cases the principles is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able

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to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."

The position was summarised in paragraph No. 17 as under:

" *17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under*

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for

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declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in ***Annaimuthu Thevar Vs. Alagammal, 2005(6) SCC 202)****. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or*

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examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

9. Mr. Sapkal laid special emphasis on the proposition No.

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11.2 (extracted above), wherein it was postulated that where the title of the plaintiff is not disputed but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession cannot seek relief of injunction simpliciter without claiming the relief of possession. In the case at hand, according to Mr. Sapkal, on a plain reading of the plaint, it becomes clear that the plaintiff is not in possession of the suit property.

10. Mr. Sapkal further urged that the observations in paragraph No. 12 of the aforesaid judgment, wherein the Supreme Court adverted to the possibility of plaintiff seeking amendment in the plaint so as to convert the suit into one for declaration, were read and construed by the Tribunal out of context. The criticism advanced by Mr Sapkal appears well merited. It is trite that while considering an application for rejection of the plaint, the Court has to consider the averments in the plaint and upon a meaningful reading thereof arrive at a conclusion as to whether the plaint discloses a cause of action or is barred by the provisions of any law. The possibility of the plaintiff resorting to provisions contained in Order VI Rule 17 of the Code so as to infuse cause of action or take it out of the purview of the bar created by any law, could not have been

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permitted to influence the determination of the question of rejection of the plaint.

11. Indubitably, the aspect of rejection of the plaint turns upon a meaningful reading of the averments in the plaint as a whole. In the case at hand, the plaintiff-Board has approached the Tribunal with a case that somewhere in the year 1971 the name of defendant No.1-Municipal Corporation came to be mutated to the record of rights of the suit property without any acquisition or instrument. Mere mutation does not confer any right, title and interest upon the defendant No.1-Corporation. Undoubtedly, there are averments in the plaint to the effect that defendant No.1 has erected structures over the suit land, comprising Dr. Ambedkar Research Centre and other offices. The question that crops up for consideration is, whether the suit without seeking the relief of possession in the peculiar facts is untenable ?

12. I am not able to persuade myself to agree with the submission of Mr. Sapkal that the moment the plaintiff does not seek the relief of possession, the suit for injunctive relief is unsustainable. The said issue turns upon the nature of the injunctive relief. Even in the case of ***Anathula Sudhakar,*** (supra),

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the Supreme Court adverted to the distinct considerations which may arise where the property in question is a building or building with appurtenant land and the property which is a vacant site. In the later cases, the principle is that possession follows title. If two persons claim to be in possession of a vacant suit site, the one who is able to prove his title thereto will be considered to be in possession as against the person who is not able to establish his title.

13. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Vishram alias Prasad Govekar and others Vs. Sudesh Govekar (Dead) by legal representatives and others, 2017(11) Supreme Court Cases 345,* wherein the plaintiff had sought the relief of mandatory injunction seeking demolition of the construction carried out by the defendant on the suit property with the allegation that it was illegally put up by the defendant on the plaintiffs' land. In the said case, the tenability of the suit was challenged on the ground that the plaintiffs were not in possession of the suit property. The Supreme Court, distinguishing the judgment in the case of *Anathula Sudhakar,* (supra), held that the assertion that the defendants have carried out illegal construction did not imply that the plaintiff admitted the

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possession of the defendant over the suit land and, therefore, the suit was not untenable in the absence of any relief of possession.

14. In the case at hand, the nature of injunctive relief sought by the plaintiff assumes critical significance. There are two dimensions to the relief sought by the plaintiff. One, the defendant be restrained from carrying out any kind of construction over the suit property. Two, the defendant be restrained from creating third party interest over the suit property. These reliefs, on a proper consideration, have their genesis in the claim of title over the suit property. As indicated above, until the declaration made by the Waqf Board U/S. 40 of the Act, 1995 holds the field the plaintiff is entitled to legally assert that the suit property is a Waqf Property.

15. The relief of injunction restraining the defendants from making any kind of construction over the suit property cannot be equated with a relief of prohibitory injunction restraining the defendants from causing obstruction to the possession of plaintiff, which is often found in run of mill cases. With a categorical assertion that the defendant No.1 has erected certain structures over the suit property, this relief of injunction seeking restraint on making construction over the suit property is required to be

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construed as one to restrain the defendants from carrying out further construction. The second part of the injunctive relief i.e. of restraint from creating third party interest in the suit property is an exercise of incidence of ownership over the suit property, plain and simple. Armed with the declaration that the suit property is a Waqf Property, the plaintiff-Board is within its rights in seeking such relief of injunction, irrespective of question of possession, as it emanates from the claim of title over the suit property.

16. There is another facet to the question in controversy. As indicated above, the plaintiff-Board is not enjoined to seek declaration of title. The plaintiff-Board can lawfully seek the relief of restraining defendant from creating third party rights over the suit property. This part of the cause of action is not dependent upon the factum of possession. In any event, even if the case of the defendant is taken as par that the plaintiff cannot seek the relief of prohibitory injunction, without seeking the relief of possession, yet the suit is competent to the extent of the second part of the injunctive relief, i.e. not to create third party interest in the suit land.

17. It is trite law that the rejection of the plaint envisaged by

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the Order VII Rule 11 of the Code is rejection of the plaint as a whole. The plaint cannot be rejected in part. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Sejal Glass Limited Vs. Navilan Merchants Private Limited, 2018(11) Supreme Court Cases 780***, wherein it was enunciated that it is a settled law that a plaint as a whole can be rejected under Order VII Rule 11 of the Code. If the plaint survives against certain defendants or property, Order VII Rule 11 will have no application at all and the suit as a whole must then proceed to trial.

18. The aforesaid pronouncement was followed by the Supreme Court in the case of ***Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another, 2019(7) Supreme Court Cases 158***, wherein, the High Court had dismissed the suit as against respondent No.1-Axis Bank Limited by invoking provisions of Order VII Rule 11(d) of the Code as the bar U/S. 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was held to operate. The Supreme Court reiterated the principle that the plaint can be rejected as a whole and not in part. The observations in paragraph No. 12 are material and, thus, extracted below:

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> *" 12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage."*
>
> *……..*

19. In view of the aforesaid enunciation of legal position, in the facts of the case, in my considered view, the bar to the tenability of the suit in the absence of prayer of possession, does not apply with equal force. The prayer for rejection of the plaint on the said count does not merit acceptance.

20. The Tribunal does not seem to have committed any error

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in observing that notice U/S. 487 of the Act 1949 was not warranted as the act attributed to defendant No.1-corporation cannot be said to have been done or purported to be done in pursuance or execution or intended execution of the provisions of the said Act, 1949. The substratum of the plaintiff's case is that the defendant No.1-corporation has arrogated the suit property though it is a Waqf Property and unlawfully erected structures thereon. In the circumstances, the notice U/S. 487 of the Act, 1949 is plainly not warranted.

21. Mr. Sapkal made a strenuous effort to persuade the Court to hold that the letter dated 25th September 2020, which was addressed to the Municipal Commissioner, does not amount to a notice to the corporation. Reliance was sought to be placed on a judgment of the learned Single Judge of this Court in the case of *Bajirao Tukaram Manav Vs. Aministerative Officer and another , 1985 (1) Bom. C.R. 587,* wherein it was observed that having regard to the distinct authorities created under the Municipal Corporation Act, it is not possible to accept the contention that the notice to the Commissioner can also be said to be a notice to the Corporation within the meaning of Section 487 of the Act, 1949.

22. I do not find it necessary to delve into this aspect of the

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matter as the Tribunal, in my considered view, was justified in observing that in the facts of the case, especially in the backdrop of the nature of allegations against defendant No.1, notice envisaged by Section 487 of the Act 1949 was not warranted.

23. The upshot of aforesaid consideration is that this Court is not persuaded to interfere with the impugned order, albeit for reasons in addition to the reasons ascribed in the impugned order. This Court does not find that the Tribunal has committed any jurisdictional error in rejecting the application for rejection of the plaint. The revision application, thus, deserves to be rejected. Hence, the following order.

O R D E R

The revision application stands rejected.

No costs.

(N.J. JAMADAR)
JUDGE

Madkar

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