

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 472 OF 2009

1. Murzban Nusserwanji Khariwala **...Applicants**
2. Manijeh Burjor Bandrawala
3. M.R.P. Enterprises

V/s.

1. Kakad Co-operative Housing Society Ltd. **...Respondents**
2 The Municipal Commissioner of Greater
Bombay.
3. The Municipal Corporation of Greater Bombay
4. The Additional Collector and Competent
Authority (ULC)
5. Renu M. Tilwani
6. White Orchid Co-operative Housing Society Ltd.

WITH

INTERIM APPLICATION NO. 1587 OF 2026

IN

CIVIL REVISION APPLICATION NO. 472 OF 2009

Kakad Co-operative Housing Society **...Applicant**
Limited

IN THE MATTER OF
Murzban Nusserwanji Khariwala and Ors. **...Applicants**

V/s.

Kakad Co-operative Housing Society Ltd. **...Respondents**
and Ors.

WITH
INTERIM APPLICATION NO. 7317 OF 2026
IN
CIVIL REVISION APPLICATION NO. 472 OF 2009
White Orchid Co-operative Housing Society **...Applicant**
Ltd.

IN THE MATTER OF
Murzban Nusserwanji Khariwala and Ors. **...Applicants**

V/s.
Kakad Co-operative Housing Society Ltd. **...Respondents**
and Ors.

Mr. Naushad Engineer, Senior Advocate with *Mr. Aditya Kavale i/b Zohair and Co., for the Applicant.*

Mr. Jagdish N. Jayale i/b Mr. Rajesh Gehani, for Respondent No. 1.

Mr. Seegarla Shrikant, for Respondent No. 6 and for Applicant in IA No. 7317/2026.

Mr. Santosh Mali, for MCGM, Respondent.

CORAM: SANDEEP V. MARNE, J

RESERVED ON: 8 SEPTEMBER 2026

PRONOUNCED ON: 22 SEPTEMBER 2026

JUDGMENT:

1) Applicants, who are original Defendant Nos. 4 to 6, have invoked Revisional Jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**Code**) for assailing the order dated 14 July 2009 passed by the learned Judge, City Civil Court dismissing the Notice

of Motion taken out by them seeking rejection of the Plaint under Order VII Rule 11 of the Code.

2) Briefly stated, facts of the case are that Applicants Nos. 1 and 2 / Defendant Nos. 4 and 5 conveyed a Plot of land admeasuring 2676.86 sq.m. situated at Pali Road, Bandra West, Mumbai alongwith FSI admeasuring 18000 sq.ft. to one M/s. Kakad Investments vide Deed of Conveyance dated 27 February 1979. According to them, under the conveyance, the balance FSI over and above 18000 sq.ft. was to belong to Applicant Nos. 1 and 2. On the same day i.e. 27 February 1979, Kakad Investments executed Indenture of Lease in respect of land admeasuring 1005.03 sq.m. in favour of Applicant Nos. 1 and 2 for a period of 999 years at a nominal annual rent of Re. 1/-. According to Applicants, the Lease Deed empowered Applicant Nos. 1 and 2 to utilize the balance FSI over and above 18000 sq.ft. arising out of the larger property. On 21 December 1980, a Deed of Modification was executed, increasing FSI share of Kakad Investments to 20662 Sq. Ft. During 1979-81, M/s Kakad Investments constructed a building named Kakad Apartments and sold flats therein to various purchasers, who formed Plaintiff-Society (Kakad Co-operative Housing Society Ltd.), who is Respondent No. 1 in the Civil Revision Application. In 1983, Plaintiff filed Suit No. 304 of 1983 against Kakad Investments seeking conveyance of a larger property. On 23 February 1983, Consent Terms were filed in Suit No. 304 of 1983 between Plaintiff-Society and Kakad Investments by which the entire larger property admeasuring 2676.86 sq.m. was conveyed in favour of Plaintiff, subject to 999-year lease in favour of Applicants Nos. 1 and 2.

3) On 26 April 1996 and 13 May 1996, Applicants Nos. 1 and 2 executed registered Deeds of Assignment, assigning the lease to Applicant No. 3 / Defendant No. 6. Applicants submitted plans for construction of 12 story building known as 'White Orchid' in the leased property in exercise of rights conferred under the lease by utilizing the balance FSI of the larger property. Construction of the building White Orchid was completed in 1998. On 7 September 1998, Plaintiff filed Writ Petition No. 1801 of 1998 challenging the permissions in respect of the building White Orchid. According to Plaintiff, the Petition was dismissed on account of involvement of disputed questions of facts which warranted filing of a suit. In the meantime, Occupancy Certificate (**OC**) was issued in respect of the building White Orchid on 27 August 1999. The flat purchasers of the building formed White Orchid Co-operative Housing Society Ltd. (Respondent No. 6/ Defendant No. 8).

4) In the above background, Plaintiff has filed LC Suit No. 2591 of 2000 before the City Civil Court *inter alia* challenging building permissions and sanctioned plans in respect of the building White Orchid and seeking its demolition. Applicants filed written statements. Issues were framed on 6 June 2005, which were recast on 18 January 2008. Applicants filed Notice of Motion at Exh-14 under Order VII Rule 11 of the Code seeking rejection of the Plaint on the ground that the suit is barred under provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTPA Act**). By order dated 14 July 2009, Applicants' motion has been dismissed by the City Civil Court, which order is subject matter of challenge in the present Revision Application.

By order dated 21 January 2010, the Revision Application has been admitted and proceedings of the Suit have been stayed.

5) Mr. Engineer, the learned Senior Advocate appearing for Applicants submits that the City Civil Court has grossly erred in rejecting the Motion under Order VII Rule 11 of the Code. That the suit is clearly barred under Section 149 of the MRTP Act. That the suit challenges sanctions/permissions/plans granted by Municipal Corporation of Greater Mumbai (**MCGM**) relating to the White Orchid building and that therefore, there is express bar under Section 149 of the MRTP Act. He takes me through the prayers of the suit and submits that the whole suit is founded as a challenge to the plans and development permissions. That development permissions are also to be considered as 'orders' passed under Section 45 of the MRTP Act and that therefore the suit cannot be filed challenging the same under Section 149 of the MRTP Act. In support, he relies on judgments of this Court in **Arihant Construction V/s Subhash Kesharmal Barlota and Ors.**¹, **Sujala Yeshwant Nitsure V/s Municipal Corporation of City of Pune and Ors.**², **Roha Municipal Council V/s Shahin Mohamed Akbar Alekar**³ and **Juhi Infra Build LLP V/s Yasin Mahamudiya Patel**⁴.

6) Mr. Engineer further submits that the impugned order erroneously refers to the purported dispute as to title as a ground to reject application under Order VII Rule 11 of Code though in fact no reliefs are sought in the suit regarding title. He submits that only the

1 2015 (6) Mh.L.J. 262

2 1996 (2) BCR 503

3 2015 SCC OnLine Bom 5105

4 2025 SCC OnLine Bom 3828

reliefs sought in the suit are required to be taken into consideration and mere narration of events is irrelevant. That if reliefs are barred by law, the plaint is required to be rejected under Order VII Rule 11 of the Code. In support he relies on judgment of the Apex Court in **Rajendra Bajoria and Ors V/s Hemant Kumar Jalan And Ors.**⁵ Mr. Engineer further submits that since the primary relief is barred under Section 149 of MRTP Act, the consequential reliefs can also not be granted. In support, he relies on judgments of this Court in **Prashant Dattatray Wazalwar V/s Sudha Baburao Lokhande and Ors.**⁶ and **Nine Media and Information Services Ltd. V/s Hero Honda Motors Ltd.**⁷ He submits that prayer clause (g) in the suit regarding challenge to the permission under the Urban Land (Ceiling and Regulation) Act, 1976 (**ULC Act**) stands abated on account of repeal of the said Act.

7) Mr. Engineer further submits that the Trial Court has erred in rejecting the application under Order VII Rule 11 of the Code on the ground of the same being filed at a belated stage. Relying on judgments of the Apex Court in **Church of Christ Charitable Trust and Educational Charitable Society V/s Ponniamman Educational Trust**⁸ and **ITC Ltd. V/s Debts Recovery Appellate Tribunal and Ors.**⁹, he submits that the Application can be filed at any stage of the suit and that mere framing of the issues is an irrelevant factor. He submits that the Trial Court has erred in considering the factor of failure to raise objection of bar of

5 (2022) 12 SCC 641

6 2017 (5) MhLJ 696 : 2017 SCC OnLine Bom 2898

7 2017 (1) MhLJ 566 : 2016 SCC OnLine Bom 10706

8 (2012) 8 SCC 706

9 (1998) 2 SCC 70

jurisdiction in the written statement when application under Order VII Rule 11 of the Code can be filed even without filing written statement.

8) Lastly, Mr. Engineer submits that the application for amendment of plaint filed by the Plaintiff itself indicates that the plaint does not contain any relief for declaration of title. Relying on judgment of this Court in **Prakash G. Goyal and Ors. V/s Sayyed Ayaz Ali s/o Makdoom Ali and Ors.**¹⁰, he submits that Court need not await decision of amendment application and can proceed to reject the plaint under Order VII Rule 11 of the Code. He accordingly prays for setting aside the impugned order.

9) Mr. Jayale, the learned counsel appearing for Respondent No.1/Plaintiff opposes the Revision Application submitting that the Trial Court has rightly rejected the baseless application filed by the Applicants seeking rejection of the Plaint. That Applicants have erroneously eaten into the lawful rights of the Plaintiff-Society by illegally constructing the building White Orchid. That the suit clearly involves disputes relating to title. That the challenge to development permissions is essentially raised to protect rights of the Plaintiff-Society in the land and FSI flowing out of the same. He relies on judgment of this Court in **Raja Bahadur Motilal and Anr. V/s State of Maharashtra and Ors.**¹¹ in support of his contention that suit is the correct remedy for challenging development permissions. That when writ petition was filed challenging the development permission, the same was opposed by Applicants contending that complicated issues could not be decided in writ

¹⁰ 2018 (5) Mh.L.J 830

¹¹ 2003 (1) Bom CR 251

jurisdiction and when suit is filed, dismissal of the same is sought on the ground that there is bar of jurisdiction under Section 149 of the MRTP Act. He submits that White Orchid Co-operative Housing Society Ltd. has filed Suit No. 1489 of 2019 in this Court claiming ownership in respect of entire FSI (barring 20662 sq.ft.) in respect of larger plot of which Plaintiff-Society is the owner. That therefore rejection of the Plaint would cause severe prejudice to the Plaintiff since it wants to establish its rights *qua* the entire larger plot as well as FSI flowing thereof. That Plaintiff has already filed Chamber Summons for amendment of the suit for adding necessary averments and reliefs relating to TDR in respect of the land. That the Chamber Summons is not getting decided on account of stay of the suit. He accordingly prays for dismissal of the Revision Application so that the suit can be decided.

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

11) Applicants are aggrieved by rejection of their application at Exh-14 seeking rejection of the Plaint under order VII Rule 11 of the Code. According to the Applicants, there is an express bar to the suit under provisions of Section 149 of the MRTP Act.

12) Plaintiff-Society is aggrieved by construction of building White Orchid by the Applicants on the leased property by consuming FSI flowing out of the entire land conveyed in favour of the Plaintiff-Society. The Plaintiff earlier filed Writ Petition No. 1801 of 1998 in this Court challenging various development permissions issued in respect of the

building White Orchid. The Petition came to be dismissed by this Court on 5 October 1998. After dismissal of the Petition, LC Suit No. 2591 of 2000 is filed by the Plaintiffs. It is contended by Mr. Jayale that the Writ Petition was disposed of on account of involvement of disputed questions of fact. At this stage, I do not wish to delve deeper into the aspect as to whether the suit is maintainable in the light of disposal of the Writ Petition and whether the Suit is barred by the principles of *res judicata* or not. The Plaint cannot be rejected under Order VII Rule 11 of the Code on the ground that the Suit is barred by *res judicata*. In the event the Plaint in the Suit survives and the Suit is taken to trial, the said issue can be decided.

13) The Suit filed by the Plaintiff-Society is essentially directed against construction of the building White Orchid. It would be apposite to reproduce the substantive prayers in the Plaint, which read thus:

a) That this Hon'ble Court be pleased to grant leave under order 2 Rule 2 of the Civil procedure Code.

b) That the building proposal plans bearing no. CE/414/WS/AH sanctioned on 13th July 1996 and the amended building proposal plans bearing no. CE/414/WS/AH sanctioned on 24th September 1996 and 10th June 1997 and all other amended building proposal plans sanctioned thereafter by defendant nos.1 and 2 by themselves and their officers for the construction of the proposed building comprising of stilts plus 12 upper floors known as "White Orchid" on the said property situate at Plot no.4 TPS III, Pali Road, Bandra (W). Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meters i.e. 2980 sq. yards or thereabouts more particularly described in Exhibit "A" hereto be declared illegal, unenforceable, bad-in-law and null and void;

c) That the defendant nos.1 and 2 by themselves and their officers, be ordered and decreed to quash cancel, revoke and/or set aside the building proposal plans bearing no. CE/414/WS/AH sanctioned on 13th July 1996 and the amended building proposal plans bearing no. CE/414/WS/AH sanctioned on 24th September 1996 and 10th June 1997 and all other amended building

proposal plans bearing no. CE/414/WS/AH, sanctioned for the construction of the proposed building comprising of stilts plus 12 upper floors known as "White Orchid" on the said property situate at Plot no. 4 TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto;

d) That the new twelve storey building on stilts known as "White Orchid" constructed by defendant nos.4, 5 and 6 without the consent of the plaintiffs as additions and alterations to the existing ground floor cottage on the said property situate at plot no.4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto declared illegal;

e) That the defendant nos.1 and 2 by themselves, their officers, employees and constructors be ordered and decreed to demolish and remove the said new twelve "White Orchid" storey building on stilts known as constructed as additions and alterations to the existing ground floor cottage on the said property situate at plot no.4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto wholly at their costs;

f) That all permissions/sanctions including the intimation of disapproval, and commencement certificates bearing no. CE/414/WS/AH of 1996 granted by defendant nos.1 and 2 by themselves and their officers for the construction of the said proposed building comprising of stilts plus 12 upper floors known as "White Orchid" on the said property situate at plot no.4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto be declared illegal bad-in-law and null and void and the defendant nos.1 and 2 by themselves and their officers be ordered and decreed to quash, cancel revoke and/or set aside all permissions and sanctions including the said intimation of disapproval and the commencement certificate bearing no. CE/414/WS/AH of 1996;

g) That the ULC permission LOI No. C/ULC/DIII/22/6011 dated 15th May 1996 and all other orders, permissions and sanctions granted by defendant nos.3 for redevelopment of the said property situate at plot no. 4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto be declared illegal, bad-in-law and null and void and the defendant no.3 be ordered and decreed to quash revoke cancel and/or set aside the same;

h) That the raised paved platform of about one foot from ground level constructed by defendant nos.4, 5 and 6 on the east north and west sides open space of the said new twelve storey building on stilts known as "White Orchid" and upto the said Kakad sub-station on the said property situate at plot no.4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto be declared unauthorized and illegal and the defendant nos.1 and 2 by themselves their officers, employees workers and contractors be ordered and decreed to demolish and remove the said raised paved platform wholly at their cost;

i) That the water connection granted by defendant nos.1 and 2 by themselves and their officers to the said twelve storied building on stilts known as "White Orchid" on fraudulent misrepresentations be declared illegal and the defendant nos.1 and 2 by themselves and their officers, employees and workers be ordered and decreed to disconnect and remove the said water connection wholly at their costs from the said property situate at plot no.4, TPS III, Pali Road, Bandra (W), Mumbai 400 050 bearing CTS Nos. F/867 to F/869 admeasuring 2491.62 sq. meter i.e 2980 sq.yards or thereabouts, more particularly described in Exhibit "A" hereto;

14) Thus, Plaintiff-Society has essentially challenged various permissions issued by the Municipal Corporation for construction of the building White Orchid. The gist of prayers in the Plaint and their exact nature is as under:

(a) Grant of leave under Order II Rule 2 of CPC;

(b) Declaration that Building Plans sanctioned on 13.07.1996 and subsequently amended in 1997 are unenforceable, illegal and bad in law (*relates to the validity of the building plans and permissions*);

(c) Direction to Defendant Nos. 1 and 2 (viz. Municipal Commissioner and the MCGM) to quash, cancel, revoke and set aside the sanctioned plans (*relates to the validity of the building plans and permissions*);

(d) Declaration that the White Orchid building is illegal (*relates to the validity of the building plans and permissions*);

- (e) Direction to Defendant Nos. 1 and 2 (viz. Municipal Commissioner and the MCGM) to demolish the White Orchid building (*consequential to challenge to the building plans and permissions*);
- (f) That all the permissions and sanctions, including IOD and CC be set aside, cancelled and revoked (*relates to the validity of the building plans and permissions*);
- (g) That the ULC permission dated 15.05.1996 granted by Respondent No. 4 be cancelled and revoked (*stands abated, as more particularly set out below*);
- (h) That the paved platform be declared unauthorized and illegal (*consequential /ancillary to challenge to the building plans and permissions*);
- (i) That the water connection in respect of the White Orchid building be declared illegal (*consequential/ancillary to challenge to the building plans and permissions*);
- (j) Prayers (j) to (bb) are all interlocutory reliefs.

15) Thus, Plaintiff is essentially aggrieved by the manner in which various permissions are granted by the MCGM. Prayer clauses (b) to (d) and (f) relate to validity of building plans and permissions sanctioned by the Municipal Corporation. Prayer clause (e) seeks consequential relief of demolition of building White Orchid and prayer clauses (h) and (i) seek consequential relief of demolition of paved platform and disconnection of water supply. Prayer clause (g) challenges ULC permission dated 15 May 1996 issued under the ULC Act. However, since the Act itself is repealed, the relief sought in prayer clause (g) of the Plaint does not really survive. Thus, the essence of the suit is challenge to the development permissions issued by the MCGM. The

other consequential reliefs are dependent on the main relief of challenge to the development permissions.

16) There is express bar under Section 149 of MRTP Act for maintenance of a Suit challenging any order passed or direction/notice issued by the Planning Authority. Section 149 of MRTP Act seeks to give finality to the orders passed or directions/notices issued under the Act which cannot be questioned in any suit or any other legal proceedings. Section 149 of the MRTP Act provides thus:

149. Finality of orders.—

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

17) It is thus more than apparent that the bar under Section 149 of MRTP Act would clearly be attracted *qua* prayer clauses (a) to (d) and (f) in the plaint as observed above. Prayer clauses (e), (h) and (i) merely seek consequential reliefs and depend on main relief of challenge to the development permissions. In my view therefore, express bar under Section 149 of MRTP Act would clearly be attracted to the reliefs sought in the Plaint.

18) In *Arihant Construction* (supra), the plaintiff therein was claiming title over the property in respect of which development permission was granted by MCGM and a suit was filed challenging the permissions and seeking demolition of the structure. However, there was

no prayer seeking declaration of title or for recovery of possession. Thus, factual situation in ***Arihant Construction*** was more or less similar to the one involved in the present case. This is clear from observations made in paragraph 3 of the judgment which reads thus:

3. To put it in nutshell, the objections raised by the defendant No. 3 are that the plaintiff is trying to say that the plaintiff has title to the suit property and thus the Municipal Corporation should not have granted the permission of construction and the Suit has limited prayer for cancellation of the permission and consequential reliefs sought are of mandatory and permanent injunction and thus it is claimed that the Suit is not maintainable in view of section 149 of the Act.

19) A coordinate bench of this Court in ***Arihant Constructions*** held that if declaration of title is not sought in the Plaint but mere challenge to development permissions is raised, bar under Section 149 of the MRTP Act would get attracted. This Court accordingly proceeded to reject the Plaint under order VII Rule 11 of the Code by holding in paragraphs 18 and 19 of the judgment are as under:

18. Keeping Rulings referred to by the parties in view, when present suit is perused, although it refers to an old earlier history of litigation, it does not seek declaration of the ownership of the plaintiff. It does not even seek possession of the property although from the plaint itself it can be made out that plaintiff was not supported by the revenue entries also regarding the possession. At the time of argument, I had asked the learned counsel for respondent No. 1-how plaintiff without seeking declaration of title the plaintiff was claiming mere cancellation of building permission. The counsel submitted that plaintiff was claiming mandatory and perpetual injunction also. The counsel was asked if without seeking declaration of title the suit could be maintained, the counsel submitted that present suit was only to the effect that defendant No. 3 should be restrained from acting on the permission of construction given by the Corporation. According to the counsel, the Corporation had given permission merely relying on revenue entries and he submitted that this was not appropriate. According to the counsel for respondent No. 1, the respondent No. 1 had raised objections but the Corporation still granted the permission. I find that the suit in its present form is hit by section 149 of the Act. It merely seeks cancellation of the permission of construction on the basis that the plaintiff had raised question of title

before Planning Authority and thus according to the plaintiff the permission should not have been granted. Merely because plaintiff raised dispute of title with the Corporation, would not be sufficient. The commencement certificate dated 21st March, 2014 issued to the defendant No. 3 and before issuing the certificate, letter dated 15th March, 2014 issued to the plaintiff by the Corporation shows that the Corporation considered entries in P.R. Card and sale deed relied on by the defendant No. 3 and measurement map and found that the entries showed title of the defendant No. 3 and accordingly granted permission for construction. Planning Authority cannot sit down and give Judgment on title. The letter dated 15th March, 2014 clearly informs the plaintiff that when he is asserting title, he may file appropriate suit. The plaintiff has filed the suit but did not claim declaration of his title. Although learned counsel for plaintiff has argued that the plaintiff can maintain the suit without asking for declaration of his own title but can seek declaration that defendant No. 3 does not have title, even that is not done. The suit does not even seek to set aside Sale Deed relied on by defendant. I do not find substance in the arguments.

19. It is not a case that while granting the permission, the planning authority did not give regard to the provisions of draft or final plan as is required to be considered under section 46 of the Act. Even in that case what would be appropriate relief or forum would be matter of consideration. The basic reason for objecting to the building permission given in Plaint is that plaintiff had raised the question of title and so the permission should not have been granted. Looking to the Court Fee clause of the suit as well as the prayers of the suit reproduced above, it is quite clear that the only relief sought is to cancel the construction permission given to defendant No. 3 and “in consequences of cancellation/suspension” of permission the mandatory injunction to remove structure and further perpetual injunction is claimed that defendant No. 3 should not do any construction at the suit property.

20) The ratio of the judgment in ***Arihant Construction*** squarely applies to the facts of the present case. Here also, Plaintiff has not sought declaration of title or a prayer for possession. The Suit involves a plain challenge to the development permissions and therefore the bar under Section 149 of the MRTP Act would clearly get attracted in the present case.

21) In ***Sujala Yashwant Nitsure*** (supra), a suit was filed seeking a declaration that building permissions granted by the planning

authority in respect of a *Mangal Karyalay* were illegal and injunction was sought to restrain defendant from carrying out the work as well as for demolition of the structure. This Court held that grant of development permission amounted to passing of an 'order' under the MRTP Act and that therefore bar under Section 149 of MRTP would apply to the suit challenging the development permissions. This Court held in paragraphs 36, 37 and 41 of the judgment as under:

36. When any Statute seeks to expressly bar the jurisdiction of the Civil Court, such bar must be clear and legislature's intendment must be very explicit. The order passed by an Officer authorized to do so under the Act, rightly or wrongly in ignorance of law or mis-application of law would be all the same order passed under the Act imposing bar upon the suit.

37. This aspect has been highlighted by and on behalf of the respondents when it was urged that undisputedly the said plot being a part of Town Planning Scheme and being developed under the said Scheme, the permission applied for and granted is under the provisions of Chapter IV of the M.R.T.P. Act, 1966. The application was made for the grant of permission and permission has been granted under the provisions as contained in Chapter IV of the M.R.T.P. Act, 1966. Therefore, there is no doubt the learned Counsel for the respondents contends that in the instant case order has been passed under the provisions of M.R.T.P. Act, 1966 and that being so as provided under section 149 there is an express bar to the institution of the suit. Therefore, the suit is not maintainable.

41. Provisions as contained in section 149 of the M.R.T.P. Act, 1966 makes any order, direction, *etc.* of the Functionary under the said Act final and expressly bars recourse to the Court. Section 147 in addition provides further protection. It is significant to note that the Previous Statutes of 1915 and 1955 did not contain the provisions as enjoined in section 149. The bar contained in section 149 is a general bar against any order or action taken under the said Act. The provisions of M.R.T.P. Act as its preamble indicates are designed to ensure planning and development of the lands in the regions, preparation and implementation of the plans, *etc.* by the various authorities under the Act exercising the power of eminent domain to serve the public purpose and interest. The Act is a Complete Code in itself and is meant to serve public purpose. The Legislative intent is very clear from its various provisions. In that wherever it thought is necessary, it provides remedy for adjudication in the Act itself by the Court. For instance issues as arising under section 71 and section 51(3) are made determinable by the Courts. The M.R.T.P. Act deals with the specific subject matter of planning, development, construction of buildings,

which are highly technical and specialized subjects and therefore orders and steps by the authorities entrusted with the powers to implement the same have been made final by the statute itself to avoid any impediments in its implementation.

22) Thus, in ***Sujala Yashwant Nitsure*** though reliefs were sought for demolition and injunction from carrying out the work, the Suit was still held to be barred under Section 149 of the MRTP Act when the main prayer in the Suit was challenge to the development permission.

23) In ***Roha Municipal Council*** (supra), notices were issued by the Municipal Council under Sections 53, 54 and 55 of the MRTP Act. Plaintiff filed a declaratory and injunction suit without raising specific challenge to the notices. This Court still held that bar under Section 149 of the MRTP Act would apply to the suit, by holding in paras 4, 5 and 7 of the judgment as under:

4. Upon a meaningful reading of the complaints, it is clear that the challenge therein is to the notice dated 6 December 2006 issued under Sections 53, 54 and 55 of the said Act. In the prayer clause though no direct reliefs have been applied in respect of the said notice, it is clear that the reliefs applied for are on the basis that the said notices are illegal or unenforceable. In fact, implicit in the reliefs applied for, is the prayer challenging said notices issued under the said Act.

5. In matters of exercise of powers under Section 9A of the CPC or for that matter Order 7 Rule 11 of the CPC, meaningful reading of the complaint is contemplated. In the case of *T. Arivandandam v. T.V. Satyapal*¹, the Hon'ble Supreme Court had held that merely because by some clever drafting illusion of cause of action is created, that by itself will not preclude the Civil Court from exercising powers under Order 7 Rule 11 of the CPC. In the present case, merely on the basis of the manner of draft of the relief clause, it cannot be said that the basic nature of the suit is anything other than challenge to the action and notices under the provisions of the said Act. Section 149 of the said Act, reads thus:

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7. Applying the law as laid down in the aforesaid decision, the impugned orders shall have to be set aside. Accordingly, the impugned orders are set aside and the plaint in each of the suits instituted by the respondents is rejected.

24) In *Juhi Infra* (supra), a suit was filed against CIDCO for reallocation of the land and seeking injunction restraining the development until reallocation of land were made. This Court held that Plaintiff's real grievance was against CIDCO's decision of allocation of land, which was an order passed under provisions of MRTP Act and that therefore the suit was barred by provisions of Section 149. This Court held thus:

15) Since the real grouse of the Plaintiff is about decision/order of CIDCO relating to allotment of land, provisions of Section 149 of the MRTP Act would be applicable. Section 149 of the MRTP Act provides thus:

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16) Thus, no Suit can be filed challenging any order passed or direction issued by State Government or order passed or notice issued by any Regional Board or Planning Authority or Development Authority under the MRTP Act. CIDCO is the Special Planning Authority for Navi Mumbai Project notified under the provisions of the MRTP Act. The decisions for allotment of land in Navi Mumbai are taken by CIDCO under the provisions of New Bombay Disposal of Land Regulations, 1975, which are formulated under the provisions of section 159 of the MRTP Act. CIDCO itself is a creature under the MRTP Act which is appointed as New Town Development Authority under the Act. Therefore, decision to allot land to various persons whose lands are acquired would essentially be a decision taken under the MRTP Act and bar of jurisdiction under Section 149 for maintainability of the Suit would clearly apply. The whole case of the Plaintiff as pleaded in the Plaint is with regard to alleged erroneous allotment made to him of area admeasuring 400.23 in Plot Nos. 58 and 65 and he desires the land to be allotted in Plot no. 10A by deducting the same from allotment made to Defendant Nos. 5 to 7. This prayer of the Plaintiff in the suit would be clearly barred under the provisions of Section 149 of the MRTP Act. Thus, prayer clause (b) in the Suit, would be barred by the provisions of section 149 of the MRTP Act.

17) Mr. Parkar has attempted to salvage the situation by contending that prayer clause (c) in the Plaint is not barred by provisions of Section 149 of the MRTP Act and that it is impermissible to reject part of the Plaint under Order VII Rule 11 of the Code. However, in prayer clause (c), Plaintiff has sought an injunction against Defendants No. 1 to 4 from granting any development permission to Defendant Nos. 5 to 7 for carrying out construction in Plot No. 10A, Sector 39A till CIDCO al-

lots a portion of land admeasuring 400.23 sq.mtrs. to the Plaintiff by deducting the same from the land allotted to Defendant Nos. 5 to 7. The injunction is also for not obstructing Plaintiff's business in the Suit property. The development permission is granted under the provisions of Section 44 of the MRTP Act. The obstruction, if any, to Plaintiff's business in Suit property can be done by CIDCO in exercise of statutory powers under section 53 of the MRTP Act. Thus, even prayer clause (c) of the Plaint is relatable to the provisions of the MRTP Act and therefore bar under section 149 of the MRTP Act would apply even to prayer clause (c).

18) In my view, therefore the entire claim of the Plaintiff in the suit is hit by section 149 of the MRTP Act. The whole Plaint therefore deserves to be rejected by having recourse to the provisions of Order VII Rule 11 of the Code.

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20) In the present case as well, Plaintiff's prayer for injuncting CIDCO from issuing development permission to Defendant Nos. 5 to 7 would be barred by section 149 of the MRTP Act. The injunction sought by him to restrain Defendant Nos. 1 to 7 from obstructing his business also has connection with provisions of Section 53 of the MRTP Act as CIDCO as a Planning Authority is required to follow the procedure under Section 53 of the MRTP Act before taking any action against unauthorised constructions. Therefore, the entire prayer clause (c) in the Plaint is barred by Section 149 of the MRTP Act."

25) In **Nashik Municipal Corporation V/s Sunil Baburao Kshirsagar¹²**, this Court has summarized the principles relating to rejection of Plaint under Order VII Rule 11 of the Code when the suit is filed before Civil Court challenging notice issued under Section 53 of MRTP Act. This Court held that clever drafting of the Plaint by avoiding to expressly challenge notice issued under Section 53 of MRTP Act or under the provisions of Maharashtra Municipal Corporation Act, 1949 (**MMC Act**) cannot save the suit from the bar under Section 149 of the MRTP Act or Section 433A of the MMC Act. The summary of principles is as under:

36. From consideration of the ratio of various judgments as discussed above, following conclusions emerge:

12 2025:BHC-AS:50496

- i) The objective behind enacting provisions in various municipal and planning statutes for bar of jurisdiction of Civil Courts is to ensure minimum possible court interference in actions initiated against unauthorised constructions so as to achieve the goal of curbing the menace of unauthorized constructions in urban areas of State of Maharashtra.
- ii) In the light of specific provision for bar of jurisdiction under Section 515A of the Mumbai Municipal Corporation Act, Section 433A of the MMC Act, 149 of the MRTTP Act etc. the Civil Court shall ordinarily not entertain any suit challenging notice issued, order passed or direction issued under the provisions enumerated in those sections.
- iii) The Civil Court must be mindful of the fact that there is legislative objective behind enacting the provision of bar of jurisdiction and that its inherent jurisdiction is legislatively circumscribed by incorporating provisions for bar of jurisdiction. Therefore, it is in very rare cases where there are sufficient pleadings in the Complaint demonstrating nullity in the notice, order or direction that Civil Court would tend in favour of retaining its jurisdiction.
- iv) It is only in very rare cases where the Complaint contains averments demonstrating that the notice, order or direction suffers from the vice of nullity that the Civil Court would be justified in entertaining Suit challenging such notice, order or direction in respect of unauthorized constructions.
- v) The Civil Court must make meaningful reading of the Complaint to find that whether the grievance expressed in the Complaint is a pure challenge to the notice, order or direction for demolition of unauthorized construction. If it is a plain challenge to such notice, order or direction, the Court must proceed to reject the Complaint by referring to the provision for bar of jurisdiction. If on the other hand, meaningful reading of the averments in the Complaint makes out case of nullity in the notice, order or direction, the Civil Court can exercise jurisdiction in respect of such notice, order or direction.
- (vi) However, mere pleading of the word 'nullity' in the Complaint would not be sufficient and the Court must find out from reading of the entire averments in the Complaint as to whether a demonstrable case of nullity is made out or not.
- (vii) For the purpose of meaningful reading of the Complaint, the Civil Courts would be guided by the manner in which this Court read the Complaint in *Akola Municipal Corporation* (supra) as well as the manner in which the Complaint has been read in the present judgment.

26) Thus the Suit filed by Plaintiff-Society is a plain vanilla challenge to the development permissions issued under the MRTTP Act. There is no declaration of title sought by the Plaintiff-Society in the suit. Though Mr. Jayale has sought to contend that the suit is filed to protect Plaintiff's ownership rights in the suit property, there is no such

declaration sought in the prayers. Though the plaint may set out the history of alleged title of Plaintiff-Society, the suit ultimately does not seek a declaration of ownership or recovery of possession. Mere averments in the plaint about title without seeking any relief in respect thereof would not convert a plain suit challenging the development permissions into a suit for declaration of title.

27) While deciding the application under Order VII Rule 11 of the Code, the Court needs to decide whether reliefs sought in the plaint are barred by law. Reliance by Mr. Engineer in this regard on judgment of the Apex Court in ***Rajendra Bajoria*** (supra) is apposite. It is held by the Apex Court in Paragraphs 17 and 18 of the judgment as under:

17. It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold. This Court, therefore, upheld the order passed by the trial court of rejecting the suit and that of the appellate court, thereby affirming the decision of the trial court. This Court set aside the order [*Manorama Sirsi v. Pearlite Liners (P) Ltd.*, 2001 SCC OnLine Kar 850] passed by the High Court, wherein the High Court had set aside the concurrent orders of the trial court and the appellate court and had restored and remanded the suit for trial to the trial court.

18. Therefore, the question that will have to be considered is as to whether the reliefs as claimed in the plaint by the plaintiffs could be granted or not. We do not propose to do that exercise, inasmuch as the Division Bench of the High Court has elaborately considered the issue as to whether, applying the provisions of the said Act read with the aforesaid clauses in the partnership deed, the reliefs, as claimed in the plaint, could be granted or not.

28) Even in ***Arihant Construction*** (supra), this Court has held that a simplicitor suit seeking cancellation of building permissions

without seeking declaration of title was not maintainable under Section 149 of the MRTP Act even though the plaint may make reference to the history of plaintiff's title. Paragraphs 18 and 19 of the judgment in ***Arihant Construction*** are already reproduced above. It would be apposite to reproduce the observations made by this Court in para 20 of the judgment, which reads thus:

20. I have gone through the impugned order passed by the trial Court. Trial Court referred to the Rulings and in Para 22 of its order, in a cryptic manner observed that the plaintiff was seeking relief in respect of construction permission raising objections in respect of title and not considering the same by Corporation while granting construction permission. Trial Court then went on to observe that the question raised could be decided only by the Civil Court and observed that the plaintiff is claiming the relief about the title which affects on the construction permission of the suit property. Thus only because plaintiff refers to his title, the trial Court has presumed that the suit was maintainable without seeing the substance of the Suit and prayer clauses and the fact that the suit did not at all claim declaration of title nor Court Fee was paid by the plaintiff. Thus, I find that the order passed by the trial Court is not maintainable.

29) Therefore, mere reference to alleged title of the plaintiff in the body of the plaint without seeking any relief of declaration of title would not convert plaintiff's suit to a declaratory one. In essence, the suit is a plain vanilla challenge to the development permission without seeking any declaration of title. Therefore, a bar under Section 149 of the MRTP Act would clearly get attracted in the present case.

30) So far as the consequential reliefs for demolition of the building White Orchid (prayer clause (e)), demolition of paved platform (prayer clause (h)) and illegality in water connection to White Orchid building (prayer clause (i)) are concerned, the same are consequential to the main relief of challenge to the development permissions. They flow

from the declaration that the building plans and permissions are illegal. It is only if Plaintiff succeeds in obtaining reliefs under prayer clauses (a) that further consequential reliefs can be granted. If Civil Court does not have jurisdiction to grant principal relief, the prayer for consequential relief is also barred. In ***Prashant Dattatraya Wazalwar***(supra), plaintiff had sought a declaration that notice issued under MRTP Act was illegal alongwith consequential prayers for injunction. This Court held that since main relief was barred under Section 149 of the MRTP Act, no consequential relief could also be granted. It is held in paragraph 7 of the judgment as under:

7. There is also a prayer made in the plaint for issuance of permanent injunction. But this prayer flows from the prayer regarding a declaration that notice issued under section 53(1) of M.R.T.P. Act is illegal. If the Civil Suit has been seen as barred by law in view of section 149 of M.R.T.P. Act, in so far as such a declaration is concerned, whatever relief that flows from such a declaration would also have to be held as non maintainable before a Civil Court, as a necessary corollary thereof.

31) In ***Nine Media and Information Services Ltd.*** (supra), the Trial Court had refused to grant the principal relief holding that the same was barred under the provisions of Companies Act, 1956 but had granted consequential relief to the plaintiff. Setting aside the order of the Trial Court, this Court held in paragraph 30 as under:

30. Thus, the trial Court also came to the categorical finding that it has no jurisdiction to grant the relief as sought by the appellant of directing the Registrar to issue duplicate share certificates. In such situation, the trial Court should have restrained itself from entering into the discussion on issue relating to the ownership and title of the appellant over the shares. As, the relief of direction to the Registrar to issue duplicate share certificates was the main relief, sought by the appellant and to enable the appellant to get that relief, the consequential/ancillary relief of declaration was sought about his title to shares. If the trial Court has held that it has no jurisdiction to grant the main relief, then it follows that trial Court had no jurisdiction even to grant

other consequential/ancillary relief of declaration. However, the trial Court has entered into that issue and recorded findings. Needless to state that, the findings of the trial Court on that issue being recorded by the Court having no jurisdiction to record such findings, those findings cannot have any legal value. Hence, it is not necessary, as such, to decide the legality of those findings on analysis of evidence. Moreover, if the submission of learned counsel for respondent No. 1 is accepted that this Court should, instead of deciding the appeal at this stage of admission, admit the same and thereafter decide on merits the legality of findings recorded by the trial Court, even then in my considered opinion, as rightly submitted by the learned counsel for the appellant, it would be a totally futile and infructuous exercise. The law is very clear, which is not and cannot be disputed in the light of the Apex Court Judgment that the Registrar is alone having jurisdiction to issue duplicate share certificate and, therefore, once the Civil Court has no jurisdiction to do so, even if I decide the appeal and ultimately hold in favour of the appellant that the appellant is having title and ownership over the said shares, respondent Nos. 1 and 2 are bound to challenge the said decision on the count that if the trial Court has no jurisdiction, this Court was also not having the jurisdiction to record such finding in the appeal. Therefore, it is going to be an entirely futile and infructuous exercise in allowing the appeal to languish after admission, till its final hearing, especially, when the cause of action for the suit has arisen in the year 1995 and already it is more than 20 years. When the legal position is crystal clear and learned counsel for the appellant has, relying upon these provisions under section 84 of the Companies Act and the law laid down in this authority of *Shripal Jain* (supra) has fairly conceded that the appellant may be given liberty to approach the Registrar instead of prosecuting this appeal, there is no point in proceeding with this appeal merely for academic purpose to decide the legality and validity of the findings recorded by the trial Court on Issue Nos. 3 and 4, pertaining to declaration of title over the share certificates.

32) So far as prayer in clause (g) challenging ULC permission is concerned, the ULC Act is itself repealed on 22 March 1999. Section 4 of the Repeal Act provides thus:

4. Abatement of legal proceedings. —

All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

33) The Repeal Act has been adopted by the State of Maharashtra on 29 November 2007. Thus, the suit *qua* challenge to the validity of ULC permission has already abated.

34) The Trial Court has grossly erred in rejecting Applicants' Application under Order VII Rule 11 of the Code on the ground that the same was filed at a belated stage. As observed above, the issues in the suit were framed on 6 June 2005 and the same was recast on 18 January 2008. Applicants filed Notice of Motion seeking rejection of plaint on 17 January 2009. The Trial Court has held that the motion was filed at a belated stage after framing of issues. However, the finding appears to be contrary to the settled position where powers under Order VII Rule 11 of the Code can be exercised at any time prior to making of a decree. Reliance by Mr. Engineer on judgment of Apex Court in ***Church of Christ Charitable Trust*** (supra) in this regard is apposite, in which it is held in paragraph 10 as under:

10. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order 7 Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:

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It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that **power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.**

(emphasis added)

35) Similarly in ***ITC Ltd. vs. DRAT*** (supra), the Apex Court has held that mere framing of the issues in the suit cannot come in the way of consideration of application under Order VII Rule 11 of the Code.

36) Another erroneous finding recorded by the City Civil Court while rejecting the motion filed by the Applicants is failure to raise the defence of bar under Section 149 of MRTP Act in the written statement. The finding is egregiously erroneous since filing of written statement itself is not necessary for deciding the Application under Order VII Rule 11 of the Code. As a matter of fact, even filing of application may not be necessary in a given case and the Court can *suo moto* reject the plaint by having recourse to Order VII Rule 11 of the Code.

37) In ***Sujala Yashwant Nitsure*** (supra), this Court held that even if the plea of bar of jurisdiction under Section 149 of the MRTP Act was not raised in the pleadings, the Court was not precluded from considering the plea even at the appellate stage where the jurisdictional bar went to the root of the matter. This Court held in paragraph 77 of the judgment as under:

77. ... Therefore, taking into consideration all the facts and circumstances as obtained in the matter herein and the findings rendered hereinabove, I do not find any merits in the appeal. The 1st Appellate Court has dismissed the appeal although reasoning assigned were different to certain extent as have be clarified in the Judgment hereinabove. Inasmuch as, the bar of suit under section 149 of the M.R.T.P. Act was not argued over before the trial Court or before the 1st Appellate Court. But same being a point of law, this Court has allowed the parties to address it on the said point. The plaintiffs have failed in the said legal point and as the same goes to the root of the matter the suit of the plaintiffs consequently has to be dismissed.

38) It is also settled law that subject matter jurisdiction stands on a different footing and can never be waived by a party. Therefore, mere failure to raise a plea in the written statement that the suit is barred under Section 149 of the MRTP Act can never amount to waiver on the part of the Petitioners. Non-raising of such plea would not confer jurisdiction on the City Civil Court, which is expressly barred under Section 149 of the MRTP Act. Whether the bar to maintainability of the suit would apply or not would not depend on the conduct of Defendants. If there is a bar, the plaint in the suit must be rejected the moment such bar is brought to the notice of the Court. It can be brought to the notice of the Court either through written statement or through an application or even orally. Even if Defendant does not bring the bar to the maintainability of the suit to the notice of the Court, the Court can itself notice such bar and proceed to reject the plaint. Thus, there is no concept of waiver on the part of the Defendant who fails to aver in the written statement that there is bar to the maintainability of the suit. Reliance by Mr. Engineer on judgment of the Apex Court in **Harshad Chiman Lal Modi V/s DLF Universal Ltd. and Anr.**¹³ in this regard is apposite.

39) Reliance by Mr. Jayale on judgment of this Court in ***Raja Bahadur Motilal*** (supra) is inapposite. The judgment is an authority on the proposition that a writ petition cannot be entertained in the light of existence of effective alternate remedy of filing a suit when the issue involves right to use TDR. In the case before this Court, there was dispute about ownership of TDR and in the light of that position, this

¹³ (2005) 7 SCC 791

Court held that effective alternate remedy was to file a suit. The judgment cannot be read in support of an abstract proposition that in every case, where the permission granted by the Municipal Corporation is challenged, the bar under provisions of Section 149 of the MRTP Act would not apply. It is well settled position that the judgment is in authority for what it decides and not what can be logically deduced therefrom [SEE: **Commissioner of Customs (Port), Chennai vs. Toyota Kirloskar Motor (P) Ltd.**¹⁴ and **Secundrabad Club and Ors. Vs. CIT and Ors.**¹⁵]. The judgment in **Raja Bahadur Motilal** does not lay down a law that a suit challenging permission by Municipal Corporation is maintainable irrespective of provisions of Section 149 of the MRTP Act.

40) Faced with the situation that the suit does not contain any prayer or relief for declaration of title, Mr. Jayale has submitted that Plaintiff-Society has filed a Chamber Summons seeking amendment of the plaint. In the schedule to the Chamber Summons, Plaintiff has sought to seek a declaration that it is entitled to TDR of the suit property and that TDR of 1000 sq.m. sanctioned vide the plans and used in construction of the building White Orchid is illegal, null and void. Proposed amendment also seeks to challenge the full OC in respect of the building issued on 27 August 1999 and Building Completion Certificate issued on 27 April 2000. The Application for amendment is still not decided. Once the Application for rejection of plaint under Order VII Rule 11 of the Code is pressed before the Court, the Court cannot defer a decision thereon merely because application for amendment of

14 (2007) 5 SCC 371

15 2023 SCC OnLine 1004

the plaint is filed or is pending. Application for rejection of plaint needs to be decided on the basis of averments made and relief sought in the plaint. The Application cannot be rejected on the ground that Plaintiff may be granted permission in future to amend the plaint and that such amendment may result in retention of the plaint. In ***Prakash G. Goyal*** (supra), this Court has held in paragraph 15 of the judgment as under:

15. The trial Court despite noticing the fact that the relief of declaration with regard to the nature of plaintiffs title not having been sought, committed an error in granting time to the plaintiff to seek proper relief and pay Court fees within a period of 15 days. From the provisions of Order VII, Rule 11 of the Code and especially clauses (b), (c), (e) and (f) the Court can extend the time for permitting the plaintiff to comply with its directions only in the situations contemplated therein. Where the rejection of the plaint is sought under provisions of Order VII, Rule 11(a) or (d) of Rule 11, there would be no question of granting time to the plaintiff to rectify the defects in the plaint. In the present case the trial Court having found that a case under provisions of Order VII, Rule 11(d) of the Code had been made out, there was no occasion for the trial Court to have granted further time of fifteen days to seek appropriate relief. By granting that time the trial Court acted beyond its jurisdiction and hence the order to that extent cannot be sustained. The submission made on behalf of the plaintiff that the defect in question was curable and hence liable to be rectified by placing reliance on the decisions in *Mst Rukhmabai* and *Vidyavati Gupta* (supra) does not deserve acceptance. If the suit appears from the statements in the plaint to be barred by any law, that defect cannot be said to be curable as contended by the plaintiff. Needless to state that recourse to provisions of Order VII, Rule 13 of the Code in that context is always permissible in accordance with law.

41) Thus, mere filing of chamber summons by the Plaintiff to amend the plaint could not have prevented the Trial Court from deciding the application for rejection of plaint. The Trial Court has otherwise not waited for decision of amendment application and has proceeded to decide the application for rejection of plaint by taking into consideration the averments and reliefs in the unamended plaint. It has however faltered in not allowing the application by ignoring the position that all

the reliefs sought in the plaint are expressly barred under Section 149 of the MRTTP Act.

42) Mr. Jayale has also referred to filing of Suit No. 1489 of 2019 by Defendant No. 8-Society. In that suit, White Orchid CHSL has *inter alia* sought a declaration that it is the sole owner and possessor of entire FSI flowing out of larger land (except FSI of 20662 sq.ft. held by Plaintiff-Society). Thus, Suit No. 1489 of 2019 clearly involves issue of title relating to the FSI flowing out of the larger land. As against this, LC Suit No. 2591 of 2000 filed by Plaintiff-Society does not contain any relief for declaration of title. Mr. Jayale has placed on record copy of counterclaim filed by Plaintiff-Society in Suit No. 1489 of 2019, in which Plaintiff has challenged the Deed of Assignment dated 10 August 2016. Thus, Plaintiff has joined issues relating to title by filing Counterclaim in Suit No. 1489 of 2019. Be that as it may. It is not necessary to take into consideration the reliefs sought in Suit No. 1489 of 2019 or in Counterclaim No. 3 of 2023 filed by Plaintiff therein. Suffice it to observe that Plaintiff-society has failed to seek declaration of title in LC Suit No. 1489 of 2019. The Suit contains plain vanilla challenge to the development permissions, thereby attracting clear bar under Section 149 of the MRTTP Act. The City Civil Court has erred in rejecting the motion filed by the Applicants.

43) The Revision Application accordingly succeeds, and I proceed to pass the following order:

- (i) Order dated 14 July 2009 passed by the City Civil Court on Application at Exh-14 is set aside.

(ii) The Application at Exh-14 filed in LC Suit No. 2519 of 2000 is allowed in terms of prayers made therein and the Plaint in LC Suit No. 2591 of 2000 is rejected.

(iii) Consequently, LC Suit No. 2591 of 2000 is dismissed.

44) Civil Revision Application is **allowed** in above terms. There shall be no order as to costs.

45) Nothing remains to be adjudicated in the Interim Applications. The same are accordingly **disposed of**.

[SANDEEP V. MARNE, J.]

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signed by
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