

Serial No.25
Regular list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR.**

CR No. 49/2025.

GHULAM HASSAN ZAROO.

..... Applicant/petitioner(s)

Through: -

*Mr. Gowhar Majid Dalal, Advocate with
Mr. Ibrahim Mehraj, Advocate.*

V/s

SHAHID HYDER ANSARI AND ORS.

..... Respondent(s)

Through:-

Mr. Yawar Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

(ORDER)

08.10.2025

1. In the instant petition filed under Article 227 of the Constitution, challenge is being thrown to the order dated 16.10.2024, (for short “Impugned order”) passed by the court of Chief Judicial Magistrate, Srinagar (hereinafter as the “trial court”) in case tilted as “*Shahid Hyder Ansari vs. Ghulam Hassan Zaroo and others*”.

2. Facts relevant to the adjudication of the instant petition available on the file would reveal that the respondent herein filed a suit for declaration and permanent injunction against the defendants including the petitioner herein before the trial court on the premise that he the plaintiff/respondent 1 herein is the legal and lawful owner in possession of a property comprising of single storeyed house alongwith land underneath and appurtenant thereto measuring 01 Kanal and 11 Marlas falling under Khasra Nos. 1246/845/363/7 Min, Khewat No. 89, Khata No. 318 situated at Mouza Nishat Bagh, Srinagar and that the defendants in the suit including the petitioner and the respondents 2 & 3 herein in league and in connivance with some goons are causing illegal interference in the said property.

3. During the pendency of the suit, the defendant 1 in the suit being petitioner herein filed an application under Order 7 Rule 11 CPC for rejection of plaint, besides an application seeking leave for filing written statement beyond the statutory period.

4. Both the said applications were contested by the plaintiff/respondent 1 herein and upon consideration of the same, the trial court rejected both the applications by virtue of composite order dated 16.10.2024, out of which, the petitioner herein, has called in question the said order insofar as it rejected application filed by him before the trial court under Order 7 Rule 11 CPC.

Heard counsel for the parties and perused the record.

5. Perusal of the record in general available on the file and in particular the application filed by the petitioner herein under Order 7 Rule 11 CPC before the trial court tends to show that the rejection of the plaint had been sought fundamentally on the ground that the agreement to sell relied upon by the plaintiff/respondent 1 herein did not give any cause of action to the plaintiff as the said agreement to sell is not registered in terms of Section 54 read with Section 17 of the Registration Act, besides pleading that the suit is not maintainable owing to its nomenclature and nature being a suit for declaration and injunction, in that, the plaintiff could have filed a suit for specific performance alone.

6. Insofar as the rejection of the plaint under Order 7 Rule 11 CPC is concerned, law is no more *res integra* and stands settled in a series of judgments including in case titled as “ ***Vinod Infra Developers Ltd. v. Mahaveer Lunia & Ors*** (CIVIL APPEAL NO. 7109 OF 2025 [Arising out of SLP(C) No. 4862 OF 2025]) wherein, it has been held that rejection of a plaint under Order 7 Rule 11 CPC is permissible only when the plaint, on its face and without

considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped and that at this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims and that if any triable issues arise from the pleadings, the suit cannot be summarily rejected.

7. Coming back to the case in hand and as has been noticed hereinabove, the defendant 1/petitioner herein sought the rejection of the plaint on the ground that there is no cause of action available to the plaintiff/respondent 1 herein against the defendant 1/petitioner herein for maintaining the suit, owing to the non-registration of the agreement to sell based upon which the suit had been filed as also account of the nature and nomenclature of the suit.

However, it is settled position of law laid down by the Apex Court in case titled as ***“State of Orissa v. Klockner and Company and ors. reported in AIR 1996 v. 8 SCC 377”*** wherein it has been inter-alia held that there is a distinction between “nonexistence of cause of action” and “nondisclosure of cause of action” and that for determining whether the plaint is liable to be rejected under clause (a) of Order 7 Rule 11 CPC, averments in the plaint alone are material and relevant and for determining whether there is cause of action for institution of the suit, the question can be determined on the basis of material (other than the plaint on record) that in that case the Order 7 Rule 11 clause (a) CPC has no application.

8. Having regard to the aforesaid position of law as also the plea raised by the defendant 1/petitioner herein before the trial court in the application seeking rejection of the plaint, indisputably, the defendant 1/petitioner herein has not sought rejection of the plaint on the ground of non-disclosure of the

cause of action, but for non-availability of cause of action inasmuch as, on the grounds which does not fall within the purview of Order 7 Rule 11 CPC. Thus, it can safely be concluded that the plaint could not be rejected on the said ground and has been rightly so declined by the trial court in terms of the impugned order.

9. Viewed thus, the impugned order does not call for any interference and as such, petition fails and is accordingly, *dismissed*.

(Javed Iqbal Wani)
Judge

SRINAGAR

08.10.2025

"Abdul Rashid"

Whether the Order is Speaking:-

Yes/No.

Whether approved for reporting:-

Yes/No