**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY AND ORIGINAL CIVIL JURISDICTION**
**IN ITS COMMERCIAL DIVISION**
**COMMRECIAL SUIT (L) NO. 970 OF 2018**

JVPD Sterling CHSL (Regd.) and Ors. ..Plaintiffs
Vs.
Kamla Landmarc Builders and Ors. ..Defendants

Mr. Maulik K. Tanna for Plaintiff
Mr. Umesh Shetty a/w Ms. Sharila D'souza i/b Sagar Talekar for Defendant No.1;
Mr. Vishal Kanade i/b K.G. Rikame for Defendant No.2;
Mr. Kalpesh Joshi for Defendant Nos. 3, 4 and 5;
Ms. Aparna Muralidharan i/b P.G. Lad for Defendant Nos. 6;
Mr. H. B. Takke, AGP for Defendant No.7;
Mr. R. Y. Sirsikar for MCGM.

**CORAM : K.R.SHRIRAM, J.**
**DATE : 22nd FEBRUARY, 2019**

**P.C.:**

1. The suit has been filed by 3 plaintiffs. Plaintiff No.1 is described as JVPD Sterling CHSL (Regd.), plaintiff No.2 is one Prashant Hingorani and plaintiff No.3 is one Rakesh Desai. Plaintiff No.1 in paragraph 1 of the plaint is described as a society which is the owner of the existing building thereon known as Kamala Heritage 'B' alongwith land underneath being a lease hold plot. Plaintiff Nos. 2 is described as members of plaintiff No.1 Co-operative Housing Society formed and registered under the provisions of Maharashtra Co-operative Societies Act, 1960.

2. The verification clause in the plaint reads as under :

"We, (1) Prashant Hingorani the Plaintiff No.2

> abovenamed for myself and as a member of Plaintiff No.1 abovenamed through my authorized representative Mr. Manish Shedge aged about 48 years and (2) Mr. Rakesh Desai, the Plaintiff No.3 abovenamed, aged about 53 years solemnly declare what is stated in paragraph 1 to 58 are true to my knowledge and that what is stated in the remaining paragraphs 59 to 72 are stated on information on and belief and I believe the same to be true." (emphasis supplied)

It cleverly camouflages that there is no verification for and on behalf of Defendant No.1. Even the plaint has been signed only by plaintiff Nos. 2 and 3, not by plaintiff No.1. Para 67 of the plaint also is cleverly drafted to say "the suit is signed and verified by (1) Prakash Hingorani, the plaintiff No.2 abovenamed for himself and as a member of plaintiff No. 1, JVPD Sterling CHSL (Regd.) and (2) Mr. Rakesh Desai, Plaintiff No.3" Plaintiff No.3 is not even claiming to be a member. The Plaintiff Nos. 2 and 3 by saying "plaintiff No.2 for himself and as a member of plaintiff No.1" are trying to create an illusion that plaintiff No.1 has authorized them to file this suit. Otherwise, there was no need to say "... and as a member of plaintiff No.1" and make plaintiff No. 1 a party. Plaintiff Nos. 2 and 3 are not even office bearers of plaintiff No.1.

3. When the attention of the Court was brought to the verification clause of the plaint and description of plaintiffs in the plaint, I found that the verification clause and paragraph 67 of the plaint are very cleverly

drafted to avoid question being asked as to whether plaintiff Nos. 2 and 3 had any authority from plaintiff No.1 society. The verification clause also does not state that they had any authority from plaintiff No.1 society to file the suit. In paragraph 9(iii) of the affidavit in rejoinder of Prashant Hingorani, plaintiff No.2 and Rakesh Desai, plaintiff No.3, in Notice of Motion (L) No. 1747 of 2018, Plaintiff Nos. 2 and 3 state as under:

> *"with reference to para 3 ... we say that it is not technically possible to pass a resolution and annex the same to the present suit since primarily there is pending dispute as to who are the members and the office bearers of the society and the said dispute is primarily an issue in the present suit."*

In paragraph 3 of the affidavit in reply of defendant No.7 to which the rejoinder referred to earlier has been filed, it is stated that plaintiffs have not annexed resolution through which as office bearers of the society plaintiff Nos. 2 and 3 have filed the present suit on behalf of the society.

4. In my view, therefore, plaintiff No.1 could not have filed the present suit in its own name. Still plaintiff Nos. 2 and 3 went ahead and filed the suit on behalf of plaintiff No.1. On the Vakalatnama annexed to the plaint also there is no seal or signature on behalf of plaintiff No.1. Only plaintiff No.2 and plaintiff No.3 have signed the Valakatnama. Mr. Tanna states that there is a chamber summons taken out by defendant Nos. 1 and 2 under Order 7 Rule 11 for rejection of plaint on the same ground which has to be heard and then the Court may pass the order.

5. The Apex Court in *Umesh Chandra Saxena v/s. Administrator General U. P. Allahabad*[1], observed *"we would only add that an action under Order 7 Rule 11 of CPC does not want an application by any party."* This was followed and applied by this court in *Rushabh Ship International LLC v/s. The Bunkers on board, the ship M.V. African Eagle and Ors.*[2]

6. In the circumstances, I see no reason for hearing such chamber summons when there is not even a submission in the plaint that plaintiff Nos. 2 & 3 have been authorised by plaintiff No.1 which is a registered society to file this suit. Plaintiff Nos. 2 and 3 have also admitted that there is no such Resolution. In the circumstances, the plaint, so far as plaintiff No.1 is concerned, stands rejected.

7. In my view, it is rather regrettable to note that parties have come to Court with such unclean hands with cleverly drafted plaint. Based on the averments in the plaint falsely making it look like plaintiff Nos. 2 and 3 had authority from plaintiff No.1, plaintiff Nos. 2 and 3 have obtained *status quo* order. Plaintiff Nos. 2 and 3 have sought to play a fraud on this Court by deceiving this Court that they had authority to file the suit on behalf of plaintiff No.1, which is a registered to operative society, when admittedly they did not have. They are not even office bearers of the Co-operative Society. This Court and the Apex Court have time and again

1 AIR (1999) All. 109
2 2014 (4) Bom. C.R. 269

strongly deprecated such dishonest approach.

8. The observations of the Hon'ble Supreme Court in *S. P. Chengalvaraya Naidu v. Jagannath (Dead) by LRS*[3] are relevant in this context. The court observed,

> *"The Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands ……... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation".*

The Apex Court also observed in paragraph 6 of the said judgment that :

> *"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another".*

9. In the case of *T. Arivandandam v. T.V. Satyapal*[4] the Apex Court observed :

> *"if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under order X, CPC. An activist judge is the answer to irresponsible law suits."*

10. The Apex Court, in *I.T.C. Ltd. v. Debts Recovery Appellate*

3 (1994) 1 SCC 1
4 (1977) 4 SCC 467

*Tribunal*[5] has held, relying upon *T. Arivandandam v. T.V. Satyapal (supra)*, that the Court should consider whether real cause of action has been set out in the plaint or something purely illusory has been stated and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue be shown in the plaint. Paragraphs 16 and 27 of the said judgment read as under :

> *"16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (See T Arivandandam v. T. V. Satyapal)*
>
> *xxxx*
>
> *27. As stated above non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer, J. in T. Arivandandam's case, the ritual of repeating a word or creation of an illusion in the plaint can certainly by unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on 'fraud', the Bank cannot take shelter under the words 'fraud' or 'misrepresentation' used in the plaint."*

11. The Apex Court and this Court have, on many occasions, stated that if a party comes to the Court with unclean hands, which in this case plaintiffs have, the party should be dealt with very strongly and substantial costs also should be imposed on the party. The conduct of plaintiff intends

5 (1998) 2 SCC 70

to impede and prejudice the administration of justice. Judiciary is the bedrock and handmaid of orderly life and civilized society. In *Sciemed Overseas Inc. v. BOC India Ltd.*[6] the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Para 2 of the said judgment reads as under :

> *"2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair."*

12. Kuldip Singh, J. (as he then was) in *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs.*[7], in paragraph 5 observed :

> *"5. ............... We are constrained to say that more often than not, process of the Court is being abused. Property–grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the Court -process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."*

13. In *Oswal Fats and Oils Limited v. Additional Commissioner (Administrator), Bareilly Division, Bareilly*[8], the Apex Court followed the same principal that if a person is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court

6 2016 AII SCR 370
7 (1994) 1 SCC 1
8 (2010) 4 SCC 728

not only has the right but a duty to deny relief to such person.

14. In *Dalip Singh v. State of Uttar Pradesh*[9], the Court bemoaned that a new creed of litigants has cropped up who do not have any respect for truth and they shamelessly resort to falsehood and unethical means for achieving their goals. Such a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

15. It will also be useful to reproduce paragraph 1 and 2 of Dalip Singh vs. State of U.P. and Ors. (supra) and they read as under :

> "1. *For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*
> *2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.* "

9 (2010) 2 SCC 114

16. Clearly these observations apply to the facts of the present case where an illusion by clever drafting, I would say dishonest drafting was resorted to give the impression that Plaintiff No.1 wanted to file this suit. When a society files a suit it is on behalf of all its members.

17. Clever drafting and creating an illusion of cause of action or right to sue are not permitted in law. I have no hesitation in condemning the actions on the part of the plaintiff Nos. 2 and 3. The action of plaintiff Nos. 2 and 3 is gross abuse of the process of the Court. Hence, suit stands dismissed.

18. All interim applications accordingly disposed. All interim orders stand vacated.

**(K.R. SHRIRAM, J.)**