IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY ,THE TWENTY NINTH DAY OF DECEMBER TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION NO: 1261 OF 2020

Petition Under Article 227 of the Constitution of India against the order dated 16-11-2020 in I.A. No. 556 of 2020 in I.A. No. 474 of 2020 in O.S. No. 416 of 2020 on the file of the Court of the Additional Junior Civil Judge, Jangaon, Jangaon District.

Between:

Rapaka Nagaraju, S/o. Sudhakar, Aged about 41 years, Occ Business, R/o. Flat No.304, Vaishnav Grand Apts., Lane Opposite to ICICI Bank, Main Road, Shridi Sai Nagar, Manikonda, Hyderabad-89. Presently residing at C/o. Pajjuri Jayahari, S/o. Murali Manohar, Aged 62 years, Occ Business, R/o. H.No 3-8-87, Vegetable Market Road, Jangaon. **...PETITIONER/ Defendant No. 1**

AND

1. Sudha High School, (Sudha Techno School), Dardepally Road, Sponsored by Sudha Educational and Cultural Society, bearing Regd No. 788/2013, Rep. by its Secretary, Rapaka Vijaya Kumar, S/o.Sudhakar, Aged about 43 years, Occ Secretary-cum Correspondent of Sudha High School, R/o. Palakurthy Village and Mandal, Jangaon District. .. Respondent / Plaintiff
2. Rapaka Somu, S/o. Late Madhu, Aged about 21 years, Occ Student, R/o. H No 5-16, Palakurthy Village and Mandal, Jangaon District. (Petitioner No.2 is not necessary party).

...RESPONDENTS/ Defendants

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in I.A. No. 556 of 2020 in IA No. 474 of 2020 in OS No. 416 of 2020 on the file of the Addl. Junior Civil Judge, Jangaon, Jangaon District, pending disposal of the above C.R.P.

Counsel for the Petitioner: SRI Y. RAMA RAO

Counsel for the Respondent NO.1 : SRI J. KANAKAIAH

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.1261 of 2020

ORAL ORDER:

Heard Sri Y.Rama Rao learned counsel for petitioner/ defendant No.1, and Sri J.Kanakaiah learned counsel for respondent No.1/plaintiff.

2. Parties are referred to as arrayed in the suit.

3. Plaintiff filed O.S.No.416 of 2020 on the file of the Additional Junior Civil Judge at Jangaon praying to grant decree of perpetual injunction restraining the defendants, their family members, servants, associates, agents, relatives etc from entering into or interfering in peaceful running of school activity in the school premises described more fully in the schedule appended to the suit plaint (hereinafter referred to as suit schedule property). According to plaintiff, Sudha Educational and Cultural Society was formed and registered in the year 2013 (Reg.No.788/2013). The society established Sudha High School. In the year 2014 he has acquired suit schedule property on 5 (five) years lease to establish the school in the premises. Lease deed was executed on 26.5.2015 by the owner of the property Sri Rapaka Sudhakar. It is his case that lease was subsequently extended. Initially school was established to impart education upto 7th class, subsequently permission is granted to impart education upto 10th class. The administration of the school is taken care of by Sri Rapaka Vijaya Kumar, Correspondent of the school and General Secretary of the society. Plaintiff contents that defendants are total strangers, have no right or interest in the management of the plaintiff school.

Plaintiff alleges that defendants became envious of the success of the school, started meddling with day to day running of the school, creating all sorts of nuisance, became violent, using abusive language in electronic media, illegally trespassed into the school premises by use of force.

4. Defendant No.1 filed I.A.No.556 of 2020 under Order VII Rule 11 of CPC read with Sections 19 and 23 of Telangana Societies Registration Act, 2001. It is averred that the school has no specific entity; that Rapaka Vijay Kumar is not the Secretary of the Society; that he was not authorized by the society to represent the society; that there is no separate body for the school to conduct day to day business; that the school is run by the society in which he is a member; that he is the co-owner of the school and absolute owner of the building. Therefore, on any dispute concerning the society governed by the 2001 Act, or on the dispute among the members of the society, the remedy is under Section 19 and Section 23 of the Act and suit is not maintainable.

5. The said plea of defendants was opposed by the plaintiff. By order against which this revision is filed, the trial Court dismissed I.A.No.556 of 2020. The trial Court observed that first defendant is not a member of the society and as per the amendments notified on 27.8.2019 reflects Mr Rapaka Vijay Kumar as General Secretary of the society.

6. The learned counsel for the first defendant reiterated the submissions made before the trial Court. He would submit that on a plain reading of the averments in the plaint would disclose that there is an *inter se* dispute among the members of the

society and on issues concerning the society and on *inter se* disputes among the members, the suit is barred by Order VII Rule 11 (d) of CPC and therefore, suit ought to have been dismissed on that ground alone.

7. *Per contra*, learned counsel for plaintiff would submit that plaint cannot be rejected by referring to averments in a written statement or in the affidavit filed in support of interlocutory application filed under Order VII Rule 11 of the CPC. As per Order VII Rule 11 (d) of CPC, plaint can be rejected only if averments in the plaint *ex facie* point out that it is barred by any law.

8. Before appreciating the respective contentions, it is appropriate to note the provision in Order VII Rule 11[1] of CPC, particularly sub-rule (d). This rule enables rejection of suit at the threshold if it is barred by law. To reject a suit, it should appear from the statement in the plaint that it is barred by law so that frivolous litigation need not be kept pending when it is apparent from the reading of the plaint that suit is not maintainable. If a special Act dealing with a specific issue excludes the jurisdiction of the Civil Court and vests power of adjudication in a Tribunal, specially formed for the purpose, the aggrieved party has to avail the legal remedy before that Tribunal and the Civil Court cannot adjudicate such dispute. However, the scrutiny to reject a plaint

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[1] **Rule 11. Rejection of plaint.**— The plaint shall be rejected in the following cases— (a)where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; **(d) where the suit appears from the statement in the plaint to be barred by any law;** 1[(e) where it is not filed in duplicate;] 2[(f) where the plaintiff fails to comply with the provisions of rule 9;] 3[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

at the threshold must be strict and in a narrow compass. The trial Court ought to satisfy that reading of plaint averments would lead to irresistible conclusion that cause stood barred by law and no relief can be granted.

9. On the scope of consideration of an application filed to reject a suit by taking resort to Order VII Rule 11 of CPC, I am guided by the following enunciation of law.

9.1. In **Saleem Bhai and others Vs State of Maharastra**[2], the Hon'ble Supreme Court held:

> "9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."

9.2. In **Hardesh Ores Pvt. Ltd vs. Hede and Company**[3] (supra), the Hon'ble Supreme Court held:

> "25..... ***It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense.*** As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I[(2004) 9 SCC 512] and Popat and Kotecha Property v. State Bank of India Staff Assn. [(2005) 7 SCC 510].
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> [emphasis supplied]

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[2] (2003) 1 SCC 557
[3] (2007) 5 SCC 614

9.3. In **P.V. Guru Raj Reddy vs. P.Neeradha Reddy and others**[4], the Hon'ble Supreme Court held:

> "5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

10. Section 19[5] of the Act 2001 stipulates who can represent the society in any legal action. Section 23[6] deals with resolution of dispute among the committee members or members of the society. It vests discretion in a member to avail remedy under the Arbitration and Conciliation Act, 1996 or by filing Original Application before civil Court.

11. Having regard to plain language employed in Order VII Rule 11 (d) of CPC, the Court can not go beyond the pleadings in the plaint. To attract Section 23, assuming that it creates absolute bar to file a suit in a civil Court, the plaint averments should make out a case to come to such conclusion and not by process of reasoning or by looking into counter pleadings of the defendants. On going through the plaint pleadings, it is seen that the pleadings do not point out dispute *inter se* the members of the committee of

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[4] 2015 (3) ALT 14 SC = (2015) 8 SCC 331

[5] S.19.(1). The Committee or any officer of the society authorized in this behalf by its bye-laws, may bring or defend any action or other legal proceeding touching or concerning any property or any right or claim of the society and may sue and be sued in its name.(2) Any action or legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any member of the society after the commencement of the proceeding.

[6] S.23. In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act,1996 or may file an application in the District Court concerned and the said court shall after necessary inquiry pass such order as it may deem fit.

the society or members and the society. Plaintiff asserts that defendants are total strangers to the plaintiff. This assertion has to be tested in the trial. On a plain reading of plaint averments, it cannot be said, *ex facie*, that the suit is barred by law to reject the plaint at the threshold. The suit cannot be thrown out at the threshold based on the plea raised by the 1st defendant in his written statement and / or in the application by him filed under Order VII Rule 11 of CPC in the counter-affidavit opposing interlocutory application filed by plaintiff to grant interim injunction. Whether, the averments made in the plaint are true and are supported by evidence that may be brought on record, can be gone into when trial is conducted in the suit.

12. In the facts of this case, I am of the opinion that there was no error committed by trial Court in exercising its discretion to reject prayer of petitioner. The Civil Revision Petition is dismissed. It is made clear that there is no expression of opinion on merits and it is open to 1st defendant to raise all pleas as available to him in law in the suit. Pending miscellaneous petitions shall stand closed.

Sd/-N.CHANDRASEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice P. Naveen Rao
(For His Lordships Kind Perusal)

To

1. The Additional Junior Civil Judge Jangaon, Jangaon District.
2. 10 LR Copies
3. The Under Secretary, Union of India Ministry of law, Justice and Company Affairs, New Delhi.
4. The Secretary Telangana Advocates Association, Library, High Court Buildings Hyderabad
5. One CC to SRI Y. RAMA RAO, Advocate [OPUC]
6. One CC to SRI J. KANAKAIAH, Advocate [OPUC]
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HIGH COURT

PNRJ

DATED:29/12/2020

LR Copy to be marked



ORDER

CRP.No.1261 of 2020

DISMISSING THE CRP WITHOUT COSTS

(19) VV 7/1/21