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O.A.No.827 of 2021
in
E.L.P.No.3 of 2021

RESERVED ON : 02.06.2023
DELIVERED ON : 09.06.2023

C.V.KARTHIKEYAN, J.

This application had been filed by the first respondent in E.L.P.No.3 of 2021 under Order VII Rule 11(a) and (d) of CPC r/w relevant provisions of the Original Side Rules of the Madras High Court, to reject the Election Petition on the ground that the averments therein do not disclose any cause of action and that the petition is barred by law.

2.E.L.P.No.3 of 2021 had been filed by Thiru.M.Palaniappan, the candidate of the Dravida Munnetra Kazhagam Party (DMK) for the 16th General Election of Tamil Nadu Legislative Assembly-2021 in 179-Viralimalai Constituency in Pudukottai District, who lost his election. The first respondent/returned candidate was Thiru.C.Vijayabaskar a candidate for the All India Anna Dravida Munnetra Kazhagam Party (AIADMK).

3.The elections were notified on 26.02.2021 and the date of poll was



06.04.2021 and the date for counting and declaration of result was 02.05.2021. Claiming that the first respondent in the Election Petition had indulged in corrupt practices and raising various allegations, the Election Petition had been filed taking recourse to various provisions under the Representation of the People Act, 1950 and the Conduct of Election Rules, 1961, as amended.

4.The first respondent in the Election Petition had filed two applications, namely, O.A.No.825 of 2021 under Order VI Rule 16 CPC to strike down various portions of the pleadings in the Election Petition and also the present application in O.A.No.827 of 2021 under Order VII Rule 11 (a) and (d) CPC to reject the Election Petition.

5.By an order dated 29.11.2022 in O.A.No.825 of 2021, various portions of pleadings had been struck off and various portions in the pleadings were retained and a burden was cast on the Election Petitioner to establish the statements so retained. To the knowledge of this Court, the said order had not been interfered with by any Appellate Court. The



Election Petitioner however filed Rev.Aplc.No.3 of 2023 and by an order even date, the said Review Application has been dismissed.

6.In this application/O.A.No.827 of 2021, elaborate arguments were advanced by Mr.T.V.Ramanujun, learned Senior Counsel assisted by Mr.B.Arvind Srevatsa, learned Counsel for the applicant and also advanced by Mr.Richardson Wilson for M/s.P.Wilson Associates appearing for the first respondent/Election Petitioner.

7.As always, both the learned Senior Counsel and the learned Counsel for the first respondent had advanced arguments in an extremely sanguine manner and this Court must place on record its deepest appreciation for the efforts taken by them.

8.In the affidavit filed in support of this application, the applicant had stated that the allegations in the Election Petition are vague, unnecessary, scandalous, frivolous, vexatious and general in nature and if left to remain, would embarrass and delay fair trial in the Election Petition. As a matter of



fact, the affidavit had been filed in common with respect to both O.A.No.825 of 2021 and O.A.No.827 of 2021.

9.This application must be viewed to examine whether the averments retained by the Court after orders have been passed in O.A.No.825 of 2021, disclose any cause of action and/or are barred by any law. The principles by which the Court should examine an application under Order VII Rule 11 CPC have been laid down very often by the Honourable Supreme Court. Both sides relied on various judgments of the Honourable Supreme Court.

10.Let me refer to the judgment of the Honourable Supreme Court in **(2019) 7 SCC 158 [Madhav Prasad Aggarwal and another vs Axis Bank Limited and another]** in the first instance. The facts in that case were that the appellants, Madhav Prasad Aggarwal and another, who as plaintiffs had instituted the suit, had entered into an agreement for the purpose of purchase of flats in a project known as “Orbit Heaven” promoted by M/s.Orbit Corporation Limited. They had commenced payment of instalments towards the purchase of the flats from the year 2009.



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11. In the year 2013, the builder, M/s.Orbit Corporation Limited had obtained loan from Axis Bank, the respondent before the Honourable Supreme Court and as collateral, the builder had mortgaged the flats, which had been constructed by them towards repayment of the loan. The builder failed to repay the loan. The respondent/Axis bank then issued a public notice on 13.09.2016 in the Economic Times informing the general public that the project, “Orbit Heaven” was mortgaged with them. The appellants then filed a suit seeking relief not only against the builder, but also against the first respondent Bank/Axis Bank. The Axis Bank then filed an application under Order VII Rule 11 (d) CPC claiming that the relief sought against them was barred by law, namely, the SARFAESI Act, 2002. This stand was found in favour by the High Court. The Honourable Supreme Court had however laid as follows:

10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application



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was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaintiff disclosed no cause of action. The civil court held that the plaintiff is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaintiff can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaintiff qua any particular portion of a plaintiff including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaintiff survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

11. In view of this settled legal position we may now turn to the nature of reliefs claimed by Respondent 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaintiff only qua the applicant, Respondent 1 herein. No more and no less.

12. Indubitably, the plaintiff can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaintiff, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaintiff as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

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14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by Respondent 1 to reject the plaintiff only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief "cannot be entertained" in exercise of power under Order 7 Rule 11(d) CPC. That power is limited to rejection of the plaintiff as a whole or not at all."



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12.It must be mentioned that in the order dated 29.11.2022 in O.A.No.825 of 2021, while retaining some of the pleadings, this Court had very categorically held that those statements, which had been retained, should be proved during the course of trial. This would indicate that there are triable issues, which would indicate that the Election Petitioner must be given an opportunity to adduce evidence to that effect. Such evidence can be tested during cross examination. But opportunity to so lead should be given.

13.Mr.T.V.Ramanujun, learned Senior Counsel for the applicant in the course of his arguments, first pointed out to the averments made in Para 12 of Election Petition and stated that the names of the voters have not been given, which is a requisite requirement under Section 123(1)(9) of the Representation of the People Act, 1950. It was also contended that there was no pleading as to which voter was induced to accept bribe and which voter was the beneficiary and who distributed the bribe amount. It had been therefore contended by the learned Senior Counsel that such averments made were very vague and do not raise any cause of action.



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14.I hold these are issues which can be examined only during the course of trial. The burden is on the Election Petitioner to establish these facts. He may or may not, by adducing evidence establish the same. But, still that opportunity must be given.

15.The learned Senior Counsel then drew reference to the averments made in paragraph 13 and stated that the names of the alleged card holders have been repeated and according to him, “planted”. With respect to paragraph 14, he stated that there is no reference to any specific voters in the sub heading to the paragraph. The various names mentioned according to him, are names which have been repeated and the learned Senior Counsel stated that mere statements of names would not give rise for any cause of action to maintain the Election Petition.

16.Again, it must be pointed out that these are issues which the Election Petitioner should be granted an opportunity to explain during the course of trial. It is only thereafter, can these statements be scrutinised by



this Court.

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17.The learned Senior Counsel then pointed out the further averments relating to jewellery and offering them to women voters. He again stated that the voters' names have not been given and that the allegations are very vague. He also stated that the averments relating to printing of cards are only self serving statements and no credence can be given to the same. There are no details as to who printed the cards and who counted the cards to arrive at the total number and the basis for arriving at the cost of printing of the cards.

18.But let me again place the responsibility on that Election Petitioner to establish these facts.

19.The learned Senior Counsel then pointed out the verification and stated that the Election Petitioner had stated that he had knowledge about the averments made. The learned Senior Counsel was quite cynical of such averment, particularly, because the names have not been mentioned in the



Election Petition. He again stated that the names of specific voters have not been stated in the Election Petition.

20.I can only have reiterate that the burden is on the Election Petitioner to establish these facts. His case will stand or fall on the nature of evidence adduced. But his case cannot certainly be stated as false without granting necessary opportunity to lead such evidence.

21.With respect to the further averments relating to the electronic voting machine and the allegations of tampering them, the learned Senior Counsel stated that these would be the handy work of negligent Government officials, which invite disciplinary proceedings to be initiated against such Government officials. He was emphatic that the election result cannot be questioned on the basis of such allegation. It was further contended that the events complained of were certainly beyond the control of the applicant/first respondent in the Election Petition.

22.To this, let me fall back to the arguments of Mr.Richardson Wilson,



learned Counsel for the first respondent/Election Petitioner, who stated that the Election Petitioner can always take recourse to various provisions under CPC relating to summoning of witnesses, directing production of documents and issuing sub poena. The learned Counsel stated that during the course of trial, the allegation stated in the Election Petition would be addressed by adducing oral and documentary evidence.

23.The learned Senior Counsel then stated that with respect to these allegations, the Returning Officer cannot be expected to go to every polling booth. He very specifically stated that the averments are vague and if witnesses were called, the applicant herein may be put to surprise. It was also contended that the pleadings have opened the doors for summoning strangers as witnesses. However, equally, the applicant/first respondent in the Election Petition will also be afforded opportunity to cross examine every witness, not only with respect to the statements made in the chief examination, but also with respect to their own locus to tender evidence. Thus, a level play field would be offered to all the parties concerned and it is only on analysing such evidence, can any conclusion be reached by this



Court. At this stage, it would be extremely inappropriate to come to a conclusion that the averments do not disclose any cause of action and that they are barred by law.

24. A cause of action is only a bundle of facts and each fact will have to be independently established during the course of trial. If there is failure to do so, then necessary consequence will follow. But it certainly does not mean or indicate that the Election Petition will have to summarily rejected at the threshold.

25. The learned Senior Counsel for the applicant/first respondent in the Election Petition relied on the following judgments:

(1) 1986 (Supp) SCC 315 [Azhar Hussain vs Rajiv Gandhi],

wherein, the Honourable Supreme Court held as follows:

“14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression “material facts and particulars”, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.



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“(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in .favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition [Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi(1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] .

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] :

(a) mode of assistance;

(b) measure of assistance; and

(c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of government servants in election it is absolutely essential to plead the following:

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(6)The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars.

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22. The principle laid down is that the pleading in regard to



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matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellant.”

(2)(2007) 3 SCC 617 [Virender Nath Gautam vs Satpal Singh and

others], wherein, the Honourable Supreme Court held as follows:

“29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of “material facts” on which the petitioner relies. It should also contain “full particulars” of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. The expression “material facts” has neither been defined in the Act nor in the Code. According to the dictionary meaning, “material” means “fundamental”, “vital”, “basic”, “cardinal”,



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“central”, “crucial”, “decisive”, “essential”, “pivotal”, “indispensable”, “elementary” or “primary”. [Burton’s Legal Thesaurus (3rd Edn.), p. 349]. The phrase “material facts”, therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, “material facts” are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be “material facts” would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party

34. A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All “material facts” must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

*50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts*



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required to be proved at the trial in order to establish the fact in issue.”

(3)(2001) 8 SCC 233 [Hari Shankar Jain vs Sonia Gandhi],

wherein, the Honourable Supreme Court held as follows:

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

25. There are two features common to both the election petitions. Firstly, both the petitions are verified as “true to personal knowledge” of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election petitioners or what is the basis for raising such pleadings. These averments also have been verified as “true to my knowledge” by each of the election petitioners, a position wholly unacceptable.”

“23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously



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defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

(4)(2009) 10 SCC 541 [Ram Sukh vs Dinesh Aggarwal], wherein,

the Honourable Supreme Court held as follows:

“19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer *res integra*. A similar plea was negated by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214] , wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)

“23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under



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Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.”

20. The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain* case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice

23. There is no quarrel with the proposition that the instructions contained in the Handbook for the Returning Officers are issued by the Election Commission in exercise of its statutory functions and are, therefore, binding on the Returning Officers. They are obliged to follow them in letter and spirit. But the question for consideration is whether the afore-extracted paragraphs of the election petition disclose material facts so as to constitute a complete cause of action. In other words, the question is whether the alleged omission on the part of the Returning Officer ipso facto “materially affected” the election result. It goes without saying that the averments in the said two paragraphs are to be read in conjunction with the preceding paragraphs in the election petition. What is stated in the preceding paragraphs, as can be noticed from Grounds (i) and (ii) reproduced above, is that by the time specimen signature of the polling agent was circulated 80% of the polling was over and because of the absence of the polling agent the voters got confused and voted in favour of the first respondent. In our opinion, to say the least, the pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being “material facts” as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to the allegation under Section 100(1)(d)(iv) of the Act. It is not the case of the election petitioner



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that in the absence of his election agent there was some malpractice at the polling stations during the polling.

24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.”

26.The principles laid down in the aforementioned judgments are that material facts must be pleaded and must be proved to establish a cause of action. It must also be examined whether the issues are triable in nature.

27.Mr.Richardson Wilson, learned Counsel for the first respondent/Election Petitioner stated that the Code of Civil Procedure arms the Election Petitioner with various possibilities like for summoning of witnesses, production of documents, issuance of sub poena and directing production of documents. According to him, material facts have been stated in the Election Petition, names have been given, facts have been stated. The facts have been verified by the Election Petitioner. He urged that therefore, an opportunity must be given to test those statements during the course of trial.



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28. The learned Counsel relied on the following judgments:

(1)(2003) 11 SCC 448 [Bidesh Singh vs Madhu Singh and others],

wherein, the Honourable Supreme Court held as follows:

8. It is not a case where Respondent 1 contended that the allegations made in the election petition were vague which would cause prejudice to him in the matter of filing written statement. Even if such a case had been made out, the Tribunal must remember the difference between the requirement of pleading as regards an election petition based on/under Section 100(1)(d)(iii) and an election petition based on Section 100(1)(b) of the Representation of the People Act, 1951. In case an election petition based on Section 100(1)(d)(iii) is concerned, the election petitioner is required to set out the material facts and particulars inasmuch as to make out a prima facie case for inspection or scrutiny of the ballot papers. Where the Tribunal finds that the material facts set out in such an election petition are lacking, the election petitioner is entitled to supply necessary material facts and particulars under Order 17 of the Code of Civil Procedure. The question as to whether the election petitioner was estopped and precluded from raising the contentions in his election petition as regards the validity or otherwise of the 258 ballot papers, in our considered opinion, was a matter which could have been gone into only at the trial. The election petition could have been allowed or dismissed by the Tribunal having regard to the provisions contained in Section 100(1)(e) of the Act only after a full-dress trial and upon giving an opportunity to the parties to examine themselves and/or their witnesses in support of their respective cases. In such a proceeding, the parties could even examine the Presiding Officer or other official witnesses as regards the contention as to whether the said 258 ballot papers were valid or invalid.

(2)(1999) 3 SCC 267 [D.Ramachandran vs R.V.Janakiraman and

others], wherein, the Honourable Supreme Court held as follows:

8. We do not consider it necessary to refer in detail to any part



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of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487]. We are satisfied that the election petition in this case could not have been rejected in limine without a trial.”

(3)(2018) 8 SCC 331 [P.V.Guru Raj Reddy and other vs P.Neeradha

Reddy and others], wherein, the Honourable Supreme Court held as follows:



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“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.

6.In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

(4)(2005) 13 SCC 511 [Harkirat Singh vs Amrinder Singh],

wherein, the Honourable Supreme Court held as follows:

47. *All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.*

48. *The expression “material facts” has neither been defined in the Act nor in the Code. According to the dictionary meaning, “material” means “fundamental”, “vital”, “basic”, “cardinal”,*



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“central”, “crucial”, “decisive”, “essential”, “pivotal”, “indispensable”, “elementary” or “primary”. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase “material facts”, therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, “material facts” are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be “material facts” would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

51. A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

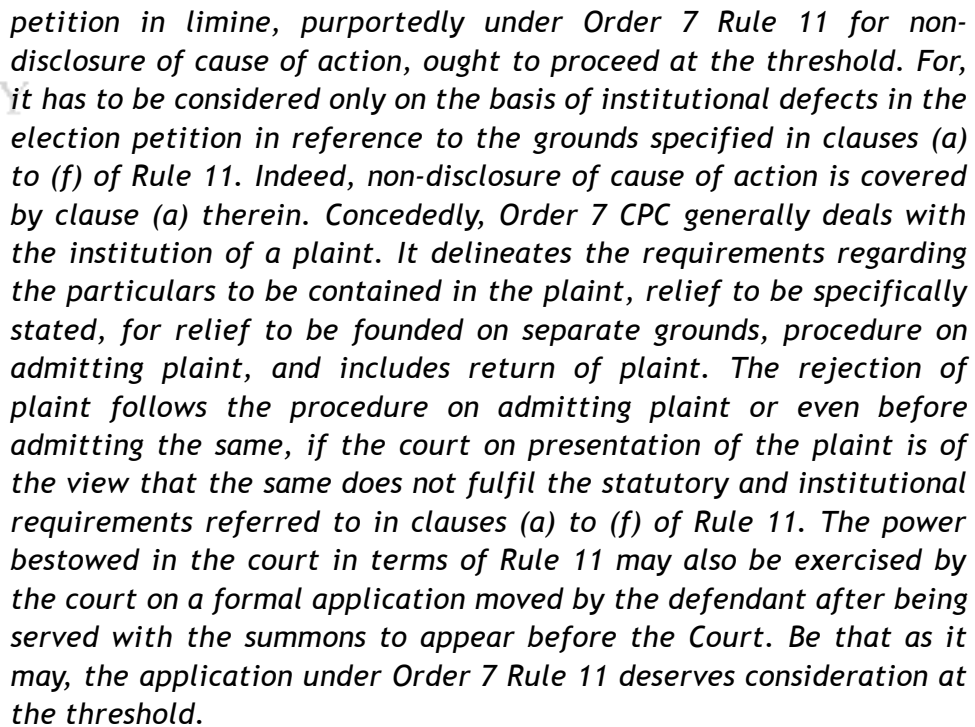
52. All “material facts” must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

(5)(2018) 14 SCC 1 [Madiraju Venkata Ramana Raju vs

Peddireddigari Ramachandra Reddy and others], wherein, the Honourable

Supreme Court held as follows:

“24. Ordinarily, an application for rejection of election



38. *It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the Court. The reliefs claimed by the appellant are founded on grounds inter alia ascribable to Section 100(1)(d)(i). Further relief has been claimed to declare the appellant as having been elected under Section 101 of the 1951 Act. The cause of action for filing the election petition, therefore, was perceptibly in reference to the material facts depicting that the nomination form of Respondent 1 was improperly accepted by the Returning Officer.*

46. Whether the material facts as asserted by the appellant can stand the test of trial and whether the appellant would be able to bring home the grounds for declaring the election of Respondent 1 to be void, is not a matter to be debated at this stage. Suffice it to observe that the averments in the paragraphs concerned of the election petition, by no standard can be said to be frivolous and vexatious as such. The High Court committed manifest error in entering into the tenability of the facts and grounds urged in support thereof by the appellant on merit, as is evident from the cogitation in paras 16 to 22 of the impugned judgment.



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29. In the instant case, various facts have been pleaded. Those facts can be analysed only during the course of trial. Specific names have been given. Specific particulars have been given. To testify whether those names and particulars have been planted, as stated by the learned Senior Counsel for the applicant herein, the process of trial has to be undergone. The Court cannot assume that the facts pleaded are false, neither can the Court wholesomely presume that they are true. The Court can only be of the opinion that since facts have been stated which require proof, opportunity must be given to establish those facts and more than sufficient opportunity should also be granted to test that evidence during cross examination. This requires the process of trial to be undergone. At this preliminary stage, I hold that it would extremely unjust on the part of this Court to reject the Election Petition, at the threshold stage itself.

30. On a reading of the Election Petition, after the portions, which have been struck off, consequent to order in O.A.No.825 of 2021, I hold that the averments which have been retained by this Court will have to be tested



during the course of trial and no opinion can be summarily given that they do not disclose any cause of action or that they are barred by any law. The trial process is the only answer and both the applicant herein/first respondent in the Election Petition and the first respondent herein/the Election Petitioner can be rest assured that they would be provided with sufficient opportunity during the course of trial.

31.The learned Senior Counsel for the applicant herein stated that during the course of trial, the applicant would be taken by surprise, if unknown person are brought to testify. But however, that may not be the case. If the procedure as enunciated under the Code of Civil Procedure is followed, then the list of documents relied on, the list of documents to be summoned and the names of the witnesses would always be disclosed . The trial process would therefore be a level playing field to both the parties to putforth their rival contentions and offer them to be tested.

32.In view of all these reasons, I hold that this application will have to suffer an order of dismissal and accordingly, this application is dismissed.



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33.I am conscious that the pleadings have not been extracted in this order. Let me only add that this Court had taken a conscious effort to ensure that no discussion is made on the merits of the various allegations raised by the Election Petitioner or on the contentions made by the applicant herein. The Court has only expressed its opinion that the Election Petitioner should be granted an opportunity to putforth admissible evidence and that the applicant herein would also be given opportunity to test such evidence during the course of trial. If ever any observation had been made on the merits of the case, I can only reiterate that they have been made only for the purpose of deciding this particular application. No order as to costs.

09.06.2023

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C.V.KARTHIKEYAN, J.

cmr

Pre-Delivery order made in
O.A.No.827 of 2021
in
E.L.P.No.3 of 2021

09.06.2023
(2/3)