

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2467 of 2024

(Assigned)

Dr. Terence Ireland

Vs.

Dr. Richard Steven Gasper & Ors.

For the petitioner	:Mr. Probal Mukherjee, Adv. Mr. Chayan Gupta, Adv. Mr. Srijiv Kr. Trivedi, Adv. Mr. Sanket Sarawgi, Adv.
For the defendant no. 1	:Mr. Sakya Sen, Adv. Mr. Sunil Gupta, Adv. Mr. Samir Kr. Choudhury, Adv.
Heard On	:12.08.2024, 29.08.2024, 03.09.2024,
Order On	: 20.09.2024

Bibhas Ranjan De, J. :

1. Challenge of this application under Article 227 of the Constitution of India is an Order dated 21.05.2024 passed by

the Learned Judge, Bench V, City Civil Court, Calcutta, in Title Suit No. 1179/2022.

Factual Matrix:-

2. Plaintiff/opposite party herein filed this suit claiming himself to be the president of “Association of Heads of Anglo-Indian Schools in India” (hereinafter referred to as AHAISI) registered as an association under Societies Registration Act XXI of 1860 for carrying its activities in terms of “Memorandum of Association” of AHAISI, dated 06.01.1925.
3. Plaintiff/opposite party herein further asserted that he was elected as the President of AHAISI in February, 2021 during Annual General Meeting.
4. Plaintiff/opposite party herein has been functioning in interest of the AHAISI without succumbing to the pressure of the defendants/petitioners herein who then hatched a conspiracy to eliminate the plaintiff/opposite party from the post of President and to appoint one of them in place of the plaintiff/opposite party.
5. Plaintiff/opposite party herein has further affirmed that in a zoom meeting held on 26.04.2022, one false and fabricated document was prepared by the defendants/petitioners herein

for removing the plaintiff/opposite party from the Post of the President to derive wrongful gain.

- 6.** By referring to the Rule 22 of the Rules and Regulations of the AHAI SI, plaintiff/opposite party herein has expressed that a member of Managing Committee can only be replaced upon his death, resignation or retirement.
- 7.** Being unlawfully removed, plaintiff/opposite party herein filed the Suit with a prayer for declaration that the plaintiff is still the President of AHAI SI with other consequential reliefs including a prayer for permanent injunction restraining the defendants/petitioners herein from creating disturbance or obstruction to the functioning of the plaintiff as President of AHAI SI.
- 8.** Defendants/petitioners filed one application under Order VII Rule 11 of the Code of Civil Procedure (for short CPC) before the Trial Court, with a prayer for rejecting the plaint solely on the ground that AHAI SI being an association registered under the “Maharashtra Public Trust Act, 1950” as per certificate of Registration of AHAI SI being no. F-668 (Bom) dated 02-01-1960, cannot be a subject matter of the suit which was filed after non-observance of all relevant provisions particularly Section 50 & 51 of the “Maharashtra public Trust Act, 1950”.

9. The Ld. Trial Judge rejected the application under Order VII Rule 11 of CPC recording a reason that the plaint does not disclose any relief either against Public Trust or Trustee save and except the illegal removal of the plaintiff and therefore, the suit does not come within the purview of the Bombay Public Trust Act, 1950.

At the Bar:-

10. Ld. Counsel, Mr. Probal Mukherjee, appearing on behalf of the petitioners/defendants has drawn my attention to a certificate of Registration annexed with the instant revision application and contended that the AHAISI is an association registered under Maharashtra Public Trust Act, 1950 and the suit was filed without complying with the mandatory provisions of Section 50 & 51 of the Act of 1950.
11. Mr. Mukherjee has further drawn attention of this Court with regard to annexure 'D' showing a letter of resignation addressed to the Secretary of AHAISI and contended that plaintiff/opposite party herein has deliberately suppressed the fact of resignation. Thus, according to the Mr. Mukherjee the plaint is liable to be rejected under Order VII Rule 11 (d) of the CPC.

12. Per contra, Ld. Counsel, Mr. Sakya Sen, appearing on behalf of the opposite party/plaintiff has submitted that the provision of the Order VII Rule 11 CPC cannot be invoked with the assistance of any pleading or documents leaving out the contents of the plaint with its annexures.

13. Before parting with Mr. Sen has submitted that it is a settled proposition of law that rejection of plaint under Order VII Rule 11 is a drastic power conferred upon the Court to terminate a civil action at the threshold, which has to be sparingly exercised. At this stage, it is only the content of the plaint that has to be considered and the stand of defendant taken through their written statement and/or application for rejection of plaint is wholly immaterial.

14. Mr. Sen in support of his disagreement, has taken assistance of the following cases:-

- ***P.V. Guru Raj Reddy and another vs. P. Neeradha Reddy and others, (2015) 8 Supreme Court Cases 331***
- ***Prem Kishore and others vs. Brahm Prakash and others , 2023 SCC OnLine SC 356***

Ratio relied upon:-

15. *P.V. Guru Raj Reddy* (supra) the Hon'ble Apex Court laid down the conditions precedent to exercise power conferred under order VII Rule 11 of the CPC. It was further observed that at the stage of exercise of power under order VII Rule 11 of the CPC, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. 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 then only the plaint can be rejected. In all other situations the claims will have to be adjudicated in the course of trial.

16. In *Prem Kishore* (supra) the Hon'ble Supreme Court by referring to various decisions of this Hon'ble Court handed down that Order VII Rule 11 (d) of the CPC has limited application and what primarily must be looked into is whether the suit is barred under any law. Such conclusion must strictly be drawn from the averments made in the plaint. For the purpose of invoking Order VII Rule 11 (d) of the CPC, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at that stage as all issues shall

not be the subject matter of an order under the said provision. Therefore, the broad principle which can be culled out is that the Court at the stage of exercising power under Order VII Rule 11 (d) of the CPC should not consider any evidence or enter into a disputed question of fact or law.

Analysis:-

17. The remedy under Order 7 Rule 11 CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the nascent stage without trial, if it is satisfied that the action should be terminated on any of the following parameters:-

17.1.The plaint does not disclose a cause of action;

17.2.The relief claimed is under valued;

17.3.The plaint is not properly stamped;

17.4.The plaint appears to be barred by any law;

17.5.The plaint is not in prescribed form.

18. In laconic, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint does not come within the parameters mentioned hereinabove, then the applications under Order VII rule 11 or the CPC must fail. To put it negatively, where it

comes within the purview of any of those parameters, the plaint shall be rejected.

19. Further it is settled that the power to invoke the provision of order VII Rule 11 of the CPC is discretionary and should be exercised judiciously and with due care. Rejection of plaint is an extreme measure which can only be resorted to in exceptional cases.

20. Court must have to consider the plaint as a whole and cannot reject the same even if there are some vague allegations. In case, plaintiff has not stated his case properly in plaint and even then plaint cannot be rejected if there is a cause of action. In that case, Court must afford the plaintiff an opportunity to amend the plaint to cure any defect or deficiencies to avoid potential injustice to the plaintiff.

21. In the case at hand, the plaint discloses that the AHAISI was formed and registered under Society's Registration Act XXI of 1860 for carrying on its activities in terms of the 'Memorandum' of AHAISI dated 06.01.1925, supported by documents annexed with the Plaint.

22. Whereas, defendants/ petitioner's case is that the AHAISI was registered under Maharashtra Public Trust Act, 1950 and

the plaint was filed without complying the provision of Section 50 & 51 of the Act of 1950.

23. Contentious issue of 'Registration', in my humble opinion, cannot be said to be an issue to be determined at the threshold invoking Order VII Rule 11 of the CPC, as the plaint discloses that AHAISI was registered under the Society Registration Act XXI of 1860. Therefore, the issue pointed by the defendants/petitioners in the application does not attract any of the parameters of Order VII Rule 11 of CPC.

24. The provision of clause (d) of Order VII Rule 11 CPC divulges for rejection of plaint when the suit appears from the statement in the plaint to be barred by any law.

25. Therefore, at this stage, this Court cannot consider any evidence by entering into any disputed question of fact or law.

26. As a sequel, there is no scope to interfere with the impugned order which is not at all suffering from any kind of infirmity.

27. Therefore, the revision application being no. C.O. 2467 of 2024 stands dismissed. No order as to costs.

28. The Trial Court shall proceed with the suit. However, if considered appropriate, after pleadings are complete, the issue

regarding maintainability of the suit can be treated preliminary.

- 29.** Interim order, if there be any, stands vacated.
- 30.** Connected applications, if there be, also stand disposed of accordingly.
- 31.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]