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A.No.4058 of 2023

Reserved on: 02.07.2024

Pronounced on: 05.07.2024

**A.No.4058 of 2023**  
**in C.S.No.870 of 2016**

**P.B.BALAJI, J.**

This application has been taken out by the 2<sup>nd</sup> defendant (party in person) to reject the plaint invoking provisions of Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

2.I have heard Mr.M.Vijay Anand, Party in Person, Applicant/2<sup>nd</sup> defendant and Mrs.K.Aparna Devi, learned counsel for the 1st respondent/plaintiff.

3.The Applicant/party in person, who is a practising advocate, submits that he is a purchaser of a flat from the defendants and there have been several acts of omissions and deficiencies committed by the developer and that they have failed to keep up their promises in terms of their contractual obligations. He would further submit that the cause of action does not exist to file the present suit and the prayer sought for is



also illusory in nature. He would further submit that the cause of action set out in the plaint has no nexus to the relief sought for and therefore, the cause of action is not in accordance with law. He would further state that in so far as the relief, challenging the registration of the Society/Association, only a separate suit has to be filed and therefore, the suit is barred under Order VII Rule 11(d) of CPC as well.

4.The applicant/party in person would submit that there are absolutely no pleadings as to how mental agony has been caused to the plaintiff and as to how there is a cause of action for the relief of damages claimed. In support of his contention, he would also place reliance on the following decisions;

***1.Roop Lal Sathi vs. Nachhattar Singh Gill  
((1982) 3 Supreme Court Cases 487).***

***2.I.T.C.Limited vs DRAT & Others ((1998) 2  
Supreme Court Cases 70)***

***3.Saleem Bhai & Others vs. State of Maharashtra  
((2003) 1 SCC 557).***

***4.Shipping Corporation of India vs. Machado  
Brothers & Others ((2004) 11 Supreme Court Cases***



WEB COPY



A.No.4058 of 2023

**168).**

***5.Temple of Thakur Shri Mathuradassji, Chhota Bhandar vs. Shri Kanhaiyalal ((2008) 2 SCC Online Raj 530).***

***6.Ramisetty Venkatanna & Others Vs Nasyam Jamal Saheb & Others (2023 Live Law (SC) 372).***

***7.Kumari Geetha & Others vs. Nanjundasamy (2023 Live Law (SC) 940 ).***

5.Per contra, Mrs.Aparna Devi, learned counsel for the 1<sup>st</sup> respondent/plaintiff would submit that the suit is very much maintainable and unless evidence is let in, the plaintiff would not be in a position to prove the claims made in the plaint and it is a case which necessarily has to go for trial and there are several documents to establish that the applicant and the 3<sup>rd</sup> defendant have caused severe mental trauma to the plaintiff, besides also harassing them. She would therefore pray for dismissal of the application seeking rejection of the plaint.

6.I have carefully considered the rival contentions put forth on



either side.

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7.The suit has been filed for the following reliefs ;

*“a) the defendants 1 to 6 jointly and severally for payment of Rs.1 Crore to the plaintiff jointly and severally towards the damages caused to the plaintiff and also unfair and unethical procedure adopted by the defendants 1 to 7 and thus render justice*

*b) For a declaration that the 7<sup>th</sup> defendants association particularly the 7<sup>th</sup> defendant herein registered by the defendants 1 to 6 (jointly and severally) is unlawful and illegal and it is against the societies registration act and thus has to be declared as null and void.*

*c) For a Permanent injunction restraining the defendants 1 to 7, their men agents or servants or any one acting under them not to interfere with the activities of the plaintiff*

*d) For a Permanent injunction restraining the defendants 1 to 6 from acting on behalf of the 7<sup>th</sup> defendant association and thus render justice;*

*e.) For costs of the suit and thus render justice.”*

8.In so far as the relief of damages to the tune of Rs.1 crore and



A.No.4058 of 2023

reliefs of permanent injunction which are sought for, they cannot be rejected at the threshold. It is a matter for evidence and the plaintiff is duty bound to establish the plaint averments and allegations before he becomes entitled to a decree, merely because the suit documents which according to the applicant/2<sup>nd</sup> defendant do not disclose any mental agony caused to the 1<sup>st</sup> respondent/plaintiff, it cannot clothe the applicant with a ground to reject the plaint. With regard to the relief of declaration that the 7<sup>th</sup> defendant association which is registered by the defendants 1 to 6 jointly and severally is unlawful and illegal and against the provisions of the Societies Registration Act, the argument of the Applicant/Party in Person that a separate suit has to be filed and it cannot be combined with other suit reliefs, namely damages and permanent injunctions cannot be countenanced.

9. There is no bar for the 1<sup>st</sup> respondent/plaintiff to seek several reliefs against the very same defendants, by way of a single suit. There is no impediment or prohibition for the same in any statute, unless it is shown that there is a clear and gross misjoinder of cause of action. Therefore, the said argument that there is no cause of action for filing the



suit and that the suit is also barred under provisions of law cannot be justified or accepted.

10. Dealing with the decisions, that have been relied on by the Applicant/Party in Person, in ***Roop Lal Sathi's case***, the Honourable Supreme Court was dealing with an Election Petition. Moreover, even in the said decision it has been clearly held that part of the plaint cannot be rejected and a plaint can only be rejected as a whole if it is shown that no cause of action is disclosed. This ratio laid down by the Honourable Supreme Court will squarely apply to the facts of the present case. When the plaintiffs are entitled to maintain the prayer for damages which wholly hinges on evidence to be adduced at trial, the suit cannot be rejected in part, even assuming that the other reliefs are barred under law. Further, even with regard to the cause of action, it is not the cause of action which is set out in the plaint alone which would be a decisive factor. The plaint has to be read as a whole and cannot be dissected in order to come to a conclusion that the plaint does not disclose a cause of action. If on an overall reading of the plaint averments and allegations, the court is able to see that the plaintiff has disclosed a cause of action



A.No.4058 of 2023

and even if the same is not very happily worded in the cause of action paragraph, it would not be a case for rejection of the plaint.

11.In *I.T.C.Limited's case*, the Honourable Supreme Court dealing with Order VII Rule 11(a), held that the court has to ascertain whether the plaint creates an illusion of cause of action by clever drafting. I do not find the said ratio laid down by the Hon'ble Supreme Court applying to the facts of the present case since the case before the Hon'ble Supreme Court was pertaining to a contractual relationship between the bank and the customer and a letter of credit that was opened by the bank which was disowned by the bank to refuse payment. Therefore, the facts of the said case were entirely different.

12.In *Saleem Bhai's case*, the Honourable Supreme Court held that germane facts for deciding to reject the plaint application are only the averments in the plaint and not pleas taken in the written statement and the Court's power can be exercised at any stage of the suit before conclusion of trial. I do not find this decision also helping the applicant's



A.No.4058 of 2023

case.

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13.In *Shipping Corporation of India Limited's* case, the Honourable Supreme Court held that Section 151 can be invoked in the interest of justice to dispose of infructuous litigation and further, dealt with the effect of interlocutory orders surviving after the original proceedings come to an end. Therefore this decision also does not come to the aid of the applicant.

14.In *Temple of Thakur Shri Mathuradassji, Chhota Bhandar*, the High Court of Rajasthan held that a plaint can be rejected when the suit is barred by law or it does not disclose cause of action or proper Court fee has not been paid even after the order of the Court and that if the suit is an abuse of process, even then, the Court is not helpless and the suit can be dismissed invoking powers under Section 151 of CPC. Here, the suit is primarily one for recovery of damages and for permanent injunction, apart from a declaratory prayer. In such circumstances, I do not find this decision also applying to the facts of the present case.



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A.No.4058 of 2023

15.In ***Ramisetty Venkatanna's*** case, the Honourable Supreme Court held that while deciding an application under Order VII Rule 11 of CPC, the averments in the plaint alone are to be considered and not the averments in the written statement and if the plaint sought to be rejected is vexatious and cause of action is illusory or the suit is barred by limitation and it is a clear case of clever drafting, then the suit is liable to be struck off. In fact, in the said decision, the facts were entirely on a different footing and the Hon'ble Supreme Court on finding that the suit was manifestly vexatious and meritless, proceeded to reject the plaint. The Hon'ble Supreme Court also found that the suit was filed by clever drafting without seeking for a relief regarding partition of the year 1953, in order to circumvent the provisions of Limitation Act and therefore, it was an abuse of process of court and law.

16.Lastly, in ***Kumari Geetha's*** case, the Hon'ble Supreme Court held that while deciding an application to reject the plaint, the test is to



A.No.4058 of 2023

read the plaint meaningfully and as a whole, taking it to be true and upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of CPC must fail and to put in the negative, where it does not disclose a cause of action, then the plaint shall be rejected. This proposition has already been discussed by me in the above paragraph (1<sup>st</sup> decision) and therefore, this decision actually helps the case of the 1<sup>st</sup> respondent/plaintiff alone and not the applicant/Party in Person. Therefore, viewed from any angle, both factual as well as legal, I do not find any grounds warranting rejecting the plaint.

17.For all the above reasons, this application is dismissed. There shall be no order as to costs.

**05.07.2024**

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A.No.4058 of 2023

**P.B.BALAJI, J,**

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**Pre-delivery order made in**  
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A.No.4058 of 2023

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