



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.07/2024

Nitika Pharmaceutical Specialties Pvt. Ltd., Nagpur through its Director
Shri Revleen Singh Khurana

...Versus...

M/s Ankit Pulps & Boards Pvt. Ltd, Nagpur through its HR Executive Mr. Ishan
Janrao Injewar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Gopal Sawal, Advocate for applicant
Ms Mahak Agrawal, Advocate for respondent No.1

CORAM : ROHIT W. JOSHI, J.

DATE : 18/04/2026

1. Application for rejection of plaint, filed vide Exh.20, by the revision-petitioner, who is defendant No.2 in Special Civil Suit No.247/2021, came to be rejected by the 11th Joint Civil Judge Senior Division, Nagpur, vide order dated 04/05/2023.

2. The defendant No.2 has preferred present revision application, contending that foundation of the suit of the plaintiff is that the defendant No.1 is its erstwhile employee, who had joined services with defendant No.2, within a period of two years from the date on which he ceased to be in employment of plaintiff, which was in contravention of the employment agreement between the plaintiff and the defendant No.1. The contention of the defendant No.2 is that there is no cause of action against it and therefore, the plaint is liable to be rejected against it.

3. Learned Trial Court rejected the application on the ground that presence of defendant No.2 is required for computation of damages payable to the plaintiff.

4. Learned Advocate for the respondents vehemently argued that the plaint certainly discloses cause of action against the defendant No.2. She contends that rejection of plaint against the defendant No.2 alone will amount to partial rejection, which is not permissible in law. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another***, reported in ***(2019) 7 SCC 158*** in support of her contention. The judgment in the case of ***Madhav Prasad*** (supra) certainly supports the contention of the plaintiff that rejection of plaint only against the defendant No.1 will amount to partial rejection of plaint, which is not legally permissible.

5. Countering the submission, learned Advocate for the revision-petitioner contends that ***Madhav Prasad*** (supra) is *per incuriam* of ***Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust, represented by its Chairperson/Managing Trustee***, reported in ***(2012) 8 SCC 706***, wherein it is held that rejection of plaint against one of the defendants is not partial rejection but complete rejection of the plaint against such defendant, which is legally permissible.

6. The judgments in the case of ***Church of Christ*** (supra) and ***Madhav Prasad*** (supra) as also ***Sejal Glass Ltd. Vs. Navilan Merchants (P) Ltd.***, reported in ***2018 (11) SCC 780*** were considered by the Division Bench of this Court in the case of ***Sheela Ram Vidhani and another Vs. S. K. Trading Company***

and others, reported in **2021 SCC OnLine Bom. 864**. Considering the aforesaid decisions, the Division Bench has held that the judgment in the case of *Church of Christ* (supra) is prior in point of time and that the said judgment is not considered by the subsequent decisions of the Hon'ble Supreme Court in the case of *Sejal Glass* and *Madhav Prasad*. In view of the settled legal position that when two decisions of the Supreme Court cannot be reconciled, the judgment prior in point of time must be followed, the Division Bench has followed the law laid down in *Church of Christ* that rejection of plaint against a particular defendant will not amount to partial rejection of plaint. It is held that in a given set of facts, a plaint may be rejected against one of the defendants in the suit, whereas the suit can be allowed to be continued against the remaining defendants. Similar view is taken by learned Single Judges of this Court in the case of *Chetana Shankar Manapure and another Vs. Bandu s/o Tanaji Barapatre*, reported in **2020 (4) Mh. L.J. 481**, *Gauri Venkatraman Vs. Vasantrao and another*, reported in **2020 SCC OnLine Bom. 161**, and *Nusli Neville Wadia Vs. Ferani Hotels Private Limited and others*, reported in **2025 SCC OnLine Bom. 3551**.

7. In view of the aforesaid, the principal contention that the rejection of plaint against the defendant No.2 will amount to partial rejection of plaint, is liable to be rejected.

8. Apart from this, perusal of plaint will indicate that the entire cause of action is only against the defendant No.1. The defendant No.2 is arrayed as party-defendant since the defendant No.1 is presently employed with defendant No.2.

9. Perusal of paragraph 25 of the plaint will demonstrate that the plaintiff has claimed amount of Rs.11,72,280/- towards liquidated damages, Rs.1,46,536/- towards three months notice pay, Rs.1,00,000/- towards perfunctory damages and breach of service conditions and Rs.35,000/- towards notice charges. This sum total of Rs.14,53,816/- is rounded off to Rs.14,50,000/-. It is, thus, clear that entire claim is based on alleged breach of service contract by the defendant No.1. Such claim is tenable only against the defendant No.1. Admittedly, there is no contract between the defendant No.2 and the plaintiff. There is no allegation that defendant No.2 granted employment to the plaintiff despite being aware of the said condition. There is no cause of action against the defendant No.1.

10. Perusal of prayer clause will also demonstrate that there is no specific prayer made against the defendant No.2. In prayer Clause (c), prayer for recovery of amount of Rs.14,50,000/- is made against the defendant No.1. The said prayer is against the defendant No.1. However, the plaintiff has prayed in the alternative that the said amount should be made payable by the defendant No.2. However, the plaint does not lay any foundation for the said claim against the defendant No.2.

11. The learned Trial Court has erred in not taking into consideration that the plaintiff has failed to make out a clear right to sue and claim any relief against the defendant No.2. The plaint does not disclose any cause of action against defendant No.2. Having regard to the claim made in paragraph 25 of the plaint, it also cannot be said that presence

of plaintiff is necessary for computation of damages. In view of the aforesaid, the impugned order cannot be sustained and is liable to be quashed.

12. In view of above, Civil Revision Application is allowed in the following terms :-

(i) The impugned order dated 04/05/2023, passed by the learned 11th Joint Civil Judge Senior Division, Nagpur on application at Exh.20 in Special Civil Suit No.247/2021 is quashed and set aside.

(ii) Application at Exh.20 in Special Civil Suit No.247/2021 is allowed and plaint in the said civil suit is rejected.

(iii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)