

**HIGH COURT FOR THE STATE OF TELANGANA**

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**APPEAL SUIT NO.126 OF 2022**

Between:

1. M/s.HYDERABAD POLLUTION CONTROLS LTD.,  
a Company regd. under the Companies Act, 1956,  
at 90/G, Phase-I, IDA Jeedimetla, Hyderabad,  
rep.by its Chairman, Mr. S.Gopalakrishnan Nair

2. S.Gopalakrishnan Nair (died per LRs appellants  
3 to 5)

3. Smt. Geetha G.Nair

4. G.Ravishankar

5. G.Parameswaran

..... Appellants/  
Plaintiffs

and

S.Radhakrishnan s/o. late Shankaran Nair,  
Aged about 65 years, occu: Business,  
r/o. 83/B, Vengalrao Nagar, Hyderabad  
and others.

.....Respondents/  
Petitioners in  
I.A.No.959 of 2015/  
Defendants 1, 3 to 7

DATE OF JUDGMENT PRONOUNCED : 14.03.2023

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**&**

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

1. Whether Reporters of Local Newspapers : **Yes**  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : **No**  
see the fair copy of the Judgment ?

**\* HONOURABLE SRI JUSTICE P.NAVEEN RAO  
&  
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

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Defendants 1, 3 to 7

!Counsel for the appellants : Sri K.Rajendran  
Counsel for the Respondents : Sri Chandrasen Reddy for R1.

<Gist :

>Head Note:

(2004) 3 SCC 137  
(2018) 11 SCC 780  
(2019) 7 SCC 158

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**APPEAL SUIT NO.126 OF 2022**

**JUDGMENT:** *(per Hon'ble Sri Justice P.Naveen Rao)*

Heard learned counsel Sri K.Rajendran for the appellants and the learned counsel Sri Chandrasen Reddy for respondent No.1.

2. Plaintiffs in O.S.No.605 of 2014 on the file of II Additional District Judge, Ranga Reddy District are appellants. Parties are referred to as arrayed in the suit.

3. First plaintiff is a Company registered under the Companies Act, 1956 and second plaintiff is the Managing Director of the first plaintiff-company. The first defendant was Ex-Director of first plaintiff-company. Second defendant is brother-in-law of 1<sup>st</sup> defendant. Third defendant was Ex-Director of 1<sup>st</sup> plaintiff. Defendants 3 to 7 were shareholders of 1<sup>st</sup> plaintiff-company. In the suit, plaintiffs sought the following prayers:

"I. Declare the acts of defendants as libellous, slanderous, defamatory, malicious and the share transfer agreement dated 08.04.2010 as null and void; consequently, order the defendants jointly and severally to pay a sum of ₹ 1,05,57,749/- to the plaintiffs;

II. That interest at the rate of 18 per cent per annum calculated from the date of filing the suit, pendente-lite till realization be decreed on the said amount;

III. Grant perpetual injunction restraining the defendant-1 from claiming or representing or holding out to the world-at-large as Director of the plaintiff company, restraining him from using the Letter Heads/Stationery or any other/similar materials of the plaintiff company for his use to communicate, write letters/circulars or representing, dealing or holding out to the public, industry, business, trade or banks/financial institutions or any agencies or doing anything in any manner detrimental/scandalous to the interest of the plaintiff's company and its name;

IV. That the costs of the suit be awarded;

V. That such other and or further relief(s) be granted as may be just and proper in the circumstances of the case and in the interest of justice.”

4. In the said suit, 2<sup>nd</sup> defendant filed I.A.No.707 of 2015 under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, 1908 (CPC) to reject the plaint. By Order dated 22.11.2019, the trial Court dismissed the I.A., holding that plaint cannot be rejected partly. This order has become final.

5. While so, I.A.No.959 of 2015 is filed by defendants 1, 3 to 7 under Order VII Rule 11 of CPC to reject the plaint. While the Court holds that the plaintiffs were set *ex parte*, the plaintiffs claim that they were not put on notice.

6. Be that as it may, the trial Court allowed the defendants 1, 3 to 7 to lead evidence and on due consideration of pleadings, evidence brought on record and submissions of defendants, allowed the I.A., rejecting the plaint against defendants 1, 3 to 7 only.

7. The plaintiffs filed I.A.No.586 of 2017 in I.A.No.959 of 2015 to recall/set aside the decree/order in O.S.No.605 of 2014. By Order dated 15.12.2021, the I.A., was dismissed. Aggrieved thereby, this Appeal is preferred.

8. Learned counsel for plaintiffs contended that trial Court grossly erred in rejecting the plaint partly and impugned decree is liable to be set aside on that ground alone. He would further submit that the trial Court erred in considering the averments in the written statement / affidavit filed in I.A., and documents marked on behalf of defendants to grant decree of rejection of plaint. It is elementary principle that while considering application under Order VII Rule 11 of CPC, Court has to consider only the plaint averments and documents cited by the plaintiffs.

9. He would further submit that the present decision is contrary to earlier decision in I.A.No.707 of 2015. In the same suit, there cannot be two conflicting decisions.

10. According to the learned counsel, plaintiffs have narrated defamatory acts of defendants in paragraphs 14 and 15 of the plaint and in paragraph-19 the dates of libellous statements/communications are set out. Cause of action is continuous, started in May, 2011 and continued till 13.05.2013 and thereon, suit was filed within time from 13.05.2013. The trial Court erred in deciding the issue of jurisdiction in the said application.

11. Learned counsel for defendants justifies the decision of the trial Court in rejecting the plaint. He would submit that the trial Court considered all aspects and having found that the plaintiffs were pursuing vexatious litigation, rejected the plaint. In the peculiar facts of the case, part rejection of plaint is permissible.

12. Issue for consideration:

Whether trial Court erred in rejecting the plaint as against defendants 1, 3 to 7 ?

13. Order VII Rule 11 of CPC vests discretion in the trial Court to reject the plaint on grounds provided therein. The primary objective of this provision is to ensure that vexatious/frivolous litigation, when apparent on the face of the plaint averments and the supporting documents relied by plaintiff, not be kept pending.

It is to ensure that such suits need not clog the system and unnecessarily cause hardship to defendants to defend in such matters. It is thus apparent that if the Court is convinced that the plaint has to be rejected, it has to pass orders rejecting the plaint as a whole. Then only the case gets closed. Perforce, as per the scheme of Order VII Rule 11 of CPC, keeping the plaint for some defendants and rejecting the plaint for some defendants does not arise. Further, it is also settled principle of law that while considering the application filed under Order VII Rule 11 of CPC, the trial Court cannot travel beyond the pleadings in the plaint and the documents relied by the plaintiff.

14. On issue of rejection of part of the plaint only but not the whole of the plaint, the law is very clear. It is consistently held that in an application filed under Order VII Rule 11 of CPC, the Court cannot reject part of the plaint. Suffice to note few decisions on the issue:

14.1. In **Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others**<sup>1</sup>, Hon'ble Supreme Court held:

“13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] only a

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<sup>1</sup> (2004) 3 SCC 137

part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

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18. ***As noted supra, Order 7 Rule 11 does not justify rejection of any particular portion of the plaint.*** Order 6 Rule 16 of the Code is relevant in this regard. It deals with “striking out pleadings”. It has three clauses permitting the court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the court.”

(emphasis supplied)

14.2. In **Segal Glass Limited vs. Navilan Merchants Private Limited**<sup>2</sup>, Hon’ble Supreme Court held that it is settled law that plaint as a whole alone can be rejected under Order VII Rule 11 of CPC. The Hon’ble Supreme Court further held,

***“3. .... What is important to remember is that the provision refers to the “plaint” which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.”***

14.3. It is further held that,

***“9. If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order 6 Rule 16 CPC would apply.*** Order 6 Rule 16 states as follows:

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<sup>2</sup> (2018) 11 SCC 780



**“16. Striking out pleadings.**—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court.

10. In contrast to the above provisions, which apply on a demurrer, the provisions of Order 14 Rule 2, read as follows:

**“2. Court to pronounce judgment on all issues.**—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been

determined, and may deal with the suit in accordance with the decision on that issue.”

The court is vested with a discretion under this order to deal with an issue of law, which it may try as a preliminary issue if it relates to the jurisdiction of the court, or is a bar to the suit created for the time being in force. Obviously, this provision would apply after issues are struck i.e. after a written statement is filed. This provision again cannot come to the rescue of the learned counsel for the respondent.” (emphasis supplied)

14.4. In **Madhav Prasad Aggarwal and another vs. Axis Bank Limited and another**<sup>3</sup>, Hon’ble Supreme Court held,

“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. ....” (emphasis supplied)

15. In addition to rejection of plaint for few defendants, the trial Court committed error in taking evidence of defendants, considering the documents marked on behalf of defendants and pleadings in the affidavit filed in support of the application.

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<sup>3</sup> (2019) 7 SCC 158

16. Further, Trial Court erred in rejecting the plaint for few defendants when on earlier occasion I.A.No.707 of 2015 filed by 2<sup>nd</sup> defendant under Order VII Rule 11 of CPC was dismissed holding that the plaint cannot be rejected partly. The said decision is binding on the trial Court.

17. These infirmities go to the root of the matter and the decision of trial Court rejecting the plaint insofar as defendants 1, 3 to 7 are concerned is not sustainable. The issue is answered accordingly.

18. Accordingly, the Appeal is allowed and O.S.No.605 of 2014 is restored to the file of II Additional District Judge, Ranga Reddy District at L.B.Nagar. Pending miscellaneous applications, if any, shall stand closed.

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**P.NAVEEN RAO, J**

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**NAGESH BHEEMAPAKA, J**

Date: 14.03.2023

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Note: LR Copy to be marked: Yes

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

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