



**IN THE COURT OF 2ND ADDITIONAL CIVIL JUDGE,  
BOTAD**

**RCS/297/2021**

**PLAINTIFF:**

Smt. Jyoti Pankaj Gandhi

**VERSUS**

**DEFENDANT/S:**

M/s Gandhi Vadia Associates & OTHERS

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**APPEARANCES:-**

- 1. For Plaintiff:- A.D. Zala.**
  - 2. For Defendants:- N.G. Vadodaria.**
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**Order Below Exhibit- 50**

1. The plaintiff has filed the suit seeking dissolution of the partnership firm, rendition of accounts, permanent injunction and for restoring '*Status quo ante*' with respect to the unauthorised sale, transfer and third party

rights created in the unsold shops by the defendants in the partnership firm i.e. Defendant No. 1.

2. Defendant No. 5 Vide Exhibit-50 has filed an application under Order 7 Rule 11 of Civil Procedure Code that the Plaint shall be rejected under Order 7 Rule 11 (a). Defendant No. 5 has submitted that from the bare perusal of the plaint and the documents filed along with, the suit does not disclose any cause of action and has been filed by the plaintiff without any cause of action and therefore liable to be rejected Under Order 7 Rule 11(a).
3. The plaintiff has filed reply to the application Exhibit-50 and submitted that she has shown cause of action against the defendants and suit deserved to be proceeded and application of the Defendant No. 5 shall be rejected with cost.
4. Heard Ld. Advocates for the parties. Read the application filed vide Exhibit-50.
5. The present application at Exhibit-50 has to be decided under Order VII Rule 11 of Code of Civil Procedure, 1908 which reads as:

*“Order VII Rule 11. Rejection of plaint.-*

*The plaint shall be rejected in the following cases:—*

- a. where it does not disclose a cause of action;*
- b. where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- c. where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- d. where the suit appears from the statement in the plaint to be barred by any law;*
- e. where it is not filed in duplicate;*

*f. where the plaintiff fails to comply with the provision of Rule 9. Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."*

6. Further it is a settled principle of law for determining whether the plaint is liable to be rejected under clause (a) of Rule 11 of Order 7, of Civil Procedure Code, averments in the plaint alone are material and relevant. On the other hand, for determining whether there is a cause of action for institution of a suit, the question can only be determined on the basis of materials (other than the plaint ) on record. Further for considering the cause of action it is settled principle in the numbers of the judgments of the Hon'ble Supreme Court and Hon'ble High Court that when a plaint is presented, it is the duty of the court to ascertain whether it contains necessary averments on which a decree could be passed. In case there are no such averments or allegations, the court has to reject the plaint. In other words, the power to reject a plaint on the ground of non-disclosure of cause of action can be exercised by the court only when the court comes to the conclusion that even if all the allegations set out in the plaint are established, the plaintiff would not be entitled to any relief.
7. At this stage it is appropriate to consider the principles enumerated by the Hon'ble Apex Court and Hon'ble High Court. In the case of the Usum

Ingots & Alloys Ltd. Vs. Union of India and another,<sup>1</sup> it was held that, “*For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.*”

It is also a settled position of law that if the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact which was held by the Hon'ble Apex Court in the case of Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner.<sup>2</sup> Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or it does not disclose, must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether the averments made in the plaint are taken to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.<sup>3</sup>

8. In ascertaining whether the petition shows a cause of action, the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of

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<sup>1</sup> (2004) 6 Supreme Court Cases, 254, Para 6

<sup>2</sup> (2004) 3 SCC ;p-137)

<sup>3</sup> Liver pool and London SP & I Association Vs. M.V. Sea success I and Anr. 2004 (9) SCC 512

action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit.

9. In that case, the court cannot consider the merit of the matter at this stage. Considering this in the instant case I have care fully read the averments in the plaint, plain reading of the plaint itself disclose the cause for filling this suit.
10. On the point of cause of action, on the perusal of the prayer in the plaint, the plaintiff has submitted that on 22/08/2006 the partnership firm has been constituted between the plaintiff and the defendant no. 2 to 9 for the purpose of construction and power of attorney has been given in the favour of Defendant No. 2 and 5 to operate the firm. The plaintiff has further submitted that the defendants have embezzled and did not act according to the object of the firm and hence plaintiff has also given a public notice dated 14/02/2012. Plaintiff has further asserted in the plaint that On 04/03/2017, the plaintiff has also issued legal notice to the defendant no. 2 and 5 seeking information but defendant no. 5 has not responded. Further asserted that on 28/09/2018, a criminal case was also came to be registered against Defendant No. 5 to 8 by the Defendant No. 2. And thereafter has filed this case for dissolution of the partnership firm, rendition of accounts, permanent injunction and for restoring '*Status quo ante*' with respect to the unauthorised sale, transfer and third party rights created in the unsold shops by the defendants in the partnership firm i.e. Defendant No. 1. Considering the above issue raised by the defendant and upon bare reading of the plaint and the documents without going into the appreciation of evidence, it appears that the plaintiff has shown the cause of action for filing this suit.

11. Seeking the facts available on record in the plaint of the plaintiff at Exhibit-1 and the discussion above and the guidelines of Hon'ble Supreme Court in Vaish Aggarwal Panchayat V/S Inder Kumar and Others and R.K.Roja V/S U.S.Rayadu & Anr.<sup>4</sup> and Parmar Narmadaben Wd./O Vithalbhai Ramabhai & Ors. Versus Amratlal Motibhai Prajapati & Ors.<sup>5</sup> and also the applicability of Order VII Rule 11 (a) to it, the present suit can not be dismissed or plaint can not be rejected and on ex-facie reading of the plaint it could not be held that the suit is filed without cause of action, thus it does not deems fit to reject the present application. Hence seeking the facts and law, following order is made in need of justice.

### **ORDER**

1. The present application at Exhibit- 50 is hereby **rejected**.
2. No order as to cost.

Pronounced and signed by me in open Court on date 17th January of 2025  
at Botad.

**(RAVINDRA KUMAR)**  
*2nd Additional Civil Judge*  
*Botad*  
*(Code No. GJ01713)*

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<sup>4</sup> 2016(3) CCC 120 (SC)

<sup>5</sup> 2017 (1) CCC 320 (Gujarat)