

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No. 65/2008

Dated this the 03rd day of July - 2026

Plaintiffs : Hubli – Dharwad Municipal Corporation.
Rep. By its Commissioner
.Vs.

Defendant : P.A. Potdar and 7 others
PARTIES TO IA No. 21

Applicant / : M. M. Kakkalmeli
Def No. 6
.Vs.

Opponent / : Hubli – Dharwad Municipal Corporation
Plaintiff Rep/by its Commissioner

ORDER ON IA NO. 21

This I.A. is filed by the defendant No. 6 U/o. VII Rule 11(a) and (d) of CPC praying to reject the plaint as there is no cause of action against defendant No. 6 in the interest of justice and equity.

2. In support of the application defendant No. 6 sworn affidavit and stated that, the plaintiffs have filed this suit for recovery of amount as claimed in the suit alleging wrongful excess payment to the contractor, i.e. to defendant No.1. The present suit is totally barred by law of limitation and filed the suit with vague and bald allegations without

magerial particulars and hit by the provisions of Karnataka Municipal Corporation Act, 1976. No suit, prosecution or other legal proceedings shall be initiated against the government or any municipal authority, servant or officer acting under the direction of government or any municipal authority, officer or servant in respect of anything done in good faith. The works of the corporation is the responsibility of the Engineering Department, H.D.M.C., Hubli. The Engineering Department is under legal obligation to execute the responsibilities strictly in accordance with A and D code Public Works Department. They have to inspect and certify that the work is satisfactory and submit report to the Executive Engineer and based on the same Executive Engineer has to recommend for payment. After all these formalities and legal requirements the bills for the payment will be considered in accordance with rules and the cheques towards such payments will be issued. Under these circumstances, he has discharged his duties strictly in accordance with the rules and as per the order of the superiors coupled with recommendations of the Engineering Department. He has not committed any offence as alleged in the plaint and has not colluded with anybody while discharging his duties. The plaintiff has made false and baseless allegations knowing it to be false without any supporting documents. The present suit is a misuse of judicial process filed without material facts and only on the presumption and therefore liable to be rejected at the

threshold and the Plaintiffs filed this suit with an intention to harass him without any cause of action to file this suit. Hence, prays to allow the application.

3. The counsel for plaintiff filed objection to said I.A. by denying the contents of the application as well as affidavit filed by the defendants and contended that, the application filed by the defendant No.6 is liable to be dismissed. The plaint discloses a clear and complete cause of action against the defendants. The material facts constituting the cause of action have been specifically pleaded in paragraphs of the plaint. Hence, the contention of the defendant No. 6 that the plaint does not disclose a cause of action is false and contrary to the record available. The Plaintiff has specifically pleaded about the collusion of defendants conspire with misappropriation of funds and the defendant were convicted for the said offences. Therefore, the plaint fully satisfies the requirements contemplated under law. The suit is not barred by any law, either expressly or impliedly. The defendant has failed to demonstrate any statutory bar apparent on the face of the plaint. It is well settled that rejection of plaint under Order VII Rule 11(d) CPC can be made only when the alleged bar is evident from the statements contained in the plaint itself. In the present case, no such bar exists. The issues raised by the defendant involve disputed mixed questions of facts and law which require full-fledged trial and appreciation of evidence. The defendant is attempting to

prematurely terminate the suit without trial, which is impermissible under law. The application is filed only to delay the proceedings and harass the Plaintiff. Hence, prays to dismiss the application.

4. I have heard both side on this I.A. Perused the rulings, pleadings of the parties, I.A. and affidavit. The following points arise for my consideration:

1. Whether the defendants proves that the suit is barred by law U/O. VII Rule 11(d) of C.P.C.?

2. What order?

5. My answer to the above points are as under.

Point No.1 : In the Negative.

**Point No.2 : As per final order,
for the following:**

REASONS

6. **Point No.1**: Admittedly, the suit is filed by the plaintiff for recovery of amount of ₹ 13,32,768/- with interest at 9% per annum on the ground that, the defendants have together with criminally conspired with each other created false and bogus documents and bills. The plaintiff to make payment of bill through cheque payable in favour of defendant No.1.

7. It is well settled position of law that while considering the application U/o.7 Rule 11 of C.P.C. the Court has to consider the averments of the plaint and plaint alone. Except the plaint the Court cannot consider the written statement or affidavit filed by the parties to reject the plaint. The Hon'ble Apex Court in **(2003) 1 SCC 557, between Saleem Bhai vs State of Maharashtra** and in landmark judgment **T. Arvindam vs T.V. Satyapal (1977) 4 SCC 467**, held that while deciding to accept or reject the plaint U/o.VII Rule 11 of CPC what can be seen by the court is only the averments made in the plaint. Defence in written statement of the defendant cannot be looked into. The Hon'ble Supreme Court recently in **(2020) 7 SCC 366, between Dahiben -vs- Arvindbhai Kalyanji Bansali**, explained relevant principles under VII Rule 11 and explained that "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 discloses a cause of action, then the application U/o.VII Rule 11 of CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

8. The main contention of the defendant No. 6 is that, he was discharging Government duty payment was made to defendant No.1. Therefore, the suit is hit by Karnataka Municipal Corporation Act. Further he has taken ground that, based on the recommendation of Executive

Engineer payment was made and suit is barred by law of limitation.

9. This suit has been filed in the year 2006. With regard to question of limitation Act, there is a writ petition pending before Hon'ble High Court of Karnataka in WP No. 26212/2005. The payment was made during the period of 07.01.2000 to 13.06.2000. As per plaint averments para No. 12 they received report from Superintendent of Engineer and thereafter they lodged complaint before the Police Station.

10. The contention of the defendant is that there is no cause of action in the plaint. The suit of the plaintiffs is without cause of action, but if the entire plaint is perused, then it discloses the cause of action. Plaintiff being a Corporation. The defendant No. 2 to 8 are the officials of the Corporation. They have played mischief at the time of making bill without carrying out the work, this application has been filed by defendant No. 6. He has not stated with regard to active participation of defendant No. 1 to 7 and 8. Whether they were involved in the case or not, court yet to be decided. So, considering the plaint averments I hold that the suit is very well maintainable before this Court. The contentions taken by the defendant in I.A. are not at all sufficient to reject the plaint.

11. The contention of the defendant No. 6 is that there is no cause of action in the plaint. The suit of the plaintiffs is without cause of action, but if the entire plaint is perused, then it discloses the cause of action. So, there is a genuine cause of action to file the suit. It is not a illusory cause of action. The question before this Court that, whether partial plaint can be rejected or not. In this regard the Advocate for plaintiff has relied upon the judgment of Hon'ble High Court of Karnataka in **2025 (3) KCCR 2123 (DB) between Smt. Nagamma and another vs. Smt. Indramma and others** wherein it is held that, *indubitably, the plaint can and must be rejected in exercise of powers under Order 7, Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...* In view of the aforesaid principles laid down by the Hon'ble Apex Court and also the observations of the Co-ordinate Bench of this Court with regard to rejection of the plaint, we have no hesitation to hold that the Trial Court has committed an illegality in rejecting the plaint partially with respect of two schedule properties mentioned above permitting the plaintiffs to delete those properties and defendant No.6 from the cause title.

12. So, considering the plaint averments I hold that the suit is very well maintainable before this Court. The contentions taken by the defendant in I.A. are not at all sufficient to reject the plaint.

13. So, considering the materials on record I hold that the application is filed by the defendant No. 6 only in order to drag on the matter. Hence, the said application is devoid of merits and liable to be rejected. Accordingly, I answer point No.1 in **Negative**.

14. **Point No.2**: In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The I.A. No. 21 filed by the defendant No. 6 U/o. VII Rule 11(a) and (d) R/w Section 151 of C.P.C. is rejected.

The costs shall following the events.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the **03rd day of July - 2026**)

Sd/-
(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.