

Order Below Exh. 33

1. This is an application filed by the opponent under Order 7 Rule 11 of The Code of Civil Procedure. Perused the application and say filed by the disputant. Heard learned advocates for both sides at length. Perused the record.

2. It is argued by the learned advocate Shri V. B. Kale for the opponent that the dispute is filed declaration and injunction. The opponent has filed the written statement and denied the allegations made by the disputant. The opponent sepcifically denied that, the disputant is not legal and valid member of the opponent society, therefore dispute is filed in capacity of member of opponent society is not maintainble under Section 91 of The M.C.S. Act. The dispute is filed on 07.01.2020 to restrain the opponent from passing the resolution in meeting scheduled on 12.01.2020. The meeting was called for to dicuss the several subjects in meeting. Wherein transaction of society and policy decisions were to be taken for interest of members and society, so in this circumstances opponent society can't be restrained from passing the resolutions in meeting.

3. It is further submitted by the learned advocate that the opponent society had called the meeting of legal and valid members, the notices were issued only to legal and valid members, the present distputant is not legal and valid member of society, therefore notice was not served to disputant. If the disputant has not recieved the notice/agenda of the meeting scheduled on 12.01.2020, then how he came to know that the opponent society is going to take an action against him by passing the resolution in meeting. The meeting was called on 12.01.2020 and dispute is filed on 07.01.2020, it means the dispute is premature and no cause of action arose to file the dispute.

4. It is further submitted by the learned advocate that, the disputant is also challenging the legality and validity of meeting held on 22.09.2019. The said meeting was held for the purpose to take the policy decision for the interest of society and members, there is no any action taken against disputant. The disputant has not made averments in plaint regarding illegal action or illegal decision taken by passing the resolution in meeting dated 22.09.2019 of opponent society, therefore no cause of action arose to file the present dispute. The opponent has not taken any action against disputant by passing the resolution, it means the right of disputant is not infringed by the opponent and then it is very clear that the cause of action is not arisen. Hence in absence of cause of action the dispute is liable to be rejected under Order 7 Rule 11 of Civil Procedure Code. Therefore, the dispute is liable to be rejected.

5. On the contrary, it is argued by learned advocate Shri H. A. Patankar for the disputant that the application is not maintainable. The application is filed with the malafide intention to put the hurdle in the proceeding. The disputant had filed all the original documents along with the evidence affidavit and the dispute is scheduled for the cross examination. The respondent had never taken any objection or any specific pleading during the pendency of dispute. It is alledged that the meeting dated 22.09.2019 and 12.01.2020 are over and there is no action against the disputant and the said meeting is not challangd in the dispute. The opponent society had expelled the disputant in the meeting dated 28.03.2021. The said action was taken by the opponent society with the malafide intention to take the new members. There are twelve members and only the action was taken on eleven members. The regularization of 12th member was done for the

reasons best known to the society. The application is filed with malafide intention hence it may knidly be rejected.

6. From rival pleadings of both the parties, following points arise for my determination. I recorded my findings thereon for the reasons mentioned thereunder.

SR. NO.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Is the dispute liable to be rejected?	No.
2.	What order?	Application is rejected.

REASONS

POINT NO.1 & 2 :

7. Perused the dispute, the present application and reply thereon. It is well settled that in order to consider Order 7 Rule 11 of Code of Civil Procedure, the Court has to look into the averments in the plaint, the averments in the written statement are immaterial. It is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendants in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments.

9. Order 7 Rule 11 (a) requires rejection of plaint where it does not disclose a cause of action. For diciding this, the court must confine itself only to the plaint averments without considering the defence or any external material. On a careful reading of the dispute, the disputant has pleaded that the cause of action arose on 04.01.2020 when disputant came

to know that general body meeting is fixed on 12.01.2020 as per opponent letter 25.12.2019.

10. On going through the plaint, it seems that the disputant has pleaded the sequence of events relating to the General body meeting dated 22.09.2019, the decision allegedly taken for expulsion and the grounds on which such action is challenged. These pleadings disclose a cause of action for seeking declaration and consequential relief. The question whether the expulsion was valid, whether proper procedure was followed or whether the minutes are correct are matters which require evidence and cannot be decided without trial.

11. These averments prima facie constitute a bundle of facts which, if proved, would entitle the dispute to a decree. The Hon'ble Supreme Court has consistently held that, the truthfulness or correctness of the averments cannot be examined at order 7 Rule 11 stage. Even a weak or doubtful cause of action is nevertheless a cause of action. Rejection of plaint is permissible only when no cause of action at all is disclosed. In the present matter, the dispute clearly discloses the triable cause of action. Therefore no ground is made out for rejection of the plaint under Order 7 Rule 11 of CPC. Hence the application deserved to be rejected. In the result following order is passed.

ORDER

1. Application Exh. 33 is rejected.
2. No order as to costs.

sd/-

Date : 11.12.2025

(Manisha N. Thorat)
Judge, Co operative Court,
Aurangabad.

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word same as per original Judgment/Order.

Name of the Stenographer : Smt. S.S. Shingade

Court : Co operative Court, Aurangabad

Judgment/Order Signed by P.O. On : 11.12.2025

Judgment/Order uploaded on : 11.12.2025