

ORDER BELOW EXHIBIT NO.43 IN DISPUTE NO. 466/2024

(Passed on 08/12/2025)

1. This is an application filed by the opponent No.1 under Order 7 Rule 11 of the Code of Civil Procedure i.e. rejection of plaint. As per the opponent No.1, dispute does not disclose any cause of action. It is the contention of opponent No.1 that, no specific date have been mentioned in the dispute about cause of action and no legal or demand notice issued by the Disputant to present opponent No.1 prior to file the instant dispute. Therefore the dispute is liable to be dismissed.

2. Disputant filed it's detailed say below Exh.44 and submits that, the application is not legal and proper as the application is totally misconceived, frivolous and not maintainable in the eyes of law. It is the contention of disputant that, in para No.5 of the dispute the society has mentioned the specific date and details of cause of action. The averments in the dispute are sufficient to disclose the cause of action. The cause of action of the dispute is still alive. Therefore application is liable to be rejected.

3. Heard the argument of both sides. Perused the record and documents.

4. On going through the contentions and submissions of both sides, following points arise for my determination and I record its findings, with reasons, as under-

Sr. No.	Points	Findings
1)	Whether the dispute is liable to rejected under Order 7 Rule 11 ?	... No

2) What order ?

... As per final order.

REASONS

AS TO POINT NO. 1 :-

5. Under Civil Procedure Code Order 7 Rule 11, rejection of plaint, Court has to take a decision looking at pleading of plaintiff only and not on rebuttal made by defendant or any other materials produced by defendant.

6. The opponent No.1 relied on **2025 ALL SCR 1414 The Correspondence, RBANMS Educational Institution Vs. B. Gunashekar & Anr.** in which Hon'ble Supreme Court held that,

“23.2 The remedy under Order VII Rule 11 is an independent and special remedy. wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit In such a case, it would be necessary to put an end to the sham litigation, so that further Judicial time is not wasted”.

7. It reveals from the citation above The Correspondence (Supra) without proceeding to record evidence and conducting a trial the court can reject the plaint. In the case in hand, already the disputant has adduced his evidence and from the documents filed on record, it does not disclose that, the disputant has filed the sham litigation. Hence, considering the citation with great respect, it can be concluded that, it is not applicable. Because in the written statement filed by opponent No.1 has not denied the loan amount disbursed by the disputant in his favour.

8. I relied upon the following citation -

Ramchandra Harishchandra Varkar Vs Jawaharnagar Co-operative Housing Society Ltd and Another – 2003 All M.R. 308 –

It was alleged in the plaint that it should be made basis to determine jurisdiction of Court and not to depend upon defence taken by the defendant in a written statement. The jurisdiction of the Court would not depend on the defence taken by the opposite side in the reply or a written say filed before the Court, but the Court will have to address itself strictly on the basis of the plaint or dispute as presented by the plaintiff / petitioner of the Court.

9. It is well settled law that when an application under Order VII, Rule 11 of the Code of Civil Procedure is filed, the Court has to confine its inquiry only to the pleadings in the plaint. The Court cannot travel beyond those pleadings and look into the defence taken by the defendant. A useful reference in this regard may be made to the case of **Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company, reported in 2007 (5) Mh.L.J. (S.C.) 577 = (2007) 5 SCC 614**. Now

bearing in mind these principles of law, let us examine whether the impugned order is consistent with the settled principles of law or not.

10. On going through the pleadings in the plaint, the dispute is filed for recovery of Rs.25,44,802/-. As per the pleading of dispute, disputant in para No.5 of the dispute mentioned that, “the cause of action for filling the present dispute arose firstly on 15.01.2022 when the amount of loan has been disbursed to the oppoennt No.1 and thereafter, when the default has been made by oppoennt No.1 in repayment of loan and again when the notices have been served on opponents”. It is also pertinent to mention here that, in the present matter, this court framed issues below Exh.32 on 18.03.2025 and thereafter, the disputant adduce its evidence by filling an affidavit below Exh.18. The opponent No.1 has complted his cross examination on 24.07.2025 and thereafter, he has filed the instant application on 09.09.2025. After perusing the written statement below Exh.31 the opponent No.1 only opposed the dispute that, the disputant society has levied huge charges.

11. As per the pleading of the disputant, disputant has disbursed the loan to the opponent No.1 and opponent Nos.2 and 3 stood as guaranters to the alleged loan. But, the opponent No.1 has made default to repay the loan amount. Hence, disputant constrained to file the instant dispute.

12. Therefore, I opined that, as per the interest of natural justice, it is necessary to decide the dispute on merits finally, after recording the evidence of both parties. As already the disputant has adduced it's evidence and the issue of cause of action can be decided finally. At

this stage this, application has no any merit. Therefore I recorded **point no.1 is in negative.**

AS TO POINT NO. 2 :-

13. Therefore following order is passed.

ORDER

- 1)** The application Exhibit No.43 is rejected.
- 2)** Costs in cause.

Akola

Date 08.12.2025

(V.V. Joshi)

Judge, Co-operative Court, Akola.