

Sp. C. S. No. 34/2014

Ogale glass works Ltd.

---- **Plaintiff**

Vs.

Vitthal Govind Kolhatkar & ors.

---- **Defendants**

Order Below Exh. 65

1. Defendant Nos. 1,2,7,9,12,14,16 to 19 and 23 have filed this application under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint.

2. The plaintiff has filed say to this application at Exh. 87 and he has taken strong objection.

3. Heard both sides at the length. It is argued by the defendants that the plaintiff is director of company. Defendant No. 26 Gurunath Ogale alone had given him power of attorney hence, it is not valid. In the say filed at Exh. 87 the plaintiff has admitted that the company is not in operation since 1976. The company has not filed annual returns therefore, when company is closed down then how the director can be appointed. The plaintiff has filed the suit without authority. Therefore, the plaint be rejected. It is argued by the plaintiff that though the company is defunct company it does not stop working. The sale deed of the defendants was also executed when the company was closed. Therefore, the plaint cannot be rejected.

4. From the contention of the defendants it appears that the defendants are praying for rejection of the plaint on the ground that Mukund Kadam has no authority to file the suit on behalf of plaintiff company and he has no valid power of attorney.

5. **Order 7 Rule 11 of Civil Procedure Code reads as**

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 property valued, but the plaint is returned 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.

6. Advocate for the plaintiff relied on the decision in **P. V. Guru Raj Reddy Vs. P. Neeradha Reddy and Ors.** reported in **(2015) 8 Supreme Court Cases 331**. It is observed by Hon'ble Apex Court that, *plaint can be rejected only if the averments made therein ex facie do not disclose cause of action or on a reading thereof the suit appears to be barred under any law.*

7. The present suit is filed challenging the sale deed executed in favour of defendants. The cause of action mentioned in the plaint. The defendants have not shown that the suit is barred by any law. In view of the provisions of Order 7 Rule 11 and observations of Hon'ble Apex Court in above cited case and facts on the record the plaint in the present proceeding cannot be rejected. Hence, application is liable for rejection. In the result, I pass the following order.

ORDER

1. Application is rejected.

(Dictated and pronounced in open court)

Dt. 11/11/2016
Karad.

(P. A. Savadikar)
Civil Court Sr. Dn. Karad.

Ganesh D. Jadhav,
Stenographer (L.G.)