

IN THE III ADDITIONAL CITY CIVIL COURT, CHENNAI

**Present: Tmt. K.Geetha Rani, M.A, M.L.,
III Additional Judge,**

Friday, the 01st day of August 2025

I.A.No.05 of 2021

in

O.S.No.3381/2020

N. Doraikannan, S/o. Late Natarajan, residing at No.1, Thirupacheeswar Street,
Ayanavaram, Chennai – 23.

...Petitioner/ 1st Defendant

Vs.

1. C G Platina Owner's Association, Rep By its President S. Athisamy, residing at
No.18, 3rd Street, Vinayagapuram, Arumbakkam, Chennai – 106.

...Respondent/ Plaintiff

2. Casagrand Builder Private Limited, Formerly M/s Casa Grande Private Limited,
NPL Devi, 5th Floor, New No.111, Old No.59, LB Road, Thiruvanmiyur,
Chennai – 41.

...Respondent/ 2nd Defendant

This petition came up on 16.07.2025 for final hearing before this Court in
the presence of M/s. S. Yuvaraj and P. Senthil Kumar Counsels for the Petitioner/
1st Defendant and of M/s. C.P. Sivamohan, K. Karthik Jagannath and R.
Hashwanth counsels for the 1st Respondent/ Plaintiff, and upon hearing the

arguments on both sides and having stood over for consideration till this day, this Court delivered the following:

ORDER

This petition filed Under Order VII Rule 11 of CPC to reject the plaint in O.S.No.3381 of 2020 as not maintainable and pass such further or other order.

2. The averments in the affidavit in support of the petition in short as follows:

The Petitioner herein is the defendant in the main suit, the present petition seeking to reject the plaint is not maintainable. The respondent/plaintiff is governed by the bye laws, which was formed when the flats was constructed in the year 2018, which is filed as Plaint Document No. 1. It is submitted that this petitioner without going into the facts and without prejudice to his right to challenge the bye law of the Respondent/plaintiff this petitioner is filing this present petition to reject the plaint. As per the Document No.1 of the respondent, under the bye law 2018, clause 13 (17) reads as follows:-

"In case of any dispute the between the Association and the members/apartment owners in relation to their respective rights and obligation, such dispute should be submitted for consideration by the general body and the decision by the general body shall be binding to both'.

It is submitted that from the above clause of the bye law 2018, it is clear that the Association ought to have referred the dispute with the petitioner to the General Body for decision. Whereas, in the present case the respondent/ plaintiff without referring the dispute to the general body, directly approached this Hon'ble Court. Since the association approached this Hon'ble Court without exhausting the alternative remedy which is available, therefore the suit is barred by law and liable to be rejected. It is well settled law that suit cannot be filed without exhausting alternative remedies. In the present case the respondent without exhausting the alternative remedy have approached this Honble court therefore the above suit is liable to be rejected as not maintainable. As per the plaint averments the petitioner association claims the this petitioner/First defendant to pay maintenance charges and corpus funds for 11 apartments from the year 2017. Whereas as per the plaint document No.9, the closure agreement dated 12.10.2016 entered between petitioner/first defendant and second defendant clearly states that only 8 apartments were handed over to the petitioner herein, while this being so it is clear that there is no cause of action arise to demand charges for 11 apartments, therefore the plaint is liable to be rejected for want of cause of action. Prior to filing the present suit the respondent/plaintiff ought to have approached the "general body" and placed the grievance against this petitioner, and only thereafter the respondents are entitled to file the present suit. Whereas the respondent once again without exhausting the available alternative have approached therefore suit is liable to rejected. There is no privity of contract between respondent/plaintiff and the petitioner/ 1st defendant. the

petitioner/1st defendant is not member in the owner's association hence the cause of action does not arise if there is no cause of action the suit is not maintainable, Hence the plaint is liable to be mandatorily rejected by this Hon'ble Court. It is clear that in order to consider Order VII Rule 11 the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit and it is the duty of the this Hon'ble Court to scrutinize the averments in the plaint for rejecting of plaint. The reading of the plaint, it is manifestly vexatious and merits less in sense of not disclosing a clear right to sue. This Hon'ble Court can exercise the power under Order VII Rule 11 of CPC, taking care to see that the ground mentioned therein is fulfilled.

From the above facts it is clear that the association approached this Hon'ble court without exhausting the remedy available to them as per clause 13 (17) of Bye law 2018 and as per closure agreement only 8 apartments were handed over to the petitioner herein, while this being so it clear that there is no cause of action arise to demand charges for 11 apartments, therefore the plaint is liable to be rejected for want of cause of action. Petitioner/first defendant has made out a prima facie case to reject the plaint. If the plaint is not rejected great hardship and serious prejudice will be caused to the petitioner/first defendant. If the present petition is not allowed, I will be put to irreparable loss and hardships.

3. The averments in the affidavit in support of the counter in short as follows:

The respondent submit that he is the Hon. President of CG Platina Owners Association, which is the 1st Respondent herein and the Plaintiff in the above suit.

At the outset, I deny the entire allegations made out in the affidavit filed in support of the above I.A. for rejection of plaint, as frivolous and vexatious. The very Application has been taken out by the Petitioner/ 1st Defendant with an ulterior motive and intention of stalling the proceedings in the suit, particularly when the 1.A. No.3 of 2021 filed by the 1st Respondent Association to direct the Petitioner/ 1st Defendant to furnish security for the suit claim of above 17 lakhs is pending and in said Application, the Petitioner/ 1st Defendant has not preferred to file his Counter till date. It is further respectfully submitted that the Petitioner/ 1st Defendant has not made out any grounds to attract the provisions of Order VII Rule 11 of CPC, for rejection of Plaint. Hence, the above Application is liable to dismissed in limini. The Petitioner/ 1st Defendant has extracted Clause 13(17) of the Bye-laws of the 1st Respondent Association in Para 5 of the Affidavit filed in support of the above Application, which clause is not denied by the Petitioner. As regards to the allegations in Paragraphs 6, 7 & 9 of the Affidavit that the 1st Respondent Association ought to have referred the dispute to the General Body for decision, that the 1st Respondent Association has approached the Court without exhausting such an alternative remedy and that the suit is liable to be rejected for such non-compliance, it is submitted as follows:-

The wild allegation of the Petitioner/ 1st Defendant that the disputes between the Petitioner/ 1st Defendant and the 1st Respondent Association, was not placed before the General Body of the Association, is vehemently denied as false and frivolous. It is submitted that the Petitioner/ 1st Defendant is not in the habit of paying the maintenance and other charges from day one of the Flats being allotted to him, despite persistent requests and demands made by the 1st Respondent Association. In continuation of the said demands, a Notice as early on 22.05.2018 was also issued to the Petitioner/ 1st Defendant demanding payment of the dues accrued as on 31.03.2018 and even then, the Petitioner/ 1st Defendant was least concerned and bothered to turn up and pay the dues.

Consequently, the issue was splaced and discussed in the General Body Meeting dated 28.10.2018 of the 1^a Respondent Association and again the said issue relating to the recovery of dues from the Petitioner/ 1st Defendant was placed and discussed in the General Body Meeting dated 29.09.2019 as well. The extracts of the same together with copies of the Minutes Book are filed along with this Counter, for this Hon'ble Court's perusal. It is submitted that the Respondent who was a member in the Common Whats-app group (later he exited from the group) administered by the Association, was also given due notice of convening of the General Body in the said group as it is being done to all the other members of the Association. While this being so, for the Respondent to come up with such a wild allegation that the issue was not placed before the General Body and hence the suit is liable to be rejected, not only shows his attitude in evading from payment of the dues under one pretext or

other, but also shows that he does not have any valid defense or reason to show cause why he has not paid the maintenance and other charges to the Association, despite owning eleven flats in the Apartment Complex.

Thus, only after placing and discussing the issue relating to the recovery of dues from the Petitioner/1st Defendant and for retrieving the original documents from him, the 1st Respondent Association proceeded to institute the above suit for appropriate reliefs. In this Context, it is pertinent to extract the provisions of Clause 13(19) of the Bye-laws, which are as follows:-

If any member/ appointed member/tenant/ is in arrears for more than three months in payment of maintenance charges/fees or other charges/fee/taxes as may be stipulated by the Association/Executive Committee or if any member/appointed member/ tenant commits any breach of any of his/her their obligation herein whatsoever necessary legal action shall be taken over him/her/ them in addition to the default of Rs. 200/- for each month of default and for the restoration charges."

As regards to the allegations in Para 8 & 12 of the Affidavit, that in the Closure Agreement dated 12.10.2016, only eight Flats were handed over to the Petitioner/ 1st Defendant, it is submitted that while stating so, the Petitioner/ 1st Defendant has not denied the fact that he owned 11 Flats and owning two flats at present and while so, he is bound to pay the maintenance and other charges for all the Flats which he owns, and only on his deliberate failure to pay the said charges, the present suit has been laid by the 1st Respondent Association, for recovery of the arrears. Thus, having not disputed his ownership of the 11 Flats in the Apartment, the Petitioner/1st Defendant

cannot that say that merely because only eight Flats are mentioned in the Closure Agreement, no cause of action arises in respect of the remaining three Flats. However, while saying so, the Petitioner/ 1st Defendant has impliedly admitted that he is bound to pay the maintenance and other charges for the Flats which he owns.

I deny the contentions in Para 10 & 11 of the Affidavit, that there is no privity of contract between the Petitioner/ 1st Defendant and the 1st Respondent Association and that he is not a member of the Association. It is submitted that the Petitioner/ 1st Defendant had categorically agreed to pay the maintenance and other charges for Flats he owns, under the Closure Agreement dated 12.10.2016, which Agreement the Petitioner/ 1st Defendant himself has relied upon in Para 8 of his Affidavit and hence he cannot go back from the said Agreement. Further, the Association came to be formed pursuant to the said Closure Agreement dated 12.10.2016 and Clause 8(1) of its Bye-laws provides that all Apartment owners shall be automatically members of the Association. Furthermore, the Petitioner/ 1st Defendant cannot deny the fact that he owned 11 Flats in the Apartment and at present he owns 2 Flats, in respect of which, he has enjoyed all the common amenities, facilities, proportionate share in the common areas, etc. While so, to say that he will not pay the maintenance and other charges for such amenities and facilities which he has enjoyed, is the height of audacity and in violation of the terms, which he has agreed to, under the Closure Agreement dated 12.10.2016. Whatever it may be, the said contentions of the Petitioner/1st Defendant in Para 10 & 11 of his Affidavit do not attract the provisions

of Order VII Rule 11(d) (barred by any law) and hence cannot be countenanced for the purpose of the above Application.

It is reiterated that the above Application which is frivolous and vexatious in nature, has been filed by the Petitioner/ 1st Defendant with the ulterior motive of stalling the proceedings in the suit, particularly I.A. No.3 of 2021 filed by the 1st Respondent Association to direct the Petitioner/ 1st Defendant to furnish security for the suit claim of above 17 Lakhs, in which Application the Petitioner/ 1st Defendant has not preferred to file his counter till date. The ground on which the plaint is sought to be rejected is a matter of evidence in the course of trial, whether it was placed before the General Body or not and that the same is a mixed question of law and facts, and not exclusively a point of law alone, as has been held by various Hon'ble High Courts and Hon'ble Apex Court and therefore the Petition is to be dismissed at the threshold. It is therefore most respectfully prayed that this Hon'ble Court may be pleased to dismiss the above Application with exemplary costs.

4. Point for consideration:

Whether this petition is to be allowed or not?

5. No oral evidence adduced and no documents produced on either side.

6. Points :

The petition has been filed Under Order VII Rule 11 to reject the plaint in O.S.No.3381 of 2020. The petitioner / defendant, has stated that as per Doc.No.1 the

respondent/plaintiff as not followed the bye-law 2018 Clause 13(17), it reads as follows.

In case of any dispute between the association and the member where apartment owners in relation to their rights and obligation such a dispute should submitted before the general body and the decision by the general body shall be binding to both.

From that it is very clear that the Association ought to have referred the dispute to the general body. Whereas the present suit has been filed without even referring the same to the general body directly approached this Court since the association approached this court without exhausting the alternative remedy which is available therefore the suit is barred by law and liable to be rejected. The Petitioner further states that in the plaint averments the petitioner association claims this petitioner/ 1st defendant to pay maintenance charges and corpus funds for 11 apartments from the year 2017. Whereas as per the doc.no.9, the closure agreement dated 12.10.2016 entered between petitioner/ 1st defendant and 2nd defendant clearly states that only 9 apartments were handed over to the petitioner herein, while this being that there is no cause of action arisen for demand of 11 apartments on that score also the petition to be rejected. The respondent without exhausting the available alternative has approached this court hence the suit has to be rejected as on the ground of barred by limitation and there is no cause of action. The petitioner/ 1st defendant further stated that there is no privity of contract between the respondent and the petitioner the petitioner is not the member of the association hence the cause

of action does not arise it is clear that in order to consider Order VII rule 11 the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit and it is the duty of this Hon'ble Court to scrutinize the averments in the plaint for rejecting the plaint. If the petition is not been allowed the petitioner will be put into irreparable loss and injury.

7. Whereas the respondent President of CG Platina Owner's Association, the 1st respondent were plaintiff in the suit as stated and denied the entire allegation made out in the affidavit filed in support of the above I.A for rejection of plaint , as frivolous and vexatious. The said application has been taken by the Petitioner/ 1st Defendant with an ulterior motive and intention of stall the further proceedings in the suit particularly when the I.A.No.3 of 2021 the 1st Respondent Association to direct the petitioner to furnish security for the suit claim of Rs.17 lakhs is pending and in the said application the petitioner has not preferred to file his counter till date and the petitioner has not made out any grounds to attract the provisions of Order VII Rule 11 of CPC. The petitioner has extracted clause 13(17) of the Bye-laws that has not been denied by the petitioner as regards the allegations in Paragraphs 6,7 and 9 of the Affidavit the respondent association ought to have referred the dispute to the General Body for decision, that the 1st respondent association has approached the court without exhausting such an remedy and hence the suit is liable to be rejected for non-compliance of said act for which the petitioner disputes between the respondent association was not placed before the General Body of the Association is vehemently denied as false and frivolous. The petitioner is not in the habit of paying the

maintenance and other charges from day one of the Flats being allotted to him, despite persistent request and demand made by the 1st respondent Association and the continuation of the said documents notice as early as 22.05.2018 was also issued to the Petitioner/ 1st Defendant demanding payment of the dues. The issue was placed and discussed in the General Body Meeting held on 28.10.2018 of the 1st Respondent Association again the said issue relating to the recovery of dues from the Petitioner/1st Defendant was placed and Discussed in the General Body Meeting dated 29.09.2019 as well. The extracts of the same together with copies of the Minutes Book have filed along with this counter. The respondent was the member in the Whatsapp group administered by the Association was also given due notice of convening of the General Body in the said group as it is being done to all other members of the Association. The respondent further stated that there is no question of not approaching General Body will not arise on that score the petition to be dismissed. After placing and discussing the issue relating to the recovery of dues from the petitioner / 1st defendant and for retrieving the original documents from him, the 1st respondent Association proceeded to institute the above suit for appropriate reliefs. In this context it is pertinent to extract the provisions of Clause 13 Rule 19 in which it has stated that any member/appointed member/tenant is in arrears for more than three months in payment of maintenance and fees and other charges taxes as may be stipulated by the association executive committee if any member/appointed member/tenant commits any breach of any of his/her their obligation herein whatsoever necessary legal action shall be taken over him/her/them in addition to

default of Rs.200/- for each month of default and for the restoration charges and he further stated that in the closure Agreement dated 12.10.2016 only eight flats were handed over to the petitioner while stating so, the petitioner/ 1st defendant has not denied the facts that he owned 11 flats and owing two flats at present and while so he is bound to pay the maintenance and other charges for all the flats which he owns, and only on his deliberate failure to pay the charges, the present suit has been laid by the respondent Association for recovery of the arrears. Thus, having not disputed his ownership of the 11 flats in the apartment, the petitioner/ 1st Defendant cannot say that merely because only eight flats are mentioned in the closure Agreement, no cause of action arises and there is no privity of contract between the petitioner and respondent association and that he is not a member of the Association. It is submitted that the Petitioner/ 1st Defendant has categorically agreed to pay the maintenance and other charges for the flat owners under the closure agreement dated 12.10.2016 the said agreement the petitioner himself has relied upon Para 8 of his Affidavit and hence he cannot go back from the said Agreement. The Association came to be formed pursuant to the said Closure Agreement dated 12.10.2016 and clause 8(1) of its Bye-laws provide that all the apartment owners shall be automatically members of the Association. Further the petitioner cannot deny the fact that he owned 11 flats in the apartment but at present he owns 2 flats in respect of which he has enjoyed all the common amenities. Hence the question of rejection will not arise.

8. Considering the contention raised by both sides and considering the reason for filing this petition Under Order VII Rule 11 CPC the main thing is that for any

dispute the both the petition and the respondent has to approach the general body that has not been done but in the reply it was stated 2 time general body meeting was done. But the petitioner because of having ownership over 11 Flats by stating that he is not a member of association as not appear. But as per the Clause 9 and 17 if a person is the owner of the property until the property has been sold he has to pay maintenance charges and other necessary charges which others is paying but he has not paid through the closure agreement he received all the apartment and apart from that if he is not a owner of the 11 apartment definitely those apartments would be sold by the petitioner as per act. As soon as any person has purchased the property he has automatically a member of the association and he has to bound to follow all the rules and regulations with regard to maintenance and other things. Whereas the petitioner has not followed any of the Rules and he also stated the suit is barred by limitation and they have not exhausted the remedy but being the owner of 11 flats if he sold as per the counter and only 2 flats is available with him if that being so from the date of closure agreement the petitioner/plaintiff become the owner of the flats where he has followed the procedure and the rules maintained in the association. The association has to follow its strictly for the strict complaints of the other owners of the building. Hence the question that has been raised by the petitioner/defendant is has to be proved only by marking examining the witness and by marking documents whether this petitioner has approached the respondent in time and whether all the documents has been produced by him in such a situation as mentioned by the petitioner/respondent 2 times the general body meeting has been held 28.10.2018

and 29.09.2019. But being non member of the association the petitioner does not know about that, so that they have exhausted the remedy even before filing the suit is very clear and how the petitioner is not entitled to pay maintenance as to be decided only by examining the witness and also marking documents hence on the basis of the petition filed to reject the plaint this petition cannot be allowed because if it is allowed the petitioner is not an opportunity to explain how he is not entitle to pay the maintenance charges and also other charges and what is the reply that has been given by the plaintiff when he was call for to pay the maintenance. Hence to prove the same the trial has to be conducted. Hence this court is not inclined to allow this petition.

In this result, this petition is dismissed. No costs.

Directly dictated to the stenographer, computerized by her, corrected and pronounced by me in the open Court, this the 01st day of August 2025.

III Additional Judge,
City Civil Court, Chennai.

List of Witness and Exhibits on both side : Nil

III Additional Judge,
City Civil Court, Chennai.

Draft / Fair : Order
I.A.No.05/2021– in
O.S.No.3381 of 2020
Dated: 01-08-2025
III Additional City Civil
Court, Chennai.