

MHND020013742023

**Spl.C.S No. 82/2023  
Pushpadevi Vs. Anita****ORDER BELOW EXH.16**

Through the instant application defendant No.4 has prayed for rejection of plaint in view of Rule 11 of Order 7 of the Code of Civil Procedure, 1908 (the CPC).

2. Briefly stated the contentions of defendant No. 4 are that defendant No. 4 has made payments of the LIC policies. The said payments is received by defendant No. 1. Except the amounts already paid, no other claim amount is payable in future under the policies. No policy has remained unpaid. No policy is in existence to mature in the future. It is submitted that the payment to the nominee gives valid discharge to the insurer under section 39 of the Insurance Act, 1938. The payments received are full and final settlement by the nominee.

3. The details of the payments are provided by defendant No. 4 in the present application. Once payments are made by defendant No. 4, defendant No. 4 is completely discharged from its duty. Only due to courtesy defendant No. 4 has filed the details of the information as sought by the plaintiff. The contentions in the plaint are vague and hypothetical. There is no cause of action against defendant No. 4. Therefore, it is requested that the plaint be rejected against defendant No. 4.

4. The plaintiff has filed her say on the back of the

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application. It is submitted in the say that defendant No. 4 has paid the amount behind the back of the plaintiff to defendant No. 1. Therefore, defendant No. 4 is necessary party to the suit. Hence, the application is requested to be rejected.

5. After having gone through the rival contentions, the following points do arise for determination of this Court. The findings on those points are recorded as follows for the following reasons -

Sr. No.	Points	Findings
1	Does defendant No. 4 prove that the plaint is liable to be rejected against it in view of the provision contemplated under Order 7 Rule 11 of the Civil Procedure Code ?	Yes.
2	What order ?	The application is allowed.

### REASONS

#### AS TO POINT NO. 1 :-

6. Before going into the legality of the present application and taking into consideration whether this defendant has actually succeeded in proving his contentions in the application, this court find it appropriate to take into account the submissions advanced by both the Learned Advocates.

#### Argument on behalf of defendant No. 4 :-

7. Learned Advocate Shaikh Iqbal Ahemad has strenuously argued and submitted that the plaintiff filed suit for

partition, separate possession, recovery of amount, for declaration that the sale deed dated 03-03-2018 executed defendant No. 1 in favour of defendant No. 8 is not binding upon the plaintiff and for perpetual injunction. He argued that defendant No. 4 is having no concern with the reliefs claimed in the suit. Defendant No. 4 has paid all the amounts of life insurance to defendant No. 1 on the death of late Lalit Agarwal. In such scenario according to him the suit is not tenable against defendant No. 4. So, it is requested that the plaint be rejected against defendant No. 4.

8. In order to buttress his submissions learned advocate placed reliance on **Sheela Ram Vidhani And Anr vs S.K.Trading Company And 5 Or.S on 19 June, 2021** wherein it is observed as follows -

"35. In conclusion, we hold that a plaint can be rejected as a whole against some of the defendants. We further hold that the Plaint in the present Suit discloses sufficient cause of action against Defendant Nos. 4 to 6 in context of the Plaintiff's alternate claim for refund of earnest amount. The Learned Single Judge ought to have considered the matter as a whole and ought not to have allowed the Notice of Motion."

**Argument on behalf of the plaintiff :-**

9. It is argued by learned counsel Shri. P. S. Bhakkad that defendant No. 4 is a necessary party to the suit. Therefore, it is argued that plaint cannot be rejected against it. Thus, it is

submitted that the application for rejection of plaint be rejected.

**Discussion :-**

10. Before proceeding to discuss the merits of the application, it would be appropriate to go through with provision contained in Order 7 Rule 11 of the C.P.C. reads as follows :-

**Order VII Rule 11- Rejection of Plaint :-**

The plaint shall be rejected in the following cases -

- a) where it does not disclose a cause of action, or
- b) where the relief claimed is under-valued, 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 properly valued, but the plaint is written 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;
- e) where it is not filed in duplicate;
- f) where the plaintiff fails to comply with the provisions of Rule 9.

(Provided that, the time fixed by the Court for the correction of the valuation of supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that

refusal to extend such time would cause grave injustice to the plaintiff )

11. What are the aspects that required to be taken into consideration while deciding an application for rejection of the plaint has been very nicely observed in the case of **The Church of Christ Charitable Trust Versus M/s Ponniamman Educational Trust** (Judgment of Hon'ble Apex Court dated 03.07.2012 in **Civil Appeal No. 4841 of 2012** ). Wherein it is observed as follows :-

" It has been held that the power of rejection of plaint can be exercised by court at any stage of the suit. Further, it has also been held that at the time of rejection of plaint the court has to consider only the averments in the plaint. Pleas taken by defendant in written statement are wholly irrelevant".

12. After going through the above Order 7 Rule 11 of the CPC, it becomes clear that the plaint can be rejected at any time before pronouncement of the judgment. Plaint can be rejected when there is no disclosure of the cause of action.

13. From the judgment relied upon by the learned counsel by defendant No. 4 in the case of **Sheela Ram Vidhani (supra cited)** it is observed that plaint can be rejected as a whole. However, it can be rejected against a particular defendant. In the present suit no relief against defendant No. 4 is seen to have been sought. Defendant No. 4 has already placed on record the information in respect of payment made to defendant No. 1 of policies.

14. Defendant No. 4 in no way concern with the suit. He is found neither proper party nor necessary party to the suit. In such circumstances, in the opinion of this Court it will be mockery of justice to keep continuing suit against defendant No. 4. Hence, it is noted that defendant No. 4 has successfully proved and made out a case for rejection of plaint against it. So, point No. 1 is answered in the affirmative.

**AS TO POINT NO.2 :-**

15. Consistent with the above discussion, the application deserves to be allowed against defendant No. 4. However, the suit requires to be kept continuing against rest of defendants. Thus, the following order is passed.

**Order**

1. The application for rejection of the plaint against defendant No. 4, is allowed.
2. The plaint is rejected against defendant No. 4.
3. Costs in cause.
4. The plaintiff is directed to file a copy of an amended plaint to the above said respect within 14 days from the date of this order.

Decree be drawn up accordingly.

***Dictated and pronounced in open Court.***

**(S.A.Khalane)**

Jt. Civil Judge Senior Division,  
Nanded.

Date : 06/10/2023

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**CERTIFICATE**

I affirm that the contents of this P.D.F. file decree are same word to word, as per the original Judgment.

Name of the Stenographer	M. M. Malwatkar
Court Name	Jt. Civil Judge, Senior Division, Nanded
Date:	06/10/2023
Judgment signed by the Presiding Officer On	06/10/2023
Judgment uploaded on	06/10/2023