

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR 12/2023
CM (2466/2023)

MIR MOUZAM.

...Petitioner(s)/Appellant(s)

Through: Mr. Shariq J. Reyaz, Advocate.
Mr. Taha Khalil, Advocate.

VERSUS

FARHANA DILSHAD AND ORS.

...Respondent(s)

Through: Mr. Fayaz Ahmad Mir, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

ORDER
13.08.2025

1. The instant petition has been filed by the petitioner herein under Section 115 of the Code of Civil Procedure seeking setting aside the order dated 8th April 2023 passed by the Court of Civil Subordinate Judge/Forest Magistrate, Srinagar in case titled "Farhana Dilshada and others versus Mir Mouzam".
2. Facts giving rise to the filing of the instant petition would reveal that the respondents herein filed a suit for permanent prohibitory and mandatory injunction against the petitioner herein including the State Industrial Development Corporation (SIDCO) along with States Manager SIDCO, Srinagar initially which defendants later came to be deleted from the array of party-defendants in the

suit. The said suit was maintained on the premise by the plaintiffs/respondents herein that they are lessees in possession of land measuring 18 kanals along with a factory established thereon situated at Industrial Estate Khanmoh which land had been allotted by SIDCO in the year 1985 in favour of their father being Managing Director of M/s Hamid Oil Mills Private Limited, a Company incorporated under Companies Act and that the said father of the plaintiffs after prolonged illness died in the year 2009 whereafter the plaintiffs initiated a process of reviving the said factory for having remained non-functional on account of the ailment of their father and that during the said time the defendant/petitioner herein without any right would encroach upon the said factory and besides committing theft of various articles including four motors lying in the said factory also caused loss and damage to the property of the factory including the trees standing thereon and while using his muscle power with the assistance of land mafia tried to usurp factory, thus necessitating the filing of the suit after the requests made by the plaintiffs to the defendant to refrain from his said illegal activities did not yield any fruitful result.

3. The plaintiffs in the said suit sought the following reliefs:

- i) *“That a decree of permanent prohibitory injunction be passed in favour of plaintiffs and against the defendant no. 1 by*

*virtue of which he be permanently restrained from, entering into the factory and causing any damage to property and the machinery and be permanently restrained from causing any sort of interference with the land/premises/factory known as “Hamid Oils Mills Pvt. Ltd.” situated at **Industrial Estate Khonmoh.***

ii) A decree of mandatory injunction by virtue of which the defendant no. 2 and 3 be commanded to restrain the defendant no. 1 from entering/approaching into the factory and be directed to initiate penal action against defendant no. 1.”

4. During the pendency of the suit, *supra* the defendant/petitioner herein besides filing the written statement to the suit also maintained an application in order 7 Rule 11 CPC for rejection of the plaint on the grounds that the plaintiffs had no locus to maintain the suit in that the Unit along with assets including the land whereupon the same is established was leased out by SIDCO to M/s Hamid Oil Mills Private Limited, a company incorporated under the Companies Act and that the plaintiffs are not clothed with any right, in law, to maintain the suit or else a cause of action has accrued to the plaintiffs in this regard and that the suit per se does not disclose a cause of action as is understood in law to the plaintiffs to maintain the suit.

5. The said application of the defendant/petitioner herein came to be opposed by the plaintiffs/respondents herein by filing objections and consequently upon consideration of the same by the Trial Court, in terms of the impugned order the said application came to be dismissed.
6. Aggrieved of the said order of rejection of the aforesaid application by the Trial Court, the defendant/petitioner herein has filed the instant revision petition on multiple grounds urged in the instant revision petition.

Heard counsel for the parties and perused the record.

7. Insofar as the provisions of Order 7 Rule 11 CPC are concerned, the Apex Court in series of judgments including in case titled as ***Dahiben vs Arvinbhai Kalyanji*** reported in ***2020 Volume VII SCC Page 366*** has '*inter alia*' held that the power conferred on a Court to terminate a civil action is a drastic one and that the conditions enumerated in Order 7 Rule 11 CPC are required to be strictly adhered to and that under Order 7 Rule 11, CPC a duty is cast upon the Court to determine '*inter alia*' whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, and that when a document referred to in the plaint forms the basis of the plaint, it should be treated as a part of the plaint and in exercise of power under Order 7 Rule 11 Clause(A) CPC, the

Court would determine if the assertions made in the plaint are contrary to statutory law or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out and that at this stage the pleas taken by the defendant in the written statement on the merits would be irrelevant and cannot be adverted to, or taken into consideration and that it is the substance in the plaint and not merely the form which is to be looked into and that the plaint has to be construed as it stands without addition or subtraction of words and that if the allegations in the plaint *prima facie* show a cause of action, the Court cannot embark upon an inquiry whether the allegations are true, and if however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue, a cause of action or suit is barred by any law, the Court has no option but to reject the plaint as the provisions of Order 7 Rule 11 is mandatory in nature in view of the expression “shall” appearing therein the said provision of Order 7 Rule 11 CPC.

8. Keeping in mind the aforesaid position of law and reverting back to the case in hand, it is not in dispute that the plaintiffs/respondents herein maintained the suit in question on the basis of the lease deed annexed with the suit dated 4th day of May 1985 executed by the SIDCO, the lessor with the lessee M/s Hamid Oil Mills (P) Limited, a Company incorporated through its

Managing Director Shri Abdul Hamid Khan and in terms whereof 18 kanals of land situated at Industrial Complex, Khonmoh came to be leased out by SIDCO for a period of 90 years in favour of said M/s Hamid Oil Mills (P) Limited on various terms and conditions set out therein.

9. It is also not in dispute that upon the said leased land a unit/factory have had been established by the father of the plaintiffs/respondents herein being run and operated under the name and style of M/s Hamid Oil Mills (P) Limited manifest from the registration certificate issued by the Tax department.
10. It is also an admitted fact emerging from plain reading of the plaint/suit filed by the plaintiffs/respondents herein wrongly claimed that they are the lessees and in possession of the leased land and the unit/factory established thereupon alleging that the defendant without any right has been encroaching upon the said unit/factory in question as also the land as also has been damaging and stealing various properties lying therein.
11. Having regard to the aforesaid position obtaining in the matter, the first question to be adverted to would be as to whether the plaintiffs/respondents herein had right to sue meaning right to seek relief by means of legal proceedings meaning in turn the cause of action having qua the right asserted in the suit is

infringed or has a threat to infringe such right by the defendant against whom the suit is instituted.

12. Perusal of the plaint reveals and as has been noticed in the proceeding paras, the plaintiffs/respondents herein while disclosing the cause of action to maintain the suit have referred to the alleged illegal activities of the defendant/ petitioner qua the leased property in question and while maintaining the suit averred that the right to sue accrued to them on the basis of the lease deed *supra* qua the land in question and establishment of the Company namely M/s Hamid Oil Mills Private Limited thereupon by their father. Since the land in question admittedly stands leased out to the M/s Hamid Oil Mills Private Limited pursuant to the lease deed dated 04.05.1985 and the factory/unit as well indisputedly stands in the name of said M/s Hamid Oil Mills Private Limited, the plaintiffs/respondents herein could not by any sense of imagination said to be possessed of a right to sue in the first place or else a cause of action in the matter inasmuch as the plaint disclosing a cause of action more so in view of the fact, it could have been either a shareholder or the Director of the M/s Hamid Oil Mills competent alone to maintain the suit against the defendant for and on behalf of the said M/s Hamid Oil Mills which admittedly being a company, as a distinct legal entity could have sued the defendant. A reference in this regard to the

judgment of the Apex Court passed in case titled as *S. S. DHANOA vs Municipal Corporation Delhi* reported in *1981 Volume-III SCC Page 431*, would be relevant.

13. Having regard to the aforesaid position obtaining in the matter, the only inescapable conclusion that could be drawn that the plaintiffs/respondents herein did not have any right to sue inasmuch as the plaint as well did not disclose the cause of action. The Trial Court having overlooked these fundamental aspects in the matter seemingly has grossly erred in the law, while passing the impugned order.
14. Viewed thus the petition succeeds, as a consequence whereof the impugned order is set aside, as a corollary whereof, the application filed by the defendant/petitioner herein for rejection of plaint before the Trial Court is allowed and the plaint/suit filed by the plaintiffs/respondents herein is rejected for non-disclosure of cause of action.
15. Disposed of along with all connected CMs.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR

13.08.2025

Sabreena

Whether order is speaking ? Yes/No

Whether approved for reporting ? Yes/No