IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No: CR No. 28/2025
CM No. 4983/2025

Reserved on: 14.07.2026
Pronounced on:07.08.2026
Uploaded on:07.08.2026

Whether the operative part or full Judgment is pronounced ***:Full***

1. Nitin Malhotra, aged 62 years, S/O Sh.Satish Malhotra, R/O 150 A/D Gandhi Nagar,Jammu.

2. Harish Choudhary, aged 56 years, S/O Sh. Sat Pal Choudhary,R/O 227, Shastri Nagar, Jammu.

……Petitioner(s)…..

Through: Mr. Vikas Mangotra, Sr. Advocate with
Mr. Rajat Jamwal, Advocate

v/s

Arya Pratinidhi Sabha J&K Arya Samaj Balidhan Bhawan, Bakshi Nagar, Jammu through its Vice President Mr. Arun Kumar Gupta, S/O late Shri Dwarka Nath, R/O Quarter No.170, Rehari Colony, Jammu.

Through: Mr. Rakesh Chargotra, Sr. Advocate with
Ms. Sabhya Gandhi, Advocate

……Respondent(s)…

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. The petitioners, through the medium of this revision petition, have challenged the order dated 10.03.2025 passed by the Court of the

learned Additional District Judge, Jammu (for short, "the trial court"), in the civil suit titled "*Arya Pratinidhi Sabha v. Hariish Choudhary and another",* whereby the application filed by the petitioners under Order VII Rule 11 CPC for rejection of the plaint has been dismissed.

2. The petitioners have assailed the impugned order primarily on the ground that Arya Pratinidhi Sabha, Jammu & Kashmir was registered as society with the Registrar of Societies, J&K, and as per the letter dated 29.12.2023 issued by the Registrar of Societies, the respondent did not apply for re-registration within the prescribed period, i.e., on or before 18.12.2021, consequently, the society stood de-registered/deleted from the records of the Registrar of Societies and, therefore, ceased to be a legal entity, and as such has no locus standi to institute the suit. It is further contended that Shri Arun Kumar Gupta was neither an office-bearer nor a member of the society, and as such not competent to maintain the suit. Reliance has also been placed on the communication dated 06.01.2004 issued by the Assistant Director, Directorate of Industries and Commerce, Jammu wherein it is stated that Arya Samaj, Purana Hospital Road, Jammu, stands de-registered/deleted from its records.

3. The respondent has filed its response/synopsis and, besides narrating the factual background of the case, has contended that, while exercising powers under Order VII Rule 11 CPC, the Court is required to consider only the averments made in the plaint and the documents annexed thereto. The facts pleaded in the written statement, as well as the pleas raised in an application under Order VII Rule 11 CPC by way of defence, are wholly irrelevant for deciding such an application.

It is further stated that the petitioners have failed to demonstrate how the plaint does not disclose a cause of action, or how the suit is barred by any law, or suffers from any of the infirmities contemplated under Order VII Rule 11 CPC. It is further submitted that the respondent society is a registered society under the J&K Societies Registration Act, VI of 1998. By virtue of the Jammu and Kashmir Re-organization (Removal of Difficulties) Order, 2019, dated 30.10.2019, issued by the Hon'ble President of India, every certificate issued under the J&K Societies Registration Act is deemed to have been issued under the corresponding provisions of the Central Act made applicable to the Union Territory of Jammu & Kashmir with effect from 31.10.2019. Therefore, the contention that the respondent society was required to obtain re-registration is misconceived and cannot constitute a ground for rejection of the plaint. It is also submitted that the documents relied upon by the petitioners, form part of their defence, as pleaded in the written statement, and such material cannot be looked into while deciding an application under Order VII Rule 11 CPC. Consequently, the plaint could not have been rejected on the grounds urged by the petitioners.

4. Learned Senior Counsel appearing for the petitioners argued that the trial court has failed to exercise the jurisdiction vested in it, as the respondent had created an illusory cause of action by withholding, concealing, and misrepresenting, material facts relating to its legal status, locus standi, and right to sue, thereby failing to disclose a valid cause of action for maintaining the suit. It was, therefore, contended that the plaint was liable to be rejected under Order VII Rule 11 CPC**.**

Learned Senior Counsel has relied upon the information obtained under the Right to Information Act to dispute the legal status of the respondent and to contend that the suit, having been instituted by a non-entity, was not maintainable and the plaint deserved to be rejected. It was also submitted that Shri Arun Kumar Gupta, through whom the suit has been instituted, was neither an office-bearer nor a member of Arya Pratinidhi Sabha, J&K**.** In support of his submissions, learned Senior Counsel for the petitioners placed reliance upon the judgments of the Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467; *Church of Christ Charitable Trust and Educational Charitable Society v. M/s Poonniamman Educational Trust*, AIR 2012 SC 3912; and *P. Nazeer etc. v. Salafi Trust and Another*, AIR 2022 SC 1580. Reliance was also placed upon the judgment of a Coordinate Bench of this Court in *F2Fun and Fitness Pvt. Ltd. v. Golden Globe Fitness Pvt. Ltd. and Another*, CR No. 36/2018, decided on 26.10.2018.

5. Learned Senior counsel, Mr. Rakesh Chargotra, argued that the suit was instituted by the respondent in February, 2023, whereas the petitioners sought to persuade the learned trial Court to rely upon their defence, based on the information/documents obtained under the Right to Information Act after the institution of suit, for rejection of the respondent's plaint, but in the light of settled position of law that, while considering an application under Order VII Rule 11 CPC, the Court is required to examine only the averments contained in the plaint and the documents annexed thereto, and cannot take into consideration the defence raised by the defendants, the learned trial

court has rightly decided the application. In support of his submissions, learned Senior Counsel for the respondent has placed reliance upon the judgments of the Hon'ble Supreme Court in *Sopan Sukhdeo Sable v. Assistant Charity Commissioner*, AIR 2004 SC 1801, and *R.K. Roja v. U.S. Rayudu and Another*, AIR 2016 SCW 328.

6. Heard learned counsel appearing for the parties and perused the record.

7. The record depicts that the suit came to be instituted by the respondent through its Vice President seeking a decree of permanent prohibitory injunction restraining the petitioners and their agents, attorney, associates or any other person/s claiming through them from interfering into the smooth functioning/working of Arya Samaj Mandir, Gandhi Nagar, Jammu in any manner whatsoever. A further prayer was made for injunction restraining the defendants from exercising any functions as office bearers of Arya Samaj Mandir, Gandhi Nagar, Jammu or claiming themselves as the office bearers of Arya Samaj Mandir, Gandhi Nagar, Jammu; and also restraining the defendants from interfering into the peaceful possession of Arya Samaj Mandir, Gandhi Nagar, Jammu in any manner either themselves or through their agents, associates, aides etc.

8. Thereafter, the defendants-petitioners filed written statement stating therein that Shri Arun Kumar Gupta has not annexed any authorization to file the present suit for and on behalf of Arya Pratinidhi Sabha, Jammu. In the preliminary objections, it is stated that the respondent has no cause of action and legal right to interfere

in the management, functioning and working of Arya Samaj Mandir, Gandhi Nagar, Jammu, which has its own office bearers, elected through democratic process of election duly acknowledged by Arya Prathindhi Sabha, J&K. As per the averments made in paragraph No.1 of the written statement, the petitioners have admitted registration and goal of Arya Pratinidhi Sabha, Jammu and Kashmir. However, it is specifically pleaded that the respondent has no direct control over Arya Pratinidhi Sabha, Gandhi Nagar, Jammu, which is governed and run by its elected office-bearers through a democratic process of election.

9. Thereafter, the petitioners filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the grounds recorded above. In support of the application, the petitioners relied upon a communication dated 08.09.2023 issued by the Registrar of Societies to one Ms. Archana Kumari, wherein it was stated that Arya Pratinidhi Sabha, J&K was originally registered under the J&K Registration Act, 1998 (Samvat) vide Registration No. 99 of 1968. However, as the society had failed to apply for re-registration under the Societies Registration Act, 1860, it was de-registered/deleted from the records of the Registrar's office with effect from 20.12.2021. The petitioners have also placed reliance upon another communication dated 29.12.2023, wherein it was stated that, as per the case file of the society, Shri Arun Kumar Gupta and Shri Narender Trehan were not office-bearers or members of the said society. Further reliance was placed on information furnished under the Right to Information Act vide communication dated 06.04.2004, wherein it was stated that Arya

Pratinidhi Sabha, J&K was not registered under the Societies Registration Act, 1860 and that the society was shown as non-operational in the official records.

10. In response to the aforesaid application, the respondents contended that the issues raised by the petitioners do not fall within the ambit of Order VII Rule 11 CPC. It was submitted that, while considering an application under Order VII Rule 11 CPC, the Court is required to examine only the averments contained in the plaint, and that neither the pleas raised in the written statement nor the defences set up in the application under Order VII Rule 11 CPC can be taken into consideration for the purpose of rejecting the plaint.

11. In terms of the order dated 21.04.2026, the Assistant Director (Development), Department of Industries and Commerce, Jammu, was directed to appear in person along with the original record pertaining to Registration Certificate No. 99 of 1968 dated 16.10.1968. In compliance with the said order, Shri Jatinder Pal Singh, Assistant Director, Industries and Commerce, Jammu, appeared before the Court and produced the relevant record, which was retained by the Court.

12. The principles governing the exercise of jurisdiction under Order VII Rule 11 of the Code of Civil Procedure (CPC) are well-settled through a long line of authoritative judicial pronouncements. It is a trite law that an application seeking rejection of a plaint must be decided exclusively on the basis of the averments made in the plaint, read in conjunction with the documents annexed thereto. Neither the defence set up in the written statement nor any extraneous material/documents

produced by the defendant can be adverted to at this stage. The Court is duty-bound to undertake a meaningful and not merely a formal reading of the plaint to ascertain whether it discloses a clear cause of action or whether the suit, on a plain reading, is barred by any law. It is only upon the strict satisfaction of these statutory conditions that the plaint can be rejected in the exercise of powers under Order VII Rule 11 of the CPC.

13. In **Church of Christ Charitable Trust and Educational Charitable Society Vs. M/s Ponniamman Education Trust**, AIR 2012 SC 3912 the Hon'ble Supreme Court of India has observed that the averments made in the written statement are immaterial and it is duty of the court to scrutinize the averments/pleas in the plaint to consider the application for rejection of the plaint under Order 7 Rule 11 CPC.

17. It would also be apposite to refer to the judgment of the Hon'ble Supreme Court of India in **R.K. Roja v. U.S. Rayudu and another,** AIR 2016 SCW 3282**.** Paragraph 5 of the said judgment, being relevant for the present controversy, is extracted hereunder:

> "5. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order VII Rule 11 of the CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others.. "**The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. …". The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement**

or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f) of the CPC, the same has to be rejected."

(emhasis added)

14. A perusal of the record produced by the Registrar of Societies reveals that the issue regarding the re-registration of Arya Pratinidhi Sabha, J&K is presently pending consideration before the Joint Director (M&P), Directorate of Industries and Commerce, Jammu. The record further reveals that the inquiry directed by the Administrative Department has not been proceeded with, in view of the pendency of the matter before the Court.

15. The petitioners' plea regarding the respondent's lack of legal status to maintain the suit, is a pure defence that falls outside the limited scope of Order VII Rule 11 CPC. In deciding an application under Order VII Rule 11 CPC, the Court must look entirely at the plaint. Though the Court may examine parties under Order X CPC to nip sham litigation in the bud where no real cause of action exists and mirage of cause of action has been created. It cannot exercise powers under Order VII Rule 11 where there are serious, disputed questions of material fact. Such factual controversies can only be adjudicated by framing issues and taking evidence on record.

16. This Court has carefully examined the order passed by the learned trial Court. The view taken and the conclusion arrived at by the learned trial Court while rejecting the application preferred by the petitioners under Order VII Rule 11 CPC are found to be well-

reasoned and in consonance with the settled principles of law. The opinion formed by the learned trial Court is unexceptionable and does not warrant any interference by this Court in the exercise of its supervisory jurisdiction. Accordingly, the present petition, being devoid of merit, is **dismissed.**

17. The record produced by Mr. Dewakar Sharma, learned Deputy Advocate General, shall be returned to him by the Registry against proper receipt.

(Rajnesh Oswal)
Judge

Jammu
07.08.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable**?** **No.**

HIGH COURT
JAMMU & KASHMIR AND LADAKH