

Umesh Chandra Saxena Vs. First Additional Civil Judge (Senior Division) and ors.

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Court : Allahabad

Decided On : Nov-19-2002

Reported in : AIR2003All140

Judge : R.K. Agrawal, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11; [Societies Registration Act, 1860](#)

Appeal No. : Civil Misc. Writ Petn. No. 53330 of 2000

Appellant : Umesh Chandra Saxena

Respondent : First Additional Civil Judge (Senior Division) and ors.

Advocate for Def. : Ajit Kumar, ;Manu Saxena and ;Yasharth, Advs. and ;S.C.

Advocate for Pet/Ap. : Ravi Kant and ;Vipin Saxena, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Agrawal, J.

1. The petitioner Shri Umesh Chandra Saxena, has filed the present writ petition under Article 226 of the [Constitution of India](#), seeking the following reliefs :

'(a) issue a writ, order or direction in the nature of certiorari quashing the plaint and the entire proceedings of O. S. No. 360 of 2000, Smt. Mohini, Bajpai and Ors. v. U.C. Saxena pending before the respondent No. 1.

(b) issue a writ, order or direction in the nature of certiorari quashing the entire, impugned orders dated 27-11-2000 passed by the respondent No. 1.

(c) issue any other suitable, writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case. _ .

(d) award cost of the writ petition.'

2. The order dated 27-11-2000 which is impugned in the present petition, has been passed by the 'First Additional Civil Judge, Senior Division, Allahabad, respondent No. 1 whereby he had decided the application 14-Ga filed by the petitioner under the provisions of Order 7, Rule 11 of the Code of Civil Procedure and also the application No. 6-Ga and objection 13-Ga, by which the respondents Nos. 2 to 6 have prayed for grant of interim mandatory injunction.

3. However, 'at the time of hearing of the petition with the permission of the Court, the relief No. (b) was amended by replacing the following relief :

'(b) issue a writ, order or direction in the nature of certiorari quashing the order dated 27-11-2000 passed on the application under Order 7, Rule 11 of C.P.C. and the order dated 27-11-2000 passed on the application of the plaintiff respondents for granting time for publication.'

4. Briefly stated the facts giving rise to the present writ petition are that the petitioner claims himself to be the duly elected President of a Society known as Shri Ram Chandra Mission, (hereinafter, referred to as the Mission) which is registered under the provisions of the Societies Registration Act 1860. The registered office of the said Society is at Deewan Jograj, Shahjahanpur in the State of U.P. The Society has its own Constitution, Rules, Regulations and Memorandum

of Association which are duly certified by the Registrar, Societies. The objects of the Society are as under :

(a) to encourage the down hearted and promote amongst them the easier methods, practicable to them for the attainment of social and moral aims of life, based on the principles of spirituality, translated as 'Sahaj Marg'.

(b) to promote the feelings of mutual love and universal brotherhood, irrespective of colour, caste or creed.

(c) The Mission shall work with aims and objects, solely based on spirituality and will have nothing to do with politics or any other activity, subversion of law and order.'

5. The respondents Nos. 2 to 6 filed original suit No. 360 of 2000 in the Court of Civil Judge, Senior Division , Allahabad for permanent Injunction restraining the petitioner from claiming himself to be the President of the Mission and from taking any money in the name of the society and from having any concern with the centres of the Mission situated at Allahabad, Delhi, Shahjahanpur, Bangalore, Calcutta, Madras etc. and the commercial activities of the Mission. The said suit was transferred to the Court of 1st Additional Civil Judge, Senior Division, Allahabad.

6. According to the petitioner, on 9-8-2000, an application for permission to sue the suit in representative capacity was moved. The respondent No. 1 granted permission to the respondents Nos. 2 to 6 on 9-8-2000 to file suit in the representative capacity. He also passed ex parte temporary injunction in favour of the respondents Nos. 2 to 6. On coming to know about the temporary injunction and filing of the suit in the representative capacity by the respondent Nos. 2 to 6, the petitioner filed an application on 13-9-2000 under the provisions of Order 7, Rule 11 of Code of Civil Procedure praying that the plaint may be rejected as the same does not disclose any cause of action. It was also stated in the said application that the suit was not maintainable and is also barred by the provisions of Societies Registration Act. The petitioner has also filed his objection under Order 39, Rule 4 of Code of Civil Procedure for setting aside the ex parte

temporary injunction and also took the plea that the provisions of Order 1, Rule 9 of Code of Civil Procedures have not been complied with.

7. The first learned Additional Civil Judge, Senior Division, Allahabad, respondent No. 1 vide impugned Order dated 27-11-2000 has rejected the application filed by the petitioner under Order 7, Rule 11, C.P.C. by holding that the plaint discloses cause of action and the same is not barred by the provisions of Societies Registration Act. He also granted temporary injunction as prayed for. The said order is under challenge in the present petition, excluding the order granting temporary injunction.

8. I have heard Shri Ravi Kant, learned Senior Counsel assisted by Shri Vipin Saxena learned counsel for the petitioner and Shri AJit Kumar learned assisted by Shri Manu Saxena on behalf of the contesting respondents.

9. As the counter affidavit and rejoinder affidavit has been exchanged between the parties with the consent of the learned counsel for the parties, the writ petition is being decided finally at the admission stage itself.

10. At the outset, it may be mentioned that by order dated 27-11-2000, the respondent No. 1 has decided two applications; one filed by the petitioner under Order 7, Rule 11, C.P.C. and another filed by the respondents Nos. 2 to 6 under Order 39, Rule 1, C.P.C. Against the order passed under Order 39, Rule 1, C.P.C. an appeal lies under the provisions of Order 43, Rule 1 of C.P.C. When this fact was pointed out to the learned counsel for the petitioner, he sought permission to amend Relief (b) of the writ petition and confined to orders passed on the applications filed by the petitioners under Order 7, Rule 11, C.P.C. and the application of the respondents Nos. 2 to 6 under Order 1, Rule 8, C.P.C. The amended relief (b) has already been reproduced above.

11. Shri Ravi Kant, learned Senior Counsel, submitted that the respondents Nos. 2 to 6 by filing the present suit are grossly abusing the process of the Court. According to him, it does not disclose any cause of action and the Court at Allahabad has no territorial jurisdiction to try the matter inasmuch as the injunction which has been claimed for is to operate in whole country. He further submitted

that since the Mission is a registered Society, action if any, can be taken under the provisions of the Societies Registration Act which is self contained Code. He further submitted that the mandatory provisions of Order 1, Rule 8, C.P.C. has not been complied with by the respondents Nos. 2 to 6, therefore, the suit filed in the representative capacity could not have been entertained at all. He further submitted that the suit in question is barred by the provisions of Sections 34 and 41 of the Specific Relief Act as no relief can be granted in the suit.

12. Shri Ravi Kant, learned Senior Counsel, further submitted that since the present suit is a gross abuse of the process of the Court, this Court, in exercise of the jurisdiction and powers, under Article 227 of the [Constitution of India](#), can. quash the entire plaint. According to him, the learned Civil Judge had exceeded his jurisdiction in entertaining the plaint and had failed to exercise Jurisdiction vested in him under the provisions of Order 7, Rule 11 of the Code of Civil Procedure (hereinafter referred to as CPC) when he declined to quash the plaint. In support of this contention, he relied upon the decisions in the following cases :

1. (1986) 1 All Rent Cas 398 : (1986 All LJ 1200), Prem Shankar Tripathi v. 1st Addl. District Judge.
2. 1988 (14) All LR 265 : (1988 All LJ 852), Gulab Chandra v. Munsif West, Allahabad.
3. 2000 All LJ 579 : (AIR 2000 All 58), Geeta Pumps (Pvt.) Ltd. v. District Judge, Saharanpur.

13. He submitted that the present suit has been filed for the benefit of Mr. P. Rajgopalachari and was, thus, not maintainable. According to him, under the Societies Registration Act, the election of the members of the managing body of a society is contemplated and the managing body of the society cannot be nominated in view of the provisions of Section 3A (4) of the Societies Registration Act (hereinafter referred to as the Act) and also Section 4(1) and (2) of the said Act.

14. He relied upon the decision of this Court in the case of *Jai Prakash Agrawal v. Prescribed Authority (S.D.M.). Deoria*, (1999) 1 UPLBEC 697. Thus, he submitted that the Societies Registration Act provides for all the modalities of election of a managing body of a Society and it also provides the settlement the election dispute. According to him, under Section 25 of the Act, the Registrar has been empowered to settle the dispute regarding the election of office bearers. Thus, the present suit, which is nothing else but for settling the dispute regarding the election of the managing body, is barred.

15. He relied upon the decisions of Division Bench of this Court in the case of *Jay Prakash Agrawal v. Prescribed Authority (S.D.M.), District Deoria* reported in 1999 (1) UPLBEC 697, *Geeta Pump Private Ltd. v. District Judge, Saharanpur* reported in 2000 All LJ 579 : (AIR 2000 All 58) wherein this Court in para 64 of the report has held that a suit which is impliedly barred under Section 9 of the C.P.C. is riot maintainable in view of the clause provide for arbitration. He also relied upon the following decision of Hon. Supreme Court :

1. AIR 1969 SC 78, *Dhulabhai v. State of Madhya Pradesh*.
2. AIR 1988 SC 752, *Raja Ram Kumar Bhargava v. Union of India*.
3. AIR 1997 SC 2076, *S.P. Subramanya Shetty v. Karnataka State Road Transport Corporation*.
4. (1997) 5 JT (SC) 182, *Punjab State Electricity Board v. Ashwani Kumar*.
5. (1997) 5 SCC 536, *Mafatlal IndustriesLtd. v. Union of India*.

16. He further submitted that none of the plaintiffs are members of the Mission. They are strangers, and therefore, no cause of action had arisen to file a suit. According to him, members have been defined under Section 15 of the Act and since the plaintiffs have not been admitted to be members of the Mission in accordance with the Section 15 of the Act, they have no right or authority to file the present suit. In the alternative, he submitted that even if the plaintiff respondents are treated to be as members of the Mission, Section 6 of the Act provides the manner in which the suit by or against the society can be filed. According to him,

the plaintiffs-respondents can not file the suit under Section 6 of the Act and, thus, the suit itself is not maintainable. He further submitted that the present suit has been filed as a representative suit under Order 1, Rule 8 of the C.P.C. but there is no semblance of any common interest and, further, the provisions of Order 1, Rule 8(2) of CPC had not been complied with which is mandatory. He relied upon the decision of Orissa High Court in the case of Sukdev Tapaswai v. Siddheshwar Mahadev reported in AIR 1986 Orissa 100.

17. He further submitted that the suit is barred by the provisions of Sections 34 and 41 of the Specific Relief Act as the dispute is essentially regarding the President of the Society which can be adjudicated in the reference made by the Registrar and, therefore, no relief can be granted. He referred to the plaint allegations to show that the plaintiffs are essentially claiming relief of injunction against the petitioner from acting as President which relief cannot be granted as it is barred under Section 41 of the Specific Relief Act,

18. Shri Ajit Kumar learned counsel for the plaintiff respondents, however, submitted that the suit filed by the plaintiff respondents is maintainable under law. According to him, the plaint discloses the cause of action. The Court of Civil Judge, at Allahabad had the pecuniary and territorial jurisdiction to entertain the plaint and the provisions of Societies Registration Act are not at all attracted in the present case. He submitted that the founder President of the Mission continued from the year 1975 to 1983, without any election from whom the petitioner is alleged to be deriving powers. If the submission of the learned counsel for the petitioner is accepted, then it would mean that in view of the 1975 Amendment in the Societies Registration Act which came into force w.e.f. 10-10-1975, the President was not acting legally. Thus, the scheme of the Act does not stipulate that the members of the managing body of the society should also be elected. It can be by nomination or by unanimous resolution.

19. According to him there is no dispute regarding the renewal of the Society. He further submitted that the provisions of Section 34 of the Specific Relief Act and Section 25 of the Societies Registration Act are not at all attracted. He submitted that the First Additional Civil Judge, Senior Division, Allahabad, had rightly rejected

the application made by the petitioner under the provisions of Order 7, Rule 11 of the C.P.C. as the plaint discloses the cause of action and it was not barred by any law. So far as the territorial jurisdiction of the said Court is concerned, he relied upon the provisions of Section 16D of the C.P.C. read with Section 17 and submitted that since the property of the Society is situated at Allahabad, the suit was maintainable. He further submitted that the plea of territorial jurisdiction is not available to the petitioner as in the past the petitioner himself had filed the suit at Allahabad. He also submitted that in the civil suit, the question of election was not raised by the petitioner, and, therefore, it would mean waiver and in view of the provisions of Explanation 4 to Section 11 of the C.P.C. , the petitioners are estopped from raising such a plea. He further submitted that relief claimed by the plaintiff respondents is fully covered under Section 17 of the Specific Relief Act. He submitted that this Court in exercise of powers under Article 227 of the Constitution, can quash the plaint where it is an abuse of the process of the Court but the present writ is not an abuse of the process of the Court and, therefore, no question of quashing the same arises.

20. So far, as the notice as required under Order 1, Rule 8(2) of the C.P.C. is concerned, he submitted that the petitioner can have no grievance. He further submitted that affidavits filed by the, plaintiffs respondents bearing paper Nos. 8-C, 18-C, 23-C, 35-C remained unrebutted and, therefore, the facts stated therein have to be accepted. Thus, on the basis of the aforesaid fact as stated in the affidavit, the suit was maintainable.

21. So far as the question of jurisdiction is concerned, he submitted that for determining the question of maintainability of the suit, the Court has only to see the plaint allegations. He relied upon the following decisions :

1. AIR 1985 SC 577, Abdulla Bin Ali v. Galappa.
2. (1990) 1 SCC 207 : (AIR 1990 SC 540), Smt. Bismillah v. Janeshwar Prasad. .
3. AIR 1976 All 349 , Municipal Board, Faizabad v. Edward Medical Hall, Faizabad.

4. AIR 1964 SC 1348, Raizada Topan Das v. Gorakhram Gokalchand.

22. He further submitted that under Order 7, Rule 11 of the CPC, the plaint can be rejected only where it does not disclose a cause of action. It has nothing to do with the alleged absence of cause. According to him, the plaint does disclose cause of action and, thus, the learned Civil Judge, had rightly held the suit to be maintainable and did not reject the plaint. He relied upon the following decisions :

1. State of Orissa v. Klockner and Company, (1996) 8 SCC 377 : (AIR 1996 SC 2140);

2. Jagarmath Prasad v. Smt. Chandrawati, AIR 1970 All 309 (FB).

23. He further submitted that the suit for injunction can be filed where any immovable property is situated in view of provisions of Section 16 read with Section 17 of the C.P.C. Thus, the Court of Civil Judge, Senior Division, Allahabad has territorial jurisdiction to entertain the suit as the property of the Mission is situated at Allahabad also. He relied upon the following decisions ;

1988 (3) SCC 511 : (AIR 1988 SC 1347), Madhap v. Madhav;

2000 (2) All Rent Cas 163 : (2001 All LJ 473), Sandeep Jain v. Suresh Chandra Jain.

24. He further submitted that a suit can be instituted where the cause of action wholly or in part arises and it is the convenience of plaintiff to choose a particular Court/Forum, if a part of cause of action arises within the territorial jurisdiction of the Court. Thus, he submitted that since a part of cause of action has arisen within the territorial jurisdiction of the Civil Judge, at Allahabad, the suit was maintainable. He relied upon the decisions of the Hon'ble Supreme Court in the case of Indian Overseas Bank v. Chemical Construction Co. (1979) 4 SCC 358 : (AIR 1979 SC 1514).

25. In the alternative, he submitted that there is jurisdiction in a civil Court unless it is expressly or impliedly barred by any statute. According to him, the provisions of the Societies Registration Act which have been heavily relied upon by the learned

counsel for the petitioner is not applicable or attracted in the present case and, thus, the civil Court has the jurisdiction to try. According to him, there is no dispute regarding the principles laid down by Hon. Supreme Court in the case of Mafat Lal Industries Ltd. [1997 (5) SCC 536] (supra) and other cases. In the present case, the provisions of the Societies Registration Act are not at all attracted, thus, the suit was specifically maintainable. He further submitted that against the order rejecting the application under Order 7, Rule 11 of the Code of Civil Procedure, a revision lies, therefore, the writ petition itself is not maintainable. He relied upon the following decisions :

(1999) 1 SCC 209 : (AIR 1999 SC 2859), Sheela Devi v. Jaspal Singh;

(1991) 4 SCC 379 : (AIR 1991 SC 2251), Ghanshyam Das Gupta v. Anant Kumar Sinha.

26. He further submitted that there are various decisions of the Competent Court against the petitioner and, therefore, he cannot validly claim himself to be the sole person managing the affairs of the Mission and in fact he has concealed/suppressed material fact in the present petition which disentitles him from any relief.

27. Shri Ravi Kant learned counsel in reply submitted that the writ petition is maintainable as it has been filed seeking quashing of the plaint itself. Further, the plaintiff respondents are merely a busy body. They are not even members of the Mission. They have no right to institute the present suit. According to him, the provisions of Section 20 of the C.P.C. is applicable and further the plaintiff respondents have instituted the suit on different cause of action. It cannot be dissected and has to go as a whole. According to him, the documents relied upon by the learned counsel for the respondents cannot be looked into as the petitioners had raised objections regarding the jurisdiction at the very first stage, and, therefore, the submission that no objection regarding territorial jurisdiction has been raised is, incorrect.

28. So far as the question that the word election was introduced in Section 3-A(4) of the Societies Registration Act is concerned, it was introduced by way of

amendment in the year 1984 w.e.f. 30-4-1984 by U.P. Act No. 11 of 1984 and thus, after that date the election of the members of managing body is a must.

29. Having heard the learned counsel for the parties, I find that the suit in question i.e. suit No. 360 of 2000 was filed by five persons. They claim to be members of the registered Society namely Shri Ram Chandra Mission. It has been filed in the representative capacity. The Mission has its Centres at various places including Allahabad, Delhi, Calcutta, Bangalore, Shahjahanpur, Madras etc. The Centres are called Ashrams. The Mission undertakes meditation through Sahajmarg system. Original Sahajmarg system was propounded by Shri Ram Chandra Ji Maharaj popularly known as Lala ji Maharaj of Fatehgarh. One of his disciple was also Shri Ram Chandra Ji Maharaj of Shahjahanpur who was popularly known as Babu Ji Maharaj. After the death of Lalaji Maharaj, Babuji Maharaj along with other disciples formed a Society in the year 1945 which was registered under the provisions of the Societies Registration Act in the name and style of Shri Ram Chandra Mission. The registration has been renewed from time to time. Under the byelaws of the Mission, it has been provided that the president shall nominate amongst spiritual successors any person as his representative, who as such, will enjoy all the powers and authorities vested in the President. According to the plaintiff respondents, Shri Babu Ji Maharaj continued as president and on 23-3-1974 appointed Shri P. Rajgopalachari as his spiritual successor which was given effect to after the death of Shri Babu Ji Maharaj on 19-4-1983. After the death of Babu Ji Maharaj, the present petitioner who is his grandson, claimed himself to have been nominated as spiritual successor by Babu Ji Maharaj.

The meeting of the Executive Committee was held on 10-7-1983 and 23-10-1983 at Shahjahanpur where the claim made by the petitioner was not found genuine and in the meeting held on 27-12-1983, Shri P. Rajgopalachari was accepted as President of the Mission. According to the plaintiff respondents, the resolution passed in the meeting held on 10-7-1983, 23-10-1983 and 27-12-1983 by the Executive Committee of the Society became final as it had not been challenged in any Court of law.

30. It appears that the petitioner instituted a suit No. 200 of 1983 before the Civil Judge, Shahjahanpur under the provisions of Order 1, Rule 8 of the Code of Civil Procedure in which he did not state anything about his past or relationship. The matter relating to temporary injunction, came before this Court in First Appeal From Order No. 439 of 1984 in which this Court vide judgment and order dated 25-2-1985 upheld the claim of Shri Rajgopalachari as President of the Mission. The Civil Appeal No. 7773 of 1985 filed against the judgment and order dated 25-2-1985 has been dismissed by Hon. Supreme Court vide order dated 27-9-1985. The petitioner by means of an amendment in suit No. 200 of 1983 had sought to incorporate that he is the President of the Mission which has not been accepted by this Court vide order dated 25-5-1996, the suit having been transferred to this Court for decision. The Special Appeal No. 561 of 1996 challenging the order dated 24-5-1996 has also been dismissed by the Court vide order dated 24-11-1998. According to the plaintiff-respondents, the Mission had filed Civil Suit No. 142 of 1986 in the Court of Civil Judge Shahjahanpur in which the petitioner had filed his written statement also wherein he did not state that he is the President of the Mission. Suit No. 142 of 1986 was got dismissed as withdrawn with liberty to file a fresh suit, It appears that the petitioners convened a meeting on 20-3-1984 in which it was resolved that Babuji Maharaj had not nominated any person as spiritual successor and, therefore, elected one Shri S.P. Srivastava as President and Shri B.D, Mahajan as Secretary and his brother S.C. Saxena as Joint Secretary. This meeting was held during the pendency of the suit No. 200 of 1983. Two of the office bearers so elected appointed later on accepted Shri P. Gopalachari Ji Maharaj as President. Therefore, the suit No. 200 of 1983 was withdrawn with liberty to file a fresh suit. Shri B.D. Mahajan subsequently filed suit No. 4 of 1999 before the Civil Judge Shahjahanpur. It has been dismissed vide order dated 15-5-1999. It appears that Shri S.P. Srivastava and Shri B.D. Mahajan started interfering in the working of the Mission of the Calcutta Centre and a suit was filed before the Calcutta High Court being suit No. 732 of 1990 in which vide order dated 4-6-1990 these two persons were restrained from interfering in the working of the Mission at Calcutta Centre. Further, in the year 1991, aforesaid three persons made an application before the Registrar of the Societies staking their claim in, place of P. Raj Gopalachari Maharaj, S.A. Sarnath, Kashi Ram

Agrawal. The Registrar declined to entertain their application, which was challenged by them before this Court in Civil Misc. Writ Petition No. 22657 of 1991 which was subsequently dismissed as withdrawn. According to the plaintiff respondents, for the First time , the petitioner claimed to be President of the Mission in the year 1993. He filed a testamentary case No. 8 of 1993 which was subsequently registered as testamentary suit No. 1 of 1994. It was dismissed by this Court vide order dated 16-10-1995. the Special Appeal No. 829 of 1995 filed against aforesaid order has also been dismissed by this Court vide order dated 24-11-1998. The petitioner's brother, S.C. Saxena was one of the parties in the testamentary suit and in the affidavit filed in Special Appeal No. 829 of 1995 he had accepted Shri P. Raj Gopalachari as President of the Mission. During the pendency of the Writ Petition No. 22657 of 1991 some persons again made an application before the Registrar of the Societies for recognising S.P. Srivastava as President and stating therein that in the year 1994, S.P. Srivastava has handed over the charge of presidentship of Mission to the petitioner. The Assistant Registrar did not accept the claim vide order dated 24-8-1994. The said order was challenged by the petitioner before this Court in Civil Misc. Writ Petition No. 37023 of 1994 which has been dismissed on 10-7-1997. Special Appeal No. 580 of 1997 challenging the said order has also been dismissed by this Court by order dated 24-11 -1998. However, Special Leave Petition is pending before the Hon. Supreme Court. The petitioner filed O.S. No. 697 of 1995 in the Court of Civil Judge, Senior Division, Allahabad, seeking a declaration that he is President of the Mission. The suit has been dismissed vide order dated 31-5-1999. Civil Appeal No. 219 of 1999 preferred against said order has also been dismissed on 11-1-2001. It appears that the petitioner wanted to raise some dispute regarding election of the committee of management held in the last week of December 1998. In January, 1999, he made an application before the Registrar, of the Societies. The Assistant Registrar, Bareilly referred for adjudication before the prescribed Authority. The order has been challenged in Civil Misc. Writ Petn. No. 19202 of 1999 wherein this Court has stayed the operation of the order passed by the Assistant Registrar, Bareilly. Another suit No. 127 of 1994 has been filed by the Society by which the petitioner has been restrained from raising any money in the name of the Mission. The said suit has also been withdrawn with liberty to file

fresh suit. The suit in question has been filed on the ground that the petitioner who is defendant in the suit has no connection with the affairs of the Mission and has no right to interfere. He is interfering in the affairs of the Mission with the intention to misappropriate and destroy the properties of the Mission at the various centres including Allahabad and Shahjahanpur and from raising funds claiming himself to be the President of the Mission. He is also proposing to construct shops. The aims and object of the Society is meditation, achieving ultimate peace through meditation whereas the petitioner is converting it into business purposes. The plaintiff respondents therefore, prayed for a permanent injunction restraining the petitioners defendant from claiming himself to be the President and from raising funds thereof, and further from raising any construction or demolishing any properties of the Mission situated at Allahabad, Delhi, Shahjahanpur, Bangalore, Calcutta and Madras etc. and from changing its nature thereof.

31. The suit was filed in the representative capacity. The application under Order 39, Rule 1 and 2 of the C.P.C. for grant of temporary injunction as also under Order 1, Rule 8 of the CPC was also submitted. The learned First Additional Civil Judge, Senior Division Allahabad, permitted the plaintiff respondents to file suit in the representative capacity. He also granted temporary injunction. The petitioner filed an application for vacating ex parte temporary injunction and application under Order 7, Rule 11 of the C.P.C. for rejecting the plaint. In the application filed under Order 7, Rule 11, the petitioner had mentioned that the plaintiffs are not connected with the Mission as they are not members and had no locus standi. It was also stated that the suit is barred by Section 5 of the Societies Registration Act. It was further stated that the dispute relating to election of the office bearers or members of the Mission can be decided under the provisions of the Societies Registration Act itself which provides for complete machinery to deal with the election dispute and, therefore, the suit is not maintainable. It may be mentioned that the application under Order 7, Rule 11 of the C.P.C. no objection of any kind regarding the territorial jurisdiction had been raised by the petitioner.

32. The learned First Additional Civil Judge Senior Division vide order dated 27-11-2000 condoned the delay in taking steps for publication of the notice . He also rejected the application made under Order 7, Rule 11 of the C.P.C. and confirmed

the temporary injunction granted by him.

33. In the present writ petition, the Court is only concerned with the order rejecting the application under Order 7, Rule 11 of the C.P.C. and the order condoning the delay in taking the steps for publication of the notice as the relief in the writ petition has been confined to these two orders only.

34. The learned First Additional Civil Judge, Senior Division, had found that the plaint disclosed cause of action and further the provisions of the Societies Registration Act will not be a bar for maintaining the suit. He had considered the averments made in paragraphs No. 17 to 20 of the plaint and had come to the conclusion that the plaint disclosed the cause of action for instituting the suit.

35. It may be mentioned here that there cannot be any dispute on the question of jurisdiction of this Court to quash the plaint itself in exercise of powers under Article 226/ 227 of the [Constitution of India](#), if the Court comes to the conclusion that finding of the suit is an abuse of the process of the Court.

36. In the case of Smt. Mahadevi (supra), this Court has held that it is open to the High Court to exercise its extraordinary jurisdiction under Article 226 of the [Constitution of India](#) for quashing the proceedings in a suit where it is nothing but a abuse of the process of the Court.

37. In the case of Gulab Chandra (1988 All LJ 852) (supra) this Court has held that where it is established that the litigation is a sheer luxury collusive and inspired by invires and vexatious design, the Court not only has jurisdiction but owe duty to throttle such litigation and quash the plaint of a suit exercising its power under Article 227 of the [Constitution of India](#).

38. In the case of M/s. Geeta Pump (Pvt.) Ltd. (2000 All LJ 579) (supra) this Court has held that the High Court in exercise of powers under Article 226/227 of the Constitution, is empowered to quash the plaint in order to prevent the abuse on the process of law and courts.

39. The question is as to whether the present suit is an abuse of the process of the Court ?

40. From the narration of the aforesaid facts, It is seen that according to the plaint allegation, the petitioner's effort to claim to be President of the Society of Ram Chandra Mission had been unsuccessful and nominated President is Shri P. J. Rajgopalachari Maharaj. The allegations are that the petitioner is interfering in the working and object of the Mission by claiming himself to be the President and raising funds and making construction and demolishing properties at the Centres of Mission at Allahabad and Shahjahanpur. Whether these allegations are correct or not, is yet to be gone into by the Court below. Thus, it cannot be said that the present suit is an abuse of the process of the Court. However, for the purpose to considering as to whether the plaint discloses any cause of action or not, it has to take into account the averment made in the plaint and not from any other material. The necessary averments have been made in paragraphs 17 to 20 which is reproduced below :

(Vernacular matter omitted....Ed.)

41. From a perusal of the aforementioned averments in the plaint it is clear that it discloses a cause of action.

42. So far as the question of granting time to comply with the publication of notice under Order 1, Rule 8 , C.P.C. is concerned, that will not have any material bearing as no prejudice has been caused to the petitioner.

43. In the case of Sukdev Tapaswai (AIR 1986 Orissa 100), Orissa High Court has¹ held that the provisions of Order 1, Rule 8 of C.P.C. are mandatory and not merely directory and essential Pre-conditions for trial in a representative suit. However, if it has been substantially complied with, the Court can grant time for publication of notice.

44. In the case of Abdullah Bin Ali (AIR 1985 SC 577) (supra) the Hon. Supreme Court has held that the allegations made in the plaint decide the forum and jurisdiction and is not dependent upon the defence taken by the defendant in the written statement.

45. In the case of Bismilah (AIR 1990 SC 540} (supra) the Hon. Supreme Court has held that the question of jurisdiction depends upon the allegation in the plaint and not merit or result of the suit and provisions seeking ouster of civil Court jurisdiction is to be strictly construed.

46. Similar view was taken by this Court in the case of Municipal Board, Falzabad (AIR 1976 All 349) (supra) wherein this Court has held as follows :

'The jurisdiction of a Civil Court to entertain a suit depends upon the allegations in the plaint and not upon what, may ultimately be found to be true. Where, after trial, the allegations are found to be unfounded the suit will be dismissed, not because the Court had no jurisdiction, but because the allegations are incorrect.

The question of maintainability of the suit also depends upon the plaint allegations. The plaintiff cannot however, by so drafting his prayer as to exclude relief which may or may not be granted by the Court confer jurisdiction on Court to try the suit. Hence, in all cases, it will be necessary to consider what the cause of action in the plaint is and what is the substantive relief sought.'

47. In the case of State of Orissa v. Klockner & Co. (AIR 1996 SC 2140) (supra) the Hon. Supreme Court has held that the plea that the plaint does not disclose the cause of action is different from the plea that there was no cause of action for the suit.

48. Whether the plaintiff ultimately, succeeds or not is a different question altogether. On failure in the suit would not mean that the plaint did not disclose any cause of action. Applying the principles laid down by the Hon'ble Supreme Court it is held the order passed by the learned First Additional Civil Judge in holding that the plaint does disclose cause of action cannot be said to be illegal or contrary to law.

49. There is also no dispute to the proposition that if the suit is expressly or impliedly barred under any other provision, the Civil Court's jurisdiction under Section 9 of CPC. is excluded.

50. So far as the question as to whether the suit is barred by the provisions of the Societies Registration Act is concerned, it may be stated that according to the plaint allegations, the petitioner who is defendant in the suit, had not been successful in his effort to claim himself as President of the Mission as legally elected, nominated President of the Mission as would be clear from a series of litigations referred to above. The petitioner has not brought any material on record to establish his claim that he is the elected/nominated President of the Mission. Mere claiming that he is President of the Mission without any material in support thereof would not be sufficient to invoke the provisions of the Societies Registration Act in so far as the relief of election dispute is concerned. Thus, the provisions of the Societies Registration Act would not be applicable in a case, which has been filed against the rank trespasser who has no connection at all with the society and is interfering in the affairs of the Society by raising funds in the name of the Society by claiming himself to be President thereof.

51. In the case of Jai Prakash Agrawal, 1999 (1) UPLBEC 697, this Court has held that by Section 25 of the Societies Registration Act, legislative intent is clear that it has provided a forum for deciding dispute in respect of election of continuance in office of office bearers of a society and Prescribed Authority acting under Section 25 of the said Act acts as a Tribunal. It decides the important dispute to election and continuance in office of office bearers which is essentially a dispute of civil nature. He is required to hear and decide in summary manner any doubt or dispute in respect of election. This decision is of no assistance to the petitioner for the reason mentioned in the foregoing paragraph.

52. From the objections raised under Order 7 Rule 11 CPC it appears that no specific objection regarding territorial jurisdiction has been raised by the petitioner. Thus, he cannot be permitted to raise it for the first time before this Court. In this view of the matter the Court is not going into the question of waiver/acquiescence of jurisdiction by the petitioner.

53. In view of the foregoing discussions, I do not find any merit in this writ petition and it is dismissed. However, the parties shall bear their own costs.