

JAMMU AND KASHMIR HIGH COURT

Bakshi Ghulam Mohd

Vs.

G.M. Sadiq

Civil Original Suit No. 26 of 1967

(Anant Singh, J.)

15.04.1968

JUDGMENT

Anant Singh, J.

1. The plaint of this suit was presented in this Court on 3-8-1967. It was admitted by a single Judge of this Court Ali, J., now Honble the Chief Justice, on 24-8-1967 when he made an order for issue of summons to all the defendants.

2. In due course, the defendants appeared and at their request on 28-9-1967, one month's time, which was later extended to 20-11-1967 was allowed to file their written statements, when one application by defendants 6 to 10, and another by defendants 1 to 5 and 11 were filed. They were both filed under Order 7. Rule 11, read with Section 151 of the Civil Procedure Code seeking to reject the plaint in limine on certain technical grounds.

3. The application by defendants 1 to 5 and 11 only adopts the grounds as contained in the application of defendants 6 to 10, I shall, hereafter, refer to both, as one application in singular.

4. The suit was transferred to my Court by the order of the Hon'ble Chief Justice dated 25-3-1968, when counsel for the defendants submitted that their aforesaid application should first be decided. No one was present on behalf of the plaintiff that day, but he was allowed time to file his rejoinder, if any, to the defendants' application by 1-4-1968, and the application aforesaid was ordered to be placed for hearing on 4-4-1968. The plaintiff filed his rejoinder on 30-3-1968 controverting all the points taken by the defendants in their application. Counsel for the parties were heard on the defendants' application on 4-4-1968 and on 5-4-1968.

5. The question that falls for consideration at present is, whether the plaint is fit to be rejected in limine as claimed on behalf of the defendants.

6. The defendants' application seeks to reject the plaint in limine because (1) it does not disclose any cause of action; (2) it is barred by limitation of one-year rule; (3) it is barred by the principles of res judicata; and (4) it is barred by law.

7. The learned Attorney-General appearing for the defendants, at the very outset, submitted that he would not press at this stage that the plaint discloses no cause of action, but he would assume the allegations therein to be correct for his present purpose. He also did not argue about the suit being barred by res judicata and/or principle analogous to res judicata, but he reserved his right to raise these questions at a later stage, if need he.

8. The learned Attorney-General confined his arguments to the question of limitation, and raised another point, although not taken up specifically in the defendants' application, except for a bald statement, that the suit is on the face of the plaint barred by law that the suit is barred on the face of the plaint itself by Section 80 of the Civil Procedure Code, because, it does not state, as it must, that notice under Section 80, Civil Procedure Code, was served on the defendants, who have all been sued for acts done by them in discharge of their official duties. He was allowed to raise this point also, provided it can be decided on a mere perusal of the plaint alone.

9. The learned counsel, Mr. Bhasin, appearing for the plaintiff raised a preliminary objection that the defendants have not as yet filed their written statement, and therefore, they should not be allowed to raise these objections at this stage. He further contended that under Order 7, Rule 11, the plaint can be rejected in limine for any of the grounds mentioned therein only at the time when the plaint is taken up for admission. But once the plaint has already been admitted by the Court, as it has been done in this case, it cannot be rejected in limine now on any of the grounds urged on the defendants' behalf, until they have filed their written statements and appropriate issues have been framed.

10. As for Mr. Bhasin's contention that the Court cannot exercise its power of rejecting a plaint after it has been admitted, there appears to be no force in it. If the Court failed to exercise its powers under Rule 11, Order 7, at the time of admitting the plaint, there is no bar to its exercising this power, at a later stage, when the Court is apprised of the error by the defendants even before they have filed their written statements. If the Court could reject the plaint on its own motion before admitting the plaint, it can do so at any stage even before the defendants have filed their statement or even in appeal whenever the error is discovered. The power to reject a plaint; can be exercised by the Court at any moment. It is a matter purely between the Court and the plaintiff. If there is not harm done or prejudice caused to the plaintiff, the Court can correct its error in the exercise of his inherent powers, on the error being pointed out by the defendants even before the framing of the issues. It is true that there is no specific provision in the Civil Procedure Code in this regard, when the Court can correct its error, but the Court, in exercise of its inherent powers', under Section 151 of the Civil Procedure Code can correct its error at any stage. This question has to be decided on a mere perusal of the plaint and on no other material. Hence, I hold that the question whether the plaint can be rejected in limine after it has been admitted can be examined at this stage even though the defendants 'have not filed their written statement as yet.

11. Order 7, Rule 11, Civil Procedure Code, provides :

"The plaint shall be rejected (a) where it does not disclose a cause of action; (d) where the suit appears from the statement in the plaint to be barred by any law."

12. The first ground, as already indicated, is not to be considered at this stage and for our present purpose, it must be answered in plaintiff's favor.

13. The ground covered under (d) above will cover the ground of limitation as also the ground as envisaged under Section 80 of the Civil Procedure Code It was so held by the Patna High Court in *Baldeo Prasad v. Sukhi Singh*¹, which followed the Privy Council decision, amongst others, in *Bhagchand Dagdusa v. Secy, of State for India, reported in*² while dealing with the applicability of Section 80, C.P.C.

14. Section 80 of the Civil Procedure Code is as follows :-

"No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of four months next after notice in writing has been, in the case of the Government delivered to, or left at the office of, the Principal Secretary to Government and, in the case of a Public officer, delivered to him or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a. statement that such notice has been so delivered or left."

15. Now to appreciate the two questions under consideration, it is necessary to state at this stage the salient facts from the plaint bearing on them.

16. Defendants 1 to 5 were Ministers with defendant No. 1 as the Prime Minister, as he then was, at the relevant time in 1964 and; thereafter, of Jammu and Kashmir State. Defendants 1, 2 and 4 are Ministers with defendant No. 1 as the Chief Minister in the present Government also, which probably came in 1967. Defendants 6 to 10 were, and some of them are even now Police officials. Defendant No. 11 who is a Deputy Minister in the Central Secretariat, New Delhi, is said to have been a camp-follower of defendant No. 1.

17. The plaintiff has been a man of great status and eminence, socially, politically and as a public man, highly spoken of in the country and abroad, having been the Deputy Prime Minister up to 1953 and the Prime Minister thereafter, of Jammu and Kashmir State till August, 1963, when he resigned under what is known as "Kamraj Plan" to devote himself to the organizational work of the National Conference.

18. The plaintiff for his eminence and great achievements became the object of envy with defendants 1 to 5 who had been his erstwhile colleagues and workers.

19. In February 1964 at a meeting of the National Conference Legislature Party,

¹ AIR 1938 Pat 127

² AIR 1927 PC 176

defendant No. 1 was elected as the new leader, and he formed the ministry on 28th February 1964 consisting of himself as "Prime Minister, Shri D.P. Dhar, defendant 2, as Home Minister, Shri Mir Qasim, defendant No. 3, as Revenue Minister, Shri Trilochari Datt, defendant No. 4, is Finance and Industries Minister.

20. The Ministry headed by defendant No. 1, commonly known as the Sadiq Ministry, for its acts

of omissions and commissions, became very unpopular even with the majority of the members of the National Conference as the leader of which he had formed the ministry. A motion of no confidence against the Speaker and the Ministry was in the offing. Several steps were being taken to oust the ministry. The plaintiff was at the back of the agitation against the ministry, as a result of which, the plaintiff had incurred the wrath of the Sadiq Ministry.

21. It was with a view to countenance the move of "No-confidence Motion" feverish activities ensued during the night between 21st and 22nd September, 1964, and finding no way out from the impending debacle, defendants 1 to 5 entered into a conspiracy and decided upon a malicious course of action, namely, to arrest the plaintiff and detain him and some other M.L.As. As a result of the above conspiracy, the plaintiff and four other M.L.As. who had signed the motion for no-confidence were arrested at 5 a.m. on 22nd September, 1964. The plaintiff was detained - under Rule 30 of the defence of India Rules.

22. This was the first act of the tort against the plaintiff by his malicious and wrongful detention at the hands of the Sadiq Ministry and its officers.

23. A notice of the no-confidence motion had been given to the Secretary of the Assembly, whereafter, the Assembly sat on the 22nd September, 1964. No cognizance of the 'No-confidence Motion' was taken, and instead, the Assembly was prorogued by the Speaker by reading a proclamation to that effect from the Sadar-i-Riayasad. This action of the Legislative Assembly brought in serious criticism from the Press and several members of the Assembly itself. A telegram was also sent by seventeen Members of the Legislative Assembly to the President of India, the Government of India and various others.

24. It was with a view to justify the wrongful detention of the plaintiff, besides some other M.L.As., that some press statements were issued on behalf of the Government scandalising the plaintiff in so many ways.

25. At about 11 a.m. on 22nd September, 1964, a press statement was issued by the Government of Jammu and Kashmir that some cases of corruption and other criminal cases were being investigated by the State authorities and that the detinue (meaning the plaintiff) and his associates were making a serious attempt to create conditions likely to affect adversely the public peace and internal security in the State.(Para 25).

26. In sub-paras (1) to (4) of para 28, some press news from the Indian Express, New Delhi, and Delhi Patriot, New Delhi, published between 23rd September and 18th October 1964, have been cited quoting Mr. G.M. Sadiq, Mr. Trilochan Dutt as having said certain things prejudicial to the character of the plaintiff with a view to defend their malicious conduct in the detention of the plaintiff.

27. It was during the period of plaintiff's detention and about a month thereafter which was in 1964, that some fourteen false cases are alleged to have been registered against the plaintiff under Section 5 of the Prevention of Corruption Act, all with a view to tarnish his fair name and character. (Para 31).

28. Some cases were started by the Anti-Corruption Department on 1-7-1964, and thereafter, in November 1964 against certain Government officials of the State. It was during the investigation

of those cases that the officers, proceeded against, were coerced, cajoled on the promise of rewards and were prevailed upon wrongly in 10 many ways to entangle the plaintiff as well as the Prime Minister of the State. A false report was made against the plaintiff to the Home Secretary by the Chief Secretary in his letter, dated 21-11-1964, involving the plaintiff in the aforesaid cases. The investigation of those cases had been entrusted to the Police machinery; and it was during the investigation of those cases, that the Police officers, defendants 6, 7, 8 and 9 were concerned with the investigation. It was at that stage, that they are said to have "joined the conspiracy" as aforesaid and are, therefore, said to be "liable as joint tort-feasors." (Paras 34,35 and 36).

29. Some mote press statements by Mr. Sadiq and Mr. D.P. Dhar of September. 1964 and October 1964 have been cited under paras 38, 39 to show that the plaintiff's detention and Police investigation against him were all malicious.

30. The materials collected during the investigation were placed before the Government and they were satisfied that that was no case against the plaintiff; so as to put him on trial in any criminal case; knowing that it would not succeed. But as the real object of the Sadiq Ministry flowing from the said conspiracy was to expose the plaintiff to public ignominy, it got a commission appointed to inquire into the conduct of the plaintiff, and this was done by a notification dated 30th January 1905. A number of imputations and false allegations were cooked up by the Police in conspiracy with defendants 1 to 5, and they were referred to for enquiry by the Commission. These imputations were all libellous against the plaintiff. The plaintiff, however, withdrew from the said Commission, and even then, the Commission found a number of allegations as not made out, or baseless (Paras 34, 44 and 46). The conclusions of all the averments made in the lengthy plaint are summed up in para 47 to the effect that "as a result of the conspiracy, the plaintiff has suffered irreparable and irretrievable damage to his life, liberty and reputation, that his health during the period of his wrongful detention was totally wrecked as a result whereof, he had to remain bed-tied for about a year and a half, and had to incur enormous expenses for his treatment, but he has not been thoroughly restored to health, and still has to lead a medically punctuated life, and finally, he has been lowered in the estimation of all right-thinking men.

31. The plaintiff has summed up his case also in the beginning of the plaint under para 1, to the following effect :-

"This is a suit for damage arising from a conspiracy of the defendants and others against the plaintiff for the annihilation of his political, moral and social life by means of false imprisonment, character-assassination, persecution of the plaintiff and his members of the family, fabrication of false evidence, abuse of the processes of law, and of their official position motivated by personal spite and political vendetta, resulting in grave damage to the plaintiff's life, liberty and reputation as an individual citizen as well as in the capacity of the Prime Minister of the State of Jammu and Kashmir, which office he occupied for well-nigh fourteen years."

32. After recounting all the overt acts said to have been done in pursuance of the conspiracy, in para 48 it is said :

"The plaintiff claims as token damages the amount of ₹ 21,000 from the defendants who are joint tort-feasors."

33. Para 50 reads as follows :-

"The cause of action arose on the night between 21st and 22nd September, 1964 when the said conspiracy was hatched against the plaintiff".

34. This finishes the material averments in the plaint. It would appear that the suit essentially is one in tort for damages, rather "token damages" of ₹ 21,000 as distinct from any "special damage" and it is said to arise from A conspiracy of the defendants and others against the plaintiff for his defamation by means of false imprisonment, persecution and false imputations, undermining his character and social position in the eye of the public.

35. Now the first question for consideration is, if the plaint is hit by the provision of Section 80 of the Civil Procedure Code already quoted.

36. If the defendants are found to be public officers within the meaning of Section 80, they were, on the allegations in the plaint, entitled to a notice under Section 80 of the Civil Procedure Code.

37. There is no mention in the plaint that any notice under Section 80 of the Civil Procedure Code was served on these defendants and, therefore, it must be held that they were not served with any notice under Section 80 of the Civil Procedure Code.

38. The next question for consideration is, whether these defendants are "public officers" within the meaning of Section 80 of the Code and whether the acts attributed to them were official acts, done in the discharge of their duties, howsoever malicious they might have been.

39. I have quoted at length from the plaint and it will appear that practically all the acts complained of in the plaint were done by the defendants, with the exception of defendant No. 11, in their official capacity, and in the discharge of their official duties, no matter, they may have been actuated with mala fide intention. If official act is done even with mala fide intention, but if it is done in official discharge of duty or under the colour of office, it will still be an official act so as to attract the provision of Section 80 of the Code.

40. As for defendants 8, 7, 8, 9 and 10, they are all described in the plaint as Public officers, and there can be no doubt about them that they are public officers Mr. Bhasin frankly conceded, as he is usually characterized with such frankness that as no notice was served on them under Section 80 of the Civil Procedure Code, the plaint may be rejected as against them alone, as can easily be done under the law, since the plaintiff's claim in tort is joint and several against all the defendants-In this contention, he seems to be quite correct. Mr. Bhasin, however, very much emphasized that defendants 1 to 5 who were in the ministry at the relevant time cannot be deemed to be "public officers" within the meaning of Section 80 of the Code.

41. Public officer, as defined in Section 2(17)(h), C.P.C, includes "every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty", the same as is the definition of "public servant" in the last sentence of Clause 9 to Section 21 of the Ranbir Penal Code which also is the same as the Indian Penal Code. The definition of the 'public servant' therein includes "every officer in the service of pay of the Government or remunerated by fees or commission for the performance of any public duty.

42. Mr. Attorney-General has referred to a decision of the Supreme Court in *Shiv Bahadur v. State of Vindhya Pradesh*³. wherein a Public servant" as denned in Section 21 the Penal Code, was held to include a Minister of the State of Vindhya Pradesh, independent of an Ordinance 48 of 1949 which had been issued to include specifically a Minister of a State within the definition of a "public servant".

43. Mr. Attorney-General also cited the decision of the Privy Council in *Emperor v. Sibnath Banerji*⁴, wherein the Home Minister was held to be "an officer subordinate to the Governor" within the meaning of Section 49 (1) of the Government of India Act, 1935. I would not, however, seek any support from this decision, since the main question involved in that case was, whether the Home Minister was an officer subordinate to the Governor. Besides, that decision was based on the interpretation of a provision in the Government of India Act, 1935; as different from our Constitution.

44. The decision of the Supreme Court, referred to above, is, however, quite clear on the point. Mr. Bhasin, however, contended that the definition of a Government servant in Section 21 of the Indian Penal Code cannot be extended to the definition of a "public officer" in the Civil Procedure Code. But, as I have already indicated, the definition of a "Government servant" and a "public officer" is quite identical for our present purpose and, therefore, the contention of Mr. Bhasin seems to have little force.

45. A Minister of a State is paid from its public exchequer, and he is paid for; doing

³ AIR 1953 SC 394 at p. 401

⁴ AIR 1945 PC 156

public duty and, in my opinion, a Minister is a "public officer" within the meaning of Section 80 as defined in Section 2 (17)(h) of the Civil Procedure Code. Thus, defendants 1 to 5 were also public officers within the meaning of Section 80, Civil Procedure Code. They have been sued, as it has been seen above, for acts done by them in discharge of their official duties, and even if they have bean mala fide, they were also entitled to a notice under Section 80 of the Civil Procedure Code. The provision of this section is mandatory as was held in AIR 1927 PC 176 already referred to and 10 many other cases decided by different High Courts in India which need not be referred to.

46. The plaint has to be rejected for want of service of notice, even as against defendants 1 to 5, apart from defendants 6 to 10.

47. As for defendant No. 11, however, who is at present in the Central Ministry, there is nothing to indicate that he joined the alleged conspiracy, and did any overt act against the plaintiff, acting in his official capacity. It is he alone, against whom, no notice under Section 80 of the Civil Procedure Code seems to have been necessary, and, therefore, the plaint against him cannot be

rejected on this ground.

48. The next question is whether the suit on the allegations in the plaint itself is barred by limitation. According to the defendants, the rule of one years limitation us prescribed under Articles 19, 22, 24 and 25 of the Limitation Act should apply from the date or dates of the tortious acts complained of, and not from the date of the alleged conspiracy which was, according to the plaint, hatched during the night between 21st and 22nd September 1904, long before one year from the date of the filing of the suit on 3-8-1967. According to the contention of the counsel for the plaintiff, however, the date of limitation is to be computed from the dates of the conspiracy, and not from the dates of the tortious acts committed in pursuance of the conspiracy. It is said that the conspiracy is an independant cause of action from the tortious acts, resulting from the conspiracy, and, therefore, when both causes or action are pleaded, limitation would run from the date of the conspiracy. Since no period of limitation is prescribed in the Limitation Act for conspiracy, the residuary Article 119 of the Limitation Act, which prescribes a period of six years' limitation, should apply.

49. Mr. Attorney-General, on behalf of the defendant, has, however, contended that conspiracy to injure by itself is not actionable in tort, unless some Injury is caused resulting in damage, and when any injury resulting in damage accrues, the conspiracy merges into tortious act or acts. It is said, that a conspiracy, when it results in tortious act or acts, disappears as an independent cause of action. The gist of tort being damage, arid when in pursuance of it conspiracy, individual torts are committed by the defendants, notion for damage in tort would lie within one year from the date or dates of such tort or torts, and not from the date of the conspiracy. For, in such cases, the conspiracy merges into tort or torts.

50. In support of his contention, Mr. Attorney-General has relied upon the decision in *Ward v. Lewis reported in*⁵ as also on a decision of a Special Bench of the Calcutta High Court in *D. Weston v. Peary Mohan Das, reported in*⁶

⁵1955-1 All ER 55

⁶ AIR 1914 Cal 396(SB)

in Ward's case. 1955-1 All ER 55, Denning, L.J. observed :

"It is important to remember that when a tort has been committed by two or more persons, an allegation of a prior conspiracy to commit the tort adds nothing. The prior agreement merges in the tort. A party is not allowed to gain an added advantage by charging conspiracy when the agreement has become merged in the tort. It is sometimes sought by charging conspiracy, to get an added advantage, for instance in proceedings for discovery, or by getting in evidence which would not be admissible in a straight action in tort, or to overcome substantive rules of law such as here the rules concerning republication of slanders. When the Court sees attempts of that kind being made, it will discourage them by striking out the allegations of conspiracy on the simple ground that the conspiracy adds nothing when the tort has in fact been committed."

51. This was a case in which no special damage bad been claimed at first, and when the plaintiff wanted to amend his plaint, pleading special damages, amendment was not allowed.

52. The Calcutta case was one for damage for wrongful confinement and malicious prosecution of the plaintiff, and defendants had pleaded limitation of one year rule under Articles 19 and 23 of the Limitation Act. At the time of hearing of the appeal, the cause was sought to be based on the conspiracy between several defendants on the ground that as conspiracy was a distinct cause of action by itself, the rule of one year limitation would not apply, but the plaintiff's contention was overruled. D. Chatterji, J., observed at p. 480 :

"I do not think there is any authority for holding that a tort, when committed by several persons acting in concert, is different from the same tort committed by a single individual. A trespass is a trespass, whether it is committed by one person or by more, and so it is malicious prosecution or false imprisonment. The combination in such cases may be an element for aggravation in the assessment of damages, but does not to my mind suffice to make it a different tort."

His Lordship, referring to a number of cases, has further observed :

"In this country the Legislature had made a general provision that suits for damages for false imprisonment or malicious prosecution must be brought within a certain period, and no distinction is made in respect of the number of persons by whom the wrong may have been perpetrated. If it were not so, the greatest uncertainty would be introduced into the law of limitation applicable to a particular case, for, a plaintiff might easily take his case out of the statute by charging more than one person with a wrong, a defendant would not know when he is secure against a charge. ' But supposing that conspiracy to perpetrate a wrong was a separate cause of action by itself, it would not be actionable unless it caused special damage by itself. In the present case, however, the whole damage caused is by reason of the imprisonment and prosecution. The plaintiff deposes that the imprisonment cost him ₹ 1,000 in law charges, and that is the only damage proved and decreed. The present case, therefore, considered as a suit for damage for wrongful confinement and malicious prosecution is barred by limitation under Articles 19 and 23, Schedule 1, Limitation Act."

53. The present case is practically on all fours with the Calcutta case. In the pre-tenet action also, the - plaintiff has claimed no "special damage" but has claimed only ordinary damage rather a "token damage of ₹ 21,000" for his false and malicious imprisonment, prosecution and other tortious acts enumerated in his plaint, all as a result of the alleged conspiracy hatched in September, 1964. I would accept the contention of the Attorney-General, and respectfully adopt the reasonings of D. Chatterjee, J., in the above Calcutta case in holding that limitation would run from the date of the tortious acts.

54. Mr. Bhasin, counsel for the plaintiff, however, has tried to repel the contention of the Attorney-General by saying that the cause of action in this case consists of a bundle of allegations, namely the conspiracy in the first instance and, thereafter, the commission of the various tortious acts, committed in pursuance to the conspiracy. It is said that the conspiracy was

not with the object to commit only one particular injury so as to compute the period of limitation from the date of the injury, but because a series of overt acts were committed in pursuance to the conspiracy, the limitation should run from the date of the conspiracy, even though no special damage has been claimed, and not from the date of the tortious acts. But Mr. Bhasin could cite no authority in support of his proposition. I wonder if the same set of facts could constitute two causes of action one for the conspiracy, and the other for the tort or torts, resulting from the same conspiracy. I am of the opinion that if a tort or torts are committed by several persons, acting in a common conspiracy, the charge of conspiracy as previously indicated, merges into the tortious act.

55. A conspiracy without any special damage resulting from the conspiracy charged, cannot by itself be an independent cause of action, when torts have been committed even by the reason of the conspiracy. The plaintiff, while charging the defendants with conspiracy in various paragraphs of his plaint, has not claimed any special damage for it but, instead, he has himself charged them clearly in paragraphs 36 and 48 of the plaint with having been "joint tort-feasors" and, for which, he has claimed an ordinary damage of ₹ 21,000 as arising from all the joint torts. In the circumstances, the charge of conspiracy has to be ignored as an independent cause of action from the torts, or even struck down as in the Ward's case, referred to earlier. Limitation has to be computed in this case from the dates of the various individual torts as given in the plaint.

56. For all the tortious acts complained of in the plaint the rule of one year limitation would apply as provided in Articles 19, 22, 24 and 25 of the Limitation Act.

57. While stating the facts of the case, I have indicated that all the tortious acts complained of had been committed in 1964, and also the notification appointing the Commission of Inquiry against the plaintiff came in 1965 about 2 years before the expiry of one year, counting till to the date of the filing of the suit on 3-8-1967. Not even one of the tortious acts is said to have been committed by the defendants any time within one year till the date of filing of the suit. Hence the suit is clearly barred by limitation.

58. Having carefully gone through the whole of the plaint and, for the reasons, I have stated, the plaint must be rejected as barred by time against all the eleven defendants, and also for the reasons of non-compliance with the provisions of Section 80 of the Civil Procedure Code against defendants 1 to 10 only.

59. I may observe that I have considered it necessary in the interest of administration of justice to decide these questions now, when the decision is based on a consideration of the plaint alone and no other material and, therefore, it has caused no prejudice to the plaintiff. On the other hand, it would avoid any unnecessary and expensive prolongation of the suit, when the result, in my opinion, must have been the same on these points, even after full trial. Also, rejection of the plaint does not debar the plaintiff from filing a fresh suit, if so advised, after complying with the necessary provisions of law, depending, of course, on the law of limitation.

60. The plaint is rejected under Order 7, Rule 11 read with Section 151 of Civil Procedure Code. There will be no order as to costs, since the defendants have not as yet filed their written statement.

Plaint rejected.