

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR  
BEFORE**

**HON'BLE SHRI JUSTICE VINAY SARAF**

**ELECTION PETITION No. 8 of 2024**

***KRISHNA PATI TRIPATHI***

***Versus***

***ABHAY KUMAR MISHRA***

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**Appearance:**

*Shri R. K. Sanghi, learned Senior Counsel with Shri Siddharth Kumar Sharma, advocate for the petitioner.*

*Shri Sanjay Agrawal, learned Senior Counsel with Ms. Neerja Agrawal, advocate for the respondent.*

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**Reserved on: 06.02.2026**

**Post for : 20.03.2026**

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**Order**

1. This order will disposed of **I.A. No. 22204/2024** dated 17.10.2024 filed on behalf of the respondent for rejection of petition under Order 7 Rule 11 (a) of the Code of Civil Procedure.

2. This election petition has been filed by the petitioner Krishna Pati Tripathi under Sections 80, 80-A, 81 and Section 100(1)(d)(i) & (iv) of the Representation of People Act, 1951 (hereinafter referred to as 'RP Act') questioning the election

of the respondent Abhay Kumar Mishra as member of M.P. Legislative Assembly from 69 Semariya Vidhan Sabha Constituency, District Rewa, Madhya Pradesh.

3. On 21.10.2023, the gazette notification was issued for general election of the Legislative Assemblies of Madhya Pradesh- 2023 under Section 15(2) of the RP Act, by which the initial date for nomination was declared as 21.10.2023 and last date for submission of nomination was fixed as 30.10.2023. The Polling was scheduled for 17.11.2023 however date for counting and declaration was fixed as 03.12.2023.

4. The petitioner contested the said election as candidate of Bhartiya Janta Party (BJP) from Semariya 69, District Rewa, wherein the respondent contested the election as candidate of Indian National Congress (INC) and both of them filed their nomination before the Returning Officer along with Form No. 26 as prescribed in Conduct of Election Rules, 1961 (hereinafter referred to as 'the Rules, 1961'). The election was conducted on 17.11.2023 and result was declared by the election commission on 03.12.2023, wherein the respondent was declared as winning/returned candidate in the State Legislative Assemblies Elections from Semariya 69, District Rewa Constituency. The respondent secured 56024 votes, whereas the petitioner secured 55387 votes and the respondent defeated the petitioner with the margin of 637 votes. There was total 15 candidates, who contested the election from Semariya 69 Constituency.

5. After declaration of result on 16.01.2024, the instant election petition has been filed by the petitioner before Registrar Judicial-II of this Court questioning the election of the respondent and for declaring the election of the respondent to be void. The grounds raised by the petitioner in the election petition *inter alia*:-

(a) That the affidavit (Form 26) annexed with the nomination paper was not in consonance with the Rules, 1961 and in the affidavit the respondent did not disclose his criminal antecedents, whereas the same was mandatory as per the Rules. The respondent in paragraphs 5 and 6 has casually mentioned “Not applicable” despite the fact that in the past, several criminal cases were registered against the respondent. The petitioner annexed the list of criminal cases obtained under RTI Act along with the petition as Annexure P-6, which reflects that nine criminal cases were registered against the respondent in the past.

(b) The respondent in the affidavit (Form 26) filed along with nomination paper did not declare the outstanding liabilities due to financial institution/Banks and this important piece of information was deliberately suppressed by the respondent in his affidavit filed with the nomination form. As per petitioner, the respondent availed loan facility from the ICICI Bank Ltd. in the year 2003 for equipment purchase and such loan amount was not repaid by respondent till date. The petitioner attached the copy of loan account statement of account no. LQJBL00001515951 after obtaining from ICICI Bank Limited on 08.01.2024 and filed the same along with the petition as Annexure P-8, which reflects that Mr. Abhay Kumar Mishra was sanctioned term loan of Rs. 23,00,000/- on 17.09.2023 and Rs. 50,87,672/- was due as on 10.01.2023. As per the petition, the said liability was suppressed by the respondent in his affidavit. It is also alleged that the respondent has deliberately disclosed the financial liability of State Bank of India only and outstanding liability of equipment payable towards the ICICI Bank Ltd was not disclosed purposely.

(c) In the nomination form and the affidavit (Form 26) enclosed with the nomination form, the respondent has suppressed the complete details of

profession or occupation of himself and his spouse in point no. 9(a) and 9(b) and details of sources of income in point 9(A). The respondent mentioned his source of income as pension from M.P. State Legislative Assembly and salary from Private Limited Companies. However the names of the companies were not disclosed in the nomination paper or in the affidavit, which is a material defect, which plays a vital role in materially affecting the result of the election.

(d) Section 9(a) of R.P. Act, 1959 provides disqualification of person, if there subsists an active contract between the contesting candidate and appropriate government for the supply of goods or for the execution of the work undertaken by the government. There is an active subsisting contract between PWD-NH Division and the company in which respondent was holding the shares and therefore, the respondent was disqualified from contesting the State Legislative Assembly Election.

6. The election petition has been filed stating that due to the aforesaid business, the result of the election has been materially affected by improper acceptance of nomination form of the respondent and the provisions provided under Section 33 of the RP Act read with Rule 4-A of the Rules, 1961 has not been complied with by the respondent. On the aforesaid grounds, the instant election petition has been preferred seeking declaration of election of respondent as void and *nonest*.

7. The respondent appeared in the case and on 17.10.2024 filed an application under Order 7 Rule 11(a) of the CPC (I.A.No.22204/2024) stating that the allegation of the petitioner that the respondent has made false declaration in Form 26 affidavit, is not correct and the respondent has disclosed all the details in the affidavit. It is stated in the application that the details obtained from the police

authorities in respect of criminal cases registered against the respondent was of 12.07.2006, whereas thereafter the respondent has been acquitted in all the nine cases and not a single criminal case was pending on the date of submission of nomination paper and the respondent has not been convicted in any case therefore, there was no need to provide details of the disposed of cases, wherein the respondent has been acquitted. Copies of the some of the judgments delivered in these cases were filed by the respondent along with the application.

8. It is also stated in the application that loan was obtained by M/s Abhay Mishra, Contractor, a Partnership firm constituted by deed of partnership in the year 2002, wherein the respondent was one of the partner till his retirement and w.e.f. 17.10.2008 he has been retired from the firm with immediate effect. The loan was not obtained by the respondent in his personal capacity and it was obtained by partnership firm in the year 2003 and thereafter the respondent retired from the firm on 17.10.2008 therefore, the outstanding amount of loan is not liability of the respondent and there was no obligation upon the respondent to disclose this liability in the nomination paper and affidavit filed along with the nomination form. Copies of the partnership deed as well as Form 5 obtained from the office of Assistant Registrar filed by the respondent along with the application in support of his contention. The respondent has also obtained the letter from the Bank and the same has also been enclosed along with the application.

9. Regarding the allegation of non-disclosure of source of income, the respondent submits that he has rightly disclosed his source of income i.e. pension from M.P. State Legislative Assembly and salary from the Private Limited Companies and nothing has been suppressed. The respondent has already resigned from the directorship of these companies much before the submission of

the nomination form and this fact was duly recorded on the official website of the Ministry of Corporate Affairs. The copies of the document downloaded from the official website of the Ministry of Corporate Affairs are also enclosed along with the application.

**10.** It is submitted in the application that there may be active contract between the appropriate government and the company in which the respondent was earlier Director but as he has already resigned from the Directorship of the Company and these resignation was duly informed to the Ministry of Corporate Affairs and therefore, the allegation of disqualification is also incorrect.

**11.** Upon the aforesaid grounds and the documents filed in support of the contentions of the respondent along with the application, the respondent prayed for rejection of the election petition on the ground that the same does not disclose any cause of action and there was no cause arose to sue or file such election petition, which is manifestly vexatious and meritless. The respondent prayed for rejection of the petition.

**12.** The election petitioner in his reply to I.A. No. 22204/2024 refuted the contentions made in the application and reiterated the grounds raised in the election petition. It is stated in the reply that nondisclosure of the criminal antecedents is accepted by the respondent himself and it is also accepted by respondent that as many as nine criminal cases were registered against him in the past, therefore, it is a matter of evidence that whether those cases are still pending or already disposed of. Similarly, the respondent has resigned from the partnership firm or companies also requires recording of evidence. The application filed under Order 7 Rule 11(a) of the CPC has been preferred just to delay the trial and the same is liable to be dismissed.

13. Heard Shri R.K. Sanghi, learned Senior Counsel for the petitioner and Shri Sanjay Agrawal, learned Senior Counsel for the respondent.

14. Learned counsel for the respondent submits that the election petition has been preferred on the ground of nondisclosure of the criminal antecedents and financial status, whereas from the perusal of the documents enclosed along with the application I.A. No. 22204/2024, it is apparent that no ground is actually available to the petitioner to file subject election petition and the same has been filed to take revenge from the returned candidate. All the documents are in public domain and can be downloaded from the official website. The respondent already resigned from various companies and this fact was duly intimated to the Ministry of Corporate Affairs. No criminal case was pending against the respondent and the respondent had not been convicted in any criminal case in the past therefore, respondent was not under obligation to disclose the fact that nine criminal cases were registered against him in the past, wherein he had already been acquitted. He further submits that the respondent has not obtained the loan from ICICI Bank in his personal capacity and loan facility was availed by the partnership firm, wherein now the respondent is not a partner, therefore, the allegation of non-disclosure of outstanding financial liability is also misconceived. Similarly, the respondent has already resigned from various companies including the company which is in contract with State Government for construction of road. The Company is a separate entity and the respondent is not connected with that company as on today.

15. Shri Agrawal, learned counsel for the respondent submits that under the provisions of Order 7 Rule 11 (a) of the CPC, the election petition, which is *prima facie* vexatious, can be rejected as the same does not disclose any cause of

action. He further submits that court must be vigilant against the suppression of facts or abuse of process of law. He further submits that applying the provisions of Order 7 Rule 11(a) of the CPC to the facts of the case at hand, the election petition is liable to be rejected being vexatious and based on illusionary cause of action.

16. Learned Senior Counsel for the respondent has relied on the judgments delivered by the Supreme Court and various High Courts in the matters of **T. Arivandandam Vs. T.V. Satyapal**, (1977) 4 SCC 467, **Dahi Ben Vs. Arvind Bhai** (2020) 7 SCC 366, **Ramisetty Venkatana & Anr. Vs. Nasyam Jamal Saheb** (2023 SCC Online SC 521), **S.P. Chengalvaraya Naidu Vs. Jaganath** AIR 1994 SC 853, **RBANMS Educational Institution Vs. B. Gunashekar** 2025 SCC OnLine 793, **Ballam Trifla Singh Vs. Gyan Prakash Shukla** 2025 SCC OnLine Bom. 1171, **Vshisht Narain Sharma Vs. Dev Chandra** (1954) 2 SCC 32, **Kamta Prasad Upadhyay Vs. Sarjoo Prasad Tiwari** (1969) 3 SCC 622, **Mangani Lal Mandal Vs. Bishnu Deo Bhandari** (2012) 3 SCC 314, **Kanimozhi Karunanidhi Vs. A. Santhana Kumar** (2024) 18 SCC 592, **Dasanglu Pul Vs. Lupalum Kri** (2024) 18 SCC 817, **Karikho Kri Vs. Nuney Tayang** (2024) 15 SCC 112, **Ram Sukh Vs. Dinesh Aggrawal** (2009) 10 SCC 541, **Suresh Chandra Bhandari Vs. Smt. Neena Vikram** decided on 15.07.2024 (E.P.No. 16 of 2024) by M.P. High Court, Indore Bench, **Ram Gareeb Vs. Ajay Arjun Singh** (E.P.No.6/2024) and **Rakesh Kumar Pandey Vs. Ajay Arjun Singh** (E.P.No.7/2024) on 22.08.2024 and Civil Appeal No.13015/2024 **Ajmera Shyam Vs. Smt. Kova Laxmi** on 14.08.2025. Shri Agrawal, learned Senior Counsel prays for rejection of the election petition by allowing the application filed under Order 7 Rule 11 (a) of the CPC .

17. *Per contra*, Shri R.K. Sanghi, learned Senior Counsel vehemently opposed the application and submits that the election petition has been filed on the basis of the definite and specific allegations. In the election petition, the petitioner has alleged that nine criminal cases were registered against the respondent in the past, however, the respondent did not disclose any criminal case and simply mentioned “Not Applicable” in the nomination form. He further submits that the voters of the constituency have right to know about the criminal antecedents of the candidate and by suppressing the same, the respondent has deprived the voters to know the candidate. He further submits that registration of the criminal case is not disputed in the case as the respondent himself has claimed acquittal in all the cases, which is a matter of evidence. Shri Sanghi submits that ICICI Bank Ltd. has issued loan statement in respect of Bank account of Mr. Abhay Mishra and as per the loan amount of Rs. 50,87,672/- was outstanding against the borrower as on 10.01.2023 and therefore, the respondent was under obligation to disclose the liability in the affidavit which, has not been disclosed. The fact that the loan was obtained by a firm and after obtaining the loan, the respondent retired from the partnership firm, is a subject matter of evidence and these defenses of the respondent are not acceptable at this stage. He further submits that though the respondent disclosed in the nomination paper and in the affidavit filed along with the form that he is earning pension from M.P. State Legislative Assembly and salaries from Private Limited Companies, the respondent deliberately did not disclose the details of these private limited companies and suppressed these facts in the nomination form deliberately.

18. Learned Senior Counsel has relied upon the judgments delivered by the Supreme Court in the matter of **Krishnamoorthy Vs. Sivakumar** (2015) 3 SCC 467, **Bhim Rao Baswanth Rao Patil Vs. Madan Mohan Rao**, (2023) 18 SCC

231, **Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy** (2018) 14 SCC 1, **Union of India Vs. Assn. for Democratic Reforms** (2002) 5 SCC 294, **Shri Ram Naresh Yadav Vs. The State of M.P.** (2015) 5 SCC 467, **Resurgence India Vs. Election Commission of India & Anr.** (2014) 14 SCC 189 and submits that the application preferred for rejection of the election petition is liable to be dismissed with heavy costs.

19. Heard learned counsel for the petitioner and the respondent and perused the record. Since in the subject election petition, the application has been moved under Order 7 Rule 11 (a) of the CPC for rejection of election petition on the ground of non-disclosure of cause of action, it would be relevant to consider the scope of Order 7 Rule 11 (a) of the CPC and provisions, which reads as under:

**“ Order VII**

*11. Rejection of plaint.— The plaint shall be rejected in the following cases:—*

*(a) where it does not disclose a cause of action;”*

20. The provision of Order 7 Rule 11 (a) of the CPC is independent and provides a special remedy to the defendant. The special remedy, by which the courts are empowered to summarily dismiss the suit at the threshold without proceeding to record evidence and conducting a trial, if it is satisfy that no cause of action is disclosed in the suit. However, if the allegations in the petition prima facie show cause of action, the court cannot embark on an enquiry whether the allegations are true or not. The Supreme Court has discussed the provisions of Order 7 Rule 11 of the CPC in **Salim Bhai Vs. State of Maharashtra**, (2003) 1 SCC 557 and held that general facts for deciding such an application are the averments in the plaint and not the pleas taken in the written statement. It is

further held that a perusal of Order 7 Rule 11 of the CPC makes it clear that relevant facts, which need to be looked into for deciding an application thereunder, are averments in the plaint. The trial court can reject the plaint under Order 7 Rule 11 of the CPC at any stage of suit and the averments in the plaint can only be looked into and the pleas taken by the defendant would be wholly irrelevant at that stage. This proposition further explained by the Supreme Court in **Dahiben** (supra), wherein the Supreme Court has held that to ascertain that the plaint discloses cause of action or not, the Court has to exercise in conjunction with the document relied upon the plaint as a whole without addition or subtraction of any words and if cause of action *prima facie* discloses, the court are not required to further enquire about truthfulness of allegation of facts and the pleas taken by the defendant in the written statement also not relevant at that stage. However, Court finds suit to be manifestly vexatious not disclosing any right to sue, may reject the plaint.

21. The relevant paragraphs of the judgment in **Dahiben** (supra) are as under:

*“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*

*23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*

*“11. Rejection of plaint.—The plaint shall be rejected in the following cases—*

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*

*(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by*

*the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of Rule 9:*

*Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”*

*23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

*23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

*23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

*“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise*

*the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

*23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

*23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

*23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

*“14. Production of document on which plaintiff sues or relies.—*

*(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.*

*(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”*

*23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, 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.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

*“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a*

*right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

*23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*

*23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.*

*x x x x x*

*24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

*24.1. In Swamy Atmananda v. Sri Ramakrishna Tapovanam [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)*

*“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”*

24.2. In *T. Arivandandam v. T.V. Satyapal* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”

24.3. Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [*ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”

22. In view of the above legal position, it is clear that provisions of Order 7 Rule 11 of the CPC enables the Court to terminate the proceedings at the threshold where the plaintiff’s case even if accepted in its entirety, do not disclose any cause of action. However, the Supreme Court in the matter of **B. Gunashekar** (supra) has held that power to reject the plaint under this provision is not merely procedural, but substantive and for preventing abuse of judicial process and ensuring that the court’s time is not wasted or vexatious claims failing to disclose any cause of action to sustain the suit.

23. Considering the above pronouncement of Supreme Court, it requires careful consideration of the application filed under Order 7 Rule 11 (a) of the CPC and examination of the election petition to ascertain that whether it discloses the cause of action or not.

24. Learned counsel for the respondent relied upon the judgments delivered by the Supreme Court in the matter of **Vashisht Narain Sharma** (supra), **Kamta Prasad Upadhyay** (supra), **Magnilal Madanlal** (supra), **Dasan Lupu** (supra) and **Tarico Khari** (supra), wherein the final judgments were under challenge and the issue of rejection of claim was not involved. Consideration of material and evidence adduced by the parties in trial is a different exercise and consideration of the pleading for the purpose of examining that prima facie it discloses the cause of action or not is a different exercise. Therefore, these judgments are not relevant for the purpose of deciding the subject application.

25. The Supreme Court in the matter of **Union of India Vs. Assn. for Democratic Reforms** (2002) 5 SCC 294 considered the right of the voters to know antecedents including the criminal past of a candidate to membership of parliament or Legislative Assembly and held that it is fundamental right of every voter to know the antecedents of the candidate.

26. Thereafter, the necessary amendments were brought in and it made mandatory to disclose the criminal antecedents and backgrounds and all other details by the candidates along with the nomination paper and issue was considered in the matter of **Resurgence India Vs. Election Commission of India & Anr.** (2014) 14 SCC 189, wherein the Supreme Court has summarized the direction as under :-

*“29. What emerges from the above discussion can be summarised in the form of the following directions:*

*29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.*

*29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.*

*29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.*

*29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the “right to know” of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.*

*29.5. We clarify to the extent that para 73 of People's Union for Civil Liberties case [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars.*

*29.6. The candidate must take the minimum effort to explicitly remark as “NIL” or “Not Applicable” or “Not known” in the columns and not to leave the particulars blank.*

*29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her.*

27. The disclosure of criminal antecedents and financial status are mandatory as per the amended provision of law and Supreme Court has held that non-disclosure of evidence creates impediment in free exercise of the electoral right. Concealment and suppression of this nature deprive the voters to make an informed and advised choice as a consequence of which come within the compartment of direct or indirect interference or attempt to interfere in the exercise to go by the electorate on the part of the candidate. It is further held by the Supreme Court in the matter of **Krishnamoorthi** (supra) that if the candidate gives all the particulars and despite that he secures the votes that will be an informed and advised free exercise by the electorate. In the election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved and how there has been non-disclosure in the affidavit. When that is established, it would amount to corrupt practice. It has to be determined in an election petition by the election tribunal. In the corrupt practice, the election tribunal or the High Court is bound to declare null and void, the election of the returned candidate.

28. The Supreme Court in the matter of **Kanimozhi Karunanidhi** (supra) has held as under:

*“22. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely, — “an election petition must contain a concise statement of material facts on which the petitioner relies”, is that such non-compliance of Section 83(1)(a) read with Order 7 Rule*

*11CPC, may entail dismissal of the Election Petition right at the threshold. “Material facts” are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.*

*23. A three-Judge Bench in Hari Shanker Jain v. Sonia Gandhi [Hari Shanker Jain v. Sonia Gandhi, (2001) 8 SCC 233] had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading “material facts” within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order 7 Rule 11CPC. It was observed in paras 23 and 24 as under: (SCC pp. 251-52)*

*“23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238] , Jitendra Bahadur Singh v. Kirshna Behari [Jitendra Bahadur Singh v. Kirshna Behari, (1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not*

*amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [V.S. Achuthanandan v. P.J. Francis, (1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.*

*24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.”*

\* \* \* \* \*

*26. In Ram Sukh v. Dinesh Aggarwal [Ram Sukh v. Dinesh Aggarwal, (2009) 10 SCC 541] , this Court again while examining the maintainability of election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the election petition, upheld the judgment [Ram Sukh v. Dinesh Aggarwal, 2008 SCC OnLine Utt 1] of the High Court/Election Tribunal rejecting the election petition at the threshold. The Court observed in paras 14 to 21 as under: (Ram Sukh case [Ram Sukh v. Dinesh Aggarwal, (2009) 10 SCC 541] , SCC pp. 548-51)*

*“14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [Samant N. Balkrishna v. George Fernandez, (1969) 3*

SCC 238] . *Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:*

(i) *Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;*

(ii) *omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;*

(iii) *the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;*

(iv) *material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and*

(v) *in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.*

15. *At this juncture, in order to appreciate the real object and purport of the phrase “material facts”, particularly with reference to election law, it would be appropriate to notice the distinction between the phrases “material facts” as appearing in clause (a) and “particulars” as appearing in clause (b) of sub-section (1) of Section 83. As stated above, “material facts” are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. “Particulars”, on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike “material facts” which provide the basic foundation on which the entire edifice of the election petition is built, “particulars” are to be stated to ensure that the opposite party is not taken by surprise.*

16. *The distinction between “material facts” and “particulars” and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)*

*‘50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the*

*pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.'*

17. Now, before examining the rival submissions in the light of the aforesaid legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(i) *that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and*

(ii) *since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into subsection (1) of Section 86 an additional ground.*

*In our opinion, both the contentions are misconceived and untenable.*

18. *Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.*

19. *Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negated by a three-Judge Bench of this Court in Hardwari Lal v. Kanwal Singh [Hardwari Lal v. Kanwal Singh, (1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)*

*'23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.'*

*20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315]. Referring to earlier pronouncements of this Court in Samant N. Balkrishna [Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238] and Udhav Singh v. Madhav Rao Scindia [Udhav Singh v. Madhav Rao Scindia, (1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.*

*21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated, the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:*

*'100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section*

*(2) if the High Court is of opinion—*

*\* \* \* \**

*(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—*

*\* \* \* \**

*(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,*

*the High Court shall declare the election of the returned candidate to be void.'*

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.'*

*27. The legal position enunciated in aforesaid cases may be summed up as under :*

*27.1. Section 83(1)(a) of the RP Act, 1951 mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code.*

*27.2. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is, every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.*

*27.3. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.*

*27.4. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.*

*27.5. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.*

*27.6. An election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under clause (a) of Rule 11 of Order 7CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.*

\* \* \* \* \*

*35. As elaborately discussed earlier, Section 83(1)(a) of the RP Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with the provisions of the Constitution or of the RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order 7 Rule 11(a)CPC read with Section 83(i)(a) of the RP Act, 1951.”*

**29.** Considering the above pronouncement when the facts of the case in hand are examined, it reveals that undisputedly, some criminal cases were registered against the returned candidate in the past and in the affidavit the returned candidate mentioned “Not Applicable”. The petitioner averred in the petition that criminal cases were registered against the returned candidate in the past and the same were not disclosed by the returned candidate. To support his contention, the petitioner filed the list of the criminal cases obtained under RTI, which fortifies the allegation of the petitioner and therefore, after examining the pleadings and the documents in support of the pleadings, it *prima facie* discloses the cause of action.

30. Learned Senior Counsel for the respondent submits that in fact the petitioner obtained the information under RTI several years back and on the date of filing of the nomination paper, no criminal case was pending, therefore, there was no obligation upon the returned candidate to disclose those cases. He filed the copies of some of the judgments and the information of disposal of other cases obtained under RTI. The documents filed by the respondent in his favour are not relevant for the purpose of examining the plaint for the purpose of deciding the issue whether the claim discloses the cause of action or not. Similarly, it is alleged in the election petition that financial loan was availed by the respondent from the ICICI Bank in 2003 and there is outstanding of Rs. 50,87,672/-. The copy of loan account statement was also obtained by the petitioner from the Bank and submitted along with the petition, however, in the application, it is stated by the returned candidate that loan was not obtained by Mr. Abhay Mishra but it was obtained by M/s Abhay Mishra Contractor, wherein returned candidate was originally partner, but retired in the year 2008. Meaning thereby the fact that the loan was availed from the ICICI Bank and the amount is still due, are not disputed. The explanation submitted by the returned candidate may be good defence during the trial, but it cannot be accepted at this stage as the Bank itself has issued copy of the loan account statement, in which the name of returned candidate i.e. Mr. Abhay Mishra has been shown as borrower. This court is considering the matter only for the purpose of examining that whether it discloses the cause of action or not. The defence of the respondent cannot be considered. The document filed along with the application for rejection of petition cannot be made a basis of rejection of petition. *Prima facie* the said allegation constitutes a triable issue.

**31.** The third ground raised by the petitioner in the election petition is that the returning candidate has not disclosed the fact that from which company he is getting salary. In the nomination form the returned candidate himself disclosed the source of income i.e. pension from M.P. State Legislative Assembly and salary from Private Limited Companies, however, the details of Private Limited Companies were not furnished by the returned candidate and in the application for rejection of the petition, it is stated that the returned candidate has already resigned from the Directorship of these Companies and the same was duly intimated to the Ministry of Corporate Affairs under the provisions of the Companies Act. The position is same that allegation is there and in the absence of consideration of defence put up by the returned candidate, the allegation prima facie discloses the cause. The allegation of disqualification on the ground of subsisting contract with PWD/Road Development Corporation is also required to be tested in trial as the returned candidate has submitted that he is not one of the Directors of the Company/Firm, which is executing the contracts.

**32.** In the instant election petition, the petitioner has made specific averments regarding suppression of material information in the affidavit filed along with the nomination paper and if the contents of the election petition regarding the suppression of material are found to be true then not only the election petition may be accepted but the election of the returned candidate may also be set aside. The petitioner has specifically stated in the election petition that the entire facts stated in the election petition are true to the knowledge of the petitioner and the available documents. The petition is duly supported by the affidavit as per Form No.25 as prescribed under Rule 94(A) of the Rules, 1961, wherein it is stated by the deponent that the statements made in the election petition in respect of suppression of criminal antecedents and improper filing of nomination paper are

true to his knowledge. Thus, the election petition contains the concise statements of material facts and requisites particular in accordance with rules.

**33.** The respondent is making prayer to consider the defense of the respondent to the allegation levelled by the petitioner at this stage, which is not permissible and therefore in the considered view of this Court, this is not a fit case to exercise the powers under Order 7 Rule 11(a) of the CPC to reject the election petition. Considering the same and in view of the above conspectus and after examining the entire bundle of facts, which constitutes *prima facie* cause of action and which if established by the election petitioner would entail the relief claimed, it is held that the petition discloses the cause of action and is not vexatious petition and is not liable to be rejected at this stage.

**34.** Consequently, I.A.No. 22204/2024 is liable to be dismissed and is hereby dismissed.

**35.** Election petition was filed on 16.01.2024 and till today, written statement has not been filed by the respondent. However considering the fact that application filed by the respondent for rejection of the plaint has been decided today itself, respondent is granted opportunity to file the reply within four weeks from today. Office is directed to list this matter after four weeks for further consideration.

**(VINAY SARAF)**  
**JUDGE**

P/