IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS NO.1 OF 2025
IN
COMMERCIAL SUIT NO.585 OF 2017

Mumbai Metropolitan Region Development Authority **...Applicant (orig. Defendant)**

<u>In the matter between</u>

BPL-BBC Joint Venture **...Plaintiff**

V/s.

Mumbai Metropolitan Region Development Authority **...Defendant**

Mr. Dhruva Gandhi *with Ms. Heenal Wadhwa i/b. M/s. The Law Point for for the Applicant in NMCD/1/2025 and for the Defendant in the COMS/585/2017.*

Mr. Ram Jay Narayan *for the Plaintiff in COMS/585/2017.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 24 AUGUST 2026.

Judgment pronounced on: 01 SEPTEMBER 2026.

<u>JUDGMENT:</u>

1) The Defendant has moved the present Notice of Motion seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 **(the Code).** Rejection of the Plaint is sought on the ground that the Suit instituted in the name of a joint venture, which is

not a jural entity, is not maintainable and that therefore, the same deserves to be dismissed.

2) The Plaintiff is a joint venture formed as per the Joint Venture Agreement executed between Backbone Projects Ltd. (**BPL**) and Backbone Construction Private Limited (**BBC**). Both, BPL and BBC are companies registered under the provisions of the Companies Act, 1956. The Defendant is a statutory authority established under the Mumbai Metropolitan Region Development Authority Act, 1974 with the aim of infrastructure development in Mumbai metropolitan region. In December-2006, the Defendant floated tender inviting bids for execution of work of widening and deepening of Mithi river from Mahim causeway to Dharavi bridge (Package I). The Plaintiff submitted bid in pursuance of the tender process and letter dated 29 March 2007 was issued to the Plaintiff accepting the bid @22.20% below the estimated cost of Rs.57.30 crores amounting to Rs.44,57,94,000/-. The Defendant thereafter issued work order to the Plaintiff for execution of the work for Rs.44,57,94,000/- on 25 April 2007. The disputes and differences arose between the parties relating to performance of the work by the Plaintiff. The Plaintiff has instituted the present Suit for recovery of amount of Rs. 115,65,50,443/- alongwith interest thereon in respect of several claims arising out of performance of the contract. Considering the narrow issue to be decided in the Notice of Motion, it is not necessary to narrate detailed events leading to filing of the present Suit.

3) The Defendant is served with suit summons. However, the Defendant has failed to file written statement within the outer limit of 120 days. Accordingly, by order dated 8 March 2019, this Court has

recorded forfeiture of right of the Defendant to file written statement. The Defendant has taken out the present Notice of Motion seeking rejection of the Plaint under Order VII Rule 11 of the Code contending that the Suit filed by the Plaintiff is not maintainable on account of the Plaintiff not being a juristic entity. It is contended by the Defendant that the Plaintiff is a mere Joint Venture, which cannot maintain the present Suit as it is not a legally recognized juristic entity.

4) Mr. Gandhi, the learned counsel appearing for the Applicant/Defendant submits that the Plaintiff is an entity named 'BPL-BBC Joint Venture', which cannot maintain the present Suit since a mere Joint Venture is not a juristic person in itself capable of filing and maintaining a Suit. That the Plaintiff is not incorporated under any statute. It is not a legal entity. That only constituent members of a joint venture can maintain the Suit. In support of his contention that a Joint Venture is not a legal entity, Mr. Gandhi has relied on judgment of this Court in ***Hindustan Petroleum Corporation Ltd. V/s. Om Construction on behalf of Om Construction Nice Projects Limited JV*** [1]. In support of his contention that joint venture is not a partnership, Mr. Gandhi relies on judgment of Division Bench of Gujarat High Court in ***Continental Construction Ltd. and others V/s. State of Gujarat and Another*** [2]. In support of his contention that a Suit filed on behalf of unregistered association in a representative capacity is not maintainable, Mr. Gandhi relies on judgment of Division Bench of Delhi High Court in ***Subhash Market Association and Another V/s. Municipal Corporation of Delhi and Others*** [3].

1 2026 SCC OnLine Bom 217
2 1986 SCC OnLine Guj 1
3 2004 SCC OnLine Del 1146

5) Mr. Gandhi further submits that the present Suit does not suffer from vice of misdescription of the Plaintiff but the vice of institution of the Suit by a non-existing legal entity. He relies on judgment of Calcutta High Court in ***Rajendra Nath Tikku V/s. Royal Calcutta Turf Club*** [4] in support of his contention that unregistered or proposed society cannot maintain proceedings before the Court. Mr. Gandhi relies on judgment of this Court in ***Mathura Bhuvan Co-operative Housing Society Ltd. V/s. Official Liquidator and Anr.*** [5] Mr. Gandhi would accordingly pray for rejection of the Plaint under Order VII Rule 11 of the Code.

6) The Motion is opposed by Mr. Narayan, the learned counsel appearing for the Plaintiff, who submits that filing of the Suit in the name of Joint Venture is a curable defect and the Court has necessary powers under Section 153 of the Code to permit the Plaintiff to cure the defect. He also relies on provisions of Order I Rule 10 of the Code in support of his submission that the Court has necessary powers to direct impleadment of correct party in the event the Suit is found to be filed in the name of a wrong Plaintiff. Inviting attention of this Court to paragraph 10 of the affidavit in support of the Notice of Motion, he submits that Defendant itself has suggested that the Suit ought to have been filed by the two corporate entities as Plaintiff or by one of them on behalf of both the companies on the strength of necessary authorisation. That the Plaintiff can always remove the defect by adding the two Joint Venture partners as Plaintiff in the Suit.

4 1963 SCC OnLine Cal 174
5 2003 SCC OnLine Bom 639

7) Mr. Narayan further submits that the Notice of Motion is filed after forfeiture of right to file written statement of the Defendant. That the Motion is filed with a view to somehow wriggle out of consequences of non-filing of the written statement. He submits that the Plaintiff would file an application for amendment of the Plaint or appropriate application under Order I Rule 10 of the Code for the purpose of impleadment of two companies as Plaintiffs. He submits that the Court need not adopt a pedantic or mechanical approach and must permit the party to cure the defect. In support, he relies on judgment of this Court in ***Joyce Cecilia Romalia De Souza and Another V/s. Carl J.M. De Souza and Others***[6]. He submits that since misjoinder or nonjoinder of parties is a curable defect, the Plaintiff must secure due opportunity to cure the same. On these broad submissions Mr. Narayan would pray for rejection of the Motion.

8) Rival contentions urged on behalf of the parties now fall for my consideration.

9) The Plaintiff in the present Suit is 'BPL-BBC Joint Venture'. In the title, the Plaintiff has described itself as 'a Joint Venture of Backbone Projects Ltd. (BPL) And Backbone Construction Limited (BBC)'. In paragraph 1 of the Plaint, the Plaintiff has described itself as under:-

> 1 The Plaintiff, BPL-BBC JOINT VENTURE is a joint venture entity duly formed as per Joint Venture Agreement executed by joint ventures, viz. Backbone Projects Limited (BPL), and Backbone Construction (BBC) -both are companies duly constituted and registered as per the provisions of the Companies Act, 1956. The Plaintiff, inter-alia, deals with business of civil and structural construction activities.

6 2022 SCC OnLine Bom 421

10) The Plaint has been verified by Mr. Kishore Gordhanbhai Jakasenia by pleading in paragraph 162 as under:

> The Plaintiff states that Mr. Kishor Gordhanbhai Kakasania, the Director of Backbone Constructions Pvt. Ltd. A partner in the Joint Venture, the Plaintiff who is duly authorised to sign and verify the Plaint has signed and verified the Plaint.

Thus, Mr. Kishore Jakasenia is described as Director of Backbone Constructions Pvt. Ltd., which is a partner in the Plaintiff -Joint Venture.

11) The Defendant has sought rejection of the Plaint under Order VII Rule 11 of the Code on the ground that the Suit as filed by the Plaintiff is not maintainable and under the provisions of Order VII Rule 11 of the Code, the Plaint can be rejected only if one of the six enumerated eventualities are met. Order VII Rule 11 of the Code provides thus:-

> **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 under-valued, 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;
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> (c) where the relief claimed is properly valued, but the plaint is returned 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;
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> (d) where the suit appears from the statement in the plaint to be barred by any law;
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> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provisions of rule 9
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> **Provided** that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.

12) Thus, plain language of Order VII Rule 11 of the Code indicates that institution of the Plaint in the name of wrong Plaintiff is not a recognized or enumerated ground for rejection of the Plaint. Thus, the technical defect such as misnaming the Plaintiff would fall outside the enumerated grounds under Order VII Rule 11 of the Code. It is well settled position that the Court needs to read the entire Plaint to determine if a cause of action is disclosed or not. If upon reading of averments in the Plaint, the cause of action is discernible, the Court would lean in favour of retaining the same rather than rejecting the same by having recourse to Order VII Rule 11 of the Code. Similarly, if upon reading averments in the Plaint the Court is satisfied that the Suit itself is barred by any law, the Plaint therein can be rejected. The issue for consideration is however whether the vice of institution of the Plaint in the name of wrong Plaintiff would be covered either by the defect of failure to disclose cause of action or the Suit being barred by any law?

13) No doubt, a Joint Venture *per se* is not a juristic entity capable of suing or being sued. This is the reason why Mr. Narayan has not made any serious attempt to suggest that the Plaintiff-Joint Venture is entitled to file and maintain the present Suit. On the other hand, the entire thrust of his submission is that the defect is curable and the Plaintiff must be granted an opportunity to cure the defect. Therefore it is not necessary to discuss the ratio of judgment of this Court in ***Hindustan Petroleum Corporation Ltd.*** (supra) or of Division Bench of Gujarat High

Court in ***Continental Construction Ltd.*** (supra) relied upon by Mr. Gandhi.

14) However the issue for consideration is whether a drastic step of rejection of Plaint can be taken if the Suit is found to be instituted in the name of a joint venture. In the present case, instead of filing the suit in names of the two constituent members of the Joint Venture, who both are incorporated entities, the suit is filed in the name of a wrong Plaintiff. This is possibly done as the contract was awarded in the name of joint venture. While the sole plaintiff in the suit is the Joint Venture, names of both the companies are also mentioned in the cause title, which describes Plaintiff as 'Joint Venture of Backbone Projects Ltd. (BPL) And Backbone Construction Limited (BBC)'.

15) Under Order I, Rule 10 of the Code, the Court has power to direct any person to be substituted or added as Plaintiff if it is found that the Suit has been instituted in name of a wrong person as Plaintiff and that the Suit has been instituted through a bonafide mistake. Sub-rule (1) of Rule 10 of Order I of the Code reads thus:-

> **ORDER I**
> **Parties to Suits**
> **10. Suit in name of wrong plaintiff.**—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

16) Thus, the defect of institution of Suit in the name of a wrong Plaintiff is a clear curable defect. The defect does not continue

throughout pendency of the Suit and can be permitted to be cured at any stage of the suit. Such defect can always be cured by the Court at any stage even on its own motion without an application made by a party. The issue for consideration is therefore if the defect of institution of the Plaint in the name of wrong Plaintiff can be cured, whether drastic power of Order VII Rule 11 of the Code can be exercised for rejection of the Plaint? The answer, to my mind, appears to be in the negative. If in every Suit the plaint is to be rejected by having recourse to Order VII Rule 11 of the Code upon finding that the Suit is filed in the name of wrong Plaintiff, power conferred upon the Court under Order I Rule 10 of the Code would be rendered otiose.

17) In the present case, the Suit has been instituted by disclosing name of all two constituent members of the Joint Venture, which are the corporate entities. Instead of naming the two corporate entities as separate Plaintiffs, the Plaintiff has fused the two companies into one Plaintiff by describing them as Joint Venture. In my view, this defect is clearly curable by the Court by exercising powers under Order I Rule 10 of the Code as well as Section 153 of the Code.

18) Even otherwise, the defect of filing of Suit in the name of non-legal entity does not fit into any of the enumerated grounds under clauses (a) to (f) of the Order VII Rule 11 of the Code. In my view, therefore, the Plaint cannot be rejected just because the Suit is instituted in the name of a joint venture.

19) Reliance by Mr. Gandhi on judgment of Division Bench of Delhi High Court in ***Subhash Market Association*** (supra) is inapposite. In case

before the Delhi High Court, the Suit was instituted by an unregistered association on behalf of its members claiming adverse possession and decree for permanent injunction. The Suit was contested by the Defendants by filing written statement. Issues were framed. Issue Nos.5 and 6 relating to maintainability of the Suit was treated as preliminary issues. The preliminary issues framed by the Court are reproduced in paragraph 5 of the judgment, which reads thus:-

> 5. The respondents herein were arrayed as defendants in the plaint. The suit was contested by the respondents who filed their written statement. On the basis of the pleadings of the parties issues were framed on 6.7.2004 and Issues Nos. 1 and 2 were directed to be treated as preliminary issues. Issue Nos. 5 and 6 relating to maintainability of the suit were also treated as preliminary issues and an opportunity was granted to the parties to argue on the same, as noticed in the impugned order. These issues read as under:
>
> 1. Whether the plaintiff is an association and legally entitled to file the present suit under Order I Rule 8 CPC? OPP.
>
> 2. Whether the suit has been filed by a duly authorised person? OPP.
> xx xx xx
> 5. Whether the suit is not maintainable in view of the preliminary objection taken by the defendant No.1 in its written statement? OPD1.
> 6.Whether the suit is not maintainable in view of section 14(1)(e) of Specific Relief Fund Act, 1963? OPD1.

The District Judge took up above quoted four issues as preliminary issues and dismissed the Suit. Thus, the case before Delhi High Court did not involve rejection of the Plaint under Order VII Rule 11 of the Code. The Suit was held to be not maintainable while answering the preliminary issues. Therefore, observations made by the Delhi High Court about unregistered association not being a legal entity in the eyes of law are to be understood in the context of decision of the Suit while answering the preliminary issues. The judgment in ***Subhash Market***

Association (supra) has therefore no application for deciding application for rejection of Plaint under Order VII Rule 11 of the Code.

20) Mr. Gandhi has relied on judgment of Single Judge of this Court in ***Mathura Bhuvan Co-operative Housing Society*** (supra) in which issue for consideration was whether a proposed society could maintain an application before this Court. Possibly the application was filed under the Arbitration and Conciliation Act, 1996. This Court held that unincorporated association cannot sue in the proposed name or through promoters /sole promoters without obtaining leave under Order I Rule 8 of the Code. The judgment therefore has no application to the issue involved in the present case.

21) Mr. Gandhi has relied on judgment of Calcutta High Court in ***Rajendra Nath Tikku*** (supra) in which application for amendment of Plaint was filed and leave was sought under Order I Rule 8 of the Code to sue the proposed Defendants as representing all members of the Royal Calcutta Turf Club and for consequential reliefs. The Suit was originally instituted against Royal Calcutta Turf Club. Calcutta High Court has held that a members' club is an un-incorporated and unregistered body which is not a legal entity, which cannot be sued in its own name. The case does not involve misdescription of Defendant. One of the objections before the Calcutta High Court was that the proposed amendment would convert the Suit into an entirely different Suit by bringing on record different parties in different capacity in place of the Defendant and relating back a cause of action when the same was barred by limitation. Issue before the Calcutta High Court was whether individual members of the club could be impleaded as Defendants by

way of amendment of the Plaint. The judgment therefore has no application to the issue involved in the present case.

22) In ***Joyce Cecilia Romalia De Souza*** (supra) Single Judge of this Court has dealt with Order VII Rule 11(d) of the Code when the Plaint was found to be not verified or affirmed in terms of mandate of Order VI Rule 15 of the Code. It was contended that the defect went to the root of the matter, which required rejection of the Plaint, being barred by law. This Court did not accept the contention and held that the Plaint could not be said to be barred by law merely on account of defect in verification of the Plaint. The Court held that the defect or irregularity was curable not warranting rejection of the Plaint under Order VII Rule 11 of the Code. This Court held in paragraphs 7 and 11 as under:-

> 7. The central question that arises for determination is, as to whether the plaint in the present case can be said to be barred by law, in view of the fact that the plaint was verified, admittedly, before the Notary Public in Canada. The sheet anchor of the arguments presented on behalf of the petitioners is that since there is no Notification placed on record to indicate that there is reciprocal arrangement between Canada and India, insofar as the acts of Notary Public are concerned as per Section 14 of the Notaries Act, the verification in the present case cannot be recognized by the Courts in India. It is further submitted that the respondent nos. 1 and 2 made no efforts to place on record material to show that in the absence of any such Notification, there was a practice in the two countries viz. Canada and India to recognize such acts of Notary in a reciprocal manner. Much emphasis was placed on the provisions of the CPC to contend that in the present case, the mandatory requirements were not satisfied and that therefore, such a plaint could not be even looked at by the Trial Court and that it deserved to be rejected at the threshold.
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> 11. Therefore, the respondent nos. 1 and 2 are justified in contending that even if the contention raised on behalf of the petitioners was to be accepted, it was merely an irregularity, which was curable and in such a situation, the Application for rejection of the plaint under Order VII, Rule 11(d) of the CPC, could not be granted. Even otherwise, this Court

> on merits of the matter is satisfied that the position of law is covered in favour of the respondents as per the aforesaid judgment of this Court in Zhejiang Medicines and Health Products Import and Export Co. Ltd. Vs. Devanshi Impex Pvt. Ltd. (supra).

23) There is a direct judgment of this Court on the issue of impermissibility to reject the Plaint under Order VII Rule 11 of the Code when the Suit is found to be instituted in the name of a non-juristic entity. In ***Ramesh Shriram Sule V/s. Dilipraj Niranjankumar Goenka and Another***[7], the Suit was instituted by chief promoter of an unregistered society. The Plaint in the Suit was sought to be rejected under Order VII Rule 11 of the Code contending that an unregistered society is merely a body of persons and not a juristic person. The Single Judge of this Court, however, held that when the Suit is instituted by a wrong person, the Suit cannot be said to be barred by law. The Court also referred to the remedy available under Order I Rule 8 of the Code for curing the defect. The Court held that the Court has power to order substitution as well as addition of any person as Plaintiff and that therefore, if the Suit is found to be instituted by a wrong person, that alone cannot be a ground for rejection of the Plaint under Order VII Rule 11(d) of the Code. This Court held in paragraphs 11 and 12 as under:

> 11. ...It is thus clear that if a suit is instituted by a wrong person and the Court is satisfied that the suit is instituted through a bonafide mistake and that it is necessary for the determination of the real matter in the suit so to do order any other person to be substituted or added as plaintiff. Thus the Court has power to order substitution as well as addition of any person as plaintiff in the suit for proper adjudication of the suit. Obviously, therefore, if a suit is instituted by a wrong person that cannot be said to be a ground falling under Clause (d) of Rule 11 of Order 7.

7 2009(1)Mh.L.J.429

> 12. Even if it is found that the suit was not filed strictly in accordance to the provisions of Order 1 Rule 8 the Court could have directed that the suit be converted into one under Order 1 Rule 8. If Rule 8 of Order 1 is read carefully it would be clear that it covers two situations; one, permission granted by Court to sue in representative capacity and two, directions to such person to sue in representative capacity. Thus the Court has a power to give even a direction to sue in a representative capacity.

24) In view of the above discussion, I am of the view that mere institution of Suit in name of joint venture does not come under the enumerated eventualities under clauses (a) to (f) of Order VII Rule 11 of the Code. Therefore, no case is made out for rejection of the Plaint by having recourse to Order VII Rule 11 of the Code.

25) Notice of Motion is accordingly **rejected**.

[SANDEEP V. MARNE, J.]