

(2015) 04 DEL CK 0190

In the Delhi High Court

Case No : I.A. Nos. 1124 & 6828/2009 in CS (OS) No. 1970 of 2008

Hazrat Maulana Arshad Madani and Others

APPELLANT

Vs

Qari Mohammad Usman and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 23 Rule 1, Order 7 Rule 11, Order 7 Rule 13

Citation : (2015) 4 AD 516 : (2015) 150 DRJ 294

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : R.K. Dash, Senior Advocate and Irshad Hanif, for the Appellant; Anoop G. Choudhry, June Choudhry, Sunil Malhotra, M. Taiyab Khan and Niaz Farooqui, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.

1. Eighteen plaintiffs have filed the present suit for declaration and injunction. It is alleged in the plaint that plaintiff No. 1 is the duly elected President and plaintiffs No. 2 to 18 are the Members of the Working Committee of Jamiat Ulama-I-Hind (hereinafter referred to as the "JUH") which is an unregistered society. The JUH is a socio- religious organization and also a representative body of Muslims in Indian Union having been founded in the year 1919.

In the plaint, it is averred that the JUH has its own Constitution and having regard to the eminence, stature and scholarly character of all its Presidents, there was no provision made in the Constitution for bringing a Vote of "No-Confidence" against the President. Such a move, it may be stated, was strongly opposed by Maulana Abul Kalam Azad in his capacity as Member of the Working Committee so that the President once elected continues to function uninterruptedly for the whole duration of the period for which he was elected. The Constitution of the JUH which was drawn up in 1919 continues to be followed

in toto by all Members of the JUH till date. The Constitution has thus achieved its own sanctity and no one ever thought of committing breach of the Constitution.

1.1. It is the claim of plaintiff No. 1 that he was the elected President of the JUH vide circular dated 19th February, 2007 as per Section 51(a) of the Constitution. Earlier, Late Maulana Syed Asad Madani R.A. had been the elected President of the JUH for more than 32 years till 6th February, 2006 when he expired. As per Section 11(c) of the Constitution and the practice, the elections for the President are held every two years. The elections are also held at the level of local bodies including City, District and State level. On the basis of the nomination of Presidential Candidate from each State, the election to the post of the President is held.

1.2. After the death of Maulana Syed Asad Madani on 6th February, 2006, the plaintiff No. 1 was duly elected as President of JUH for the remaining term, i.e. up to December, 2006. Plaintiff No. 1 is the youngest brother of late Maulana Syed Asad Madani. The plaintiff No. 3 has been a Member of the Central Working Committee of the JUH for the last about 25 years. Fresh elections for the period 2007-08 became due which were finally completed in July, 2007 as per Section 51(a) of the Constitution of JUH. During the period when the election process was initiated and completed, defendant No. 2 held the post of General Secretary of JUH. It is alleged that the plaintiff No. 1 was declared as the elected President of JUH for the term 2007 and 2008 and his election as President of JUH was circulated vide circular dated 19th July, 2007 issued by defendant No. 2 himself who was the then General Secretary of JUH.

1.3. After the completion of the election of the President, defendant No. 2 as per the prescribed procedure announced the date for election of the State Bodies as per Section 51(a) of the Constitution of JUH with the direction to complete the same up to 31st January, 2008. Accordingly, the State elections in all the States (except Rajasthan, Madhya Pradesh, Karnataka and Bihar) were completed. As per the election procedure (per Section 45 of the Constitution of JUH), the previous Working Committee continues to discharge its duties till the members from at least three States are not elected in new Working Committee of JUH. In view of the above, it is incumbent on the elected President to nominate a new Working Committee comprising of up to 21 Members strictly in consonance with Section 46 of the Constitution of JUH. Sections 45 and 46 of the Constitution of JUH have been reproduced in the plaint as under:-

"45. So long as the members from at least three State Jamiats are not elected in the new Governing Council of the Jamiat-Ulama-i-Hind, the previous council shall continue to discharge its duties as before.

46. (a) There shall be a Working Committee of Jamiat- Ulama-i-Hind consisting of 21 members, which shall be nominated by the President of Jamiat-Ulama-i-Hind.

(b) The Working Committee shall consist of the President, Vice Presidents and

General Secretary in their respective capacities."

1.4. Accordingly, plaintiff No. 1 nominated its new Working Committee in the meeting held on 6th March, 2008 announcing the names of 16 members of the Working Committee. Since the newly appointed Working Committee was appointed by plaintiff No. 1 on 6th March, 2008 as aforesaid in consonance with Sections 45 and 46 of the Constitution of the JUH, the previous Working Committee automatically stood dissolved under law. It became infructuous and non est in the eye of law.

1.5. After the meeting of 6th March, 2008, defendants No. 1 and 2 whose names had not appeared, the newly elected Working Committee created unruly scenes at the place of meeting. They held a second meeting on the same day after the conclusion of first meeting without any prior notice to all concerned. Defendant No. 2 who was divested of his position and post in the Working Committee got annoyed and vowed to throw away the duly elected body of the JUH. Defendant No. 1 joined hands with defendant No. 2 who was destroying the democratic functioning of the JUH. In the second meeting, they prepared the minutes against the plaintiffs. Plaintiff No. 1 after having some apprehension on 19th March, 2008 filed a suit being CS (OS) No. 519/2008 against defendants Nos. 1 and 2 who had called some meeting of the JUH on 26th March, 2008. As some subsequent events happened, the plaintiff No. 1 filed a fresh suit and also moved an application for withdrawal of the first suit. The application for withdrawal of the suit of the plaintiff No. 1 was allowed. It is alleged in the plaint that the defendants on 26th March, 2008 called some meeting at the premises of JUH to lend support. They also suggested to resolve the issues through mediation on or about 23rd March, 2008. Therefore, the plaintiff No. 1 filed the second suit on 24th March, 2008.

1.6. The proposed process of mediation was trapped, laid to deprive the plaintiffs from their legal remedy through judicial process. During the process of mediation, plaintiff No. 1 wrote a letter dated 1st April, 2008 to the Mediator expressing regret regarding the consent given by him to defendant No. 2 to convene a meeting of the so-called Working Committee on 5th April, 2008 for the same agenda as was earlier proposed in the meeting on 26th March, 2008 which meeting was cancelled. However, the plaintiffs by way of advertisement in the newspaper published on 2nd April, 2008 came to know about the calling of a meeting of the Central Working Committee scheduled for 5th April, 2008 at Delhi. The said advertisement was issued by defendant No. 2 claiming himself to be the Secretary of the JUH, an office from which he already stood demitted on the appointment of the new General Secretary (plaintiff No. 5). It was also reported that in the subsequent second meeting on 6th March, 2008 which was held after the conclusion of the lawful meeting earlier on 6th March, 2008, the said defendant removed the plaintiff No. 1 as President of the JUH.

1.7. It is argued that nowhere in the Constitution of the JUH, there is any provision for removal of the duly elected President. Defendant No. 2 is claiming

himself to be the General Secretary of the JUH as he had addressed a letter dated 7th April, 2008 in this regard. In view of the above, in the second suit filed by the plaintiff No. 1 being CS(OS) No. 685/2008, the relief was sought to declare the alleged proceedings held in second meeting on 6th March, 2008 and 5th April, 2008 which were conducted by defendants Nos. 1 and 2 to be unlawful and nullity and an injunction was also sought.

1.8. On 25th August, 2008, this Court in CS (OS) No. 685/2008 rejected the plaint by allowing the applications being I.A. Nos. 6047/2008 and 6348/2008 filed by defendants Nos. 1 and 2. The operative portion of the said order is reproduced as under:-

"28. In this case, the plaintiff's application, IA 6338/2008, under Order I Rule 8 generally mentions about the District Committees having authorized him to file the suit on behalf of Jamat. However, the membership of those committees remains undisclosed; the membership of the Jamat, whose interests are allegedly affected due to the impugned resolution, has not been shown. According to the suit, the Jamat has a membership base of one crore. These lacunae are, in the opinion of this court, incurable.

29. For the above reasons, it is held that the suit is not maintainable. IA 6047/08 and IA 6348/2008 accordingly deserve to succeed and are allowed. The plaint is accordingly rejected; the interim orders are vacated. All pending applications are disposed of accordingly. In the circumstances of this case, parties shall bear their costs."

1.9. It is alleged in the present suit that after passing the said order, on 26th August, 2008 defendants Nos. 1 and 2 along with few other persons came to the office of JUH and threatened the plaintiffs No. 1 to 5 to handover the charge of the working of the JUH as their suit has been dismissed by the Court. They also issued the press release raising their claims. It is specifically alleged in the plaint that the plaintiffs are the members of the Working Committee of the JUH and such representatives of the JUH in accordance with the provisions of the Constitution of the JUH and plaintiff No. 1 continues to enjoy the support from all quarters, bodies, Committees and Working Committee throughout the country. Therefore, the plaintiffs have no option but to file the fresh suit.

2. By this order, I propose to decide the two pending applications; one being I.A. No. 1124/2009 and other being I.A. No. 6828/2009 filed by the defendant Nos. 1 and 2 respectively for rejection of plaint under Order 7 Rule 11 CPC.

3. In both the applications, similar prayer is made for rejection of plaint on the following grounds:-

(i) The present suit is not maintainable in law by virtue of the provisions of Order 23 Rule 1 Sub Rule 4 CPC because the plaintiff filed CS(OS) No. 519/08 seeking amongst others the following relief :

"Declare that the alleged meeting dated 6.3.2008 said to have been conducted

by Defendant No. 1 allegedly bringing no confidence motion against plaintiff No. 2 to be void unlawful and nullity the same being without authority of law and hence ab initio void "

(ii) The plaintiff No. 2 filed an application for withdrawal of suit CS(OS) No. 519/08 and sought liberty to file a fresh suit. However before withdrawal of CS (OS) No. 519/08, CS(OS) No. 685/08 was filed, an objection was raised by the present defendant No. 1 in CS(OS) No. 685/08 that CS(OS) No. 685/08 was not maintainable because no liberty had been granted by this Court in order dated 11th April, 2008 to file a fresh suit, and therefore the said suit was not maintainable under Order 23 Rule 1 Sub Rule 4 (b) CPC. This Court vide order dated 25th August, 2008 held that since C.S. (OS) No. 685/08 was filed prior to withdrawal of C.S. (OS) No. 519/08 provisions of Order 23 Rule 1 CPC would not be applicable. However the plaint in C.S. (OS) No. 685/08 was rejected. Thus the suit CS(OS) No. 685/08 ceased to exist.

(iii) The present suit would therefore be a fresh and subsequent suit to which provisions of Order 23 Rule 1 CPC would be squarely applicable and since CS(OS) No. 519/08 was withdrawn without the liberty to institute a fresh suit in respect of the subject matter of that suit the plaintiffs are precluded from instituting the present suit since it relates to the same subject matter as that of CS(OS) No. 519/08.

(iv) The plaintiff No. 1 had previously on the same/ identical cause of action brought two suits against the defendants. The prayers made in all these suits are similar. The plaintiffs are agitating the same claim by raising identical/ similar prayers even though the previous two suits have been dismissed by this Court on the same cause of action.

(v) The defendant No. 1 in CS (OS) No. 685 of 2008 amongst other objections preferred I.A. No. 6342/2008 under Order VII Rule 11 CPC wherein it was pleaded that CS (OS) No. 519 of 2008 had been withdrawn after the filing of CS (OS) No. 685 of 2008, hence the second suit was not maintainable. It was pleaded that plaintiff No. 2 therein does not and cannot represent JUH as he is neither its elected President nor authorised by the present Working Committee to institute the said suit. It was further pleaded that JUH is not a juristic entity, not being a registered body. Hence, the plaintiff No. 1 in the present suit could not have instituted that suit on the basis of his claim to represent the entire organisation.

(vi) All the issues raised in the present suit were mainly covered and considered by the Single Judge of this Court, vide order dated 25th August, 2008. The present suit has been instituted through several plaintiffs, all of whom claim themselves to be office bearers of the Committee appointed by plaintiff No. 1, as President of JUH. Once the appointment and claim of plaintiff no. 1 as President of JUH is itself under challenge, then his right to appoint any office bearer/ Committee does not arise and such individuals cannot claim themselves to

represent the interest of all the registered members of JUH as the plaintiff No. 2 to 18 have not claimed any independent relief. The President and members of its Working Committee are elected by the General Body. The relief claimed by plaintiff No. 1 cannot be granted since defendants by themselves are not the General Body of JUH. They are only the nominated members of Executive Committee having been nominated by the defendant No. 1 who was elected as president of JUH on 5th April, 2008 by the General Body of JUH with 1857 members voting in his favour out of the 1858 present in the said General Body.

(vii) In order to overcome the lacuna in the previous suit and the decision of the Single Judge in CS (OS) No. 685 of 2008, the plaintiff no. 1 this time has differently worded paragraph 1 of the plaint. The plaintiffs have not preferred an appeal against the order of Single Judge, hence the findings have attained finality and hence remain binding upon the parties. The present suit being hit by the principle of *res judicata* and *estoppels*.

There was no surviving cause of action on the day the present suit was filed. In paragraph 16 of the plaint it is alleged that cause of action arose on 19th July, 2007 when the plaintiff No. 1 was elected as president of JUH for 2007- 2008. In clause (a) of the prayer clause it is prayed that the plaintiff No. 1 be declared as president of JUH for the period 2007-2008. Thus on the day the present suit was filed, the term of President for which the declaration was sought stood expired.

(viii) The dispute between the plaintiff No. 1 and defendant No. 2 was referred for arbitration before the arbitrator. Both the plaintiff No. 1 and defendant No. 1 had given their written consent to the arbitration and interim directions were also issued by the Arbitrator from time to time.

4. In reply filed by the plaintiffs to the above said applications the plaintiffs mainly have reiterated the statement and averment made in the plaint and have denied the objections raised by the defendant Nos. 1 and 2. It is submitted that the defendant No. 2 at one point of time had in fact tried to assume the office of the President when the question of filling the post for interregnum period arose. Consequent upon the death of Late Maulana Asad Madani he withdrew his name since he could not muster support thereafter he prompted defendant No. 1 to claim himself to be the President though the fact remains that the defendant No. 1 also in the regular elections did file his nomination for the post of the President. The names from all over the State were forwarded, all the states forwarded the name of the plaintiff except one state i.e. the State of West Bengal forwarded the name of defendant No. 1, knowingly fully well that if the defendant No. 1 remains in the contest he was surely and certainly likely to suffer the defeat accordingly the defendant No. 1 withdrew his name consequently the plaintiff was duly elected. The defendant No. 2 declared the result of the plaintiff by circular dated 19th July, 2007 *inter alia* declaring him as the President of JUH therefore it does not lie in the mouth of either the defendant No. 2 or defendant No. 1 to say and suggest that the plaintiff is claiming himself to be the President for two years as per Article-II.

4.1. The plaintiffs No. 2 to 18 have filed the instant suit against the defendants for the first time. It is further submitted that the plaintiffs No. 2 to 18 neither filed CS(OS) No. 519/2008 nor CS(OS) No. 685/2008 against any of the defendants. The first suit was withdrawn with liberty to file the subsequent suit, the liberty was afforded by this Court. The second suit CS (OS) No. 685/2008 was filed by the plaintiff No. 1 though the liberty was later on granted by this Court, the said plaint was rejected on technical grounds by allowing the application of the defendant under Order 7 Rule 11 CPC and the application of the plaintiff under Order 1 Rule 8 CPC was dismissed. The merit of the earlier two suits was not considered. The plaintiff No. 1 was constrained to prefer an application under Order 1 Rule 8 CPC which application was simply dismissed without touching the merits of the suit.

4.2. On merit it is submitted that even for the interregnum period the plaintiff No. 1 was an elected president consequent upon the expiry of his term as an interim president. Regular elections were conducted in accordance with the provisions of JUH in which elections his name was duly forwarded by all states unanimously except the State of West Bengal who had forwarded the name of defendant No. 1 also along with the plaintiff No. 1. It is also an accepted fact that the defendant no.1 seeing his imminent defeat withdrew his name consequentially the defendant no.2 by circular dated 19th July, 2007 declared the plaintiff No. 1 as a duly elected president. Therefore there is all legitimacy for the plaintiff No. 1 to continue and claim himself to be a duly elected President in consonance with the constitutional provisions of Section 39 and 40 of the Constitution of JUH. It is submitted that once all the electorates having exercised their franchise and a regular elections having been held the present plaintiff having duly been elected in the proper and regular election in consonance with the provisions of the Constitution of JUH and the defendant No. 2 himself declared him as the President by virtue of his circular dated 19th July, 2007, nothing further survives and the fact remains that the merits of the lis in between the parties was never gone into by the Single Judge as is evident from the operative portion of the order dated 25th August, 2008.

4.3. The question of preference of an appeal could have only arisen if the case in hand would have been decided on merits. The merits having been not touched, the law of the land clearly permits and stipulate to prefer the instant suit therefore there was no necessity to prefer an appeal. There is no reason or cause for the present suit being barred by the principles of res judicata or being hit by the principles of estoppel. The defendant No. 1 and 2 therefore cannot be allowed to short circuit the present proceedings.

4.4. The plaintiffs have common interest in the suit and they have been nominated by plaintiff No. 1 under the powers conferred and duty cast on him in terms of Section 46 of the Constitution of JUH.

The relief claimed in regard to the resolution of the alleged general body dated 5th April, 2008 is consequential to the relief in regard of the resolution dated 6th

March, 2008 is wrong and contrary to the stand taken by defendant No. 1 and 2.

4.5. The General Body meeting alleged to have taken place on 5th April, 2008 has acted unconstitutionally, illegally as there is no provision in the constitution for bringing no confidence motion against the duly elected President, thus any business transacted in the said alleged meeting is unconstitutional, illegal and void ab-initio.

4.6. It is alleged by the plaintiff that in earlier two suits namely CS (OS) 519/2008 and CS (OS) 685/2008 there were two plaintiffs out of whom plaintiff No. 1 of the present suit was one of them. The other plaintiffs i.e. 2 to 18 in the present suit are allegedly the members of the working committee of JUH and they were not parties to the two earlier suits in any capacity.

4.7. The present suit has been filed by the plaintiffs in their individual capacity and not for or on behalf of JUH. It is further submitted that president is elected as per Section 51 of the Constitution of JUH and plaintiff No. 1 has been duly elected as President strictly as per the provisions of Constitution of JUH. No application under Order 1 Rule 8 CPC was required to be filed for filing the present suit.

5. Both the parties have made their submissions on many accusations. I have also gone through the record of earlier two suits which were earlier ordered to be tagged with the present suit. It is the admitted position that the plaintiff No. 2 to 18 were not the parties in earlier two suits. In the present suit JUH is also not a party. The relief sought in the present suit is substantially similar. Therefore, it is to examine as to whether the present suit is maintainable or the plaint is liable to be rejected.

6. Order VII Rule 11 CPC under caption "Rejection of the plaint" reads as under:

" 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 provision of Rule 9."

7. While considering the application under Order VII Rule 11 CPC, the court is not required to take into consideration the defence set up by the defendant in his written statement. The question whether the plaint discloses any cause of action is to be decided by looking at the averments contained in the plaint itself. While considering the application, the strength and weakness of the plaintiffs' case is, not to be judged.

8. CS(OS) No. 519/2008 was dismissed as withdrawn with leave of the Court by order dated 11th April, 2008. When the said order was passed, CS (OS) No. 685/2008 had already been filed.

9. From the order dated 25th August, 2008 passed by this Court in CS (OS) No. 685/2008 the defendant No. 1 in the said suit raised two submissions namely:

(a) That the suit is not maintainable on the same cause of action and for the same-self relief claimed in the earlier suit without leave of the court.

b) That JUH being an unregistered association the plaintiff No. 2 in the said suit unless could show his competence, in any manner to represent JUH, cannot legally maintain suit without taking resort to the provisions of Order I Rule 8 CPC.

10. The Court rejected the contention of the defendant No. 1 as to the maintainability of suit on ground (a) relying upon the decision of Supreme Court in *Vimlesh Kumari Kulshreshta vs. Sambhajirao* (Appeal (Civil) 2976/2004 decided on 5th February, 2008). In para 19 of the said order it was held that the previous suit which was pending, cannot be defeated. In rejoinder filed by the defendant No. 2 in para 9, it was observed by the Court that it has now been admitted that the liberty was granted to institute fresh proceedings upon the same cause of action. It was held that Order XXIII Rule 1 CPC cannot be read so as to bar a suit which is, already instituted before the other suit has been abandoned or dismissed. The said findings were not challenged by defendant No. 1 and 2 in appeal. However, they are again trying to re-agitate the same in the applications filed by them under Order 7 Rule 11 CPC.

11. Thus, the objection of the defendant No. 1 and 2 that no leave/liberty was granted to file fresh suit is rejected.

12. The main reasons for rejection of plaint was given in the ultimate paragraph of the order, this Court in second suit being CS(OS) No. 685/2008 observed as under:

"In this case, the plaintiff's application, I.A. No. 6338/2008, under Order 1 Rule 8 generally mentions about the District Committees having authorized him to file the suit on behalf of Jamat. However, the membership of those committees remains undisclosed the membership of the Jamat, whose interest are allegedly affected due to the impugned resolution has not been shown. According to the suit, the jamat has a membership base of one crore. These lacunas are in the opinion of this Court, incurable"

The C.S. (O.S.) No. 519/2008 was dismissed by the Single Judge upon filing of I.A. No. 4545/2008 under order XXIII Rule 1, CPC. The order passed on the said application on 11th April, 2008 is as follows: ""learned counsel for the plaintiff seeks liberty to withdraw this suit in view of the subsequent suit no. CS (OS) No. 685/2008. It is submitted that this suit sought injunctive relief in respect of the meeting dated 26.03.2001 and the fresh suit has questioned the legality of the subsequent meeting.

Leave Granted.

The Suit CS (OS) 519/2008 and all the pending applications are, therefore, dismissed as withdrawn."

13. Order 7 Rule 13 CPC provides as under:-

"Where rejection of plaint does not preclude presentation of fresh plaint." The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

14. The dispute centres around between the plaintiffs on one hand and the defendants on the other as to who are the actual President, office bearers and members of the working committee of JUH. It has been stated earlier that after rejection of the plaint in CS(OS) No. 685/2008 vide order dated 25th August, 2008, defendant No. 1 and 2 on next day threatened the plaintiffs to hand over the charge of the JUH and have been threatening to illegally possess the office of the JUH.

15. The plaintiffs in their individual capacity have filed the present suit as President, office bearers and members of the working committee of JUH and this has been refuted by the defendants in their written statement. Defendant No. 1 in his separate written statement has pleaded inter alia that it is defendant No. 1 who was elected as President and he himself nominated new working committee of the JUH.

16. The present suit is not for and on behalf of the members of the district and state committees. It is appropriate to refer to relevant part of Order 1 Rule 8 CPC which reads as under:

"8. One person may sue or defend on behalf of all in same interest.-

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

xxxxxxxxxx xxxx xxxxxxxx"

The present suit has also not been filed against JUH which is an unregistered body and if any proceedings are initiated against it, the permission of the Court under Order 1 Rule 8 CPC is mandatory. No doubt, the plaintiffs sought time to file the application under Order 1 Rule 8 CPC which was granted by order dated 14th May, 2012 but the same was not filed. Counsel for the plaintiffs submits that it is not necessary as JUH is not a party and plaintiff Nos. 2 to 14 are claiming their independent rights and even otherwise, the plaint can be thrown out at this stage as merit of the case has to be considered atleast by the Court. It is settled law that no suit shall be defeated by reason of misjoinder and non-joinder of parties. In case necessary parties are joined, the said issues/objections of the defendant Nos. 1 and 2 no doubt would be considered at the appropriate stage of the suit.

17. It is argued on behalf of plaintiffs that the sine-qua-non for applying Order 1 Rule 8 CPC, is the existence of the same interest. The expression "same interest" implies a joint and inseparable interest. The test would be whether a judgment which a party might obtain in its favour in respect of its rights arising out of or invaded by act or transaction would ipso facto restore the rights of those who are not parties on the record. In the present suit as stated earlier, the plaintiffs have claimed rights in individual capacity as the office bearers of the JUH and the interests of the members of district and state committees and the members in general body are in no way concerned and no relief has been claimed in the suit in the representative capacity for and on behalf of them. In such view of the matter Order I Rule 8 CPC is not attracted. The issue with regard to applicability of Order I Rule 8 CPC to the present suit cannot be gone into and decided while dealing with the application (s) filed under Order VII Rule 11 CPC. It requires to be decided in a full fledged trial after issues are settled.

The reliefs claimed against the defendants are declaration and injunction. A reading of the plaint would reveal that plaintiffs' specific case is that defendant Nos. 1 and 2 are imposters and illegally claiming to be President and General Secretary of JUH, are threatening to interfere with the plaintiffs' possession of the office of JUH. Therefore, prayer has been made to restrain them in the plaintiffs' possession of the office of JUH and also to direct defendant No. 2 to hand over the entire records of JUH since those were in his possession when he held the office of General Secretary.

18. Defendants No. 2 in paragraph 3 of the application has urged that previously suit was filed on same cause of action. The defendant No. 2 does not say that plaint does not disclose cause of action to file the present suit. The expressions "no cause of action" is different from the plea that the plaint "does not disclose any cause of action". In the event, plaint does not disclose any cause of action, the court may reject the plaint, but not in case where the plea is taken that there is no cause of action or lack of cause of action.

19. To ascertain whether the plaint discloses any "cause of action" the averments made therein should be read as a whole. In paragraph 11 of the plaint it is stated thus:

"That on 26th August 2008 the defendants Nos. 1 and 2 along with few other persons came to the office of JUH and threatened the plaintiff Nos. 1 and 6 to hand over the charge of the working of the JUH as their suit has been dismissed by this Hon"ble Court. As a matter of fact the plaintiffs are in occupation and possession of the offices of JUH and the defendants are threatening to get the same vacated by hook or by crook".

One relief was sought to declare the meetings held on 6th March, 2008 and 5th April, 2008 by defendants Nos. 1 and 2 bringing No Confidence motion against plaintiff No. 1 as void ab initio, unlawful and nullity in the eyes of law. Thus the said relief sought in the present suit was not in the earlier suits being CS(OS) No. 685/2008.

20. The phrase "does not disclose cause of action" has to be very narrowly construed. The rejection of the plaint at the threshold entails very serious consequences. This power therefore, has to be used in exceptional circumstances and ought to be exercised only when the court is absolutely sure that the plaintiff does not have an arguable case at all.

21. Even there are certain averments in the plaint that there being the subsequent cause of action, the plaintiffs in one of the reliefs of the present suit have prayed to restrain the defendants from interfering with the plaintiffs' possession of JUH's Office as well as other offices connected with the central organization. It is also settled law that at the time of deciding of application for rejection of plaint, merely the averment in the plaint and documents annexed with the plaint are to be considered.

22. With regard to the another objection about the maintainability of suit in terms of relevant provisions of Arbitration and Conciliation Act, 1996 as urged by defendant Nos. 1 and 2, suffice it to say that the question was raised and agitated in the present suit and the same was turned down by this Court by order dated 22nd January, 2010 in I.A. No. 1123 of 2009. Therefore, the said objection cannot be agitated afresh in the present applications and the same is rejected.

23. The objection is also that filing of the present suit amount to res judicata, the plaintiffs No. 2 to 18 were not parties to the earlier two suits and therefore, the present suit cannot be said to be not maintainable so far as they are concerned. The averments made in the plaint would show that he has filed the suit in his individual capacity as a President of JUH. Similarly the other plaintiffs in their individual Capacity as members of the working committee of JUH have brought the suit seeking several reliefs. Nothing on merits has been considered in the order dated 25th August, 2008. Parties in the present suit are also not same. Prima facie, I am of the view that there is a force in the submission of the

plaintiffs that there is now no impediment to proceed the suit on merit as the fresh suit for the same cause of action is maintainable under Order 7 Rule 13 CPC. In case, the objections in subsequent suit are cured, the suit is maintainable, however at the same time, the other party is entitled to raise the objection. It is for the court to decide as to whether fresh plaint is rejected or not.

24. The last objection raised by the Senior counsel appearing on behalf of defendant No. 1 that prayer sought by the plaintiffs in the plaint has become infructuous on the date of suit as the plaintiff No. was appointed for the period 2007-2008 as alleged in the prayer clause and in view of admission made by the plaintiff No. 1, the suit is not maintainable. There is a force in the submission of the Senior counsel appearing on behalf of plaintiffs that there is typing mistake otherwise the period of appointment of plaintiff No. 1 was for two years. Learned Senior counsel has referred Article 11 of the Constitution of JUH which reads as under :

"The membership of Jamait Ulama-i-Hind and its duration.

Article (11)

(a) xxxxxxxxxxxx...

(b) xxxxxxxxxxxx...

(c) Now term of Jamait Ulama-i-Hind and its units will commence from the date of when Central Office elects the new president and he took charge of the same. The tenure of the president will be for the two years. The process of making members will start after commencement of new term and Working Committee will fix its duration. However during emergency period, the General Secretary of the Jamait Ulama-i-Hind after consultation with the president can extend its duration."

In view of the above, there is no force in the submissions of the Senior counsel appearing on behalf of defendant No. 1. Even if the earlier two plaints are read, it is specifically mentioned about the appointment of plaintiff No. 1 for two years i.e. for 2007 and 2008. Thus, the objection is not sustainable.

25. In view of aforesaid reasons, there is no merit in both applications filed by defendant Nos. 1 and 2. The same are dismissed.

CS(OS) No. 1970/2008

26. List the matter before Roster bench on 1st July, 2015 for further proceedings.