

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Dinesh Kumar Sharma

CO 3434 of 2011

Smt. Geeta Khemka & Anr.

Vs.

Southern Avenue Rajeshwari Residents Welfare Association & Ors.

With

CO 1032 of 2012

Southern Avenue Rajeshwari Residents Welfare Association & Ors.

Vs.

Smt. Geeta Khemka & Anr.

**For the petitioners in CO 3434 of 2011:
& for the respondents in CO 1032 of 2012**

**Ms. Bani Ghosh, Adv.,
Mr. S.K. Kanodia, Adv.**

**For the petitioners in CO 1032 of 2012:
& for the respondents in CO 3434 of 2011**

**Mr. Avijit Chakraborty, Adv.,
Mr. Pankaj Kumar Gupta, Adv.**

Reserved on:

12.05.2026

Judgment on:

23.07.2026

Dinesh Kumar Sharma, J.:

1. Late Sri Amitava Khemka and Smt. Geeta Khemka (petitioner in CO 3434 of 2011) filed a Title Suit No. 41 of 2002 against Southern Avenue Rajeshwari Residents Welfare Association and against its office bearer for declaration and permanent and mandatory injunction on 20th August 2002.
2. During the pendency of the suit, the petitioners moved an application for production of certain documents in terms of legal notice dated 4th February

2009, while the matter was at the stage of petitioners' evidence. Learned Trial Court *vide* order dated 18th May, 2009, directed the defendants to give inspection of the documents mentioned in the aforesaid notice dated 4th February, 2009 to the plaintiff on a suitable date, not later than 10 days from the date of the order. It was further, *inter alia*, directed that after such inspection, the plaintiff will be entitled to take certified copies of those documents which he chooses at his own cost.

3. Perusal of the uncertified/photostat copies of orders filed by the Learned Council for Association indicates that the order dated 18th May, 2009 was not complied with. Learned Trial Court, on 3rd December, 2009, *inter alia*, recorded that learned advocate for defendant submits that documents mentioned in serial No. 1 and 6 are not possible to be produced and consequently, the defense of the defendant was struck out under Section 11 Rule 21 of CPC for non-compliance of court order of production of documents. While the matter rested thus, the defendants were proceeded ex-parte on 5th January, 2010.
4. The defendant/association filed an application under Section 151 CPC on 1st of June 2011 for setting aside the order striking of the defence. Learned Trial Court *vide* a detailed order dated 13th July, 2011 dismissed this application, *inter alia*, holding that though the application under Section 151 CPC is maintainable, but noted the willful contumacy and willful conduct of the defendant. The defendant/association aggrieved of this, has invoked the jurisdiction of this court by challenging the order dated 13th July, 2011 in CO 1032 of 2012.

5. In the meanwhile, the defendant/association moved an application under Order 11 Rule 14 CPC read with Section 151 CPC, seeking production of certain documents. The plaintiff filed an objection to the same, *inter alia*, stating that the application has been filed only to delay and drag the suit and thus, the same is liable to be dismissed. The plaintiffs/petitioners also took a plea that the defendant/association has no *locus standi* to file the impugned application, as their defence has already been struck off.
6. Learned Trial Court, *vide* order dated 10th August, 2011 allowed the application, *inter alia*, holding that production of certain documents would not cause any prejudice to the plaintiffs' side, if such document, is placed on record for the consideration of the court. It was further, *inter alia*, held that schedule of documents to be produced are relevant to the case and may throw some light in the material controversy. The learned Trial Court also, *inter alia*, held that non-production of the documents, at the best, can only draw adverse inference.
7. The petitioners aggrieved of this, has invoked the jurisdiction of this court in CO 3434 of 2011, *inter alia*, stating that the impugned order is liable to be set aside predominantly on two grounds. Firstly, when the defense of the defendants had already been struck off, the learned Trial Court could not have entertained the application under Order 11 Rule 14 CPC itself and secondly, the documents sought to be produced are not at all relevant for the purpose of the suit.

8. Learned counsel for the petitioners in CO 3434/2011 has relied upon M/s. Babbar Sewing Machine Company vs. Trilok Nath Mahajan, (1978) 4 SCC 188. Learned counsel submits that in the order dated 13th July 2011, the learned Trial Court has categorically held that the conduct of the defendant was willful and contumacious and there was a willful attempt to disregard the order of the court. Learned counsel has further relied upon Balmer Lawri & Co. vs., Assam Brook Estates, AIR 1979 Calcutta 64 to buttress her point that if an appeal is provided in the statute, the party aggrieved cannot be allowed to take the shortcut method by filing an application under Section 151 CPC. Learned counsel has also relied upon M/s. J.S.Construction Pvt. Ltd. vs. Damodar Rout, AIR 1987 Orissa 207. Learned counsel further submits that in any case the revision petition in C.O. 1032/2012 is badly barred by limitation as having been filed on 23rd March, 2012, challenging the order dated 13th July 2011. Learned counsel submits that Article 131 of the Limitation Act, 1963 provides limitation of 90 days for filing the revision petition.
9. Learned counsel for the petitioner in CO 1032/2012 has refuted all the averments and submits that the order dated 3rd December, 2009, whereby the defence was struck off is patently illegal as having been passed in clear disregard to the provisions of law. Learned counsel submits that even in M/s. Babbar Sewing Machine (supra), it was, *inter alia*, held that for striking off the defence under Order 11 Rule 21 CPC, the party needed to have moved a formal application. Learned counsel further submits that in the present case, application under Section 151 CPC was moved as there was a miscarriage of

justice. Learned counsel has submitted that the jurisdiction under Section 151 CPC is very wide and can be invoked to prevent the miscarriage of justice.

10. Bare perusal of the record reveals that the case has a chequered history. On the first look, the matter seems to be badly barred by the limitation and to be rejected outrightly, however, careful reading of the same reveals that it raises some pertinent questions. The question seems to be that whether, if the High Court has come across with some patent illegality, the Court should cure it, or leave it as having not been challenged in accordance with procedure. The Court considers that the questions to be considered in the present proceedings are:

(i) Whether the order dated 3rd December, 2009 whereby the defence was struck off, is legally sustainable or not;

(ii) Whether in absence of any appeal having been filed as provided under Order XXXIII Rule 1-F, the order dated 3rd December, 2009, striking off the defence cannot be interfered, though it is patently illegal on the face of it;

(iii) Whether the delay in filling in CO 1032 of the 2012, challenging the order dated 13th July, 2011, without any application for condonation of delay can be entertained; and

(iv) Whether the Court can mould the relief claimed and issue directions to ensure substantial justice is done and illegality, if any, is cured.

11. Since both the petitions are proposed to be disposed of by a common order, it is necessary to recapitulate the entire facts which are subject matter of present petitions. Initially, Late Sh. Amitab Khemka (since died) filed a Title Suit no. 41 of 2002 for declaration and permanent and mandatory injunction. The plaintiffs were the owner of flats in the residential society named as Southern Avenue Rajeshwari Resident Welfare Association. Briefly, the suit was for

declaring the special general meeting held on July 9, 2000 as null and void and as well challenging the functioning of the managing committee. While the suit was pending, the plaintiff served a notice dated September 4, 2009 upon learned Advocate for the defendants to produce certain documents before the Learned Court for inspection. The documents were stated to be related to the matters of the suit. The documents sought to be produced were as below:

“1) Notices, Minutes and Attendance Record on all meetings of the defendants associations i.e. Committee Meeting, Annual General Meetings and Special General Meetings from 1995 to 2008.

2) All Balance Sheets of the defendant No. 1 Association with Auditor's report and all attendant papers with Secretary's Report from 1995 to 2008.

3) Original of the letters of plaintiff No. 1 dt. 03.07.2000, 09.07.2000, 20.04.2001, 09.05.2001.

4) Forwarding letter of Plaintiff No. 1 addressed to defendant No. 2 dt. 21.02.2001 enclosing two letters dt. 13.02.2001 and 20.02.2001.

5) Original of Computer typed letter addressed to dr. Awani Kr. Roy, Advocate of defendant dated 25.01.2002, 18.2.2002.

6) Original of the Computer copy of the two letters dated 04.01.2002, 6.02.2002, 30.4.2001”.

12. Pursuant to this the plaintiffs also filed an application before the Learned Court seeking a direction to the defendants to produce the documents and stated therein that unless these documents are produced at the time of the recording the declarations, the plaintiffs shall be prejudiced. This application was taken up for hearing on May 5, 2009 and the same was allowed *vide* order

dated May 18, 2009, *inter alia*, directing the defendants therein to give inspection of records mentioned in the notice dated February 4, 2009 to the plaintiff on a suitable day not later than ten days of this order. The learned Court also, *inter alia*, observed that plaintiff should be allowed inspection of the record for proper adjudication of this case. The case was taken up on June 15, 2009 and July 29, 2019 on which date the defendant took adjournment. On December 3, 2009, Learned Advocate for the defendant (Resident Welfare Association) submitted that the documents mentioned in serial no. 1 and 6 are not possible to be produced. Learned Trial Court passed the following order:

“Order dt 3.12.09.

Plaintiff filed hazira. Ld. advocate for plaintiff is present. Ld. advocate for defendant submit that the documents mentioned in serial no 1 and 6 are not possible to be produced. Consider the submission Heard.

Let the defence of defendant is struck out u/s 11 rule 21 for non compliance of court order of production of document

Fix 5.1.10 for F hearing”.

13. It is pertinent to mention here that subsequently defendant was proceeded ex-parte on January 5, 2010. Resident Welfare Association moved an application under Section 151 CPC dated March 20, 2011 praying for recall of order dated December 3, 2009 by which the defense was struck off. Learned Court rejected the application *vide* order dated July 13, 2011. The resident welfare association challenged this order before this Court *vide* CO 1032 of 2012. In the meanwhile, the resident welfare association moved an application under Order XI Rule 14 filed on July 12, 2011, seeking directions to the plaintiff to produce certain documents relating to ownership of flat no. 3A and 3B. The plaintiff

filed written objections predominantly taking two pleas that the defense has already been struck off and, therefore, there is no locus to file the present application, and secondly, these documents are not relevant in the suit. The Learned Trial Court *vide* a detailed order dated August 10, 2011 allowed the application and directed the plaintiffs to produce the document. It is pertinent to mention here that the Court, *inter alia*, observed that for non-production of documents as sought for, at the best can only draw adverse inference. The plaintiff aggrieved of this challenged the impugned order *vide* CO 3434 of 2011 predominantly taking a plea that the learned Trial Court has fallen into error by allowing the application under Order XI Rule 14 CPC, whereas the defense had already been struck off.

14. Ld. Counsels for both the parties have made detailed submissions and have also filed written note of arguments. Before proceeding further, the Court is conscious of the fact that initially the Title Suit no.41 was filed in 2002 and even after expiry of 24 years, the suit does not seem to have seen much progress. The court was rather doubtful whether the parties would still be interested in the original suit as almost the quarter of the century has elapsed. The chequered history of this case demonstrates a total casual approach of the Ld. counsels representing the parties as well as the ld. Trial Court. The question herein is whether the Court should take a hyper technical view taking into account the procedural limitations, delay and latches and dispose of the petitions or may examine the legality of the orders passed in order to ensure that if any illegality has been committed that should not be allowed to be

perpetuated.

15. Before proceeding further, it is necessary to take into account certain relevant provisions of the law. Order XI of CPC relates to the chapter "Discovery and Inspection". Order XI Rule 14 reads as under:

“14. Production of documents.- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just”.

16. Since Order XI Rule 21 is also at the center point, therefore, it is necessary to reproduce the same also order XI Rule 21 which reads as under:

“21. Non-compliance with order for discovery.-[(1)] Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed or want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and[an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]
[(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]”

17. Before proceeding further, it is also advantageous to refer to Section 151 CPC which confers inherent power of the Court Section 151 CPC reads as under:

“151. Saving of inherent powers of Court. -Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for

the ends of justice, or to prevent abuse of the process of the Court”.

18. Bare reading of Section 151 CPC makes it clear that the Court can exercise its inherent power, if the same is necessary for the ends of justice or to prevent the abuse of the process of the Court. The scope and ambit of Order XI Rule 41 and Order XI Rule 21 CPC have been subject of discussion in various judgments and the detailed deliberation on this point may be found in a judgment of High Court of Delhi in Maj. (Retd.) Sukesh Behl & Anr. vs. Koninklijke Phillips Electronics N.V., 2016 Vol.3 AD (Del)315. Hon'ble Division Bench of High Court of Delhi examined in detail the question relating to the consequences of dismissal of the suit or striking out defense for failure to comply with the order for production under Order XI Rule 14 CPC. The Division Bench after considering the judgment of Madras High Court in Sithamalli Subbayyer vs. M.L.M. Ramanathan Chettiar, (1924) 46 MLJ 350, Lyallpur Sugar Mills Co. Ltd. and Anr. vs. Ram Chandra Gur Sahai Cotton Mills Co. Ltd., AIR 1922 Allahabad 235, Koduri Krishnarao vs. State of Andhra, now Andhra Pradesh represented by Secy, to the Govt. (Public Works Dept.) Hyderabad, AIR 1962 AP 249, (Sahu) Munna Lal vs. Tara and Anr., AIR 1929 Allahabad 83, Chinnappan vs. Ramachandran, AIR 1989 Madras 314, Ms. Gur Prasad Shyam Babu and Ors. vs. State Bank of India and Anr, AIR 1994 Allahabad 151, Manohar Das vs. Darbara Singh and Anr., AIR 1933 Lahore 248, Shri Baba Shiva Sambhu vs. Raj Mohan Deb Nath, AIR 1966 Tripura 16, *inter alia*, held as under:

“These cases clearly establish the principle that the non-compliance with an order under O. 11 R. 14 does not and cannot warrant the dismissal of the suit of a plaintiff or the striking off of the defence of the party which is guilty of the non-compliance of the order as such non-compliance does not fall within the ambit of the three grounds which are stated in the rule and which only would justify the striking off of the defence. It may further be pointed out in this connection that where a party fails to produce certain documents under O. 11 R. 14, the Court would be entitled to raise an adverse presumption against the party on account of the non-production of the documents required, but that would not justify its dismissing a suit in the case of a plaintiff or striking off of the defence in the case of a defendant. It has to be emphasised in this connection, and I would do so even at the risk of repetition, that the provisions of this rule are of a very drastic nature, and it is only in rare cases that the penalty contemplated under the rule should be resorted to. Bearing these principles in mind, I have no hesitation in coming to the conclusion that the order passed by the Court of first instance dismissing the suit of the plaintiff was wholly without justification and that in passing that order the Court exercised jurisdiction which did not vest in it in accordance with law.....

21. The consistent view taken by various High Courts across the country for a considerably long period of time i.e. nearly over 90 years is that an order under 11 order rule 14 is merely an order to produce documents. Non compliance of the said order may have several consequences, but the set of consequences as stipulated by order 11 rule 21 is not one of them. The court is not given discretion under rule 21 to dismiss the suit for non prosecution or strike out the defence in case of non compliance of the order of production. Various other measures may be available/consequences provided for dealing with a failure to comply with an order of production under order 11 rule 14, however, we are not in the present case called upon to deal with the said issue.

22. The impugned order is an order made under Order 11, Rule 14. The non-compliance of that order does not warrant the striking out of the defence of the appellant. The grounds upon which the discretion is given to a Court to strike out the defence of a defendant are given in Rule 21 of Order 11 CPC. According to the said rule, there are three grounds only upon which a Court is justified in striking out the defence of a defendant or in dismissing the suit of a plaintiff, namely, (1) the refusal to answer interrogatories, (2) the refusal to make discovery of documents, (3)

refusal to permit inspection of documents. Rule 14 of Order 11 CPC does not relate either to the answering of interrogatories or the discovery or inspection of documents and the rule relating to discovery is embodied in Rule 12 of Order 11 and the rule relating to the inspection of documents is to be found in Rule 18 of order 11. In the present case the learned Judge has not passed any order either under Rule 12 or Rule 18 of Order 11 CPC. An order under Rule 14 is clearly not covered within the ambit of rule 21.

23. Further, an order for production under order 11 rule 14 CPC does not decide or affect any vital and valuable rights of the parties or decide matters of moment. In any event, prior to passing any order under order 11 rule 21, the court is to put the defaulting party to notice and give him an opportunity of being heard. The impugned order does not satisfy the test as laid down in Shah Babulal Khimji (Supra) and as such the present appeal is not maintainable”

19. Thus, the bare perusal of this judgment would make it clear that non-compliance of Order XI Rule 14 CPC cannot be followed with the dismissal of the suit or striking off a defense. It has also been made clear that an order under Order XI Rule 21 CPC can be passed only in the following three circumstances:

- i) The refusal to answer interrogatories;*
- ii) The refusal to make discovery of document; and*
- iii) Refusal to permit inspection of documents.*

20. It is also pertinent to mention here, that the Order under Order XI Rule 14 CPC does not decide or affect any vital and valuable right of the parties. It is also pertinent to mention here that an order for striking off defence under Order XI Rule 21 CPC can be passed only upon an application being moved by either of the parties. The Hon'ble Division Bench of High Court of Madhya Pradesh in Archdiocese of Bhopal Registered Society vs. Hasan Kabir, 2009 (4) MPLJ 530,

while dealing with the interpretation of Order XI Rule 14 of CPC and Order XI Rule 21 of CPC, *inter alia*, held as under:

“(8.) A bare reading of Rule 21 of Order 11 CPC makes it clear that the provision entails non-compliance of the order to answer interrogatories. Interrogatories are dealt with under Rule 1 to Rule 11 of Order 11. Rule 12 of Order 11 CPC deals with application for discovery of documents. Inspection of the documents which is referred to in Rule 21 is again dealt with in Rule 15 to 18 of Order 11 CPC. The Order 11 Rule 1 CPC enables party to a suit to make discovery by interrogatories by leave of Court. Rule 2 of Order 11 CPC provides that particular interrogatories to be submitted to the Court, and factors to be taken into consideration. Order 11 Rule 11 provides that when any person omits to answer or answer insufficiently the court may on application, direct to answer or further answer. The Court orders discovery of document under Rule 12 of Order 11 CPC. The Rule 18 of Order 11 CPC provides that where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit. In case plaintiff fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, be liable to have his suit dismissed for want of prosecution. In case of defendant not complying with the provision, his defence can be struck off and he may be placed in the same position as if he had not defended. It is further required that party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and by way of amendment which has been inserted with effect from 1.2. 1977 the order may be made under Order 11 Rule 21 CPC after notice to the parties and after giving them reasonable opportunity of being heard. The sine, qua non for exercising the power under Rule 21 is failure to answer the interrogatories, order of discovery or inspection of documents. Non-compliance of Rule 14 which is with respect to production of documents is not covered under rule 21 CPC. Legislature has thought it appropriate in case of plaintiff if he fails to comply with the order relating to interrogatories, discovery or inspection of documents a suit be dismissed or in case of defendant his defence may be struck off. Legislature in its wisdom has not included in Rule 21 of order 11 CPC such a penal consequence due to non-compliance of order passed under Order 11 Rule 14 CPC. Moreover in the instant case, it is not in dispute that no application was filed for dismissal of suit under Order 11

Rule 21 CPC which is condition precedent for exercise of the power under the aforesaid provision, thus, even assuming for a moment that aforesaid provision was applicable, it was not open for the trial Court to have passed the order dismissing the suit. An order under Order 11 Rule 21 CPC can be passed only on an application and that too after giving notice to the parties and giving them reasonable opportunity of being heard. It is also provided in sub-rule (2) of Rule 21 of Order 11 that once suit is dismissed under sub-rule (1) of Rule 21 of Order 11 CPC, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action. This dire consequence is not provided with respect to non-compliance of Order 11 Rule 14 CPC, but it is the consequence of noncompliance of order of interrogatories, interrogatories are dealt with in Rule 1 to Rule 11 of Order 11 CPC. Rule 12 deals with discovery and Rule 15 to 18 deals with inspection of documents. The non-compliance as to aforesaid is covered within the ken of penal provisions contained in Rule 21 of Order 11 CPC.

(9.) In *Premraj Bheoraj Agarwal vs. Nathumal Rupchand Marwadi* (supra) there was an application moved for inspection of documents which was allowed by the Court. Court has, directed production of account bills which was not produced, in that context observation has been made that Order 11 Rule 21 CPC, provides the penalty for non-compliance of such a direction. Order 11 Rule 14 CPC has also been referred. When the documents are in power of the Court, it was held that the Court would have no jurisdiction to proceed under. Order 11 rule 21 CPC. If it could not have proceeded under that rule, it could not have proceeded under the general provision of Section 25 of Provincial Insolvency act. Thus, dismissal of the suit was set aside. The decision has to be seen in the context that Court has ordered inspection of documents and consequent production, inspection is dealt with under Rule 15 to 18 of Order 11 CPC.

(10.) In *Chinnappan vs. Ramachandran* AIR 1989 Madras 314 it was laid down that failure to produce the documents directed to be produced by an order of Court passed under Order 11 Rule 14 CPC does not enable the Court to exercise its powers under Order 11 Rule 21 CPC. Such an application is misconceived and not maintainable.

(11.) In *Prem Sukh Chunder and others vs. Indronath Banerjee* ILR 1891 18 Cal 420, *Shankar Deoba Patil and another vs. GanpatilalShiodayalChamedia* AIR 1971 Bombay 87, *Koduri Krishnarao vs. State of Andhra, now Andhra Pradesh* represented

by Secy, to the Govt. (Public Works Dept.) Hyderabad AIR 1962 Andhra Pradesh 249, Chander Bhan Singh vs. Lallu Singh and another AIR 1947 Allahabad 343, Ram Kishun Lal and others vs. Abu Abdullah Syed Hussain Imam AIR 1943 Patna 69 and in Devakaranbholaram and others vs. SangidasJesiram and others AIR 1925 Born 386, it has been laid down that in the absence of an order under Rules 11,12 or 18 and the disobedience thereof by the party against whom the order is made, the Court cannot act under Rule 21 Order 11 CPC.

(12.) An order for production of documents Rule 14 of Order 11 CPC is not one of the orders mentioned in Rule 21 of Order 11 CPC. A disobedience of an order for production under Rule 14 of Order 11 CPC would not empower the court to take action under Rule 21 of Order 11 CPC has been laid down in G. Kishan Rao vs. B. Narayan Reddy ILR 1970 Andh Pra 1203, M/s Gur Prasad Shyam babu and others vs. State Bank of India and another AIR 1994 Allahabad 151, Lyalpur Sugar Mills and Co. and another vs. R. C. G. Sahai Cotton Mills and Co. AIR. 1922 Allahabad 235, (Sahu) Munna Lal vs. Tara and another AIR 1929 Allahabad 83, Subbayyar vs. M. LM. Ramanathan Chettiar 1924 Madras 582, Amarsingh vs. Chaturbhuj and others AIR 1957 Rajasthan 367 and in Shri Baba Shiva Sambhu and another vs. Raj Mohan Deb Nath and others AIR 1966 Tripura 16.

(13.) The Apex Court in M/s Babbar Sewing Machine Co. vs. Tirlok Nath Mahajan (supra) has considered the provision of Order 11 Rule 21 CPC and it has been observed that power for dismissal of a suit or striking out of the defence under Order 11 Rule 21 CPC should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party. There was joint application under Rule 14 and Rule 18 of Order 11 CPC for production and inspection of documents. In the instant case, there was no application or order under Order 11 Rule 18 CPC. Thus, decision of Apex Court is in the context of Order 11 Rule 18 CPC.

(14.) A single Bench decision of this Court in Indore Development Authority, Indore vs. Satyapal Anand and another (supra) has been relied upon in which learned single Judge of this Court has opined that suit can be dismissed under Order 11 Rule 21 CPC in case there is failure to comply with the order passed under Order 11 Rule 14 CPC. We are unable to agree with the view taken in Indore Development Authority, Indore vs. Satyapal Anand and another (supra) in view of clear language of the rule and number

of decisions of the various High Courts on this aspect. We hold that law has not been correctly laid down in the aforesaid decision.

(15.) In view of above, we hold that due to non-compliance of provision under order 11 Rule 14 of CPC suit cannot be dismissed under Order 11 Rule 21 CPC. It can be dismissed only in the exigencies such as due to non-compliance of orders of interrogatories, discovery or inspection as envisaged under Order 11 rule 21 CPC”.

21. The bare perusal would make it clear that Order XI Rule 21 can be passed only for the non-compliance of Order of interrogatories, discovery, or inspection as envisaged under Order XI Rule 1,12, and 18of CPC. In M/s. J.S. Construction Pvt. Ltd. vs. Damodar Rout, AIR 1987 Orissa 207 while dealing with the interpretation of Order XI Rule 14 and Order XI Rule 21CPC it was, *inter alia*, held that before issuing a direction under Order XI Rule 14 of CPC the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit. This power cannot be exercised to cause a roving enquiry to fish out information, which may not be relevant for the disposal of the suit.
22. Learned counsel for the petitioner in CO 3434 of 2011 has relied upon the judgment of Balmer Lawrie and Company Ltd. vs. Assam Brook Estates Ltd. and Anr., AIR 1979 Calcutta 64 wherein it was, *inter alia*, held that if there is a provision for filing an appeal, the same cannot be substituted by exercising its inherent jurisdiction under Section 151 CPC. There cannot be any quarrel to this settled proposition. However, the question is that whether the purported order under Order XI Rule 21 actually falls within the purview of Order XI Rule 21 CPC or not. The Court cannot merely be guided by the mentioning of the

provision in the patently illegal order. Learned counsel for the petitioner in CO 3434 of 2011 has also relied upon M/s. Babbar Sewing Machine Company vs. Trilok Nath Mahajan, (1978) 4SCC 188, wherein it was, *inter alia*, held that the provisions of Order XI Rule 21 CPC should be applied only in extreme cases, where there is contumacy on the part of the defendant or a willful attempt to disregard the order of the Court is established.

23. Even at the cost of repetition, it may be reiterated that in the notice dated February 4, 2009 the plaintiff has not given even an iota of reason that how the documents sought to be produced are necessary for the fair disposal of the suit or the same are relevant for proper adjudication of the matter in the suit. It is also pertinent to mention that even in the application filed by the plaintiff there is no mention of any provision of the CPC. The application is also totally silent about the relevance of the documents sought to be produced. The plaintiff merely stated that non-production of the same shall prejudice the plaintiffs. It is also worth mentioning that the learned Trial Court passed an order on May 18, 2009 wherein also there was no recording of any satisfaction that the document sought to be produced are relevant for proper adjudication of the matter in dispute.

24. It is relevant to note that after passing of the order the matter was taken up on June 15, 2009 and July 29, 2009 and, thereafter, *vide* order dated December 3, 2009 the Learned Trial Court proceeded to strike off the defense under Order XI Rule 21 CPC which seems to have been wrongly typed as under Section 21. It is a matter of record that no application for striking off the defense was

made. In the impugned order, there is no mention of any willful default, neglect, or contumacy on the part of the defendant. The question is whether such an order can be as treated Order XI Rule 21 CPC, merely because the Learned Trial Court has simply mentioned the same. Neither in the notice nor in the application the plaintiff has mentioned any such provision.

25. Even for the sake of argument, if it is taken that the Learned Trial Court passed an Order 11 Rule 14 CPC. In that case the court, without any application having been moved by the plaintiff under Order XI Rule 21 CPC, and without giving any opportunity of being heard, could not have passed the order of striking off the defence. This Court considers that such an order being patently illegal and violative of basic principle of natural justice shocks the conscience of the Court and thus, it is liable to be set aside to ensure that further illegality is not perpetuated.
26. In respect of CO No. 1032/2012, certainly, there is a delay on the part of the defendant Resident Welfare Association in challenging this order. However, the Court is of the firm view that the procedure is a handmaid of justice if there is a patent illegality, the same is liable to be corrected at the first instance.
27. The discussion made hereinabove makes it clear that in order to exercise the extreme power of striking of the defense there has to be prolonged, inordinate, and inexcusable delay and it also must be demonstrated that such non-production has caused substantial or serious prejudice. It is also to be borne in mind that striking of the defense is a harsh order, which is punitive in nature and, therefore, can only be done after issuing the show cause. In present case

the petitioner in CO 3434 of 2011 issued a notice for production of certain documents without explaining their relevance. Learned Trial Court passed an order for the production of such documents, and for the non-production of the same, struck off the defense purportedly under Order XI Rule 21 CPC. There is nothing in the record to suggest that there was inordinate, inexcusable or prolonged delay. There was also no show-cause issued or an opportunity of being heard was afforded to the defendant to show cause that why the defence be not struck off. This Court while exercising its revisional jurisdiction is duty bound to correct, if any, patent illegality has come to its notice. Order dated December 3, 2009 on the face of it is patently illegal and falls under the category of non-est. All subsequent orders which are subject matter of challenge i.e., July 13, 2011 and August 10, 2011 are also liable to be set aside as the basis of such orders being non est, these orders also cannot be sustained. Thus, the order dated December 3, 2009, July 13, 2011 and August 10, 2011 are set aside.

28. Thus, in view of the discussions made herein above, the questions as framed in para 10 are answered as follows:

- (i) *"The order dated December 3, 2009 is not legally sustainable being non est;*
- (ii) *The order being patently illegal, the Court is well within its power to exercise its inherent powers and can set aside the same So as to ensure that illegality is not further perpetuated; and*
- (iii) *Though there is no limitation prescribed for filing the petition under Article 227 of Constitution of India. However, the Courts have always ensured that there should not be any*

delay or latches. In the present case in view of the peculiar facts and circumstances of the present case the Court considers that it is necessary to decide the petition on merits so as to ensure that substantial justice is imparted; and

(iv) In view of the discussion made hereinabove the order dated December 3, 2009 and subsequent orders dated July 13, 2011 and August 10, 2011 are set aside. The matter is remanded back to the Learned Trial Court to start de novo from this stage where it was before passing an order dated December 3, 2009. The Learned Trial Court will conduct the proceeding expeditiously and shall fix the matter minimum for two days a week and ensure that the suit is decided within the period of six months. The Court shall hear and decide the matter independently of any order passed by this Court. The learned Registrar General shall list the matter before the Court in the month of January, 2027 along with compliance report to be sent by the learned Trial Court”.

29. In view of the discussion made hereinabove and thus, both the petitions are disposed of. No order as to cost.
30. All parties shall act on basis of the server copy of this judgment duly downloaded on the official website of this Court.

(Dinesh Kumar Sharma, J.)