* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CS(OS) No. 197/2010**

% **24th May, 2016**

KIMSUKH KRISHNA SINHA ..... Plaintiff

Through: Mr. Gaurav Mitra, Mr. Pratik Malik and Mr. Rudra Nath Sharma, Advocates.

versus

SUDIPTI ESTATES AND ORS. ..... Defendants

Through: Mr. B.B. Gupta, Sr. Advocate with Mr. Udyan Srivastava, Advocate for D-1, 5 and 7.

Mr. Yoginder Handoo, Advocate for D-6.

Mr. Aditya Shankar and Ms. Meghna Mishra, Advocates for D-8, 9 and 10.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

I.A.Nos. 7018/2010 (u/O VII R 11 CPC by D-2 to 4 and 7), 7115/2010 (u/O VII R 11 CPC by D-1) & 7116/2010 (u/O VII R 11 CPC by D-8 to 10 CPC)

1. These are applications filed by all the 10 defendants in the suit except defendant nos. 5 and 6 for rejecting the suit plaint and dismissing the suit. I.A No.7115/2010 filed by the defendant no.1 is for dismissal of the suit on the ground of the suit being barred by limitation, and therefore, counsel for the defendant no.1 prays for treating the application of defendant no.1 also

under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) and which oral prayer is allowed. In fact if the suit is held to be time barred against defendant no.1, the suit will also have to be held to be time barred against the other defendant nos. 2 to 10 by application of Section 3(1) of the Limitation Act, 1963.

2. Plaintiff by this suit seeks recovery of a sum of Rs.31,09,50,000/- alongwith *pendente lite* and future interest against a total of ten defendants. Memo of parties in the suit is as under:-

"**IN THE MATTER OF:**

KIMSUKH KRISHNA SINHA
Having its office at 39, Ground Floor,
Indraprakash Building, 21 Barakhamba Road,
New Delhi-110001 …. PLAINTIFF

VERSUS

1. SUDIPTI ESTATES (*Sic*: SUDIPTI ESTATES PVT. LTD.)
Registered Office at:
1E, Jhandewalan Extension
New Delhi

2. ARUN KUMAR BHAGAT
Director
M/s. Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

Also at:
R/o- 104/77, Silver Oaks Apartments,
DLF City, Phase-I, Gurgaon-122002

3. VIPEN JINDAL
Director
M/s. Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

Also at:

R/o.-Flat No.7157,
Block: D-7, Vasant Kunj,
New Dehi.

4. PURAN CHAND SACHDEVA
Director
M/s Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

5. PRAVEEN KUMAR (EARLIER NO.4)
Authorized Signatory
M/s. Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

Also at:
B-13/12, DLF City, Phase-I,
Gurgaon-122002, Haryana

6. PRADEEP SINGH (EARLIER NO.5)
Authorised Representaive
M/s. Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

Also at:

Apartment 1B75,
Wellington Estate, DLF (Opp. DLF Golf Course)
Phase-V, Gurgaon
Haryana

7. JAI PRAKASH GAUR
Authorized Signatory
M/s Sudipti Estates Pvt. Ltd.
1E, Jhandewalan Extension
New Delhi

Also at:

B-13/12, DLF City, Phase-I,
Gurgaon-122002, Haryana

8. DLF LIMITED
DLF Centre, Sansad Marg,
New Delhi-1100017

9. DLF HOME DEVELOPERS LIMITED
DLF Centre, Sansad Marg,

New Delhi-1100017

10. DLF ESTATE DEVELOPERS LIMITED
Shopping mall,
Arjun Marg,
DLF City, Phase-I

Gurgaon-122002 ….DEFENDANTS”

3. As per the plaint, plaintiff had title rights in the two properties stated in para 5 of the plaint. The first property is land measuring 361 Kanal and 13 Marla situated at Village Bandhwari, Tehsil, Sohna, District Gurgaon, Haryana. The second property is land comprising of 44 Kanals and 11 Marla situated at Village Bandhwari, Tahsil, Sohna, District Gurgaon, Haryana. Rights in these properties were transferred by the plaintiff to the defendant no.1 for a total sum of Rs.34,27,31,188/- and which amount was received by the plaintiff from defendant no.1 through six cheques signed by defendant nos.5 and 7 namely Sh. Praveen Kumar and Sh. Jai Prakash Gaur. The details of such payments are as under:-

Sr. No.	Amount (in Rs.)	Cheque No.	Date	Drawn on
1.	3,75,89,000/-	578767	14.09.2006	ICICI Bank, Sushant Lok, Gurgaon
2.	6,04,12,500/-	578765	14.09.2006	ICICI Bank, Sushant Lok, Gurgaon
3.	7,48,40,625/-	578770	18.09.2006	ICICI Bank, Sushant Lok, Gurgaon
4.	6,82,17,188	578778	21.09.2006	ICICI Bank, Sushant Lok, Gurgaon
5.	7,09,59,375/-	578776	21.09.2006	ICICI Bank, Sushant Lok, Gurgaon
6.	3,07,12,500/-	578787	28.09.2006	ICICI Bank, Sushant

				Lok, Gurgaon
Total	**34,27,31,188/-**			

4. The case of the plaintiff is that he was defrauded by the defendants because amounts which were received by the plaintiff in cheques from defendant no.1 of Rs. 34,27,31,188/-, he paid over the same in cash to the defendant no.1 through duly signed receipts of defendant nos. 5 and 6, and which was done because defendants promised to get funds invested in projects of the DLF group companies inasmuch as defendant no.1 company is a group company of the DLF group. The plaintiff further pleads that after the defendant no.1 took over the possession of the properties sold by the plaintiff to the defendant no.1, defendant nos.5 and 6 under a well planned *modus operandi* and calculated conspiracy lured the plaintiff to reinvest the moneys received with defendant no.1 company so that in the fresh lands acquired the DLF group would carry out development in collaboration with the plaintiff. The plaintiff further pleads that after receiving moneys from the plaintiff, defendants no.2, 3, 5 and 6 started avoiding the plaintiff and neglected the demands of the plaintiff for procurement of the proposed lands and execution of the sale deeds in his favour by the DLF group companies. Plaintiff further pleads that when defendants were not coming forward, plaintiff somehow managed to have a personal meeting with defendant nos. 5 and 6 on 01.12.2006 when plaintiff insisted for the documents relating to the progress of the project, but defendant

nos. 5 and 6 refused straight away and in fact defendant nos. 5 and 6 threatened the plaintiff from following the matter any further by telling the plaintiff that he would have to face dire consequences as defendants enjoyed immense political and muscle clout being big builders. Plaintiff further pleads that having left with no option he sent a Legal Notice dated 25.1.2007 to defendants no.1, 2, 3, 5 and 6 (wrongly pleaded in plaint to all defendants), which was received by these defendants, but these defendants neither repaid the monies advanced to the defendant no.1 company nor replied to the legal notice. Plaintiff then pleads that he has been duped by the defendant no.1 and its Directors whereby plaintiff filed a complaint under various Sections of the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 resulting in FIR bearing no. 249/2007 under Section 420 IPC against defendant nos. 1 to 3, 5 and 6 at Police Station Connaught Place, New Delhi. The investigating officer however filed a final report cancelling the complaint. Plaintiff challenged this in the competent court, but the court declined the prayer of the plaintiff for further investigation and which order was challenged by the plaintiff by filing a petition before this Court which was said to be pending at the time of filing of the suit. Plaintiff therefore pleads the aforesaid cause of action for filing of the suit for recovery of moneys which arose in August, 2006 and also on 25.1.2007, 9.1.2010 and 16.1.2010 when plaintiff sent legal notices to the defendants but the defendants failed to pay the amounts claimed.

5. In the subject application being I.A. No.7115/2010 filed by the defendant no.1 it is pleaded that the suit is clearly barred by limitation because plaintiff pleads fraud as per paras 17 to 19 of the plaint and of the plaintiff sending a Legal Notice dated 25.1.2007 to the defendants and it is quite clear from the contents of this Legal Notice dated 25.1.2007 that the plaintiff has come to know of the fraud prior to 25.1.2007 when the legal notice was issued, and since the suit is filed on 25.1.2010, the suit is therefore barred by limitation because cause of action for three years under Article 113 of the Limitation Act arose prior to the sending of the Legal Notice dated 25.1.2007 which talks of plaintiff having come to know of the fraud prior to 25.1.2007 and hence the suit had to be filed maximum by 24.1.2010.

6. On behalf of defendant nos. 2 to 4 and 7 and the defendant nos. 8 to 10, who have filed I.A Nos. 7018/2010 and 7116/2010 respectively, it is argued that the plaint is deliberately confusingly made because plaintiff at his convenience at different places in the plaint refers to defendants either jointly or to only some of the defendants being defendant nos. 1, 5, 6 and 7, and at other places to defendants no.5 and 6 or defendants no.5 and 7, however, a closer reading of the plaint shows that effectively no cause of action is pleaded as against any of the defendants except defendant nos. 1, 5 and 6. It is pleaded that a reading of the plaint essentially only shows that it is the defendant no.1 company which admittedly received the monies from the plaintiff as per the

plaint and hence the liability to return the monies is only of the defendant no.1 along with defendants no.5 and 6 on account of the cause of action of collusion being pleaded against defendant nos. 5 and 6. It is pleaded that even if such collusion exists qua these defendant nos. 5 and 6, the suit itself qua all the defendants will be barred by time as the suit is time barred on account of arguments as raised on behalf of defendant no.1. On behalf of defendant nos. 8 to 10 companies, it is also argued that they were nowhere in the picture and legal entities cannot be said to be in collusion with defendant nos. 5 and 6 to defraud the plaintiff. It is also pleaded that in fact there are no averments of a legal cause of action as against defendant nos. 2, 3, 4 and 7 to 10.

7. To decide the issues urged on behalf of the defendants let me at this stage reproduce extensively the relevant paras of the plaint relied upon by the plaintiff to argue that the plaint discloses a cause of action and the suit is not barred by limitation, inasmuch as, it is these paras which will show as to whether cause of action is pleaded against defendant nos. 2 to 4 and 7 and also the defendants no.8 to 10 and as to whether at all the suit is barred by limitation against all the defendants. The relevant paras of the plaint are paras 3, 4, 7, 10, 11, 15, 16, 17, 18, 19, 20, 21 and 25 and which paras read as under:-

> "3. That Defendant nos. 2, 3, 4, 5, 6 and 7 are the Directors/Authorised Signatories/Authorised Representatives of the Defendant no.1 Company and have at all times acted on behalf of the Defendant no.1 Company.
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> 4. As per the memorandum and articles of association, the Defendant no.9 and 10 are the promoters and initial subscribers to the equity

shares of the Defendant no.1 Company. It is submitted that the Defendant no.9 and 10 are companies that are group companies of the Defendant no.8 group. It is stated and submitted that it is Defendant no.8 is the group that holds and controls all the Defendants above mentioned.

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7. That upon the afore-said invitation, the Plaintiff visited office of the Defendants in the first week of September, 2006 situated at Shopping Mall, Arjun Marg, Phase-I, Gurgaon, Haryana. During the discussions, the Defendant no.5 apprised and represented to the Plaintiff that he is the Director and Authorised Signatory of the defendant no.1 Company. The Defendant no.5 in order to lure and gain the confidence of the Plaintiff further apprised that the Defendant no.1 was one of the group companies of DLF Group (one of the leading real estate developer in the country) and further claimed and represented that he was also in the board of many DLF Group Companies including the Defendant no.1 Company and also on the board of DLF Estate Developers Ltd. (one of the promoters of the Defendant no.1 Company), and in that context the Defendant no.5 showed copies of a number of documents in support of his afore-said claim. During the course of interaction at the said office, the Defendant no.5 also introduced Defendant no.6 to the Plaintiff who was already present there.

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10. That besides the above, the Defendant nos. 5 and 6 also represented to Plaintiff that they are aware of some other pieces of land which they would procure in favour of Plaintiff at a much cheaper rate and thus, under a calculated design, the said Defendants induced Plaintiff to part with his ownership rights over the said properties. The Defendant nos. 5 and 6 further represented that as the Defendant no.1 being a real estate development company and also part of the renowned DLF group, they would facilitate an agreement between the promoters of the Defendant no.1 Company i.e., the DLF group and Plaintiff wherein Plaintiff would contribute the land proposed to be acquired by him through the efforts of the Defendants out of the consideration receivable by him for the transfer of his rights in the above mentioned properties and upon the fresh lands so acquired, the DLF group would carry out development in collaboration with Plaintiff.

11. That the Defendants their malafide intention and design represented to Plaintiff that the money so paid to them as against the validity executed receipts shall be utilized towards procurement of land in the name of Plaintiff and that the land so procured would be

subjected to joint development by Plaintiff and the DLF Group or by the Contractors/Sub-Contractors to be nominated/engaged by Plaintiff or the DLF Group as may be mutually decided and the DLF Group will also provide its brand name, business and marketing support etc., to the proposed project thereby yielding huge returns from the said developed project which shall be beneficial for all the parties concerned.

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15. That in accordance with the above understanding, the Defendant No.1 made payment of a total sum of Rs. 34,27,31,188/- in parts to Plaintiff through six cheques which were duly signed by Defendant no.5 together with Defendant no.7. The details of the said payments cheques are as under:-

Sr. No.	Amount (in Rs.)	Cheque No.	Date	Drawn on
1.	3,75,89,000/-	578767	14.09.2006	ICICI Bank, Sushant Lok, Gurgaon
2.	6,04,12,500/-	578765	14.09.2006	ICICI Bank, Sushant Lok, Gurgaon
3.	7,48,40,625/-	578770	18.09.2006	ICICI Bank, Sushant Lok, Gurgaon
4.	6,82,17,188	578778	21.09.2006	ICICI Bank, Sushant Lok, Gurgaon
5.	7,09,59,375/-	578776	21.09.2006	ICICI Bank, Sushant Lok, Gurgaon
6.	3,07,12,500/-	578787	28.09.2006	ICICI Bank, Sushant Lok, Gurgaon
Total	**34,27,31,188/-**			

16. That as and when Plaintiff received an account payee cheque from the Defendant No.1 Company duly signed by Defendant No.5 and 7 towards sale consideration in respect of transfer of his rights in the

said properties, Plaintiff immediately arranged the cash against the realisation/credit and handed over the same to Defendant no.1 through Defendant nos. 5 and 6 against duly stamped receipts issued by Defendant no.6 on behalf of Defendant no.1 for the purpose of procuring/purchasing the proposed lands in pursuance of the understanding as stated above. The details of the cash given to Defendant no.5 and 6 acting on behalf of the Defendant no.1 Company are as under:-

Sr. No.	Amount (in Rs.)	Date of Receipt	Status/Remarks
1	9,50,000/-	14.09.2006	In cash
2	2,86,00,000/-	18.09.2006	In cash
3	74,85,240/-	19.09.2006	In cash
4	3,71,64,760/-	21.09.2006	In cash
5	2,08,31,240/-	22.09.2006	In cash
6	7,18,47,000/-	25.09.2006	In cash
7	6,81,21,000/-	27.09.2006	In cash
8.	2,94,84,000/-	10.10.2006	In cash
9.	4,64,66,760/-	16.10.2006	In cash
Total	**31,09,50,000/-**		

17. That after receiving the funds in cash to the tune of Rs.31,09,50,000/-(Rupees Thirty One Crores Nine Lacs and Fifty Thousand Only) and execution of the said Sale –Deeds in favour of Defendant no.1 and taking over the possession of the said properties, the Defendant nos.2,3,5 and 6 under a well planned modus operandi and calculated conspiracy started avoiding Plaintiff on one pretext or the other. Whenever Plaintiff tried to reason it out with the said Defendants to do the needful as promised, assured and undertaken, the Defendants deliberately started neglecting the genuine and legal demands of Plaintiff regarding procurement of the proposed lands and execution of the Sale-deeds in his favour and to get executed the necessary collaboration/development agreements thereof with the DLF Group.

18. That when the Defendants were not coming forward, Plaintiff some how managed to have a personal meeting with Defendant nos. 5 and 6 on 01.12.2006 at about 07.45 P.M at City Club, Gurgaon and in the meeting the Defendant nos. 5 and 6 further gave false assurances to the Plaintiff that they are in the process of procuring the proposed

land and very soon the said lands shall be transferred in the name of the Plaintiff. When Plaintiff insisted that the documents relating to progress of the matter be shown to him, the Defendant nos. 5 and 6 straight away refused to provide the said documents and told Plaintiff that the defendants have their own working system which is also prevalent under the other DLF Group Companies also and there is no requirement for showing any document whatsoever. When Plaintiff still insisted that the commitments be honoured as earliest possible, the Defendant nos. 5 and 6 threatened Plaintiff to desist from following the matter any further, otherwise Plaintiff would have to face dire consequences as the Defendants being builders they enjoy immense political and muscle clout and were having sufficient influence in the police machinery also.

19. That having no option left, Plaintiff was constrained to send a legal notice dated 25.01.2007 to the Defendants and which the same was duly received by the defendants. However, the Defendant neither repaid the monies as advanced to the Defendant no.1 Company by the Plaintiff towards procurement of land nor have replied to the legal notice dated 25.01.2007.

20. It may not be out of place to mention herein that Plaintiff also filed a complaint under section 200 read with section 190 of the Code of Criminal Procedure 1973 and in which an FIR bearing no. 249 of 2007 was registered under section 420 of IPC against the Defendant No.1 to 3, 5 and 6 at Police Station Connaught Place. That the investigating officer filed a final report, whereby cancelling he complaint of the Plaintiff. That the Plaintiff filed as application for further investigation as the investigating officer ignored certain vital facts in order to give benefit to the Accused therein. That the concerned court declined the prayer for further investigation, and the said order has been challenged by the Plaintiff by filing a petition before this Hon'ble Court and in which the prosecution has been directed to file status report and the same is listed on 04.03.2010.

21. That having being duped by the Defendant no.1 and its directors and authorized representatives/signatories under the continuing protection of the influence, wealth and enormous power of the Defendant no. 8 and concerned with the potential devastating consequences of such dubious entity being allowed to operate on the stock exchange and have uncontrolled access to extraordinary sums of public monies, the Plaintiff was compelled to address a letter dated 04.06.2007 to the market watchdog, Securities and Exchange Board of India (SEBI) who vide its letter dated 25.06.2007 informed the Plaintiff that the complaint of the Plaintiff has been forwarded to the said Defendants for a suitable reply. The Defendant No. 8, vide its letter dated 11.07.2007 addressed to the Plaintiff, clearly denied the allegations and denied its association with the Defendant No.1

Company. At this, the Plaintiff again sent a representation dated 19.07.2007 to SEBI but again the same was forwarded by SEBI to the said Defendant no. 8 for their comments vide its letter dated 27.08.2007. In response to the same, the Defendant no. 8 vide their reply dated 28.09.2007 again reiterated its stand as taken in the earlier reply and denied its association with the defendant No.1.

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25. That the cause of action for filing of the suit arose in August 2006 when the Defendants approached the Plaintiff for discussing business propositions. It further arose in September 2006 when the Plaintiff met the Defendant no.5 and 6 at their offices and when the Plaintiff was misrepresented and made to believe that the lands would be developed in accordance with the collaboration between the Plaintiff and other group company of the Defendants. It further arose on 25.01.2007, 09.01.2010 and 16.01.2010 when the Plaintiff through its counsels sent legal notices to the Defendants and despite receipt of the same the Defendants failed to pay the amounts as mentioned in the legal notice."

8.(i) A reading of the aforesaid paras show that the plaintiff at his own convenience uses the expression defendant or defendants or defendant no.1 with defendant nos.5, 6 and 7 or one or more of defendants with defendants nos. 5, 6 and 7 etc etc. There are no averments whatsoever against defendant nos. 8 to 10 companies and which companies being legal entities in any case could not have been guilty of collusion with individuals being the defendant nos. 5 to 7. Therefore, the plaint is liable to be and is accordingly rejected for lacking cause of action against defendant nos. 8 to 10. Also, as per the discussion hereinafter contained the suit will also have to be time barred as against defendant nos. 8 to 10 assuming a cause of action is pleaded against defendant nos. 8 to 10.

(ii) Like no cause of action has been pleaded against defendant nos. 8 to 10 companies, it is seen that there is no cause of action pleaded even against defendant nos. 2 to 4 and 7 except for the averments made in para 3 of the plaint that these defendant nos.2 to 4 and 7 are Directors/authorized signatories/authorized representatives of the defendant no.1 company. There are no averments as required by law or pleading exists in the plaint for any alleged collusion between defendant nos. 2 to 4 with defendant nos. 1 and 5 to 7 for defrauding the plaintiff. By making generalized vague averments of the plaintiff to his convenience using the expression 'defendants' generally in certain paras of the plaint would not mean that the legal cause of action is pleaded against defendant nos. 2 to 4 and 7. The plaint does not show as to any illegal and false representations being made by the defendant nos.2 to 4 and 7 to lure the plaintiff and which has resulted in plaintiff being defrauded as claimed by the plaintiff.

(iii) In my opinion the plaint does not disclose a legally required to be pleaded cause of action against the defendants no.2 to 4 and 7 (as also defendants no.8 to 10) for the following reasons:-

(A) Para 3 of the plaint pleads defendants no.2 to 7 as the Directors/authorized signatories/authorized representatives of the defendant no.1 company and which averment does not amount to collusion and conspiracy by these defendants as they cannot be held to be in collusion to defraud the plaintiff by merely being Directors or authorized signatories or authorized representatives of the defendant no.1 company.

(B) At best luring and defrauding of the plaintiff would be by defendants no.5 and 6 only, and this becomes clear from the reading of paras 7, 8, 9, 10, 18 to 20 and 23 of the plaint.

(C) Plaintiff pleading 'defendants' as an omnibus term in para 11 of the plaint will not amount to pleading a legal cause of action against all the defendants and reference of defendants in para 11 of the plaint be taken as reference only to defendants no.5 and 6 and if reference is taken to other defendants then such a pleading falls foul of Order VI Rule 4 CPC as no particulars of how defendants other than defendants no.5 and 6 have duped the plaintiff is not pleaded in para 11 or for that matter in other paras of the plaint.

(D) Defendant no. 7 by merely being a signatory to the receipts of receiving moneys for defendant no.1 company will not mean that a legal cause of action would stand pleaded against defendant no.7 inasmuch as Order VI Rule 4 CPC requires detailed pleading when the issue is of fraud and no detailed pleading is found as to how defendant no.7 is guilty of allegedly duping the plaintiff in collusion and conspiracy with defendant nos. 5 and 6 and any other defendant.

(E) On a meaningful, and not a formal, reading of the plaint, the same shows only that duping of plaintiff is allegedly and only by the defendants no.5 and 6.

(F) Vague and generalized averments of plaint be not allowed to be a valid and legally required cause of action and which is otherwise mandatorily to be found to exist in the plaint.

(iv) Therefore, no cause of action is found to be pleaded against defendant nos. 2 to 4 and 7 and the suit plaint is liable to be and is accordingly rejected as against defendant nos. 2 to 4 and 7. Also, the suit plaint as hereinafter discussed will also have to be taken as time barred as against defendant nos. 2 to 4 and 7.

9. I once again note that this Court must not cursorily read the plaint but the plaint must be read thoroughly and analytically. Merely because plaintiff would seek to create an illusion of the cause of action does not mean that this Court must find existence of a cause of action on vague and identical averments made in the plaint qua the defendant nos. 2 to 4, 7 and 8 to 10. Court has to nip in the bud those litigations where really no cause of action is pleaded to exist i.e as against defendant nos. 2 to 4, 7 and 8 to 10. The Supreme Court in its judgment in the case of ***T.Arivandandam Vs. T.V.Satyapal and Another (1977) 4 SCC 467*** has held that this Court must act under Order VII Rule 11 CPC to reject false suit plaints by minutely and closely examining the plaint

without being affected by illusory attempts of the plaintiff to plead a cause of action. Accordingly, as per the ratio of the said judgment, I find that plaint only seeks to create an illusion of a cause of action without pleading a valid legal cause of action as against the defendant nos. 2 to 4, 7 and 8 to 10. The Supreme Court has made it clear that there cannot be a formal reading of the plaint but plaint has to be read in a meaningful manner so that the illusory cause of action is not allowed to continue by continuation of the suit. I may also note that merely because defendant nos. 2 to 4 and 7 are authorized signatories of the defendant no.1 company would not in any manner mean that merely on account of their being authorized signatories they are liable for the liability of the defendant no.1 company and which defendant no.1 company is pleaded as per the plaint to have received monies from the plaintiff and which monies the plaintiff claims return of by way of the present suit.

10. Let me now turn to the issue as to whether the suit is barred by limitation because if the suit is barred by limitation then the suit will be barred by limitation as against all the defendants. It is trite that in law a cause of action for seeking recovery and refund of monetary amounts as per the pleadings of the present suit of plaintiff being duped and defrauded would be when the plaintiff becomes aware of the fraud being played upon him. As per Article 113 of the Limitation Act, a suit has to be filed within 3 years of arising of a cause of action and in a suit pleading a cause of action of a case of fraud, the same arises

when the fraud becomes known to the plaintiff who seeks recovery of monies. In the present case, the Legal Notice sent by the plaintiff for the first time is dated 25.1.2007. The Legal Notice dated 25.1.2007 talks of plaintiff having been defrauded and which knowledge thus had already come to the plaintiff prior to issuing of the Legal Notice dated 25.1.2007 ie on or before 24.1.2007. If we minutely and carefully read the plaint, it is found that plaintiff actually discovered the fraud on 1.12.2006, and this becomes apparent on a reading of para 18 of the plaint. However, even if we give a liberal interpretation to para 18 of the cause of action not arising on 1.12.2006, although this para in sum and substance talks of defendants giving threats of dire consequences and hence of plaintiff being defrauded, yet, the contents of para 19 of the plaint and contents of the Legal Notice dated 25.1.2007 makes it clear that the cause of action has accrued prior to 25.1.2007 ie on 24.1.2007 or before. The subject suit is however filed only on 25.1.2010 i.e after three years of 24.1.2007. Subject suit therefore filed beyond three years from 24.1.2007 is clearly barred by limitation. Learned counsel for the plaintiff is not justified in placing reliance on Article 47 of the Limitation Act because the said Article does not apply when plaintiff seeks to recover amounts on the basis of fraud being allegedly perpetrated on the plaintiff by the defendants and in which case it is Article 113 of the Limitation Act which would apply.

11. The aforesaid discussions show that no cause of action is pleaded against the defendant nos. 2 to 4, 7 and 8 to 10, and therefore, the suit plaint is liable to be and is accordingly rejected as against these defendants. The suit plaint is also rejected as barred by limitation against all the defendants as the suit had to be filed, taking as correct the cause of action of fraud being perpetrated on the plaintiff, on or before 24.1.2007, and therefore, the suit had to be filed on or before 24.1.2010, but since the suit has been filed on 25.1.2010, the suit is clearly barred by limitation. The suit plaint is accordingly rejected, and dismissed on account of being time barred by applying Order XII Rule 6 CPC, leaving the parties to bear their own costs.

MAY 24, 2016 **VALMIKI J. MEHTA, J.**
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