

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2515 OF 2017

ORDER:

Aggrieved by the order dated 10.02.2017 passed in I.A.No.205 of 2016 in O.S.No.235 of 2011 by the XIII Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad dismissing the petition filed under Order VII Rule 11 (a) and (d) read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C."), filed this revision under Article 227 of Constitution of India.

The petitioner and respondent herein were the petitioner and respondent before the trial Court. Hence, for the sake of convenience, the parties to the revision will be referred hereinafter throughout the Order as arrayed before the trial Court in I.A.No.205 of 2016 in O.S.No.235 of 2011.

The petitioner (defendant) filed a petition under Order VII Rule 11 (a) and (d) read with 151 of C.P.C. to reject the plaint alleging that the vendor of the petitioner namely M/s Hy Fed Foundation had purchased the property bearing M.No.2-4-1115 and 2-4-1115/1 admeasuring 1408 Sq. Yards situated at Kachiguda, Hyderabad by registered sale deed dated 03.12.1973 bearing document No.817 of 1974 from Faiz Mohd. Khan S/o Nawab Dr. Faiz Jung, father of the respondent. Smt. Khairunnisa Begum W/o Late Abdus Samad Khan @ Faiz Jung became entitled to the suit schedule property as she purchased the same in Court auction in E.P.No.37 of 61 in O.S.No.199/1 of 1952 and she having acquired the same had gifted the same to her son Fiaz Mohd. Khan, father of the respondent, on 14.07.1963 and

delivered possession to him. The said Smt.Khairunnissa Begum died in the year 1964. Faiz Mohd. Khan was in possession and enjoyment of the suit schedule property and leased out a portion of the same to Government Jayasurya Homeopathy Medical College in the year 1972. Subsequently, the property has conveyed in favour of M/s Hy-Fed Foundation, a society registered under societies registration Act represented by its President Late Moinuddin Shaik Imam under registered sale deed dated 03.12.1973 and possession was delivered thereunder and in so far as other part of the schedule property, which was in occupation of the Government, the tenancy of Government was attorned in favour of purchaser under registered sale deed dated 03.12.1973 and M/s. Hy-Fed Foundation had been in possession and enjoyment of the said premises ever since till the date of execution of sale in favour of the petitioner herein, who has been in possession since the date of acquisition of the suit schedule property i.e. on 08.04.2008 under registered sale deed for valuable consideration.

Faiz Mohammed Khan, father of the respondent, died in the year 1975. Smt. Khairunnisa Begum W/o Late Abdus Samad Khan @ Fiaz Jung participated in the auction only after obtaining the permission of the Court vide orders in E.A.No.76 of 1962 in E.P.No.37 of 1961 on 06.07.1962.

Respondent has filed the above suit seeking the following reliefs:

- (i) "Declaring that the plaintiff is the absolute owner and possessor of the plaint schedule property.
- (ii) Consequently grant a permanent injunction restraining the defendant and his men from interfering with the peaceful possession of the suit schedule property of the plaintiff.

- (iii) Consequently grant a permanent injunction restraining the defendant and his men from interfering with the peaceful possession of the suit schedule property of the plaintiff.
- (iv) Declaring that the sale deed 1399/2008 dated 08.04.2008 is not binding on the plaintiff.
- (v) Declaring that dismissal decree in O.S.No.555 of 2001 as a fraudulent one and not binding on the plaintiff
- (vi) Award cost of the suit and
- (vii) Pass such other order or orders as the Hon'ble Court might deem fit and proper in the circumstances of the case in the interest of justice."

Respondent in the plaint admitted the fact with regard to filing of a suit O.S.No.555 of 2001 on the file of V Senior Civil Judge, City Civil Court at Hyderabad against vendors of the petitioner for perpetual injunction in respect of the suit schedule property; the same was dismissed on contest on 07.10.2004. The respondent admitted with regard to filing an appeal A.S.No.577 of 2004 on the file of XIII Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad aggrieved by the judgment and decree passed in O.S.No.555 of 2001 dated 07.10.2004, the said appeal was also dismissed by the XIII Additional Chief Judge, City Civil Court, Hyderabad on 27.07.2006. The respondent also filed second appeal in S.A.No.1338 of 2006, which ended in dismissal by this Court initially on 25.01.2007 for default. After dismissal of second appeal on 25.01.2007, the respondent filed another suit O.S.No.856 of 2007 on the file of V Senior Civil Judge, City Civil Court at Hyderabad against the vendors of the petitioner claiming following reliefs:

- "(i) This Hon'ble Court may be pleased to cancel the sale deed document No.817 of 1974 executed on 3.12.1973 by Late Faiz Mohammed Khan in favour of the defendants Hy-Fed Foundation represented by its President Shaik Imam pertaining to the property MCH No.2-4-1115 and 2-4-115/1, situated at Kachiguda, Hyderabad – 27.

- (ii) To award Cost and
- (iii) For any other relief that the plaintiff is entitled to and pass order or orders as this Hon'ble Court fit in the interest of Justice."

M/s Hy-Fed Foundation, the vendor the petitioner, had filed application I.A.No.936 of 2007 to reject the plaint in O.S.No.856 of 2007 under Order VII Rule 11 (d) of C.P.C. as it is barred by law and the said application, after due contest, was allowed by V Senior Civil Judge, City Civil Court, Hyderabad on 10.08.2007 rejecting the plaint in O.S.No.856 of 2007. Aggrieved by the said order and decretal order dated 10.08.2007 passed in I.A.No.936 of 2007 in O.S.No.856 of 22007, the respondent filed an appeal C.M.A.No.354 of 2007 and the same was dismissed on 24.03.2008 holding that the suit is barred by law and confirmed the order of rejection of plaint in O.S.No.856 of 2007.

Respondent also filed a suit O.S.No.902 of 2008 against the person to whom the property was sold by M/s Hy-Fed Foundation and obtained an exparte injunction on 19.03.2008 in I.A.No.455 of 2008 restraining the respondent therein from displaying the sign board of the company in the suit schedule property. On receipt of summons, the respondent had entered appearance and on filing of the counter, XIX Junior Civil Judge, City Civil Court at Hyderabad dismissed the I.A.No.455 of 2008 on 26.03.2008 and vacated the exparte injunction granted on 19.03.2008 holding that the respondent is not in possession of the suit schedule property and the respondent has no title to the suit schedule property.

While things stood thus, the respondent by suppressing various proceedings, filed an application before this Court in S.A.M.P.No.1108 of 2008 on 29.04.2008 to restore S.A.No.1338 of

2006, which was dismissed for default on 25.01.2007 and without notice to the respondents therein, had obtained status quo on 30.04.2008 by suppressing facts.

In pursuance of the orders of Status quo obtained on 30.04.2008, the respondent tried to interfere with the possession of the petitioner herein over the suit schedule property, as such the petitioner was compelled to file a suit before the Vacation Civil Judge, City Civil Court at Hyderabad and obtained order of injunction and the said suit was numbered as O.S.No.1596 of 2008 and the same was pending before XIX Junior Civil Judge, City Civil Court at Hyderabad.

Immediately after reopening of the Courts after summer vacation the vendor of the petitioner filed vacate stay petition S.A.M.P.No.1230 of 2008 before this Court bringing it to the notice of Court all the facts and this Court by orders dated 05.08.2008 vacated the status quo orders granted in S.A.M.P.No.1108 of 2008 by dismissing the same while allowing the vacate stay petition S.A.M.P.No.1230 of 2008.

However, the second appeal No.1338 of 2006 was dismissed by this Court on 03.03.2009 while holding that the respondent herein has failed to establish his possession over the suit schedule property.

It is further alleged that the respondent resorted to frivolous litigation without any foundation to the claim and with a view to reagitate the same filed separate suit in O.S.No.902 of 2008 and also filed I.A.No.455 of 2008 in the said suit though the suit is hopelessly barred by law. As per Article 58 of Schedule I of Limitation Act, the suit has to be filed within 3 years, when the

right to sue first accrues, which accrued to the respondent against the petitioner on 24.03.2008.

Be that as it may, the vendors of the petitioners filed written statement in O.S.No.555 of 2001 on the file of V Senior Civil Judge, City Civil Court at Hyderabad on 16.04.2001 contending that the respondent has no title and denied the title of the respondent. By virtue of decree and judgment dated 07.10.2004 passed in O.S.No.555 of 2001 by the V Senior Civil Judge, City Civil Court, Hyderabad and by subsequent confirmation in Second Appeal, the claims of the respondent herein were dismissed. The respondent without any basis reagitating the claim over the suit schedule property though his claim was barred by limitation and filed the present suit with false allegations. Therefore, the plaint filed by the respondent/plaintiff in O.S.No.235 of 2011 is liable to be rejected by exercising power under Order VII Rule 11 (a) and (d) read with 151 of C.P.C. as there is no cause of action and it is barred by limitation and finally prayed to reject the plaint.

The respondent – plaintiff filed counter denying material allegations raised of the petition and contended that the suit is at premature stage of trial and trial not yet commenced and the respondent – plaintiff is taking steps to amend the plaint by converting the relief of declaration that the respondent – plaintiff is absolute owner and recovery of possession. The respondent further contended that the S.A.No.1338 of 2006 preferred against the judgment passed in O.S.No.555 of 2001 was dismissed on 03.03.2009 and the present suit was filed on 13.04.2011 in view of the deliberations and findings contained in the judgment passed in S.A.No.1338 of 2006. Hence, the present petition filed by the

petitioner – defendant is not maintainable and liable to be dismissed.

Respondent further contended that the suit is not filed by abusing the process of the Court and the same was instituted well within the period of limitation asserting his right which was tried to take away by the petitioner by deceitful means, playing fraud and fabricating the documents.

Respondent further contended that the suit is not vexatious one, since, the dispute is with regard to title of suit schedule property basing on the oral gift in the year 1990 and subsequently it was reduced into writing i.e. memorandum of gift dated 07.10.2008 (Juma 29th Ramzan 1420 Hijri) and that as per Mohammedan Law, oral gift and subsequent memorandum of gift based on oral gift are valid. Further, the claim of the petitioner – defendant over the suit schedule property is based on fabricated on frivolous documents and it came to the notice of the respondent – plaintiff in the year 2008, hence the suit is for declaration and for recovery of possession is not time barred, hence the petition filed under Order VII Rule 11 of C.P.C. for rejection of plaint is liable be dismissed as it is misconceived and the said petition did not satisfy the ingredients of Order VII Rule 11 of C.P.C. and prayed for dismissal of the petition.

During hearing Exs.R.1 to R.24 were marked on behalf of the petitioner – defendant and Exs.P.1 to P.9 were marked on behalf of the respondent – plaintiff.

The trial Court upon hearing both the counsel and considering documentary evidence, dismissed the application filed

under Order VII Rule 11 (a) and (d) read with Section 151 of C.P.C. for rejection of plaint.

Aggrieved by the said order, the present revision is filed on various grounds mainly contending that the order of the court below is contrary to the settled principles of law and the Court below did not consider the starting point of limitation for the suit filed for declaration of title and the same is contrary to the principle laid down in “**T.Arivandandam v. T.V.Satyapal**¹”. It is also contended that when the suit is barred by limitation, the Court ought to have rejected the plaint by exercising power under Order 7 Rule 11 (a) and (d) of C.P.C. Apart from that the cause of action mentioned in the plaint is imaginary, when such imaginary cause of action by clever drafting, the suit cannot be entertained and the same is liable to be rejected by exercising power under Order VII Rule 11 (a) and (d) of C.P.C. at the threshold to avoid unnecessary trauma to the petitioner herein to face ordeal of trial for years together, but the trial Court did not consider the law laid down in various judgments and did not verify the material on record in proper perspective and dismissed the petition and prayed to set aside the same.

During hearing, Sri Kishore Rai, learned counsel for the petitioner contended that when earlier suit in respect of same property was dismissed, the judgment and decree attained finality in the second appeal; it would operate as res judicata. Apart from that after dismissal of second appeal and before filing the present suit, the plaint in earlier suit O.S.No.856 of 2007 was rejected by the Court by orders in I.A.No.936 of 2007, but still the petitioner

¹ (1977) 4 SCC 467

filed 2nd suit for various reliefs and the present suit is filed by inventing different cause of action to circumvent the judgment in S.A.No.1338 of 2006 and rejection of plaint in O.S.No.856 of 2007. Therefore, the claim of the plaintiff in the present suit is hit by doctrine of *res judicata* and the claim is barred by limitation. There is no cause of action for filing the present suit, therefore the plaint is liable to be rejected. Learned counsel for the petitioner placed reliance on several judgments of Apex Court in support of his contentions, which will be referred at appropriate stage during consideration of the material available on record and on the strength of the same, requested this Court to set aside the order passed by the trial Court and reject the plaint in the present suit.

Per contra, Sri S.Ashok Anand Kumar, learned counsel for the respondent would contend that rejection of plaint in O.S.No.856 of 2007 would not debar the plaintiff/respondent to file fresh suit in view of Order VII Rule 13 of C.P.C. Therefore, rejection of plaint in O.S.No.856 of 2007 by exercising power under Order VII Rule 11 (d) of C.P.C. is not a ground to reject the plaint in the present suit. It is also contended that limitation is a mixed question of law and fact and on the ground of limitation plaint cannot be rejected by exercising power under Order VII Rule 11 (a) and (d) of C.P.C. Finally, it is contended that the 'cause of action' is nothing but an act, which created right on the plaintiff to file a suit and cause of action is a bundle of facts which give the plaintiff a right to relief against the defendant. The Court can exercise power under Order VII Rule 11 (a) of C.P.C. only when the plaint does not disclose the cause of action and the Court cannot undertake exercise to decide whether the cause of action mentioned in the

plaint is true and correct while deciding application filed under Order VII Rule 11 of C.P.C. and placed reliance on “**Surjit Kaur Gill v. Adarsh Kaur Gill**”² “**P.V.Guru Raj Reddy v. P.Neeradha Reddy**”³ “**State of Orissa v. Klockner and Company**”⁴ and “**Bhau Ram v. Janak Singh**”⁵ in support of his contentions.

Considering facts and circumstances of the case and arguments advanced by both the counsel, the points that arise for consideration are as follows:

- (1) Whether rejection of plaint in O.S.No.856 of 2007 as per orders in I.A.No.936 of 2007 dated 10.08.2007 debars the plaintiff-respondent to file a fresh suit?
- (2) Whether the plaint in O.S.No.235 of 2011 can be rejected on the ground that it is hit by principles of res judicata and barred by limitation?
- (3) Whether the plaint disclosed cause of action for filing the suit, if not the same is liable to be rejected?

P O I N T No.1:

One of the contentions raised before this Court by the learned counsel for the petitioner Sri Kishore Rai is that when the plaint in O.S.No.856 of 2007 was rejected under Order VII Rule 11 (d) of C.P.C. vide orders in I.A.No.936 of 2007, subsequent suit against the same defendant by the same plaintiff is not maintainable as it is hit by principle of *res judicata*. This contention is refuted by the learned counsel for the respondent by taking aid of Order VII Rule 13 of C.P.C. and contending that rejection of plaint does not preclude presentation of fresh plaint.

² (2014) 16 SCC 125

³ (2015) 8 SCC 331

⁴ (1996) 8 SCC 377

⁵ (2012) 8 SCC 701

Order VII Rule 11 (d) of C.P.C. permits the Court to reject the plaint where the suit appears from the statement in the plaint to be barred by any law. Rejection of plaint in O.S.No.856 of 2007 is undisputed fact, but that would not debar or preclude the petitioner-plaintiff in the suit to file fresh suit in view of Order VII Rule 13 of C.P.C. and the rule made it clear that “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.”

Thus, it is abundantly clear that the plaintiff in the present suit is entitled to file a fresh suit on same cause of action even if the plaint in earlier suit was rejected on any of the grounds contemplated under Order VII Rule 11 of C.P.C. Therefore, on the ground that plaint in O.S.No.856 of 2007 was rejected as per orders in I.A.No.936 of 2007, the plaint in the present suit cannot be rejected. Accordingly, the point is answered.

P O I N T No.2:

Admittedly, there was earlier round of litigation and the plaintiff in the present suit admitted about the earlier round of litigation and dismissal of those proceedings in clear terms in various paragraphs, more particularly in paragraph Nos.24 to 26 and specifically asserted that the suit O.S.No.1597 of 2008 has been dismissed for non-compliance of the Court order etc. Deciding earlier litigation between the same parties or the persons claiming through them is not a disputed question, but in the present petition learned counsel for the petitioner raised a contention that in view of the dismissal of earlier suits, the present suit is hit by principle of *res judicata* as parties in the present suit claiming right

or title to the property through the parties to the earlier suit are one and the same. Therefore, it is hit by principles of *res judicata*.

In **Vaish Aggarwal Panchayat v. Inder Kumar and others**⁶, the Supreme Court held that Principle of *Res Judicata* is both mixed question of fact and law and issue is required to be framed and decided on merits and the plaint cannot be rejected at the threshold on the ground that it is hit by Section 11 of C.P.C.

The main endeavour of the learned counsel for the petitioner is that when the suit is barred by limitation and hit by principle of *Res Judicata*, the Court is bound to reject the plaint.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **T. Arivandandam v. T.V. Satyapal and another**⁷, where then Apex Court held that if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. The judgment of the Apex Court **T. Arivandandam v. T.V. Satyapal and another** (supra) at best would be useful to highlight the duty of the Judge to reject the plaint at the stage when the parties were examined under Order X C.P.C and mere clever drafting may create an illusory cause of action, but, that cannot be spared by the Courts as such the gullible grant of ex parte orders tempts gamblers in litigation into

⁶ 2015 SCC 751

⁷ AIR 1977 SC 2421

easy courts to proceed with the vexatious litigation which would worsen the situation, if such situation is encouraged. But the principle has no application to the present facts of the case, since the issue before this Court is pertaining to limitation and Principle of *Res Judicata*.

Learned counsel for the petitioner however placed reliance on the judgment of the Apex Court **Madanuri Sri Rama Chandra Murthy v. Syed Jalal**⁸ to contend that when the claim in the plaint is barred by limitation and when the Court found that it has no jurisdiction, the Court is bound to reject the plaint. But, this principle has no application to the present facts of the case, for the reason that it was not the issue of inherent jurisdiction of civil court.

Learned counsel for the petitioner Sri Kishore Rai while contending that delay in filing a suit for declaration, unless plaint discloses how the suit is in time, the plaint shall be rejected and forfeited by the law declared by the Apex Court in **Fatehji & Company and others v. L.M. Nagpal and others**⁹. The Apex Court after considering various judgments of Apex Court, concluded that when right to sue is accrued to the plaintiff in the suit and there was abnormal delay in filing the suit, then the plaint has to be rejected. In the facts of the above judgment, The Defendants 1 to 3 filed an application Under Order VII Rule 11 Code of Civil Procedure on 10.10.1996 for rejection of the plaint as barred by the law of limitation. The Trial Court after hearing both sides by a speaking order held that the suit is patently barred by the law of limitation and allowed the application by rejecting the plaint. The

⁸ 2017 (5) SCALE 127

⁹ (2015) 8 SCC 390

Plaintiffs preferred appeal in RFA No. 350 of 1997 and the High Court by the impugned judgment allowed the appeal by setting aside the order of the Trial Court and restored the suit to file. Aggrieved by the same the Defendants have preferred the appeal. The Trial Court after hearing both the counsel passed an order rejecting the plaint and the matter was carried to the Supreme Court. the Apex Court held that when the suit is barred by limitation, the plaint has to be rejected.

Similar view was expressed by the Supreme Court in **Hardesh Ores Pvt. Ltd. v. Hede and Company**¹⁰. In paragraph 10 of the said judgment, it is specifically held as follows:

“10. An application was filed on behalf of the respondent under Order VII Rule 11 of the Code of Civil Procedure submitting that there was absence of cause of action and also the plaint was barred by limitation. Subsequently, the plea of absence of cause of action was given up and only the plea of bar of limitation under the Limitation Act was pressed. It was submitted that Article 54 of the Limitation Act applied and that a suit for specific performance of the contract should have been filed within 3 years from the date the appellant-plaintiff had notice that the renewal of the agreement was refused by the respondent. In the instant case the refusal was communicated on 29.12.2001 and, therefore, the suit should have been filed within 3 years thereafter.”

(Emphasis supplied)

When, the suit was filed with long delay and the Apex Court concluded that the language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not, must be found out from reading

¹⁰ (2007) 5 SCC 614

the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it, out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of Apex Court in **Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success I and Anr**¹¹ and **Popat and Kotecha Property v. State Bank of India Staff Association**¹²

In the above judgment of the Apex Court, the plaint was rejected on the ground that the suit was barred by limitation.

The main endeavour of the learned counsel for the petitioner Sri Kishore Rai is to demonstrate as to how the suit claim is barred by limitation and the learned counsel drawn attention of this Court to previous litigation between the parties claiming through the original owners. No doubt, the respondent resorted to frivolous litigation by filing different suits and not allowing the petitioner herein to enjoy the property as litigation free. There is any amount of doubt about the claim of the plaintiff within limitation, but still

¹¹ (2004) 9 SCC 512

¹² (2005) 7 SCC 510

the Apex Court in the latter judgment took a different view. However, in **I.T.C. Limited v. Debts Recovery Appellate Tribunal**¹³, the Apex Court while deciding an identical issue held that when an issue has been framed, the matter has necessarily to go to trial has been clearly rejected. The contention that in the context of Order 7 Rule 11 C.P.C., a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in **Azhar Hussain v. Rajiv Gandhi**¹⁴ that in substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial if it is concluded that the plaint does not disclose cause of action the powers under the CPC for dealing with a defective plaint which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court. The above said judgment which related to an election petition is clearly applicable to suits also and was followed in **Samar Singh v. Kedar Math**¹⁵. Therefore hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7, Rule 11, CPC.

The Court indirectly concluded that when the claim is barred by limitation, the Court is bound to reject the plaint by exercising power that is conferred on it under Order 7, Rule 11, CPC to

¹³ (1998) 2 SCC 70

¹⁴ [1986] 2 SCR 782 (p.324)

¹⁵ AIR 1987 SC 1926

discourage such frivolous litigants. The same view was expressed by the Apex Court in **Sopan Sukhdeo Sable and ors. v. Assistant Charity Commissioner and ors.**¹⁶ and also in **Popat and Kotecha Property v. State Bank of India Staff Association**¹⁷. Therefore, the substance of the law declared by the Apex Court in all the judgments is that when the claim is barred by limitation on the face of the allegations made in the complaint, the Court is bound to reject the plaint by exercising power under Order VII Rule 11 (d) C.P.C., since law of limitation is also included in the clause. But, in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra), the Apex Court took a different view and held that when the averments of the plaint are considered in principles set out in **Sopan Sukhdeo Sable and ors.**¹¹. Further, noticing the conflict between various High Courts and the apparent conflict of opinion expressed by the Apex Court in **N.V. Srinivasa Murthy and ors. v. Mariyamma (dead) by proposed LRs and ors**¹⁸ and **Popat and Kotecha Property**¹² the Division Bench of the Apex Court referred the question of law for consideration to a larger bench, whether the words 'barred by law' under Order VII Rule 11(d) C.P.C would also include the ground that it is barred by the law of limitation. In paragraph 15 of the judgment in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra), the Apex Court held as follows:

"15. The three-Judge Bench opined that there was no conflict of opinion and thereafter the matter came back to the Division Bench for adjudication. The Division Bench reproduced what has been stated by the three-Judge Bench. It is as under:

¹⁶ 2004 (2) ALD 115 (SC)

¹⁷ 2005 (6) ALD 27 (SC)

¹⁸ 200885 (5) ALD 113 (SC)

Before the three-Judge Bench, counsel for both the parties stated as follows:

...It is not the case of either side that as an absolute proposition an application under Order 7 and Rule 11(d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.”

(Emphasis supplied)

In view of the recent judgment of the Apex Court referred supra, it is clear that the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint it could not be held that the suit was barred by time. If, this principle is applied to the present facts of the case, based on the allegations made in the plaint, it is difficult to conclude that suit is barred by limitation to reject the plaint by exercising power under Order VII Rule 11(d) C.P.C by this Court. The Apex considered the judgment of the larger Bench and concluded that limitation is a mixed question of fact and law, on the ground that the plaint is barred by limitation, the plaint cannot be rejected. Therefore, by following the principle laid down in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra), the plaint cannot be rejected on the ground that it is barred by limitation.

The other contention urged by the learned counsel for the petitioner before this Court is that the claim is barred by the Principle of *Res Judicata*. But, the principle laid down in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra) is the direct answer tot his question, where the Apex Court while dealing with the concept of Principle of *Res Judicata*, held that, the

principles of res judicata, when attracted, would bar another suit. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage. But, the said question cannot be determined at this stage while considering application under Order VII Rule 11 C.P.C. Therefore, by applying the Principle of *Res Judicata*, I am afraid, to reject the plaint that the present suit is hit by Principle of *Res Judicata*. On overall consideration of the law laid down by the Apex Court and perusal of the plaint, there were clear admissions about earlier proceedings in the plaint itself. But, still the plaint cannot be rejected on the ground that it is hit by Principle of *Res Judicata* and barred by limitation, in view of the latest judgment of the Apex Court in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra). Accordingly, the point is answered in favour of the respondent and against the petitioner.

P O I N T N O . 3 :

The last ground urged before this Court is that the plaint does not disclose cause of action. Cause of action is a bundle of facts which gives rise cause to file a suit or proceeding against other. The word 'cause of action' was not defined anywhere in C.P.C. But, it can be said to be a cause which gives rise to file a suit i.e. to redress remedy in the Court. Non-disclosure of cause of action in the plaint is a ground to reject the plaint, but the Court cannot decide whether the cause of action disclosed in the plaint is true or not at the time of deciding the application under Order VII

Rule 11 C.P.C. On bare look at the plaint, the plaint discloses cause of action and paragraph 37 of the plaint is relevant to decide whether plaint disclosed the cause of action for filing the suit.

Learned counsel for the petitioner would contend that when the pliant does not disclose cause of action, the plaint is liable to be rejected at the threshold and when the cause of action is illusory, the Court is also bound to reject the plaint and drawn attention of this Court to the principle laid down in **T. Arivandandam v. T.V. Satyapal and another** (supra), that when the plaint discloses an illusory cause of action, the Court can reject the plaint on examination of the parties under Order X, but not by exercising power under Order VII Rule 11(a) C.P.C.

In **Saleem Bhai and ors v. State of Maharashtra and ors**¹⁹ the Apex Court while dealing with Rejection of plaint and scope of Rule 11 of Order VII, Application by defendant under Clauses (a) and (d) of Rule 11 of Order VII for rejecting plaint, whether High Court justified in giving direction to defendant-appellant to file his written statement and then trial court to frame issues and record finding on preliminary issues, held that for deciding application, averment made in plaint only germane and pleas of defendant in written statement wholly irrelevant. Similarly **Chanumolu Radha Rani v. Thota Vishnu Rao and anr**²⁰, this Court held that no necessity arose for Court to register plaint and issue summons to Defendants and Order VII Rule 11 of CPC contemplated rejection of plaint under certain circumstances and Clause (d) did not contemplate issue of any summons to Defendants for such consideration as to rejection of plaint. Moreover, it was duty of

¹⁹ (2003) 1 SCC 557

²⁰ 2006 (4) ALT 431

Court to look into averments in plaint in proper perspective and consider plaint as whole to scan essence of cause of action and arrive at conclusion. In **Thota Rambabu @ Ramu v. Cherukuri Venkateswara Rao @ Pedababu and ors**²¹, this Court considered the scope of Order VII Rule 11 C.P.C, but it is of no assistance for the reason that the Court expressed such opinion after trial only.

Based on the principles laid down in the above judgment, learned counsel for the petitioner would contend that when the plaint does not disclose real cause of action, plaint is to be rejected. But, this question has been decided by the Apex Court in **The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee**²².

The Apex Court in the above judgment elaborately dealt with the power of the Court to reject the plaint under Order VII Rules 11 and 14 of C.P.C. relying on several judgments of the Apex Court rendered in **Saleem Bhai and others**¹⁴, **Raptakos Brett and Co. Ltd. v. Ganesh Property**²³,; **Mayor (H.K.) Ltd. and others v. Owners and Parties, Vessel M.V. Fortune Express and others**²⁴, and **T. Arivandandam v. T.V. Satyapal and another** (supra), on the strength of the above judgments, it is concluded that the Court has to take into consideration total allegations made in the plaint and decide whether the plaint discloses cause of action for filing the suit.

²¹ AIR 2006 AP 114

²² 2012 (3) RCR (Civil) 811

²³ (1998) 7 SCC 184

²⁴ 2006 (2) ALD 36 (SC)

In the facts of the above judgment, in a suit for specific performance, the defendant filed application for rejection of plaint under Order VII Rule 11 of C.P.C. on the ground that the plaint does not disclose cause of action. The Single Judge of the High Court rejected the plaint insofar as the 1st defendant is concerned and directed that the suit can be proceeded against the 2nd defendant, while rejecting the application for interim injunction and amendment of the plaint. Thereupon the order was challenged by the plaintiff before the Division Bench, on that the Division Bench by its order while dismissing the appeals against the order rejecting the applications for amendment and for interim injunction, allowed the appeal against the rejection of the plaint. Aggrieved by the same, the 1st defendant therein approached the Apex Court by filing appeal by way of special leave petition, the Apex Court concluded that when the plaint does not disclose cause of action, the same shall be rejected.

The law declared by various High Courts is that Order VII Rule 11 of C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order VII Rule 11 of C.P.C. at any stage of the suit i.e., before registering the plaint or after issuing summons to the defendant or at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant to decide the application filed under Order VII Rule 11 of C.P.C. But curiously in

T. Arivandandam v. T.V. Satyapal and another (supra), the Apex Court has held as follows:

"5.....The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled and if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of Civil Procedure. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them....."

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J., in the above referred decision, it should be nipped at the bud, at the first hearing by examining the parties under Order X of the Code."

To apply the principle laid down in **T. Arivandandam v. T.V. Satyapal and another** (supra), the Court can reject the plaint only at the time of first hearing by examining the parties under Order X of C.P.C. but not based on application filed under Order VII Rule 11 of C.P.C. Therefore, it is obligatory on the part of the Court to find out whether the allegations made in the plaint would give rise to any cause of action or plaint discloses any cause of action for the suit.

What is cause of action, is again a question to be decided and in the same judgment the Apex Court relied on judgment rendered in **A.B.C. Laminart Pvt. Ltd. and another v. A.P.**

Agencies, Salem²⁵; wherein the word "cause of action" is defined as follows:

"Cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

In **Bloom Dehor Ltd. v. Subhash Himatlal Desai and others**²⁶; the word "cause of action" is defined as follows:

"Cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In **State of Haryana v. State of Punjab and Anr.**²⁷, the Apex Court held that the phrase "cause of action" as occurring in Order XXIII Rule 6(a) does not appear in Article 131. The phrase, which occurs in Section 20 of the Code of Civil Procedure and is commonly used in connection with 'ordinary' suits, has, in that context, "acquired a judicially-settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in

²⁵ (1989) 2 SCC 163

²⁶ (1994) 6 SCC 322

²⁷ (2004) 12 Supreme Court Cases 673

"cause of action". Therefore, cause of action is nothing but set of facts which give rise to a party to redress his claim before the competent Court of law.

Learned counsel for the respondent would contend that when the plaint disclosed cause of action, the Court need not examine its truth or validity of cause of action and at best, the Court is required to go through the allegations made in the plaint and find out whether those facts would disclose cause of action or not and such power has to be exercised sparingly. Learned counsel for the respondent, in support of his contention would rely on the judgment of the Apex Court in **Bhau Ram v. Janak Singh and others**²⁸ and the Apex Court held as follows:

"The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr.: (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors.: (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors.: (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149]"

In **P.V. Guru Raj Reddy represented by GPA Laxmi Narayana Reddy and another v. P. Neeradha Reddy and others**²⁹, the Apex Court held that Rejection of the plaint Under Order VII Rule 11 of the Code of Civil Procedure is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power Under Order VII

²⁸ (2012) 8 Supreme Court Cases 701

²⁹ (2015) 8 Supreme court Cases 331

Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power Under Order VII Rule 11, the stand of the Defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. If, this principle is applied to the present facts of the case, plaint cannot be rejected as the plaint discloses cause of action on reading of entire facts and circumstances.

After an elaborate analysis and discussion, the Court is of the considered view that the order passed by the Trial Court rejecting the plaint under Order VII Rule 11 C.P.C is unsustainable and accordingly, the plaint was allowed, since the plaint disclosed cause of action.

In **Jageshwari Devi and Ors. vs. Shatrughan Ram**³⁰ the Supreme Court had an occasion to decide an identical issue where the Court considered the scope of Order VII Rule 11(a) C.P.C i.e. non-disclosure of cause of action and the Apex Court concluded that if plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) Code of Civil Procedure to reject the plaint. Further, the Apex Court held that there is a difference between the non-disclosure of a cause of action and defective

³⁰ (2007) 15 Supreme Court Cases 52

cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the Appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 Code of Civil Procedure no exception can be taken to the order.

In view of the law declared by the Supreme Court in the above judgment, it is clear that whether cause of action is real or not, is a question to be determined only at the end of the trial, but, at the stage of considering the application under Order VII Rule 11(a) C.P.C, the Court has to notice the allegations made in the plaint, irrespective of the pleas raised in the written statement of the defendant and decide whether the allegations made in the plaint would disclose cause of action or not. If the plaint does not disclose cause of action, the Court is entitled to reject the plaint at the threshold, though the power of this Court is drastic, but the Court cannot decide whether the cause of action is real or not at the threshold and reject the plaint. In the present facts of the case, the plaint disclosed cause of action and thereby, the Trial Court refused to reject the plaint by exercising power under Order VII Rule 11 C.P.C and consequently, the order of the Trial Court cannot be faulted even by applying the principles laid down in various judgments referred supra.

On overall consideration of entire material on record, including the allegations made in the plaint, and applying the law laid down by the Apex Court, when the plaint disclosed cause of action, the Court cannot exercise its power under Order VII Rule

11(a) C.P.C to reject the plaint. Therefore, the Trial Court rightly refused to reject the plaint on this ground.

In view of my foregoing discussion, the Trial Court cannot reject the plaint on the ground that the suit claim is barred by limitation, since limitation is a mixed question of fact and law, as observed by the Apex Court in **Vaish Aggarwal Panchayat v. Inder Kumar and others** (referred supra) and similarly on the ground that the suit is hit by Principle of Res Judicata and also on the ground that when the plaint was rejected in the earlier suit, the present suit is maintainable, in view of Order VII Rule 13 C.P.C and apart from that the plaint disclosed cause of action. Therefore, I find no ground to interfere with the finding of the Trial Court to reject the plaint. Consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 29.08.2017

KSP/SP