IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20th DAY OF JULY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.2511 of 2018
in
C.S. No.790 of 2016

M.P.I.Exports (P) Ltd,
Rep.by its Director
Mr.Krishnakumar Sood
No.67, Developed Plot SP, Industrial Estate
Ambattur
Chennai 600 058 ... Plaintiff

-Versus-

1. M/s.Sunko Machines Limited
   27, Sathyanarayana Avenue,
   Boat Club Road,
   Adyar
   Chennai 600 020

2. Mr.Srinath Rajaram
   Director
   M/s.Sunco Machines Limited
   27, Sathyanarayana Avenue,
   Boat Club Road
   Adyar, Chennai 600 020

... Defendants

A.No.2511 of 2018

Mr.Srinath Rajaram
Director
M/s.Sunco Machines Limited
27, Sathyanarayana Avenue,
Boat Club Road
Adyar, Chennai 600 020

..Applicant

VS

1. M.P.I.Exports (P) Ltd,
Rep.by its Director
Mr.Krishnakumar Sood
No.67, Developed Plot SP, Industrial Estate

Ambattur
Chennai 600 058.

2. M/s.Sunko Machines Limited
27, Sathyanarayana Avenue,
Boat Club Road,
Adyar
Chennai 600 020

Application praying that this Hon'ble Court be pleased to reject the Plaint in C.S.No.790 of 2016.

This application coming on this day before this court for hearing the court made the following order:

The plaintiff is a Private Limited Company, incorporated under the Companies Act 1956. The 1st defendant is a Limited Company and the 2nd defendant is the Director of the 1st defendant Company. This application has been filed by the 2nd defendant in the suit under Order 7 Rule 11 C.P.C to reject the plaint in C.S.No.790 of 2016.

2. C.S.No.790 of 2016 had been filed by the plaintiff M.P.I. Exports (P) Limited, represented by its Director, Krishnakumar Sood against M/s. Sunco Machines Limited and Srinath Rajaram, Director, M/s. Sunco Machines Limited, seeking a judgment and decree, against the defendants to jointly and severally pay the plaintiff a sum of Rs. 1,27,98,263/- together with the interest at 12% per annum on Rs.65,63,207/- from the date of the plaint till the date of realization and also for costs of the suit.

3. This application had been filed only by the 2nd defendant. In the affidavit filed in support of this application, it had been stated that the suit claim is barred by the Law of Limitation and consequently, the plaint should be rejected. It must also be pointed out that

during the arguments, the learned counsel for the 2nd defendant had urged that the 2nd defendant cannot be held responsible for any claim against the 1st defendant, since the 1st defendant is a separate legal entity and the 2nd defendant being a Director cannot be mulcted with the claim made against the 1st defendant.

4. To appreciate the application, the facts of the case would have to be narrated:-

In the plaint, it had been stated that the plaintiff was the owner /landlord of premises bearing door Nos. 67, 68 and 72 (Southern Phase), Industrial Estate, Ambattur, Chennai, measuring 60,000 square feet or thereabouts. The 1st defendant through the 2nd defendant had approached the plaintiff in and around July 2015 and expressed intention to take on lease a portion of the said premises, with a constructed area of about 46,600 square feet together with open space. After discussions, the 1st defendant was inducted as a tenant with effect from 01.08.2005 on a monthly rent of Rs.2,79,600/- with 5% escalation on the monthly rent every year. The 1st defendant had to pay electricity charges according to the meter.

5. In the plaint, it was further stated that the 1st defendant had sublet the portions of the tenanted premises, after retaining a portion for their own use and occupation. The 1st defendant was irregular in payment of the monthly rents. Consequently, the plaintiff had filed R.C.O.P. No.7 of 2008 before the District Munsif Court, Ambattur and an order of eviction was passed on 09.09.2008. The defendants vacated the premises, measuring about 28,700 square feet by handing over the keys to the security guard on 15.09.2008. However, the sub tenants continued to be in possession.

They were put on notice about the order of eviction.

6. The averment in the plaint in paragraph no.7 is extracted in full, since it relates to averments against the present applicant, who is the 2nd defendant.

> "7. *At this juncture all the sub tenant/s informed the Plaintiff that they were regularly paying up the rentals to the 2nd defendant and also divulge all other details pertaining to the sub tenancy, which are as under.*
>
> *a) the 2nd defendant had entered into an agreement on 14.10.2005 to sublet a portion of the leased property, measuring 10000 square feet floor area, on a monthly rental of Rs.70,000/- to Bangalore Auto Engineers Pvt. Ltd., for a period of 5 years and collected interest free security deposit of Rs.6,00,000/- on 02.11.2005;*
>
> *b) the 2nd defendant had entered into an agreement to sublet a portion of the property measuring 4300 square feet with M/s. Ashwin Trading, on a monthly rental of Rs.30,000/- and collected interest free refundable security deposit of Rs.2,40,800/-;*
>
> *c) in February 2006, the 2nd defendant entered into an agreement to sublet a portion measuring 3600 square feet to Unitex Exports on a monthly rental of Rs.18,000/- p.m. and collected interest free refundable security deposit of Rs.2,40,000/-".*

7. In paragraph no.8, the plaintiff has further stated as follows:

"8. The plaintiff was also given to understand that all the above said sub-tenant/s were paying up the rents regularly and promptly to the 2nd defendant and the 2nd defendant, after having collected the monthly rents from the sub-tenants did not choose to pay up the same to the plaintiff. Instead, the 2nd defendant misappropriated the montly rentals payable by the 1st defendant as also the monthly rents paid by sub tenants, to himself. When the plaintiff confronted the 2nd defendant, the 1st defendant would falsely claim that the sub tenant/s have not paid the rents. In all, the 2nd defendant has misappropriated a total sum of Rs.65,63,207/-, which liability has been acknowledged by the 2nd defendant himself".

8. The plaintiff thereafter stated that they had initiated criminal proceedings in C.C.No.439 of 2008 on the file of the Judicial Magistrate Court, Ambattur, for the offences punishable under Sections 406, 409 & 420 of IPC. The said proceedings were challenged before this court under Section 482 Cr.P.C. in Crl.O.P.No.5078 of 2008 and the proceedings were quashed by order dated 11.02.2016, by holding that the dispute is of civil nature and further making it clear that the order will not preclude the plaintiff from initiating further proceedings.

9. The plaintiff has further stated that they had returned the rental advance paid by the sub-tenants and the sub tenants vacated and delivered possession. The plaintiff

confronted the 2nd defendant with the statement of accounts, which reflected that a sum of Rs.9,36,600/-, which had been collected for the period September 2007 and July 2008, was due and it is claimed in the plaint that the 2nd defendant made an endorsement in the said statement.

10. It had been thereafter stated in Paragraph no. 11 as follows:

> *"11. Thus it could be seen that the 2nd defendant after having had sublet portions of the tenanted premises and collected security deposit as also the monthly rents and from the sub-tenants/s, has falsely misrepresented to the plaintiff that the sub tenants have not paid up the rents. In an event, the 2nd defendant is also liable along with the 1st defendant and responsible for the monies received by the 2nd defendant by way of security deposit and the rentals collected by the 2nd defendant from the sub-tenants. The conduct of the 2nd defendant would speak volumes about his dishonest and fraudulent intention".*

11. It had been further stated that the plaintiff called upon the defendants to pay a total sum of Rs.65,63,207/- and enclosing the statement of the 2nd defendant, showing rent receivable/and paid by the 1st defendant and statement showing rent received by the 2nd defendant from the sub tenants. The 2nd defendant had received the notice and sent a reply on 23.04.2016, denying the claim. A rejoinder was issued by the plaintiff on 03.05.2016.

12. It had been stated that the plaintiff also obtained the Balance Sheet of the 1st defendant and in the same, the following details have been given.

S.No.	**Name of Unit**	**Period for rent paid**	**Total months**	**Rent paid Rs.**	**Total paid for period Rs.**
1.	Popular Auto	December 2005 to April 2008	29 months	70,000/-	20,30,000/-
2.	Ashwin Traders	November 2005 to June 2008	32 months	31,000/-	9,92,000/-
3.	Unitext	February 2006 to July 2008	27.5 months	30,000/-	8,25,000/-
				Total	**38,47,000/-**

13. Claiming that the 1st defendant's bank Balance Sheet for the years 2012 - 2013, 2013 - 2014, 2014 - 2015 have reflected the receipt of rental advance of a total sum of Rs.10,80,800/- from the 3 tenants, and further claiming that the plaintiffs have to be paid a sum of Rs.65,63,207/- jointly and severally by the two defendants, the suit had been filed for the reliefs as stated above.

14. In this application filed by the second defendant, as stated above, it had been stated that the transactions were only between the plaintiff and the 1st defendant. The 2nd defendant was only a Director of the 2nd defendant and it had been stated that the 1st defendant is a separate legal

entity. It had been further stated that the 2^{nd} defendant had been made as a party to harass him. It was claimed that the relief is barred by the law of limitation.

15. Along with the plaint, the plaintiff had filed 17 documents, including letters from the sub tenants and also the statement of accounts, dated 30.08.2008 and also copies of the notices issued between the parties and the Balance Sheet of the 1^{st} defendant between the years 2006 – 2015.

16. In the counter filed to the present application, the plaintiff had stated that the plaint has to be read in entirety. The defendants had only extracted paragraphs 7 and 9. It had been further stated that this court had also passed orders on 22.12.2017 in Crl.M.P.No.14262 of 2017 in Crl.OP.No.5078 of 2010, which had been filed under Section 195(1)(b)(i) and 340 Cr.P.C read with 482 Cr.P.C and the court had directed the Registrar General to give a complaint against the 2^{nd} defendant before the competent court for the offences under Sections 191, 192, 193, 196, 199, 200, 463, 464, 465, 469, 470 & 471 IPC. It had been stated that the 2^{nd} defendant was directly involved in the dispute between the plaintiff and the defendants.

17. This Court heard the arguments advanced by Mr.Srinath Sridevan, learned counsel for the applicant/2^{nd} defendant and Mr.B.Hari krishnan, learned counsel for the 1^{st} respondent/plaintiff. For the sake of convenience, the parties shall be hereinafter referred to as the plaintiff and the defendants. The applicant is the 2^{nd} defendant.

18. The brief facts of the case are that the plaintiff had inducted the 1^{st} defendant as a tenant in respect of

46,600 square feet of constructed area together with open space, out of about 60,000 square feet of premises in doors Nos. 67, 68 and 72(Southern Phase), Industrial Estate, Ambattur, Chennai, over which, the plaintiff was the landlord/owner. The 1st defendant was inducted as a tenant with effect from 01.08.2005 on a monthly rent of Rs.2,79,600/- and there was also a provision for 5% escalation every year. It had been specifically alleged in the plaint that the 1st defendant sublet the portions of areas under the tenancy to various sub tenants. Since, there was arrears of payment of rent, the plaintiff filed R.C.O.P.No.7 of 2008 before the District Munsif Court, Ambattur and the 1st defendant was set ex-parte, an order of eviction was passed on 09.09.2008. The defendants vacated the premises under their occupation measuring 28,700 square feet by handing over the keys to the security on 15.09.2008. However, the sub tenants continued to be in occupation.

19. In the plaint, it had been specifically stated that it was the 2nd defendant, who had entered into an agreement on 14.10.2005 to sublet the portion of the leased property measuring 10,000 square feet on a monthly rent of Rs.70,000/- to Bangalore Auto Engineers Pvt. Ltd. for a period of 5 years and also collected interest free security deposit of Rs.6,00,000/- on 02.11.2005. It was also stated that the 2nd defendant had entered into a similar agreement with M/s. Ashwin Trading, for property measuring 4,300 square feet on monthly rent of Rs.30,000/- and had collected interest free security deposit of Rs.2,40,800/-. It was further stated that the 2nd defendant had entered into an agreement with Unitex Exports to sublet the portion measuring 3,600 square feet on a monthly rent of Rs.18,000/- and collected interest free security deposit of Rs.2,40,000/-.

20. Mr.Srinath Sridevan, the learned Counsel for the plaintiff contrast his averment made in the plaint, with the averment made with respect to the extract of the Balance Sheet. Wherein, the plaintiff had stated that the 1st defendant had received rent from the sub tenants and the details are as follows:

S.No.	**Name of Unit**	**Period for rent paid**	**Total months**	**Rent paid Rs.**	**Total paid for period Rs.**
1.	Popular Auto	December 2005 to April 2008	29 months	70,000/-	20,30,000 /-
2.	Ashwin Traders	November 2005 to June 2008	32 months	31,000/-	9,92,000/-
3.	Unitext	February 2006 to July 2008	27.5 months	30,000/-	8,25,000/-
				Total	**38,47,000 /-**

21. Mr.Srinath Sridevan further pointed out that there is divergent of pleadings between paragraph No.12, in page No.5 of the plaint and the details given in page No.7 of the plaint. The learned Counsel therefore stated that by clever drafting the plaintiff had included the 2nd defendant as the party to the suit and stated that the contradictions in the plaint itself would be a reason to reject the plaint. The learned Counsel also stated that the 2nd defendant was only a Director of the 1st defendant and consequently since, the 1st defendant was a separate

legal entity, and the Director cannot be held responsible for the liabilities of the Limited Company, the plaint should be rejected in so far as the 2nd defendant is concerned.

22. The learned Counsel relied on the decision of the Hon'ble Supreme Court in **Bacha F.Guzdar, Bombay *Versus* Commissioner of Income Tax, Bombay, reported in AIR 1955 SC 74**, wherein, in paragraph No.9, it had been stated as follows:

> *9.It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders. In Halsbury's Laws of England, Volume 6 (3rd Ed.), page 234, the law regarding the attributes of shares is thus stated :*
>
> > *"A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the, nature of real*

estate."

23. The learned Counsel relied on the said above judgment to show that the 2nd defendant as a Director cannot be made responsible for the liabilities of the 1st defendant Company.

24. The learned Counsel also relied on the decision of the House of Lords in **Aron Salomon (Pauper) Versus A.Salomon and Company, Limited in 1897 H.L.(E.) Lord's Journals, November 13, 1896,** wherein, Lord Herschell in Page Nos.42 and 43 had stated as follows:

> *"It is to be observed that both Courts treated the company as a legal entity distinct from Salomon and the then members who composed it, and therefore as a validly constituted corporation. This is, indeed, necessarily involved in the judgment which declared that the company was entitled to certain rights as against Salomon. Under these circumstances, I am at a loss to understand what is meant by saying that A. Salomon & Co., Limited, is but an "alias" for A.Salomon. It is not another name for the same person, the company is ex hypothesi a distinct legal persona. As little am I able to adopt the view that the company was the agent of Salomon to carry on his business for him. In a popular sense, a company may in every case be said to carry on business for and on behalf of its shareholders; but this certainly does not in point of law constitute the relation of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs."*

25. The learned Counsel also relied on the

observations of Lord Macnaghten in Page No.51 is as follows:

> *"When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate "capable forthwith," to use the words of the enactment, "of exercising all the functions of an incorporated company." Those are strong words. The company attains maturity on its birth. There is no period of minority – no interval of incapacity. I cannot understand how a body corporate thus made "capable" by statute can lose its individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act."*

26. The learned Counsel again reiterated that this principle had been continuously upheld and a Director cannot be held responsible for the liabilities of the Company.

27. The learned Counsel also relied on the decision of the Hon'ble Supreme Court in **Church of Christ Charitable Trust and Educational Charitable Society,**

Represented by its Chairman ***Versus*** **Ponniamman Educational Trust** Represented by its Chairperson/Managing Trustee, reported in **(2012) 8 SCC 706**, wherein, in Paragraph Nos. 10 and 11 are as follows:-

> *10. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision: Order VII Rule 11 of the Code:*
>
> *"**11. Rejection of plaint**– The plaint shall be rejected in the following cases:*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *(e) where it is not filed in duplicate;*
>
> *(f) where the plaintiff fails to comply with*

the provision of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11.This position was explained by this Court in Saleem Bhai & Ors. vs. State of Maharashtra and Others, (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was *held as under: (SCC p. 560, para 9)*

> *"9. A perusal of Order VII Rule 11 CPC 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 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant 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 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."*

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the *pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express.*

28. The learned Counsel also relied on the observations of the Hon'ble Supreme Court in **T.Arivandandam v. T.V.Satyapal, reported in (1977) 4 SCC 467**, wherein it was observed as follows:

"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, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

29. The learned Counsel primarily relied on the averments made in the plaint that the 2^{nd} defendant had received an advance from the sub tenants and contrasted that with the actual claim made at page 7 of the plaint, wherein it was shown that the 1^{st} defendant Company was liable for the amounts collected from the sub tenants.

30. Mr.B.Hari Krishnan, on the other hand, contended that the 2^{nd} defendant had admitted to the statement of accounts submitted by the plaintiff and it was the 2^{nd} defendant who had collected the advance amounts and consequently, reiterated that the plaint cannot be rejected

at the threshold.

31. The Order VII Rule 11 CPC is as follows:

"***11. Rejection of plaint****-The plaint shall be rejected in the following cases:-*

Order VII Rule 11(A) CPC: Where it does not disclose a cause of action;

Order VII Rule 11(D) CPC: Where the suit appears from the statement in the plaint to be barred by any law;

32. In the present case, the learned Counsel has urged this court to consider Order VII Rule 11(A) CPC and that there was no cause of action as against the 2nd defendant. In the affidavit filed in support of the application, it had been stated that the suit is also barred by the Law of Limitation. However, with respect to issue of statutory bar, the plaintiff had produced Balance Sheets of the 1st defendant, wherein, they had admitted existing liability towards amounts collected from the sub tenants. Further limitation is a mixed question of fact and law and it is a matter in which evidence will have to be recorded and consequently, I am not able to agree with the contentions of the 2nd defendant in that regard raised in the application.

33. The learned Counsel for the 2nd defendant had stated that the 2nd defendant is only a director of the 1st defendant and consequently, he cannot be held responsible for the liabilities of the 1st defendant. In the plaint, there is a specific averment that the 2nd defendant had collected security deposit on the freeze of tenants.

34. The averments in the plaint in paragraph no.7 is extracted as follows:-

> "7. *At this juncture all the sub tenant/s informed the Plaintiff that they were regularly paying up the rentals to the 2nd defendant and also divulge all other details pertaining to the sub tenancy, which are as under.*
>
> *a) the 2nd defendant had entered into an agreement on 14.10.2005 to sublet a portion of the leased property, measuring 10000 square feet floor area, on a monthly rental of Rs.70,000/- to Bangalore Auto Engineers Pvt. Ltd., for a period of 5 years and collected interest free security deposit of Rs.6,00,000/- on 02.11.2005;*
>
> *b) the 2nd defendant had entered into an agreement to sublet a portion of the property measuring 4300 square feet with M/s. Ashwin Trading, on a monthly rental of Rs.30,000/- and collected interest free refundable security deposit of Rs.2,40,800/-;*
>
> *c) in February 2006, the 2nd defendant entered into an agreement to sublet a portion measuring 3600 square feet to Unitex Exports on a monthly rental of Rs.18,000/- p.m. and collected interest free refundable security deposit of Rs.2,40,000/-".*

35. Moreover, in paragraph no.8, the plaintiff had stated as follows:

> *"8. The plaintiff was also given to understand that all the above said sub-tenant/s were paying up the rents regularly and promptly to the 2nd defendant and the 2nd defendant, after having collected the monthly rents from the sub-tenants did not choose to pay up the same to the plaintiff. Instead, the 2nd defendant misappropriated the montly rentals payable by the 1st defendant as also the monthly rents paid by sub tenants, to himself. When the plaintiff confronted the 2nd defendant, the 1st defendant would falsely claim that the sub tenant/s have not paid the rents. In all, the 2nd defendant has misappropriated a total sum of Rs.65,63,207/-, which liability has been acknowledged by the 2nd defendant himself".*

36. It is seen that in the plaint, it had been further stated as follows:

> *"11. Thus it could be seen that the 2nd defendant after having had sublet portions of the tenanted premises and collected security deposit as also the monthly rents and from the sub-tenants/s, has falsely misrepresented to the plaintiff that the sub tenants have not paid up the rents. In an event, the 2nd defendant is also liable along with the 1st defendant and responsible for the monies received*

> *by the 2nd defendant by way of security deposit and the rentals collected by the 2nd defendant from the sub-tenants. The conduct of the 2nd defendant would speak volumes about his dishonest and fraudulent intention".*

37. What is extracted in page No.7 of the plaint is an extract of the Balance Sheet of the 1st defendant, and that is the statement issued by the 1st defendant and not by the plaintiff. The 2nd defendant cannot rely on the statement made by the 1st defendant. The Balance Sheet reveals the facts pleaded in the plaint, namely the sub tenants were inducted, advances were received and rental amounts were due and payable are actually correct. The further claim as to who had received the advance and received the monthly rents and who is liable, for the repayment of the advance amount are matters of evidence.

38. The 2nd defendant has relied on the Balance Sheet of the 1st defendant, in which he himself has been shown as a signatory to the statement as Director. Then, it means that the 2nd defendant is relying on document which he himself has projected as Balance Sheet of the 1st defendant and seeks to reject the plaint. From that angle it is a self serving document.

39. The provision of law that the Director cannot be held responsible for the liability of a Company is well settled. But, again in the present case, the allegation of the plaintiff is that the 2nd defendant had received advance in his personal capacity. This is a fact which has to be decided at the time of trial and the plaintiff cannot be non suited at the threshold. Evidence has to be let in on this aspect and the 2nd defendant has to withstand cross examination on the specific allegation that he had received

the advance amounts from the subtenants.

40. The Balance Sheet of the 1st defendant has been produced by the plaintiff to show existence of liability and also to show that the suit is within the period of limitation. The signatory to the Balance Sheet is the 2nd defendant himself. In the plaint, it had been specifically stated that the 2nd defendant had personally received advances and that is the fact in issue which has to be tested in trial. The witness for the plaintiff has to substantiate on that aspect and opportunity to do so must be granted. The 1st defendant has also to be cross examined on the evidence let in. I am unable to agree that the suit must be rejected.

41. In the result, this application is dismissed. No costs.

Sd/.C.V.K.J
20.07.2018

//Certified to be a true copy//
Dated this the day of 2018.

KY/31.07.2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.