IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 10TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A. No.4805 of 2018
in
C.S.No.926 of 2017

M/s. Rajarathnam Construction (P) Ltd.,
Rep.by its Managing Director
A.Rathinam
No.20, Anderson Road, Ayanavaram,
Chennai 600 023. : Plaintiff

Vs.

1. M/s. Ganapathy Funds
Partnership Firm
Rep.by its Managing Partner

2. J.S.Srinivasan
Managing Partner
M/s. Ganapathy Funds

3. Jayaraman Srinivasan
Managing Partner
M/s. Ganapathy Funds

4. Vichoor Sundaram Jayaraman
Managing Partner
M/s. Ganapathy Funds

5. Thiyagarajan Nataraja
Managing Partner
M/s. Ganapathy Funds

6. Natarajan Sridhar
Managing Partner
M/s. Ganapathy Funds
All having office at No.25/296,
Paper Mills Road, 1st Floor, Perambur,
Chennai 600 011. :Defendants



**A.No.4805 of 2018:**

1. M/s. Ganapathy Funds
Partnership Firm
Rep.by its Managing Partner

2. J.S.Srinivasan
Managing Partner
M/s. Ganapathy Funds

3. Jayaraman Srinivasan
Managing Partner
M/s. Ganapathy Funds
All having office at No.25/296,
Paper Mills Road, 1st Floor, Perambur,
Chennai 600 011. :Applicant/Defendants 1 to 3

-Vs.-

1. M/s. Rajarathnam Construction (P) Ltd.,
Rep.by its Managing Director
A.Rathinam
No.20, Anderson Road, Ayanavaram,
Chennai 600 023. : 1st Respondent/Plaintiff

2. Vichoor Sundaram Jayaraman
Managing Partner
M/s. Ganapathy Funds

3. Thiyagarajan Nataraja
Managing Partner
M/s. Ganapathy Funds

4. Natarajan Sridhar
Managing Partner
M/s. Ganapathy Funds
All having office at No.25/296,
Paper Mills Road, 1st Floor, Perambur,
Chennai 600 011. :Respondents 2 to 4/ Defendants 4 to 6



Application praying that this Hon'ble Court be pleased to pass an order to reject the plaint in C.S.No.926 of 2017 with exemplary cost.

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

There is a sole plaintiff in the main suit, i.e., M/s.Rajarathnam Construction (P) Ltd., a company and obviously a juristic person. There are 6 defendants in the main suit.

2.Defendants 1, 2 and 3 in the main suit are applicants 1, 2 and 3 respectively in the instant application. Sole plaintiff in the main suit is the first respondent in the instant application. Defendants 4, 5 and 6 in the main suit are respondents 2, 3 and 4 respectively in the instant application. Parties in this application are referred to by their respective ranks in the main suit, for the sake of convenience and clarity.

3.Defendants 1, 2 and 3 have taken out this application under sub-clauses (a) and (d) of Order VII Rule 11 of 'The Code of Civil Procedure, 1908' (hereinafter referred to as 'CPC', for brevity). In other words, this is an application seeking rejection of plaint on the grounds that there is no cause of action and that the suit is barred by law.



4.Before I proceed further with this application, it is necessary to deal with an objection that has been raised primarily in paragraph 17 of the affidavit filed in support of this application. This objection pertains to the jurisdiction of this Commercial Division qua this suit.

5.There is no dispute or disagreement between the parties before me that this suit pertains to a money transaction between one M/s.Ganapathy Funds and the plaintiff company. It is also not in dispute that the plaintiff, which is a juristic person, i.e., Company, is a trader.

6.As the plaintiff is a juristic person, i.e., Company, and as there is no dispute or disagreement that this *lis* arises out of an ordinary transaction of a trader, the dispute out of which this suit arises qualifies as a 'commercial dispute' under Clause (i) of Section 2(1)(c) of 'The Commercial Courts Act, 2015' (hereinafter referred to as 'said Act', for brevity). To be noted, Clause (i) of Section 2 (1) (c) of the said Act reads as follows:

> **2. (1)** *In this Act, unless the context otherwise requires, -*
>
> *(a) ...*
>
> *(b) ...*
>
> *(c) "commercial dispute" means a dispute arising out of -*
>
> *(i)ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
>
> ...



7.As mentioned supra elsewhere in this order, this suit was presented on 22.9.2017, admitted on 30.11.2017 and therefore, this suit was pending on the date of constitution of Commercial Division in this Court. To be noted, Commercial Division was constituted in Madras High Court vide Notification No.467/2017 dated 02.12.2017 and therefore, this suit has been transferred to this Commercial Division under Section 15 (1) of said Act, which reads as follows:

> *"**15. (1)** All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division."*

8.This takes us to the specified value aspect of the suit. A perusal of the valuation paragraph of the suit being paragraph no.19 reveals that the suit has been valued at Rs.4,83,72,278/-. In other words, the suit has been valued at over Rs.4.83 crores. This makes it clear that this suit qualifies qua 'specified value' also within the meaning of Section 2 (1) (i) read with Section 12 of the said Act.





9.It follows as a sequitur that this suit is one relating to a 'commercial dispute' of 'specified value'.

This suit has been presented/filed in this Court on 22.09.2017 and therefore, it it obvious that this suit has been filed in a High Court having ordinary original civil jurisdiction. It, therefore, follows as an inevitable further sequitur that this Commercial Division will have jurisdiction to hear and dispose of this suit under Section 7 of the said Act, which reads as follows:

> *"7. All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:*
> *Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:*
> *Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 or section 104 of the Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction."*

10.Jurisdiction thus determined. Having determined jurisdiction of this Commercial Division qua this suit, I now proceed to deal with the instant rejection of plaint application.

11.As mentioned supra, defendants 1 to 3 in the main suit have taken out the instant application seeking rejection of plaint. Mr.K.N.Nataraaj, learned counsel on record for defendants 1 to 3, Mr.P.Chandrasekar, learned counsel on record for the sole plaintiff and Mr.G.Thyagarajan, learned counsel on record for defendants 4 to 6 are before this Commercial Division.

12.I have heard all the aforesaid learned counsel.

13.It is necessary to set out broadly the primary and pivotal grounds on which the instant rejection of plaint application is predicated. The grounds are as follows:

(i) There is no cause of action for this suit. Suit is not clear as to against which defendant the claim has been made; cause of action paragraph refers to remittance by plaintiff qua subscription to defendants on 05.12.2014, but no receipts have been filed; admitted plaint document no.15, i.e., communication from the plaintiff (though wrongly given as 15.11.2016 in the cause of action paragraph) is not addressed to plaintiff; plaint document no. 7 is not supported by adequate material. In sum and substance, the cause of action paragraph has not been sufficiently buttressed with documents and therefore, there is no cause of action.

(ii) The suit is barred by law, i.e., Section 64, more particularly, sub-section (3) of Section 64 of the Chit Funds Act, 1982 (hereinafter referred to as 'CF Act', for brevity), as the suit which relates to subject transaction is barred.

(iii) The plaint has been signed by a person [i.e., A.Rathinam] describing himself as Managing Director, but no Board resolution of the plaintiff authorising said Rathinam to verify, sign the plaint and prosecute the suit has been placed before the Court. Therefore, this suit is barred by Section 179 of the Companies Act, 2013 ('new Companies Act', for brevity), in the light of Order XXIX Rule 1 of CPC.



14.The above said three points are broadly the pivotal grounds on which the instant rejection of plaint application is predicated. A perusal of the three points would reveal that the rejection of plaint application, as mentioned supra, is predicated by invoking sub-sections (a) and (d) of Rule 11 of Order VII of CPC.

15.Referring to there being no document to buttress the averments in the cause of action paragraph, learned counsel for defendants 1 to 3 referred to plaint document no.15, which is a letter dated 14.11.2016 in the letterhead of the plaintiff. To be noted, it is submitted by the learned counsel for the defendants that this is an admitted document. It is now a well established principle that an admitted plaint document can also be looked into in a rejection of plaint application. Referring to plaint document no.15, learned counsel submitted that the letter in the plaintiff's letterhead is addressed to one J.Srinivasan of Sarvalakshmi Chit Funds Private Limited. Learned counsel pointed out that neither J.Srinivasan (natural person) nor Sarvalakshmi Chit Funds Private Limited (obviously a juristic person) are parties to the suit. Learned counsel also pointed out that the second defendant is J.S.Srinivasan, and Sarvalakshmi Chit Funds Pvt. Ltd. is not there in the array of parties. Likewise, referring to plaint document no.7, which is also an admitted document dated 27.06.2015, it was submitted that it is said to be a statement of account and also said to be in the letterhead of the plaintiff company, which is completely different from document no.15 which has been referred to supra. It was pointed out that there is a logo in plaint document no.15 letterhead, whereas the same is absent in plaint document no.7.



16.To be noted, learned counsel appearing for defendants 4 to 6 stated that he adopts the submissions made by Mr.K.N.Nataraaj, learned counsel for defendants 1 to 3, who is the protagonist of this application for rejection of plaint.

17.In response to the aforesaid submission regarding point no.(i), learned counsel for plaintiff submitted that letterheads need not be uniform and it was also pointed out that the letterheads can change from one financial year to the other. It was pointed out that plaint document no.15 is dated 14.11.2016 and plaint document no. 7 is dated 27.06.2015, which fall in two different financial years. With regard to the name J.Srinivasan and Sarvalakshmi Chit Funds Pvt. Ltd., it was submitted that plaint document no.15 may not be the lone fulcrum and sheet anchor of this *lis*. It was submitted, it was open to the plaintiff to produce documents and oral evidence to buttress document no.15 and establish that it does relate to the plaintiff company.



18.In the light of the aforesaid submissions, I am of the view that point no.(i) raised by the protagonist in this application for rejection of plaint are clearly matters for trial. Plaint document no.15 should be established and proved in a manner known to law and it is for the plaintiff to discharge the burden of proof cast on it and establish that it does pertain to the plaint transaction. Assuming for a moment, on a demurrer, even if the plaintiff does not succeed in doing so, it is for the plaintiff to discharge the burden by relying on other documents which have been pressed into service. The difference in letterheads is one which certainly cannot be gone into in an interlocutory application much less in a rejection of plaint application. *Prima facie,* the explanation that the letterheads can change in successive financial years is acceptable but, this is only a *prima facie* view subject to proof in the trial.

19.This takes us to the next point i.e., (ii) supra, on which the instant rejection of plaint application is predicated. As would be evident from the enumeration of points qua grounds for rejection of plaint, which have been adumbrated supra, the second point is that the suit is barred by sub-section (3) of Section 64 of CF Act. I deem it appropriate to extract entire Section 64, which consists of three sub-sections and the same reads as follows:

> ***64.Disputes relating to chit business.*** *- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-*

*(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deemed subscriber to a chit;*

*(b) a surety of a subscriber, past subscriber, or a deemed subscriber;*

*(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;*

*(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and*

*(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.*



*(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.*



*(3) No Civil Court shall have jurisdiction to entertain any suit or other proceedings in*

*respect of any dispute referred to in sub-section (1).*

20.In response to above, relying on paragraphs 4 and 5 of **Sethupathy's** case reported in **CDJ 2007 MHC 418**, rendered by Mrs.Justice R.Banumathi as a single Judge of this Court (as Ladyship then was), it was emphatically argued that it should necessarily be a dispute between a foreman and subscriber as adumbrated in various sub-rules of Rule (1) of Section 64. To qualify a dispute referable to arbitration under Section 64, it is not as if that all and every dispute touching upon the chit funds would be barred under sub-section (3) of Section 64 is the plaintiff's counsel say.

21.To be noted, paragraphs 4 and 5 of the aforesaid judgment, i.e., **Sethupathy**'s case, read as follows:

*"4. The main point urged is that in view of Section 64(3) of the Chit Funds Act, the Decree passed is a nullity. Section 64(3) reads as under:-*

*"64(3).No civil Court shall have jurisdiction to entertain suit or other proceedings in respect of any dispute referred to in Section 64(1)".*

*Section 64 to 72 provide for a self contained machinery for the settlement of dispute arising between a foreman and the subscribers. The Chit Funds Act will be applicable only in case of chit* *funds registered under the provisions of the Act. The learned Counsel for the Plaintiff has submitted that Plaintiff preferred complaint before the Registrar making his claim and the same was returned stating that Muthamizh Chit is not a registered one. The District Registrar of Chits, North Arcot, was also made a party in the suit, who has also filed the Written Statement. No serious dispute was raised as to lack of jurisdiction of civil Court.*

*5. Contending that the Civil Suit is not maintainable and the Civil Court has no jurisdiction to pass Decree, the learned Counsel for the Revision Petitioners has placed reliance upon -*

*AIR 1977 SC 1201; 2003 (4) SCC 147;*

*AIR 1996 SC 1819; 2003 (1) CTC 41*

*All the above decisions cited on behalf of the Revision Petitioners concerning Sec.47 CPC have no relevance to the case on hand.*

22.However, I noticed a more important aspect with regard to this ground that is being projected in the rejection of plaint application. This ground turns on plaint document no.22. To be noted, learned counsel for the defendants, i.e., counsel for defendants 1 to 3 as well counsel for defendants 4 to 6, have no disagreement that plaint document no.22 is an admitted document and therefore, I looked into the said document. Plaint document no.22 is a copy of a plaint dated 26.04.2017 being plaint in O.S.No.2285 of 2017 on the file of XI Assistant Judge's Court, City Civil Court, Chennai. To be noted, this is a suit filed by one J.Srinivasan. Learned counsel for defendants 1 to 3 states that it is their plaint. Learned counsel refers to paragraph 4 and the relevant portion of paragraph 4, which is most relevant for the instant rejection of plaint application, is as follows:

> *"4.The Plaintiff states by observing the friendly attitude of him, the defendant had financial consultation. The defendant wanted financial assistance for his construction business. He told the plaintiff, whenever he ventures into a new construction project, he gets struck for want of funds. Further, he added, to obtain loan from bank, it is a cumbersome procedure and takes time. By that time loan is sanctioned, it becomes too late to start a work. It affected the credibility of the defendant. ...."*

23.Relying on the aforesaid averment in the plaint, learned counsel submitted that it was merely a financial assistance for construction business, as the plaintiff was venturing into a new construction project and that it was financial assistance which has a staggered repayment schedule and therefore, it is not a chit transaction. If it is the stated position of defendants 1 to 3 that this transaction does not qualify as a chit transaction, it may not be open to defendants 1 to 3 to now raise the submission that it is hit by sub-section (3) of Section 64 of CF Act. However, considering that this is rejection of plaint application, I do not want to foreclose the defence which may be available for defendants 1 to 3 by holding one way or the other in this regard. Suffice to say that, *prima facie*, vide admitted plaint document no.22, as it is alleged that the transaction is of a different nature, the plea of sub-section (3) of Section 64 of CF Act and the suit being barred by the same will not be available to defendants 1 to 3.

24.However, I have also considered the submission made by the learned counsel for the plaintiff with regard to **Sethupathy's** judgment and particularly, paragraphs 4 and 5 of the same which have been extracted and reproduced supra. It may have to necessarily be an arrangement between a foreman and subscriber to qualify as a dispute referable to arbitration under Section 64 of CF Act. In this regard, my attention was also drawn to Section 4 of CF Act, which prohibits chits which are not sanctioned or registered under the CF Act.

25.There are no plaint averments to show that it is a sanctioned or registered chit under the CF Act. Therefore, the plea that the suit is hit by sub-section (3) of Section



64 of CF Act fails and there is no difficulty in holding

that the plaint is not liable to be rejected as being barred by sub-section (3) of Section 64 of CF Act.

26.This takes us to the third point, i.e., point no. (iii) supra that was projected in the instant rejection of plaint application.

27.The third point, i.e., (iii) turns largely on Order XXIX Rule 1 CPC. I deem it appropriate to extract and reproduce Order XXIX Rule 1 CPC, which reads as follows:

> ***"1. Subscription and verification of pleading***
>
> *In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the security or by any director or other principal officer of the corporation who is able to depose to the facts of the case."*

28.Referring to Order XXIX Rule 1 CPC, learned counsel for defendants 1 to 3 submitted that the term 'corporation' occurring in Rule 1 includes a company. There is no difficulty in accepting this time honoured proposition. Learned counsel submitted that the plaint has been signed by one A.Rathinam, describing himself as Managing Director of the plaintiff company and no document has been filed along with the plaint to show that he is authorised by a Board resolution. Learned counsel in an attempt to buttress the said submission had made a reference to Section 179 of the New Companies Act. Relying on Section 179 of New Companies Act, learned counsel submitted that the Board of Directors of a company shall be entitled to exercise powers and do such acts and things as the company is authorised and the adumbration / enumeration of the same is contained therein. In the absence of a board resolution authorising said A.Rathinam, he cannot pursue and prosecute the suit, is his say. It is also submitted by the learned counsel that it is not a curable defect. In support of his submission, learned counsel pressed into service three judgments. The first judgment is that of a Division Bench of this Court in **Swadharma Swarajya Sangha vs. Indian Commerce and Industries Co. Pvt. Ltd., (1997 STPL 11127 Madras).** The relevant paragraph is paragraph 2, which reads as follows:

> *"2.A reading of the above article leads to an inference that it is the directors who should jointly authorize to decide to institute or institute a suit. Conceding, the directors have passed no resolution deciding to institute a suit binding the institution with the result of the suit. The suit having been filed without there being any resolution and as the corporation can only file a suit if there is a resolution for the same, the suit was not filed by an authorised person under Order 29, Rule 1 of the Code of Civil Procedure. The suit as such is not maintainable."*

29.A perusal of paragraph 2 reveals that it is a case where the position that the directors have not passed any resolution was conceded with regard to institution of the suit. There is no such conceded position in this regard in this case. On the contrary, learned counsel for plaintiff submits that he would produce the board resolution and necessary documents in the trial.

30.The next judgment pressed into service is **Schemenger Gmbh and Company Leder vs. Saddler Shoes Private Limited**, reported in **2010 (21) CTCOL 48 (Mad)**. It was rendered by a learned Single Judge of this Court. Reference was made to paragraph 15 of the said judgment, which reads as follows:

> "**15.***It is to be noted that in the said Order 29, Code of Civil Procedure, the Corporation includes any Company registered under the Companies Act, 1956. In the suit for recovery of money filed by the Plaintiff-Company, it should be filed by the person authorized by the Board of Directors of the Plaintiff-Company, who shall verify and institute the suit. The suit should have been filed by the competent person. To institute a suit on behalf of the Plaintiff-Company, it can only be filed by the Directors, specifically empowered by the Board of Directors to file the suit, and in this case, only the Liaison Officer*

*has filed the suit. Even the Director is not competent to file the suit on behalf of the Company, unless the specific power is conferred on him. The Power of Attorney should have been issued to the Director to file the suit on behalf of the Company on the basis of the Resolution passed by the Board of Directors in their meeting held in that regard. The suit is only then held to be validly instituted by the competent person who has been authorized by the Company and when once the Resolution is passed, authorizing the Managing Director by giving Power of Attorney in favour of the Director of the Company and then no further Resolution in that regard is necessary. The Company can always authorize some person to sign on behalf of the Company and if the Company does not chose to do so, it can act in accordance with Order 29 Rule 1 Code of Civil Procedure and it can rely on the Order 29 Code of Civil Procedure, as in fac,t a constituting agent to sign if necessity of giving an express authority. In that way, Order 29 Code of Civil Procedure is read only merely as a permissive and not mandatory. In some cases, if the suit is filed by the Company, even the Secretary is competent person to sign and verify the pleadings. As per the memorandum/Articles of Association of the Company, if the Directors who were jointly authorized to decide to institute the suit,a nd when the Directors have passed no Resolution deciding to initiate the suit, binding the institution with the result of the suit, and the suit having been filed without there being any Resolution and as the Corporation/Company could* *only file the suit, if there is any Resolution for the same, the suit is not maintainable. In the present case, the suit is not filed by the authorized person under Order 29 Rule 1 Code of Civil Procedure and suit as such is not maintainable and in the case on hand, there is no proof to show that the Liaison Officer was so authorized by the Board of Directors in their meeting, authorizing him to initiate the suit."*

31.With regard to **Saddler Shoes**'s case, supra, a perusal of the judgment reveals that the same has been rendered in a main civil suit post trial. This is rejection of plaint application. There are two distinguishable features. One is, it is a case where issue was tested in the main suit and not by affidavits and counter-affidavits as in an interlocutory application. The second distinguishable factor is that it is not a proceeding arising out of an application for rejection of plaint where the scope is extremely limited, where the Court should look it into uncontroverted averments in the plaint with a hood without adding or subtracting any averment in the plaint. Therefore, **Saddler Shoes**'s case does not help defendants 1 to 3 in the instant case, as this is rejection of plaint application. However, it is open to defendants 1 to 3 to raise this contention in the pleadings and pursue the same in the main suit trial.

32.Learned counsel pressed into service a judgment of Bombay High Court, Nagpur Bench, in **M/s.New Shelter Enterprises vs. Smt.Meenakshi (Civil Revision Application No.62 of 2017 decided on 21.07.2017)**, to show that a defect under Order XXIX Rule 1 CPC is not curable. Reference was made to paragraphs 23 and 24 which read as follows:

*"23. In the case of State Bank of Travancore v. Kingston Computers India Private Limited reported in (2011) 11 SCC 524, the Hon'ble Apex Court referred to the decision of the Delhi high Court in the case of Nibro Limited (supra) and affirmed the view taken by the learned single Judge of the Delhi High Court when it held that unless a resolution is passed by the Board of Directors delegating its power to an individual to file a suit on behalf of the Company, the suit is not maintainable. It also observed that when a suit is filed by a person not duly authorized by the Company, it cannot be entertained by a civil court.*

*24. In the instant case, if we go through the plaint pleadings, we would instantly find that there is not even a whisper about the Board of Directors passing a resolution to authorize respondent no. 1 to file a suit on behalf of the two Companies. I have already found that the provisions of Order XXIX, Rule 1 of the Code of Civil Procedure are only about signing and verifying the pleadings in the plaint and not* *about the authority to institute a suit. The above-referred rulings would show that the authority to institute a suit would emanate from a resolution passed in that regard by the Board of Directors or authority given under the Articles of Association or even in the decision taken in the annual general meeting of the Company in view of the provisions of Section 291 of the Companies Act, 1956. If no such authority has been given, an individual director would have no authority to take a decision and file a suit for and on behalf of the Company. Apart from absence of any words regarding existence of such authority, the plaint in this case is also not accompanied by any Board resolution authorizing either of the respondents to institute a suit. These respondents may be the only Directors of these two Companies, as submitted. But, they must show or at least plead that there was a Board meeting in which a decision to institute a suit on behalf of the Company was taken. This was required as a necessity in law and facts. By way of reiteration, suffice it to say here that the agreements on which the cause of action in the instant suit was founded, were executed between the two Companies and the revision applicants and those agreements were in respect of an immovable property jointly owned by these Companies. The necessity of law, however, has not been quenched by pleadings in the plaint. So, one can very well say that the suit as filed by the respondents is also barred by law.*

33.It was also pointed out that **Shelter Enterprises**'s case, supra, was rendered by following a Supreme Court judgment in **State of Travancore vs. Kingston Computers India Private Limited,** reported in **(2011) 11 SCC 524** (though the said judgment was not placed before me). However, there is a reference to the said judgment in paragraph 23, which had been extracted supra and my attention was drawn to the same. A careful perusal to **Shelter Enterprises**'s case, supra, reveals that it turns on a different set of facts. It is a case where an agreement was executed between two companies in respect of immovable property jointly owned by the two companies. It was in this context that it was held that the necessity of law has not been quenched by the pleadings in that case. To that extent, the case on hand is clearly distinguishable. It does not turn on an agreement or a contract by a company. It is pertaining to a transaction of a company with another entity.



34.To be noted, according to the plaintiff, M/s.Ganapathy Funds is a partnership firm whereas defendants 1 to 3 would vehemently and emphatically contend that it is only a proprietary concern with one J.Srinivasan as the Proprietor carrying on business in the name and style of Ganapathy Funds. These are all matters which have to necessarily be gone into in trial and it may not be apposite to go into these aspects in a rejection of plaint application.

35.Learned counsel for defendants 1 to 3 also pressed into service a judgment of the Supreme Court in **Bharvagi Constructions vs. Kothakapu Muthyam Reddy**, reported in **2017 (5) CTC 775.** My attention was drawn to paragraph 32 of the said judgment. It may not be necessary to extract the said paragraph as this judgment was pressed into service for the principle that 'barred by law' would include barred by a judge-made law or the ratio laid down in a judgment. In other words, the learned counsel submitted that for a suit to be barred by law within the meaning of sub-clause (d) of Rule 11 of Order VII CPC, it need not necessarily be a provision of a statute, but it can be judge-made law also. There is absolutely no difficulty in accepting this proposition. The issue is, as mentioned supra, the case law pressed into service particularly **Shelter Enterprises**'s case, supra, turns on a different set of facts that is clearly distinguishable on facts being a *lis* arising on an agreement between two companies. Equally, the **Saddler Shoes** judgment, supra, is one that was rendered in a main suit post trial after examination of the witnesses, i.e., depositions, and marking of documents, i.e., exhibits, and therefore, does not help defendants 1 to 3 to advance their case here.

36.Be that as it may, learned counsel for plaintiff pressed into service a judgment of the Andhra Pradesh High Court in **B.Anil Kumar Reddy vs. Margadarsi Chit Fund Limited**, reported in **CDJ 2006 APHC 183**, to say that defect, if any, under Order XXIX Rule 1 CPC is curable. Learned counsel referred to paragraph 6 of the judgment and relevant portion of paragraph 6 is as follows:

> *"6. ... A person may be expressly authorized to sign the pleadings on behalf of the company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its Officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."*

37.A perusal of the judgment shows that this ratio is closer to the facts of the instant case. It is a matter of evidence and it is for the plaintiff to press into service documents and deposition that may be necessary in this regard. To be noted, learned counsel for the plaintiff submitted that there is a board resolution and that he would press that into service in the trial.

38.Also to be noted, learned counsel for the plaintiff has placed a compilation of citations consisting of six judgments, but only two out of the six judgments, i.e., the aforesaid **Sethupathy**'s case and the instant **Anil Kumar Reddy**'s case, were pressed into service. Therefore, these two case laws, which were pressed into service, have been looked into and have been discussed.

39.Before I conclude, it may be necessary to set out two aspects of the matter. With regard to cause of action, it is not in dispute that cause of action is not a term of art as the same has not been defined in any statute much less under CPC. One has to necessarily turn to **Nawal Kishore Sharma**'s case **[(2014) 9 SCC 329]** for a description of cause of action.



40.There can be no two opinions about the fact that cause of action is a chain/bundle of facts wherein and whereby every link in the chain and every shred in the bundle may not constitute cause of action, but only those of the facts which are absolutely essential and imperative for the plaintiff to establish for succeeding and getting a



decree in the suit will get classified as cause of action.

I have applied **Nawal Kishore Sharma**'s case principle in testing the plea of lack of cause of action, which is one of the grounds on which instant rejection of plaint application is predicated in the affidavit and protagonised in the hearing.

41.With regard to testing of rejection of plaint application itself, I have borne in mind the time honoured well-established principle that a rejection of plaint application has to be tested on a demurrer and not just on a demurrer, but on a extreme demurrer, meaning it has to be tested by assuming all the averments in the plaint to be true and correct by looking at the plaint averments with a hood. To put it differently, it has to be tested on uncontroverted averments in the plaint without adding or subtracting the same by assuming that the averments are true and correct. I have borne this principle in mind in testing the rejection of plaint application.



42.In the light of the narrative supra what follows indisputably as a sequitur is that this application should fail and therefore, this application will stand dismissed.

43.Though obvious, it is made clear that all the observations made in this order are solely for the purpose of disposal of the instant rejection of plaint application and the rights and contentions of all the parties including those aspects which have been dealt with in this order are left open to be decided in trial of the main suit. In other words, if the issues which have been dealt with in this order are raised in the suit, the same will be decided in a manner known to law untrammeled and uninfluenced by any of the observations made in this order.

44.In the result, this application is dismissed. In the light of the trajectory of this application and the hearing, parties are left to bear their respective costs.

45.As this Commercial Division is now exercising jurisdiction over this suit, the defendants, particularly, defendants 1 to 3 and 4 to 6 will do well to complete pleadings by filing written statements at the earliest, within the period and strict timelines provided under the said Act.



46.However, as determination of jurisdiction of this Commercial Division has been done vide this order, exercising powers under proviso to Section 15 (4) of the said Act, thirty days time is granted to the defendants to file written statements. In other words, the defendants shall file written statements on or before 10.10.2018. The written statements shall be filed along with all supporting documents and advance copies to the learned counsel for the plaintiff.

47.Thereafter, the next procedural steps under Rules 3 and 4 of Order XI of amended CPC as amended by the said Act will be considered in the next listing of the main suit, which will be on 12.10.2018.

Sd/-M.S.J

10/09/2018

//Certified to be a true copy//

Dated this the day of 2018

JJ 12.11.2018 COURT OFFICER

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