

application below Exhibit 47 under Order 7 Rule 11 (a) to (e) of the Code of Civil Procedure it is pointed out that the suit is barred by limitation. It is further stated that according to the terms of the agreement dated 29/11/2012 the matter needs to be referred to arbitration.

3. The trial Court has rejected the objection in so far as proper valuation of the suit by stating that the suit is filed simplicitor for injunction. As regards objection of arbitration clause is concerned, the trial Court was of the opinion that the said objection only be taken up as a defence and not for the purpose of deciding the Order 7 Rule 11 application.

4. I have gone through the order passed by the trial Court.

5. Learned counsel for the original plaintiff – respondent herein contended that as Memorandum of Understanding between the plaintiff and the defendants has already been acted upon, the suit merely is filed for the

injunction and the trial Court has rightly understood the suit to be one for injunction. Even in so far as objection regarding existence of the arbitration clause is concerned, learned counsel for the respondent would submit that there is no such averment in the Plaint as the application under Order 7 Rule 11 (a) to (e) of the Code of Civil Procedure has to be decided on the basis of the averments made in the Plaint.

6. Having gone through the order passed by the trial Court, in my opinion, the application needs to be reconsidered by the trial Court. The claim of the plaintiff in the suit as filed is for declaration and injunction. The trial Court is free to consider the plea of the plaintiff in the context that as the Memorandum of Understanding is already acted upon, the suit is therefore simplicitor for injunction. However, from the reliefs claimed in the Plaint, it is seen that even a declaration is sought whereas the trial Court has proceeded only on the footing that the suit is for injunction.

7. In so far as arbitration clause is concerned, in the

Plaint details as to the Memorandum of Understanding are mentioned in paragraph 2. What is the effect of the reference to the Memorandum of Understanding and the clauses in the Memorandum of Understanding on the application made under Order 7 Rule 11 (a) to (e) of the Code of Civil Procedure will have to dealt with by the trial Court. The impugned order is therefore set aside.

8. All contentions are kept open.

9. The trial Court not to be influenced by any of the observations made by me in this order and shall decide the application Exhibit 47 afresh on its own merits and in accordance with law.

10. The Petition is disposed of.

(M.S.KARNIK, J.)

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