

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2586 OF 2021

M/S ARYAN AQUA TECH PRIVATE LIMITED THROUGH ITS DIRECTOR
AND ANOTHER
VERSUS
CROYO CLEAN PRIVATE LIMITED THROUGH ITS DIRECTOR

...

Advocate for the Petitioners : Shri Totala Rameshwar F.
Advocate for the Respondent : Shri Bhandari Ananad P.

...

**CORAM: SMT. BHARATI H. DANGRE, J.
DATE :- 15th February, 2022**

Per Court:

1. Heard the learned counsel for the petitioners and the learned Counsel for the respondent.
2. The petitioners are aggrieved by rejection of their application below Exhibit 20, at the hands of the learned Joint Civil Judge, Senior Division, Aurangabad, seeking rejection of the plaint filed by the respondent/ plaintiff in Special Civil Suit No.35/2016.
3. Special Civil Suit No.35/2016 came to be filed by the respondent Croyo Clean Private Limited, a company registered under the Companies Act, 1956, seeking specific performance of the contract directing the petitioners/ defendants to execute the supplementary agreement (Deed of Transfer of Lease) in respect of plot Nos.A-78 and A-79 situated at MIDC Paithan, District Aurangabad and for perpetual

injunction. The suit property is described in paragraph 1 of the plain. In paragraph No.2 of the plaint, it is pleaded that the plaintiff and the defendants are registered under the Companies Act, 1956 and one Mr.Aatish Ramchandra Pole is the authorized director of the plaintiff company, whereas Mr.Uday Manoharrao Patil is the authorized director of the defendant company. It is specifically pleaded that both the directors of the companies took active part in the disputed transaction. It was pleaded in the plaint that the defendant intended to start the unit of mineral water and packaging and was allotted the plot in MIDC area in the year 2007 and even possession was delivered. It is further pleaded that though the defendant was intending to start the packaging unit of mineral water on the said property, it could not succeed in it's venture and therefore, it was in search of the party, who could purchase the said plot and the plaintiff was also in search of certain property in the MIDC area and therefore, the agreement was executed between the duo for the total premium/ consideration of Rs.15,00,000/-. The defendant agreed to transfer the suit property either in the name of the plaintiff or any other name as suggested by the plaintiff.

Further steps taken by the plaintiff company on it's incorporation, are set out in paragraph Nos.6 to 8. It is also pleaded in the plaint that the plaintiff, thereafter, prepared the project report for commencement of the new unit on the suit property and filed an

application for obtaining financial aid from the financial institution and the supplementary agreement came to be executed between the MIDC and the plaintiff. But, for execution of the supplementary agreement, the defendant backed out and this constrained the plaintiff to file the suit for specific performance of contract seeking direction to the defendant to execute the supplementary agreement.

4. In the said suit, an application came to be moved by the defendant seeking rejection of the plaint by pleading that the suit is barred by law as it is filed by a company and the company has to be understood in a way defined in the Companies Act, 2013 i.e. the company incorporated under this Act or any previous company law. It was, therefore, projected that the suit is not maintainable because the agreement of which the execution is sought, is not in the name of the company, but it is in the name of individual Shri Aatish Pole, who subsequently projected himself to be the director of the company and the company was incorporated in the year 2014, whereas, the suit is filed in the year 2016.

The learned Judge refused to entertain the application and dismissed the same vide the impugned order dated 24.10.2019.

5. It is a trite position of law that when the plaint is to be rejected by taking recourse to Order VII Rule 11(d) of the Code of Civil Procedure, the plaint has to be read in its entirety and only one statement

or one document appended to the plaint, cannot be considered to be a bar created under Order VII Rule 11(d).

6. The learned counsel for the petitioner though vehemently submits that the suit is not maintainable at the instance of the company, he is unable to demonstrate as to how it is barred in law as, if the plaint along with its documents is carefully read, it is revealed that individual Shri Aatish Pole was desirous of establishing the packaging unit and after the agreement was executed on 12.10.2011, immediately thereafter, under the signatures of the plaintiff and the defendant, an application was made to the MIDC for the purpose of transfer of the plot in the name of the company.

7. The learned counsel for the respondent has also placed on record of the compilation of documents, which would reveal that there was correspondence with the concerned authorities of the MIDC and the proposal has been proceeded in the name of the plaintiff M/s Croyo Clean Private Limited, a company which was incorporated. Ultimately, the company is incorporated, but since the party to the agreement backed out from its promise, the suit is required to be filed. The documents placed on record including the undertaking, which is executed between Shri Uday Patil i.e. director of the defendant M/s Aryan Aqua Tech Private Limited and Shri Aatish Pole, who is reflected as the director of the plaintiff and the undertaking-cum- indemnity bond of liability against the labourers,

Sales Tax Department and Central Excise Department, are the various documents, which would make the object of the agreement apparent for which the proposed land was sought to be purchased by the individual Shri Aatish Pole. The defendant company cannot avoid to face the action for specific performance by raising a technical ground that the suit is barred in law.

8. The argument in support of the application being that on the date of the agreement i.e. 12.10.2011 the company was not in existence and therefore, the plaint deserves rejection. This ground cannot be accepted, since if the plaint is read in totality, it gives an impression to the contrary and merely because the agreement was entered by an individual, all documents, which are appended to the plaint and about which the averments are specifically pleaded in plaint, would reveal that the company was incorporated and the agreement was entered for the purpose of carrying out business activity on the suit property.

9. The provision of rejection of the plaint is harsh one and cannot oust the party at the threshold unless and until the ingredients of Order VII Rule 11 are specifically satisfied. The learned Judge has rightly rejected the application and entertained the plaint. Finding no legal infirmity in the impugned order, this Writ Petition is dismissed.