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O.S.A. No.165 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA  
AND  
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

O.S.A. No.165 of 2021

Nirmal Kumar Maheswari

.. Appellant

Vs.

1.M/s.Zee Entertainment Enterprises Limited  
Represented by its Director  
33-B, 1st and 2nd Floor  
Olympia Plantina, Sidco Industrial Estate  
Guindy, Chennai - 600 032

2.Firoz A Nadiadwala  
Sole Proprietor  
M/s.Base Industries Group  
Plot No.20, Barkat  
Gulmohar Cross Road  
No.5, JVPD Scheme  
Mumbai - 400 049

3.M/s.Oyeeee Media Ltd  
Represented by its Director  
A201, 2nd Floor, New Link Road  
Crystal Plaza, Oshiwara, Andheri West  
Mumbai - 400 053

4.Eros International Media Limited  
Represented by its Director  
901/902, Supreme Chambers  
Off Veera Desai Road  
Andheri (West)  
Mumbai - 400 053

.. Respondents



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\* \* \*

**Prayer :** Original Side Appeal filed under clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Original Side Rules r/w Section 13 of the Commercial Courts Act against the order dated 10.01.2020 made in A. No.4180 of 2019 in C.S. No.662 of 2018.

\* \* \*

For Appellant : Mr.K.Krishnaswamy

For Respondents : Mr.Jose John  
for M/s.King & Patridge for R1

Mr.N.A.Nissar Ahmed for R2

Mr.Jayesh B. Dolia  
for M/s.Aiyar & Dolia for R4

R3 served - No Appearance

## **J U D G E M E N T**

**PUSHPA SATHYANARAYANA, J.**

The plaintiff in C.S. No.662 of 2018, has preferred the above appeal aggrieved by the order passed in Application No.4180 of 2019, filed by the second defendant under Order VII Rule 11 CPC, to reject the plaint.



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2. The said application was ordered revoking the leave granted earlier on 24.09.2018 and directed the plaint to be returned to be presented before the court at Mumbai, which has jurisdiction.

3. The suit has been filed in the commercial division of the original side of this court. The plaintiff, who is the appellant, had filed the suit for recovery of money. The appellant has stated that the first defendant had borrowed money from the plaintiff for production of Hindi feature film titled "POWER". Since the said movie did not do well, the first defendant agreed to pay the plaintiff after producing the second film in Hindi titled "WELCOME BACK". It appears that, in the midway of the production of the second movie, the first defendant, namely the principal borrower, sold the movie to the second defendant, who continued the production of the same. The plaintiff, who had lent the money was awaiting the release of the said movie to recover the dues. While so, the second and third defendants started claiming rights over the said movie, which resulted in the issuance of a notice and the filing of the suit. A letter dated 27.07.2015 was filed in the suit. It appears that cheques issued by the first defendant in favour of the plaintiff, were also dishonoured and the dishonour of the cheques, was within the territorial jurisdiction of this court. The Television rights were also issued, only within the jurisdiction



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of Chennai. Hence the plaintiff had filed the suit before this court, after obtaining the leave of this court. The leave was granted as early as on 24.09.2018 and none of the defendants have challenged the same.

4. It is well settled Law that written statement has to be filed within 30 days from the date of service of summons. Thereafter, 90 days additional time is granted, with the leave of the court. Therefore, the defendant has to file the written statement within 120 days. The second defendant, who has purchased the rights in the movie, did not file the written statement within time and now it is not possible for him to file a written statement and the leave to sue was ordered only against defendants 1, 3 and 4. As the second defendant is within the jurisdiction of this court, and having missed the bus, made an attempt under Order VII Rule 11 CPC, to reject the plaint.

5. In the said application, it was contended that the Branch office of the second defendant alone is in Chennai and the Registered office is in Mumbai and therefore, there is no cause of action that arose within the jurisdiction of this court. It was further contended that the Articles of the agreement between the appellant/plaintiff and the second defendant dated 03.09.2013 was only entered in Mumbai and therefore, the plaint has to be rejected on the ground of lack of cause of action arising in



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Chennai against the second defendant. The said agreement is between the plaintiff and the first defendant and the second defendant is not a party to the said agreement. Hence the learned counsel for the appellant argued that the second defendant cannot place reliance on the said agreement.

6. We have heard both sides and perused the materials available on record.

7. The only point that arises for consideration in this original side appeal is, *whether the appeal has to be allowed, setting aside the order passed by the learned single Judge?*

8. The application was filed by the second defendant under Order VII Rule 11 CPC, for having lost its opportunity to file a written statement within the time stipulated for a commercial division suit. It is also relevant to note that Application No.7279/2018 filed granting leave to sue has become final and the same was not challenged by any one of the defendants. The defendants having failed to cancel the leave granted on 04.09.2018, are estopped from questioning the same in another application filed for rejection of the plaint.



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9. Learned counsel appearing for the appellant vehemently contended that the learned single Judge had gone beyond the scope of the application under Order VII Rule 11 CPC and directed the plaint to be returned to be re-presented before the court having jurisdiction. When there is no application taken out by any of the defendants to revoke the leave granted, the same cannot be revoked in a collateral proceedings under Order VII Rule 11 CPC. It is also well settled principle that an application under Order VII Rule 11 CPC, ought to be decided only on the basis of the plaint averments and the plaint documents. In the instant case, it would clearly go to show that the cause of action arose very well within the jurisdiction of this court. It is also not the case of the second defendant that there is no disclosure of cause of action in the plaint. In Order VII Rule 11 CPC, a non-disclosure of cause of action would only give rise to the rejection of the plaint and not the question of jurisdiction.

10. The learned counsel also pointed out that the affidavit filed in support of the application under Order VII Rule 11 CPC was signed by the deponent only in Chennai. The application was taken out only by the second defendant for rejection of the plaint and there cannot be a partial rejection of the plaint at the instance of one defendant, when the other defendants have submitted to the jurisdiction of this court. It was also complained that the plaintiff was not allowed to argue on Order VII Rule



10 CPC before passing the order impugned. When there is no ground contemplated under Order VII Rule 11 CPC to reject the plaint on the ground of ouster to jurisdiction, the order passed by the learned single Judge cannot be sustained.

11. The further case of the second defendant is that the letter dated 27.07.2015 conferred jurisdiction only in Mumbai, cannot be accepted. Even presuming that only the Mumbai court has got jurisdiction by consent of parties, it is only barred by the contract and not barred by the Law, as per Order VII Rule 11(d) CPC. In this regard, the learned counsel appearing for the appellant also placed his reliance on the decision of the Hon'ble Supreme Court in **Madhav Prasad Aggarwal and Another vs. Axis Bank Limited and Another** reported in **(2019) 7 SCC 158**, wherein the Hon'ble Apex Court in paragraph No.10 held thus:

*"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division*



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*Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.*

From the above, it is clear that any plaint that is filed has to be proceeded as a whole or can be rejected as a whole and not in part.



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12. In the instant case, the attitude of the second defendant is evident from his conduct. The second defendant having not filed the written statement and lost its opportunity to oppose the suit, has filed the application under Order VII Rule 11 CPC to reject the plaint on flimsy grounds. When there was no appeal against the leave granted, the plaint cannot be rejected singularly against one person. Hence the order of the learned single Judge has to be set aside, in view of the above decision of the Hon'ble Supreme Court as well as the discussions above.

14. In fine, the original side appeal is allowed. The order of the learned single Judge dated 10.01.2020 made in A. No.4180 of 2019 in C.S. No.662 of 2018, is set aside. However, there shall be no order as to costs.

(P.S.N., J.) (S.K., J.)  
23.02.2022

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**AND**  
**S.KANNAMMAL, J.**

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