A.No.727 of 2021
in
C.S.No.491 of 2007

V.M.VELUMANI, J
and
SUNDER MOHAN, J

(Order of the Court was delivered by SUNDER MOHAN,J.)

The above application has been filed by defendants 9 and 10 to reject the plaint in C.S.No.491 of 2007. The applicants have filed the above application on the ground that the cause of action stood extinguished on the happening of subsequent events. The averments in the application for rejection of plaint briefly are as follows:

(a) The respondents 1 and 2/plaintiffs have filed a suit in C.S.No.491 of 2007 praying for a declaration that the shares transferred by the defendants 1, 5 to 7 and 20 to 22 in favour of defendants 2, 3, 8 to 19 and 23 to 29 as null and void and for consequential relief for permanent injunction restraining the defendants from transferring the shares of the fourth defendant namely the Tamil nadu Mercantile Bank to any third parties.

(b) The cause of action pleaded in the plaint got extinguished pursuant to a memorandum of compromise entered into between the defendants 12 to 19 and subsequent abandonment of the suit as against the defendants 12 to 19.

(c) The case of the plaintiffs is that there was a MOU between the second plaintiff and the first defendant and the defendants sought to transfer the shares of defendants 1, 5 to 7 and 20 to 22 in favour of the defendants 2, 3, 8 to 19 in breach of the said MOU. It is further the case of the plaintiff's that transfer of shares have been effected by fabrication of records to make it appear that they had effected transfer before the order was passed by this Court in a Section 9 Application filed by the petitioners in O.A.No.653 of 2007. By abandoning the suit as against the defendants 12 to 19 the plaintiff's had given up the right to challenge the transfer of share on these two grounds.

d.The defendants 9 and 10/applicants that the plaintiffs have no locus to prosecute the present suit and therefore prayed for rejection of the plaint in C.S.No.491 of 2007.

2.The first respondent/first plaintiff filed a counter affidavit to the above application and in brief averments are as follows:

a) The application is not maintainable since the defendants 9 and 10/ applicants have not stated under which Sub Rule of Order VII Rule 11 CPC the above application had been filed.

b) The application has been filed belatedly after 13 years of filing the suit and nearly five years after the written statement was filed by the defendants.

c) The subsequent developments namely the Memorandum of Compromise entered into between the plaintiffs/respondents 1 and 2 and defendants 12 to 19 in the suit cannot be a ground for rejection of the plaint. The abandonment of the suit in respect of certain defendants will not extinguish the cause of action as against the other defendants.

d) The cause of action still continues as against the defendants especially against the defendants 9 and 10/applicants in view of the averments made against the second defendant - deceased that he had acted against the interest of the sangam when he was representing the sangam. The plaintiffs/respondent 1 and 2 also sought leave of the Court to refer to the order of the learned Single Judge of this Court in O.A.Nos.681 and 682 of 2007 dated 06.12.2007 in which the learned Single Judge found that the allegation against the defendants furnish a cause of action to maintain the suit.

e) The defendants 9 and 10/applicants have not made out the case for rejection of the plaint as the averments would show that the compromise cannot take away the right of the respondents 1 and 2/plaintiff to sue the remaining defendants more particularly the defandants 9 and 10/applicants who are the direct beneficiaries of 21,000 shares which belongs to the members of the Sangam.

3.Mr.Karthick Seshadri, learned counsel for the defendants 9 and 10/applicants submitted that:

(a) the prayer in the suit is for declaration that the shares transfered by the defendants 1,5 to 7 and 20 to 22 and 23 to 29 is a comprehensive one and it cannot be split against few defendants. The plaintiffs cannot say that cause of action to sue continues as against the other defendants. In any event, the learned counsel submitted that the entire reading of the plaint does not disclose any cause of action and the plaintiffs have not been able to show the right they are espousing.

(b) The suit seeks to challenge the transfer of shares of Tamil Nadu Mercantile Bank from the Sterling Group to certain transferees. The seller has not sought any recession of the contract for the sale of the goods. The sterling group has received adequate consideration and has discharged the sale by the delivery of goods. Sale is complete as between the seller and the purchaser. The Third party plaintiffs have no right to interfere in this transaction.

(c)The shares in question are moveable property. The plaintiffs have not sought for any relief of specific performance of the contract alleged to have been entered into between them and the Sterling Group. The TMB had registered the shares in the names of various purchases validly on 13.05.2007 and the statutory share register of TMB also duly reflects the name of the purchasers of the shares.

(d) No person till date has complained or made any claim in Court that they paid money to the forum and shares were not transferred to them. The suit is speculative and is an abuse of process. In any event, the subsequent event of abandonment of claims of shares in favour of D12 to D19 rendered the suit as infructuous.

4.Mr.K.M.Vijayan, learned Senior Counsel for the first and second plaintiffs submitted that:

(a) the cause of action for the suit did not get extinguished merely because the plaintiffs had abandoned the suit in respect of the defendants 12 to 19. The plaint averments clearly disclosed that the role played by the deceased, 2nd defendant and the defendants 9 and 10/applicants are different and not comparable to that of the foreign investors whose role and motives where at the worst commercial. The plaintiffs can continue or leave action against particular defendants without affecting their claim as against others. The plaint averments discloses the specific role of misconduct played by the second defendant who is the father and husband of the defendants 9 and 10/applicants.

(b) The learned Senior Counsel submitted that it is the specific case of the plaintiffs that the cause of action arose on 24.06.1999 when the MOU was entered into between the defendants 1 to 3. The second agreement dated 10.03.2006 between the defendants 1 to 3 to benefit the second and third defendants personally was in conflict with their position in the investors forum trust. The plaint discloses the conduct of the defendants 2 and 3 who had acted in conflict with the trusteeship with a view to benefit themselves.

(c) The plaintiffs also challenge the alleged Board Meeting said to have taken place on 13.05.2007 which had authorised or permitted the transfer of shares in the name of first defendant to the nominees, the 2nd and 3rd defendants.

(d) The further allegation in the suit is that the second defendant had in connivance with the Board of Directors of the 4th defendant/Bank manipulated the records to show that a meeting was convened on 13.05.2007 itself to cover up their conduct of effecting the transfer of shares contrary to the orders passed by this Court in the application filed under Section 9 of the Arbitration and Conciliation Act.

(e) The learned Senior Counsel therefore submitted that there are several triable issues and the application for rejection of plaint is not maintainable merely on the basis that the plaintiffs had abandoned the suit claim as against few defendants.

5.Mr.Vijay Narayanan, learned Senior Counsel, appearing for the fourth defendant, submitted that as a defendant he would have normally supported an application for rejection of plaint. But in the facts of the instant case, the learned Senior Counsel would submit that there are certain facts which have to be finally adjudicated in a suit. Unless the rights of the parties are finally determined after a full fledged trial several ancillary issues would crop up and the litigations would never come to an end. There are litigations pending in respect of transfer of shares in various places and unless the trial in the suit is conducted the issues cannot be sorted out. The Bank is not supporting any particular party, but would like to have the issue resolved as the pendency of the litigation is causing several issues in the administration of the Bank.

(b) The learned Senior Counsel also submitted that the Bank had conducted an independent investigation and have found that there are certain irregularities in the transfer of shares on 13.05.2007 in respect of 11,855 shares which forms part of the shares which are subject matter of the suit. They have filed an Additional Written Statement in C.S.No.491 of 2007 to bring to the knowledge of this Court about the report of the company Secretary appointed by the Bank to conduct enquiry.

6.We have heard Mr.Karthik Seshadri, learned counsel for the defendants 9 and 10/applicants, Mr.K.M.Vijayan, learned Senior Advocate for the first and second plaintiff and Mr.Vijay Narayan, learned Senior Counsel for the fourth defendant.

7.In order to appreciate the rival submissions of the learned Counsel and Learned Senior Counsels, we have to analyse the plaintiff's case. The plaintiff's case is that the first plaintiff/first respondent is a Sangam constituted to promote the welfare of Nadar Community. The second plaintiff/second respondent is a forum formed by the first plaintiff Sangam to re-purchase certain shares held by private entities for the benefit of Nadar community people. M/s.Essar Group held 67.29 shares in the fourth defendant Bank. They later transferred their shares to Sterling Group of Companies. Both the plaintiffs/respondents 1 and 2 entered into an Memorandum of Understanding (in short 'MOU') with the Sterling Group on 24.06.1999 for purchase of 67.29 shares in the fourth defendant Bank amounting to 1,91,400 shares. As per the terms of MOU, the second plaintiff had to pay a sum of Rs.155 crores for acquiring those shares. The second defendant who is no more was the Trustee, who represented the plaintiffs when the MOU was entered into between the plaintiffs and the Sterling Group. As per the terms of the agreement, the plaintiffs paid a sum of Rs.80.75 crores, for which, 95996 shares were alloted to the members of the first plaintiff. According to the plaintiffs, the balance amount was to be paid by collecting money from the members of the Nadar Community. For the purchase of the balance shares, the funds collection was made by the second defendant, who was the father of the defendant / first applicant herein and the husband of the second applicant. The second defendant for reasons best known to him did not allow the transactions to get completed. At that relevant point of time, he was also a Director in the fourth defendant Bank controlling the other Board members. The MOU was extended from time to time and six supplementary agreements were entered into between the plaintiffs and the Sterling Group.

8.While so, it is the plaintiff's case that the second defendant, who was supposed to protect the interest of the plaintiffs and its members and the third defendant with a dishonest intention to defraud the Nadar Community, entered into a MOU dated 10.03.2006 for purchase of the remaining 95418 shares for themselves and for their nominees. Pursuant to the said agreement, 67066 shares of the fourth defendant Bank was transferred to certain foreign investors, namely the defendants 12 to 19 in the suit. The second and third defendants retained

28352 shares and ultimately, transferred 10800 shares to the second defendant, 8532 shares to the third defendant and the remaining shares to the defendants 8 to 11 and 23 to 29. The plaintiffs on coming to know about the agreement between the Sterling Group and the second and third defendants, invoked the arbitration clause in the agreement dated 24.06.1999 and issued notice to the defendants 1 to 3 for appointment of Arbitrator to resolve the dispute. The defendants 1 to 3 instead of replying to the notice hurriedly made attempts to transfer the shares. The plaintiffs filed O.A.No.653 of 2007 on 11.05.2007 under Section 9(1)(d) of Arbitration and Conciliation Act, 1996 before this Court and this Court passed an order of interim injunction restraining defendants from transferring the shares to any third parties till 05.06.2007. However, defendants hurriedly created records to make it appear that the shares were transferred to defendants on 13.05.2007 itself. The plaintiffs therefore sought for a declaration that the shares transferred to the defendants 1, 5 to 7 and 20 to 22 in favour of the defendants 2, 3, 8 to 19 and 23 to 29 as null and void and for certain consequential reliefs.

9.The plaintiffs also obtained interim orders in O.A.Nos.681 and 682 of 2007 before the learned Single Judge, against which, some of the defendants have preferred O.S.As and the same are pending before this Court.

10.While so, it appears that the plaintiffs entered into a MOU with defendants 12 to 19, by which, they had agreed to withdraw the suit as against the defendants 12 and 19. However, the said compromise was not accepted by this Court. Thereafter, the plaintiffs made the following endorsement in the plaint:

> *"The plaintiffs are abandoning their claim against defendants 12 to 19 and the suit may be dismissed against the defendants 12 to 19."*

On such endorsement, this Court passed the following order on 08.02.2008:-

> *"2. On an earlier occasion, the plaintiffs filed a Memorandum of Compromise. But the said Memorandum of Compromise was not accepted in view of the provisions of Order XXIII Rule 3B of the C.P.C. Therefore, the counsel for the plaintiffs has made an endorsement on the plaint. There cannot be an objection to the plaintiffs abandoning a part of the claim in view of the provisions contained in Order XXIII Rule 1 of C.P.C. Therefore, the suit shall stand dismissed as against the defendants 12 to 19 in view of the endorsement made. No costs."*

11.While so, the applicants have filed this application for rejection of plaint in the year 2021, mainly on the ground that the cause of action to maintain the suit got extinguished pursuant to the abandonment of the suit as against the defendants 12 to 19. The contention of the defendants 9 and 10/ applicants is that cause of action disclosed in the suit is that the transfer of shares were made while the earlier agreement between the plaintiffs and the Sterling Group was in force and the transfer of shares had been effected by creating records to make it appear that it was transferred on 13.05.2007 itself to circumvent the injunction order passed by this Court in filed under Section 9 of the Arbitration and Conciliation Act filed by the plaintiffs. Since the transfer of shares to defendants 12 to 19 and to the other defendants which is impugned in the suit were done on the same day, the cause of action as against the other defendants does not survive in view of the abandonment of suit apart D12 to D19 . That apart, it is also the case of the applicants/defendants 9 and 10 that the plaintiffs have not disclosed their right to question the transfer of shares.

12.We may note that the instant application has been filed nearly 14 years after the initiation of the suit. That apart, this Court in O.A.Nos.681 and 682 of 2007 had made certain observations, which would *prima facie* show that the plaintiffs had disclosed the cause of action, though the said order is under challenge in the appeals pending before this Court. Further from a perusal of the plaint we find that it cannot be said that the plaintiff's have not disclosed any cause of action. Therefore, we are of the view that it is not open for the applicants to raise the issue that the plaintiffs did not disclose cause of action at this belated stage.

13.Therefore, the only point to be decided in this application is whether pursuant to the abandonment of the suit as against the defendants 12 to 19, the cause of action as against other defendants got extinguished. We find that there are specific averments made against the defendants, especially the defendants 2 and 3, who were part of the plaintiffs' Sangam when the earlier MOU was entered into between the plaintiffs Sangam forum and the Sterling Group. It is the case of the plaintiffs that the second defendant, who is supposed to protect the interest of Nadar Community had betrayed them and entered into an agreement with the Sterling Group, which benefited him personally. These averments are certainly different from the averments made as against defendants 12 to19.

14.Further, it is the case of the plaintiffs that the second defendant was also part of the Board of Tamil Nadu Mercantile Bank at the relevant point of time, who manoeuvered and created records to show that the transfer of shares were made on 13.05.2007 itself to make it appear their shares were transferred before the injunction order was passed by this Court in the Section 9 application in O.A.No.653 of 2007. These averments would show that it is the case of the plaintiffs that the second defendant had gained personally out of the MOU which was entered into between the Sterling Group and the plaintiffs. They had also challenged the transfer of shares on the ground that it is in violation of the interim order passed by this Court. We are of the view that these are triable issues and cannot be adjudicated at the stage of rejection of plaint.

15.The very fact that the plaintiffs had abandoned the suit as against the defendants 12 to 19 cannot be a basis to conclude that the suit would not survive as against the other defendants. The plaintiffs has specifically averred the role played by the second defendant and the applicants in the transaction, which is not same as the averments made as against the other defendants. The applicants have not been able to show as to how the abandonment of suit in respect of some defendants can extinguish the cause of action as against the other defendants. The only common factor that the applicants were able to show is that all the transfers were made on the same day. This, in our view cannot put all the defendants in the same position in the light of the averments made in the plaint. The conduct of the plaintiffs in abandoning the suit can at best be a point to be agitated in the trial of the suit.

16.In this regard, we rely upon the judgment of the Hon'ble Supreme Court in the case of ***Sejal Glass Limited v. Navilan Merchants Private Limited*** reported in (***2018) 11 SCC 780*** and the relevant portion of the judgment is extracted hereunder:

> *"8.We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.*

17.It would also be useful to refer to the observation of the Hon'ble

Supreme Court in the case of ***Dahiben v.Arvindbhai Kalyanji Bhanusali (Garja) dead through Legal Representatives and others*** reported in ***(2020) 7 SCC 366.***

> ***23.1.****We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*
>
> *"**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 written 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 provisions of Rule 9:*
>
> *Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers 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 from correcting the valuation or supplying the requisite stamp-papers, 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."

(emphasis supplied)

23.2. *The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

23.3. *The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

"12. ... The whole purpose of conferment of such

powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

***23.5.** The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

***23.6.** Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

***23.7.** Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

*"**14. Production of document on which plaintiff sues or relies**.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(emphasis supplied)

23.8. *Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

> *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the* *substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D.Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V.Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.*

24. *"Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmananda v.Sri Ramakrishna Tapovanam [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)*

> *"24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the*

material facts on which it is founded."

(emphasis supplied)

24.2. *In T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V.Satyapal, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

> *"5. … The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing.…"*

(emphasis supplied)

18.Applying the above principles to the instant case, we are of the view that merely because the plaintiffs abandoned the suit against the defendants 12 to 19, the cause of action does not get extinguished. Though the orders of the learned Single Judge in O.A.No.681 and 682 of 2007 are under challenge in O.S.As before this Court, the order would prima facie indicate that the plaintiffs have disclosed the cause of action. However, we would make it clear that these observation of ours is only for the purpose of deciding the instant application. Besides that a reading of the plaint discloses cause of action and the plaintiffs have made averments to suggest that the role of second defendant and the other defendants cannot be equated. For the above reasons, we are of the view that the application deserves to be dismissed and hence, dismissed.

19.Before we part with the case, we have to record the fact that there were number of suits and litigations pending in various Courts relating to the transfer of shares by the fourth defendant Bank. Some suits were also filed before the City Civil Court. There were certain writ petitions and some proceedings pending in other parts of the country as well. The Hon'ble Supreme Court had occasion to consider an application for impleadment filed by the fourth defendant Bank in a proceeding before the Hon'ble Supreme Court. The Hon'ble Supreme Court in S.L.P.(Civil) No.4274 of 2021 extracted the details of the petitions pending before various Courts and directed the consolidation of all the matters and ordered the same to be heard by a Division Bench of this Court. Subsequent to the order, we are informed that all the proceedings mentioned in the order of the Hon'ble

Supreme Court have culminated except for the suit in O.S.No.491 of 2007. The learned counsel for the applicants had given a chart stating the dates of which various proceedings were dismissed, which is as follows :-

S.No	Case No.	Status of case
1	C.S.No.981 of 2004	Dismissed on 10.03.2016
2	C.S.No.481 of 2008	Dismissed on 22.01.2020
3	O.S.No.3199 of 2008	Dismissed on 04.03.2015
4	W.P.No.11159 of 2011	Dismissed on 21.03.2022
5	W.P.No.1317 of 2013 (Bom) Renumbered as W.P.No.6817 of 2016	Dismissed on 22.01.2020
6	C.S.No.379 of 2011	Dismissed on 01.09.2015
7	W.P.No.3667 of 2013 (Del) renumbered as W.P.No.6818 of 2016	Dismissed on 22.01.2020
8	W.P.No.12543 of 2013 (Madurai Bench)	Dismissed on 21.03.2022
9	W.P.No.6809 of 2013 (Del) Renumbered W.P.No.6816 of 2016	Dismissed on 19.10.2022
10	W.P.No.25256 – 25258 of 2013	Dismissed on 26.11.2015
11	C.S.No.491 of 2007	Pending

20.As on date, there are a few writ petitions and two suits, namely C.S.Nos.386 of 2014 and 491 of 2007, which are pending for adjudication. The Hon'ble Supreme Court by a subsequent order dated 26.11.2015 in S.L.P.(Civil)No.4274 of 2021 had passed the following order :

> *“We declined to interfere with the impugned judgment passed by the High Court. Special Leave Petition is dismissed. However, we request the High Court to take up the civil suits and the writ petitions for hearing expeditiously and possibly on day-to-day basis. We hope and trust that the parties would co-operate for a decision preferably within a period of six months from today.”*

21.Since this application for rejection of plaint was pending we thought fit to hear this application filed by the defendants 9 and 10 and a contempt petition in Contempt Petition No.30 of 2018 filed by the plaintiffs jointly.

22. In view of the order passed by us in the above application, we deem it appropriate to commence the trial in C.S.No.386 of 2014 and C.S.No.491 of 2007. We direct the parties to complete the process of filing the pleadings including written statement and reply if any within a period of four weeks from today.

The learned counsel appearing for the petitioners submitted that they have filed written statement along with the petition to condone the delay in filing the written statement and also filed application for leave of the Court to file additional written statement.

23.Registry is directed to list the matter before the Division Bench of this Court after two weeks.

(V.M.V.,J) **(S.M.,J)**

30.11.2022

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
dk/sp

V.M.VELUMANI, J.
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dk/sp

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