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A.No.2839 of 2022

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in

C.S.No.77 of 2022

C.SARAVANAN, J.

This application has been filed by the defendant to reject the plaint filed in the above suit under Order VII Rule 11 of CPC. It is the specific case of the applicant/defendant that the suit has been over valued to contrive the jurisdiction of this Court and therefore the suit is also barred under law and therefore the plaint is liable to be rejected under Order VII Rule 11 of CPC. Specifically, a reference is made to Section 12 (1)(a) of the Commercial Courts Act, 2015 and the requirements contemplated in Order VII Rule 2A of CPC has amended for the purpose of Commercial Courts Act, 2015.

2.It is submitted that the plaint is silent regarding the calculation of interest as required under Order VII Rule 2A of CPC has amended for the purpose of Commercial Courts Act, 2015.

3.The learned counsel for the applicant/defendant has relied upon the decision of the Madhya Pradesh (Jabalpur Bench) in the case of **Vinod Kumar Tamrakar Vs. Mukesh Kumar Agrawal** in W.P.No.16296 of



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2005, wherein, it has been held the objection of the defendant/petitioner is that the suit has been over-valued in an arbitrary manner with a mala fide intention of depriving the defendant/petitioner from his right to appeal to the Court of District Judge. Whatever the objection may be, but it is amply clear that the objection of the defendant/petitioner being about over-valuation, is not covered by Clause (b) of Rule 11 of Order VII of Code of Civil Procedure Code. This clause seems to be inserted to protect the revenue of the state and does not seem to have been inserted for giving a tool in the hand of the defendant to oppose the suit on the ground of over-valuation.

4. Another reference is also made to the decision of the Hon'ble Supreme Court in the case of **Srihari Hanum Andas Totala VS Hemant Vithal Kamat** (2021) 9 SCC 99. Relevant portion of the order reads as under:

“19. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In *Kamala v. K.T. Eshwara Sa*, the trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed by the High Court. S.B. Sinha, J. speaking for the two-Judge Bench examined the ambit of Order 7 Rule 11(d) CPC and observed:

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit



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is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking Clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. ***Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.***”

5.It is submitted that the jurisdiction of this Court has been contrive and therefore the plaint is liable to be rejected in terms of Order VII Rule 11 of CPC.

6.The application is opposed by the respondent/plaintiff. Specifically, it is stated that as far as High Court is concerned, Order 49 Rule 3 of CPC is relevant. It is submitted that as per the Order 49 Rule 3(i) of CPC, Rule 10, 11, Clauses (b) & (c) of Order VII are not applicable.

7.Therefore, the question of either return of plaint under Order VII



Rule 10 or rejection of plaint under Order VII Rule 11, Clause (b) & (c) are to be straight away excluded while construing the application filed under Order VII Rule 11 of CPC.

8.It is further submitted that the applicant/defendant has not stated that the plaint does not disclose the cause of action. Therefore, Order XI Rule 7(a) is also inapplicable. It is further submitted that in the application filed for rejecting the plaint the applicant/defendant also not specifically stated how from the averment in the plaint for the relief renders the suit as barred under any law. Hence, prays for dismissal of the application.

9.The learned counsel for the respondent/plaintiff further submitted that the alleged failure to comply with the requirements of Section 12 (1)(a) of the CPC has amended for the purpose of Commercial Courts Act also cannot be countenanced, as Para 5 & 9 of the plaint clearly disclose that calculation of interest. He further drew attention to invoice and the confirmation of balance by the applicant/defendant on 02.07.2022 as Rs.9,622,432/-. It is therefore submitted that the respondent is entitled for interest at 21% as per the invoice from the expiry of 7 days from the date of



invoice.

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10.I have considered the arguments advanced by the learned counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff.

11.In my view, this application is mis-conceived. At best, it was open for the applicant/plaintiff to state that the plaint was liable to be rejected under Order VII Rule 10 of CPC. While considering the application under VII Rule 11 of CPC, this Court is also not expected to go to the defense in the written statement or the document filed by the defendant. This Court is merely required to look into the documents filed by the plaintiff and the averments in the plaint. There is a partial deficiency in the pleadings insofar as the requirements of Section 12(1)(a) of Commercial Courts Act, 2015 read with Order VII Rule 2A of CPC inserted for the purpose of Commercial Courts Act, 2015. However, it cannot be stated that the suit is barred by law such deficiency is a curable. It is open for the respondent/plaintiff suitably amend the plaint so that the plaint compliance with the requirement of Section 12(1)(a) of Commercial Courts Act, 2015 read with Order VII Rule



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2A of CPC as inserted for the purpose of Commercial Courts Act, 2015.

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12.In my view, the application filed for rejecting the plaint deserves to be dismissed. Accordingly, this application stands dismissed.

09.02.2023

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