

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.O. 1679 of 2022
Balaji Enterprises
versus
West Bengal Housing Infrastructure Development Corporation Ltd.**

For the Petitioner	: Mr. Aniruddha Chatterjee, Advocate Mr. Rahul Karmakar, Advocate Mr. Uttiyo Mallick, Advocate Ms. Trini Joarder, Advocate
For the Opposite Party	: Mr. Jishnu Chowdhury, Advocate Mr. Chayan Gupta, Advocate Mr. Aviroop Mitra,
Heard on	: 18.07.2023, 14.09.2023, 22.09.2023, 05.10.2023
Judgment on	: 22.03.2024

Bivas Pattanayak, J. :-

1. This civil revisional application under Article 227 of the Constitution of India has been filed by the petitioner-defendant challenging the Order No. 33 dated 7th June, 2022 passed by learned Judge, Commercial Court at Rajarhat, North 24-Parganas in Title Suit No. 10 of 2020 rejecting the prayer of the petitioner under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') for rejection of plaint.

2. The brief fact of the case is as follows:

(i) The plaintiff-West Bengal Housing Infrastructure Development Corporation Limited (in short, 'WBHIDCO') initially designed for infrastructural development of the New Town pertaining to major

activities in the field of IT industries, housing projects for Middle Income Group (MIG), Lower Income Group (LIG), Economically Weaker Section (EWS), Superspeciality hospitals, Diagnostic Centres, Academic Institutions, Convention Centres, Cultural Hubs etc on 3075 hectares of land situated within 20 kms of the Central Business District of Kolkata and a few kilometers from Kolkata Airport.

(ii) It was felt necessary to allot plots under Chairman's discretionary quota to those who have not got the opportunity of getting plots but are capable of showing desired performance if the plots are allotted. Accordingly, applications were invited from *bonafide* individuals, company, traders, developers, industrialists, educational institutions etc. and also for welfare activities benefiting the families belonging to Lower Income Group, Economically Weaker Section/ BPL Group/Backward class/ families of land losers of New Town Project of allotment of plots in New Town, Kolkata under Chairman's discretionary quota.

(iii) The Board of Directors of the opposite party-plaintiff (WBHIDCO) was reconstituted by the State Government in the year 2011. The reconstituted Board after assuming office found that the policies adopted for allotment of land under Chairman's discretionary quota by previous management were unconstitutional, arbitrary and discriminatory.

(iv) The Board of Directors of the opposite party-plaintiff (WBHIDCO) decided that the previous allotments made by the earlier Chairman has to be revoked and/or cancelled since such allotment was in

violation of the Model Code of Conduct. Various allotments due to prevalence of Model Code of Conduct was cancelled as per the decision taken in the Board Meeting of the Board of Directors.

(v) The petitioner-defendant was amongst the few whose allotment culminated into a registered sale deed in lieu of valuable consideration despite the subsistence of purported minutes of cancellation.

(vi) The opposite party-plaintiff (WBHIDCO) contended that the application of the petitioner-defendant was done fraudulently and the deed of sale was executed in favour of the petitioner-defendant by misrepresentation and fraud. On such basis the opposite party-plaintiff (WBHIDCO) filed the suit being Title Suit No. 10 of 2020 before the learned trial court seeking cancellation of the deed of sale executed and registered in favour of the petitioner-defendant along with other consequential reliefs.

3. The petitioner-defendant entered appearance in the aforesaid suit and filed application under Order VII Rule 11 of the Code for rejection of plaint on the following grounds.

(a) The plaint is barred by law of limitation. The alleged deed of sale was registered on 21st October, 2011 and the suit was filed on 27th October 2014 which is much after the expiry of period of limitation. Thus, the suit ought to be rejected as per provisions of Order VII Rule 11 (d) of the Code.

(b) The plaint does not disclose any cause of action despite on a complete and meaningful reading of the entire plaint. The

allotment of land has been made on 1st February, 2011 which is much before the declaration of the Model Code of Conduct before election and, therefore, the allotment of land cannot be said to be made in violation of Model Code of Conduct. Principal case made out in the plaint is that due to mistakes on the part of plaintiff's officers inasmuch as ignoring its own minutes and proceedings, the suit property was conveyed on receipt of consideration money through registered deed. Since the deed was executed and registered at the instance of the plaintiff on payment of regular stamp duty, mistakes for ignoring the existing minutes proposing to cancel the allotments of other plot holders, have been set out as a ground. Once a sale deed has been registered, the title passes and the same cannot be reverted on a ground of alleged mistake. As per Sections 20, 21 and 22 of the Indian Contract Act, 1872, any contract is not rendered void unless both parties are under a mistake as to a matter of fact. In the present case, admittedly neither of the parties was under any mistake of fact as far as the allotment or the approval of the petitioner's land is concerned. Therefore, suit ought to be rejected as per provisions of Order VII Rule 11 (a) of the Code.

- (c) The suit has been filed on 27th October 2014. Since filing of the suit no steps have been taken after considerable period of time of more than six years to serve notice upon the defendant. Despite repeated direction by the learned trial court to serve notice to the defendant, the plaintiff took adjournments. Final direction was

issued on 26th March 2021 to file requisite which had not been complied till date. Therefore, the plaint is liable to be rejected under Order VII Rule 11(f) of the Code.

(d) The plaint is barred by principles of *res judicata* under Order II Rule 2 of the Code. The issue raised in the suit is directly and identically related to the case before the Hon'ble High Court at Calcutta in W.P. No. 4325(W) of 2014. Both the parties to the suit were also parties in the said writ petition, which was dismissed thereby dismissing the claim for cancellation of allotment of the defendant's land.

4. Upon hearing and considering the materials on record, the learned trial court rejected the application of the petitioner for rejection of plaint filed under Order VII Rule 11 read with Section 151 of the Code by the impugned order dated 7th June 2022.

5. Being aggrieved by and dissatisfied with the impugned order of the learned trial court, the petitioner-defendant has filed the present revisional application.

6. On hearing, it appears that the petitioner-defendant in the present revisional application has thrown challenge to the impugned order of rejection of application under Order VII Rule 11 of the Code by the learned trial court on the following grounds.

- (i) The suit is barred by the law of limitation.
- (ii) The plaint does not disclose any cause of action.
- (iii) The plaintiff failed to serve the summons for more than six years.

7. The first ground taken by the petitioner for rejection of the plaint is that the suit is barred by limitation.

7.1. Mr. Aniruddha Chatterjee, learned advocate for the petitioner-defendant submitted that as per the pleadings in the plaint, the deed of sale was executed and registered 21st October, 2011. Whenever a document is registered, the date of registration becomes the date of deemed knowledge. Therefore, the opposite party-plaintiff (WBHIDCO) had deemed knowledge of the deed of conveyance on the date of its execution and registration on 21st October, 2011. Article 59 of the Limitation Act, 1963 provides that a suit for cancellation or setting aside an instrument or decree or for the rescission of a contract should be instituted within three years when the facts entitling the plaintiff to have the instrument or the decree cancelled or set aside or the contract rescinded first comes to the knowledge of the plaintiff. The facts pleaded in the plaint clearly shows that the plaintiff on the date of registration of the deed of sale in favour of the petitioner-defendant had the knowledge of such instrument on such date itself i.e. 21st October 2011. The suit having been filed on 27th October, 2014, admittedly is beyond the stipulated period of three years as provided under Article 59 of the Limitation Act and thus is barred by the law of limitation. The burden of proof regarding the suit to have been filed within the period of limitation lies with the plaintiff. To buttress his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Dilboo (Smt) (Dead) By LRs. And Others versus Dhanraji (Smt)***

(Dead) and Others¹. Where the suit is barred by limitation, the same should be rejected under Order VII Rule 11(d) of the Code. In support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Dahiben versus Arvindbhai Kalyanji Bhanushali (Gajra) Dead Through Legal Representatives and Others²***.

Moreover, the opposite party-plaintiff (WBHIDCO) cannot also take recourse to Article 112 of the Limitation Act which provides for limitation of 30 years in case of any suit filed by Central Government or State Government including Government of State of Jammu and Kashmir since the opposite party-plaintiff (WBHIDCO) is not wholly owned by the State Government. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Bharat Sanchar Nigam Limited versus Pawan Kumar Gupta³*** and another decision of Allahabad High Court passed in ***Smt. Indira Nigam and another versus State of U.P and Others⁴***.

Relying on the decision of this court passed in ***Nagendra Nath Dey and Another versus Suresh Chandra Dey and Others⁵***, he submitted that the question of limitation must be decided upon plain words of the Article and there is no warrant reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it. The words mean just what they are. Since Article 59 of the Limitation Act provides for a period of limitation of three years from date of knowledge, such period of

¹ (2000) 7 SCC 702

² (2020) 7 SCC 366

³ (2016) 1 SCC 363

⁴ (2014) 4 ALL LJ 345

⁵ 59 IA 283

limitation should be read as it is in the statute and no further interpretation would be acceptable.

In light of his aforesaid submissions, he urged that the suit of the opposite party-plaintiff (WBHIDCO) is hopelessly barred by limitation and thus should have been rejected by the learned trial court.

7.2. In reply to the contentions raised on behalf of the petitioner-defendant, Mr. Jishnu Chowdhury, learned advocate for the opposite party-WBHIDCO (plaintiff) submitted that the land in question was allotted to the petitioner-defendant by the previous management. This Hon'ble Court in ***Govinda Prasad Ladia and Others versus WBHIDC Limited and Others***⁶ observed that the previous management did not have the right or authority to do the same. The fact of arbitrary and illegal allotment of plot in favour of the petitioner-defendant came to the knowledge of the opposite party-plaintiff (WBHIDCO) on 10th April, 2014 upon the Board of Directors cancelling the allotment/transfer. In paragraph no.22 of the plaint, it has been clearly pleaded that in the month of March/April 2014 the plaintiff discovered the fact of wrongful allotment and placed the same in its 80th Board meeting held on 10th April 2014 and a resolution was passed for cancellation of transfer. In any event, resolution taken by the Board of opposite party-plaintiff (WBHIDCO) in its 61st Board Meeting on 22nd October, 2011 was forwarded to the Officers of WBHIDCO under cover of a letter dated 11th November, 2011, however, by that time the deed of

⁶ (2015) 3 Cal LT 142

conveyance has already been executed on 21st October, 2011 in favour of the petitioner-defendant.

Furthermore, though it has been urged on behalf of the petitioner-defendant that since the plaintiff has executed the deed of conveyance, the knowledge of the plaintiff would be from date of execution of deed of conveyance, yet such submissions are not acceptable inasmuch as if certain employees or directors of the plaintiff did something beyond the scope of their authority that is not binding on the opposite party-plaintiff (WBHIDCO). It is the specific case of the opposite party-plaintiff (WBHIDCO) that allotments made through Chairman's discretionary quota by previous directors were illegal and beyond the scope of such person's authority which is why the allotment of various allottees has been cancelled by the Hon'ble High Court in *Govinda Prasad Ladia (supra)*. It is settled law that directors are agents of the company to the extent they have been authorized to perform certain acts on behalf of the companies. In support of his submission, he relied on the decision of Delhi High Court passed in ***Tristar Consultants versus Vcustomer Services India Pvt Ltd***⁷. Since the act of the previous directors was not permitted and was illegal as held by the Hon'ble High Court, if a suit for damages is brought against the directors by the allottees, they would be liable. In support of his contention, he relied on the decision of Delhi High Court passed in ***Mukesh Hans & Anr Smt Uma Bhasin & Ors***⁸. If the act of execution of deed of conveyance which is challenged in this suit was binding on the

⁷ ***ILR (2007) 1 Del 1053***

⁸ ***(2010) SCC OnLine Del 2776***

plaintiff, then the plaintiff would be estopped from challenging the same and not otherwise.

Moreover, limitation is a mixed question of law and facts and unless the plaint on the face of it shows that it is barred by limitation, there cannot be any rejection of plaint on the ground of limitation. To buttress his contention, he relied on the following decisions:

- i. ***Popat and Kotecha Property versus State Bank of India Staff Association***⁹
- ii. ***Balasaria Construction (P) Ltd. versus Hanuman Seva Trust and Others***¹⁰
- iii. ***Shakti Bhog Food Industries Ltd. versus Central Bank of India and Anr.***¹¹

Furthermore, the decision relied upon by the petitioner-defendant is factually distinguishable.

In the aforesaid backdrop he submitted that the ground of plaint being barred by limitation as advanced on behalf of the petitioner-defendant is not sustainable.

7.3. Having heard learned advocates for respective parties on the issue, it is found from the averments in the plaint at paragraph no. 22 that the opposite party-plaintiff (WBHIDCO) has specifically pleaded that it discovered the wrongful allotment and the conveyance deed dated 21st October, 2011 in favour of the petitioner-defendant in the usual course of business, sometime in or around March/April, 2014. It is further averred

⁹ (2005) 7 SCC 510

¹⁰ (2006) 5 SCC 658

¹¹ AIR 2020 SC 2721

that this fact was placed at 80th Meeting of the Board of Directors held on 10th April, 2014. At this Board Meeting, resolution was passed for cancellation of the transfer of the said premises to the petitioner-defendant. It is strenuously argued on behalf of the petitioner-defendant that on the date of execution and registration of the deed of conveyance, the opposite party-plaintiff (WBHIDCO) had deemed knowledge of the deed of conveyance and, therefore, the limitation of three years as per the Article 59 of the Limitation Act would run from the such date of execution and registration i.e., 21st October, 2011. Since the suit is filed on 27th October, 2014, the same is barred by limitation. The pleadings as set out in the plaint divulge that the WBHIDCO made an advertisement for allotment of plot of land through the Chairman's quota and subsequently, after change in constitution of Board, it was found that several allotments were illegally made by the previous Board. Further the allotment through the Chairman's quota by the previous Board of Directors is irregular, irrational and smacks of favouritism on the part of the then Chairman. By its 61st Board Meeting of the company, allotments were cancelled. Challenging such cancellation, writ petitions were filed before the Hon'ble High Court. The Hon'ble High Court dismissing the writ petitions made certain observations which would be profitable to reproduce as follows:

“239. Most of the applications for allotment appear to be dubious and several are demonstrably false or had been ante-dated. It is strange that a substantial number of the petitioners herein puts up received copies of applications bearing a questioned rubber-stamp and the alleged signature thereon of a solitary employee of the

company. It is intriguing that though several of the petitioners have relied on copies of other letters received by the company, none of such other letters carries the dubious rubber-stamp that many of the petitioners have sought to rely on to demonstrate that their applications had been lodged with the company. At least three of the companies that had allegedly applied for allotment of non-residential plots in New Town had not even been incorporated on the date that they claim to have applied therefor. In all three cases the concerned companies were incorporated several months or years after the last date passed for receiving applications for the allotment of non-residential plots in New Town. Several other applicants for non-residential allotments appear to have referred to facts in future, if the dates appearing on their applications are to be given any credence. Most curiously, many of the petitions do not carry copies of the applications for allotment or rely on printed applications for allotment which are undated or where the date is written in hand. As to the rejected allottees of residential plots, several of the applications refer to "New Town Police Station" or to "Jyoti Basu Nagar" years before such police station was set up or New Town was sought to be renamed. Many of the residential applications that fall for consideration are also either undated or carry hand-written dates or are in a similar form. It is unnatural that so many anomalies appear in the applications for allotment of plots. The only logical inference is that the process was undertaken on the basis of extraneous considerations and the related documents have been fabricated or manufactured to try and window-dress the process as authentic.

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241. The sanctity of a process is destroyed if even a solitary instance is shown that would cast a doubt on the date on which the process is shown to have been

undertaken. There are instances galore which lead to the inevitable conclusion that the minutes of the two committees which met to approve the residential and non-residential applications on May 24, 2007 and April 28, 2008, respectively, were fabricated and brought into existence as a part of a charade to cloak a dubious process with contrived authenticity. The facts lead to the inescapable inference that the entire process of approving or granting allotment of plots under the chairman's discretionary quota was a sham and that the exercise of discretion was arbitrary, at variance with the guidelines set therefor and otherwise opposed to public interest and contrary to public policy.”

7.4. After considering the materials the court has noted several anomalies in the allotment of plots. The court further inferred that the entire process of approving or granting allotment of plots under the Chairman's discretionary quota was a sham and that the exercise of discretion was arbitrary, at variance with the guidelines set therefor and otherwise opposed to public interest and contrary to public policy. In the said writ petition, the opposite party-plaintiff (WBHIDCO) informed the Court that civil suits have been filed against the petitioner-defendant *Balaji Enterprise* and *Alo Eye Care Private Limited*. The observation made by the court in the aforesaid writ petitions shows that factually the court found the allotments to be dubious. The judgment of the Single Judge was assailed in appeal where upon due consideration the Division Bench in ***Prabir Kumar Talukdar versus West Bengal Housing Infrastructure Development Corporation Limited & Ors.***¹² held that the process of

¹² ***M.A.T. No. 1306 of 2015 (Decision of High Court at Calcutta)***

allotments of plot of land is tainted, completely arbitrary, discriminatory, stinks of nepotism and favoritism, is grossly violative of Article 14 of the Constitution and is a classic example of flagrant abuse/misuse of executive power. Bearing in mind the facts involved this court finds substance in the submission of Mr. Chowdhury, learned advocate for opposite party-WBHIDCO relying on the *Popat and Kotecha Property (supra)*, *Balasaria Construction (P) Ltd. (supra)* and *Shakti Bhog Food Industries Ltd. (supra)* that the aspect of limitation is a mixed question of law and fact. From paragraph no.22 of the plaint, it manifest that the wrongful allotment and the conveyance deed dated 21st October, 2011 was discovered in the usual course of business, sometime in or around March/April, 2014, which was placed at 80th Meeting of the Board of Directors held on 10th April, 2014. At this Board Meeting, resolution was passed for cancellation of the transfer of the said premises to the petitioner-defendant.

7.5. In *Dilboo (Smt) (Dead) By LRs. (supra)* the Hon'ble Supreme Court has held that it is always for the party who files the suit to show that the suit is within time. Thus, in case where the suit is filed beyond the period of 12 years, the plaintiff would have to aver and then prove that the suit is within 12 years of his/her knowledge. In the absence of any averment or proof, to show that the suit is within time, it is the plaintiff who would fail. In the backdrop of the aforesaid proposition, reverting back to the present case, as from the pleading in the plaint it appears that the plaintiff has averred the date of knowledge on 10th April, 2014 at the 80th Board Meeting, hence it is upon the plaintiff to prove such fact in trial. Although

the registration of deed of conveyance has been made on 21st October, 2011, but one cannot be oblivious to the fact that the act of the previous Board of directors in executing such deed of conveyance in favour of the petitioner-defendant is under challenge in the suit. This court finds force in the submissions of Mr. Chowdury, learned advocate for opposite party-plaintiff (WBHIDCO) relying on *Tristar Consultants (supra)* and *Mukesh Hans (supra)* that directors are agents of the company to the extent they have been authorized and permitted to perform certain acts on behalf of the companies and if such act is beyond authorisation, then they are liable for damages. Such being the position even if registered document is executed in favour of the petitioner-defendant that cannot be deemed knowledge of the plaintiff as there is pleadings of connivance of defendants with the official in getting the deed registered. Therefore, at this stage while dealing with an application for rejection of plaint such aspect cannot be gone into since those pleadings pertaining to date of knowledge of the plaintiff are to be proved during trial and thereafter the question of limitation can be decided.

7.6. In ***C. Natarajan versus Ashim Bai and Another***¹³, the Hon'ble Supreme Court held as follows.

“8. An application for rejection of the plaint can be filed if the allegations in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only averments made in the plaint are

¹³ (2007) 14 SCC 183

relevant. At this stage, the court would not be entitled to consider the case of the defence.”

7.7. Bearing in mind the aforesaid proposition since the plaint disclose the date of knowledge on 10th April, 2014 at the 80th Board Meeting, hence considering such averments it cannot be said at this stage that the suit is barred by limitation.

7.8. In *Dahiben (supra)*, the Hon’ble court found that the plaintiff attempted to make out an illusory cause of action and bring the suit within the period of limitation. The plaintiffs deliberately did not mention the date of registered sale deed dated 2.7.2009 executed by them in favour of the respondent no.1, since it would be evident that the suit was barred by limitation. The prayer however mentioned the date of subsequent sale deed i.e. 01.04.2013 when the suit property was further sold to respondent no. 2 and 3. The omission of the date of execution of the sale was held to have been done deliberately and knowingly so as to mislead the Court on the issue of limitation. Such an act of the plaintiff to suppress the actual date of the sale deed and mislead the Court into adjudicating upon the issue of limitation was enough for the plaint to be rejected as the same is barred by limitation. The fact involved in the cited decision is quite dissimilar to the case at hand and as such the ratio does not apply to the present case.

7.9. Though relying on *Nagendra Nath Dey (supra)* it is urged on behalf of the petitioner-defendant that the period of limitation of three years as provided in Article 59 of the Limitation Act should be read as it is in the statute and no further interpretation would be acceptable yet bearing in mind of the facts involved in allotment as noted by the writ court to be

sham and arbitrary action in exercise of discretion by the Chairman reproduced herein above, it goes without saying that the date of knowledge of the opposite party-plaintiff (WBHIDCO) can only be determined after taking evidence.

7.10. It has also been urged on behalf of the petitioner-defendant relying on the decision of Hon'ble Supreme Court passed in *Pawan Kumar Gupta (supra)* and another decision of Allahabad High Court passed in *Smt. Indira Nigam (supra)* that the opposite party-plaintiff (WBHIDCO) cannot take recourse to Article 112 of the Limitation Act for availing limitation of 30 years in case of any suit filed by Central Government or State Government including Government of State of Jammu and Kashmir since it is not wholly owned by State Government. Be that as it may, as no argument has been advanced on behalf of opposite party-plaintiff (WBHIDCO) of claiming limitation as provided under Article 112 of the Limitation Act, this court recuse from making any observation with regard to the applicability of Article 112 of the Limitation Act to the facts of the present case.

7.11. In light of the above discussion, taking into account the pleadings in the plaint it cannot be said, at the stage of consideration of the application for rejection of plaint, that the suit is barred under law of limitation. Thus, the grounds taken for rejection of plaint under clause (d) of Order VII Rule 11 of the Code falls short of merit.

8. The next ground for rejection of plaint pressed into service is that the plaint does not disclose any cause of action.

8.1. Mr. Chatterjee, learned advocate for the petitioner-defendant submitted that the cause of action of the plaint is based on alleged mistake

committed by the authorities in executing and registering the deed of sale in favour of the petitioner-defendant. According to the plaintiff, the entire process of allotment of plots is hit by the Model Code of Conduct inasmuch as such allotments were made during the prevalence of the Model Code of Conduct before the election in the year 2011. However, the Election Commission of India has clarified that the allotments made prior to 28th February, 2011 would not come within the purview of Model Code of Conduct. Since allotment in favour of the petitioner-defendant has been made on 1st February, 2011, hence such allotment is not hit by the Model Code of Conduct. The entire cause of action of the plaintiff emanates from Sections 20 and 22 of the Indian Contract Act, 1872 read with Section 31 of the Specific Relief Act, 1963. Unilateral mistake is the foundation of the plaintiff. However, unilateral mistake does not find place in the aforesaid provisions. Moreover, Section 20 of the Contract Act applies only in case of agreements and not in case of registered deeds of conveyance. The averments in the plaintiff canvasses the manner of participation of the plaintiff in the registration process after the change of regime and as such there cannot be any cause of action on such score. In support of his contention, he relied on the following decisions:

- i. ***Riverlate Properties Ltd versus Paul***¹⁴
- ii. ***Tarsem Singh versus Sukhminder Singh***¹⁵

Relying on the decision of Hon'ble Supreme Court passed in ***Andhra Pradesh Industrial Infrastructure Corporation Limited and Others***

¹⁴ [1974] 2 All ER 656

¹⁵ (1998) 3 SCC 471

versus S. N. Raj Kumar and Another¹⁶, he also submitted that when the contract is concluded and regular sale deed is executed between the vendor and vendee in respect of an immovable property it cannot be said that the dispute arises in the realm of statutory contract or non-statutory contract. The dispute is not with regard to the contract. It is in effect the question of title which is sought to be nullified by the opposite party-plaintiff (WBHIDCO) unilaterally based on conditions of allotment and the same is not permissible in law. Once a title passes in favour of a party, the vendor ceases to have the rights to challenge the said sale on the plea of impropriety.

There is substantive difference between a fraud and a mistake. The plaintiff has neither made out any case of fraud nor the same has been pleaded and the entire plaint is based on a unilateral mistake. Further mere stating in the plaint that a fraud has been played is not enough and the allegation of fraud must be specifically averred in the plaint. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in **C.S. Ramaswamy versus V.K. Senthil and Others**¹⁷.

Moreover, if the plaint does not have a cause of action and owing to a crafty drafting, a sham cause of action is created, the plaint is to be nipped in the bud. In support of his aforesaid contention, he relied on the decision of Hon'ble Supreme Court passed in **T. Arivandandam versus T. V. Satyapal and Another**¹⁸.

¹⁶ (2018) 6 SCC 410

¹⁷ AIR 2022 SC 4742

¹⁸ (1977) 4 SCC 467

In view of his aforesaid submissions, he urged that the suit of the opposite party-plaintiff (WBHIDCO) ought to have been rejected by the learned trial court under Order VII Rule 11 (a) of the Code, since it does not disclose any cause of action.

8.2. *Per contra*, Mr. Chowdhury, learned advocate for the opposite party-plaintiff (WBHIDCO) in reply strenuously argued that the State largesse cannot be distributed at the whims and fancies of a few persons at the helm of affairs without following the transfer process i.e., without any public tender. In the present case, admittedly land was allotted to the petitioner-defendant not on the basis of any open tender but on the basis of Chairman's discretionary quota of the then Chairman of WBHIDCO in the regime of the previous political dispensation. After the change of the political dispensation in the State of West Bengal in the year 2011, the present management of WBHIDCO discovered the large-scale fraud which was perpetrated on the citizens of State by squandering away the national treasure. Taking into account such large-scale fraud, the State of West Bengal had formed a land policy which prevented any further allotment of any piece or parcel of land on freehold basis or without any open tender process. The Board of WBHIDCO resolved to cancel all residential and non-residential allotments under the Chairman's discretionary quota where offers of allotment were issued on or after 28th February, 2011. The cut-off date was selected as large-scale allotments were shown to have been made on such date on the eve of coming into effect of the Model Code of Conduct for the purpose of General Elections in the State of West Bengal in the year 2011. The allottees being aggrieved by the cancellation of the allotments

filed writ petitions which have been heard analogously and by a common judgment the writ petitions were dismissed in *Govinda Prasad Ladia (supra)*. The WBHIDCO demonstrated in the writ petitions that the allotments were results of fraud perpetrated on the State which warranted rejection at the threshold. The opposite party-plaintiff (WBHIDCO) in the plaint at paragraph nos. 15 to 17 has demonstrated that the application of the petitioner-defendant was fraudulent. The nature and extent of the fraud would be the subject matter of the trial and cannot be decided at the stage of hearing of the application under Order VII Rule 11 of the Code. For the purpose of an application under Order VII Rule 11 of the Code, statements made in the plaint are to be taken as true and correct. To buttress his contention, he relied on the following decisions:

- i. ***Expfar SA and Another versus Eupharma Laboratories Ltd. and Another*¹⁹**
- ii. ***Mayar (H.K.) Ltd. and Others versus Owners & Parties, Vessel M.V. Fortune Express and Others*²⁰**
- iii. ***C. Natrajan versus Ashim Bai and Another*²¹**
- iv. ***P.V. Guru Raj Reddy Represented By GPA Laxmi Narayan Reddy and Another versus P. Neeradha Reddy and Others*²²**

Rejecting the plaint filed in the suit would necessarily mean that the Court without trial disbelieves the plaint case. Moreover, when the defendant-petitioner is also a party to the fraud and when the officers of WBHIDCO

¹⁹ (2004) 3 SCC 688

²⁰ (2006) 3 SCC 100

²¹ (2007) 14 SCC 183

²² (2015) 8 SCC 331

were also parties to the fraud by making allotments in favour of the different allottees at the whims and fancies, principles of *pari delicto* would come into play and it cannot be said that the opposite party-plaintiff (WBHIDCO) having executed and registered the deed of conveyance in favour of the defendant-petitioner cannot have the same delivered up and cancelled. Such principles of *pari delicto* clearly applies in the present case where the execution of the deed of conveyance is bad and in violation of the decision taken by the Board of Directors of WBHIDCO. An illegality or fraud cannot be waived merely because a deed of conveyance has been executed. Hon'ble Supreme Court has consistently held that a contract which is prohibited and which is against public policy cannot stand. Even a person who has entered into the same can challenge the same and no waiver applies since it is void. Thus, a company after having made the allotment can challenge the same. There can be no waiver and estoppels as public interest is concerned. In support of his aforesaid contention, he relied on the following decisions:

- i. ***Waman Shrinivas Kini versus Ratilal Bhagwandas and Co.***²³
- ii. ***Indira Bai versus Nanda Kishore***²⁴
- iii. ***Amrit Banaspati Co. Ltd. and Another versus State of Punjab and Another***²⁵

The action of the lesser minions of the company in making an illegal allotment is not permissible in terms of the Section 23 of the Contract Act.

²³ ***AIR 1959 SC 689***

²⁴ ***(1990) 4 SCC 668***

²⁵ ***(1992) 2 SCC 411***

Therefore, the ground taken by the petitioner-defendant that the plaint does not disclose any cause of action is unsustainable.

8.3. Mr. Chatterjee, learned advocate for the petitioner-defendant, in reply, submitted that the learned Single Judge of this Hon'ble High Court in the writ has held that the Court should not accept the childish explanation proffered by the company that the transaction in *Balaji's case* was completed by lesser minions in the company before the decision to annul the allotments under the Chairman's quota had been circulated and such observation made by the Hon'ble Single Judge is untouched by the Division Bench of this Hon'ble High Court in appeal. At no point of time, the WBHIDCO stated that the petitioner obtained the deed of conveyance by playing fraud. On the contrary, the new management of WBHIDCO authorities on a detailed examination of the records through its letter dated 20th September, 2011 invited the petitioner for execution of deed of conveyance. Relying on the decision of Hon'ble Supreme Court in ***Motilal Padampat Sugar Mills Co. Ltd. versus State of Uttar Pradesh & Others***²⁶, he submitted that the doctrine of promissory estoppel applies against the Government and the defence based on executive necessity has been categorically negated. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and in fact, the promisee, acting in reliance on it, alter his position, the Government would be held bound by the promise and the promise would be enforceable against the Government. Therefore, plaintiff's excuse that the deed of conveyance was executed by the lesser minions of the company

²⁶ (1979) 2 SCC 409

and/or inadvertently the deed of conveyance was executed is unacceptable and plaintiff is estopped from raising such issue.

8.4. Upon hearing learned advocates for the respective parties on the aforesaid aspect, at the outset, it is noted that Section 20 of the Code introduces a concept of cause of action and recognises the territorial jurisdiction of courts, *inter alia*, wherever the cause of action arises. The expression ‘*cause of action*’ has acquired a judicially settled meaning. In the restricted sense ‘*cause of action*’ means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction of the right, but also the infraction coupled with right itself. The cause of action is the legal claim that allows a party to seek judicial relief. This gives legal right to seek a remedy because of the act or omission, failure to perform duty, or breach of obligation of the defendant towards the plaintiff. Bearing in mind the above concept of cause of action it is to be decided whether the plaint actually discloses any cause of action or not. It is trite law that the consideration of application for rejection of plaint should not be on the basis of allegations made by the defendant in his written statement or on the basis of allegations in the application for rejection of plaint. The Court is to consider only the plaint as a whole and in case the entire plaint comes under the situation covered by Order VII Rule 11(a) to (f), the same is to be rejected. This Court finds force in the submission of Mr. Chowdhury, learned advocate for the opposite party-plaintiff relying on *Expchar SA (supra)*, *Mayar (H.K.) Ltd. (supra)*, *C. Natrajan (supra)* and *P.V. Guru Raj Reddy Represented By GPA*

Laxmi Narayan Reddy (supra) that for the purpose of considering an application under Order VII Rule 11 of the Code, statements made in the plaint are to be given face value and taken to be correct to decide whether the plaint is hit by provision of Order VII Rule 11 of the Code. Keeping in mind the aforesaid principles let me consider the averments in the plaint.

8.5. For proper appreciation of the facts, it would be appropriate to reproduce paragraph no. 15, 16 and 17 of the plaint as hereunder:

“15. Records also reveal that there is an application for allotment made by the defendant in the form of a letter dated 28th March, 2008. This application is signed by one Bela Debi Banka of M/s. Balaji Enterprises. However the signature of Bela Debi Banka appearing in the said letter dated 28th March, 2008 is not the same as the signature of the same person in the attested balance sheet of the defendant and/or the copy of the partnership deed of the defendant.

16. Records further reveal that the defendant as a partnership firm was registered with the Registrar of Firms only on 7th March, 2011. Even the unregistered partnership deed is notarized on 11th February, 2010. The plaintiff further reasons to believe that the application of the defendant is back dated and is the result of collusion and conspiracy between the defendant and one or more officers of the plaintiff. Further investigation in this regard is being carried out for taking appropriate measures.

17. The plaintiff therefore states that the application of the defendant is also fraudulent apart from the same being not in accordance with law. The allotment to the defendant is also thus liable to be cancelled and the registered deed of sale is set aside on the ground the same being misrepresented and fraud.”

From the foregoing averments made in the plaint as above, it is palpable that the opposite party-plaintiff (WBHIDCO) has made out a case of fraud, collusion and conspiracy between the defendant and one or more officers of the opposite party-plaintiff-WBHIDCO in allotment and execution of deed of conveyance in favour of petitioner-defendant. Mr. Chatterjee, learned advocate for the petitioner-defendant has argued referring to Sections 20 and 22 of the Indian Contract Act that unilateral mistake which is the foundation of the plaint cannot establish any cause of action and further there is no case of fraud made out in the plaint and has also relied on the decisions in *Riverlate Properties Ltd (supra)* and *Tarsem Singh (supra)*. Further relying on *C.S. Ramaswamy (supra)* he submitted that mere stating in the plaint that a fraud has been played is not enough and the allegation of fraud must be specifically averred in the plaint. Be that as it may, since the plaint unequivocally spells out the aspect of fraud, collusion and conspiracy of the petitioner-defendant with the officers of the company in getting allotment of the plot of land in question and deed of conveyance executed in his favour, those aspects need to be decided on taking evidence. The aspect of collusion and fraud as alleged in the plaint can be found out only during the course trial. Fraud is a question of fact which is to be established in the course of trial. In such a situation, the plaint cannot be rejected solely on such ground. **(See *M/s. Cambridge Solutions Ltd., Bangalore versus Global Software Ltd. And Ors.*²⁷).** Thus the argument advanced on behalf of the petitioner-defendant as above does not stand to reason.

²⁷ **AIR 2009 Mad 74**

8.6. It is not in dispute that the plots of land were allotted to the allottees including the petitioner-defendant. Such allotments to the allottees excluding the petitioner-defendant and one *Alo Eye Care Pvt Limited* were cancelled by the resolution of the Board of opposite party-plaintiff (WBHIDCO). The cancellations of such allotments were assailed before the writ court by the allottees. The writ petitions were dismissed by Hon'ble Single Judge by a common judgment. The dismissal of the writ petitions was challenged before the Hon'ble Division Bench which has upheld the judgment of the Single Bench. The Special Leave Petition being Special Leave Petition (Civil) Diary No(s). 9814 of 2023 against the decision of the Division Bench was also dismissed by the Hon'ble Supreme Court. Thus, the records show that the cancellation of the allotments of the allottees excepting the petitioner-defendant and one *Alo Eye Care Pvt Limited* has been approved upto the Hon'ble Supreme Court. The opposite party-plaintiff (WBHIDCO) stated before the writ court that suits have been initiated for cancellation of the deed of conveyance. It goes without saying that since deed of conveyance was executed in favour of the petitioner-defendant the opposite party-plaintiff (WBHIDCO) had to file the suit for cancellation of deed of conveyance executed in favour of the petitioner-defendant, which was not the case with the other allottees whose allotments were subsequently cancelled by WBHIDCO.

8.7. The observation of learned Single Judge regarding the anomaly in allotments have already been reproduced in paragraph no. 7.3 of this judgment. Similarly, the Division Bench in appeal in respect of the applications for allotment of the allottees which were cancelled, have also

noted that some of the purported applications were made by companies which were incorporated much later than the dates of the respective applications. Some of the applications referred to the '*New Town police station*' when on the dates of such purported applications, such police station had not come into existence. Similarly, some of the applicants referred to '*Jyoti Basu Nagar*' although *New Town* was re-named as *Jyoti Basu Nagar* much after the dates of the respective applications. Considering the entire gamut of facts, the Division Bench held that the process of allotment of plots of land adopted by the previous management of WBHIDCO, is tainted, completely arbitrary, discriminatory, stinks of nepotism and favoritism, is grossly violative of Article 14 of the Constitution and is a classic example of flagrant abuse/misuse of executive power. Taking cue from such fact, it goes without saying that the process which led to the registration of the deed of conveyance in favour of the petitioner-defendant needs to be scrutinized and tested through the rigours of trial and it would not be proper to reject the plaint at the threshold.

8.8. It is argued on behalf of the petitioner-defendant that the Single Judge in the writ petition observed that Court should not accept the childish explanation proffered by the company that the transaction in *Balaji's case* was completed by lesser minions in the company before the decision to annul the allotments under the Chairman's quota had been circulated. Be that as it may, upon going through paragraph no. 125 of the judgment and order dated 13th May, 2015 passed by Single Judge in WP 2522 (W) of 2014 (*Govinda Prasad Ladia and Others versus WBHIDC*

Limited and Others) along with other batch of writ petitions, it is found that the aforesaid aspect has been noted and recorded as a submission of the petitioner and not the observation of the learned Single Judge. Therefore, such argument advanced on behalf of the petitioner falls short of merit.

8.9. Mr. Chatterjee, learned advocate for the petitioner-defendant placing reliance on the decision of the Hon'ble Supreme Court passed in *S. N. Raj Kumar (supra)* tried to impress upon the Court that once a title passes in favour of a party, the vendor ceases of its rights to challenge the said sale on the plea of impropriety. Referring to *Motilal Padampat Sugar Mills Co. Ltd. (supra)*, he submitted that promissory estoppel acts against the Government as well. *Per contra* it is urged on behalf of the opposite party-plaintiff (WBHIDCO) relying on the decision *Waman Shrinivas Kini (supra)*, *Indira Bai (supra)* and *Amrit Banaspati Co. Ltd. (supra)* that illegality or fraud cannot be waived merely because a deed of conveyance has been executed and there cannot be waiver and estoppel as far as public interest is concerned. This Court cannot be oblivious to the fact that the allotment of land made in favour of the allottees including the defendant-petitioner is out of State largesse. The question is whether registration of deed of conveyance acts as estoppel in challenging such deed of conveyance.

8.10. In order to appreciate such issue, it would be profitable to refer to the following decision of Hon'ble Supreme Court.

8.11. In *Indira Bai (supra)*, the Hon'ble Supreme Court observed as follows:

“3. Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates

$$x \qquad \qquad x \qquad \qquad x$$

5. *Exception to this universal rule or its non-availability, is not due to absence of any provision in the Act excluding its operation but welfare of society or social and general well-being. Protection was, consequently, sought not on the rationale adopted by the High Court that in absence of notice under Section 8 of the Act estoppel could not arise but under cover of public policy. Reliance was placed on Shalimar Tar Products Ltd. v. H.C. Sharma [(1988) 1 SCC 70 : AIR 1988 SC 145] a decision on waiver, and Equitable Life Assurance Society of the United States v. Reed [1914 AC 587 : 111 LT 50], which laid down that there could be no estoppel against statute. Equity, usually, follows law. Therefore that which is statutorily illegal and void cannot be enforced by resorting to the rule of estoppel. Such*

extension of rule may be against public policy. What then is the nature of right conferred by Section 9 of the Act? In *Bishan Singh v. Khazan Singh* [Bishan Singh v. Khazan Singh, AIR 1958 SC 838 : 1959 SCR 878] this Court while approving the classic judgment of Mahmood, J. in *Gobind Dayal v. Inayatullah* [ILR 7 All 775 (FB) : 1885 AWN 228], 'that the right of pre-emption was simply a right of substitution' observed that, 'courts have not looked upon this right with great favour, presumably, for the reason that it operated as a clog on the right of the owner to alienate his property'. In *Radhakishan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi* [AIR 1960 SC 1368 : (1961) 1 SCR 248], this Court again while repelling the claim that the vendor and vendee by accepting price and transferring possession without registration of sale deed adopted subterfuge to defeat the right of pre-emption observed that, 'there were no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means'. Such being the nature of right it is harsh to claim that its extinction by conduct would amount to statutory illegality or would be opposed to public policy. The distinction between validity and illegality or the transaction being void is clear and well known. The former can be waived by express or implied agreement or conduct. But not the latter. The provision in the Act requiring a vendor to serve the notice on persons having right of pre-emption is condition of validity of transfer, and therefore a pre-emptor could waive it. Failure to serve notice as required under the Act does not render the sale made by vendor in favour of vendee ultra vires. The test to determine the nature of interest,

namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct. The Act does not provide that in case no notice is given the transaction shall be void. The objective is to intimate the pre-emptor who may be interested in getting himself substituted. The Act does not debar the pre-emptor from giving up this right. Rather in case of its non-exercise within two months, may be for the financial reasons, the right stands extinguished. It does not pass on to anyone. No social disturbance is caused. It settles in purchaser. Giving up such right, expressly or impliedly cannot therefore be said to involve any interest of community or public welfare so as to be in mischief of public policy.

(Emphasis supplied)”

8.12. The proposition which emerges from the aforesaid decision of the Hon’ble Supreme Court is that estoppel is a rule of equity flowing out of fairness striking on behavior deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. It need not be specifically provided as it can always be used as a weapon of defence. Exception to this universal rule or its non-availability is not due to absence of any provision in the Act excluding its operation but welfare of society or social and general wellbeing. There can be no estoppel against statute. Equity usually follows law. Therefore, that which is statutorily illegal and void cannot be enforced

by resorting to the rule of estoppel. Such extension of rule may be against public policy.

8.13. It is trite law that the Government functions through its officials and so long they are acting bona fide in pursuance of Government policy the Government cannot be permitted to disown it as a citizen can have no means to know if what was being done was with tacit approval of the Government. And if it is found that the representation made by the official concerned was such that any reasonable person would believe it to have been made on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government. [*See Amrit Banaspati Co. Ltd. (supra)*]

8.14. Since primarily the allotments were found to be dubious and arbitrary by the writ Court, the deed of conveyance in favour of the petitioner-defendant cannot act as an estoppel against the company for the reason that the allotments in the similar set of facts in respect of other allottees were found to be fraudulent, dubious and arbitrary and therefore execution of deed of conveyance in favour of the petitioner-defendant needs to be scrutinized. Thus, the proposition of law advanced on behalf of the petitioner-defendant relying on *T. Arivandandam (supra)* that if the plaint does not have a cause of action and owing to a crafty drafting, a sham cause of action is created, the plaint is to be nipped in the bud, does not apply to the facts of this case. For the similar reason, the decision in *Motilal Padampat Sugar Mills Co. Ltd. (supra)* also does not apply to this case.

8.15. The decision in *Waman Shrinivas Kini (supra)* is not applicable to this case since the decision deals with the effect of an agreement contrary to the provisions of law. In the case at hand, a deed of conveyance has been challenged and not enforceability of an agreement.

8.16. Referring to the decision of Hon'ble Supreme Court passed in ***Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and Another versus Shishir Realty Private Limited and Others***²⁸, Mr. Chatterjee, learned advocate for the petitioner-defendant submitted that it is elementary that in a republic governed by the rule of law, no one, however, high or low, is above the law. Everybody is subject to the law as fully and completely as any other and the Government is no exception. By merely using grounds of public interest of loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If it were otherwise, then there will remain no sanctity in the words and undertaking of the Government and such a practice is counterproductive to the economy and the business environment in general. As far as the present case is concerned, the WBHIDCO has filed a suit for cancellation of the deed of conveyance on the ground of fraud. Such claim has to be proved by way of material, evidence and figures which has also been taken into consideration in the aforesaid decision. Therefore, the grounds taken by the opposite party-plaintiff (WBHIDCO) in the suit through its pleadings can only be decided after taking evidence and not at the stage of deciding

²⁸ **2021 SCC OnLine SC 1141**

an application for rejection of plaint. In view of the above discussion, the ground taken by the petitioner-defendant that the plaint does not disclose cause of action falls short of merit.

9. The last ground taken by the petitioner-defendant for rejection of the plaint is that the plaintiff did not take step to ensure compliance of Order V Rule 9 of the Code for delivery of summons upon the defendants thereby it failed to comply the provisions of Rule 9 of Order VII. Mr Chatterjee, learned advocate for the petitioner-defendant urged that despite repeated directions of the learned Trial Court, the plaintiff failed to take requisite steps for service of summons upon the defendant, after lapse of considerable period and hence on such ground the plaint is liable to be rejected. In support of his contention, he relied on the decision of this Court passed in *NPR Finance Limited versus Deepak Jhunjhunwala (in G.A. No. 852 of 2009, C.S. No. 97 of 2003)*. On the contrary, Mr. Chowdhury, learned advocate for the opposite party-plaintiff (WBHIDCO) submitted that the plaintiff has put in the requisites on 30th March, 2015. Once the plaintiff has put in requisites for service of summons, it is the responsibility of the department to serve the summons. The cause shown by the plaintiff for summons not been served was accepted by the learned trial Court on 26th March, 2021 which has not been challenged and, therefore, such question cannot be raised for rejection of plaint. In support of his contention, he relied on the decision of this Court passed in ***Colgate Palmolive (India) Limited versus Coastal Roadways Limited***²⁹.

²⁹ 2011 SCC OnLine Cal 2835

9.1. By Order No. 15 dated 9th February, 2021, the plaintiff was directed to file requisites forthwith as a last chance failing which dismissal order will be passed. On 26th March, 2021, the plaintiff prayed for acceptance of the show-cause after condonation of laches. The learned trial court found the cause shown to be satisfactory and the laches was condoned. It is an admittedly position that the petitioner-defendant has already entered appearance. There is nothing in Rule 11 of Order VII of the Code to conclude that if the documents, on which the plaintiff rely were not sent to the defendant along with the copy of the plaint accompanying the summons, then the plaint is liable to be rejected. What Clause (e) and (f) of Rule 11 says is that the plaint is liable to rejected if it is not filed in duplicate and if the plaintiff fails to comply with the provisions of Rule 9 of Order VII. Upon going through the application under Order VII Rule 11 of the Code, it is not the grievance of the petitioner-defendant that the plaint was not filed in duplicate. So far the question of complying with the Rule 9 is concerned, under this Rule the plaintiff is to file as many copies of the plaint on plain papers as there are defendants within seven days from the date on which the Court directs the service of all the defendants. The case made out by the petitioner-defendant is that summons were not served upon them. The case of the defendant does not fall under Rule 9 of Order VII of the Code **(See *Shobit Construction and Anr. Etc. versus T. K. International Ltd.*³⁰)**. Such being the position, it would be a travesty of justice to reject the plaint at the threshold on the ground that the

³⁰ **AIR 2006 HP 4**

summons was not served as pressed into service by the petitioner-defendant.

9.2. The decision in *Colgate Palmolive (India) Limited (supra)* pertains to Original Side Rules, hence is not applicable to the facts of this case.

9.3. The decision in *NPR Finance Limited (supra)* is factually distinguishable and it does apply to the present case.

10. In view of the above, the civil revision stands dismissed. The impugned Order No. 33 dated 7th June, 2022 passed by learned Judge, Commercial Court at Rajarhat, North 24-Parganas in Title Suit No. 10 of 2020 rejecting the prayer of the petitioner under Order VII Rule 11 of the Code is affirmed.

11. There shall be no order as to costs.

12. All connected applications, if any, stand dismissed.

13. Interim order, if any, stands vacated.

14. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)