A.No.2999 of 2024
in C.S.No.8 of 2024

Judgment reserved on 28.08.2024	Judgment pronounced on 28.10.2024

RMT.TEEKAA RAMAN, J.

This application is filed by the applicant/first defendant under Order XIV Rule 8 of Original Side Rules read with Order VIII Rule 11 of CPC to reject the plaint filed in C.S.No.8 of 2024.

2. Various reliefs has been asked for in the suit filed by the 1st respondent/plaintiff in C.S.No.8 of 2024.

3. Counter has been filed by the 1st respondent/plaintiff and earlier Application No.869 of 2024 filed by the 1st defendant was dismissed by this Court on 29.04.2024.

4. Heard Mr.P.R.Raman, learned Senior Counsel for the applicant, Mr.Bijesh Thomas, learned counsel for the 1st respondent and Mr.A.Ameen, learned counsel for the 4th respondent.

5(a) The sum and substance of the submissions made by the learned Senior Counsel for the applicant/1st defendant is that the 1st respondent/plaintiff has *inter alia* referred to and dealt with three independent entities in the plaint. They are as follows :

(i) Conjap Electronic Industries;

(ii) Syndicate Electronics and

(iii) Conjap Electronics Pvt. Ltd.

5(b) Conjap Electronic Industries is a proprietorship concern of the 1st respondent/plaintiff. Syndicate Electronics was a partnership firm in which the 1st respondent/plaintiff and the applicant/1st defendant were equal partners. The applicant/1st defendant dissolved the said partnership firm by issuing a notice to the 1st respondent/plaintiff which was dated 17.01.2024. As far as the third entity Conjap Electronics Pvt. Ltd. is concerned, the 1st respondent/plaintiff was a Director at the time of its incorporation along with the first and second defendants. The 1st respondent/plaintiff has thereafter resigned his Directorship in the said company vide resignation dated 03.07.2023.

5(c) The plaint suffers from misjoinder of cause of action and multifariousness. The 1st respondent/plaintiff has alleged several cause of action against the seven defendants. These cause of action are all distinct and separate. *Inter alia,* from a reading of paragraph 21 of the plaint pertaining to the alleged cause of action for the suit, it is clear that several distinct cause of action and that too against multiple (seven) defendants have been erroneously united in a single suit. The defendants are not jointly interested in the cause of action.

5(d) The 1st respondent/plaintiff has improperly joined all the seven defendants in a single suit. The alleged right to the numerous reliefs claimed by the respondent/plaintiff is not in respect of or arising out of the same acts or transactions which are alleged to exist against the defendants. The questions involved in the suit are not common. Not only are the alleged cause of action against the defendants separate, the defendants are also not alleged to be jointly liable to the respondent/plaintiff. The plaint is in violation of Order 1 Rule 3 and Order II Rule 3 of CPC as well as Clause 14 of the Letters Patent.

5(e) The 1st respondent who is the plaintiff filed counter affidavit alleging that the present application is one among the continuous delaying tactics and further stated that the defect stating in the petition is only procedural in nature and hence there is no ground for rejection of plaint. Order I Rule 3 and Order II Rule 3 of the Code of Civil Procedure and Clause 14 of the Letters Patent 1862 being procedural in nature, an application under Order VII Rule 11 (d) of the CPC would not lie at all and the application ought to be dismissed *in limine* with costs and the present suit is a composite suit to expose the larger web of applicant's / 1st defendant's fraud.

5(f) At its core, the entire subject-matter of the suit is one long series of cause of action against the Applicant, 3rd, 4th, 5th & 7th Defendants: The 'subject-matter of the suit is a composite one encompassing the web of fraud orchestrated by the Applicant in connivance with his wife (the 3rd Defendant in the suit), the 4th Defendant Bank, the 5th Defendant Company (deceptively similarly named to siphon off funds from the Plaintiff's business), and the Auditor, (the 7th Defendant in the suit) to siphon-off funds from individual account as well as joint-business; forging/fabricating documents as if signed by the 1* Respondent ; lodging incorrect and fraudulent statutory returns on the 1" Respondent/Plaintiff's behalf and his sole proprietorship, 'Conjap Electronic Industries' etc. which have all cumulatively caused loss to the 1st respondent/plaintiff and the sole proprietorship, 'Conjap Electronic Industries'.

6. The learned counsel counsel for the 1st respondent/plaintiff contended that all the points raised by the learned Senior Counsel for the applicant/defendant are procedural in nature and they fall under the 'realm of procedure' and not in the 'realm of substantive law of rights' and prayed for dismissal of the application.

7. The scope of the enquiry under the application filed under **Order XIV Rule 8 of Original Side Rules read with Order VIII Rule 11 of CPC** are kept in mind.

8. Heard the learned Senior Counsel for the applicant/defendant as well as the 1st respondent/plaintiff and perused the plaint.

9. The plaintiff, C.M.Goyal had filed the suit against his son, Suraj Goyal, the 1st defendant and against his daughter-in-law / 2nd defendant and against five other defendants seeking a judgment and decree directing the1st defendant to repay a sum of Rs.25,00,000/- which according to him was withdrawn by the 1st defendant from his (plaintiff's) account in Bank of India Ltd., Mount Road Branch, Chennai and also for a preliminary decree directing the 1st defendant to render true and proper account for the business Syndicate Electronics for the previous three years and for a final decree to be passed with respect to the amount due to the plaintiff and also for a declaration against the 1st and 7th defendant that they had unlawfully lodged incorrect statutory returns to the Goods & Service Tax and Income Tax authorities for the two businesses, Conjap Electronic Industries and Syndicate Electronics on behalf of the 1st respondent/plaintiff and to direct the 1st and 7th defendants to pay a sum of Rs.9,85,000/- as damages to the plaintiff and also for a declaration that the registration of a Sale Deed dated 12.03.2020 with respect to a property at No.9/10, Krishnappa Chetty Street, Chintadripet, as being null and void and not binding on the plaintiff and for a further permanent injunction restraining the 1st defendant from interfering with the plaintiff's access to the two businesses, Conjap Electronic Industries and Syndicate Electronics and also for a permanent injunction restraining the

1st defendant from operating the bank account in Kotak Mahindra Bank Ltd., in the name of Syndicate Electronics and for permanent injunction restraining the 1st defendant from alienating the property at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai and also for cost of the suit.

10. A reading of the reliefs would indicate that the plaintiff had joined several causes of action. There is a distinct cause of action against the 1st defendant directing him to repay a sum of Rs.25,00,000/- which according to the plaintiff had been unlawfully withdrawn from the account of the plaintiff in Bank of India, Mount Road Branch, Chennai. There is a separate relief sought relating to the property at No.9/10, Krishnappa Chetty Street, Chintadripet including seeking a declaration that a Sale Deed with respect to the said property is null and void and for an injunction against the 1st defendant from further alienating the property. There is yet another distinct cause of action relating to the business Syndicate Electronics for which the plaintiff seeks a direction against the 1st defendant to produce accounts for three financial years and for damages against the applicant/1st and 7th defendants for lodging incorrect statutory returns to the Goods & Service Tax and Income Tax Authorities. A further relief is sought restraining the 1st defendant from interfering with the plaintiff's right to access to the two

businesses, Conjap Electronic Industries and Syndicate Electronics. A separate relief is also sought restraining the 1st defendant from operating a bank account at Kotak Mahindra Bank Ltd., which is in the name of the Syndicate Electronics. A further break-up of the reliefs would indicate that the plaintiff had sought reliefs surrounding the business Syndicate Electronics and also clubbed the same with distinct causes of action inducted.

11(a) As per the plaint averment, plaintiff claimed that he had been trading in electronic parts and accessories since 1957 under the name of Conjap Electronic Industries and in a partnership called Syndicate Electronics between himself and the 1st defendant. The plaintiff claimed that he had put in the entire capital for the business Syndicate Electronics and specifically averred that the 1st defendant had not contributed any amount to the said business. It was stated that after the death of the wife of the plaintiff, the plaintiff inducted the 1st defendant as a partner in Syndicate Electronics. The plaintiff further claimed that the bank account of Conjab Electronic Industries is in Bank of India and there is also a savings bank account of the plaintiff in the same branch. The bank account of Syndicate Electronics is also at Bank of India.

11(b) It is further seen that the 1st respondent/plaintiff came to know that the 1st defendant had opened another bank account in Kotak Mahindra Bank, in the name of Syndicate Electronics without the consent of the plaintiff and the funds from the two businesses of the plaintiff in Bank of India were transferred to the said account at Kotak Mahindra Bank. It was stated that the defendants 1 and 2 had purchased movables to the disadvantage of the plaintiff. It was further stated that both the businesses were operating in the property at No.9/10, Krishnappa Chetty Street, Chintadripet. The office premises was tenanted by the plaintiff since 2004. In 2020, the landlord had offered to sell the office premises to the plaintiff and the sale consideration was agreed at Rs.90,00,000/-. The plaintiff claimed that he had entrusted the entire sale consideration to the 1st defendant to complete the purchase. The plaintiff however, found that taking advantage of his age and illness and solitude, the defendants 1 & 2 had taken complete control of the two businesses and also of all other assets of the plaintiff. The plaintiff also suffered from fracture in his ribs and was not able to attend to the business activities. The defendants 1 & 2 prevented the plaintiff from travelling outside and controlled his movements. The plaintiff was able to break free from them in June, 2023. He found that the defendants 1 and 2 had transferred the funds from the two business to their account.

11(c) It is specifically pleaded that the plaintiff issued a notice on 01.08.2023 to the defendants 1, 2 & 5. A common reply was issued by the said defendants. The plaintiff also found that the 1st defendant had fabricated bills in the name of Conjab Electronic Industries without the knowledge of the plaintiff and caused loss of Rs.76,00,000/-. He had also filed returns before the statutory authorities without the knowledge and consent of the plaintiff. A fresh account was opened in the name of Syndicate Electronics in Kotak Mahindra Bank and amounts were diverted to that particular account. It was also found that the amount of Rs.90,00,000/- which was the sale consideration for the office premises at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai, was utilized by the 1st defendant for his personal use and the 1st defendant had withdrawn amounts from the business entities and had purchased the office premises in his name. The plaintiff had issued cheques trusting the 1st defendant. It is also stated that the 1st defendant had also taken control of the online access of the bank accounts of the plaintiff and had withdrawn a sum of Rs.25,00,000/- unlawfully and without authority.

12. After hearing the rival submissions made by the parties and the pleadings, as averred by the plaintiff in the plaint, the points for determination is whether the points urged by the learned Senior Counsel for the applicant/1st defendant that the plaint can be rejected under Order VII Rule 11 (d) of CPC for non-compliance of Order I Rule 3 CPC as well as Clause 14 of the Letters Patent.

13(a) In the petition, it is specifically averred that the plaint suffers misjoinder of cause of action and alleged cause of action are separate. The above legal position projected by the applicant is no longer *res integra* in view of the decision reported in ***2007 (2) SCC 551 [Prem Lala Nahata and another v. Chandi Prasad Sikaria]*** wherein the Hon'ble Supreme Court has held as follows -

> ***16.*** *Order 7 Rule 11(d) speaks of the suit being "barred by any law". According to Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the*

Code.

> ***17.*** *A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.*
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> ***18.*** ***...............................*** *If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of the suit.*

13(b) In the above said decision, the Hon'ble Supreme Court has also held as follows -

> ***21.*** *The legal position in an identical situation as ours has been considered by a learned Judge of that Court in Assembly of God Church v. Ivan Kappers. The learned Judge has held that a defect of misjoinder of parties and causes of action is a defect that can be waived and it is not such a one as to lead to the rejection of the plaint under Order 7 Rule 11(d) of the Code.*

14. In view of the above legal position and the plea raised by the applicant, I have no hesitation to come to the conclusion that all the plea raised by the applicant herein have already been settled by the preposition of law by the Hon'ble Supreme Court in ***Prem Lala Nahata's case, cited supra.***

Hence, this application is devoid of merits and accordingly, this application is dismissed.

28.10.2024

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RMT.TEEKAA RAMAN, J.

rgr

order in
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