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Application No.4560 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2024

Pronounced on : 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Application No.4560 of 2024

in

C.S.No.109 of 2023

Mr.Udhayanidhi Stalin,
25/9, Chittarajan Road,
Alwarpet, Chennai- 600 018,

Also at
No.31, Kurinji Illam,
P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai- 600 028.

.. Applicant/1st defendant

/versus/

1.Mr.Ramasaravanan,
Proprietor,
M/s.OST Films,
No.S-1, Kurien Complex,
No.19, Railway Colony 1st Street,
Nelson Manickam Road,
Aminjikarai,
Chennai- 600 029.

..1st Respondent/Plaintiff

2.M/s.Red Giant Movies

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(Now known as)

M/s.Red Giant Movies Private Ltd.,
Rep. by its Director Mr.Raja Shankar Arjun Durai,
No.180, Murasoli Atchagam,
Kodambakkam High Road,
Nungambakkam,
Chennai- 600 034.

3.Qube Cinema Technologies Pvt Ltd.,
No.42, Ranga Road, Mylapore,
Chennai- 600 004.

4.UFO Moviez India Ltd.,
No.178, 3&4 J.B.Tower,
Kumaran Colony Main Road,
Vadapalani, Chennai- 600 026.

.. Respondents 3 to 5
/Defendants 2 to 4

Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 (d) of Civil Procedure Code to reject the plaint in C.S.No.109 of 2023.

For Plaintiff	: Mr.N.R.Elango Senior Counsel for R.Vivekananthan
For Defendant	: Mr.T.Thiageswaran for M/s.Waraon and Sai Rams

ORDER



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Judges summons is filed under Order XIV Rule 8 of the Original side Rules read with Order VII Rule 11(d) of the Civil Procedure Code, to reject the plaint in C.S.No.109 of 2023.

2. The defendant is the applicant herein. He has filed the above application to reject the plaint under Order VII Rule 11(d) of the Civil Procedure Code on the ground that the suit claim is barred by limitation and there is no real cause of action.

3. Prayer in the suit:

The 1st respondent/plaintiff filed the above suit in C.S.No.109 of 2023 for the following reliefs:

(a) for a Permanent injunction restraining the defendants, his men, agents, servants, etc., from releasing the film titled as “Mamannan” without completing the shooting schedule and dubbing of the film titled as "Angel" as agreed by the 1st defendant, through theatres or in any other platform like OTT, etc.,

(b) for a Mandatory injunction directing the 1st defendant to



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complete the shooting schedule and dubbing of the film titled as "Angel" as agreed by the 1st defendant, or in the alternate;

(c) direct the 1st defendant to pay a sum of Rs.25.00 Crores towards compensation for the loss incurred by the Plaintiff in view of the non-performance and refusal for completing the shooting schedule and dubbing of the film titled as "Angel" so as to enable the Plaintiff to release the said film; and

(d) Costs of the suit.

4. The plaint averments that are necessary for the determination of the present application to reject the plaint are as under:

(a) The Plaintiff is carrying on business in film production.

(b) During the course of his business the Plaintiff ventured into the production of a new film titled as "Angel" starring Mr.Udayanidhi Stalin (1st Defendant) as lead Hero with two heroines namely, Ms.Anandhi and Ms.Payal Rajput and other actors such as Yogi Babu, etc., music by Mr.D.Iman and directed by Mr.K.S.Adhiyaman.



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- (c) The Plaintiff entered into an agreement with the Director Mr.K.S.Adhiyaman on 24.07.2018 for directing the said film "Angel". The Plaintiff has registered the title of the film namely "Angel" with the Tamil Film Producers' Council and also entered into a Lab Agreement on 12.07.2018 with Gemini Digital Lab, Chennai.
- (d) The Plaintiff had engaged the 1st defendant by way of an oral agreement as Lead Hero in the said film titled as "Angel" and the 1st defendant agreed by way of implied contract to complete the entire shooting of the film titled as "Angel" by providing 70 (Seventy) days of his call sheet during the year 2018-19. The total remuneration for the performance of the 1st defendant to act as lead Hero in the film titled as "Angel" was agreed as Rs.1.25 Crores and the Plaintiff had paid a sum of Rs.30.00 Lakhs towards advance for the performance of the 1st defendant to act as the Lead Hero in the said film titled as "Angel" for completing the shooting schedule and dubbing.



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(e) The shooting of the film commenced with the pooja in the year 2018 and shooting were scheduled from 16.07.2018 and the 1st defendant has acted in the said film as lead hero by participating in the shooting.

(f) In view of the commitment and allotment of call sheet, the Plaintiff had arranged pre-production work as well as the shooting by engaging the technicians and artists and invested huge sums of money to the tune of approximately Rs.13.00 Crores and completed almost 80% of the production work of the film titled as "Angel".

5. It is alleged in the plaint at para No.11 that the 1st defendant has not given his call sheet for the remaining 8 days to complete the balance 20% of the shooting of the film "Angel", the Plaintiff was waiting and in view of the subsequent pandemic Corona threat, the shooting was delayed. During the election in the year 2021, the 1st defendant had contested for the Tamil Nadu Legislative Assembly as a "Member of Legislative Assembly" in Chepauk Constituency. After the election, the



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1st defendant has started dodging the Plaintiff without giving any reply or providing call sheet to complete the said film "Angel". It was reported in the magazine that after the 1st defendant became the Minister for Youth Welfare and Sports Development of Tamil Nadu, the 1st defendant had given an interview that "Mamannan" would be the last film and the 1st defendant would act before assuming charge as the post of the Minister. The 1st Defendant has repeatedly assured and promised the Plaintiff that before the movie "Mamannan", the 1st defendant will complete the movie titled as "Angel" and declared to the media during his interviews that the said film would be released before "Mamannan". The 1st defendant has repeatedly assured the Plaintiff that the 1st defendant will complete the entire shooting schedule and post production work such as dubbing so as to enable the Plaintiff to complete and release the said film titled as "Angel" before the release of the film titled as "Mamannan". However, in spite of the repeated requests made by the Plaintiff, the 1st defendant has failed and neglected to give call sheet to the Plaintiff so as to enable the Plaintiff to release the film titled as "Angel" as scheduled.



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6. It is the specific averment at para No.12 that against the assurances and promises made by the 1st defendant that before the release of the film "Mamannan", the 1st defendant will complete the film titled as "Angel". The 1st defendant has breached his commitment to complete the film "Angel" before the release of the film titled as "Mamannan" and the same clearly shows that the 1st Defendant does not have the intention to complete the shooting of the film titled as "Angel" and leave the Plaintiff in lurch. Hence, it is pleaded that the first defendant is duty bound to complete the balance of 20% of the shooting of the film titled as "Angel" so as to enable the plaintiff to release the same and in view of the delay and non-performance on the part of the first defendant, the plaintiff has suffers huge expenses to the tune of Rs.13.00 Crores and expected loss of Rs.12.00 Crores. After issuance of legal notice dated 07.06.2023 and reply notice dated 13.06.2023 at para No.17 of the plaint regarding the cause of action, the relevant averment is as under;

“the plaintiff entered into an oral agreement with the 1st defendant to act as a Lead hero in the film titled as “Angel” on 16.07.2018”.

Accordingly, he has sought for the prayer as stated supra. From the



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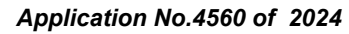
docket entry, I find that O.A.No.562 of 2023 and A.No.3179 of 2023 in C.S.No.109 of 2023 were dismissed on 28.06.2023 wherein the plaintiff has asked for interim injunction on the lines of the permanent injunction in prayer No.(a) and the same was dismissed.

7. The written statement filed. Issues framed. The matter was posted before the Masters. PW1 was examined.

8. The second defendant filed an application No.1822 of 2024 to struck off the second defendant from the plaint. By a detailed order dated 02.04.2024, it appears that my predecessor has allowed the application and ordered the Registry to struck off the second defendant from the suit. This application in A.No.4560 of 2024 is filed for rejection of the plaint.

9. Counter filed.

10. In the affidavit filed in support of the application, it is specifically pleaded by the applicant/1st defendant that the present suit



11. In the counter affidavit filed by the respondent/plaintiff at para 3, it is stated that the defendants 3 to 4 are formal parties and they are not required for the reliefs sought for against the 1st defendant. However, since the prayer of injunction restraining the 2nd defendant from making the movie was sought for, the 3rd and 4th defendants through



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whom the movie was released were added as necessary parties. However, the movie had already been released. Therefore, the defendants 3 and 4 are not relevant and required to proceed with the relief as against the 1st defendant.

12. In sum and substance, since the prayer of injunction restraining the defendant from releasing the movie, the defendants 3 and 4 are added as a party. The movie was already released since the interim application filed by the plaintiff was rejected as stated supra and hence, the defendants 3 and 4 are not relevant parties or not required to proceed the relief sought by the first defendant.

13. Heard Mr.N.R.Elango, learned Senior counsel appearing for the applicant and Mr.T.Thiageswaran, learned counsel appearing for the 1st respondent and perused the records.

14. Mr.N.R.Elango, learned Senior counsel would contend that the present application has filed on the terms as contemplated under Order



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VII Rule 11(d) of the Civil Procedure Code. The present suit is barred by law namely Law of Limitation and the law of limitation in the present case is a question simpliciter. It does not involve any facts so as to term it as a mixed question of law and facts.

15(a). Per contra, Mr.T.Thiageswaran, learned counsel for the 1st respondent/plaintiff would contend that the plea of limitation raised by the defendant in the suit is mixed question of law and facts. Hence, it does not fall under the category of Order VII Rule 11(d) of the Civil Procedure Code.

15(b). In other words, whether the plea of limitation has raised by the applicant/defendant is limitation simpliciter or mixed question of law on facts.

16. The essential facts for determination of this appeal are:

(1) The suit is based upon the oral agreement between the parties.

In the written statement as well as in the application of oral



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agreement is admitted by the defendant.

- (2) The suit is not one for specific performance of the oral agreement. However, the wordings used in the prayer 19(b) of the plaint is for mandatory injunction directing the first defendant to complete the shooting of the schedule and dubbing of the film titled as “Angel” as submitted by the first defendant.
- or

- (3) in the alternate, direct the first defendant to pay a sum of Rs.25.00 crores.

17. It is for mandatory injunction directing the first defendant to complete the suit schedule and dubbing of the movie. Section 38 of the Specific Relief Act deals with permanent injunction; Section 39 deals with mandatory injunction; Section 40 deals for the compensation by way of damages.

18. The present application has filed, as extracted supra seeks for the relief of mandatory injunction as stated above or in the alternate



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claiming subject damages to the tune of Rs.25.00 crores.

19. As stated supra by an order dated 02.04.2024 made in the application in A.No.1822 of 2024, the second defendant was stuck off from the plaint. In view of the counter filed by the plaintiff at para No.18, he has stated that the defendants 3 and 4 are not relevant. Para No.18 of the counter of the respondent/plaintiff is hereby recorded. Consequently, the defendants 3 and 4 are held to be not necessary parties since no relief as sought against them. Thus, now the lis is between the plaintiff and the first defendant alone.

20(a). In view of the order passed in O.A.No.562 of 2023 in A.No.3179 of 2023 order dated 28.06.2023, the relief (a) is no longer survives. The prayer (d) is only for cost of the suit.

20(b). Thus, I find that now the suit is reduced into plaintiff vs. the first defendant and the relief (b) or in the alternate relief 19(c) alone. Admittedly the first defendant is an artist-cum-politician and the core



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question as to why specific performance of the alleged oral agreement was not sought for. The learned counsel for the respondent/plaintiff could contend that since the actor who turned as a full time politician and become the MLA, thereupon Minister and now Deputy Chief Minister of the State and hence, he cannot come and act for the movie and therefore, he has not sought for the specific performance of the oral agreement or prayed for mandatory injunction as detailed under 19(b) of the relief portion. The learned counsel for the respondent/plaintiff also made reference to Section 16(c) and 14(c) of the Specific Relief Act.

21. Per contra, the Mr.N.R.Elango, learned Senior Counsel would submit that on an earlier occasion, a similar plea was raised before the Hon'ble High Court in respect of the then Chief Minister Thiru. M.G.Ramachandran in acting a movie and the Madras High Court has held that there is no bar in law. This Court recapitulate that yet another incident in the State of Andhrapradesh wherein the then Chief Minister Thiru.N.T.Ramarao was proposed to act in a movie, similar writ petition was filed before the Andhra Pradesh High Court and the Constitution



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Bench Judgment of the Andhra Pradesh High Court has held that there is no bar for the Chief Minister in acting the movie.

22. However, I hasten to add that there is more march of law on the topic. Since it is not be relevance to the issue to be determined the application, the same is left open.

23. Mr.N.R.Elango, learned Senior Counsel draw my attention to the plaint and would contend that at no point of time, the applicant/1st defendant has given assurance and promise to the plaintiff that he will complete the subject movie “Angel” before the release of “Mamannan” and no scrap of paper was produced in this regard. With regard to the alleged breach of the commitment on the part of the first defendant, there is jingling of facts and draw my attention to para No.12.

24(a). Before proceeding further, the law on the point are extracted as under:

“In the case of *T.Arivandandam v. T.V.Satyapal* [(1977) 4 SCC



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467], it is held that as the plaint is vexatious and meritless and creates illusion of a cause of action by clever drafting the same should be rejected at the earliest.”

24(b). In the above said decision, it is held 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 by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.

25. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated



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with a view to get out of Order 7 Rule 11 of the Code. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nip it in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

26. In the case of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174, the Hon'ble Supreme Court observed and held as under:

- (a) The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful



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reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to.

(b) The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case.

(c) When the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised.



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(d) If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

27. In the decision reported in **2020 (7) SCC 366 [Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others.]** it is held as under:

(a) The remedy under Order VII 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.

(b) The underlying object of Order VII 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



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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.

(c) Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law.

(d) In **Swamy Atmanand v. Sri Ramakrishna Tapovanam**, this Court held :

“24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an 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”

(e) The power under Order VII Rule 11 CPC may be exercised by the



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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. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case.

28. The judgment relied upon by both the parties are considered.

29. It is settled fact in law that any application filed under Order VII Rule 11(d) of CPC, the plaint averment alone are to be looked into and plaint document if any and the contention of the defendant cannot be taken into consideration. There must be a specific pleadings with regard to the cause of action. The cause of action so pleaded must be real and genuine and not an illusionary one as observed by the Hon'ble Supreme Court in the decision referred supra. With regard to the plea of limitation there must be a specific pleading with regard to the commencement of date of limitation and conclusion of the date of limitation at the time of the filing of the suit.



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30. On the point of pleadings, it is to be stated that;

(a) The first fundamental rule of pleadings is that neither provisions of law nor conclusions of law be alleged in a pleading.

(b) A plea on a mixed question of fact and law should be specifically taken, but mere conclusions of mixed law and fact should not be alleged. The pleadings should be confined to facts only, and it is for the judge to draw such inferences from those facts as are permissible under the law, of which he is bound to take judicial notice. A judge is bound to apply the correct law and draw correct legal inferences from facts even if the party has been foolish enough to make a wrong statement about the law applicable to those facts. It is a mistake to think that the judge is not bound to consider, or rather is bound, not to consider, any view of the law in respect of the facts before them except such as laid in before him formally by the parties.

(c) The second fundamental rule of pleadings is that every pleading shall contain, and contain only, a statement of the material facts



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on which the party pleadings relies for his claim. Though the version “material facts” has not been defined in the Code, the Hon'ble Supreme Court in ***Ram Sukh v. Dinesh Aggarwal*** [AIR 2010 SC 1227] has held that the material facts are facts upon which the plaintiff's cause of action or defence depends, if any. The rule requires;

(1) that the party pleadings must plead all “material facts” on which he intends to rely; and

(2) that he must plead “material facts” only, and no fact which is immaterial should be pleaded nor the evidence.

(d) There is a thin line of distinction between a material fact required to be given under Order VI Rule 2 and the particulars required to be given under Order VI, Rule 4 & 6.

(e) Under Order VI, Rule 2, all material facts on which a party relies for his claim or defence should be pleaded in his pleading. It is true that Order VII, Rule 1 requires the plaint merely to contain “ the facts constituting the cause of action”.

(f) While drafting the prayer in the suit, it should be ensured that



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relief is sought against all those defendants who were concerned with the relief. If no relief is sought against a particular defendant, no relief can be granted against him in view of Order VII Rule 5 and Rule 7 of CPC.

(g) The damages are of two kinds, viz., general damages and special damages. The plaintiff has to claim specific amount as general damages and it has to be valued for the purpose of jurisdiction and court fee.

(h) Where damages have actually resulted from the defendant's act, whether in breach of a contract or in tort, the plaintiff should claim the exact amount of such damages. He has to give full particulars of every paisa he claims. The damages should be such as have resulted directly and immediately from the defendant's act, and, as in the ordinary and natural course of things do arise from such act and not remote damages. The plaintiff should not, therefore, claim special (as opposed to general) damages, more than the actual amount of such damages, if any. He can, under certain circumstances, claim



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even greater, i.e., extraordinary damages, if he has suffered any, in case he had given notice to the other party that a breach of the contract would result in such damages to him. It is the date of breach which has to be taken into consideration in assessing the damages and the plaintiff can, therefore, claim damages incurred on that date,

31. As stated supra at the risk of repetition, however, for the sake of continuity in an application filed for rejection of plaint, the averments in the pleadings has to be looked into. The nature of the pleadings and necessity of pleadings on facts and material facts and what constitutes material facts that has to be pleaded in the plaint or should briefly narrated above. With this mind, I shall proceed to analyse the plaint on the point of whether there exists a cause of action and on the point of limitation.

32. After hearing the submissions of the learned Senior counsel Mr.N.R.Elango and on perusal of the plaint averments, I find that as



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pointed out by the learned Senior counsel, the agreement is only oral in nature. The suit is not filed for specific performance and the plaintiff averments, it is not averred as to the fact when the applicant/defendant had promised the plaintiff to complete the subject movie before the Mammannan movie. He could state only in the interview given in the press, for the press question whether which will come first and which will come next. For which the 1st defendant said to have gave a reply that Mamannan movie is the last movie. So the plaintiff assumed for himself that his movie will also be completed before that. For the reason s best known “nothing is whispered” in the plaintiff assumes significance. Even in the “cause of action” claiming, as extracted supra, it was not pleaded. Though the learned counsel for the plaintiff could contend that in the body of the plaintiff, he has averred but not mentioning of the same in the cause of action is not matter. View from any angle, there must be a specific pleadings in respect of point of limitation.

33. According to the plaintiff, the cause of action for the suit arose on 16.07.2018, the period of limitation for the suit for damages is three years



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for which the limitation is barred on 15.07.2021.

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34(a). This Court taking note of the judgment of the Hon'ble Supreme Court during the COVID Pandemic wherein the Hon'ble Supreme Court has extended the period of limitation as 90 days between 15.03.2020 to 28.02.2022 and on a simple mathematical calculation, even after considering the above period of extension, as held by the judicial order by the Hon'ble Supreme Court in view of the COVID Pandemic, the period of limitation ends on 31.05.2022. As per the seal contained in the plaint, the date of filing of the suit is 14.06.2023. The above position makes it clear and hence, I find that the point involved in this application is plea of limitation simpliciter without intervention to any facts much less material facts.

34(b). After perusing the cause of action as narrated in para No.18, I find that the plaintiff has indulged in clever drafting backed by legal acumen. The plaintiff cannot be permitted to bring the suit within the period of limitation by clever drafting which is otherwise barred by



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limitation. This is the consistent view of the Hon'ble Supreme Court. Furthermore, the cause of action, the plea taken by the plaintiff is to create the illusory cause of action so as to overcome the period of limitation. It is to be stated that the trial Court if on meaningful reading and not formal reading of the plaint comes to the conclusion that by clever drafting the plaintiff has created illusion have cause of action, it has to be nip it in the bud and cannot ask the defendant to undergo the ordeal of trial.

35. The learned counsel for the respondent/plaintiff draw my attention to the various whatsapp messages which is said to be the plaint document. After going through the same, I find that they are all self-serving submission of wishes to the first defendant becoming MLA and Minister and the other whatsapp messages are only a self serving statements, to save limitation in an attempt which this Court find that ends in a fatal attempt. By creating the illusory cause of action by the defendant circumvent the provision of the Limitation Act.



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36(a). Since the plaintiff has not filed the suit for specific performance, I am not expressing any view as to the financial capacity to the plaintiff to complete the movie within the limitation period of three years. Since the plaintiff alleged that it is an oral agreement, this Court is not venture into the terms of alleged oral agreement said to have been averred by the plaintiff or by the defendant since the same falls outside the scope of the enquiry in the present petition. Hence, I find that the decision of the Hon'ble Supreme Court in Madanuri Sri Rama Chandra Murthy case as stated supra squarely covers the points raised in this petition and hence, I have no hesitation to come to the conclusion that the suit has been filed after the period of limitation.

36(b). In view of the decision of the Hon'ble Supreme Court in Madanuri Sri Rama Chandra Murthy case and Swamy Atmanand case, the powers under Order VII Rule 11 of CPC can be exercised at any stage of the proceedings. Further more, in view of the discussion in the preceding paragraphs, I find that the plea of limitation raised by the applicant/1st defendant is a “limitation simpliciter” on the facts and



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circumstances of the case and “not mixed question of law” as projected by the plaintiff.

36(c). Accordingly, I have no hesitation to hold that on factual matrix, as detailed supra, it is a point of limitation simpliciter. The material pleadings in as to true cause of action and point of limitation are conspicuously absent in the plaint.

36(d). It remains to be stated that “right to sue” is different from “raising of cause of action”. The Limitation Act does not bar exercises of his right. However, bars right to the remedy after lapse of time stipulated under the Act.

36(e). In the instant case as narrated in the preceding paragraphs, even taking into consideration the COVID Pandemic time extended by the Hon'ble Supreme Court, the period of limitation expires on 31.05.2022. The suit has been filed on 14.06.2023 and hence on the expiry of the limitation period, the claim becomes time-barred and the



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suit cannot be laid on a time-barred claim and hence the suit itself become time-barred suit which cannot be maintained wherein the petitioner/defendant cannot be called upon to undergo ordeal of trial and hence, on the facts narrated above, this Court is of the considered view that the applicant/1st defendant has successfully demonstrated before this Court that the suit claim is barred by limitation and squarely falls under Order VII Rule 11(d) of CPC. As a sequel, this application has to be allowed.

37. Accordingly, this application in A.No.4560 of 2024 is allowed and the plaint in suit C.S.No.109 of 2024 stands rejected and consequently, the suit in C.S.No.109 of 2024 is dismissed and the connected applications, if any, ordered to be closed.

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Neutral Citation : Yes/No
Speaking Order : Yes/No
Internet : Yes/No

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RMT.TEEKAA RAMAN, J.

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