



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 04.06.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.942 of 2025
in
C.S.(Comm Div) No.43 of 2025

M/s.Ocean Lifespaces India Pvt. Ltd
Rep. By its Managing Director,
Mr.Sylvanus King Peter
Having head office at MF-1, Industrial Estate,
CIPET Hostel Road, Guindy,
Chennai-600 032.

.. Applicant /
Defendant

Versus

M/s.VME Precast Products
a registered Partnership Firm
Rep. by its Partner Mr.P.Ramanathan
No.114, Shop No.5, TS Krishna Nagar,
Mogappair East,
Chennai-600 037.

.. Respondent /
Plaintiff

PRAYER: Judge's summons filed under Order XIV Rule 8 of O.S.Rules R/W Order VII Rule 11 (A) & (D) of CPC prayed to reject the plaint in C.S.No.43 of 2025 under Order VII Rule 11(a) of CPC.



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For Applicant / : Mr.V.Prakash, Senior Advocate
Defendant for Ms.K.Jayasudha

For Respondent /: Mr.Jayesh B.Dolia, Senior Advocate
Plaintiff for M/s.Aiyar & Dolia

ORDER

In the suit, the plaintiff seeks specific performance of work order dated 25.04.2023, including by making payment of Rs.1,45,71,203/-, along with interest thereon at 18% per annum. In addition, the plaintiff seeks to restrain the defendant from engaging the services of any third party to carry out the remaining work under work order dated 25.04.2023 and for a declaration that the plaintiff is not liable to make payments to the defendant as per the demands made in communications dated 23.01.2025 and 24.01.2025.

2. By this application, the defendant prays for rejection of the plaint under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (the CPC). Under Order VII Rule 11(a) of the CPC, a plaint is liable to be rejected where it does not disclose a cause of action.



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Therefore, the question to be considered in this application is whether the plaint discloses a cause of action.

3. Mr.V.Prakash, learned senior counsel for the applicant/defendant, submits that the plaint proceeds on the basis that RA Bill - 17 was not paid in full. He also submits that the plaintiff purportedly enclosed RA Bill No.17 as Document No.17. On perusal, he submits that only RA Bill No.16 and not RA Bill No.17 was enclosed. He further submits that the plaintiff submitted a revised proposal by email of 26.12.2024 claiming a net payable of Rs.96.80 lakhs and not the sum of Rs.1,45,71,203/-, which is mentioned in the plaint.

4. The next submission of learned senior counsel is that the contract between the plaintiff and the defendant is determinable in its nature and, therefore, specific performance cannot be granted in respect thereof.



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5. In support of the contention that the plaint is liable to be rejected for non-disclosure of cause of action, learned senior counsel relied on the judgment of the Hon'ble Supreme Court in *Shrawan Kumar Jaipuriyar v. Krishna Nandan Singh and Others*, MANU/SC/1531/2019. In support of the contention that specific performance of a contract, which is determinable in nature, cannot be granted, he relied on the judgment of the Delhi High Court in *GHH Bumi Mining Services Pvt Ltd. v. Hindustran Zinc Ltd.* MANU/DE/4141/2023, particularly paragraphs 24 and 32 thereof. By relying on the judgment of the Hon'ble Supreme Court in *Sushil Kumar Agarwal v. Meenakshi Sadhu and Others*, (2019) 2 SCC 241, particularly paragraphs 25 and 31 thereof, he contended that specific performance of a construction contract may be granted only if the plaintiff satisfies the requirements of Section 14(3)(c) of the Specific Relief Act, 1963.



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6. He concluded his submissions by further pointing out that the relief of declaration that the plaintiff is not liable to make payment to the defendant is pre-mature inasmuch as no proceeding has been initiated by the defendant for such payment. In other words, his contention is that this relief is virtually in the form of an anti-suit injunction.

7. Mr.Jeyesh B. Dolia, learned senior counsel, responded on behalf of the plaintiff. By referring to several paragraphs of the plaint, including paragraphs 14 to 22, he submitted that these paragraphs clearly disclose a cause of action to seek specific performance and to prevent the defendant from engaging a third party. By referring to paragraph 19 of the plaint, he submitted that the amount payable is reflected in the table therein as Rs.158.64 lakhs and that even if the advance available with the plaintiff is adjusted, the outstanding would be in excess of Rs.1 crore.



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8. In support of his contentions, he relied on the judgment of the Hon'ble Supreme Court in *Vinod Infra Developers Ltd. v. Mahaveer Lunia & Others in Civil Appeal No.7109 of 2025*, particularly paragraphs 9.6 and 9.7 thereof, for the principle that the wholesale rejection of a plaint without appreciating the distinct causes of action is untenable. He also relied on paragraph 13 of the judgment of the Division Bench of this Court in *Astral Cables Limited v. The National Small Industries Corporation Limited and Another*, 2011 SCC OnLine Mad 385 (*Astral Cables*), for the proposition that an application for rejection of the plaint is liable to be rejected if the plaint discloses a cause of action and that the Court is not required to take into consideration the defence of the counter party at that juncture.

9. As stated at the outset, the only material question for deciding this application is whether the plaint discloses a cause of action. In order to decide this question, it is necessary to refer to the



material paragraphs of the plaint. Paragraphs 18, 20 and 22 are set out below:

"18. It is submitted that despite communications, including emails exchanged between both the parties, the Defendant failed to issue payment as per the RA. Bill No. 17 to the Plaintiff Firm. It is further pertinently submitted that the Defendant, when confronted why the payment was not released, was attempting to drag on the issue and beat around the bush by stating the "necessary documents" are not produced and intimated certain "unfinished works in their email which was strenuously rebutted by this Plaintiff in their email. In the end of the discussions, the Plaintiff repaid only a meagre sum of Rs. 10,21,544, (Rupees Ten Lakhs Twenty-One Thousand Five Hundred Forty-Four) to the Plaintiff firm, despite the actual quantity of work done is much higher.

20. It is submitted that the Defendant has wrongfully withheld a total payment of Rs. 1,45,71,203/-, representing the balance due for



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fabrication, transportation, and erection works, as well as additional works executed at the Defendant's request. It is submitted that the Plaintiff's performance under the Work Order was marred by delays and impediments attributable to the Defendant, including but not limited to frequent design revisions and lack of timely approvals, non-provision of consistent work fronts for erection activities, Unauthorized usage by the Defendant of the Plaintiff's equipment and tools at the site and withholding of payments for completed works, thereby causing financial strain on the Plaintiff. The documents relied by the Plaintiff would prove that they were diligent to get the work done however the progress was impeded solely by the Defendant.

22. It is submitted that from that on 26.12.2024, the Plaintiff communicated to the Defendant by way of an email [Annex.18] the various payments outstanding on their account which is payable to the Plaintiff and highlighted the problems faced by the Plaintiff due to their inactions. The Plaintiff



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*further reiterated that the scope of the erection work is dependent on the completion of the work on the Defendant's side. However, the Defendant issued a reply mail to that citing frivolous and baseless allegations against the Plaintiff firm and falsely accused them as the reason for the delay towards completion of the project. It is submitted that despite non-payment of the RA Bills, the Defendant insisted on completing the work by the Plaintiff firm and further issued a threatening email dated 27.12.2024 (**Annex.20**) wherein they have threatened the Plaintiff firm that they will terminate the contract, if the Plaintiff does not finish the remaining work. The Plaintiff apprehends that the Defendant may use force against the Plaintiff and bring in a third party to complete the job. If that is done, the Defendant may even find fault with the job already done by the Plaintiff and create a false dispute. It is to be noted that the Plaintiff Firm is in dire need of payment in order for them to proceed forward with the work and is not in a position to proceed*



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forward and complete the work due to paucity of funds."

10. In paragraph 18, the plaintiff has asserted that full payment was not made towards RA Bill No.17. This is expanded in paragraph 20 by stating that the defendant has wrongfully withheld the total payment of Rs.1,45,71,203/- representing the balance due for fabrication, transportation, erection work and additional work. In paragraph 22, the plaintiff refers to the email sent to the defendant and informing the defendant about amounts due and payable. The plaintiff also refers to the threatening email dated 27.12.2024 stating that the defendant would terminate the contract. Thereafter, the plaintiff states that it is apprehended that the defendant may engage the services of a third party to complete the balance work. On this basis, the suit claim for specific performance and injunctive relief was made.



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11. Apart from contending that R.A. Bill No.17 is not payable, learned senior counsel for the applicant/defendant contended that the contract is determinable in its nature and that, therefore, specific performance should not be granted. These contentions are based on the misconception that the plaintiff is required to establish likelihood of success at the rejection of plaint stage. Whether the contract is determinable and, if so, whether it is determinable in nature is a matter to be examined either in course of final disposal or while considering an application for summary judgment, if filed. This aspect cannot be examined at this juncture. For such reason, the judgment of the Hon'ble Supreme Court in *Sushil Kumar Agarwal* does not advance the cause of the applicant/defendant.

12. As held by the Division Bench of this Court in *Astral Cables*, while considering an application for rejection of the plaint, it is not necessary to examine whether the plaintiff would succeed in the suit



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claim by establishing all elements of the cause of action. It is sufficient that the averments in the plaint disclose a cause of action.

In my view, the averments in the plaint, including those in the paragraphs extracted above, disclose a cause of action. Whether the plaintiff would succeed in the suit is a distinct matter not germane for present purposes.

13. For reasons aforesaid, I conclude that this application cannot be sustained since the plaint discloses a cause of action. Therefore, the application is dismissed without any order as to costs.

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SENTHILKUMAR RAMAMOORTHY J.

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