



Appeal(CAD) No.25 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2025

CORAM

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Appeal(CAD) No.25 of 2023
and CMP No.5521 of 2025

1.K.Vaidyalingam
2.V.Thamilarasi
3.V.Sudhakar
4.K.Subramani

Appellants

Vs.

1.S.K.Ganesan
2.G.Chitra

Respondents

PRAYER: Appeal filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code and Section 13(1A) of Commercial Court Act, 2015, to set aside the fair and final order dated 20.09.2023 made in I.A.No.2 of 2023 in C.O.S.No.9 of 2023 on the file of District Judge, Commercial Court, Salem.

For Appellants:

Mr.P.S.Raman, Senior Counsel
for Mr.Kandhan Duraisami

For Respondents:

Mr.R.Saravanakumar



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JUDGMENT

(Delivered by the Hon'ble Chief Justice)

This appeal impugns an order dated 20.09.2023 passed by the District Judge, Commercial Court, Salem, by which, the plaint came to be rejected under Order 7 Rule 11 of the Code of Civil Procedure (for short, 'the Code')

2. This is one other case where siblings are at war with each other over money.

3. Appellants herein were plaintiffs. Respondents herein were defendants. Appellants and respondents are siblings.

4. Pursuant to a Memorandum of Understanding dated 20.07.2011 entered into between the plaintiffs and defendants and certain others from the family, plaintiffs were to pay a sum of Rs.16 Crores as consideration towards the transfer of shares and assets to be made by defendants and others, including profits, goodwill, etc. This amount was to be paid in three tranches, Rs.3 Crores on 03.08.2011, Rs.3 Crores on 20.09.2011 and Rs.10



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Crores on or before March, 2012.

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5. The Memorandum of Understanding also provided for interest at the rate of 13.5% per annum, if the amounts were not paid within the stipulated time.

6. Admittedly, the first two tranches of Rs.3 Crores plus Rs.3 Crores were paid. The balance of Rs.10 Crores was not paid. This led to dispute between the parties. In view of the dispute that arose between the parties, first plaintiff invoked arbitration as per the Memorandum of Understanding. Defendants filed a petition before the National Company Law Tribunal (NCLT) on 24.08.2012 under Sections 397, 398 and 402 of the Companies Act. Subsequently, two other cases were filed. Petitions are also mentioned in the plaint. As defendants failed to participate in the arbitral proceedings, first plaintiff filed applications before NCLT under Section 8 of the Arbitration and Conciliation Act, 1996 seeking reference of all disputes to arbitration. The NCLT rejected the Section 8 applications vide order dated 31.08.2017 stating that the subject matter of the company petitions was not covered by the Memorandum of Understanding and are



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independent of the Memorandum of Understanding. This order was challenged before National Company Law Appellate Tribunal (NCLAT), New Delhi, which confirmed the order of NCLT vide order dated 28.03.2018. First plaintiff thereafter, filed a Special Leave Petition before the Hon'ble Supreme Court of India and the Apex Court confirmed the orders passed by NCLT and NCLAT vide order dated 12.10.2018.

7. Thereafter, allegations and counter allegations were exchanged, by communications dated 01.04.2019 and 17.04.2019 and finally suit came to be lodged on 09.01.2020.

8. The facts narrated above have been averred in the plaint. The cause of action clause in paragraph 24 of the plaint reads as under:

"That the Cause of Action for the suit arouse on 20.07.2011, when the plaintiffs and defendants entered into a MoU. In pursuance of that when the plaintiffs paid a total sum of Rs.6,00,00,000.00 on 28.07.2011, 29.07.2011 and 10.07.2011 and the Defendants on 10.11.2011, unilaterally cancelled the MoU dated 20.07.2011 and on subsequent filing company petitions with National Company Law Tribunal leading to the effective Cause of Action 1st arouse on 12.10.2018, when the Hon'ble Supreme Court passed its common



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order in CA No.10213/2018 CA No.10214/2018 & CA No.10215/2018. It is submitted that the period of limitation shall be calculated from the date on which the Hon'ble Supreme Court finally upheld the cancellation of MoU (12.10.2018), subsequently, on 01.04.2019, when the plaintiffs sent a notice of demand to the defendant and 1st defendant sent a reply on 17.04.2019 with false averments and also denying the above said payments and on the subsequent date of oral demand made by the plaintiffs at Salem, within this jurisdiction of the Hon'ble Court"

9. Defendants filed an application under Order 7 Rule 11 of the Code, for rejection of the plaint. The application was allowed by the impugned order dated 20.09.2023. The Trial Court has effectively decided a mixed question of law and fact in the application under Order 7 Rule 11 of the Code by observing that the time lost in the proceedings in NCLT, NCLAT and the Apex Court cannot be excluded. In fact, the Trial Court, has, in paragraphs Nos.14, 16, 17 and 18 of the impugned order, gone beyond the scope of Order 7 Rule 11 of the Code. Strangely, in paragraph 17, the Trial Court states that in ***M.P. Steel Corporation v. Commissioner of Central Excise***¹ it was held that the absence of a formal plea regarding exclusion of period under Section 14 of the Limitation Act is not fatal and in paragraph

¹ (2015) 7 SCC 58



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18, the Trial Court states that there is no plea regarding the exclusion of period under Section 14 of the Limitation Act and the plaint is bereft of any of these details and there is no formal plea that plaintiffs actually pray for the exclusion of period under Section 14 of the Limitation Act.

10. It is quite clear that this is a case where mixed question of law and fact are involved. In the old case of the Apex Court in ***SS Khanna vs F.J.Dillon²***, the Apex Court has held that jurisdiction to try issues of law apart from the issues of fact may be exercised by the Court if the whole suit may be disposed of on the issue of law alone, but the Code confers no jurisdiction upon the Court to try a suit on the mixed issue of law and facts as preliminary issues.

11. In ***Narne Rama Murthy v. Ravula Somasundaram³***, the Court held that in cases where the question of limitation is a mixed question of fact and law and suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation, which have been pleaded

² AIR 1964 SC 497

³ 2005(6)SCC 614



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have to be proved, on issues raised and decided on evidence.

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12. It is not that a plaint cannot be rejected as barred by limitation under Order 7 Rule 11(d) of the Code. It is permissible to do so mainly in a case where the plaint averments itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

13. It is also settled law that under Order 7 Rule 11 of the Code, only pleadings of plaintiff form basis of decision of Court but not rebuttal made by defendants or any material produced by defendants.

14. The Apex Court in ***Shakti Bhog Food Industries Limited v. Central Bank of India and Another***⁴ held that Court's duty is to scrutinize averments contained in the plaint as a whole on the face value to ascertain bar of limitation and take decision on the application. If averment shows that suit is barred by law of limitation or does not disclose any cause of action, Court can exercise power under Order 7 Rule 11 of the Code to

⁴ 2020 (17) SCC 260



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reject the plaint. The Court also went on to hold that where mixed question of law and fact arise, the question of rejecting the plaint under Order 7 Rule 11 of the Code would not arise. The Court held that the relevant facts which need to be looked into for deciding an application under Order 7 Rule 11 of the Code are the averments of the plaint only. If on an entire meaningful reading of the plaint, it is found that the suit is not manifestly vexatious or meritless, then the Court should not reject the plaint.

15. Having read the plaint in its entirety, in our view, the gravamen of the case is that defendants had unilaterally terminated the Memorandum of Understanding dated 20.07.2011, after plaintiffs paid Rs.6 Crores. Thereafter, defendants filed applications under the Companies Act before the NCLT and plaintiffs filed applications before the NCLT under Section 8 of the Arbitration and Conciliation Act, 1996. Plaintiffs were finally held to have approached the wrong forum when the Apex Court passed the order on 12.10.2018. There are averments to that effect in the plaint. Whether this time has to be excluded, in our view, it can be decided only at the time of trial.



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16. After the appeal was heard for some time, Shri Saravanakumar, on instructions from Shri Ganesan, who is present in Court, states that keeping open the rights and contentions of defendants, who are respondents in this appeal, including the issue of limitation, the impugned order be quashed and set aside.

17. In the circumstances, the impugned order is set aside. The Trial Court shall proceed with the suit expeditiously since it is a family dispute and we are informed that the main contesting parties are in the late 60's or early 70's.

18. Appeal is disposed of accordingly. Suit is restored to file and the Trial Court then would proceed expeditiously.

19. Counsel for defendants states that written statement, if not yet filed, will be filed within four weeks from today.

20. The Trial Court shall, within six weeks, list the suit for directions/case management hearing.



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WEB COPY There shall be no order as to costs. Consequently, interim application stands closed.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

24.03.2025

Index : Yes
NC : Yes
mrn

To:

- 1.The District Judge,
Commercial Court,
Salem.
- 2.The Sub Assistant Registrar
Original Side, High Court
Madras.



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