

Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 35100 OF 2024**

1. L&T Asian Realty Project LLP
(now known as Elevated Avenue Realty LLP)
A Limited Liability Partnership Firm
Registered under Limited Liability
Partnership Act, having its office at
4th Floor, The Metropolitan, E Block,
Bandra Kurla Complex, Bandra (East)
Mumbai 400 051.
2. L&T Realty Limited
(now known as L&T Realty Developers Limited)
A Company Registered under
the Companies Act, 1956, having
its registered office at L&T House,
Ballard Estate, Narottam Morarjee
Marg, Mumbai 400 001. ...Applicants
(Org. Defendant Nos. 11 & 12)

**WITH
INTERIM APPLICATION NO. 7746 OF 2025**

Shiv Infra Vision Pvt. Ltd.
A Company incorporated under
the Indian Companies Act, 1956
and having its office at 1st Floor, R.C.
House, The Grand Residency, New

Sheetal Cinema, L.B.S. Marg, Kurla
(West), Mumbai – 400 070.

...Applicant
(Org. defendant No.4)

**WITH
INTERIM APPLICATION (L) No. 22392 OF 2024**

Chief Executive Officer
Slum Rehabilitation Authority
An Authority constituted under
the provisions of Maharashtra
Slum Areas (I,C & R) Act 1971
and having its office address at
Administrative Building, Prof.
Anand Kanekar Marg, Bandra (E),
Mumbai – 400 051.

...Applicant
(Org. Defendant no.3)

**WITH
INTERIM APPLICATION NO. 1925 OF 2025**

Portsmouth Buildcon Pvt. Ltd.
A Company incorporated under the
Indian Companies Act, 2013 and
having its registered office at Adani
Corporate House, Shantigram Near
Vaishno Devi Circle, S. G. Highway,
Khodiyar, Ahmadabad 382421, Gujrat
and Corporate office at 601, Hall Mark
Business Plaza, Opp. Gurunanak Hospital,
Bandra (East), Mumbai 400 051.

...Applicant
(Org. Defendant No. 19)

**IN
COMMERCIAL SUIT NO. 21 OF 2024**

1. K. S. Chamankar Enterprises,
A partnership firm, registered under
the partnership Act, 1932, having its
office at A-702, Krishna Galaxy, Datta
Mandir Road, Near Patha College,
Vakola, Santacruz (East), Mumbai 400 055

2. Krishna Shantaram Chamankar
Age 63 Yrs, of Mumbai, Indian
inhabitant, partner of M/s. K. S.
Chamankar Enterprises, having
his residence at A/1001, Aditi CHS,
Opp. Versova Tel. Exchange, S.V.P.
Nagar, MHADA, Four Bungalows, Andheri
(West), Mumbai 400 053. ...Plaintiffs

VERSUS

1. The State of Maharashtra
(To be served through Govt. Pleader
High Court, Bombay.)

2. Hon'ble Additional Chief Secretary
(Housing) and Chairman,
High Power Committee, SRA,
Administrative Building, Prof. Anant
Kanekar Marg, Bandra (East), Mumbai 400 051.

3. Chief Executive Officer, Slum Rehabilitation Authority,
An Authority Constituted under the provisions of the Maharashtra Slum Areas (I.C. & R.) Act, 1971, and having its office address at Administrative Building Prof. Anant Kanekar Marg, Bandra (East), Mumbai 400 051.
4. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the Indian Companies Act, 1956 and having its office at 1st Floor, R.C. House, The Grand Residency, New Sheetal Cinema, L.B.S. Marg, Kurla (West), Mumbai – 400 070.
5. Prithvijeet Rajaram Chavan
Age 54 Yrs, Occ. Business, Mumbai, Indian Inhabitant, Director of Shiv Infra Vision Pvt. Ltd. Having its office at 1st Floor, R.C. House, The Grand Residency, New Sheetal Cinema, L.B.S. Marg, Kurla (West), Mumbai – 400 070.
6. Rani Rajaram Chavan
Age 70 Yrs, Occ. Business, Mumbai, Indian Inhabitant, Director of

Shiv Infra Vision Pvt. Ltd. Having its office at 1st Floor, R.C. House, The Grand Residency, New Sheetal Cinema, L.B.S. Marg, Kurla (West), Mumbai – 400 070.

7. Prime Builders and Developers
A partnership firm, registered under the Indian Partnership Act, 1932, having its office at 1307, Lotus Trade Centre, New Link Road, Andheri (West), Mumbai 400 053.
8. Shailesh Swarupchand Mehta
Age 62 Yrs, Occ. Business
Mumbai, Indian inhabitant, partner of Prime builders and Developers, having its office at 1307, Lotus Trade Centre New Link Road, Andheri (West), Mumbai 400 053, and having residential address at 1st Floor, Sharnam, 45, J.V.P.D. Scheme, Road No. 11, Vile Parle (West), Mumbai 400 049.
9. Dhanapat Parshuram Seth
Age 65 Yrs, Occ. Business,
Mumbai, Indian inhabitant, partner of Prime Builders and Developers, having its address at C/o. Enso Group, 901, Links

Buildings, Corner of 14th Road and Khar
Pali Road, Khar (West), Mumbai 400 052.

10. Seth Discretionary Family Trust
305, Dol-Bin-Shir, 69/71, Janmbhoomi
Marg, Fort Mumbai 400001.
11. L&T Asian Realty Project LLP
A Limited Liability Partnership Firm
Registered under Limited Liability
Partnership Act, having its office at
10th Floor, Tower-A, L & T Business Park
Gat No.5, Saki Vihar Road, Powai,
Mumbai 400 072.
12. L&T Realty Limited
A Company Registered under
the Companies Act, 1956, having
its registered office at L&T House,
Ballard Estate, Narottam Morarjee
Marg, Mumbai 400 001.
13. Think Tower Developers Pvt. Ltd.
(formerly known as LTR SSM Pvt. Ltd.),
a Company incorporated under the Indian
Companies Act, 1956 and its office at L & T
House, Ballard Estate, Narottam Morarjee
Marg, Mumbai 400001.

14. Saourabh Shailesh Mehta
Age 36 Yrs, Occ. Business,
Mumbai, Indian inhabitant, Director of
LTR SSM Pvt. Ltd. And Partner of SSM
Realty LLP, having residential address at
101, 1st Floor, Sharnam, 45, J.V.P.D. Scheme,
Road No. 11, Vile Parle (West), Mumbai
400 049.
15. Sudhir Gururaj Kulkarni
Age 67 Yrs, Occ. Business,
Mumbai, Indian inhabitant, a Director of
LTR SSM Pvt. Ltd. Having its office at L
& T House, Ballard Estate, Narottam Morarjee
Marg, Mumbai 400001.
16. SSM Realty LLP
A Limited Liability Partnership and having
its registered office at Plot 81, GIDC Colony,
Umbergaon, Valsad 396171, Gujrat.
17. Virtual Construction Pvt. Ltd.
A Company incorporated under there
Indian Companies Act, 1956 and
having its registered office at C-102,
Parijat Apartment, Royal Garden, Daman
Road, Chala, Vapi (West) Vapi, Valsad,
Gujrat 396191.

18. Sangeeta Shailesh Mehta
Age 56 Yrs, Occ. Business,
of Mumbai, Indian Inhabitant, Designed
Partner of SSM Realty LLP, having
residential address at 101, 1st Floor,
Sharnam, 45, J.V.P.D. Scheme Road No. 11,
Vile Parle (West), Mumbai 400 049.

19. Portsmouth Buildcon Pvt. Ltd.
A Company incorporated under the
Indian Companies Act, 2013 and
having its registered office at Adani
Corporate House, Shantigram Near
Vaishno Devi Circle, S. G. Highway,
Khodiyar, Ahmadabad 382421, Gujrat
and Corporate office at 601, Hall Mark
Business Plaza, Opp. Gurunanak Hospital,
Bandra (East), Mumbai 400 051.

20. Crest Logistics and Engineering Private
Limited. (Formerly Knows as REL Utilities
Engineering Pvt. Ltd.)
CIN : U45200MH2003PTC140946, a
Company incorporated under the
provisions of the companies Act, 1956,
and having its registered office at Raheja
point, Wing-B, 7th Floor, Behru Road, Vakola
Santacruz (East), Mumbai 400 055.

21. ~~Reliance Captial Limited~~
~~CIN : L65910MH1986PLC165645,~~
~~A Company registered under the~~
~~Companies Act, 1956, having its registered~~
~~office at Reliance Centre, 6th Floor, Near~~
~~Prabhat Colony, Santaacruz (East), Mumbai~~
~~400 055.~~
New Address:
~~Trade World, B-Wing, 7th Floor, Kamla Mills~~
~~Compound, Senapati Bapat Marg,~~
~~Lower Parel, Mumbai, Mumbai City~~
~~MH 400013 In.~~ **(Deleted)**
22. Sunshine Builders and Developers
registered under the Indian Partnership
Act, 1932, and having its registered office
at A-501, Kotia Nirman, Opp. Laxmi
Industrial Estate, New Andheri Link Road,
Andheri (W), Mumbai 400 053.
and also having address at :
1307, Lotus Trade Centre, New Link Road,
Andheri (W), Mumbai 400 023.
23. Rakesh Omprakash Seth
Age 61 Yrs, Occ : Business,
Partner of Sunshine Builders and
Developers, having residential
E-2, Joshi Apartments, 290, S. V. Road,
Bandra (West), Mumbai 400 051. ...Defendants

Mr. Rohan Savant, Mr. Ish Jain, Mr. Vinayak Siraskar, Mr. Duj Jain, Mr. Soham Bhagwat, Mr. Agam Mehta, Mr. Aman Saraf i/b. Kiran Jain & Co for the plaintiff.

Ms. Aparna D. Vhatkar for defendant no.2.

Mr. Yashesh Kamdar, Mr. Brian Noronha, Ms. Amisha Upadhyay i/b. India Law LLP for defendant nos. 11 and 12.

Mr. Simil Purohit, Senior Advocate a/w. Mr. Shrikant Seegarla, Ms. Shraddha Achliya i/b. Law Associates for defendant no.4 to 6.

Mr. Pravin Samdani, Senior Advocate, Mr. Aditya Shiralkar, Ms. Disha Shetty and Ms. Jyoti Tated i/b. Wadia Gandhi and Co for defendant no.19.

Mr. Dushyant Purekar, Mr. Rajat Dedhia, Ms. Esther Mathew for defendant nos. 7, 10 and 22.

Mr. Mayur Khandeparkar, Mr. Jagdish G. Aradwad (Reddy) and Mr. Abhijit Patil for applicant in IA-6341/2025 and for defendant no.3 in SRA.

Mr. Himanshu Takke, AGP for defendant no.1 State.

Ms. Priyanka Fadia, Mr. Shashank Fadia for defendant nos. 14, 16, 17 and 18.

CORAM : GAURI GODSE J

RESERVED ON: 24th FEBRUARY 2026

PRONOUNCED ON: 8th JUNE 2026

JUDGMENT:

1. These applications are filed by defendant nos. 11 and

12, defendant nos. 4, 3 and 19, respectively, under Order VII Rule 11 (a) and (d) of the Civil Procedure Code, 1908 (“CPC”) for rejection of the plaint. The suit is filed for a declaration that the plaintiffs were entitled to all the benefits *in lieu* of the construction carried out by them under the slum rehabilitation scheme, and, in the alternative, prayed for the handing over of the constructed area. The plaintiffs also prayed for monetary compensation in lieu of the construction carried out and prayed for damages in terms of the construction carried out and the cost incurred by them. The plaintiffs have bifurcated their prayers regarding their entitlement, based on the original agreement appointing them as the developer. According to the plaintiffs, they are subjected to and victimised by fraud and conspiracy by the defendants and that they are illegally removed as the developer in the slum rehabilitation schemes and a blacklisted developer is appointed.

2. The applications are filed on the grounds that there is no cause of action to file the suit and the suit is barred for non-compliance with the mandatory provision under Section 12A of the Commercial Courts Act, 2015 (“the said Act”) and

the suit is barred under Section 42 of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). Additionally, defendant nos. 11 and 12 have raised an objection of bar under Order II Rule 2 of the CPC.

3. The plaintiffs were appointed as developers for three slum societies. According to the plaintiffs, in view of the defendants' *inter se* conspiracy and fraud, the plaintiffs were removed as the developer, and defendant no. 4 was appointed as the new developer. The plaintiffs have alleged fraud against the directors of defendant no.4 and the officers of the slum authorities. It is alleged that these defendants have fraudulently and with malafide intention colluded to remove the plaintiffs as the developer and illegally appointed defendant no.4 to substitute the plaintiffs. Defendant no.1 is the State Government, defendant no.2 is the chairman of the High Power Committee constituted by the government to enquire into complaints regarding slum, rehabilitation schemes and defendant no. 3 is the Chief Executive Officer ("CEO") of the Slum Rehabilitation Authority ("SRA"). The remaining defendants are private parties and companies

involved in the development of the slum rehabilitation scheme in question.

SUBMISSIONS ON BEHALF OF DEFENDANT NO.4

4. Learned senior counsel for defendant no.4 submitted that pursuant to the pleadings in the plaint, the cause of action to file the suit arose on 3rd October 2018. Hence, the suit had to be filed within three years, i.e., before 2nd October 2021. The exemption period due to Covid-19 restrictions would not apply, as the limitation period expired between 15th March 2020 and 28th February 2022. Hence, the plaintiffs were entitled to claim the benefit of only 90 days from 1st March 2022. Hence, the suit should have been filed before 30th May 2022. Therefore, the suit filed on 11th September 2023 is barred by limitation.

5. On the point of non-compliance with Section 12A of the said Act, learned senior counsel for defendant no.4 submitted that in view of the pleadings in paragraph 44 of the plaint, the plaintiffs are not entitled to seek any benefit on the ground that the provisions of Section 12A of the said Act would not apply. To support his submissions on the applicability of bar under Section 12A of the said Act, learned counsel for

defendant no.4 relied upon the decisions in ***Deepak Raheja Vs. Ganga Tao Vazirani¹, Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited², Dhanbad Fuels Pvt. Ltd. Vs. Union of India and Anr.³ and Yamini Manohar Vs. T.K.D. Keerthi⁴***

6. Learned counsel for defendant no.4 submitted that the plaintiffs have already availed of the remedy under Section 35 of the Slum Act by filing an appeal challenging the notice of termination issued by the SRA. Hence, after availing the remedy of appeal under the Slum Act, the plaintiffs are not entitled to seek relief based on the termination, which is upheld by the appellate authority under the Slum Act. Hence, civil courts' jurisdiction is barred from entertaining the suit in view of Section 42 of the Slum Act.

7. According to the learned counsel for defendant no. 4, all the prayers in the suit relate to the alleged illegal termination of the plaintiffs as the developer of the slum projects. Once the issue is dealt with in the appeal under the Slum Act, the plaintiffs are not entitled to seek mandatory

¹ 2021 SCC Online Bom 3124

² (2022) 10 SCC 1

³ (2025) 9 SCC 424

⁴ (2024) 5 SCC 815

relief on the ground that the termination is illegal. The prayers in the suit are based on the allegations of conspiracy and fraud. However, no particulars of fraud are pleaded. Hence, the prayers for mandatory relief based on allegations of fraud would not constitute a meaningful cause of action for filing the suit. Hence, the plaint is also liable to be rejected on the ground that there is no meaningful cause of action to file the suit.

8. Learned senior counsel for defendant no.4 refers to the pleadings in the plaint regarding the termination notice issued to plaintiff no.1 under Section 13(3) of the Slum Act. As per the order dated 19th June 2017 issued under the Slum Act, the plaintiffs were terminated, and the subsequent developer was appointed. While appointing the subsequent developer, the expenditure incurred by the first developer is verified while deciding the notice of termination. After following due process, the valuer appointed by the SRA ascertained that Rs. 25 Crores would be paid by defendant no. 4 to the plaintiffs for the costs incurred by the plaintiffs before the termination. The valuation report is not acceptable to the plaintiffs. However, if the plaintiffs are aggrieved by the

computation or quantum of compensation, the remedy is to file an appeal under the Slum Act. Hence, based on the illegal termination or inadequate compensation, the plaintiffs are not entitled to file this suit by making baseless and vague allegations of fraud.

9. The particulars of fraud are required to be pleaded under Order VI Rule 4 of the CPC, but are absent from the plaint. Hence, for want of any sufficient pleadings of fraud, the bar under Section 42 of the Slum Act would apply. Only by making vague allegations of fraud, the plaintiffs have sought to contend that there is cause of action to seek relief on the ground of illegal termination of the plaintiffs and alleged fraudulent appointment of defendant no.4. However, only to bring the suit within limitation and to get away with the bar under Section 42, an illusory cause of action is pleaded. Hence, in view of the well-settled legal principles by the Apex Court in the decision of **C. S. Ramaswamy Vs. V. K. Senthil and Ors**⁵, merely stating the fraud cannot be termed as a meaningful cause of action to seek relief from the civil court. Learned counsel for defendant no.4 relied upon the decision of the Apex Court in **Dahiben Vs. Arvindbhai Kalyanji**

⁵ 2022 SCC OnLine SC 1330

Bhanusali (Gajra) Dead Through Legal Representatives and Ors⁶ to support his submissions that when the plaint discloses an illusory cause of action created by way of clever drafting, the plaint is liable to be rejected at the threshold.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 19

10. In an attempt to get over the bar under Section 42 of the Slum Act, the plaintiffs have made vague allegations of fraud without pleading material particulars. There is a clear distinction between malice in law and malice in fact. The present case is of purported fraud in fact. Hence, in the absence of any material particulars as required under Order VI Rule 4 of the CPC, the vague allegations of fraud cannot be a ground to maintain the suit. To support his submissions, learned senior counsel for defendant no. 19 relied upon the Apex Court's decision in ***Electrosteel Castings Limited Vs UV Asset Reconstruction Company Ltd.⁷*** and ***C. S. Ramaswamy***. The reliefs in the suit are covered under the provisions of the Slum Act as applicable to the slum rehabilitation schemes. Hence, the SRA authorities under the Slum Act are fully competent to adjudicate and grant the

⁶ (2020) 7 SCC 366

⁷ (2022) 2 SCC 573

reliefs as claimed in the suit. Hence, the plaint is liable to be rejected, as barred under Section 42 of the Slum Act.

11. The plaint is also liable to be rejected for the lack of a meaningful cause of action pleaded by the plaintiffs. To support his submissions, learned senior counsel for defendant no. 19 relied upon the Apex Court's decision in ***Correspondence RBANMS Educational Institution Vs B. Gunashekhar***⁸. The plaint is also liable to be rejected as barred by limitation. Considering the cause of action and the nature of reliefs claimed in the suit based on a wrongful act, causing an injury, the suit would be bad by limitation in view of Section 23 of the Limitation Act. To support his submissions, learned senior counsel for defendant no. 19 relied upon the decision of the Apex Court in ***Balakrishna Pujari Waghmare Vs Shree Dnyaneshwar Maharaj Sansthan***⁹. The exemption granted by the Apex Court during the COVID-19 pandemic would not be applicable in the present case. When the period of limitation is expiring within the excluded period, the plaintiffs would get only 90 days extension. Hence, the plaint must be rejected at the threshold on the ground that the suit is barred by the law of

⁸ 2025 SCC OnLine SC 793

⁹ 1959 SCC OnLine SC 68

limitation. Hence, in view of the legal principles settled by the Apex Court in ***Dahiben*** the plaint is liable to be rejected at the threshold.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 3

12. On 9th October 2018, defendant no. 4 was selected as the new developer. The Order passed by the Apex Court is dated 12th April 2019. The plaintiffs have pleaded a cause of action of 3rd October 2018 as per paragraph 42 of the plaint. The report for the letter of intent (LOI) is dated 15th October 2019, the date it was signed by the CEO of SRA. This LOI was a revised letter of intent. The substituted Section 3B of the amended Slum Act is applicable to the slum rehabilitation schemes. Hence, in view of the remedy available under Sections 34A and 34B read with 35, there would be a bar to the present suit in view of Section 42 of the Slum Act. To support his submissions on the bar of civil court jurisdiction, learned counsel for defendant no. 3 relied upon the decision of this court, in the case of ***New Janta SRA CHS Vs State of Maharashtra and others***¹⁰.

13. The prayer clause (g) in the present suit pertains to the

¹⁰ WP No. 2349 of 2018 Dt. 26/09/2019

powers exercised by the authorities under the Slum Act. None of the prayers in the suit challenges the orders of the Appellate Grievance Redressal Committee (“AGRC”). Therefore, the CEO’s order stands merged with the AGRC order. Hence, the plaint must be rejected in view of the bar under Section 42 of the Slum Act. To support his submissions, learned counsel for defendant no. 3 relied upon the decision of the Apex Court in ***Competent Authority, Calcutta Vs David Mantosh and others***¹¹.

SUBMISSIONS ON BEHALF OF DEFENDANT NOS. 11 AND 12

14. Learned counsel for defendant nos. 11 and 12 submitted that the plaintiffs have referred to the entire written statement dated 27th July 2021 filed by the plaintiffs in Commercial Suit No. 971 of 2019 filed by defendant nos. 11 and 12. The entire pleadings in the counterclaim are relied upon by the plaintiffs in the present suit. Hence, the copy of the counterclaim, though not annexed to the plaint, can be considered and treated as part of the plaint of this suit. For the purpose of objection of the bar under Order II Rule 2 of the CPC, the counterclaim of the plaintiffs in the suit filed by

¹¹ (2020) 12 SCC 542

defendant nos. 11 and 12 needs to be compared with the plaint in the present suit.

15. According to the learned counsel for defendant nos. 11 and 12, the frame of the plaint in the present suit and the counterclaim and the entire cause of action as pleaded in the counterclaim would reveal that the cause of action pleaded in the present suit is similar. Hence, filing of this suit is an attempt on the part of the plaintiffs to characterise the cause of action in the counterclaim as one based on breach of the contract, while the cause of action in the present suit is characterised as one based on fraud. However, the facts pleaded in the counterclaim and the present suit are the same. Thus, based on the cause of action pleaded in the counterclaim, it is clear that the suit would be barred by limitation as well as barred in view of Order II Rule 2 of the CPC.

16. To support his submissions that the bar under Order II Rule 2 of the CPC can be considered at the stage of Order VII Rule 11 of the CPC, learned counsel for defendant nos. 11 and 12 has relied upon the decision of the Apex Court in the cases of ***Virgo Industries Pvt Ltd Vs Venturetech***

***Solutions Pvt. Ltd.¹², Cuddalore Powergen Corporation
Vs Chemplast Cuddalore Vinyls Limited¹³ and Vurimi
Pullarao Vs Vemari Vyankata Radharani¹⁴.***

17. On the ground of rejection of the plaint for non-compliance with the mandatory requirement under Section 12A of the said Act, learned counsel for defendants nos. 11 and 12 submitted that, on plain reading of the plaint, it is clear that an illusory relief has been claimed only to wriggle out of the mandatory requirement under Section 12A. Hence, in view of the well-settled legal principles in the decisions of ***Patil Automation, Deepak Raheja, Yamini Manohar and Dhanbad Fules Pvt. Ltd.***, the plaint is liable to be rejected in view of the bar under Section 12A of the said Act. Learned counsel for defendant nos. 11 and 12 also relied upon the decision of the Apex Court in ***Novenco Building and Industry A/s Vs. Xero Energy Engineering Solutions Pvt. Ltd. And Anr¹⁵***.

18. Learned counsel for defendant nos. 11 and 12, submitted that no urgent interim relief is contemplated in the

¹² (2013) 1 SCC 625

¹³ 2025 SCC OnLine SC 82

¹⁴ (2020) 14 SCC 110

¹⁵ 2025 SCC OnLine SC 2278

suit seeking monetary relief on the ground of fraud. Hence, the plaint is liable to be rejected in view of the bar under Section 12A of the said Act. To support the submission of rejection of the plaint on the ground that it is barred by limitation, it was submitted that the exclusion claimed by the plaintiffs on the ground of the decision of the Apex Court granting exemption due to the Covid-19 pandemic period would not apply in the present case. The suit is filed after 5 years from the real cause of action. The suit has been instituted on 14th September 2023 based on a cause of action of 2018. Hence, the suit is clearly barred by limitation.

19. Learned counsel for defendant nos. 11 and 12 also claimed rejection of the plaint on the ground of bar under Section 42 of the Slum Act on the same grounds argued on behalf of the above-referred defendants. So far as the rejection of the plaint only qua defendant nos. 11 and 12 on the ground of Order II Rule 2 of the CPC is concerned, he submitted that it is a well-established legal principle that the plaint as a whole can be rejected qua a particular defendant if no cause of action is pleaded against the said defendant. To support his submissions, learned counsel for defendant

no.11 and 12 relied upon the decisions in the case of ***Church of Christ Charitable Trust & Educational Charitable Soc., Vs. Poonnimman Educational Trust***¹⁶, ***Roop Lal Sathi Vs. Nachhattar Singh Gill***¹⁷ and the three-judge bench decision of the Apex Court in ***D. Ramchandran Vs. R. V. Janakiraman and Ors***¹⁸. He submits that the said decision would not dilute or render the decision in the ***Church of Christ*** as *per incuriam*. The view taken by the Apex Court in ***Church of Christ*** in holding that the plaint can be rejected as a whole would squarely apply to the facts of the present case qua defendant nos. 11 and 12.

20. To support his submissions that the decisions of the Apex Court in ***Sejal Glass Limited Vs. Navilan Merchants Private Ltd***¹⁹ and ***Madhav Prasad Aggarwal and Anr Vs. Axis Bank Limited and Anr***²⁰, would not apply, the learned counsel for defendant nos. 11 and 12 relied upon the decision of this Hon'ble Court in ***Sheela Ram Vidhani and Anr. Vs. S. K. Trading Company and Ors***²¹ holding that the decision in ***Church of Christ*** prior in time is binding and the

¹⁶ (2012) 8 SCC 706

¹⁷ (1982) 3 SCC 487

¹⁸ (1999) 3 SCC 267

¹⁹ (2018) 11 SCC 780

²⁰ (2019) 7 SCC 158

²¹ (2022) 10 SCC 1

ratio decidendi in the subsequent two decisions were irreconcilable.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

21. Learned counsel for the plaintiffs submitted that the plaint contains substantive pleadings that give particulars of the allegations of fraud against each defendant. He submits that in view of the reliefs claimed on the ground of fraud, the bar under Section 42 of the Slum Act would not apply. The nature of reliefs claimed in the suit can be tried only by the civil court in view of Section 9 of the CPC, and the civil court's jurisdiction is not excluded by Section 42 of the Slum Act. To support his submissions, learned counsel for the plaintiffs relied upon the decisions of this court in ***Om Shree Sai Developers Vs State of Maharashtra***²² and ***Qari Mohammed Zakir Hussain Vs Municipal Corporation of Greater Mumbai***²³.

22. Learned counsel for the plaintiffs relied upon the relevant pleadings in the plaint to contend that the cause of action arose on 3rd October 2018. The three-year period to seek a declaration would therefore end on 3rd October 2021.

²² 2010 (3) Mh.L.J. 586

²³ 2001 SCC OnLine BOM 871

The suit was filed on 11th September 2023 on the ground that, in view of the exemption of limitation period granted by the Apex Court during the Covid-19 Pandemic, the three-year period would end on 18th September 2023. He, therefore, submitted that in view of the Apex Court's decision in ***Cognisance for Extention of Limited, In RE***²⁴, the suit is well within limitation.

23. Learned counsel for the plaintiffs submitted that the pleadings raising cause of action against all the defendants are specifically pleaded in paragraph 10 of the plaint. In paragraph 13 of the plaint, the particulars of the fraud are substantially pleaded, including the conspiracy of the defendants in the removal of the plaintiffs as the developer and the appointment of defendant no.4 as a developer. To support his submissions, he relied upon the decision of this court in the case of ***Kangana Ranaut Vs. Municipal Corporation of Greater Mumbai & Ors***²⁵.

24. With reference to specific pleadings of fraud, learned counsel for the plaintiffs relied upon paragraph 17 of the plaint. According to the learned counsel for the plaintiffs, the

²⁴ (2022) 3 SCC 117

²⁵ 2020 SCC OnLine Bom 3132

cause of action in the counterclaim filed in the suit filed by defendant nos. 11 and 12 is based on the contractual dispute with the said defendants. The present suit is filed based on the allegations of fraud. Hence, the bar under Order II Rule 2 argued on behalf of the defendant nos. 11 and 12 would not apply in the present case for rejection of the plaint at the threshold. He submitted that the cause of action is not identical, even if the reference to fraud is made in the counterclaim. Hence, the bar under Order II Rule 2 cannot apply at this stage. The prayer for rejection of the plaint under Order VII Rule 11 of the CPC can be decided only based on the averments in the plaint in the present suit. To support his submissions, learned counsel for the plaintiffs relied upon the Apex Court's decision in ***Srihari Hanumandas Totala Vs Hemant Vithal Kamat***²⁶.

25. On the objection raised on the bar under Section 12A of the said Act, learned counsel for the plaintiffs referred to all the prayers in the suit which are in the aid of final relief. However, the same cannot be a ground to reject the plaint. Similarly, in the present case, the points argued for rejection of the plaint cannot apply. By praying for rejection of the

²⁶ (2021) 9 SCC 99

plaint by raising objections on the point of limitation and the bar under Section 12A of the said Act and Section 42 of the Slum Act, the defendants are making an attempt to nullify the liberty granted by the Apex Court to the plaintiffs to file this suit.

26. On the issue of cause of action, learned counsel for the plaintiffs submitted that the report dated 19th April 2017 was favourable to the plaintiffs. However, it was not made available. The non-supply of the report to the plaintiffs is specifically pleaded in paragraph (I) of the plaint. The plaintiffs had applied under the Right to Information Act, 2005, for a copy of the report, which is also specifically pleaded in paragraph (VIII) of the plaint. Hence, assuming the cause of action is of 2018, the suit is filed within the limitation due to Covid-19 exemption. The cause of action is based on the report being made available to the plaintiff. Hence, the triable issue on the point of limitation arises in the present suit, and therefore, the issue of limitation, if any, cannot be decided at the threshold in the present case. To support his submissions, learned counsel for the plaintiffs relied upon the Apex Court's decision in **P.**

Kumarakurubaran Vs P. Narayanan²⁷.

27. Learned counsel for the plaintiffs, therefore, submitted that none of the grounds argued on behalf of the defendants are available for rejection of the plaint at the threshold. In view of the substantial pleadings in the plaint, triable issues arise, and the grounds raised cannot be decided at the threshold.

CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

28. I have carefully perused the pleadings and supporting documents. According to the plaintiffs, they were removed as the developer by playing fraud. Defendant nos. 5 and 6 are the partners of defendant no.4. The description of the defendants is pleaded in the plaint. Defendant no.11 had entered into an agreement with the plaintiffs and defendant no.7 at the relevant time. Hence, they are made party defendants. Defendant no.13 had participated in the selection process of the new developer. Defendant no.14 is the son of defendant no.8 and was a director, along with defendant no.5, in defendant no.13-company. Serious allegations are made against defendant no. 8, who is alleged

²⁷ 2025 SCC OnLine SC 975

to be a blacklisted developer. Defendant no.15 is the director of defendant no.16 along with defendant no.18. Defendant no.15 is the business head of defendant no.11, who had executed the tripartite agreement with plaintiff no.1 and defendant no. 7, and is also a director of defendant no.13 along with defendant no.14. Defendant no.16 is formed by defendant no.8 and defendant nos. 14 and 18 as partners. The nexus between defendant no.17 and defendant no.18 is alleged on the ground that defendant no.18 is the partner of defendant no.16 and the wife of defendant no.8. It is alleged that defendant no.5 has transferred his shares to defendant no.18 after the letter of intent was issued to defendant no.4.

29. Defendant no.19 is the company with whom defendant no. 4 executed an agreement dated 31st March 2022 regarding the development of the slum rehabilitation scheme. Defendant nos. 20 and 21 are the group of companies that executed an agreement with defendant no. 7; defendant no. 22 is a blacklisted company by the SRA; and defendant no. 23 is its partner along with defendant no. 22. Defendant no. 21 is deleted vide Order dated 19th January 2026. The particulars of the fraud alleged against these defendants are

substantially pleaded in paragraphs 10 and 11 of the plaint. The plaintiff has pleaded conspiracy among the defendants to remove the plaintiffs as the developer and appoint defendant no. 4.

30. It is pleaded by the plaintiffs that various construction activities for the development of the slum plot for the rehabilitation of the slum dwellers were undertaken by the plaintiffs. According to the plaintiffs, the composite building no.1 was constructed, and 155 slum dwellers were accommodated, and 9 sale tenements in the composite building were constructed. The construction was completed in 2007, and the plaintiff had commenced and undertaken to complete the rehab building no. 1 to accommodate 397 project-affected persons, including 122 residential and 3 commercial project-affected persons. The construction of the two multistoried rehab buildings was ongoing when the notice dated 12th January 2017 was issued to the plaintiffs.

31. The substantial work carried out by the plaintiffs regarding the infrastructure is pleaded in the plaint. Hence, according to the plaintiffs, despite having taken all necessary steps to complete the project, the plaintiffs received the

notice of termination. Pursuant to the notice issued to the plaintiffs, two reports dated 10th March 2017 and 19th April 2017 were prepared by the Engineering Department of the SRA. The plaintiffs have raised objections to the reports on the grounds that they were based on factually incorrect statements. According to the plaintiffs, the removal was systematically planned by manipulating the CEO of the SRA. Defendant no. 8 was allowed to participate in the appointment of the new developer by creating false records. Hence, the plaintiffs pleaded that there was a conspiracy in the appointment of defendant no. 4, who is the *alter ego* of Mr. Shailesh Mehta, that is, defendant no. 8, who is a blacklisted developer.

32. The plaintiffs contended that, since they were subjected to and victimised by fraud, they filed the present suit for a declaration that they were entitled to benefits *in lieu* of the construction carried out by them, and, in the alternative, prayed for the handing over of the constructed area. The plaintiffs also prayed for monetary compensation in lieu of the construction carried out and prayed for damages in terms of the construction carried out and the cost incurred

by them. The plaintiffs have bifurcated their prayers regarding their entitlement, based on the original agreement appointing plaintiffs as the developer.

33. The plaintiffs have pleaded a cause of action in paragraph 42 of the plaint, thereby stating that, for the first time, the cause of action arose on 3rd October 2018, when the plaintiffs learned of the wrongful appointment of defendant no. 4 as the developer. However, subsequently, the fraud and conspiracy committed by the defendants were revealed. The plaintiffs got knowledge of the reports dated 10th March 2017 and 19th April 2017 after the order dated 12th April 2019 was passed by the Apex Court. Since the prayers allege fraud and conspiracy, according to the plaintiffs, the bar under Section 42, read with Section 35 of the Slum Act, would not apply. It is pleaded that only the civil court would have jurisdiction to decide the allegations of fraud and the illegalities committed by the defendants in removing the plaintiffs as the developer and appointing defendant no.4 as the new developer.

34. It is pleaded in the plaint that the Order dated 19th June 2017 passed by the CEO of the SRA against the

plaintiffs was challenged by them in this court as well as by filing an appeal before the AGRC. The plaintiffs have relied upon the liberty granted by the Apex Court in the order dated 12th April 2019 in SLP (c) Nos. (s) 8737/2019. Copies of the orders passed by the High Court and the Apex Court are annexed to the plaint. By order dated 20 April 2019, the Apex Court dismissed the plaintiffs' special leave petition; however, it granted liberty to pursue other appropriate remedies regarding breach of contract and damages as permissible in law. Accordingly, the plaintiffs have pleaded that the cause of action first arose on 3rd October 2018, when the plaintiff learnt about the wrongful appointment of defendant no. 4 as developer. It is further pleaded that subsequently, even the fraud and conspiracy committed by the defendants were revealed. The plaintiffs have pleaded to have obtained knowledge of the reports dated 10th March 2017 and 19th April 2017, after the order passed by the Apex Court.

35. The plaintiffs had challenged the SRA order on the basis of the said reports. The plaintiffs in paragraphs (I) and (VIII) have pleaded non-supply of copies of the reports and applications made under the Right to Information Act for

obtaining the copies of the reports. The plaintiffs have also pleaded about the false criminal proceedings initiated against them, the various suits filed by various defendants, and the source of knowledge of the conspiracies from the various proceedings. It is also explained by the plaintiffs that the reports not supplied to them formed the basis of the adjudication for compensation in lieu of the plaintiffs' termination.

36. The exhaustive and substantial pleadings in the plaint show that all particulars of the allegations of fraud, malice and collusion are pleaded. Section 42 of the Slum Act bars civil court's jurisdiction in respect of any matters which the AGRC and the Apex Grievance Redressal Committee or Tribunal is empowered by or under the Slum Act to determine in respect of any action taken or to be taken in pursuance of any power conferred by or under the Slum Act. Under Section 35 of the Slum Act, a remedy of appeal is provided to any person aggrieved by any notice, order or direction issued by SRA authorities. In the present case, according to the plaintiffs, they exhausted the said remedy; however, in view of the liberty granted by the Apex Court, the present suit is

filed where they seek relief on the ground of allegations of fraud, malice and collusion, which were not the subject matter of the remedy availed under the Slum Act.

37. In ***Electrosteel Castings Ltd.***, the Apex Court while dealing with the issue of bar under Section 34 of the Sarfaesi Act held in the facts of that case that, the pleadings and averments in the suit more particularly the use of the word fraud even considering the case on behalf of the plaintiff, the allegations of fraud are made without any particulars and only with a view to get out of the bar under Section 34 of the Sarfaesi Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the Sarfaesi Act, which is not permissible. Considering the different facts of the present case, the legal principles settled in the said decision would not be of any assistance to the arguments raised on behalf of the defendants for rejecting the plaint at the threshold.

38. In ***State of W.B. Vs David Mantosh***, the Apex Court, while dealing with the issue of bar of civil court's jurisdiction in view of the provisions of the Urban Land (Ceiling and Regulation) Act 1976, relied upon the test laid down in

Dhulabhai Vs State of M.P.²⁸ for examining the issue of jurisdiction as under:

“(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

²⁸ AIR 1969 SC 78

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

39. In the facts of the case the Apex Court held that the civil court had no jurisdiction to try the civil suit in relation to the land which is subject to ceiling proceedings under the Act in question; nor did the civil court have the jurisdiction to declare the proceedings held under the Act, as void or illegal or non est, since it was impliedly excluded and barred under the Act.

40. In ***New Janta SRA CHS Ltd***, this Court while dealing with the issue whether the slum dwellers society was entitled to a change of a developer under the provisions of Section 13(2) of the Slums Act discussed the scope of powers of the SRA under Chapter IV which provides for slum clearance and redevelopment under which Section 13 which is a relevant provision for change of the developer in case the

redevelopment is not being undertaken within the time. Considering the statutory scheme, it is held that once a developer is appointed, it is within the powers of the SRA on a proper verification and scrutiny of the facts and applying the rules and the law to take an appropriate decision on any proposal to change the developer and/or the viability of a new developer being appointed in the facts of a given case. In view of the scope of interference under Article 226 of the Constitution of India, it was held that the exercise of powers by the Writ Court in the SRA matters must be limited to the matters which remain unresolved despite the remedy of an appeal being exhausted, more particularly when the full-fledged hearing complying with the principles of natural justice was granted before AGRC on all the issues. This judgment does not consider the bar under Section 42 of the Slum Act and the Civil Court's plenary jurisdiction under Section 9 of the CPC.

41. In ***Qari Mohammed Zakir Hussain***, this Court held that if the allegation is that the act done or intended to be done by the concerned authority is the result of fraud, collusion or *mala fide* and is clearly in transgression of the

powers conferred on that person or authority under the Act or Rules, in such a case, the allegation would be actionable, before the Civil Court being one of civil nature to be tried only by the Civil Court by virtue of Section 9 of the CPC. This Court held in paragraph 16 as under:

“**16.** It is well settled that exclusion of the jurisdiction of the Civil Court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if the jurisdiction is so excluded the Civil Courts have jurisdiction to examine into the issues where the provisions of the Act have not been complied with, or statutory Tribunal has not acted in conformity with the fundamental judicial procedure. On the other hand, a suit in a Civil Court can always be maintained to question the order of a Tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said Tribunal abuses its power or does not act under the Act but in violation of its provisions. In other words, if the suit proceeds on the premises that the offending act has been done not in good faith, then there is no bar for such a suit. This legal position is enunciated in catena of decisions including (A.I.R. 1940 Privy Council 105)¹ (*State of Kerala v. N. Ramaswamy Iyer & Sons*)², A.I.R. 1966 S.C. 1738, (*Firm Seth Radhakishan (deceased) represented by Harikishan v. Administrative Municipal Committee, Ludhiana*)³, A.I.R. 1963 S.C. 1547, as well as decision of

Kerala High Court in (*Secretary, K.S.E.B., Trivandrum v. M. Sainaba*)⁴, A.I.R. 1990 Kerala 50.”

42. In ***Om Shree Sai Developers***, this court held that the bar of civil Court’s jurisdiction under Section 42 of the Slum Act is not absolute. It is held that the disputes which are purely private or contractual will have to be resolved by suit or arbitration as permissible in accordance with law and that Section 42 of the Slum Act is not a blanket bar for institution of civil suits, but prohibits civil court from entertaining such suits or granting injunction in suits in respect of action taken or to be taken in good faith in exercise of powers conferred under the Slum Act. It is further held that the remedy of civil suit is not barred to seek relief against malafide commission or omission of acts which are not in good faith.

43. In ***Kangana Ranaut***, this court has summarized the well-settled legal principles on malice in law and facts, as under;

“ **162.** The principles which can thus be deduced from the aforesaid Judgments, as well as the Judgments referred to in the respective written submissions of the parties, are as under:

- i. An action is said to be vitiated by malice in fact when the same lacks good faith and is motivated by personal

bias, grudge, oblique or improper motive or ulterior purpose. The malice in fact needs to be pleaded, the party concerned against whom malice in fact is alleged, needs to be impleaded and an opportunity has to be given to the party so impleaded, to respond to the allegations. The said allegations have to be established before the Court.

ii. An Order or action can be said to be vitiated by malice in law in one or more of the following circumstances:

- (a) From doing of a wrongful act intentionally without any just cause, or excuse, or without there being reasonable relation to the purpose of exercise of statutory power.
- (b) It is the attainment of ends beyond the sanctioned purposes of power by simulation or pretention of gaining legitimate goal. When the custodian of power is influenced in its exercise by consideration outside those for the promotion of which the power is vested, the Court calls it colourable exercise and is undeceived by illusion.
- (c) It is a deliberate act in disregard to the rights of others.
- (d) It is an act taken with an oblique or indirect object.
- (e) Conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.
- (f) Passing an Order for unauthorized purpose.

- iii. Malice in law need not be pleaded and does not need proof. For malice in law, intention is immaterial.
- iv. There are no strict guidelines for proving malice in a case where there is material from which the Court can infer malice. The Court is empowered to draw inference on the basis of facts disclosed and material produced before the Court and arrive at a conclusion, which according to its opinion may not be of much doubt and could be supported by justifiable reasons. The party against whom allegations are made is expected to cover up its decision or action and dress it up in a manner to give colour or justification, but the Court has to discover whether the action is colourable on the basis of material, looking beyond the apparent. Malafide cannot be established by direct evidence. It may not be discernable from the Order impugned, or from the note made in the file preceding the Order, and can be deduced as a reasonable and unescapable inference from true facts. “

44. In ***Srihari Hanumandas Totala***, the Apex Court held that at the stage of deciding an application of rejection of the plaint under Order VII Rule 11 of the CPC, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed and that the court while deciding such an application must have due regard only to the statements in the plaint. It is further held that

whether the suit is barred by any law must be determined from the statements in the plaint, and it is not open to decide the issue on the basis of any other material, including the written statement in the case.

45. When viewed in the light of the aforesaid legal principles, the substantial pleadings in the present case, as discussed in the above paragraphs regarding fraud, malice and collusion, raise triable issues to be adjudicated by the civil court. The bar under Section 42 of the Slum Act would therefore not apply. Whether the allegations pleaded in the plaint would constitute an action vitiated by malice in fact and lack good faith and is motivated by personal bias, grudge, oblique or improper motive or ulterior purpose raises triable issues and would fall within the civil court's jurisdiction. Hence, the plaint cannot be rejected at the threshold on the ground of the bar under Section 42 of the Slum Act.

46. In ***P. Kumarakuruban***, the Apex Court held that the plea regarding the date of knowledge, whether it is credible for deciding the issue of limitation, was a matter that would necessarily require appreciation of evidence and that at the preliminary stage, the averments made in the plaint must be

taken at their face value and assumed to be true. It is further held that once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily, and it becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 of CPC. It is therefore held that the rejection of the plaint on the ground of limitation without permitting the parties to lead evidence is legally unsustainable.

47. On the point of limitation, much was argued on behalf of the above-referred defendants/applicants that, in view of the explanation in paragraph 5.3 in the Apex Court's order granting the period of suspension of limitation, when the limitation period expires between 15th March 2020 and 28th February 2022, after the expiry of the exempted period, only 90-day limitation is available. Hence, the plaintiffs are not entitled to seek the benefit of more than 90 days. Learned senior counsel for defendant no. 19 relied upon an order passed by this court in CRA No. 431 of 2023 in the case of ***Hemlata Joshi Vs Naman Enterprises***, and submitted that this court has taken the view that, considering the

explanation in paragraph 5.3 of the Apex Court's order, when the limitation period expires between 15th March 2020 and 28th February 2022, the further limitation period available is 90 days from 1st March 2022.

48. Paragraph no.5.3 of the Apex Court's Order in ***Cognizance For Extension of Limitation, In Re***, reads as under:

“5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. **In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.**”

emphasis applied by me

49. In the present case, the cause of action is dated 3rd October 2018. The exemption period as per the Apex Court's Order due to the COVID-19 pandemic was from 15th March 2020 to 28th February 2022. Therefore, without the exemption period, the three-year limitation would expire on

3rd October 2021, i.e. during the exempted period. Therefore, as of 15th March 2020, the actual balance period of limitation was 1 year, 6 months and 17 days (From 15/3/2020 to 3/10/2021). Thus, after the exemption period ended on 28th February 2022, the actual balance period of limitation available was 1 year, 6 months and 17 days, which is longer than 90 days and would have ended on 17th September 2023. The suit was filed on 11th September 2023.

50. Therefore, in view of the clarification in the last part of paragraph 5.3, when the actual balance period of limitation remaining with effect from 1st March 2022 is greater than 90 days, that longer period shall apply. In the present case, the actual balance period of limitation as of 1st March 2022 was 1 year, 6 months and 17 days, which is greater than 90 days. Hence, the suit is not barred by limitation. Therefore, the plaint cannot be rejected at the threshold on the ground of barred by limitation. This Court in ***Hemlata Joshi*** has observed in paragraph 11 that in those cases where the balance period of limitation as on 1st March 2022 exceeds 90 days, such persons shall be entitled to the benefit of a longer period of limitation. Therefore, even considering the view

taken by this Court in ***Hemlata Joshi***, the present suit is within limitation.

51. In ***Balakrishna Savalram Pujari Waghmare***, while discussing the argument by relying on Section 23 of the Limitation Act, the Apex Court held that Section 23 refers not to a continuing right but to a continuing wrong and that it is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. It is further held that if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue; however, if a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong.

52. Considering the facts of the present case, as discussed in the foregoing paragraphs, the legal principles settled in this decision would not be of any assistance to decide the issue of limitation at the threshold at the stage of Order VII Rule 11 of CPC. In the present case, the cause of action is pleaded to have first arisen on 3rd October 2018 and then

after the Apex Court's order dated 12th April 2019. Therefore, the pleadings on the cause of action would raise a triable issue for considering the issue of limitation and cannot be decided at the preliminary stage.

53. With reference to the mandatory requirement under Section 12A of the said Act, the plaintiffs have pleaded that, in view of the urgency as explained in paragraphs 34 to 36 and 38 of the plaint for seeking urgent interim relief, the bar under Section 12A of the said Act would not apply. The plaintiffs have contended that defendant no. 4 is carrying out construction, even on the non-slum plots and thus causing serious prejudice and loss of profit to the plaintiffs. It is further alleged that by taking undue advantage of the orders passed under the slum rehabilitation scheme, the plaintiffs' private rights are being infringed, thereby causing substantial loss to them. Hence, according to the plaintiffs, the suit was filed with urgency seeking prayers for the appointment of a court receiver and an injunction to protect the plaintiffs' rights.

54. The legal principles governing the rejection of a plaint under Order VII Rule 11 of the CPC are no longer res integra. The Hon'ble Apex Court in ***Dahiben*** held that the

power conferred on the court to terminate a civil action is a drastic one and thus the conditions enumerated under Order VII Rule 11 of the CPC must be strictly adhered to.

55. The Division Bench of this Court in ***Deepak Raheja*** held that Section 12-A of the said Act is mandatory, and a commercial suit which does not contemplate any urgent interim relief cannot be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules.

56. While discussing the legal principles settled in the decision of ***Patil Automation***, the Hon'ble Apex Court, in the decision of ***Yamini Manohar***, held that the words "contemplate urgent interim relief" suggest that the suit must contemplate, which means the plaint documents and facts should show and indicate the need for urgent interim relief. The Hon'ble Apex Court further held that if any urgent interim relief is contemplated, the commercial courts have to carry out a limited exercise in the facts and circumstances of the case to ascertain whether the prayer for interim relief is not made in a disguise only to wriggle out of the mandatory compliance under Section 12A of the said Act. It is thus held

that the facts and circumstances have to be considered holistically from the standpoint of the plaintiff.

57. The legal principles settled by the Hon'ble Apex Court in the case of ***Patil Automation*** and ***Yamini Manohar*** are further explained in the decision of ***Dhanbad Fuels***. The Hon'ble Apex Court held that the courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the said Act. If the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12A, if the test for urgent interim relief is satisfied, notwithstanding the actual outcome on merits. Thus, the legal principles are now well-established that the test for "urgent interim relief" is to see whether, on the examination of the nature of and the subject matter of the suit and the cause of action, the plaintiff's prayer for urgent interim relief could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. Therefore, if the test for urgent interim relief is satisfied notwithstanding the actual outcome on merits, the suit can be proceeded with without compliance

with Section 12A.

58. In ***Novenco Building and Industry***, the Apex Court held that a plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention and on a wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and the court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

59. In ***C. S. Ramaswamy***, the Apex Court held that while considering the issue/question whether the plaint can be rejected on the ground of limitation in exercise of powers under Order VII Rule 11(d) CPC, the cause of action pleaded in the plaint is required to be referred to. It is further held that from the averments in the plaint and the bundle of facts stated in the plaint, it must be ascertained whether, by clever

drafting, the plaintiff has tried to bring the suit within the period of limitation, which otherwise may be barred by limitation.

60. In ***The Correspondence, RBANMS Educational Institution***, the Hon'ble Apex Court was dealing with a prayer for rejection of the plaint, on the ground that the respondents were only agreement holders and not owners of the suit property and that mere execution of an agreement to sell does not create or confer any right or interest in the property in favour of the proposed purchasers. The Apex Court relied upon the legal principles settled in ***Dahiben*** and held that Order VII Rule 11 of the CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. It is held that there is a bounden duty on the Court to discern and identify a fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal and when clever drafting veils the implied bar to disclose the cause of action; it then becomes

the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. It is further held that merely including a paragraph on cause of action is not sufficient, but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action and the plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant.

61. Thus, in view of the well-settled legal principles as discussed in the above paragraphs, it is clear that when a prayer is made for rejection of the plaint at the threshold, it is the duty of the court to read the plaint in a meaningful manner. There is a difference between non-disclosure of cause of action, or express bar in law that can be ascertained only on pleadings without the requirement of any evidence, which comes within the scope of Order VII Rule 11 and a defective cause of action, or merits of the pleadings in support of jurisdiction and entitlement of the reliefs from a civil court which has to be decided during the trial. Therefore, it is the bounden duty of the Court to examine the material

mentioned in the plaint along with the other documents and, on a meaningful reading of it, to arrive at a conclusion whether the plaint can be rejected at the threshold without the requirement of any evidence.

62. Considering the urgency pleaded by the plaintiffs and the nature of the interim relief claimed, urgent interim relief is contemplated from the plaintiff's standpoint. A cause of action is also pleaded in the plaint, seeking substantial relief as prayed against all the defendants. Therefore, in view of the aforesaid legal principles, the plaint cannot be rejected on the ground that there is no cause of action or that the bar under Section 12A of the said Act or Section 42 of the Slum Act would apply.

63. In ***Virgo Industries (Eng.) (P) Ltd.***, the Apex Court while considering the objection on the bar under Order II Rule 2 of the CPC, held that the rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. It is further held that, considering the true object of the law, the provision of

Order II Rule 2 of the CPC would apply in both situations: when the first suit is disposed of and when the second suit is filed during the pendency of the first suit.

64. In ***Vurimi Pullarao***, the appeal before the Apex Court arose from the Bombay High Court's judgment in a second appeal. The Apex Court held that a plaintiff who has omitted to sue or has intentionally relinquished any portion of the claim within the meaning of Order II Rule 2(2) of the CPC shall not afterwards be entitled to sue in respect of the portion so omitted or relinquished.

65. In ***Cuddalore Powergen Corporation Ltd.*** the Apex Court discussed the law on the applicability of the bar under Order II Rule 2 of the CPC, including the legal principles settled in ***Virgo Industries*** and ***Vurimi Pullarao***, and in the context of rejection of the plaint under Order VII Rule 11(d) of the CPC held as under;

“ 56. Order VII Rule 11(d) reads as - “*where the suit appears from the statement in the plaint to be barred by any law*”. In light of the aforesaid, it follows that before rejecting the plaint under Order VII Rule 11(d), the Courts must ensure that the plaint is read as a whole and its entire averments are looked into. A few lines or passages must not be read in

isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein. In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II Rule 2. **It would be a reductive approach to only cull out the cause of action paragraphs from the respective complaints and decide that they disclose the same cause of action on mere comparative overview.**”

emphasis applied by me

66. It was thus observed in ***Cuddalore Powergen Corporation Ltd.*** that the true import of the bar under Order II Rule 2 must be that it operates to preclude a plaintiff from instituting a second suit, on the same cause of action, for a claim, any portion of a claim, or reliefs, which the plaintiff was entitled to avail at the time of filing of the first suit. On the approach to ascertain the applicability of the bar under Order II Rule 2 of the CPC, it was observed as under;

“74. There may arise a situation where the plaintiff may be entitled to a relief but such a relief was not available at a certain point in time. In other words, that obtaining such a relief was impossible due to the circumstances which existed during the institution of the first suit. **It is our opinion that,**

in such scenarios, Courts must give such an interpretation to the principles under Order II Rule 2 that is not bogged down by mere technicalities.”

emphasis applied by me

67. Learned counsel for defendant nos. 11 and 12 relied upon the decisions in ***Church of Christ*** by the Apex Court and the learned Division Bench of this court in ***Sheela Ram Vidhani*** to support his contention that rejection of a plaint in its entirety qua a particular defendant is permissible when the pleadings disclose no cause of action against such defendant. He distinguished the concept of a “partial rejection” of the plaint by dissecting its pleadings, which is not permissible as held by the Apex Court in ***D. Ramachandran*** and ***Roop Lal Sathi*** and the concept of rejection of the plaint as a whole only against a particular defendant.

68. All these aforesaid judgments were referred to in support of the contention that the plaint in the present suit deserves to be rejected as a whole against defendant nos. 11 and 12 on the ground that it does not disclose any cause of action against them and the bar under Order II Rule 2 of

the CPC would apply. The objection on the bar under Order II Rule 2 of the CPC is argued on the ground that in the suit filed by defendant nos. 11 and 12, the plaintiffs have filed a counterclaim seeking similar relief and based on the same cause of action. I have perused the counterclaim. The counterclaim is based on the allegations of breach of the terms and conditions of the contract between the parties. Therefore, the cause of action and the relief in the counterclaim are based on contractual obligations. Even if the pleadings on the cause of action may seem overlapping, the issue, if any, as to the bar under Order II Rule 2 cannot be considered at this stage, as the present suit is filed on the basis of allegations of fraud, malice and collusion. Therefore, even if the issue of bar under Order II Rule 2 would arise, the same would be a triable issue and cannot be considered at the stage of Order VII Rule 11 of the CPC.

69. I have recorded my reasons to hold that the plaint does disclose a cause of action against all the defendants. Hence, in the present case, it is not necessary to decide the controversy whether the plaint as a whole can be rejected or cannot be rejected at the threshold under Order VII Rule 11

of the CPC only against defendant nos. 11 and 12.

70. Therefore, the plaint can neither be rejected under clause (d) of Rule 11 of Order VII of the CPC on the ground that there is non-compliance with the mandatory provision of Section 12A, nor on the ground of any express bar under Section 42 of the Slum Act, nor can it be rejected under clause (a) of Rule 11 of Order VII of the CPC on the ground that no cause of action is disclosed.

71. Before parting with the judgment, I must add that despite the well-settled legal principles on the circumstances under which the bar under Section 12A of the said Act applies, and well settled legal principles on the other objections raised in these applications, as well as the well-established legal principles under Order VII Rule 11 of the CPC, these applications were filed and argued for considerable long time by citing large number of decisions of this Court and the Apex Court and lengthy written notes were also submitted. Such attempts by the defendants defeat the very object of the Commercial Courts Act, namely, the speedy disposal of suits and also unnecessarily consume the court's time. Hence, the applicant/applicants in each

application shall pay the costs of their respective applications to the plaintiffs, quantified at Rs. 2,00,000/- per application. The costs shall be paid within two weeks from today.

72. For the reasons recorded above the Interim Applications are dismissed.

[GAURI GODSE, J.]