IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No. 399/2026
in Civil Suit No. 05/2023
Reserved on: 09.09.2026
Decided on: 30.10.2026
Date of Uploading on Website: 30.10.2026

M/s Randhawa Construction Pvt. Ltd. & Anr.
...Non-applicants/plaintiffs

Versus

M/s Ropeways & Rapid Transport & Anr.
…Applicants/defendants

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.
Whether approved for reporting?[1]

For the Non-applicants/plaintiffs : Mr. Ajay Kumar, Senior Advocate with Mr. Sumit Sood, Advocate.

For the applicants/defendants: Mr. R.K. Gautam, Senior Advocate with Mr. Sahil Dixit, Advocate, for respondent No. 1.

Mr. Raj Kumar Negi, Additional Advocate General, for respondent No. 2/State.

Sushil Kukreja, Judge

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

This order shall dispose of an application filed by applicant/defendant No. 1, under Order VII, Rule XI read with Section 151 CPC for rejection of the plaint. It has been stated in the application that the plaint deserves to be dismissed on the ground that appropriate Court Fee has not been affixed on the plaint, as perusal of prayer clause makes it clear that the plaintiffs have claimed for a sum of Rs. 1,32,00,000/- alongwith interest at the rate of 18% per annum and a decree of Rs. 50,00,000/- has also been claimed towards loss of opportunity, harassment and mental agony. However, no Court fee has been affixed on this amount. It has been further stated in the application that present lis is covered under Section 2 (1)(c)vi of the Commercial Courts Act, as such, the suit is not maintainable in the present form. Hence, prayer for rejection of the plaint has been made.

2. Reply to the application has been filed, wherein, it has been averred that while considering an application under Order VII, Rule XI CPC, as per the settled law, only the averments contained in the plaint are required to be

examined and neither the defence taken in the written statement nor any external material can be looked into. The plaint discloses a complete and subsisting cause of action against the respondents. The rights asserted by the plaintiffs and the violations committed by the respondents are specifically pleaded and elaborated in the plaint, as such, none of the ingredients of Order VII, Rule XI CPC are attracted to the facts and circumstances of the case. The present application is an abuse of the process of Court and has been filed merely to delay the adjudication of the suit on merits. It has been stated that the suit has been valued in accordance with the provisions of the Court Fees Act and the Suits Valuation Act, as such, the averments made in the application qua inadequate Court Fee are not a ground for rejection of plaint. It has been denied that the suit is not maintainable under the Commercial Courts Act, 2015. Hence, prayer for dismissal of the application has been made.

3. In rejoinder, contents of the reply are denied and that of the application are reasserted and reaffirmed.

4. I have heard learned Senior Counsel for applicant/defendant No. 1, learned Senior Counsel for the non-applicants and also gone through the material available on record.

5. Learned Senior Counsel for the applicant contended that the suit of the plaintiffs is not maintainable in the present form, as it is covered under the definition of Commercial dispute, as such, the same is maintainable only under the Commercial Courts Act.

6. On the other hand, learned Senior Counsel for the non-applicants/plaintiffs contended that no commercial dispute is involved in the present suit and the application filed by applicant/defendant No. 1 deserves to be rejected.

7. It is settled law that the power conferred on Civil Courts to reject plaint at the threshold is an extra-ordinary power and, therefore, required to be exercised with great care and circumspection. At this stage, it would be relevant to reproduce Oder 7, Rule 11 of CPC, which reads as under:-

> "*11.* ***Rejection of plaint- The plaint shall be rejected in the following cases****:-*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

8. Thus, under Order 7, Rule 11 of CPC, plaint can be rejected on the grounds that the suit is barred by law or it does not disclose the cause of action or proper court fees has not been paid even after order of the court or where it is not filed in duplicate or where the plaintiff fails comply with the provision of Rule 9. It is well settled that the Court, at the stage of considering an application under Order 7 Rule, 11 of CPC has to examine only the plaint averments, and the documents filed along with the suit. Other pleas advanced by

parties, including the pleadings in the written statement, have no relevance in order to decide the present application in hand. In ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and another, (2004) 9 SCC 512,*** while dealing with the law relating to rejection of plaint under Order VII, Rule 11, CPC, the Supreme Court observed as follows:-

> *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.*
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> *151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact……..*
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> *152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars."*

9. In the case of ***Saleem Bhai v. State of Maharashtra, AIR 2003 SC 759***, it was held with reference to Order VII, Rule 11 of CPC that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise

the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

10. In the case of ***Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510***, it was held as under: -

> *"20…...The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits…….*
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> *23.Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."*

11. Thus, the real object of Order VII, Rule 11, CPC is to keep out irresponsible lawsuits from the Courts and it provides for an independent remedy for the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The Supreme Court in ***Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137,*** held as under:-

> *" 17.... The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.*
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> *** *** *** ***
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> *20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word —shall‖ is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."*

12. In ***Azhar Hussain*** v. ***Rajiv Gandhi, AIR 1986 SC 1253,*** the Supreme Court further held that the whole

purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste the judicial time of the Court, in the following words :-

> *"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action….."*

13. Thus, on the conspectus of the settled position of law, it is crystal clear that the power vested in the Court under Order VII, Rule 11 of CPC is to curb abusive or fruitless litigation which is bound to meet a dead fate. Order VII, Rule 11 CPC is a vital procedural safeguard that prevents the abuse of the legal process and ensures that only legitimate disputes consume judicial time. While the rule acts as a gatekeeper preventing frivolous litigation, courts also exercise caution to ensure that genuine plaintiffs are not unjustly denied their right to seek justice due to hyper-technicalities. The balance lies in a

judicious application of the rule, upholding the sanctity of court proceedings while safeguarding access to justice.

14. It is a settled position of law that all commercial disputes do not come within the definition of the commercial disputes as appearing in the Act of 2015. The Act of 2015 has defined "commercial dispute" in Section 2(1)(c). It is only those commercial disputes that have been defined in Section 2(1)(c) of the Act of 2015 which are required to be decided by the Commercial Courts. If a Civil Suit is filed as a commercial suit when it does not qualify as a "commercial dispute" under the Act of 2015, it undermines the scope and object of the Act of 2015, as it essentially misuses the specialized jurisdiction of commercial courts intended for swift resolution of genuine commercial disputes, potentially delaying other legitimate commercial cases. At this stage, it would be relevant to reproduce Section 2(1)(c) (vi) of the Commercial Disputes Act which reads as under:-

> *"**2(1)(c)(vi) Construction and infrastructure contracts, including tenders**."*

15. Section 2(1)(c)(vi) of the Act of 2015 specifies that, commercial disputes means a dispute arising out of the construction and infrastructure contracts, including tenders.

16. Recently, in the case of ***M/s. Levitate Mobile Technologies Pvt. Ltd. v. M/s. Standard Chartered Bank Pvt. Ltd. 2025 SCC OnLine Del 818,*** Delhi High Court had an occasion to consider the scope and ambit of the Act of 2015 while rejecting the application under Order XI, Rule 1(5), CPC. It observed as under:

> *"23. A comprehensive reading of the Statement of Objects and Reasons, along with the insights from the Law Commission's 188th and 253rd Reports, provides significant clarity on the rationale behind the enactment of the Act. The Parliament's intention was to overhaul the commercial dispute resolution framework by distinguishing it from other civil disputes, thereby achieving its core goal i.e., the expeditious disposal of commercial disputes in India, keeping in view the larger picture of preserving and boosting the economy of the country. The aim and objective of the Act of 2015 clearly reflect the intent of the Parliament for speedy disposal of high value commercial disputes while setting up an independent mechanism for their early resolution."*

17. In ***Kailash Devi Khanna & Ors vs D D Global Capital Ltd & Ors., 2019 SCC Online Del 9954,*** the High Court of Delhi emphasized that not all suits for monetary

recovery qualify as "commercial dispute" under the Act of 2015. The Court specifically observed that for a claim to fall under Section 2(1)(c)(i) of the Act of 2015, it must pertain to "ordinary transactions of merchants, bankers, financiers, and traders," involving mercantile documents and their enforcement or interpretation. The Court further held that a suit merely seeking recovery of money, without any connection to mercantile transactions or documents, does not meet the criteria of a "commercial dispute" and, therefore, cannot be filed as a commercial suit. Filing a civil suit under the commercial courts' jurisdiction, without meeting these requirements, amounts to a misuse of the specialized forum meant for expeditious resolution of genuine business disputes, ultimately hindering the adjudication of legitimate commercial cases.

18. Further, the High Court at Calcutta in ***Ladymoon Towers (P) Ltd. v. Mahendra Investments Advisors (P) Ltd. 2021 SCC Online Cal 4240,*** clarified that a "commercial dispute" involves transactions typically of merchants, financiers, and traders, and emphasized that disputes should

be assessed on the substance of the case rather than procedural objections. Similarly, in ***Rolta (P) Ltd. v. Varanium Cloud Ltd., 2024 SCC Online Bom. 3518*** the High Court at Bombay reiterated that a "commercial dispute" under the Act of 2015 must relate to commercial transactions and not personal loans or other non-commercial engagements. In both these cases, the Courts ruled that disputes arising from personal loans, even if advanced for business purposes, do not qualify as "commercial dispute" under the definition provided in Section 2(1)(c) of the Act of 2015.

19. Thus on a plain reading of Section 2(1)(c)(i) of the Act of 2015 coupled with the judicial pronouncements as discussed above, it is crystal clear that only those ordinary transactions that concern merchants, bankers, financiers and traders, and relate to mercantile documents, would come under the purview of the "commercial dispute". It would also be apposite to note that under Section 2(1)(c)(i) of the Act of 2015, two essential ingredients must exists simultaneously. The transactions in the suit must be ordinary transaction of

merchants, bankers, financiers and traders and that there are mercantile documents with regard to such ordinary transactions between such entities. The overall scheme of the Act of 2015 and the intent underlying therein indicate that both elements must co-exist for a dispute to be termed as a "commercial dispute".

20. In ***Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and another, 2020 (15) SCC 585***, the Hon'ble Supreme Court has held that the averments of the plaint would be relevant for determination as to whether, the suit is required to be tried by the Commercial Court under the Act of 2015 or not. It has also held that, the provisions of the Act of 2015 are to be strictly construed. Paras-13 and 14 of the judgment read as under:-

> *"13. The learned senior advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while*

entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition "commercial disputes" as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction."

21. On such principles as has been enunciated in various judicial pronouncements referred to above, the question which arises for consideration before this court is as to whether the subject matter of the dispute between the parties to the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vi) of the Act and whether the transaction between the parties is commercial in nature.

22. As observed in ***Ambalal Sarabhai Enterprises case (supra),*** the decision as to whether or not the suit involves a commercial dispute within the meaning of the Act has to be arrived at on the basis of the averments made in the plaint and on a strict construction of the provisions of the Act. Thus, a bare reading of the plaint in the instant case would disclose that the defendants

23. In the instant case, a bare perusal of the plaint would disclose that the plaintiffs applied for participation in the project for development of the ropeway between Narkanda and Hatu Peak in District Shimla, on the basis of request for proposal (RFP), flouted in the form of a tender on 14.10.2019, in which, last date was 10.02.2020. The RFP

document clearly specified in its second paragraph that it was neither an offer nor an invitation to the prospective bidders or any other persons. The plaintiffs were the only successful bidders for the said project in the year 2019 and requested for pre-bid meeting with the defendants on 25.11.2019, wherein, they expressed doubt and displeasure on the feasibility of the bidding process and raised certain queries. Further case of the plaintiffs is that despite the pendency of consideration on the objections raised by the plaintiffs and after depositing the earnest money deposit, defendant No. 1 has in utmost wrongful/ unjustified/arbitrary/unconstitutional manner demanded from the plaintiffs to submit fresh bank guarantee. Further case of the plaintiffs is that the defendants have failed to amend the RFP in terms of clause 2.10 in a time bound manner, i.e. within 120 days, therefore, the defendants by letters dated 03.12.2020 and 07.12.2020 cannot be allowed to illegally withhold the bid security amount of Rs. 1,32,00,000/- deposited on 10.02.2020 and the same needs to be refunded, as now the said project has became unviable due

to the timeline and resources being diverted to other projects by investors on account of negligent act of the defendants, who sit on the file without communicating any decisions on the objections raised by the plaintiffs, which they can amend having the power for the same in clause 2.10 of the said RFP and could have completed the formalities within the timeline of 120 days, as mentioned in the RFPs. Therefore, upon considering the aforesaid assertions made in the plaint and on perusal of the material available on record, it is seen that the suit has not been filed by the plaintiffs-company raising any commercial dispute. The plaintiffs have filed a suit simplicitor for recovery of bid security amount of Rs. 1,32,00,000/- against the defendants and no commercial dispute is involved in the present case.The case of the plaintiffs does not fall within any of the categories enumerated under Section 2(1)(c) of the Act. Hence, the plaint cannot be rejected on the ground that the present *lis* is covered under the Commercial Disputes Act, as per Section 2(1)(c)(vi).

24. The learned counsel for the applicant/defendant next contended that the plaintiff has claimed for a sum of Rs. 1,32,00,000/- alongwith interest at the rate of 18% per annum and a decree of Rs. 50,00,000/- has also been claimed towards loss of opportunity, harassment and mental agony but no Court fee has been affixed on this amount.

25. Insofar as the rejection of the plaint on the ground of improper valuation and non-payment of appropriate Court fees is concerned, a plain and conjoint reading of clauses (b) and (c) of Order VII Rule 11 of the Code makes it abundantly clear that the power to reject a plaint on the grounds enumerated therein, is not to be exercised in the first instance, without affording an opportunity to the plaintiff. The statutory scheme contemplates a two-step process. Firstly, the Court must form an opinion that the relief claimed is undervalued or that the court fee paid is insufficient. Secondly, upon such determination, the Court is obligated to require the plaintiff to correct the valuation and/or supply the requisite court fee within a time to be fixed by it. It is only upon failure of the

plaintiff to comply with such direction within the stipulated time, that the consequences of rejection of the plaint can ensue. Thus, the rejection of a plaint under Order VII Rule 11(b) or (c) is not automatic upon a finding of undervaluation or deficit court fee; rather, it is conditional upon non-compliance with the opportunity so granted by the Court

26. In the case on hand, the perusal of the plaint reveals that in addition to the claim pertaining to the refund of bid security in the sum of Rs. 1,32,00,000/-, the plaintiffs have also claimed an amount of Rs. 50,00,000/- towards loss of opportunity, harassment and mental agony, but no court fee has been affixed on this amount. Therefore, the plaintiff is required to pay ad valorem court fee on the said relief as required under Section 7(i) of the Court-fees Act, 1870.

27. Hence, in view of my aforesaid discussion, the application filed by applicant/defendant No. 1, is partly allowed and the plaintiffs are directed to pay ad valorem court fee on the relief claimed towards loss of opportunity,

harassment and mental agony within a period of four weeks from today.

28. The application is disposed of accordingly.

(Sushil Kukreja)
Judge

October 30, 2026
(raman)