IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, NAGPUR.

(Presided over by S.T. Dande)

E-Filing Case

Regular Civil Suit No. : 613 of 2024.

Ramakrishna Electricals Limited

// Versus //

MSED Company Limited and others

ORDER BELOW EXHIBIT 18

(Passed on 20.12.2024)

Defendant No.1 Maharashtra State Electricity Distribution Co.Ltd. (MSED) and Defendant No.2 The Superintending Engineer of MSED have filed application under Order VII Rule 11 and under Order VII Rule 10 of C.P.C.

2] It is averred in the application that the plaintiff has filed suit and challenged the alleged unjustified action of the answering defendants encashing the bank guarantee by communication dated 15.06.2022 as also the communication dated 25.02.2019, debarring the Petitioner from participating in MSEDCL tenders in future tender.

3] It is further averred in the application that the plaint is liable to be rejected in accordance with the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, on the grounds that the relief claimed is undervalued, this court lacks territorial jurisdiction, suit is barred by the law of limitation and the plaint does not disclose any cause of for filing the instant suit.

4] It is further averred in the application that the plaintiff is seeking a declaration and an injunction upon the invocation of the bank guarantee which is valued at Rs. 1,79,54,676.00/- and the plaintiff has valued the suit for Rs. 1000/- each for declaration and an injunction. The plaint is therefore liable to be rejected on this ground of undervaluation alone. It is further averred that if the present suit is decreed then the Plaintiff will be benefited for an amount of Rs. 1,79,54,676.00/- as by the prayer in the plaint the plaintiff is seeking to avoid the payment of the said amount which is payable to the present defendants by the Plaintiff under the Bank Guarantee issued by Defendant No. 3 bank. The suit is susceptible to monetary valuation and as per the Maharashtra Court Fees Act particularly Section 6 of the said Act and also looking to the prayer clauses in the suit. Therefore, the suit is undervalued for the purposes of calculating the court fee and therefore, direction be given to the Plaintiff to pay the deficit stamp, withing a fixed time and upon failure to supply the deficit stamp the plaint be rejected.

5] It is further averred in the application that the Clause 8 of the Bank Guarantee which is the subject matter of the present suit debars the Plaintiff from filing the present suit in the courts in Nagpur. Clause 8 of the said Bank Guarantee is as follows :

"8. In case of any dispute arising out of or in connection with the extension or encashment of Bank Guarantee, the courts in Mumbai will have jurisdiction."

It is further averred that any dispute arising out of or in connection with the extension or encashment of bank guarantee, the court in Mumbai alone will have the jurisdiction. Therefore, this Court has no jurisdiction to try and entertain the suit.

6] It is further averred in the application that, the jurisdiction of Nagpur Court is ousted also because of Clause 32 and Clause 27 of the earlier conditions of tender and supply attached to the work order dated 25.03.2013 and the current acceptance of tender letter dated 30.10.2018. It is further averred in the application that all the tenders in question were floated from Mumbai, bank guarantee was submitted and payable at Mumbai, all information, intimations etc. was to be given at Mumbai, payment of bills was to be done from Mumbai, dispatch instructions were to be issued from Mumbai, it shows that the cause of action had arisen at Mumbai alone and that no part of cause of action has arisen at Nagpur. Hence, this Court has no territorial jurisdiction to try and entertain the present suit. Hence, prayed that plaint be returned.

7] It is further averred in the application that the suit filed by the plaintiff in respect to debarring the plaintiff from participating in MSEDCL tenders is hopelessly barred by limitation, as the impugned communication is dated 25.02.2019. Thus, the cause of action for the first time has arisen on 25.02.2019 and the limitation period expires on 24.02.2022. The present suit is filed on or about 03.06.2024. Thus, the suit is barred by limitation. Hence, prayed that plaint be rejected on this ground.

8] It is further averred in that application that the question of rejection of a plaint has to be decided on the touchstone of Order VII Rule 11 of the CPC which provides that a plaint be rejected if no cause of action is disclosed. The plaintiff has failed to disclose a cause of action and therefore, the suit is liable to be rejected. Hence, prayed that plaint be rejected/returned with costs.

9] The plaintiff has filed say at Exh.21 and resisted the application. It is contended that the law with respect to the objections under Order VII Rule 11 is well settled through various Judicial precedents that where in time and again the courts have held that, within whose territorial jurisdiction even slightest of cause of action arose, such courts to have jurisdiction to entertain the matter. In the present case the plaintiff company is from Nagpur the manufacturing of the products and supply has been done and coordinated through Nagpur, the bank giving the performance bank guarantee also having office at Nagpur, thus more than part of cause of action has arisen in Nagpur and accordingly this Hon'ble Court has complete Territorial

Jurisdiction to hear and decide the present suit.

10] It is further contended that the contract of guarantee is executed: interse between the defendants and as such the conditions stipulated therein are binding on them only. The plaintiff is only a affected party and as most part of the cause of action arouse at Nagpur as stated above, the clause in the bank guarantee no way binds the plaintiff and the same is not applicable. Further more the plaintiff has not sought any relief with respect to the tenders or any rights flowing through the tender. The plaintiff has only sought relief regarding the invocation of bank guarantee validity period of which has come to an end as per the tender agreement. The bank guarantee has been issued by a Nagpur Branch, i.e. defendant No.3, the plaintiff has its office at Nagpur and so does the defendant Nos. 1 and 2, accordingly as stated above most of the cause of action has arouse within the territorial jurisdiction of this Court accordingly this court has the jurisdiction to try and entertain the present suit.

11] It is further contended that as per the clause 8 of the bank guarantee, the said clause substantiates that the jurisdiction of courts of Mumbai is inclusive and not exclusive. Therefore as per section 20 of the code of civil procedure this Court has jurisdiction to entertain the present suit.

12] It is further contended that regarding allegation that suit is being undervalued, it is submitted that the suit is properly valued as per section 6 (iv)(j) of the Maharashtra Court Fee Act. The plaintiff by the present suit have only sought a declaration with respect to the letter of invocation of bank guarantee to be bad in law and has not challenged the execution of the said bank guarantee nor have prayed for release of the bank guarantee. Thus declaration to the effect of certain document being bad in law and consequential relief of injunction both have been properly valued as per section 6 (iv)(j) of the Maharashtra Court Fees Act. Accordingly the second objection for rejection of plaint is not tenable.

13] It is further contended that the third objection raised by the defendants Nos.1 and 2 for rejection of plaint is that of limitation. At the out set the question of limitation is said to be a mixed question of facts and law which is a settled law and hence on the ground of limitation a suit cannot be rejected under Order VII rule 11 as it shall enquiry to be conducted by the court as to whether the suit is within limitation or not. Further more the action of blacklisting the plaintiff by the defendants Nos.1 and 2 is by way of order dated 25.02.2019. The Hon'ble Apex court has exempted the period of limitation from 15.03.2020 uptill 28.02.2022. Accordingly the said period has to be computed. Then the plaintiff herein had challenged the impugned action of the defendants no.1 and 2 before the Court vide writ petitions 3592 which came to be filed on and 3593 of 2022, 30.06.2022, the plaintiff has been bonafidely litigating the Hon'ble High Court and the High Court was of the view that the plaintiff should approach this Court, the Hon'ble

Hon'ble High granted liberty to the plaintiff to file the present suit vide order dated 29.02.2024, accordingly the present suit came to be filed on 01.06.2024. Thus considering Section 14 of the Limitation Act, the period where in the plaintiff was bonafidely litigating before the Hon'ble High Court needs to be exempted and coupled with the liberty given by the Hon'ble High Court to file the present suit, it can be very well established that the suit is within limitation.

14] It is further contended that the Hon'ble Apex as well as various High courts have held that when the invocation of bank guarantee is patently illegal and causing irreparable loss to the party then the courts have not only right to entertain the suit for injunction but also grant and protect the party from the illegal acts of the defendants by granting injunction.

15] It is further contended that the plaintiff has in various para's of its plaint have abundantly spelt of the cause of action that has aroused in its favor more specifically in para 27 of the suit. Hence the contention of the defendants Nos.1 and 2 that the plaint does not disclose any cause of action is completely misconceived and the same has been raised maliciously. It is further contended that all the objections raised by the defendants Nos.1 and 2 in the present application praying for rejection of plaint under Order VII rule 11 of the code of civil procedure are all frivolous and misconceived and therefore, application is liable to be rejected.

16] Heard learned Advocates for the Plaintiff and the Defendant Nos. 2 and 3. Perused the documents on record. From rival contentions of both the parties, following points arise for my determination, my findings thereon with reason are as under:

Sr. No.	Points	Findings
1	Whether plaint is liable to be rejected under Order VII Rule 11 of C.P.C. or returned under Order VII Rule 10 of C.P.C. ?	No, if plaintiff carry out the correction of the valuation and to supply the requisite court fees within one month from the date of the order.
2	What order ?	As per final order.

R E A S O N S

AS TO POINT NO. 1 :

17] First it is necessary to consider Order VII Rule 10 and Order VII Rule 11 of the C.P.C.

Order VII Rule 10 of the C.P.C. - The provision regarding the return of plaint are provided under the Order VII Rule 10, 10A, 10B of C.P.C. The court, if it found that it does not have jurisdiction in the suit, can return by an order that plaint to be presented in the proper court.

Order VII Rule 11 of the C.P.C. - The plaint can be rejected in following cases :

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

(b) where the relief claim is under valued 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 claim is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff on being required by the Court to supply 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 plaint is not filed in duplicate;

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

Provided that the time fixed by the Court for correction of valuation or supplying of the requisite stamp paper 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 paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.

18] The object of Order VII Rule 11 of the C.P.C. is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. Under

Order VII Rule 11 of the C.P.C. the duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law or judicial dicta for deciding whether case for rejecting the plaint at the threshold is made out. At this stage, the pleas taken by the Defendant in his written statement and application for rejection of plaint on the merits, would be irrelevant and cannot be adverted to or taken into consideration.

19] Thus, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint disclose a cause of action, then the application under Order VII Rule 11 of the C.P.C. must failed. Following this, now I proceed to consider the averments made in the plaint.

20] The suit is filed for declaration and perpetual injunction. The plaintiff is a public limited company duly registered under the Indian Companies Act, having its registered office at Hingna, MIDC, Nagpur, a small scale industry. The plaintiff has been in business relationship as a supplier of the defendant No.1 for a period more than 35 years. The defendant No.1 had placed an order vide letter dated 25.03.2013 for supply of 100 KVA amounting to 2000 numbers as per the terms of the contract. The delivery period for supply of the material was indicated in the said order. The plaintiff was to execute bank guarantee by way of performance guarantee for a period of 60 months from the date of commissioning of the transformer or 66 months from the date of dispatch whichever is earlier. The plaintiff has supplied 100 KVA transformers to the different consignees of defendant No.1 for period from 23.09.2013 to 24.11.2014. The consignment is delivered on the respective dates to the consignees of defendant No.1 and during the above period they did not notice any defect or any workmanship dissatisfaction and as such the material supplied was in good condition and acceptable by the defendant No.1.

21] It is further averred in the plaint that as per the terms and conditions of the contract as referred in the letter dated 25.03.2013, the plaintiff had executed bank guarantee as a performance guarantee for a period of 60 months. The bank guarantee was for Rs.1,79,54,676/- which was renewable every year as required as per the clause of the contract. One such extension of the performance guarantee by the defendant No.3 for and on behalf of the plaintiff was by letter dated 01.08.2021 which was valid till 31.07.2022. The said bank guarantee is still in force as the plaintiff has been extending the same on the orders of the Hon'ble High Court passed in Writ Petition No.3592/2022 as such the bank guarantee is in force till 30.06.2024.

22] It is further averred in para No.27 of the plaint that the cause of action for the present suit arose when the plaintiff received communication dated 15.06.2022 from defendant No.3

and further arose on 25.03.2019 by which communication, the plaintiff were intimated about cancellation of orders and blacklisting. The cause of action further continue when the plaintiff was perusing defendant No.1 and 2 for re-issuance of the aforesaid order vide various communications. Therefore, plaintiff has filed present suit for declaration that communication dated 15.06.2022 issued by defendant No.1 for invocation of bank guarantee No.37611LG006218 dated 28.09.2018 issued for order No.SP/L-104/T-1202/0512/1421 is bad in law and accordingly quash and set aside the same. Further plaintiff prayed for declaration and quashing the communication dated 25.02.2019 only with respect to debarring the plaintiff from participating in MSEDCL tenders in future issued by defendant No.1 as bad in law. The plaintiff has also prayed for permanent injunction to restrain the defendant Nos.1 and 2 from invoking bank guarantee No. 37611LG006218 for sum of Rs.1,79,54,676/- issued for order No. SP/L-104/T-1202/0512/1421 and further refrain the defendant No.3 also not to act upon such request made by the defendant Nos.1 and 2.

23] First Objection – Whether suit is undervalued ?

The learned advocate for the defendant argued that the plaintiff is seeking the declaration and injunction upon the invocation of the bank guarantee which is valued of Rs.1,79,54,676/-. Therefore, if the suit is decreed the plaintiff will be benefited for an amount of Rs.1,79,54,676/- as by the prayer in the plaint the plaintiff is seeking to avoid the payment of the said amount which is payable to the defendants by the plaintiff under the bank guarantee issued by the defendant No.3 bank.

24] As per **Section 6 (iv) (j) of the Maharashtra Court Fees Act** provides – for other declarations – in suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this act ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees.

25] However, in the present suit the subject matter in dispute is susceptible of monetary evaluation and therefore, **Schedule 1, Article 7 of the Maharashtra Court Fees Act** will apply.

Schedule I, Article 7 provides any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid – A fee on the amount of the monetary gain or loss to be prevented, according to the scale prescribed under Article 1. Article 1 provides plaint or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any civil or revenue court – provided that the maximum fee leviable on the plaint or memorandum of appeal or of cross objection shall be three lakh of rupees.

26] The learned advocate for the defendant has placed his reliance in the case of **Mohan Meakin Breweries Ltd. Vs. Oceanic Imports And Exports Corporation and another reported in 1980 Mh.L.J. 803** wherein it has held that Suit for declaration and injunction restraining Bank from making payment and selling property under charge as also restraining party from demanding payment from Bank, Court-fee payable under Schedule I, Item 7 of the Bombay Court Fees Act.

Wherein it is observed that the provision Section 6(iv)(j) of the Act is attracted only when three conditions are satisfied, namely, that the suit is (i) for declaration, (ii) the subject-matter in dispute is not susceptible of monetary evaluation and (iii) the suit is not otherwise provided for under the Act. Prayer (a) in the present suit is for a declaration that the second defendants are not entitled to demand, recover or receive any payment under the two guarantees or to enforce either of the said guarantees and that the first defendants have no right to make any such payment to the second defendants under either of the two guarantees. The subject-matter in dispute further is the amount due under the said two bank guarantees and the same is clearly susceptible of monetary evaluation. Further Item 7 of Schedule I of the said Act covers a suit such as the present one, and therefore, the third condition mentioned in the section 6(iv)(j) is also not satisfied in the present case. As is clear from what has been stated earlier, the present suit is for a substantive relief of a declaration that under the two bank guarantees, the second defendants are not entitled to demand, recover or receive any amount and the first defendants have no right to make such payment to the second defendants. The suit is also for an injunction restraining the first defendants from making the said payment and the second defendants from enforcing the same thereby preventing a loss to the plaintiffs of the amount guaranteed under the said two guarantees. The suit therefore clearly falls under the said Item 7 of Schedule I of the said Act.

27] The learned advocate for the plaintiff argued that plaintiff has not sought any relief with respect to the tenders or any rights flowing through the tender. The plaintiff has only sought relief regarding the invocation of bank guarantee validity period of which comes to an end as per the tender agreement. The present suit has only sought the declaration with respect to the letter of invocation of bank guarantee to be bad in law and has not challenged the execution of the said bank guarantee nor have prayed for release of the bank guarantee. Thus, declaration to the effect of certain document being bad in law and consequential relief of injunction both have been properly valued as per Section 6(iv)(j) of the Maharashtra Court Fees Act.

28] In the present case, it appears from the averments in the plaint that the plaintiff has filed suit to restrain the defendant from invoking the bank guarantee. The plaintiff is seeking declaration that act of defendant No.1 for invocation of bank guarantee is bad in law. It shows that the plaintiff has not only sought declaration regarding communication but plaintiff is seeking declaration for alleged act of defendant of invocation of bank guarantee. Admittedly the bank guarantee executed by the plaintiff as a performance guarantee. The bank guarantee was for Rs.1,79,54,676/-, therefore it appears from the averments in the plaint that the subject matter in dispute is susceptible of monetary evaluation. Assuming for a moment that defendant No.1 invoked the bank guarantee, ultimately plaintiff will suffer monetary loss therefore, provisions of Schedule 1, Item No.7 will apply for the relief capable of being valued in terms of monetary gain or prevention of monetary loss. Therefore, abovesaid decision is perfectly applicable to the present fact of the case. Therefore, I come to the conclusion that suit is not properly valued.

29] As per Order VII Rule 11(b), the plaint shall be rejected where the relief claimed is undervalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so. In view of the said provision it is necessary to give sufficient time to the plaintiff for correction of the valuation and to supply the requisite stamp papers to present the plaint.

30] Second Objection – Whether this Court lacks territorial jurisdiction ?

It appears from the averments in the plaint that – Subject matter of the suit i.e. Bank Guarantee has issued by Defendant No.3, Nagpur Branch, the Plaintiff and Defendant

Nos.1 and 2 have their offices at Nagpur. Most of the cause of action has taken place within the territorial jurisdiction of Nagpur Court. Hon'ble High Court in Writ Petition No.3593/2022 order dated 19.01.2023, held that prima-facie the Nagpur Bench have territorial jurisdiction. However in Clause 8 of Performance Bank Guarantee it is specifically mentioned that 'In case of any dispute arising out of or in connection with the extention or encashment of Bank Guarantee, the courts in Mumbai will have the jurisdiction'.

31] The learned advocate for the Plaintiff has placed his reliance in the case of -

Swastik Gases Private Limited Vs. Indian Oil Corporation Limited, reported in **(2013) 9 SCC 32** wherein it has held that use of words like "alone", "only", "exclusive" or "exclusive jurisdiction", is not necessary in exclusion clause to exclude jurisdiction of Court. What is essential is intention of parties to the agreement. Such exclusion clause, held neither hit by Section 23 nor offends Section 28 of Contract Act, 1872.

32] When it comes to the question of territorial jurisdiction relating to the suit, Section 20 of the Code of Civil Procedure is relevant. Section 20 of the Code states that subject to the limitations provided in Section 15 to 19, every suit shall be instituted in a Court within the local limits of whose jurisdiction – (c) the cause of action, wholly or in part arises. In the present case, Bank Guarantee executed at Nagpur, Plaintiff's office is at Nagpur, Defendant Nos.1 and 2 being a government company having office at Nagpur. According to the defendant Nos.1 and 2 the tenders in question were floated from Mumbai, bank guarantee was submitted and payable at Mumbai, all information, intimations, etc. was to be given at Mumbai, payment of bills was to be done from Mumbai, dispatch instruction were to be issued from Mumbai. It shows that the cause of action has arisen at Nagpur and Mumbai. It cannot be held that no part of cause of action has arisen at Nagpur and therefore, it cannot be concluded that intention of parties to the agreement was that only Mumbai will have the jurisdiction. Part of cause of action has arisen in Nagpur and therefore, Nagpur Court also is having jurisdiction to try and entertain the present suit.

33] Third and Fourth objections – Whether suit is barred by Law of Limitation and plaint does not disclose any cause of action for filing the suit ?

34] It is averred in the plaint that the cause of action for the present suit has arisen on 15.06.2022 and on 25.02.2019 by which communications the plaintiffs were intimated about cancellation of orders and blacklisting. The plaintiff has filed letter dated 15.06.2022 along with the plaint. It shows that the said letter issued by defendant No.2 to defendant No.3. The subject of the said letter was encashment of bank guarantees No.37611LG006218 dated 28.09.2018 and 376101LG002521 dated 28.07.2021. The defendant No.3 was called upon to pay Rs.3,79,12,176/- in reference of order dated 25.03.2013 and

10.09.2015. Further the plaintiff has also filed letter dated 25.02.2019 the said letter issued by defendant No.2 to the plaintiff regarding cancellation of order. The plaintiff has also filed entire relevant documents regarding the transaction. It prima-facie shows that there are sufficient documents and averments in the plaint showing alleged cause of action.

35] The learned advocate for the Defendant Nos.1 to 3 argued that the impugned communication is dated 25.02.2019 and therefore, cause of action for the first time has arisen on 25.02.2019 and the limitation period expired on 24.02.2022. However, present suit is filed on or about 03.06.2024 therefore, suit is barred by Law of Limitation.

36] In reply, learned advocate for the Plaintiff argued that the Hon'ble Apex High Court has exempted the period of limitation from 15.03.2020 till 28.02.2022 vide its order passed in suo-moto PIL dated 10.01.2022, keeping in mind the pandemic situation. Then, the Plaintiff had challenged the impugned action of the Defendant Nos.1 and 2 before the Hon'ble High Court vide Writ Petition No.3592 and 3593 of 2022 on 30.06.2022. The Hon'ble High Court was of the view that the Plaintiff should approach before this Court and therefore, the Hon'ble High Court granted liberty to the plaintiff to file the present suit vide order dated 29.02.2024. Accordingly, the present suit came to be filed on 01.06.2024.

37] Defendants placed their reliance in the case of **Oil**

and Natural Gas Corporation Ltd. Vs. Modern Construction and Co. reported in 2014(1) SCC 648, wherein it has held that the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act. However, after presentation before the Court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted denovo even if its stood concluded before the court having no competence to try the same.

38] Section 14 of the Limitation Act provides protection against the bar of limitation to a person bonafide presenting his case on merit but fails as the court lacks inherent jurisdiction to try the suit. In the present case, it appears that the plaintiff approached before the Hon'ble High Court on 30.06.2022. The Hon'ble High Court granted liberty to the plaintiff to file the present suit vide order dated 29.02.2024. Therefore, the period where the plaintiff was bonafidely litigating before the Hon'ble High Court needs to be exempted.

39] Moreover, the question of limitation and cause of action are mixed question of law and fact and it requires both legal and factual analysis. A mixed question of fact and law can be established by adducing necessary evidence at the trial. Therefore, it will not proper to reject the plaint merely on the basis of averments.

40] In the case of **Shakti Bhoj Food Industries Limited**

Vs. Central Bank of India and others [(2020) 17 SCC 260], wherein it has held that whether suit is barred by law of limitation, Court's duty is to scrutinized averments contains in the plaint as a whole on their face value to ascertain bar of limitation and to take decision of the application Order VII Rule 11 (d) of C.P.C. If averments show that suit is barred by law of limitation and does not disclosed any cause of action, Court can exercise power under Rule 11 to reject the plaint. However, averments in the written statement as well as contentions of the Defendant are wholly immaterial while considering the prayer of the Defendant for rejection of the plaint.

41] In the present case, it is apparent from the plaint that the Plaintiffs specifically pleaded that the impugned communication was delivered to the plaintiff and the defendant No.3 on 15.06.2022. Further it is pleaded that the cause of action has arisen on 25.02.2019 by which communication the plaintiffs were intimated about cancellation of orders and blacklisting. The plaintiff has given sufficient explanation regarding exemption granted by the Hon'ble Apex Court and Hon'ble High Court. Therefore, whether suit is barred by law of limitation and whether plaint does not disclose any cause of action these questions are mixed question of law and facts. It can be determined during the trial. The result of which would depend upon the evidence adduced by the parties. Therefore, at this stage, it will not proper to consider the averments made in the application under Order VII Rule 11 of the C.P.C. Prima-facie it appears that the plaint disclosed a cause of action for filing suit against the Defendant. Moreover suit is filed with all relevant documents. The defendant has failed to make out ingredients specified in Order VII Rule 10 and clause a and d of Order VII Rule 11 of C.P.C. Therefore, I am not inclined to reject the plaint under clause a and d of Order VII Rule 11 of the C.P.C. Hence, I answer point No. 1 accordingly.

AS TO POINT NO. 2 :

42] In view of discussion of point No.2, I pass the following order-

ORDER

[i] Application under Order VII Rule 10 and for clause a and d of Order VII Rule 11 is rejected.

[ii] Suit is not properly valued hence one month time is granted to the plaintiff for the correction of the valuation and to supply the requisite court fees, from the date of the order.

DISTRICT COURTS MAHARASHTRA

Digitally signed by SAYALI TEJESH DANDE
Date: 2024.12.20 15:41:03 +0530

Nagpur. (**S.T. Dande**)
Date : 20.12.2024 Civil Judge, Sr. Dn., Nagpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of Stenographer : M.S.Vishwakarma
Stenographer, G-II.