

**Order below Exh.84 in Regular Suit No.289/2022**

(Old Civil Suit No.3800/2000, City Civil Court, Ahmedabad,  
Old Commercial Suit No.460/2019, Small Cause Court, Ahmedabad and  
Old Commercial Suit No.186/2020, City Civil Court, Ahmedabad)

**Coram: Mr. G. P. Sodhaparmar, Chief Judge.**

1) Heard learned advocates of both the parties. Read the present application, reply filed by the plaintiff vide Exh.87 and all the record of the case.

2) This application has been submitted by the defendant nos.3 and 8 under the provision of Order-7 Rule-11 of the C.P.C. to reject the suit plaintiff of the plaintiff. It is stated by the defendants in the present application that the plaintiff is registered co-operative bank and filed one Lavad Case/suit No.1932/1992 under Section-96 of the Co-operative Societies Act before the Hon'ble Court of Board of Nominees in the said suit. The plaintiff has joined the present defendant nos.3 and 8 for recovery of loan amount in regard of hypothecation of machinery taken for business purpose. It is further stated that in that suit before the Board of Nominees, the defendant nos.3 and 8 have raised one dispute in regard of not having the status of shareholder and therefore, as the plaintiff has failed to prove the suit before the Board of Nominees, the Court has after considering all the facts, evidence and submission of all the parties of the suit on merits, rejected the suit of the plaintiff on dated 28.06.2000. It is further stated that in that suit, the plaintiff has failed to prove the suit plaintiff and also failed to

prove any documentary evidence in regard of liabilities of the present defendants and hence, the Hon'ble Court of Board of Nominees had legally held out that the plaintiff is failed to prove this suit as filed under Section-96 of the said act and therefore, the suit has been decided on merits by that Court. It is further stated that it has been held out of the said Court Board of Nominees that as no Jurisdiction to decide the said Court and hence, also suit of the plaintiff has been rejected and therefore, the present suit is not tenable in the eye of law and specifically barred by law of limitation as the plaintiff has not fulfilled the provision of Section-14 of the Limitation Act and it is nothing but negligency on the part of the plaintiff to file the suit within time limit. It is further stated that though the Lavad Suit No.1932/1992 has been decided on merits and in that suit, the suit claimed was Rs.4,05,125/- but in the present case, the plaintiff has claimed for Rs.9,17,535/- with interest and therefore, the present suit is clearly barred by law of limitation and therefore, this suit is rejected under the provision of Order-7 Rule-11(b) of the C.P.C. It is further stated that the plaintiff has not made out any procedure for attachment before the Judgment in the said Lavad Suit and therefore, now filing of the present suit beyond limitation, same is required to be rejected. It is further stated that the plaintiff has also failed to get necessary permission to file such present suit before this Court and therefore, the present suit is clearly barred by the provision of Order-2 Rule-2 read with Order-7 Rule-11(b) of the C.P.C and therefore, this application to reject the suit plaint of

the plaintiff.

3) On the other hand, the plaintiff has filed reply at Exh.87 and strongly objected the facts and allegations made out by the defendant nos.3 and 8 and stated that as the Board of Nominees Court has not decided the suit on merits and same has been rejected only one ground i.e. about the Jurisdiction and as such the earlier suit i.e. Lavad suit has been rejected on one ground of Jurisdiction, the plaintiff has filed the present suit within three years after the said Judgment of the Court of Board of Nominees and therefore, the present suit has been filed within prescribed time limit, this application is not tenable. It is further stated that the plaintiff is also entitled to get benefit of Section-14 of the Limitation Act and the present suit has filed as a cause of action has also survived and hence, as the defendants have filed the present application to prolong the matter, this application is required to be dismissed with cost.

4) Now, for the determination of the present application, it is required to go through the suit plaint of the plaintiff. If we perused the same, it appears that the present suit has been filed by the plaintiff The Ahmedabad Mercantile Co-op. Bank Ltd., which is registered under the Co-operative Societies Act having it's office at Navrangpura, Ahmedabad. The said suit has been filed before this Court on 20.07.2000 against total 8 defendants to recovery of Rs.9,17,535/-. As per the suit of the plaintiff, it is stated and alleged by the plaintiff that the

defendant no.1 is registered firm and the defendant nos.2 to 5 were / are partners of the same and the defendant nos.6 to 8 are the guarantors in regard of the loan transaction made out by the defendant nos.1 to 5 with the plaintiff bank and therefore, all the defendants are liable in regard of the said loan, which has been sanctioned by the plaintiff bank to the defendants for providing monetary help with a view to develop the business of the defendant no.1 firm. It is further stated that the defendant nos.6 to 8 (including the present defendant nos.3 and 8) are the guarantors who have also signed and produced the necessary documents in regard of the loan transaction for Rs.3,40,000/- having hypothecation of the machinery to develop the business of defendant no.1 firm and therefore, necessary documents like agreement of hypothecation, document in regard of bookdebts deed, letter of continuity, etc. in favour of the plaintiff bank. It is further stated that as per the terms and conditions of the said loan, total 60 installments are agreed by the parties with interest @ 16% p.a. and if the defendant failed to repay the loan amount to the plaintiff bank, necessary legal action be proceeded against them and hence, all the defendant are liable to pay the loan amount to the plaintiff bank. It is further stated that the defendant no.6 has also submitted the title deed of the co-lateral security of the property having tenement number 85. It is alleged by the plaintiff bank that as the defendants are failed to pay regular amount of installment and also not paid the amount of interest in regard of loan transaction, the plaintiff bank has written two letters to the

defendants on dated 20.06.91 and 20.02.92 respectively but same has not been complied by the defendants and the defendants failed to perform their liabilities and hence, lastly, the Bank has asked the defendants for the payment of due loan amount of Rs.4,01,783/- but the defendants have failed and therefore, the plaintiff has filed one Lavad Case No.1932/1992 before the Court of Board of Nominees and as the said suit was filed on dated 30.09.1992, the defendants were member of the plaintiff bank and therefore, as the plaintiff has legal right to recover the due loan amount from the defendants and as all the defendants liable for the same and by bonafide intention as well in good faith manner, the plaintiff has filed the said suit before the Court of Board of Nominees by presuming that the said Court has Jurisdiction to decide such suit but in proceedings of the said suit before the Court of Board of Nominees, the Court has rejected the suit of the plaintiff on dated 28.09.2000 only one ground for Jurisdiction and held out that the Court of Board of Nominees has no Jurisdiction to decide such suit and therefore, the said suit has been rejected. It is further stated by the plaintiff that total Rs.9,17,535/- is due amount in regard of the loan transaction, the details also stated in para no.7 of the suit plaint for the same and it is further stated that as all the defendants have submitted necessary documents for the loan purpose in favour of the plaintiff bank having the signature on the same, all the defendants are liable to pay the said amount as alleged by the plaintiff in the present suit and the plaintiff has further stated that as the suit filed before the Court of

Board of Nominees has been rejected only on the ground of Jurisdiction, prayed for decree of suit claimed amount Rs.9,17,535/-. It appears from the record that on service of summons of the present suit, the defendant no.3 has submitted the written statement vide Exh.23 to resist the present suit of the plaintiff but no any other defendants have submitted any reply pertaining to the suit of the plaintiff and it also appears from the record, necessary issues vide Exh.25 have been framed on dated 20.10.2018. If we perused the written statement of the defendant no.3 and looking to the issued at Exh.25, the Hon'ble Court has framed two separate issues in regard of limitation as well as jurisdiction and estoppel and to prove the suit claim, the plaintiff has filed examination-in-chief of the Bank Manager of the plaintiff bank vide Exh.42 on dated 07.08.2021 but till date, no any cross-examination has been made out by the defendant side. The plaintiff has also produced documentary evidence in support of suit claimed and hence, the matter is pending for cross-examination of the plaintiff since long time but meanwhile the legal heirs of deceased defendant no.8 are brought on record and thereafter, by engaging new advocate defendant nos.3 and 8 have submitted present application under the provision of Order-7 Rule-11 of the C.P.C vide Exh.84 to reject the suit of the plaintiff. Now looking to the ground raised in the present application by the defendants, it appears that in support of present application as well as in support of written statement at Exh.23, the defendants have not submitted any copy of said Lavad Suit No.1932/1992 but on perusing of the record, it

appears that the plaintiff has submitted the same vide Mark-3/8 and on perusing of the same, it appears that the plaintiff bank has filed the said Lavad Suit No.1932/1992 before the Court of Board of Nominees to recover Rs.4,05,125/- with interest against total 8 defendants. It is further appears from the record that the said Lavas Suit No.1932/1992 has been decided by the Court of Board of Nominees on dated 28.06.2000 and the suit of the plaintiff has been rejected only on one ground about the Jurisdiction and it ordered that the suit of the plaintiff is rejected on the ground of Jurisdiction. As the said suit has been rejected on the said ground of Jurisdiction by the Court of Board of Nominees Ahmedabad on dated 28.06.2000, the plaintiff came before this Court to file the present suit for recovery of due amount in regard of said loan and the present suit has been filed on 20.07.2000 before this Court and hence, it appears that the present suit is filed within time limit as provided in the Limitation Act. So far as the benefit of Section-14 of the Limitation Act is concerned, this Court has framed necessary issue as stated above and therefore, the contention raised by the defendants in the present application is rejected on merits and straight out the present suit is not required to be rejected under the provisions of Order-7 Rule-11 of the C.P.C.

5) As stated above, the present application is filed by the defendant nos.3 and 8 under the provision of Order-7, Rule-11 of the C.P.C, the same required to be considered, the same is reads thus...

**Order 7, R. 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 to 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.].

Order-7 Rule-11 deals with rejection of plaint.

6) It is also settled that under the provision of Order-7 Rule-11 of the C.P.C, the Court has power to decide its own jurisdiction and the question of maintainability of the suit. It is held in the case of <sup>1</sup> **Vasu Tech Ltd. v. Ratna Commercial Enterprises Ltd.** that... **“One of relief's is alleged to be barred under any law, entire plaint not liable to be rejected”**. In the case on hand, earlier Lavad Suit No.1932/1992 has rejected under only one ground i.e. Jurisdiction of the Court of Board of Nominees and the present suit has filed by the plaintiff-bank (registered co-operative bank under the provision of the Co-operative Societies Act) for recovery of due loan amount from the defendants and considering the pleadings of the parties, the Court has framed Issues vide Exh.25 on 20.10.2018 in respect of limitation, mis-joinder and non-joinder of parties and Jurisdiction and estoppel and as discussed herein above, the plaintiff's Bank Manager has submitted examination-in-chief vide Exh.42 on 07.08.2021 and from the side of defendant, no any cross-examination has been made out and it also transpires that the plaintiff has produced documentary evidence in support of their suit and the present suit is pending for cross-examination of the plaintiff from long time and inspite of that the present application has filed by the defendant nos.3 and 8 on 19.03.2025 after such a long time i.e. after 25 years as initially, the present suit has filed by the plaintiff in year 2000 before the Hon'ble City Civil Court,

1 AIR 2008 DELHI 122: Vasu Tech Ltd. v. Ratna Commercial Enterprises Ltd. DELHI HIGH COURT.

Ahmedabad.

7) So, looking to the above stated reasons as well as the contention raised by the plaintiff in the suit claimed and more particularly, when the present defendants are alleged to be having liability as guarantors of alleged loan transaction and the loan receiver i.e. defendant nos.1 to 5 have not appeared this Court to resist the present suit, the suit is required to be decided on merits and therefore, considering all the facts and circumstances of the present suit, it appears that the dispute raised by the defendants in regard of the limitation, same seems to be mixed question of facts and law and hence, this application is not tenable and therefore, in the interest of justice, I pass following order:-

**ORDER**

(1) This application is hereby rejected.

(2) No order as to cost.

Pronounced and signed in the open Court today i.e 2<sup>nd</sup> day of August, 2025.

Ahmedabad.

Date: 02/08/2025.

(Ganpatsinh Parvatsinh Sodhaparmar)  
Chief Judge, UIC No.GJ00923,  
Small Causes Court,  
Ahmedabad.