

**Order below Exhibit-34, filed by the defendant under Order-VII, Rule-11(d) of the Code of Civil Procedure, 1908 in Commercial Suit No. 1 of 2022.**

**APPEARANCE :**

On behalf of the plaintiff : Ld. Adv. Shree H. R. Dhoriyani.

On behalf of the defendant No. 2/1 & 2/2 : Ld. Adv. Mr. S. R. Upadhyay.

Defendant Nos. 1 & 3 struck out. (As per order below Exhs.-16 & 17)

[1.1] The plaintiff has filed the present suit under Order-XXXVII of the Civil Procedure Code, 1908 and Sec.-6 of the Commercial Courts Act, 2015.

[1.2] The defendant has been duly served; and appeared through Ld. Adv. The defendant Nos. 2/1 and 2/2 have filed their written statements and written objections at Exh.-31 and filed this application under Order-VII, Rule-11 read with Sec.-151 of Civil Procedure Code, 1908 at Exh.-34.

[1.3] The plaintiff has filed their written reply against the said application on hand at Exh.-37.

[2] Considered the pleadings of the plaint and the documentary evidence produced by the plaintiff-side. Read the application at Exh.-34. Considered the written reply filed against the said applications at Exh.-37 filed by the plaintiff-side. Heard the Ld. Adv. for plaintiff and defendant. Considered the written arguments filed at Exhs.-41 and 44 respectively by the defendant Nos. 2/1 &

2/2 and the plaintiff. Considered the arguments of both the sides. Perused the record and proceedings.

[3] At the outset, it is advantageous to refer the related provisions of law. Order-VII, Rule-11 read as under :

**“Rule-11** : 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 provisions of Rule-9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reason 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-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.”

[4] Considering the facts of this application filed by the defendant Nos. 2/1 & 2/2 (***hereinafter referred to as defendant***), they have come with three grounds only,

i.e. (a) Title in the heading of the suit; (b) suit is not under Order-XXXVII of CPC; and (c) Statement of Truth.

[5.1] First, The defendant has come with the ground that the suit contains title, i.e. "*Before the Hon'ble District Judge's Commercial Court at Morbi*" then after "*Halvad*" is written striking out "*Morbi*" and giving space mark "*Sr.*" is written' that who, why and when the said change has been made is not disclosed in the entire suit; that after order of striking out defendant Nos. 1 & 3, the plaintiff has filed amended plaint with the said change, but the plaintiff has not filed any application for amendment of the same; that as per Rule-1 of Order-VII of CPC, it is important to write name of the Court before whom the suit has been filed. Considering the facts on record, the present suit has been filed on 19-11-2022 before the Principal Senior Civil Judge, Morbi who was in-charge Principal Senior Civil Judge, Halvad, Dist. Morbi. The title in the heading was changed before filing of the same as the Commercial Court is in existence at Taluka Halvad of Dist. Morbi and this suit has been registered at Halvad. When the suit is filed, the title is written in the name of the Principal Court and the matter may be transferred to another court as per roster or order, i.e. the matter is filed with title of "*Before the Principal Senior Civil Court at XYZ*" and transferred to the Civil Court of XYZ station. When the matter is transferred under Sec.-24 of the CPC, the title in the heading (Name

of the Court) does not change. It is very much clear that the same is curable defect and does not affect the merits of the case. This is ground of technical defect which is not included under Order-VII, Rule-11 of the CPC.

[5.2] Second, the defendant has come with the ground that considering the subject of the suit, the plaintiff has come under Order-XXXVII of the Code, but the conditions of Rule(2)(1)(a) and (b) have been written with clever and ambiguous drafting and avoided the per-conditions. Considering the entire pleadings, defense and relief claimed, it transpires that the suit contains relief for recovery of money, accounts, payment of mesne commission, distribution ship and perpetual injunction. The defendants have not been served the summons of the suit in Form No. 4 in Appendix B; that as per the provisions of Order-XXXVII, Rule-2(2) of the Code. The defendants have been served the summons for settlement of issues. In these circumstances, merely the subject contains that the suit has been filed under Order-XXXVII does not put the entire suit within the frame of Order-VII, Rule-11(d). Considering the provisions of Order-XIII A of amended CPC, Summary Judgment, the same sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

[5.3] Third, the defendant has come with the

ground that the plaintiff has not filed the Statement of Truth as per the amended provisions of Rule-15A of Order-VI; therefore, the plaint should be rejected. Considering the provisions of Rule-15A (4) of Order-VII (Amended) of CPC, where a pleading is not verified in the manner provided under sub-rule(1), the party shall not be permitted to rely on such pleading as evidence or any of the matter set out therein. as per sub-rule (5), the Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule. The said provision is having helping verb "may" which interprets that the same is not mandatory, but discretionary. Secondly, the plaintiff himself is responsible for the result of non filing of Statement of Truth as he shall not be permitted to rely on such pleading as evidence or any of the matters set out therein. Thirdly, the same is curable defect which does not include under the provisions of Order-VII, Rule-11 of the Code.

[6] As per the ratio laid down in the case of **A. Manju**<sup>1</sup>, the Hon'ble Apex Court has held that the technical defect which is curable does not fall within the provisions of Order-VII, Rule-11 of CPC.

[7] Considering the averments made in the plaint of the suit on hand and even accepting all the averments

1 A Manju Versus Prajwal Revanna @ Prajwal R reported in 2021(0) AIJEL-SC 68118

made in the plaint as they are, the present suit is not either expressly or impliedly barred by any law. Therefore, the present application deserves to be rejected. Hence, the following final order is passed in the interest of justice.

**-:: ORDER ::-**

- (a) The application at Exh.-34 filed by the defendant under Order-VII, Rule-11(d) of CPC is hereby rejected.
- (b) The cost shall follow the final disposal of the present suit.

Pronounced in the open Court today, on this 23<sup>rd</sup> day of October, 2023.

Halvad.

Date : 23/10/2023.

**(Anil Nanalal Gajjar)**  
Principal Senior Civil Judge,  
Halvad, Dist. Morbi. (GJ-01166)