

The order is pronounced in
open court.

ORDERS ON IA No.3

This application is filed U/Or VII Rule 11(a) & (d) of CPC for rejection of the plaint against the defendant Nos.2 to 5 as there is no cause of action.

Along with the application, the Director of the defendant No.1 company has filed his affidavit. The plaintiff has filed the suit for recovery of the amount with interest. The plaintiff sent a demand notice U/Sec.138 of N.I. Act on 24.06.2022 demanding a sum of Rs.67,97,126/- to the defendant No.1 company and its Directors. Reply was sent by denying the allegations stating that the defendant Nos.2 to 4 are the Non Executive Directors and not responsible for the day to day affairs of the defendant No.1 company. The defendant No.1 company is a limited by shares and private limited company and the Directors, Employees do not have any personal liability.

It is further stated that the defendant No.1 company is solely liable for any actions performed by the company and its Directors cannot be held liable, unless there is specific averments of fraud alleged in the plaint. The Directors are not guarantors of the company. As per Sec.230 of the Indian Contract Act, the suit is barred by law. The Directors are not personally bound by the contract alleged by the plaintiff.

It is further stated that after perusing the plaint averment there is only one line written in the notice and plaint against the Directors - The defendant No.1 is a private limited company and defendant Nos.2 to 5 are the Directors / Managing Directors and authorized signatories and also responsible for the day to day affairs of the defendant No.1. The defendant Nos.2 to 5 have transacted with the plaintiff on behalf of the defendant No.1. Therefore, all the defendants are liable for not making the payment of the above mentioned outstanding to the plaintiff.

The plaintiff had instituted a complaint for the offence punishable U/Sec.138 of N.I. Act against the Directors in C.C.No.28204/2022. A petition was filed U/Sec.482 of Cr.P.C. for staying the proceedings in the said criminal case. The suit against the defendant Nos.2 to 5 is without any cause of action and barred by law. Hence, liable to be rejected. Therefore, pray for allowing the application.

The plaintiff has filed its objections in detail, denying the contents of the application as well as the affidavit annexed to it. It is contended that the suit is filed for recovery of the amount with interest. The defendants have filed an application U/Or. I Rule 10(2) of CPC as I.A.No.2 for deleting the defendant Nos.2 to 5 from the suit. After contest, on merits the application came to be rejected on 28.03.2024. Now, once again these defendants have filed this application. The defendants have filed W.P.No.10331/2024 against the order passed on I.A.No.2, there is no stay of the further proceedings. The said W.P. is pending for consideration. Without any reason, the defendants have filed this application only to protract the proceedings. The matter is posted for cross examination of PW1, at that juncture the present application has been filed. The defendant Nos.2 to 5 are ready to contest the suit on merits, the defendant No.2 with an hidden agenda only to drag on the matter filed this application without having authority. Regarding cause of action, it is clearly pleaded in the plaint. The defendant No.1 is a juristic person and it cannot act on its own, but, it has to act through the defendant Nos.2 to 5 who are the Directors. They are also necessary parties and liable to pay the suit claim. Hence, prays for rejection of the application.

Heard on the application.

The learned counsel for the defendant Nos.2 to 5 has submitted his arguments basing on the contents of the application as well as affidavit. He has pointed out towards the statement of objections filed by the plaintiff. The suit is filed by the plaintiff firm for recovery of the amount against the defendant Nos.1 to 5. There is no cause of action against the defendant Nos.2 to 5 who are the Directors of the defendant No.1 company. The suit is barred by law also. Sec.230 of Contract Act is clear, hence, the suit is barred by law. He has pointed out towards the plaint averments as well as the defence made out by the defendants. The defendant Nos.2 to 5 are not liable to pay the alleged suit claim.

During his arguments, he has relied upon the decisions reported in Gurmeet Satwant Singh Vs Meera Gupta [AIR Online 2019 Del 1482], V.K.Uppal Vs M/s Akshay International Pvt. Ltd. [Ex.App. No.516/2009 in Ex.P.295/2003], Nandalal N. Verma & Co. Ltd. Vs Alliance Mills (Leasee) Pvt. Ltd. [(1994) 2 CALLT 82 (HC)] and Vingro Developers Pvt. Ltd. Vs Nitya Shree Developers Pvt. Ltd. [ArB.P.667/2023]

Per contra, the learned counsel for the plaintiff submitted his arguments basing on the statement of objections, he also drawn my attention towards the plaint averments. Admittedly, the defendant No.1 is a company and the defendant Nos.2 to 5 are the Directors. He has also submitted that I.A.No.2 was filed for deleting the defendant Nos.2 to 5 from the suit, on merits the application came to be rejected and W.P. is pending, there is no stay of the further proceedings. It is pending for

consideration. The Director of the defendant No.1 company has filed his affidavit. The defendant Nos.2 to 5 have adopted the written statement filed by the defendant No.1 company. When the matter is posted for cross examination of PW1, the present application has been cropped up. The defendant Nos.2 to 5 are ready to contest the suit, since they have adopted the written statement filed on behalf of the defendant No.1 company. He has also pointed out towards the pleadings of the parties. The defendant No.1 represents Managing Director - Sanjay Gujral. The defendant No.2 is the MD, defendant Nos.3 to 5 are also Directors of defendant No.1 company.

After hearing the learned counsel for the parties, I have gone through the pleadings of the parties. I have also perused the materials produced by the parties. Admittedly, the suit is for recovery of amount with interest against the defendants. The defendant No.1 is the company and it represents its Managing Director. The defendant Nos.2 to 5 are the Directors of the defendant No.1 company. After perusing the material on record and orders on I.A.No.2, an application was filed for deleting the defendant Nos.2 to 5 who are the Directors of the defendant No.1. The application came to be rejected after hearing both sides. These defendants filed W.P. and it is pending for consideration before the Hon'ble High Court of Karnataka. No doubt, the defendant No.1 is a private limited company and defendant Nos.2 to 5 are its Directors. They have transacted with the plaintiff on behalf of the defendant No.1. The defendant No.1 has filed its written statement through its MD and same has been adopted by the defendant Nos.2 to 5 who are the Directors.

I have gone through the plaint averments and also defence by the other side. The plaintiff has clearly pleaded regarding the cause of action of the suit. I have also gone through the provisions of Sec.230 of the Contract Act. I have also gone through the decisions relied upon by the learned counsel for the defendant Nos.2 to 5. The principles laid down in these decisions are well founded. These decisions are not come to the aid of these defendants. Since there is cause of action against the defendant Nos.2 to 5 and as per the provisions of Sec.230 of the Contract Act - Agent cannot personally enforce, nor be bound by, contracts on behalf of the principal. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Therefore, this is not applicable to the case on hand. Since there are no grounds to consider the present application. Therefore, in the present facts and circumstances of the case, I made the following :

ORDER

The application filed U/Or VII Rule 11 (a) & (d) of CPC on behalf of the defendant Nos.2 to 5 as IA No.3 is hereby rejected.

For Cross of PW1.

Call on 22.06.2024.

**LXXXIV A.C.C. & S.J.,
(CCH-85) Bengaluru**