

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde,
M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru

Dated on this 6th day of December 2022

COM.OS.No.1432/2022

Plaintiffs

- 1.** Mrs.Sreelakshmi Kottu
W/o Mr. jagadeesh Sreenivas Kottu,
Aged about 37 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp: IDL, Moosapet,
Hyderabad-500018.
- 2.** Mr.Jagadeesh Sreenivas Kottu,
S/o Venkatarama Rao,
aged about 44 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp: IDL, Moosapet,
Hyderabad-500018.
- 3.** Ms. Jai Vaishnavi Kottu,
Represented by Legal Guardian
Mr.Jagadeesh Sreenivas Kottu,
aged about 9 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL. Moosapet,
Hyderabad-500018.

(By Sri.L.M, Advocate)

// versus //

Defendants

- 1.** M/s. Elena Geo Systems Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956/2013,

CIN U72200KA2012PTC139939
having its registered office at:
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru-560032.

2. Mr. Shanmugavelan Venkatachalam,
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru.
3. Ms. Rajendran Naveena @
Ms. Naveena R Velan @ Ms. Naveen R
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru.
4. Mr. Pradeep Kumar Juneja,
major, father's name not known
Shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru.
5. Mr. Jayawant Shivaji Patil,
major, father's name not known
Shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru.

(By Sri.G.V., Advocate)

ORDER ON I.A.No.V

This application under Order VII Rule 11 R/W Sec.151 of CPC is filed by defendants No.1 and 2 praying to reject the plaint.

2. In the affidavit in support of the application, it is stated that the plaint is liable to be rejected, as there is no cause of action for the suit and the suit is barred by law and this court has no jurisdiction to try the suit. It is stated that none of the prayer in the suit are maintainable and the suit is frivolous and vexatious. It is stated that in respect of directorship right of plaintiff No.2, suit is prematurely filed, as only on completion of investment under the Share Purchase Agreement (SPA), right to become director of 2nd plaintiff would arise and SPA was for investing Rs.2 crore and the plaintiff has invested only Rs.66 lakhs and the time for completion of the investment was 180 days from 1/6/2019, which has already expired. It is stated that as investment is not completed, the claim for directorship on the basis of SPA is completely misplaced and untenable and hence plaint is liable to be rejected. It is also stated that SPA only assured plaintiff No.2 a position as director and not as whole time director of the defendant No.1 and prayer to remain as whole time director is not maintainable. It is stated that the second issue is regarding repayment of the investment made by the plaintiff under Optionally fully convertible debentures (OFCD) Subscription Agreement. Regarding this issue, the plaintiffs contention that the defendants are in collective breach of the OFCD Subscription Agreement is also premature and the OFCD were allotted on 11/2/2022 and carry a maturity period of 5 years. It is stated that amount of investment is not repayable on demand. Hence repayment of the money is

not due until February 2027. Therefore, it is stated that present suit is premature and liable to be rejected. It is also stated that there is nothing unnatural or unreasonable in the remuneration paid to the directors and there is no contractual or statutory bar on such payments. It is stated that financial position of defendant No.1 is sound and it has earned profits. Therefore on the pretext of misutilization of funds the plaintiffs cannot seek the relief. The defendant has also stated that for these reasons plaintiffs have failed to make out cause of action in the plaint and hence plaint is liable to be rejected. It is also contended that the SPA and the OFCD agreement contains arbitration clause and hence suit is barred by law. It is also stated that the suit is in respect of the matters pertaining to company and hence would be beyond the jurisdiction of this court as per Section 430 of Companies Act. On these grounds the plaint is prayed to be rejected.

3. Plaintiffs have filed detailed objection by way of counter affidavit. In the counter affidavit the plaintiffs have stated that the application is not maintainable. It is also stated that there are totally 5 prayers made in the plaint and the defendant has raised objection with regard to prayer A and D and the remaining averments of prayer have not been touched upon by the plaintiffs in their application. It is stated that the entire plaint has to be rejected or not at all and there cannot be a piece meal rejection of plaint. It is also stated that apart from the relief prayed against defendants

No.1 and 2, prayer is also there against other defendants and those reliefs are not addressed and touched by the defendants No.1 and 2. Hence there are no grounds to reject the plaint. It is stated that clear cause of action is stated in the plaint. It is stated that cause of action also arose when plaintiff No.2 was threatened to be removed from the Board of 1st defendant and also when the investment made by the plaintiffs have been fraudulently misutilized by the defendant and the cause of action has also arisen and when special notices regarding removal of the plaintiff No.2 were communicated on 14/9/2022. Plaintiffs have also stated that several claims of SPA have been violated and SPA was entered with the plaintiff on 1/6/2019 with several clauses and due to subsequent act of defendant No.2, investment into the defendant No.1 company to be capped at Rs.66 lakhs and the defendant No.2 who has issued shares by breaching the SPA by selling the shares at a valuation that is abundantly lower than the valuation at which the shares were allotted. It is also stated that plaintiff was made a director being aware that only Rs.66 lakhs was paid and the contention that entire amount is not paid and therefore directorship cannot be claimed will not survive and the suit cannot be said to be premature as contended. It is also stated that as per the OFCD agreement there are certain conditions and when there is a material breach, in so far as the investment made by the plaintiff No.2 was not utilized by the defendant for business purpose, plaintiff is well within its right to approach court to seek

redressal against misconduct and fraudulent action of the defendants in utilizing her investment for the personal gain. It is also stated that the defendants have concealed their promise to return sum of Rs.1 crore invested by the plaintiff No.1, after the parties had decided to amicably resolve the matter. It is also stated that even otherwise, debt has not been earmarked with security interest created in favour of the creditor which itself is in violation of the OFCD Agreement and the statutory mandates and this is sufficient cause of action. On this ground it is stated the contention that there is no cause of action cannot be accepted and the application deserves to be dismissed. It is also stated that the defendants have stated that the suit is barred by law on the ground that there is arbitration agreement in SPA and OFCD agreement. It is stated by the plaintiff that the defendants have not invoked arbitration under Section 8 of Arbitration & Conciliation Act by filing application and the defendants have forfeited their right to refer the matter to arbitration and stated that there is no absolute bar for the civil court to try the suit when there is arbitration agreement. It is also stated that the other defendants who are parties to the suit are not parties to the arbitration agreement and even on this ground it cannot be said that the suit is barred by law. It is also stated that the action of the defendant is a fraud perpetuated by the defendants against the whole company and also the plaintiff and the defendants No.2 and 3 have withdrawn director remuneration and employee benefits without any

explanation and without passing any Board resolution and without obtaining consent of the shareholders and when there is serious matter of fraud it cannot be arbitrated. Contention that the court has no jurisdiction is also not acceptable as the defendants have not stated as to under which provision the suit is barred. It is stated that in respect of the matters for which the tribunal is empowered to determine the civil court jurisdiction is barred under Section 430 of the Companies Act. However the defendants have not stated as to which of the relief that are prayed in the suit are to be decided by the tribunal. It is stated even assuming that Section 241 and 242 dealing with oppression and mismanagement is the matter which the defendants are urging, under Section 242 the plaintiffs have to prove before the NCLT there is a case for winding up of the company, in addition to proving oppression of the plaintiffs to maintain a petition. It is stated that there is no just and equitable ground for winding up the defendant No.1 company and therefore the plaintiff would not be able to maintain the petition before NCLT. It is also stated by referring to several decisions that plaintiff's cause of action arises from the breach of two agreements and is the matter to be decided by the Civil Court and not the NCLT. It is also stated that issues relating to exclusion from directorship and non payment of remuneration could not be dealt with by the CLB and directorial complaint of shareholder should not be entertained under Section 241 and 242. It is stated that right under the

agreements, title, status and interest of the plaintiff No.2 as a director in defendant No.1 company and the breach of these rights give rise to the cause of action and can only be determined by this court and hence, application deserves to be dismissed.

4. Now the points that arise for my consideration are:

1. Whether plaintiff do not disclose the cause of action for the suit?

2. Whether the suit appears to be barred by any law?

3. What order?

5. Heard both counsels. Perused records.

6. My answer to the above points are :

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : As per final order for the following:

REASONS

7. Points No.1 & 2: As these two points are interlinked with each other, they are taken together for discussion to avoid repetition.

8. Plaintiffs have filed this suit against defendant No.1 company and four other defendants praying to declare that plaintiff No.2 has right to remain as whole time director of the defendant No.1 company as per the SPA dated 1/6/2019 and to declare that special notice dated 9/9/2022 given by defendants No.4 and 5 are obtained by fraud and are illegal and to declare that defendants are in collective breach of the OFCD subscription agreement and seeking injunction against

defendant No.1 from removing plaintiff No.2 as director and for costs.

9. Plaintiffs have stated that, plaintiff No.2 is an investor and defendant No.2 assured the plaintiff No.2 of directorship on the board of the defendant No.1 company upon investing and accordingly plaintiff No.2 agreed to invest Rs.2 Crores and Share purchase agreement was executed on 1/6/2019. Plaintiffs have stated that plaintiff No.1 is wife of Plaintiff No.2 and she has made investment by taking debentures and entered into OFCD subscription agreement. Plaintiff No.3 is minor daughter of plaintiff No.2 and 43,200 shares of plaintiff No.2 in 1st defendant Company are transferred in the name of Plaintiff No.3 and plaintiff No.2 is representing her as guardian. As per SPA, on completion of the investment the plaintiff No.2 will have right to become the director or to nominate the director. Plaintiff has stated that there is clause in the agreement stating that if rest of the shares are to be sold plaintiff No.2 is to be offered first for purchase and any sale of shares is to be equivalent to the price quoted in the SPA or above. According to plaintiffs, as against this, defendant No.2 sold 5% of the equity shares to his friend defendant No.4 at a lower price. According to plaintiffs, defendant No.1 has not created any charge on its assets as a consequence of the debentures issued as per OFCD Agreement to plaintiff No.1 which is against the statutory right as a secured creditor. According to plaintiffs, plaintiff No.2 was made as director, but now defendants are

trying to remove him from directorship. It is the plaintiffs' case that amount invested by plaintiff No.1 under OFCDs was to be utilised by defendant No.1 company for furtherance of the business and as decided by the Board from time to time and in accordance with law. According to plaintiffs, as against such restriction for use of funds, defendants No.2 and 3 have withdrawn totally Rs.48,00,000/- as remuneration from the coffers of the defendant No.1 company. Regarding these irregularities, plaintiffs are said to have raised objection and then filed this suit seeking several reliefs.

10. The defendants No.1 and 2 have appeared and filed this I.A.No.V under Order VII Rule 11 of CPC praying to reject the plaint. It is stated in the application that the suit does not have cause of action and that the suit is barred by law and that this court has no jurisdiction.

11. Main contention of the defendants No.1 and 2 is that there is no cause of action to the suit and that suit is premature. For the relief A which is with regard to directorship of the plaintiff No.2, defendant contends that as per the SPA on completion of the investment under the share purchase agreement which is Rs.2 crore, plaintiff No.2 is to be appointed as director and as only Rs.66 lakhs is paid, entitlement of the plaintiff No.2 to become director itself has not arisen and therefore, suit is barred and is even premature and is not maintainable. It is also stated in the course of arguments that the plaintiff No.2 has transferred shares to plaintiff No.3 who is a minor and for this reason also,

directorship cannot be claimed by plaintiff No.2. As seen from the records though the SPA is for investment of Rs.2 crore for purchasing the shares and to get 30% share in the 1st defendant company, plaintiff has paid Rs.66 lakhs as admitted by the parties. Agreement clearly provides that on completion of the investment, 2nd plaintiff will have the right to become director in the company. Though only Rs.66 lakhs has been paid, plaintiff No.2 is already made as director of the 1st defendant company. According to the plaintiff as against the terms of agreement, defendant No.2 has sold shares to defendant No.4 at a lesser value and thereby value itself has come down and hence the investment made by the plaintiff was sufficient for the share that has been fixed. Whether payment of Rs.66 lakhs, as against amount fixed of Rs.2 crore in the SPA, entitles the plaintiff to become director of the 1st defendant company is to be decided in the course of trial. At this stage it cannot be held on the ground that Rs.2 crore is not yet invested, 2nd plaintiff cannot raise the contention of his entitlement to continue as director of the 1st defendant company. As regards transfer of shares by 2nd plaintiff to 3rd plaintiff, 2nd plaintiff is guardian of 3rd plaintiff and may be entitle too claim right under SPA. Another contention on the same prayer that in SPA, there is only reference to director and not full time director, is also to be decided in the trial. Therefore, plaint averments including documents produced by plaintiffs, do not show that there is no cause of action to seek relief A or that suit is premature.

12. Another contention of defendants No.1 and 2 is that as per OFCD subscription agreement, OFCD is allotted with a maturity period of 5 years and as OFCD is allotted on 11/2/2022 the repayment would be due only in February 2027 and the suit filed now is premature and hence there is no cause of action to the suit. As rightly stated, debentures are convertible after maturity period of 5 years and said period has not expired. However, plaintiff has produced email said to have been sent by defendant on 26/4/2022 stating that they will pay back Rs.1 crore invested by the plaintiff at the earliest subject to legal feasibility and availability of the funds. This itself show that even the defendants No.1 and 2 had planned to return the amount before expiry period and only on the ground that the debenture matures after 5 years, suit cannot be said to be premature at this stage. Apart from this, OFCD agreement contains several clauses and in clause 3, it is mentioned that OFCD subscription money shall be utilized by the company for the furtherance of the business and as decided by the Board from time to time in accordance with law. According to the plaintiff, several clauses of the agreement are violated and defendants No.2 and 3 have received huge amount of totally Rs.48 lakhs as remuneration after the plaintiff No.1 invested Rs.1 crore as per the OFCD agreement. Therefore, as plaintiff is also challenging utilization of amount invested by the plaintiff in the 1st defendant company, only on the ground that OFCD maturity is after 5 years, suit cannot be said to be premature.

Moreover, relief prayed by the plaintiff in respect of OFCD is that for declaration that there is a collective breach of the OFCD subscription agreement by the defendant. Whether OFCD agreement condition have been breached by the defendant is to be decided in prayer 'D' and the maturity period of 5 years provided in the OFCD may not come in the way of deciding this issue. Therefore, prima facie, it cannot be said that the suit with regard to prayer 'D' is premature.

13. Another ground on which plaint is prayed to be rejected is that there is arbitration clause in the agreement. No doubt the SPA and OFCD subscription agreement contains arbitration clause. In the present case, though defendants No.1 and 2 have appeared and filed objection to the interim application filed by the plaintiff seeking temporary injunction, defendants No.1 and 2 have not filed any application under Section 8 seeking referring of the matter to the arbitration.

14. In a decision reported in **AIR 2017 Chattisgarh 90 (C.L.Athnagar & Others V/s HIRAMAN LAL SAHU)** Hon'ble High Court of Chattisgarh has held that it is well settled principle that there is a strong presumption that civil courts have jurisdiction to decide all questions of civil nature. In para 31 the Hon'ble High Court has held as under:

"... The Supreme Court has already held that jurisdiction of the civil court is barred after an application under Section 8 of the Act of 1996 is made for arbitration and in view of that, a separate application is required to be filed under Section 8(1) of the Act of 1996 for referring the dispute to the arbitration fulfilling the requirements of Section 8 of the Act. It cannot be held that the

civil Courts shall not have jurisdiction to entertain the suit only because there is an arbitration clause in the contract for referring the dispute to the arbitrator and it will not be a case of total ouster of the jurisdiction of the civil Court. Therefore, it cannot be held that once it is found that the contract between the parties contains an arbitration clause, jurisdiction of the civil court stands ousted automatically and is barred explicitly. To take benefit of arbitration clause, party to the contract has to apply for that relief under Section 8(1) of the Act of 1996 within a specific period. Therefore, we hold that merely because there is an arbitration clause in the Memorandum of Association read with Section 201 of the Act of 1996 for referring the dispute and claim to the arbitration, the civil court's jurisdiction is not barred but the same is subject to Section 8(1) of the Act of 1996 and its compliances. ...”

Therefore, as held in this decision, only because there is an arbitration clause in the agreement, jurisdiction of the civil court is not barred and the jurisdiction is not ousted automatically. Therefore, at this stage it cannot be said that present suit is not maintainable.

15. Even otherwise the SPA and OFCD agreement are entered between the plaintiff and defendant No.1. there are two more defendants No.4 and 5 who are not parties to this agreement. When they are not parties to the agreement and the relief prayed even against them, relief cannot be claimed in the arbitration against them. Therefore the arbitration agreement in SPA and OFCD agreement do not appear to bar in the present suit.

16. Another main ground on which the present suit is attacked is Section 430 of the Companies Act in 2013. It is stated that the present suit is pertaining to the company matter and these matters pertaining to company are beyond the jurisdiction of the court under Section 430. As rightly stated by the plaintiff, defendant has not stated as to under which provision, Tribunal has the jurisdiction to decide the issues that are raised by the plaintiff in the present suit. As per Section 430 of Companies Act, civil court's jurisdiction is ousted in respect of any matter which Tribunal or an Appellate tribunal is empowered to determine. Defendants No.1 and 2 have not stated as to how the issues that are raised by the plaintiff in the present suit are to be decided by the tribunal or appellate tribunal only. Therefore, at this stage it cannot be said that this court has no jurisdiction to try the suit and that there is bar under Section 430 of the Companies Act.

17. Though, defendants have not given any specific ground or provision under which issues raised by the plaintiff should be decided by the tribunal, plaintiffs have referred to Section 241 and 242 of Companies Act which empowers the NCLT to consider the matter pertaining to oppression and mismanagement and explained as to how, present matter do not come under those sections. The learned counsel for the plaintiff has referred a decision reported in **(2004) 121 Company Case 374 Bombay Division Bench** in which the Hon'ble High Court in para 17 has held that **"...The suits by**

minority shareholders against oppression and mismanagement, have been time honoured exception to the rule in Foss v. Harbottle and in the absence of word expressly or impliedly barring them it cannot be said that Section 397, 398 and 408 of the Companies Act exclude jurisdiction of the ordinary courts...” It is also held in para 20 that **“...Moreover, there is nothing to indicate in the language of Sections 397 and 398 that the court as specified under Section 10 has exclusive jurisdiction...”**

18. In another decision reported in **2017 SCC Online Delhi 11436 (Jai Kumar Arya and others v. Chhaya Devi and another)** the Division Bench of Hon’ble High Court in para 107 has held that **“... The issue of whether the civil suit filed by the plaintiffs before this court was maintainable or was barred by Section 430 of the Act, would, therefore, depend on whether the NCLT was empowered to exercise jurisdiction, on the issue, under the Act...”** In para 109 the Hon’ble High Court has held that **“... The mere reference, to the tribunal, in the said proviso, cannot divest the civil court of its ordinary jurisdiction to entertain the suit filed by the plaintiffs...”** The Hon’ble High Court has considered Section 241 and 242 of the Companies Act in this decision. The plaintiff has also relied on the judgment of the Hon’ble Supreme Court reported in **(2001) 4 SCC 420 (Hanuman Prasad Bagri and others v. Bagress Cereals Private Limited and others)** in which the Hon’ble Supreme Court in para 11 has held that **“...The**

Division Bench found that if a director even if illegally terminated cannot bring his grievance as to termination to winding up the company for that single and isolated act, even if it was doing good business and even if the director could obtain each and every adequate relief in a suit in a court...” By relying on this judgment the learned counsel has argued that after illegally terminating the director, the dispute need not come under Section 397 regarding oppression as invoking the said section would lead to winding up of the company. The learned counsel has also relied on the judgment of the Hon’ble Supreme Court reported in **(2020) 8 SCC 79 (Aruna Oswal v. Pankaj Oswal and others)** in which in para 31 the Hon’ble Supreme Court has held that, with regard to the dispute as to right, title and interest in the securities, the finding of the civil court is going to be final and conclusive and binding on parties. Though the facts are different, Hon’ble Supreme Court has reiterated that the finding of the civil court would be final on the right and interest in the securities.

19. On going through these decisions, it is prima facie clear that the civil court would have jurisdiction to decide the matter regarding entitlement of the plaintiff No.2 as director and for the entitlement of the plaintiff No.1 to seek action against breach of the terms of OFCD agreement. Defendants No.1 and 2 have failed to show any specific section of the Companies Act which bars the present suit. Therefore the

defendants No.1 and 2 have failed to show that the present suit is barred by law particularly Companies Act.

20. The learned counsel for the defendants No.1 and 2 has relied on the decision of Hon'ble Supreme Court reported in **AIR 2022 SC 4724 (C.S.Ramaswamy V/s V.K.Senthil)** in which the Hon'ble Supreme Court has considered Order 7 rule 11(d) CPC particularly rejection of plaint when the suit is barred by limitation. On going through the decision same is on different facts and is not applicable to the present case. Though the learned counsel for the defendant relied on this decision to contend that there is no real cause of action set out in the plaint and the cause of action stated is illusory etc, on looking to the plaint averments there is clear cause of action shown in the plaint. The suit cannot be said to be barred by limitation as SPA and OFCD agreement were executed recently and the claims are within the period of limitation.

21. Regarding cause of action, plaint clearly show the cause of action and while considering application under Section 7 rule 11(d) the court have to see only plaint averment and defence cannot be looked into. On perusal of the plaint averments, there is a clear cause of action stated in the plaint for seeking the relief. Even for rejection of the plaint under Order VII rule 11(d) the plaint averments have to be seen and on looking to the statement made in the plaint the suit do not appear to be barred by any law.

22. Apart from this though the defendants No.1 and 2 have contended about the relief prayed by the plaintiff with regard to directorship and OFCD agreement, there are two more reliefs in prayer B and which is prayed against defendants No.4 and 5 and there is also prayer 'C'. When the suit contains several prayers and even if some of those reliefs on issues raised are not maintainable, still plaint cannot be rejected, as the plaint is to be rejected as a whole and not in part. In the decision reported in **(2004) 3 SCC 137 (Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others)**, the Hon'ble Supreme Court in para 18 has held that **"...As noted supra, order 7 Rule 11 does not justify rejection of any particular portion of the plaint..."** Therefore only portion of the plaint cannot be rejected. Looking from any angle, plaint cannot be rejected as prayed. Accordingly point No.1 and 2 are answered.

23. POINT No.3 : For the discussion made on above points, following order is passed:

ORDER

**I.A.No.V filed by defendants No.1 and 2
under Order VII rule 11 of CPC for rejection of
the plaint is dismissed.**

*[Dictated to the Judgment Writer; transcript thereof corrected,
signed and then pronounced by me, in the Open Court on this
the 6th day of December 2022]*

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**
