

KABC170027032022



**IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)**

**Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.**

COM.OS.No.1432/2022

Dated on this 7th day of February 2024

Plaintiff

Mrs/Sreelakshmi Kottu & others

(By Smt.Lakshmi Menon, Advocate)

// versus //

Defendants

M/s. Alena Geo Systems
Private Limited & others

**(D1 toD3 by Sri.G.Venkatesh, Adv.,
Proposed D6 by Sri.N.C.S, Advocate
D.4 by Sri.G.M, Advocate,
D.5 - Exparte)**

IA No.12

**Applicants/
Defendants**

- 1.** M/s Alena 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 Alena Geo Systems Pvt. Ltd.,



62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru-560032.

(D1 & D2 by Sri.G.Venkatesh, Adv.,)

// versus //

**Respondent/
Plaintiff No.2**

Mr.Jagadeesh Sreenivas Kottu,
S/o Venkatarama Rao,
Aged about 44 years,
R/at No.K-1902,
Nainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.

(By Smt.Lakshmi Menon, Advocate)

I.A.No.13

**Applicant/
Plaintiff No.2**

Mr.Jagadeesh Sreenivas Kottu,
S/o Venkatarama Rao,
Aged about 44 years,
R/at No.K-1902,
Nainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.

(By Smt.Lakshmi Menon, Advocate)

// versus //

**Respondents/
Defendants**

1. M/s Alena 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 Alena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru-560032.

(D1 & D2 by Sri.G.Venkatesh, Adv.,)

I.A.No.14

**Applicants/
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,
Nainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.
3. Ms. Jai Vaishnavi Kottu,
Represented by Legal Guardian
Mr. Jagadeesh Sreenivas Kottu,
Aged about 09 years,
R/at No.K-1902,
Nainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.

(By Smt. Lakshmi Menon, Advocate)



// versus //

**Respondents/
Defendants**

1. M/s Alena 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 Alena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar, Bengaluru-560032.

(D1 & D2 by Sri.G.Venkatesh, Adv.,)

(i)	<i>Provision under which the application is filed</i>	<i>IA No. 12 is filed by Defendant No. 1 and 2 under Order 38, Rule 1 and 5 of the CPC for direction to Plaintiff to furnish bank guarantee for Rs. 20 Lakhs.</i>
(ii)	<i>Relief sought for</i>	<i>IA No. 13 is filed by Plaintiff No. 2 under Order 7, Rule 11 (a) and (d) of the CPC for rejection of the counterclaim raised by Defendant No. 1 and 2. IA No. 14 is filed by the Plaintiffs under Order 8, Rule 9 of the CPC seeking leave to file rejoinder to the Written Statement filed by Defendant No. 1 and 2.</i>
(iii)	<i>The date on which the application is filed</i>	<i>IA No. 12 filed on 27-01-2023 IA No. 13 filed on 16-02-2023 IA No. 14 filed on 16-02-2023</i>
(iv)	<i>No. of the application</i>	<i>IA No. 12 to 14</i>
(v)	<i>The date on which the objections are filed by different opponents</i>	<i>Objection to IA No. 12 filed on : 16-02-2023 Objection to IA No. 13 filed on : 18-04-2023 Objection to IA No. 14 filed on : 18-04-2023</i>
(vi)	<i>The date on which the orders were passed on the said application</i>	<i>07-02-2024</i>



ORDERS ON IA NO. 12 TO 14

IA No. 12 is filed by Defendant No. 1 and 2 under Order 38, Rule 1 and 5 of the CPC for direction to Plaintiff to furnish bank guarantee for Rs. 20 Lakhs. **IA No. 13** is filed by Plaintiff No. 2 under Order 7, Rule 11 (a) and (d) of the CPC for rejection of the counterclaim raised by Defendant No. 1 and 2. **IA No. 14** is filed by the Plaintiffs under Order 8, Rule 9 of the CPC seeking leave to file rejoinder to the Written Statement filed by Defendant No. 1 and 2.

2. The stage of the main suit is that pleadings are complete and Plaintiff has filed Statement of Admission and Denial of Documents but the defendants are yet to file said Statement.

3. The Plaintiff No. 2 has filed detailed objections to IA No. 12. The defendant No. 1 and 2 have filed detailed objections to IA No. 13 and 14.

4. I have heard the arguments of Learned Counsel for Plaintiffs on the present IAs. In spite of grant of sufficient opportunity, Counsel for Defendant No. 1 & 2 has not addressed arguments and hence arguments of defendants on present IAs, is taken as nil.

5. I have perused the records of the case.



6. The points that arise for my consideration are :-
- 1) **Whether IA No. 12, filed by the Defendant No. 1 and 2 under Order 38, Rule 1 and 5 of the CPC, deserves to be allowed, and the plaintiffs should be directed to furnish bank guarantee for Rs. 20 lakhs?**
 - 2) **Whether IA No. 13 deserves to be allowed, and the counterclaim raised by Defendant No. 1 and 2 requires to be rejected under Order 7, Rule 11 (a) and (d) of the CPC?**
 - 3) **Whether IA No. 14, filed by the plaintiffs deserves to be allowed, and the plaintiffs should be permitted to file rejoinder to the written statement of Defendant No. 1 and 2, under Order 8, Rule 9 of the CPC?**

7. My answer to the above points are in the **negative**, for the following :-

REASONS

Point No. 1 to 3 :-

8. These points require common discussion and hence considered together.

9. The facts in brief are that, the Plaintiff No. 1 to 3 have filed the present suit against Defendant No. 1 to 5 on the premise that, Plaintiff No. 1 and 3 are the wife and daughter of Plaintiff No. 2 respectively, and Plaintiff No. 2 is a well-respected and well-known investor, and Defendant No. 1 is a private limited company, and Defendant No. 2 and 3 are the directors, and Defendant No. 4 and 5 are the shareholders of



Defendant No. 1 company. It is pleaded that, Plaintiff No. 2 was approached for investing funds in Defendant No. 1 company and accordingly he entered into Share Purchase Agreement [**hereinafter SPA**] to invest Rs. 2 crores, and in lieu of said investment, it was agreed that Plaintiff No. 2 or his nominee will be director of Defendant No. 1 company, and accordingly, Plaintiff No. 2 purchased 42,000 shares in Defendant No. 1 company and he has also purchased 1,200 shares from third party, and thereby Plaintiff No. 2 totally acquired 43,200 shares which has been gifted by him to Plaintiff No. 3. Simultaneously, Plaintiff No. 1 undertook to invest Rs. 3 crores by way of Optionally Fully Convertible Debentures [**hereinafter OFCDs**] and she has already invested Rs. 1 crore in pursuance thereof, and she has also purchased shares worth Rs. 40 lakhs from third party shareholder. At that stage, when the entire family of the plaintiffs had invested such huge amounts in Defendant No. 1 company, it was found that Defendant No. 2 and 3 have diverted company funds for their personal purposes by withdrawing huge amounts without the knowledge of Plaintiff No. 2 who was also director. When the Plaintiff No. 2 on behalf of himself and other plaintiffs objected to the diversion of company funds and demanded return of investment, it is alleged that Defendant No. 2 and 3 started making hectic efforts to remove the plaintiff as director of the company. Contending that under the share purchase agreement [SPA], the Plaintiff No. 2 has a right to continue as a director in



order to protect the investments made by the plaintiffs in the Defendant No. 1 company, the suit was initially filed for declaration that the plaintiff has a right to remain as whole-time director of the company and declare the special notice issued by Defendant No. 4 and 5 for his removal as illegal and also for permanent injunction to restrain the defendants from removing Plaintiff No. 2 as director and declaration that defendants are in collective breach of OFCD subscriptions and direct the defendants to return the investments in the form of debentures made by Plaintiff No. 1.

10. Subsequently, the Plaint was amended to incorporate certain subsequent facts that, after filing of the suit, the defendants have succeeded in illegally removing the Plaintiff No. 2 as director of the company and therefore the prayer column was also amended to delete the relief of injunction and instead to seek declaration that removal of Plaintiff No. 2 as director of Defendant No. 1 is illegal and to direct his reinstatement.

11. In response to the suit summons, the defendants have entered appearance and filed detailed written statements denying the plaint averments. In addition, Defendants No. 1 and 2 have raised counterclaim for recovery of Rs.20 lakhs on the ground that, Plaintiff No. 2 has withdrawn Rs.20 lakhs from the Defendant No. 1 under the guise of professional fee on the assurance that the amount so withdrawn by him will



be brought back into the company in the form of additional investments under the Share Purchase Agreement. But, he has only brought investment of Rs.11 lakhs in March 2011 and thereafter not brought any investment, which has led to Defendant No. 1 Company to lose out on the said amount of Rs.20 lakhs drawn by Plaintiff No. 2. With these pleadings, for recovery of the said sum, counterclaim is raised by Defendants No. 1 and 2.

12. It is in the background of the above rival cases set up by both sides that the present applications have to be considered. Under IA no.12, the defendants no.1 and no.2 are seeking a direction to the plaintiff to furnish bank guarantee for Rs.20 lakhs, which is the sum claimed in the counter claim. However, it is to be noted that, it is for the defendants no.1 and no.2 to prove in the trial that they are entitled to the said sum of Rs.20 lakhs, which is raised in the counter claim. Even as per the case set up by defendants no.1 and no.2 in their counter claim, the said amount was paid by defendant no.1 to the plaintiff no.2 as professional fee on the understanding that the plaintiff no.2 shall get additional investments into the defendant no.1 company. It is the case of the defendants no.1 and no.2 that contrary to his claims, the plaintiff no.2 did not get any investment into the defendant no.1 company. As against this, in the written statement to the counter claim filed by the plaintiff no.2, it is contended that the counter claim is barred by limitation. It is



contended that the said sum of Rs.20 lakhs was paid towards professional services already rendered and therefore, there is no question of returning the same to defendant no.1. Therefore, it is clear that there are serious disputed facts to be decided in the trial and even before the defendant no.1 and no.2 prove their case and their entitlement to the sum claimed in the counterclaim, in the trial, the defendant no.1 and no.2 cannot seek the drastic relief against plaintiffs of direction to furnish bank guarantee for the counter claim value. **Therefore, at this stage, the relief sought under IA no.12 for direction to the plaintiffs to furnish bank guarantee for Rs.20 lakhs cannot be granted and accordingly I answer point no.1 in the negative.**

13. Under IA no.13, the plaintiff no.2 seeks rejection of the counter claim under Order 7, Rule 11 (a) and (d) of the CPC on the ground that it does not disclose cause of action and it is barred by limitation. In the affidavit in support of the said IA, it is stated that the counter claim is devoid of merits and the counter claim has been filed in the guise of legitimate claim when in reality there does not exist any lawful debt or amount owed by plaintiff no.2 to defendant no.1 and no.2. The law is settled that the Plaint or counter claim can be rejected on the ground of non-disclosure of cause of action only where accepting the averments of the same at face value, even then, the relief claim cannot be granted. **At the stage of order 7 rule 11 of the CPC, the court cannot enter into**



realm of disputed facts. It is only if accepting the averments of the counter-claim at face value and as the truth, if even then, the defendants are not entitled to the counter claim relief, only then, the counter claim can be rejected on the ground that it does not disclose cause of action. In the case on hand, all the grounds raised in the affidavit to contend that counter claim does not disclose cause of action fall in the realm of disputed facts. Therefore, on the said grounds, it is not possible to reject the counter claim under Order 7, Rule 11 (a) CPC.

14. The other ground raised in IA no.13 is that the counter claim is barred by limitation. In order to consider the question of limitation, again the court will have to enter in the realm of disputed facts because in the objections to IA no.13, it is contended by defendants IA no.1 and 2 that there was a tacit acknowledgement of debt by plaintiff no.2 as late as in March 2020. Hence, the contention is that, the same will extend the period of limitation under section 18 of the Limitation Act and therefore, it is clear that, it is a matter to be decided in the trial whether the counter claim is barred by limitation. Therefore, at stage of order 7 rule 11 CPC, the said question cannot be decided.

15. The third ground raised for seeking rejection of the counter claim is that it is manifestly vexatious and frivolous. However, even before the trial, it is not possible for this court



to record any such finding that the counter claim is vexatious and frivolous and therefore, on this ground also it is not possible to reject the counter claim under order 7 rule 11 of the CPC. **Accordingly, IA no.13 for rejection of the counter claim under Order 7, Rule 11 (a) and (d) of the CPC deserves to be dismissed and I answer point no.2 in the negative.**

16. In so far as IA no.14 is concerned, it is filed by the plaintiff seeking leave to file rejoinder to the written statement of defendants no.1 and no.2. The law is settled that permission to file rejoinder can be given to the plaintiff only if defendants have brought out certain new facts in the written statement which calls for explanation from the plaintiff. In this regard, in the affidavit in support of IA no.14, it is stated that in the written statement, the defendants no.1 and no.2 have brought out new fact that appointment of plaintiff no.2 as director was not under the share purchase agreement but due to personal relationship and therefore this requires explanation by filing rejoinder. This contention cannot be accepted because it is part of the plaintiff's case to prove that he was appointed as director under the share purchase agreement and in violation of the same, he has now been removed as director. In order to deny the plaintiff's case, the defendants can take any plea and they have taken up the plea that appointment as director was not under SPA but due to personal relationship. This is nothing but denial of the



plaintiff's case and therefore does not call for explanation by filing of rejoinder.

17. It is then contended that the defendants have alleged in the written statement that Rs.20 lakhs was drawn by plaintiff no.2 for his personal purposes and this calls for rejoinder. This plea is part of the counterclaim to which plaintiff has already filed written statement.

18. Then, it is contended that, there are pleadings regarding bank loan sought by company from Bank of Baroda for which Plaintiff No. 2 refused to give personal guarantee, which calls for rejoinder. These pleadings of Defendant No. 1 and 2, are not strictly relevant for the purpose of the present suit since the questions that have to be decided in the present suit are whether the defendants have acted in conformity with their obligations under share purchase agreement entered into with plaintiff no.2 and the OFCDs issued to plaintiff no.1. Any pleading raised by the defendants No. 1 and 2 that plaintiff No. 2 was removed as director due to his reluctance to furnish personal guarantee for the bank loan of Bank of Baroda is a defence raised by the defendants and it will be for the defendants to prove the same and therefore does not call for any explanation by the plaintiffs by filing rejoinder. In this regard, the law is settled that it is not the duty of the plaintiff to file rejoinder to deny the written statement contentions as per law laid down by Hon'ble High Court of Karnataka in the



case of **B.R. Rangaswamy v. D. Syed Younous, ILR 1999 KAR 2539**, as follows;

*No doubt, Defendant-1 in his written statement has taken up a contention about the prior agreement, vide Exhibit D-6, with the said Varuny. It is true that the plaintiff could have filed a rejoinder challenging the true and binding nature of this prior agreement. **But, in our view, under the provisions of Order VIII Rule 9 CPC, law does not compel plaintiff to file rejoinder. In our view the fact that it was Defendant-1 who has pleaded a new fact of existence of a prior agreement, the burden is on him to prove the same. Mere non-filing of rejoinder would not mean that the plaintiff is deemed to have admitted the same.** The trial Court, in our view should have firstly considered as to whether Defendant-1 has proved the agreement, Exhibit D-6, dated 11.7.1975 in favour of the said Varuny and only after giving a finding, could have considered the requirement, absence of pleading and the effect thereto.*

(Emphasis Supplied)

19. It is then contended that defendants have raised fresh allegations that plaintiff No. 2 attempted to covet technology and engaged in anti-company activities including alleged stealing of intellectual property of the company and this is again a defence raised by the defendants to justify the removal of plaintiff No. 2 and it is not necessary for the plaintiff to file rejoinder to deny the defence of the defendants. It is then contended that defendants No. 1 and 2 have tried to



justify their failure to register transfer of 1,333 shares purchased by plaintiff No. 2 from 3rd party and this is again a defence raised by the defendants in response to plaintiff averments and therefore does not justify filing of rejoinder.

20. Finally it is contended that defendants have raised a plea that loan lent by plaintiff No. 1 was required to be retrieved by her for some other purpose and is not related to withdrawal of amounts of defendants No. 2 and 3. In this regard also rejoinder is not called for because it is for the plaintiff to prove that defendants No. 2 and 3 withdrew company funds for their personal purposes and the contention of defendants No. 1 and 2 that the loan lent by plaintiff No. 1 was required to be retrieved for some other purpose is a defence raised and as already noted supra there is no need for the plaintiff to file rejoinder only to deny the defence raised by the defendants since the burden is always on the defendants to prove their defence. **Therefore viewed from any angle no case is made out for filing of the rejoinder and accordingly IA No. 14 also deserves to be rejected and I answer point No. 3 in the negative** and proceed to pass the following :-

ORDER

IA No. 12 filed by the defendant No. 1 and 2 under order 38 rule 1 and 5 of the CPC is hereby rejected.



IA No. 13 filed by the plaintiff No. 2 under Order 7, Rule 11 (a) and (d) of the CPC for rejection of the counterclaim of defendants No. 1 and 2 is also rejected.

IA No. 14 filed by the plaintiff under order 8 rule 9 of the CPC seeking leave to file rejoinder to the written statement of defendants No. 1 and 2 is also rejected.

[Dictated using Dragon Professional Speech Recognition Software Version 15.3, transcript revised, corrected, signed and then pronounced by me in open court on this the 07th day of February, 2024]

**(Sri. S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT; BANGALORE.**

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