

Com.O.S.No.3436/2015

**IN THE COURT OF LXXXII ADDL. CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH. 83)**

THIS THE 23RD DAY OF AUGUST 2021

PRESENT:

**SRI. DEVARAJA BHAT. M., B. COM, LL. B.,
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

I.A. NO. II

BETWEEN:

M/s. Sai Enterprises.

**: APPLICANT/DEFENDANT
No. 27**

AND

**M/s. Viom Networks
Limited.**

: OPPONENT/PLAINTIFF

IN

Com.O.S.No.3436/2015

BETWEEN:

**M/s. Viom Networks
Limited.**

: PLAINTIFF

AND

**Mr. Bhoopathi and
Others.**

: DEFENDANTS

ORDERS ON I.A. NO. II

This is an application filed by the Applicant/Defendant No. 27 under Order VII Rule 11 (a) of the Civil Procedure Code to reject the plaint against the Applicant/Defendant No. 27 only, since the Plaint does not disclose any cause of action against it.

2. In the accompanying Affidavit, the 27th Defendant has contended as follows:-

That the Para No. 4 of the Plaint only indicate the nature of facilities that the Plaintiff allegedly require, that having regard to the allegations therein it is clear that the pest control is not the business of the 27th Defendant, that there is no privity of contract between the Plaintiff and 27th Defendant, that the allegations in Para's No. 5, 6 and 7 refer to the supply of various equipment by the Defendants 8 to 26 through the assistance of the Defendant No. 1 to 7, who are said to be internal staff of the Plaintiff's Company, that only vague allegation is about various vendors including Defendant 9 to 27 referred to in Para's 7 to 10, but

conspicuously there is no specific allegation against the 27th Defendant, that there is a general allegation of the raising of invoices by the Defendants 9 to 27, but there is no specific allegation of such raising of invoice by 27th Defendant, that there is absolutely no allegation in the Plaint of any direct or indirect contractual relationship between the Plaintiff and 27th Defendant, that the allegation in Para NO. 14 (3) of the Plaint is about the acceptance by the 3rd Defendant of financial favours from the 27th Defendant to the tune of Rs. 30,000/- by Bank transfer is false and untenable, that there is no allegation as to how the Plaintiff is financially effected by this alleged acceptance, that there is no allegation of any agency, liaison or any other legal relationship between the Defendant 1 to 7 and 27th Defendant, that the allegation of the 27th Defendant is the vendor of services to the Plaintiff by supply of necessary equipment is false, that the 27th Defendant has not raised any invoices either against the Plaintiff or Defendant 1 to 7, that the suit based on said invoices does not disclose any cause of action against the 27th Defendant and hence the Plaint is liable to be rejected against the 27th Defendant.

3. The Opponent/Plaintiff has filed its detailed objections on 27.10.2016 by denying various contentions of the Defendant No. 27 and prayed to dismiss the said Application.

4. I have heard the arguments of the learned Advocate for Plaintiff and the Advocate for the 27th Defendant. On behalf of the 27th Defendant, Smt. C.S. Radha has submitted her oral arguments.

5. Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

(1) Whether the Plaint is liable to be rejected against 27th Defendant only ?

(2) What Order?

6. My findings are as follows:-

Point No. 1 : - In the Negative.

Point No. 2 : - As per my final orders for the following reasons.

REASONS

7. Point No. 1 : - It is to be noted that in this I.A, the 27th Defendant prays to reject the Plaint as against it only on the ground that the Plaint has not disclosed any cause of action against it.

8. The only short question to be discussed in this application is about “**Can Complaint be rejected in part?**” The Hon’ble Supreme Court in the decision reported in **A.I.R. - 2017 - S.C. - 4477 (Sejal Glass Limited vs. Navilan Merchants Private Limited)**, has held that a Complaint can either be rejected as a whole or not at all. In the said case, the Hon’ble Supreme Court has held that the word Complaint, as used in Rule 11 of Order VII of Civil Procedure Code, necessarily means the Complaint as a whole and that if only a portion of the Complaint, as opposed to the Complaint as a whole is to be struck out, Order VI Rule 16 of the Code, which relates to striking out pleadings, would apply. The Hon’ble Supreme Court has also clarified that where the Complaint is barred qua one Defendant but maintainable vis-à-vis others, the Complaint cannot and should not be rejected as a whole. In all such cases, if the Complaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the Suit as a whole must then proceed to trial.

9. The said position of law was thereafter reaffirmed, by the Hon’ble Supreme Court in **2019 (7) - S.C.C. - 158 (Madhav Prasad Aggarwal vs. Axis Bank)**. In the said case, Axis Bank being one of the Respondents filed a Notice of Motion under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, on the ground that the Suit against it was barred under Section 34 of SARFAESI Act.

10. In the said case, setting aside the Order of Hon'ble High Court that allowed the motion, the Hon'ble Supreme Court has held that indubitably, the Plaint can and must be rejected in exercise of powers under Order VII Rule 11 (d) of the Civil Procedure Code on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the Plaint, ascribable to clauses (a) to (f) of Rule 11 of Order VII of Civil Procedure Code. In other words, the Plaint as presented must proceed as a whole or can be rejected as a whole but not in part, that the relief claimed by Respondent No.1 in the notice of motion which commended to the Hon'ble High Court, is clearly a jurisdictional error, that the fact that one or some of the reliefs claimed against Respondent No.1 in the concerned Suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order VI Rule 16 of Civil Procedure Code at the appropriate stage.

11. In view of the ratio of the above-mentioned two decisions of the Hon'ble Supreme Court, I need not discuss about various contentions of the Applicant/ 27th Defendant in this case. Further the Advocate for the 27th Defendant has also relied on a decision reported in **A.I.R. - 2011 - Gujarat - 27 (Chandrakant Kantilal Jhaveri and Another vs. Madhuriben Gautambhai and Another)**, wherein it is held

that it is the duty of the Court to reject the Plaint which does not disclose the cause of action. However the said decision is not related to partial rejection of the Plaint against one of the Defendants as prayed by the 27th Defendant in the present case. Hence, in view of the ratio of the above-mentioned two decisions of the Hon'ble Supreme Court, the ratio of the said decision is not applicable to the present case .

12. Therefore there are no grounds to reject the Plaint in part as against the Applicant/ 27th Defendant only. It is to be noted that the 27th Defendant, by filing this application, has also wasted the judicial time and deviated the time lines of the Commercial Courts Act, since 2015. Therefore, an exemplary cost of Rs. 5,000/- is imposed on 27th Defendant. With this observation, I answer this Point in the **'Negative.'**

13. Point No. 2: - Therefore, I proceed to pass the following Order.

ORDER

The I.A. No.II filed by the Applicant/Defendant No. 27 under Order VII Rule 11(a) of the Civil Procedure Code is dismissed.

The 27th Defendant shall pay the cost of Rs.5000/- to the Plaintiff.

(Dictated to the Stenographer, typed by her directly on the computer, verified by me and pronounced in the open court on **23rd day of August 2021**).

(M. DEVARAJA BHAT)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.

Com.O.S.No.3436/2015

The Order on I.A.No.II is pronounced in Open Court. The operative portion of the said Orders is as follows :-

ORDER

The I.A. No.II filed by the Applicant/Defendant No. 27 under Order VII Rule 11(a) of the Civil Procedure Code is dismissed.

The 27th Defendant shall pay the cost of Rs.5000/- to the Plaintiff.

(vide my separate detailed Order dated 23.08.2021).

To hear the arguments on the Affidavit and Memo by 07.09.2021.

Typed to my dictation).

LXXXII ACCJ, B'LURU.