

Special Civil Suit No. 253/2018**Order below application Exhibit. 17.**

1. The present application has been filed by the defendant No. 4 to 9, under Order 7 Rule 11(d) of CPC and prayed for that the plaintiff's suit is barred by provisions of The Company Act and it is filed without cause of action, hence this suit is to be rejected summarily.
2. In response to the aforesaid application, Ld. Advocate for the plaintiff has filed written objections against the present application.
3. Read the application, perused the record of the case. I have heard, Ld. Advocates for the respective parties at length.
4. Upon considering the present application and rival contentions, and considering the settled principles of law, the following points for determination have been arisen for consideration.

P O I N T S

- [I] Whether the plaintiff's suit is barred by Section 430 of The Companies Act as prayed for ?
- [II] Whether the plaintiff's suit falls under the purview of Order VII Rule 11(a) and (d) of C.P.C ?
- [III] What Order ?

5. Answers of the aforesaid points are as under:-

- [I] In the Negative.
- [II] In the Negative.
- [III] As per final Order.

REASONS

6. For arriving at the aforesaid conclusions, the following reasons are assigned:

7. **Points No. 1 to 3 :-**

As all the points are inter se connected, they are discussed jointly for the sake of brevity and convenience.

It is well settled principal of law that, at the time of adjudication of application under Order 7 Rule 11 of the Code Of Civil Procedure, the court is not required to go into the rival contentions of the defendant, but the plaint alone and documents filed along with the plaint is only to be taken into consideration. Now looking to the averments made by the plaintiff in the plaint at Exh. 1, the plaintiff has sought for various kinds of reliefs and the main relief is specific performance of Memorandum of Understanding (which is hereinafter referred to as "MoU") was executed between the parties to the suit.

8. Considering to the objections and contentions raised by the Ld. Advocate for the defendant Nos. 4 to 9 by filing the present application, it is categorically contended that proceedings for the

similar kind of disputes have been pending in the National Company Law Tribunal (which is hereinafter referred to as “NCLT”). Ld. Advocate for the defendant has contended that, when the proceedings regarding disputes of Companies have been pending to the NCLT, then, as per Section 430 of the Company Act, this Court does not have jurisdiction to entertain the present suit. Ld. Advocate for the defendant has submitted that, the present suit is barred by Provisions of Section 430 of the Company Act. In support of his submissions Ld. Advocate for the defendant has heavily relied upon the judgment of the Hon'ble Delhi High Court reported in **SAS Hospitality Pvt. Ltd. & Anrs. Vs. Surya Constructions Pvt. Ltd. & Ors.**, delivered by Hon'ble Justice Pratibha M. Singh and it was contended by learned advocate for the defendants that, as laid down by the Hon'ble Delhi High Court in the judgment, even, if, the present case, the Court grants the relief sought for by the plaintiff, after a full trial, the effective order in respect of including company, an administrating, the affairs of the Company, cannot be passed and such order can only be passed by the NCLT which has exclusive jurisdiction to deal with the affairs of the Company. It is also contended by Ld. Advocate for the defendant that, the NCLT is only empowered to decide the disputes of the present suit.

9. I have gone through the judgment of the Hon'ble Delhi High Court, wherein, it was held that, when the dispute is related to the company affairs, then, the same disputes can be decided by the NCLT, but at the same time, considering, Section 430 of the

Company Act, 2013 by which specific provision regarding the jurisdiction of the Court, has been provided, wherein, it is provided that, the Civil Court cannot entertain any suit or proceedings in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction can be granted by any Court or other Authority in respect of any matter which ought to be taken in pursuance of any power conferred by or under this Court or any other law for the time being in force by the Tribunal or the Appellate Tribunal.

10. On the other hand, Ld. Advocate for the plaintiff has vehemently submitted that the present suit has been instituted within the stipulated time period, therefore, it is not barred by Law of Limitation. It is further submitted that, the present Court has ample jurisdiction to entertain the present suit, as the present suit is filed for Specific Performance of MoU, Therefore, it was submitted that, Section 430 of the Company Act has no application to the facts of the present case. Learned advocate for the defendant has cited and relied upon the aforesaid judgments, but facts of the case on hand and facts of the cited authorities are quite different, and therefore, it has no application to the facts of the present case. Furthermore, this court has taken into consideration the settled principles of law as laid down by Honble Apex Court and Honble High Court of Gujarat.

11. Ld. Advocate for the plaintiff has cited and relied upon the following judgments:--

[1] 2012 SCC online MAD 3335

[2] (2005) 11 SCC 73

[3] (2005) 11 SCC 314

[4] (1966) 1 SCR 683

[5] 1993 SCC online Delhi 551.

12. I have gone through the aforesaid judgments, as cited by the Ld. Advocate for the plaintiff, wherein, Hon'ble Madras High Court, in the case of, S. Thilagavathy vs. M/s. Cosmopolise Properties Pvt. Ltd., wherein, in para 16 of the judgment, it was observed by the Hon'ble Madras High Court that, as per the judgment of the Hon'ble Supreme Court, AIR 2003 SC 2696 cited in the judgment, the Civil Court has got jurisdiction to entertain suits of civil nature except the same is expressly and impliedly barred by statute. Further, reading of Section 2 (11) of the Companies Act, which makes it clear that, the Court have not jurisdiction under the Companies Act with respect to the matter regarding to that Act is the Court as provided in Section 10, namely, High Court or district Court. It is further held by the Hon'ble High Court that, in view of the elaborate provisions contained in the 1956 Act, in regard to management or conduct of a Companies affairs, including even matters of administration, the scope for affairs of the Civil Court may have became more limited, but, the power has not at all been taken away. In the same judgment, it is further held by the Hon'ble Madras High Court that, in the plaint,

the plaintiffs are seeking the reliefs on the basis of MoU entered into between the parties and that cannot be brought within the exclusive jurisdiction of the Company Court and the rights under the MoU are common law rights and, therefore, such rights can be enforced in the ordinary Civil Courts and, if, the plaintiffs want to enforce their Civil rights on the basis of MoU, then, the ordinary Civil Court have got jurisdiction. Therefore, considering, the ratio laid down by the Hon'ble Madras High Court, looking to the averments of the plaint, when the present suit is filed by the plaintiff for declaration and for Specific performance of MoU, then, looking to the totality of the facts of the present case, this Court has jurisdiction to entertain the present suit and, therefore, the contentions raised by the Ld. Advocate for the defendant Nos. 4 to 9 are not tenable as the same have no application to the facts of present case. Under the circumstances, this Court is of the considered view that, Section 430 of the Company Act has no application to the facts of the present case and this Court has ample jurisdiction to entertain the present suit. Therefore, the present suit is maintainable and, hence, the averments made in the plaint is not covered within the purview of Section 430 of the Company Act. and therefore, the present application is *de void* of merits.

13. It is also advantageous to refer the celebrated principles of law laid down by the Hon'ble Supreme Court that, if the meaningful reading of the plaint suggests that the plaint is barred by any law or does not disclose cause of action, in that

circumstance only plaint can be rejected. But as discussed herein above and considering the averments of the plaint the plaint does not fall under ambit of provisions of Order 7 Rule 11 of CPC. It is also required to be noted that the plaintiff has categorically and precisely averred as to when the cause of action was arisen. Therefore, when the plaint discloses material facts and even full particulars, the plaint does not found to be barred by any law and the plaint disclosed cause of action precisely. In view of the aforesaid judgments and considering factual and legal aspects of the present suit, it is clearly born out that the present plaint does not fall within the four corners of the provisions of Order 7 Rule 11 of CPC, hence all the points for determination are answered accordingly.

14. Point No. 3.

In view of the foregoing discussion, in the interest of justice, the following final order is passed.

:: ORDER ::

- The present application for rejection of plaint is hereby dismissed.
- No order as to cost.

Pronounced in the open Court today on 1st day of January, 2019.

Surat.
Date: 01.01.2019

(Sanjaykumar Chhaganbhai Makvana)
12th Additional Senior Civil Judge,
Surat. Code No-GJ00920.