

**BEFORE THE COMMERCIAL COURT & II ADDL DISTRICT &
SESSIONS JUDGE, MYSURU, AT: MYSURU.**

Present: Sri.Hosamani Pundalik,
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

Dated this the 19th day of November 2022

Com.O.S.No.02/2019

Plaintiff :

Chamundeshwari Electricity Supply
Company, Mysuru A wholly owned
undertaking of Govt. Of Karnataka, A
company Incorporated Under the Indian
Companies Registration Act CESC, Mysuru
having its Corporate Office at Projects Wing,
29, Vijayanagar II Stage, Hinkal, Mysuru.

Reptd by its Principal Officer and Authorized
Signatory.

/vs/

Defendant:

Rajashekar & Associates Electrical
Engineers, A partnership Firm Claiming to
be a Partnership Firm, Under the Indian
Partnership Act Unit No.201, Landmark
Plaza, No.229, Lang Ford Road, Bengaluru
reptd by two of its partners 1)
Sri.N.Sathyanarayana and 2) Sri.Sundeep
Sathyanarayana

I.A. U/o VII R.11(a) and (d) R/w
Section.151 of CPC

Applicant / Defendant :

Rajashekar & Associates Electrical Engineers, A partnership Firm Claiming to be a Partnership Firm, Under the Indian Partnership Act Unit No.201, Landmark Plaza, No.229, Lang Ford Road, Bengaluru restd by two of its partners 1) Sri.N.Sathyanarayana and 2) Sri.Sundeep Sathyanarayana

Respondents / Plaintiff :

Chamundeshwari Electricity Supply Company, Mysuru A wholly owned undertaking of Govt. Of Karnataka, A company Incorporated Under the Indian Companies Registration Act CESC, Mysuru having its Corporate Office at Projects Wing, 29, Vijayanagar II Stage, Hinkal, Mysuru.

Restd by its Principal Officer and Authorized Signatory.

Order on I.A.U/O VII R.11(a) and (d) R/w
Section 151 of CPC

This is an application filed by the Defendants under Order VII Rule 11(a) and (d) of CPC., for rejection of plaint as there is no cause of action and the suit is barred by law under Section 12(A) of Commercial Court Act in the interest of justice.

2. The case of the Defendants is as under:

The Defendant No.1 Sathyanarayana filed an affidavit that he is the Managing Partner of the Defendants concern and he is conversant with the facts and circumstance of the case. Further it is stated that the present suit is filed by the plaintiff seeking recovery of a sum of Rs.2,61,06,505/-, interest of Rs.64,86,214/- from 16.03.2017 and for such other consequential reliefs. The Plaintiff knowing fully well that the alleged dispute between the Plaintiff and Defendants is a commercial dispute chooses to file the present suit as Ordinary Suit. The Plaintiff as stated in the plaint is a company involved in management of power supply of electrical power in the designated areas. It is further stated that the Plaintiff Company intended electricity distribution network strengthening in Chamarajanagar and Kollegal Towns. Further it is stated that subsequent to the bid of enquiry and price negotiations, letter of acceptance was given by the Defendants. Thereafter, letter of intent for supply and erection was issued to the Defendant. Contract for supply portion and erection portion was entered into between the Plaintiff and Defendants both dated 14.12.2011. The Plaintiff at Para-9 of the plaint has stated that both the contracts contained technical specification as per the letter of intent and that the two contracts detailed work award was intimated as per the terms and

conditions to the Defendants on 06.01.2012 through separate quotes. Further it is stated that the Plaintiff stated the cause of action arose on and from the date of the final joint meeting that was held on 04.01.2016 thereafter not being complied with by the Defendant within the territorial jurisdiction of this Court. Therefore, by the said averments it can be inferred that the cause of action to file the present suit was the joint meeting held on 04.01.2016. Further it is stated that the Plaintiff has filed the minutes of said meeting at document No.14. In the entire minutes of the meeting the Defendants have continuously brought it to the notice of the Plaintiff the delay and latches from their end to proceed with the work and also the pending payment due by the Plaintiff not been released despite work being completed and requests made in that regard. Further it is stated that as per the cause of action averred in the plaint the cause of action to file the present suit is the meeting dated 04.01.2016 and from the meeting referred to by the Plaintiff it can be seen that there is not liability cast on the Defendants to make any payment. As such, it makes it clear that the cause of action stated in the plaint is imaginary and created only for the purpose of filing the present suit to harass the Defendants by abusing the process of law. Hence, the plaint is liable to be rejected as there is no

cause of action to file the present suit as can be seen from the plaint itself. Further it is stated that Arbitration proceedings in relation to the dispute between the parties have been referred to Arbitration. He is given to understand that there can be no parallel proceedings in respect of same dispute between the parties. Such parallel proceeding is not maintainable and is liable to be rejected. Further it is stated that the claim/dispute of the Plaintiff for recovery of money is a dispute which is covered under Section 2(1)(c)(vi) of the Commercial Courts Act 2015 and provides the remedy of pre-institution mediation has to be exhausted before Plaintiff files a suit that does not contemplate any urgent relief. Therefore, the Act makes it mandatory for a party to exhaust the remedy of Pre-Institution Mediation before initiating Court proceedings under the Commercial Courts Act, with the limited exception of cases where urgent relief is being sought. Admittedly, no pre-mediation has taken place before the institution of the present suit and no urgent relief is also sought for in the present suit. Further it is stated that if present application is allowed, no hardship or loss would be caused to the other side. If the present application is not allowed, it will cause great hardship, loss and injustice to the Defendants and prayed to allow the application.

3. Per contra, it is contended by the plaintiff by filing objection that the application filed by the Defendants is not maintainable either in law or on facts and liable to be set-aside. Further it is stated that the plaintiff has filed suit for recovery of sum of Rs.2,61,06,505/- along with interest at the rate of 21% per annum amounting to Rs.64,86,214-00 from 16.03.2017., future interest at the rate of 21% with cost. Further it is contended that the cause of action for the suit arose on and from date of final joint meeting that held on 04.01.2016. The present application was filed by the Defendants by suppressing material facts. Further it is contended that the Defendants were awarded the work of electrical distribution network strengthening in Chamarajanagar and Kollegal town of Chamarajanagar District. The execution of project was delayed by the Defendants due to its failure in mobilizing men and machinery among other reasons. In spite of repeated request and reminder the Defendants failed to carry out the work and even to complete the work in the extended period of time. Further it is contended that the cause of action means bundle of facts which gives the plaintiff a right to relief against the Defendants. Further it is contended that as per Section 12 of the Commercial Court Act a suit does not contemplate any urgent interim relief shall not be instituted without exhausting the remedy of pre - institution mediation. In the instant case, the plaintiff has filed present suit with inter-locutory

application IA I seeking direction to the Defendants to furnish security including Bank guaranty equivalent to the suit claim. The present suit was transferred from III Addl.Senior.Civil Judge, Mysuru to this Court. The condition imposed in Section 12 (A) of the Commercial Court Act does not apply to transfer of pending cases as enumerated in Section 15 of Commercial Court Act and prayed to reject the application.

4. Thereafter, I have heard the arguments advanced by the learned counsel for the Defendants and that of the learned counsel for the plaintiff.

5. The points that would arise for my consideration are as under:

1. Whether the application filed by the Defendants under order VII Rule 11(a) and (d) for rejection of the plaint deserves to be allowed ?

2. What Order ?

6. My findings on the above points are as follows:

Point No.1: In the Negative.

Point No.2: As per final order, for the following:-

REASONS

7. **Point No.1:** The present suit was filed by the plaintiff against the Defendants for recovery of an amount

of Rs.2,61,06,505/- and interest an amount of Rs.64,18,214/- with current and future interest at the rate of 21 % from the Defendants. The present suit was filed on 22.06.2018 and registered on 26.06.2018 before the Senior Civil Judge,, Mysuru after establishment of commercial Court the present matter was transfer to this Court for trial and disposal. When matter was posted for plaintiff evidence the Defendants appeared before the Court and filed the application for rejection of plaint as there was no cause of action and suit is barred by law stating that the present suit is filed by the plaintiff seeking recovery of a sum of Rs.2,61,06,505/-, interest of Rs.64,86,214/- from 16.03.2017 and for such other consequential reliefs. The Plaintiff knowing fully well that the alleged dispute between the Plaintiff and Defendants is a commercial dispute chooses to file the present suit as Ordinary Suit. The Plaintiff as stated in the plaint is a company involved in management of power supply of electrical power in the designated areas. It is further stated that the Plaintiff Company intended electricity distribution network strengthening in Chamarajanagar and Kollegal Towns. Further it is stated that subsequent to the bid of enquiry and price negotiations, letter of acceptance was given by the Defendants. Thereafter, letter of intent for supply and erection was issued to the Defendant. Contract for supply portion and erection portion was entered into between the Plaintiff and Defendants both dated 14.12.2011. The

Plaintiff at Para-9 of the plaint has stated that both the contracts contained technical specification as per the letter of intent and that the two contracts detailed work award was intimated as per the terms and conditions to the Defendants on 06.01.2012 through separate quotes. Further it is stated that the Plaintiff stated the cause of action arose on and from the date of the final joint meeting that was held on 04.01.2016 thereafter not being complied with by the Defendant within the territorial jurisdiction of this Court. Therefore, by the said averments it can be inferred that the cause of action to file the present suit was the joint meeting held on 04.01.2016. Further it is stated that the Plaintiff has filed the minutes of said meeting at document No.14. In the entire minutes of the meeting the Defendants have continuously brought it to the notice of the Plaintiff the delay and latches from their end to proceed with the work and also the pending payment due by the Plaintiff not been released despite work being completed and requests made in that regard. Further it is stated that as per the cause of action averred in the plaint the cause of action to file the present suit is the meeting dated 04.01.2016 and from the meeting referred to by the Plaintiff it can be seen that there is not liability cast on the Defendants to make any payment. As such, it makes it clear that the cause of action stated in the plaint is imaginary and created only for the purpose of filing the present suit to harass the Defendants by abusing the

process of law. Hence, the plaint is liable to be rejected as there is no cause of action to file the present suit as can be seen from the plaint itself. Further it is stated that Arbitration proceedings in relation to the dispute between the parties have been referred to Arbitration. He is given to understand that there can be no parallel proceedings in respect of same dispute between the parties. Such parallel proceeding is not maintainable and is liable to be rejected. Further it is stated that the claim/dispute of the Plaintiff for recovery of money is a dispute which is covered under Section 2(1)(c)(vi) of the Commercial Courts Act 2015 and provides the remedy of pre-institution mediation has to be exhausted before Plaintiff files a suit that does not contemplate any urgent relief. Therefore, the Act makes it mandatory for a party to exhaust the remedy of Pre-Institution Mediation before initiating Court proceedings under the Commercial Courts Act, with the limited exception of cases where urgent relief is being sought. Admittedly, no pre-mediation has taken place before the institution of the present suit and no urgent relief is also sought for in the present suit. Further it is stated that if present application is allowed, no hardship or loss would be caused to the other side. If the present application is not allowed, it will cause great hardship, loss and injustice to the Defendants and prayed to allow the application.

8. Per contra, it is contended by the plaintiff by filing objection that the application filed by the Defendants

is not maintainable either in law or on facts and liable to be set-aside. Further it is stated that the plaintiff has filed suit for recovery of sum of Rs.2,61,06,505/- along with interest at the rate of 21% per annum amounting to Rs.64,86,214-00 from 16.03.2017., future interest at the rate of 21% with cost. Further it is contended that the cause of action for the suit arose on and from date of final joint meeting that held on 04.01.2016. The present application was filed by the Defendants by suppressing material facts. Further it is contended that the Defendants were awarded the work of electrical distribution network strengthening in Chamarajanagar and Kollegal town of Chamarajanagar District. The execution of project was delayed by the Defendants due to its failure in mobilizing men and machinery among other reasons. In spite of repeated request and reminder the Defendants failed to carry out the work and even to complete the work in the extended period of time. Further it is contended that the cause of action means bundle of facts which gives the plaintiff a right to relief against the Defendants. Further it is contended that as per Section 12 of the Commercial Court Act a suit does not contemplate any urgent interim relief shall not be instituted without exhausting the remedy of pre - institution mediation. In the instant case, the plaintiff has filed present suit with inter-locutory application IA I seeking direction to the Defendants to furnish security including Bank guaranty equivalent to the suit claim. The

present suit was transferred from III Addl.Senior.Civil Judge, Mysuru to this Court. The condition imposed in Section 12 (A) of the Commercial Court Act does not apply to transfer of pending cases as enumerated in Section 15 of Commercial Court Act and prayed to reject the application.

9. The learned counsel for the Defendants submitted that there was no cause of action to file the suit and suit is barred by law under the provisions of Section 12(A) of Commercial Court Act as the plaintiff has not complied with the provision of pre - institution mediation and prayed to allow the application and reject the plaint. The learned counsel for the Defendants relied on the decision reported in **(1997) 4 SCC 467** in case of **T. Arivandandam Vs.T.V.Satyapal** and another wherein the Hon'ble Supreme Court of India held that reading of a plaint is it is manifestly vexatious and merit less in the sense of not disclosing a clear right to sue it should exercise its power under Order 7 Rule 11 CPC. Another decision reported in **(1977) 4 SCC 471** in case of **State of Karnataka and another Vs. Sri Rangnatha Reddy and another**. Wherein the Hon'ble Supreme Court of India held that power to reject plaint can be exercised even after framing of issues and when matter is posted for evidence. Another decision reported in **(1998) 2 SCC 70** in case of **I.T.C. Ltd., Vs Debts Recovery Appellant Tribunal and another** wherein the Hon'ble Supreme Court of India wherein it was held that the application filed by the seller

Under order 7 Rule 11 (A) for rejection of the plaint on ground that no valid cause of action was shown against it held application must be allowed and the plaint liable to be rejected. Another decision reported in **2004(3) SCC 137** in case of **Sopan Sukhdevo Sable and others Vs Asst.Charity Commissioners and others** wherein it was held that for the purpose of deciding an application under Order 7 Rule 11(a) and (d) CPC the averments in the plaint are Germane- plea's taken in the written statement would be wholly irrelevant at that state. Another decision reported in **AIR 2021 Cal 190-2021 SCC online Cal 1457** in case of **Laxmi Polyfab Pvt., Ltd., Vs Eden Reality Venchurs, Pvt., Ltd.**, wherein it was held that pre institution mediation under Section 12 (A) of Commercial Court Act is mandatory.

10. Per contra, the learned counsel for the plaintiff has submitted that the application filed by the Defendants is not maintainable either in law or on facts and liable to be dismissed. Further it is stated that cause of action is bundle of facts. The reading of the plaint as whole discloses cause of action in the plaint and there was no question of any exfacia bar of Law and prayed to reject the application. Further he has submitted that the plaintiff seeking to institute a suit involving urgent interim relief is not require to exhaust the remedy of pre institution mediation and prayed to reject the application . The learned counsel for the Defendant relied the decision reported in **(2012) 8**

Supreme Court Cases 706 in case of **Church of Christ Charitable Trust and Educational Charitable Society Vs Ponniamman Educational Trust** wherein the Hon'ble Supreme Court of India held that Court must scrutinize averments made in the plaint- averment made in the written statement not relevant. Another decision reported in **(2021) SCC online Bom 195** in case of **Ganga Taro Vazi Rani Vs. Deepak Raheja** wherein the Hon'ble High Court of Bombay. Another decision reported in wherein the **Hon'ble High Court of Madhyapradesh** held that a suit which does not contemplate any urgent interim relief under the Act shall not be instituted unless the plaintiff exhaust the remedy of pre-institution mediation and in the said suit the plaintiff has filed application under Section 39 Rule 1 and 2 CPC the Court held that the plaintiff has made out a case that there is an urgency for interim relief. Another decision in **civil Revision petition 3690 of 2018** wherein the **Hon'ble High Court of Telangana** held that if only in cases wherein it was held that plaintiff is entitled to urgent interim relief the provision will not apply. Another decision reported in **ILR (2002) II Delhi 627** in case of **Venu Jolly and Ors Vs.Vinod Kumar** wherein it was held that procedural law which are hand maiden of justice cannot be allowed to defeat the end of justice.

11. It is pertinent to note that the present application was filed by the Defendants for rejection of plaint as there was no cause of action to file the suit against the

Defendants. In this aspect the Judgments of the Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka assumes significance and the same are reproduced as under :

The decision in case of **AIR 2020 SC 2721 – 2020 (6) SCJ 520 in case of Shakti Bhog Food Industries vs. Central Bank of India** – wherein the Hon'ble Supreme Court of India held that the rejection of plaint since factum of suit being barred by limitation would be a mixed question of fact and law. Hence, rejection of plaint U/o VII Rule 11 of CPC improper. Further it was **held** that – the cause of action for filing a suit would consist of bundle of facts, the factum of suit being barred by limitation ordinarily would be a mixed question of facts and law. Even for that reason invoking order VII Rule 11 CPC., is ruled out. Another decision reported in **AIR 2021 SC 1114 – in case of K.Akbar Ali Vs K.Umar Khan and others SLP (Civil) 31844 of 2018 dated 12.02.2021** - wherein it was held that - rejection of plaint – Held while considering an application under Order VII Rule 11 CPC., the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law on the face of the averments contained. In the plaint itself while considering an application under Order VII Rule 11 CPC., the Court is not look into the strength or

weakness of the case of the plaintiff or defence raised by the Defendant. In any case an application under Order VII Rule 11 CPC., for rejection of the plaint requires a meaningful reading of the plaint as a whole petition is dismissed. Another decision reported in **2021(4) KCCR SN 270(SC)** in the case of **Salim D Agboatwala and others Vs Shamalji Oddhavji Thakkar and others** – wherein the Hon'ble Supreme Court of India held that - VII Rule 11 CPC., - rejection of plaint barred by limitation – limitation depend upon the evidence of the issuance and service of notice – knowledge of plaintiffs – Defendant cannot pick up few sentence here and there from plaint to seek rejection of plaint. Appeal allowed the judgment of Trial Court and High Court set-aside suit. Suit restored to file. In another decision reported in **AIR 2021 SC 4594** in the case of **Rajendra Bajoria and others Vs Hemant Kumar Jalan and others** – wherein the Hon'ble Supreme Court of India held that – rejection of plaint – if proper- cause of action not disclosed by averments made in plaint – in addition High Court holding that since relief sought cannot be granted plaint liable to be rejected – Justified – Held only on the basis of the avermetns made in the plaint it could be ascertained as to whether a cause of action is made out or not – It is equally true that for finding out the same the entire pleadings in the plaint will

have to be read and that too at their face value. At this stage the defence taken by the Defendants cannot be looked into. Reading of averments made in the plaint should not only be formal but also meaningful. However under Order VII Rule 11 CPC., the duty is cast upon the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon or whether the suit is barred by any law. Another decision reported in **(2019)10 SCC 226** in case of **Shankathussain Mohammed Patel Vs. Khatunben Mohammed Bhai Polar** wherein the Hon'ble Supreme Court of India held that unless entire avement of the plaint crucial aspect of the case considered no plaint should be rejected.

12. It is pertinent to note that, the plaintiff has filed present suit for recovery of amount of Rs.2,61,06,505-00 and interest of Rs.64,86,214-00 from 16.03.2017 with future interest at the rate of 15%. The record reveals that the agreements between the parties entered at Mysuru and the cause of action arose at Mysuru and this Court has the jurisdiction to try the suit. The reading of the plaint as a whole discloses a cause of action and there was no question of any exfacie bar of law for which I placed reliance on the decision reported in **AIR 2020 SIKK 20** in case of **Shanthi Subha and Others VS. Jashang Subha** and **AIR 2019 Cal**

– **319.** Under these circumstance it can be said that the application filed by the Defendants under Order VII Rule 11 CPC there was no cause of action to file suit, liable to be rejected.

13. Next aspect is to be considered whether the suit of the plaintiff hit by the bar of section 12(A)(1) of the Commercial Court Act. In this aspect provision under Section 12A of Commercial Court Act assume significant, Section 12A of the Commercial Courts Act, 2015 reads as under:-

“12A. (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall

complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties: Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963.

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996.”.

14. It is pertinent to note that a plain reading of Sub-section (1) of Section 12A of the Commercial Courts Act, 2015 indicates that the institution of a suit, which does not contemplate any urgent interim relief, is prescribed unless

the plaintiff exhausts the remedy of pre-institution mediation in accordance with the procedure as may be prescribed. There is no ambiguity that a suit, which contemplates urgent interim relief, is excluded from the rigor of Section 12A(1) of the Commercial Courts Act, 2015. Thus, a plaintiff seeking to institute a suit involving urgent interim relief(s) is not required to exhaust the remedy of pre-institution mediation. The decision in case of **FAO (COMM) 128/2021, CM Nos.28066/2021, 28067/2021 and 40033/2021 dated 27.10.2022** in case of **Chandra Kishore Chaurrasia Vs R.A.Perfumery Works Private Ltd.**, wherein the **Hon'ble High Court of Delhi** held that that a suit which contemplates urgent interim relief is excluded from rigor of Section 12A(1) of the Commercial Court Act. Thus a plaintiff seeking to institute a suit involving urgent interim relief(s) is not required to exhaust the remedy of Pre-institution mediation. It is pertinent to note that in the instant case the plaintiff has filed IA No.I seeking urgent interim reliefs under Section 151 CPC., for direction to the Defendants to furnish security including Bank guarantee equivalent to the suit claim. Under these circumstances, it can be said that the plaintiff seeking to institute a suit involving urgent interim relief is not required to exhaust the remedy of Pre-institution mediation. Therefore, the application filed by the Defendants that the suit of the plaintiff is barred by law under Section 12(A) of Commercial Court Act has no merits and liable to be rejected. The ruling relied by the learned counsel for

Defendants not going to helpful to the Defendants. In view of the facts and circumstances of the case and materials available on record, I am of the considered opinion that the application filed by the Defendants under Order VII Rule 11(a) and (d) CPC., is liable to be rejected. Therefore, I hold that the application filed by the Defendants under Order VII Rule 11(a) and (d) CPC., liable to be rejected. Hence, I answer **Point No.1 in the Negative.**

15. **Point No.2:-** In view of my findings on the above Point No.1, I proceed to pass the following:

ORDER

The application filed by the defendants under Order VII Rule 11(a) and (d) CPC is hereby rejected.

In view of the facts and circumstances of the case parties are directed to bear their own costs.

(Dictated to the Judgment Writer directly on computer and then pronounced in the open court on this the 19th day of November 2022)

(Hosamani Pundalik)
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.