

**IN THE HIGH COURT AT CALCUTTA
(ORDINARY ORIGINAL CIVIL JURISDICTION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No. G.A. 5 of 2023

In

C.S. No. 246 of 2022

Manoj Kumar Gupta

Versus

Sri Alope Kumar Gupta & Ors.

Mr. Sakya Sen, Sr. Adv.

Mr. Sabyasachi Sen

Ms. Pallavi Chatterjee

... For the plaintiff.

Mr. Mainak Bose, Sr. Adv.

Mr. Debmalya Ghoshal

Mr. Niladri Khanna

Ms. Doyel Dey

... For the defendants.

Hearing Concluded On : 09.03.2026

Judgment on : 31.03.2026

Krishna Rao, J.:

1. The defendant Nos. 1, 2, 6 and 7 have filed the present application being G.A. No. 5 of 2023 praying for rejection of the plaint on the ground of barred by limitation, barred by Section 430 of the Companies Act, 2013 and no cause of action disclosed in the plaint.
2. The plaintiff has filed the present suit praying for the following reliefs:
 - a) *A decree of declaration that the plaintiff, the defendant no. 1 and the defendant no. 2 are the joint owners of the companies, businesses, assets and properties;*
 - b) *A decree of declaration declaring that the alteration in respect of shareholding pattern and as also the directorial pattern and composition of the defendant nos. 8 to 15 are without authority and not binding upon the plaintiff;*
 - c) *A decree of declaration that irrespective of shareholding and directorial patterns and/or composition of the defendant nos. 8 to 15, the properties, businesses and assets of such companies and firms including those **mentioned in Annexure "B" hereto** are joint amongst the plaintiff, the defendant no. 1 and the defendant no. 2;*
 - d) *A decree of Mandatory Injunction be passed directing the defendants to restore the original share holding pattern and directorial pattern and/or composition in respect of the defendant nos. 8 to 15;*
 - e) *Decree for mandatory injunction be passed directing the defendant no. 1, 2, 6 and 7 to disclose the full particulars of various movable properties including jewelry owned by Smt. Gayetri Gupta in the instant proceedings*
 - f) *A preliminary decree be passed declaring that the plaintiff, the defendant no. 1 and the*

defendant no. 2 each having undivided 1/3rd share in the businesses, assets and properties;

g) *A final decree for partition by appointment of a Commissioner of Partition in accordance with law with a direction to partition the properties which are capable of partition by metes and bounds and with a further direction to value the other properties, businesses and assets and allot the same in order to make over 1/3rd hereof to the plaintiff, the defendant nos. 1 and 2 in accordance with law;*

h) *Judgement upon admission;*

i) *Commissioner;*

j) *Receiver;*

k) *Injunction;*

l) *Costs;*

m) *Such other relief or reliefs.”*

3. The plaintiff and the defendant nos. 1 and 2 are the brothers and the defendant nos. 3, 4 and 5 are the sisters of the plaintiff. The defendant no.6 is the wife of the defendant no.1 and the defendant no. 7 is the wife of the defendant no.2. The plaintiff has not claimed any reliefs against the defendant nos. 6 and 7. The defendant nos. 8 to 15 are the companies or the partnership firms. Shri Radheshyam Gupta (since deceased) is the father of the plaintiff and the defendant nos.1 to 5 and father-in-law of the defendant nos. 6 and 7.

4. Mr. Mainak Bose, Learned Senior Advocate representing the defendant nos. 1, 2, 6 and 7 submits that the plaintiff has disclosed legal notice dated 13th May, 2022 and from the said legal notice, it reveals that the

plaintiff was not only aware but was conscious of the fact that there was a family settlement in the month of November, 2012 after the death of the father, in which the plaintiff was the party and accepted the settlement and acted upon the terms of settlement. He submits that after the period of 10 years from settlement, the plaintiff has raised dispute of the said family settlement. In support of his submissions, Mr. Bose relied upon the judgment in the case of ***Dahiben Vs. Arvindhbai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives & Ors.*** reported in ***(2020) 7 SCC 366*** and submits that if on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the Court would be justified in exercising the power under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

5. Mr. Bose submits that the suit filed by the plaintiff is ex-facie barred by limitation as the right of the parties have been settled in the year 2012 by way of settlement. He further submits that during the life time of the mother, the family settlement was given effect to and admittedly the entitlement of the plaintiff which included Ipsa Credit Private Limited, Mars Viniyog Private Limited and Parag Finlease Private Limited were made over to the plaintiff.
6. Mr. Bose submits that settlement arrived between the parties during the life time of the mother of the parties has been given effect to and right have been transferred and benefits have been enjoyed, thus the plaintiff cannot challenge the said settlement and seek partition of the

properties. He has relied upon the judgment in the case of ***Khatri Hotels Private Limited Vs. Union of India and Another*** reported in ***(2011) 9 SCC 126*** and submits that successive violation of the right will not give rise to a fresh cause of action and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the date when the right to sue first accrued.

7. Mr. Bose submits that the shareholders or the directors neither have any right nor can claim any title to any property owned by the company. The plaintiff as an individual does not have any cause of action to claim any right, title or interest of any assets or properties owned by any incorporated company. He submits that the plaintiff does not have any cause of action and right to sue with respect to such assets and properties of the defendant nos. 8 to 15. He submits that the plaintiff prays for a declaration in respect of shareholding patterns, which are alleged to have altered by the defendant nos. 1 and 2 and have illegally ousted the plaintiff from the management and control of the defendant companies, thus in terms of prayers (b), (c), (d) and (e) of the plaint, the plaintiff has to approach the Learned National Company Law Tribunal (NCLT). He submits that as per provisions of Section 430 read with Sections 241 and 242 of the Companies Act, 2013, this Court does not have any jurisdiction to entertain the suit filed by the plaintiff. He has relied upon the judgment in the case of ***Shashi Prakash Khemka (Dead) through Lrs. & Anr. Vs. NEPC MICON (Now NEPC India Limited) and Others*** reported in ***(2019) 18 SCC 569*** and submits that

the Learned National Company Law Tribunal is having the exclusive jurisdiction to deal with all issues relating to oppression and mismanagement of the company.

- 8.** Mr. Sakya Sen, Learned Senior Advocate representing the plaintiff submits that sometimes in the year 1970, the father Radheshyam Gupta started a timber and plywood manufacturing unit under the name and style of “National Industrial Corporation” as sole proprietorship firm. Thereafter the name of the concern firm was changed to “Bihar Plywood & Timber Industries”. He submits that the plaintiff and defendant no.1 also joined with the father and started assisting their father in running and expanding the said business.
- 9.** Mr. Sen submits that out of the earnings and profits of the said business started diversifying the business and invested the surplus amount of the business corpus for acquisition of other businesses, like finance, investment in stock market and real estate properties etc. He submits that the businesses were carried on and properties were held under the names of different persons and entities including the defendant nos. 8 to 15. The companies amongst such entities had and has diverse stock holdings. Shares in such companies were and are held by the plaintiff and the defendant nos. 1 and 2 and their respective family members, relatives, friends and associates. He submits that all such entities were all along treated by all concerned including the plaintiff, the defendant nos. 1 and 2 and their father to be the part of

the business of joint family of the plaintiff, the defendant nos. 1 and 2 and their father.

10. After the death of the father on 27th June, 2003, the plaintiff and defendant nos.1 and 2 continued to carry on their business jointly as joint owners of such businesses, assets and properties owned in the name of the defendant nos. 8 to 15. The mother died on 9th May, 2021. He submits that after the death of father, the plaintiff and the defendant nos.1 and 2 continued to carry on businesses as jointly having 1/3rd share each or interest thereon.
11. Mr. Sen submits that after the death of father, the plaintiff time and again called upon the defendant nos. 1 and 2 to partition the companies, properties, businesses and assets which continued to remain joined on the basis of their respective valuations so that it could be allotted amongst the three brothers in equal shares but the defendant nos. 1 and 2 refused to partition.
12. Mr. Sen submits that issue of limitation is always a mixed question of law and fact and to determine whether the claims are *ex-facie* barred by limitation is to be read as a whole and no particular averment can be read in isolation. He relied upon the judgment in the case of **Salim D. Agboatwala and Others Vs. Shamalji Oddhavji Thakkar and Others** reported in **(2021) 17 SCC 100** and submits that the defendant cannot pick up a few sentences here and there from the plaint and contend that the plaintiff had constructive notice of the proceedings

and that therefore limitation started running from the date of constructive notice.

13. Mr. Sen submits that the stand of the defendant in the written statement or in the application for rejection is immaterial. He has relied upon the judgment in the case of ***P.V. Guru Raj Reddy represented by GPA Laxmi Narayan Reddy & Anr. Vs. P. Neeradha Reddy and Others*** reported (2015) 8 SCC 331 and submits that averments made in the plaint will have to be accepted as correct for the purpose of consideration of the application under Order VII, Rule 11 filed by the defendants.
14. Mr. Sen submits that the present application is filed by defendant nos. 1, 2, 6 and 7 though there are altogether 15 defendants. He submits that the plaint either is to be rejected as a whole or not at all in exercise of power under Order VII, Rule 11 of the CPC. He has relied upon the judgment in the case of ***Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Another*** reported in (2019) 7 SCC 158.
15. Mr. Sen submits that the inheritance of the estate of deceased is a civil dispute and could not be said to be an act of oppression and mismanagement. Such a dispute could not be adjudicated in a company petition filed during the pendency of civil suit. He has relied upon the judgment in the case of ***Aruna Oswal Vs. Pankaj Oswal and Others*** reported in (2020) 8 SCC 79.

16. The first issue raised by the defendants in the present application is that the suit is barred by limitation. The defendants in support of this issue, have relied upon the paragraphs 21 and 29 of the plaint with the legal notice dated 13th May, 2022. Paragraphs 21 and 29 of the plaint, reads as follows:

“21. The fact that the said properties, businesses and assets were joined between the plaintiff, the defendant nos. 1 and 2 were and/or are not in dispute until 2011. However, taking advantage of commanding position of the defendant no. 2 by being a Chartered Accountant and being blind foldedly trusted by the plaintiff and also the fact that the registered office of most of the defendant companies were situated in Kolkata where the defendant no. 2 was located, the defendant no. 2 who in concert and collusion with the defendant no. 1 has altered the position and is now alleging that some of such companies, properties, assets and businesses are not joint.

29. The defendant no. 1 and 2 is seeking to deny the plaintiff's lawful shares in the joint companies, properties, businesses and assets on frivolous and baseless grounds by contending that the defendant nos. 8 to 15 are juristic entities and cannot be subject matter of joint properties and cannot be subjected to partition. The defendant nos. 1 and 2 are also illegally contending the independent right, title and interest of their family members, some of such companies, businesses, properties and assets which are in fact jointly owned by the plaintiff and the defendant nos. 1 and 2. In addition thereto, the defendant nos. 1 and 2 are taking shelter of an advice of a mediator namely, Sourabh Jalan which has communicated to the parties by way of an email dated 24th November, 2012 which is not at all binding upon the plaintiff. Thus, the question of acting in terms of such email by the plaintiff does not and cannot arise.”

- 17.** The plaintiff has given details of shares, assets and properties which the plaintiff is entitled to get being his share but has not been done by the mediator. In the said letter, it is also alleged that the defendant nos. 1 and 2 have withheld all necessary documents of the companies, properties including personal documents and files of the plaintiff.
- 18.** The defendants have relied upon Article 58 of the Limitation Act, 1963, which reads as follows:-

<i>Description of Suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
58. <i>To obtain any other declaration.</i>	<i>Three Years</i>	<i>When the right to sue first accrues.</i>

As per the contentions of the defendants that the plaintiff's right to sue arose on 25th November, 2012. The defendants have relied upon the family settlement of November, 2012 but the defendants have not disclosed any settlement deed. It is the specific case of the plaintiff that the mediator appointed for settlement has not dealt with all the properties and also not acted impartially.

- 19.** It is also the case of the plaintiff that after the death of mother on 9th May, 2021, the share of the mother in the properties, assets and companies mentioned in an email dated 25th November, 2012, have been grabbed by the defendant nos. 1 and 2. The defendants have relied upon the judgment in the case of ***Dahiben (supra)*** wherein the Hon'ble Supreme Court held that:

“23.13 *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

24. *“Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

28. *A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”*

The defendants have further relied upon the judgment in the case of ***Khatri Hotels Private Limited (supra)*** wherein the Hon’ble Supreme Court held that:

“30. *While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”*

20. The plaintiff has relied upon the judgment in the case of **P.V. Guru Raj Reddy (supra)** wherein the Hon'ble Supreme Court held that:

“9. Both the suits were filed in July 2002 which is well within three years of the date of knowledge, as claimed by the plaintiffs, of the fact that the property had not been transferred in the name of Plaintiff 2 by Defendants 1 and 2. The aforesaid averments made in the plaint will have to be accepted as correct for the purposes of consideration of the application under Order 7 Rule 11 filed by Defendants 1 and 2. If that be so, the averments in the plaint would not disclose that either of the suits is barred by limitation so as to justify rejection of the plaint under Order 7 Rule 11 CPC.”

The plaintiff also relied upon the judgment in the case of **Salim D.**

Agboatwala (Supra) wherein the Hon'ble Supreme Court held that:

“8. Insofar as the rejection of the plaint on the ground of limitation is concerned, it is needless to emphasise that limitation is a mixed question of fact and law. It is the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.

9. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasi-judicial authority, is entitled to approach the court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

10. We are not dealing here with a case where notices were ordered to be issued, but were

not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the trial court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.”

- 21.** In the present case, the plaintiff has given the details that after the death of the father, the plaintiff, the defendant nos. 1 and 2 continue to expand the joint businesses and the entire earning and profit out of the joint businesses are enjoyed jointly by the plaintiff and defendant nos. 1 and 2. It is also mentioned in the plaint that the defendant nos.1 and his wife were also looking after the business of the companies at Jharkhand and Bihar and the defendant no.2 and his wife were looking after the business and companies having head offices at West Bengal and Bangalore.
- 22.** The plaintiff has also categorically alleged that the defendant no. 2 being the qualified Chartered Accountant and also a Company Secretary having advantage of commanding position in connivance with the defendant no.1 altered the position of the shareholding pattern and directorship of several companies. The plaintiff has given the details of misdeeds of the defendant nos.1 and 2 in paragraphs 19 (i) to (vii) of the plaint.

- 23.** It is the specific case of the plaintiff that the mediator has not acted impartially and even after the death of the mother on 9th May, 2021, the share of the mother has been grabbed by the defendants. The mother died on 9th May, 2021. The plaintiff had issued notice on 13th May, 2022. The defendants have filed the present application harping upon the settlement of November, 2012. It is the specific case that the settlement was not impartially and several properties were not considered by the mediator.
- 24.** It is settled law that the defendants cannot pick up a few sentences here and there from the plaint and say that the plaint filed by the plaintiff is barred by limitation. The Court has to examine whether there was any terms of settlement between the parties and whether all parties agreed for the said settlement and have acted upon.
- 25.** The ground of limitation is a mixed question of law and facts. In paragraph 29 of the plaint, the plaintiff has made the following averments which reads as follows:

“29. The defendant no. 1 and 2 is seeking to deny the plaintiff's lawful shares in the joint companies, properties, businesses and assets on frivolous and baseless grounds by contending that the defendant nos. 8 to 15 are juristic entities and cannot be subject matter of joint properties and cannot be subjected to partition. The defendant nos. 1 and 2 are also illegally contending the independent right, title and interest of their family members, some of such companies, businesses, properties and assets which are in fact jointly owned by the plaintiff and the defendant nos. 1 and 2. In addition thereto, the defendant nos. 1 and 2 are taking shelter of an advice of a mediator namely, Sourabh Jalan which has communicated

to the parties by way of an email dated 24th November, 2012 which is not at all binding upon the plaintiff. Thus, the question of acting in terms of such email by the plaintiff does not and cannot arise.”

In the said paragraph, the plaintiff has categorically stated that the defendant nos.1 and 2 are taking shelter of an advice of the mediator, namely, Sourabh Jalan but the same is not binding upon the plaintiff. The said averment is to be decided during trial only.

- 26.** The defendants have raised second issue that with regard to the prayers (b), (c), (d) and (e) of the plaint, this Court is not having jurisdiction in terms of Section 430 read with Sections 241 and 242 of the Companies Act, 2013. It is the specific case of the plaintiff that the defendant nos. 1 and 2 avoided to disclose accounts and other information of all companies under their control, since 2008 onwards. The defendant nos.1 and 2 fraudulently transferred 12,02,900 shares of the plaintiff by forging signature of the plaintiff on share transfer forms, after removal of the plaintiff from the directorship of six companies. The defendant nos.1 and 2 along with the defendant nos. 6 and 7 fraudulently transferred the shares of Mahant Vanijja Private Limited, Raga Commercial Private Limited, Paragon Infrastructure Private Limited and Paragon Fincrop Private Limited in favour of the defendant nos. 1, 2, 6 and 7 and their children and amalgamated Raga Commercial Private Limited, Paragon Infrastructure Private Limited, Paragon Fincrop Private Limited with Mahant Vanijja Private Limited,

Paragon Finance Limited, Basera Abasan Private Limited, Kit Commercial Private Limited and Naman Barter Private Limited.

- 27.** It is also the case of the plaintiff that the defendant nos. 1, 2, 6 and 7 have removed jewelries, cash and other assets including documents and files of Radheshyam Gupta. The defendant no. 2 operated the bank account of the plaintiff and his wife in the HDFC Bank by forging signatures. It is also the case of the plaintiff that the defendant no.1 misappropriated the funds of the Trust created by father during his life time under the name and style of “Shri Dindayal Smriti Trust” and has not disclosed the accounts for the same and forged the signatures of the plaintiff on several occasions with respect to the banking transactions.
- 28.** It is settled law that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the National Company Law Tribunal or the Appellate Tribunal is empowered to determine the same. In the present case, the plaintiff has not only claiming the shares or directorships in the company. The plaintiff has originally filed the present suit declaring his right over the properties and assets of his deceased father. Once if the Court declared the share of the plaintiff, the plaintiff would be at liberty to take appropriate steps before the Learned Tribunal. It is not the case of the defendants that all the prayers made by the plaintiff is not maintainable before this Court. Under Order VII, Rule 11 of the CPC, the Court cannot reject part of the plaint. In other words, the plaint is to be rejected as a whole or not at

all in exercise of power under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

- 29.** In the case of ***Aruna Oswal (supra)***, the Hon'ble Supreme Court held that the dispute as to inheritance of shares is eminently a civil dispute and cannot be said to be a dispute as regards oppression and/or mismanagement so as to attract the Company Court's jurisdiction.
- 30.** As regard to the cause of action, it is the case of the plaintiff that the defendant nos. 1 and 2 deny the lawful shares in joint companies, properties, businesses and assets. The defendant nos.1 and 2 are taking shelter of an advice of a mediator but the plaintiff has categorically denied that the same is not binding upon the plaintiff. It is also the case of the plaintiff that the defendant nos. 1 and 2 have refused to provide account for the profits, gains and income arising from the joint properties, businesses and assets. Particulars of the properties, businesses and assets are described in Annexure "B" of the plaint.
- 31.** Under Order VII, Rule 11 of the Civil Procedure Code, 1908, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of

the powers under Order VII, Rule 11 of the Code would be on consideration of the principles laid down by the Hon'ble Supreme Court in the case of ***T. Arivandandam v. T.V. Satyapal*** reported in **(1977) 4 SCC 467**, the Hon'ble Court has held that if on a meaningful, not formal, reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In ***Roop Lal Sethi v. Nachhattar Singh Gill*** reported in **(1982) 3 SCC 487**, the Hon'ble Supreme Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII, Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII, Rule 11(a) of the Civil Procedure Code, 1908 for striking down certain paragraphs nor the High Court could act under Order VI, Rule 16 to strike out the paragraphs in absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the Court. In ***ITC Ltd. v. Debts Recovery Appellate Tribunal*** reported in **(1998) 2 SCC 70**, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order VII, Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a

view to get out of the said provision. In **Saleem Bhai v. State of Maharashtra** reported in **(2003) 1 SCC 557**, the Hon'ble Supreme Court has held that the trial court can exercise its powers under Order VII Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In **Popat and Kotecha Property v. State Bank of India Staff Association** reported in **(2005) 7 SCC 510**, the Hon'ble Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words: *“There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence of a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities”*.

32. This Court finds that the plaintiff has shown sufficient cause of action for filing of the suit. In view of the above, this Court did not find any merit in the application filed by the defendant nos. 1, 2, 6 and 7 under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

33. Accordingly, **G.A. No. 5 of 2023** is **dismissed**.

(Krishna Rao, J.)