IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMPs No. 526 & 762/2021
in Civil Suits No. 44 & 45/2024
Reserved on: 19.06.2026
Decided on: 06.07.2026
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(1) OMP No. 526/2021 in CS No. 44/2024

Chhotu Ram ....Non-applicant/plaintiff

Versus

Purnendu Jain (deceased) through LRs & Anr. …Applicants/defendants

(2) OMP No. 762/2021 in CS No. 45/2024

Chhotu Ram ....Non-applicant/plaintiff

Versus

Anupama Jain & Anr. …Applicants/defendants

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?[1] **Yes.**

For the Non-applicant/plaintiff : Mr. Karan Singh Kanwar, Advocate.

For the non-applicants/defendants : Ms. Shradha Karol, Advocate (through VC), for defendants No. 1(a) to 1(c) in CS No.44/2024 and defendant No. 1 in CS 45/2024.

Mr. Prem Chand Verma, Mr. Varun Thakur and Mr. Aakash Thakur, Advocate,

1 *Whether reporters of Local Papers may be allowed to see the judgment?*

for defendants No. 2 in CS Nos. 44 & 45/2024.

Sushil Kukreja, Judge

This order shall dispose of the applications filed by applicant/defendant No. 2, under Order 7, Rule 11 read with Section 151 CPC for rejection of the suit. As per the applicant, the plaintiff filed a suit for specific performance of agreement to sell dated 24.09.2018 against defendant No. 1 with respect to Plot No. 167 & 168, both measuring 221.65 square meters, situated at Phase 3, Housing Board Colony Baddi, Tehsil Baddi District Solan, H.P. for a total sale consideration of Rs. 1,60,00,000/-. As per the averments made by the plaintiff, the sale deed was to be executed on or before 30.10.2018 and no amount was given by the plaintiff as consideration, except a cheque amounting to Rs. 50,00,000/- as earnest money, which was to be kept as security cheque and not to be presented. However, defendant No. 1 presented to same on 29/30.10.2018, but the same could not be encashed, as the same was presented without informing the plaintiff. Whereas, the agreement annexed with the plaint depicts that entire sale consideration was paid and received, as such, a contrary stand has been taken in the plaint. It has been further averred that defendant No. 2 was first authorized vide General Power of Attorney dated 27.11.2018 to take care of the suit property in all respects and vide agreement to sell dated 28.11.2018, the suit property alongwith other plots were sold to applicant/defendant No. 2 and now he is in possession of the same. The averments made in the plaint dis-entitles the plaintiff from filing any suit as the same is not maintainable, being barred by law. The plaintiff, as per his own averments, did not pay a single penny to defendant No. 1 and the cheque in question got dishonoured due to insufficient funds in the bank account of plaintiff. The agreement annexed with the plaint depicts that entire sale consideration was paid and received, as such, a contrary stand has been taken in the plaint. There can be no oral evidence qua the contents of a written document. Hence, it is admitted position that there is an agreement without any consideration i.e. a void document whose specific performance is now being sought. The plaintiff has never paid any consideration in order to conclude any legal valid contract for which, the plaintiff could seek any specific performance, as such, the suit of the plaintiff is barred by law, as neither there was any concluded contract between the plaintiff and defendant No. 1 nor any consideration has been paid by the plaintiff, as such, there arises no enforceable cause of action in favour of the plaintiff and the suit is liable to be dismissed.

2. Reply to the applications has been filed, wherein, it has been averred that the defendant entered into an agreement to sell dated 24.09.2018 for a total sale consideration of Rs. 1,60,00,000/-. As per the agreement, the sale deed was to be executed on or before 30.10.2018. As per terms and conditions laid down in the aforesaid agreement, the defendant had to seek permission from the HIMUDA for merger of two plots/houses into one before the registration of the sale deed. The defendant also had to obtain permission/NOC from HIMUDA for transfer of two plots/houses. The balance dues and charges were to be paid

by the defendant to HIMUDA. The sale consideration complete in all respect was also to be paid at the time of execution and registration of the sale deed. As per terms and conditions of the agreement, the defendant was duty bound to get all formalities completed, which were pre-requisite for executing and registering the sale deed. It has been admitted that the plaintiff had issued a cheque of Rs. 50 lacs to the defendant as earnest money, which was to be kept by the defendant as a security. It has been denied that vide GPA dated 27.11.2018 the applicant was authorized to take care of the suit property and vide agreement to sell dated 28.11.2018, the suit property alongwith plots were sold to the applicant. It has been denied that there was no concluded contract between the plaintiff and defendant No. 1. It has been averred that the applicant after seeking his impleadment cannot be permitted to file the present applications, as the original defendant has chosen to contest the suit on merits. Hence, prayer for dismissal of the applications has been made.

3. In rejoinder, contents of the reply are denied and that of the applications are reasserted and reaffirmed.

4. I have heard learned Counsel for applicant/defendant No. 2, learned counsel for the non-applicants and also gone through the material available on record.

5. Learned counsel for the applicant contended that the suit of the plaintiff is not maintainable, being barred by law and is liable to be rejected under Order 7 Rule 11 CPC. He further contended that the plaintiff was never ready and willing to perform his part of the contract and as per his own averments, he did not pay even a singly penny to defendant No. 1 and the cheque amounting to Rs. 50 lacs, which was paid in lieu of the earnest money, was dishonored due to 'funds insufficient' in the bank account of the plaintiff, as such, the plaint does not disclose any cause of action to file the present suit and there is no enforceable cause of action in favour of the plaintiff. With these averments he prayed for rejection of the plaint.

6. On the other hand, learned counsel for the non-applicant/plaintiff contended that as per the agreement, the sale deed was to be executed on or before 30.10.2018 and as per terms and conditions laid down in the agreement, the defendant had to seek permission from HIMUDA for merger of two plots/houses into one before the registration of the sale deed,however, the defendant had failed to obtain any such permission. He further contended that the cheque of Rs. 50 lacs, issued in favour of the defendant, as earnest money, was to be paid as security and entire sale consideration was to be paid at the time of execution of registration of the sale deed and, therefore, the applicant has failed to make out any case for rejection of the plaint. With these averments, he submitted that present applications, which are devoid of merits, deserves to be dismissed. In support of his contentions, he placed reliance upon the decisions of Hon'ble Apex Court in ***D. Ramachandran*** Vs. ***R.V. Janakiraman and Others (1999) 3 SCC 267***, ***M. Gurudas and Others*** Vs. ***Rasaranjan and Others (2006) 8 SCC 367***, ***Kamala*** Vs. ***K.T. Eshwara Sa (2008) 12 SCC 661***,

Chhotanben and Another Vs. ***Kiritbhai Jalkrushnabhai Thakkar and Others (2018) 6 SCC 422***, ***Ripudaman Singh*** Vs. ***Balkrishna (2019) 4 SCC 767***, ***Vinod Infra Developers Ltd.*** Vs. ***Mahaveer Lunia and Others 2025 SCC OnLine SC 1208***, ***Karam Singh*** Vs. ***Amarjit Singh and Others 2025 SCC OnLine SC 2240***, ***P. Kumarakurubaran*** Vs. ***P. Narayana and Others 2025 SCC OnLine SC 975*** and ***Marg Limited*** Vs. ***Sushil Lalwani and Others 2026 SCC OnLine SC 647.***

7. It is a settled position of law that Order VII Rule 11 of Code of Civil Procedure empowers a Court to reject the plaint to keep out of Court irresponsible suit, when prima facie the Court comes to the conclusion that suit is an abuse of process of Court. The Court can exercise the power under Order VII Rule 11 of Code of Civil Procedure at any stage of the suit, before conclusion of the trial. The procedure contemplated is summary in nature. The averments in the plaint and documents filed along with the plaint alone can be taken into consideration while deciding the application filed under this provision. The contentions of defendants in their

affidavit or written statement and documents relied by them cannot be taken into consideration. The plaint as a whole has to be taken into consideration and it has to be read in a meaningful manner. At this stage, it would be apposite to reproduce Order VII Rule 11 of Code of Civil Procedure for easy reference:

> *"11. Rejection of plaint— The plaint shall be rejected in the following cases:—*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law :*
> *(e) where it is not filed in duplicate;*
> *(f) where the plaintiff fails to comply with the provisions of rule 9:*
>
> *Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

8. Thus under Order 7 Rule 11 CPC plaint can be rejected on the grounds that the suit is barred by law or it does not disclose the cause of action or proper court fees has not been paid even after order of the court. It is a settled proposition of law that frivolous litigations are required to be nipped in the bud at the earliest possible stage. If court reaches to the conclusion that suit is frivolous from the totality of the facts brought on record or which have come on record then by not dismissing the suit at earliest, the court virtually declares that a frivolous suit can demand trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in the law or sometimes is left out or not specifically provided in statute then they are required to be ironed out by the courts by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suits.

9. The principles which would guide the Court while exercising its power under Order 7 Rule 11 of the CPC have been widely laid down by the Apex Court in ***Mayar (H.K) Ltd. vs. Owners & Parties, Vessel M. V. Fortune Express & Ors., AIR 2006 SC 1828,***

wherein the court laid down the applicable law stating as hereunder:

> *"10. Under Order 7 Rule 11 of the Code, 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 the 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 7 Rule 11 of the Code would be on consideration of the principles laid down by this Court. In T. Arivanandam v. T.V. Satyapal, this 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 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfillled. In Roop Lal Sathi v. Nachhattar Singh Gill, this 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 7 Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11 (a) of the Code for striking down certain paragraphs in the 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, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order 7 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, this Court has held that the trial court can exercise its powers under Order 7 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 Assn., (2005) 7 SCC 510, this Court has culled out the legal ambit of Rule 11 of the Order 7 of the Code in these words:

> *"There cannot be any compartmentalisation, 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 or 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"*

11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the

Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."

10. In ***T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467,*** the Hon'ble Supreme Court while dealing with the powers of the Court under Order 7 Rule 11 CPC had noted that where the meaningful reading of the plaint disclosed that the suit which had been filed was in fact vexatious and meritless; it being a case of clever drafting which has created the illusion of a cause of action, it must be nipped in the bud by the Court.

11. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no

option, but to reject the plaint. A “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. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant.

12. In the case on hand, as per the plaintiff, the cause of action is said to have arisen on 24.09.2018, when agreement to sell in question was executed between the parties and thereafter on each and every date when plaintiff approached and requested the defendant to receive the entire sale consideration and execute the sale deed. The cause of action is also stated to have arisen on 12.11.2018 when the plaintiff sent a legal notice to the defendant to execute and register the sale deed and when the defendant

allegedly sent a false and frivolous legal notice to the plaintiff. The cause of action is further stated to have arisen on 28.11.2018 when the plaintiff visited and remained present in the office of Sub-Registrar Baddi throughout the day, but the defendant did not come to execute and register the sale deed. The cause of action is stated to be still continuing and subsisting, as the plaintiff is stated to be ready and willing to perform his part of the contract.

13. Now the question, which arises for consideration before this Court, is as to whether the plaintiff has always been ready and willing to perform his part of the agreement or not. In a suit for specific performance, the plaintiff has to prove a valid sale agreement; the breach of the contract by the defendants; and readiness and willingness of the plaintiff to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates "readiness" and "willingness" on the part of the plaintiff as a condition precedent to seek specific performance. At this stage, it would be apposite to examine Section 16 (c) of the Specific Relief Act, 1963, which reads as under : -

"16. Personal bars to relief. Specific performance *of a contract cannot be enforced in favour of a person--*
(a) and (b)..........
(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
Explanation.-- For the purposes of Clause (c).

(i) where a contract involved the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;
(ii) the plaintiff must prove performance of, or readiness and willingness to perform the contract according to its true construction."

14. A bare reading of the section shows that a decree for specific performance cannot be granted to any one who fails to prove that either he had performed or had always been ready and willing to perform the essential terms of the contract. The compliance of the requirements of Section 16(c) of the Specific Relief Act is, therefore, mandatory in nature . The "readiness" and "willingness" are two separate issues. The former depends on the availability of requisite funds whereas the latter depends on the intention of the purchaser. The "readiness" has to be proved by the purchaser that he had the availability of the funds whereas

the intention has to be inferred from his conduct and circumstances. In ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao, (1995) 5 SCC 115,*** the Hon'ble Supreme Court held that the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances to adjudge the "readiness" and "willingness" of the plaintiff. The amount of balance sale consideration must be proved to be available with the purchaser right from the date of execution of the agreement till the date of decree.

15. In ***J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429,*** the Hon'ble Supreme Court explained the distinction between "readiness" and "willingness". The former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance.

16. The specific performance is an equitable relief and the Court is not bound to grant such relief merely because it is lawful to do so. The Court is required to see the totality of the circumstances which are to be assessed by the Court in the light of facts and circumstances of each case.

The specific performance is usually granted where substantial sale consideration has been paid. When the parties enter into an agreement relating to an immovable property, they amicably agree on the sale consideration, earnest money as well as the payment of the balance sale consideration. If both the parties are ready and willing, they usually complete the transaction within the stipulated time. Once a seller has entered into an agreement to sell of an immovable property, he is looking for the sale consideration within the period stipulated in the agreement. If he does not get the money within the stipulated period, his plan to use the money for whatever purpose he has intended would get frustrated. He may have a plan to buy some other property or for some other purpose. Secondly, the delay in completion of sale also causes injustice to the seller as the property prices keep on increasing in normal parlance. As such, more the delay, the seller may suffer loss due to rise in property price and greater is the profit which the purchaser would derive by tying down a property and not paying the sale consideration within the stipulated period.

17. In ***Saradamani Kandappan v. S. Rajalakshmi & Ors., (2011) 12 SCC 18,*** the Supreme Court declined to grant the discretionary relief of specific performance to the purchaser who had made payment of nominal advance to the seller. The Apex Court while examining the doctrine that time is generally not the essence in contracts relating to immovable property, clarified that such a principle cannot be applied mechanically in modern commercial realities. The Court observed that although earlier precedents treated time stipulations in property contracts as merely indicative, the significant escalation in property values and changing economic circumstances require courts to give due significance to the time stipulations agreed between the parties. Where the contract clearly prescribes specific dates for payment of consideration and provides consequences for default, such stipulations may demonstrate the intention of the parties to treat time as the essence of the contract. In such circumstances, failure to adhere to the agreed schedule of payment may justify termination of the agreement and disentitle the purchaser from seeking the equitable relief of

specific performance. The relevant portion of the aforesaid judgments is extracted hereunder:-

> *"37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.*
>
> *xxx xxx xxx"*

18. In ***Padmakumari & others v. Dasayyan & others, (2015) 8 SCC 695,*** the Apex Court, emphasized that where the agreement of sale stipulates a specific period for payment of the balance consideration, failure on the part of the purchaser to comply with such stipulation assumes significant legal importance in determining entitlement to specific performance. The Court held that when the purchaser does not pay the balance consideration within the agreed period and no acceptable explanation is offered for such default, the conduct of the purchaser clearly indicates lack of readiness and willingness to perform the essential terms of the contract. The Court further observed that courts must carefully examine the contractual terms and surrounding circumstances and cannot ignore such material aspects while granting the equitable relief of specific performance. Accordingly, non-compliance with the stipulated time for payment of consideration may disentitle the purchaser from obtaining the relief sought. The relevant para of the aforesaid judgment is as under:

> *"20. The said contention urged on behalf of the plaintiff is unacceptable to us that the question of*

> *taking measurement would not arise before the plaintiff performed his part of the contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff in the instant case within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which is stipulated to pay the balance consideration amount to defendants 1 to 11 which is a very important legal aspect which was required to be considered by the courts below at the time of determining the rights of the parties and passing the impugned judgment. The courts below have ignored this important aspect of the matter while answering the contentious issues (i) and (ii) in favour of the plaintiff and granted decree of specific performance in respect of the suit scheduled property. The said finding of fact is contrary to the terms and conditions of the agreement, pleadings and the evidence on record. Accordingly, we answer the said issues in favour of defendants 12 to 15 after setting aside the concurrent findings of fact recorded by the High Court."*

19. It is apt to note that in ***Man Kaur (dead) by L.Rs. vs. Hartar Singh Sangha (2010) 10 SCC 512,*** the Apex Court clarified that breach of contract by the defendant and ready and willingness of the plaintiff are two distinct issues in a suit for specific performance. Even if, a defendant is proved to have committed breach, the plaintiff cannot obtain a decree unless he pleads and proves that he was always ready and willing to perform the essential terms of the contract as required under Section 16 (c) of the Act, 1963. Even if, the vendor wrongfully refuses to execute the sale

deed, if the purchaser did not possess the financial capacity to pay the balance sale consideration at the time of the performance, he is not entitled to the specific performance. For the sake of ready reference the relevant para of the aforesaid judgment is extracted hereunder:

> *"40. … … "Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the paint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore,*
>
> *the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct."………*

20. In the light of the aforesaid principles, coming to the facts of the present case. In the instant case, admittedly, the agreement to sell was executed between the parties on 24.09.2018 and the sale deed was to be executed on or before 30.10.2018, but no amount was paid by the plaintiff as consideration. The plaintiff, as per his own averments, did not pay even a single penny to defendant No. 1. The cheque amounting to Rs. 50,00,000/- which was given by the plaintiff

to defendant no.1 as earnest money, could not be encashed and it got dishonoured due to “Funds Insufficient” in the bank account of plaintiff, when defendant No. 1 presented the same with his banker on 29/30.10.2018. Thus the plaintiff has failed to show the availability of funds at the time of the execution of the agreement to sell which is an indication of his non readiness to perform his part of the agreement since the very first date of the agreement. In the opinion of this court, no prudent person would fail to honour the cheque with respect to the payment of earnest money, if he was really interested in going ahead with the sale transaction. Therefore, the only inference, that can be drawn is that the plaintiff was not ready and willing to perform his part of the agreement since the very first date of the execution of the agreement.

21. It is a settled law that that the party who seeks specific performance being an equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations and/or does not come to the Court with clean hands is not entitled to the equitable relief. While

exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties and the motive behind the litigation.

22. In the case on hand, the plaintiff had averred in para-9 of the plaint that he had issued a cheque of Rs. 50 lacs to the defendant as earnest money, but with an undertaking that the said cheque was not to be used and it was to be kept by the defendant only as a security and was not to be presented for getting it encashed and the entire sale consideration was to be paid by the plaintiff to the defendant at the time of execution and registration of the sale deed. The plaintiff further averred that this arrangement was made because the defendant was yet to obtain the permissions for transfer and merger and the defendant, however, in utter violation and disregard of the mutual agreement and understanding between the parties, committed a fraud on the plaintiff and presented the cheque on 29/30.10.2018 without informing the plaintiff and without the consent of the plaintiff.

23. I have gone through the agreement to sell minutely, perusal of which, reveals that there is no such stipulation in the agreement that cheque of Rs. 50 lacs, which was paid to the defendant by the plaintiff, as earnest money, was issued with an understanding that it was not to be used and was to be kept by the defendant only as security. Thus, it has become clear that the plaintiff has not come to the Court with clean hands and has made false averments in the plaint regarding dishonor of the cheque in question.

24. It is trite law that the plaintiff seeking specific performance of the agreement has to prove all along until the final decision in the suit is made, that he was ready and willing to perform his part of the contract and the plaintiff is duty- bound to show his readiness and willingness. A reading of the plaint as a whole shows that the plaint does not disclose a cause of action either for the relief of specific performance of agreement to sell or for the relief of declaration of permanent prohibitory injunction as well as mandatory injunction. The plaintiff has agreed to purchase

the suit property from the defendant No. 1 for a total sale consideration of Rs. 1,60,00,000/-, out of which the plaintiff issued a cheque of Rs. 50,00,000/- in favour of defendant No. 1 at the time of the execution of the agreement on 24.09.2018 in lieu of advance money and the balance sale consideration of Rs. 1,10,00,000/- was payable by the plaintiff on or before 30.10.2018. However, the plaintiff committed breach of the agreement dated 24.09.2018 by failing to honour the aforesaid cheque amounting to Rs. 50,00,000/- due to "Funds Insufficient" in his bank account. Thus the plaintiff has failed to prove the availability of the funds with him at the time of the execution of the agreement and even on the date of the filing of the suit or even thereafter. The plaintiff‟s conduct shows that he was never ready and willing to perform his part of the agreement at any stage and he did not possess the financial capacity to pay even the earnest money what to talk about the balance sale consideration and had instituted a false claim with the hope that he would arrange the funds, if the suit is decreed in his favour. Therefore, it is clear from the averments in the plaint, that the plaint as a whole does not disclose any cause of action for filing the suit. The plaintiff had committed the breach of the agreement and is not entitled to the decree of specific performance against the defendant No. 1.

25. As observed earlier, under Order VII Rule 11 of 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. The underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. In such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted. In ***Dahiben*** Vs. ***Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others***, ***(2020) 7 SCC 366,*** it has been held as under:-

> *"23.1 We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, which reads as under:*

"11. Rejection of plaint.–The plaint shall be rejected in the following cases:–

(a) where it does not disclose a cause of action;

(b) where the relief claimed in undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;(f)where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevent by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."(emphasis supplied)

23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the *threshold,without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

> *"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*

23.5 The power conferred on the court to terminate a civil action is,however,a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6 Under Order VII Rule 11, a duty is cast on 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.

xxx xxx xxx

23.8 Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to *be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint. 23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd.v. M.V. Sea Success, which reads as :"

> *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

23.12 In Hardesh Ores (P.) Ltd. v. Hede & Co. the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form,which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

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 VII Rule 11 CPC.

23.14 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

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.

24.1 In Swamy Atmanand v. Sri Ramakrishna Tapovanam this Court held :

> *"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can*

> *possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded"(emphasis supplied)*

24.2 In T. Arivandandam v. T.V. Satyapal & Anr. this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words :

> *"5. ...The learned Munsiff must remember thatif 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, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..."(emphasis supplied)*

24.3 Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court"

26. In the instant case, as discussed above, the plaint as a whole does not disclose any cause of action for filing the suit as the plaintiff had committed breach of

agreement by failing to honour the cheque amounting to Rs. 50,00,000/- issued to the defendant no.1 in lieu of earnest money due to “Funds Insufficient” in his bank account as such he has failed to prove the availability of the funds with him. Therefore, the only inference, that can be drawn is that the plaintiff was not ready and willing to perform his part of the agreement since the very first date of the execution of the agreement as such in the facts and circumstances of the case, he is not entitled to a decree of specific performance against defendant No. 1. Therefore, the plaints in both the suits which do not disclose any cause of action deserve to be rejected under the provisions of Order 7 Rule 11 (a) CPC in order to unnecessarily protract the proceedings and also to put an end to the sham litigation.

27. Hence, in view of my aforesaid discussion, both the applications filed by applicant/defendant No. 2, are allowed and the plaints in both the suits, which do not disclose any cause of action, are rejected.

28. Both the suits are disposed of accordingly. All the interim orders stand vacated.

Pending application(s), if any, stands disposed of.

(Sushil Kukreja)
Judge

July 06, 2026
(raman)