Reserved on : 06.10.2026
Delivered on : 08.10.2026

2026:AHC:210691

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 13309 of 2026

M/s I Think Apps Pvt. Ltd.

…..Petitioner(s)

Versus

Anugya Gupta and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Devendra Kumar Misra, Sr. Advocate
Counsel for Respondent(s)	:	Abhinav Gaur, Anurag Kumar Ojha, Shreya Trivedi, Vibhu Rai

Court No. - 9

HON'BLE ROHIT RANJAN AGARWAL, J.

1. The short controversy which engages the attention of the Court is as to whether an application filed under Order VI Rule 17 CPC by plaintiff is to be decided first or an application filed by defendant under order VII Rule 10 and 11 CPC.

2. The present petition under Article 227 of Constitution of India has been filed questioning the legality of order dated 13.08.2026 passed by Presiding Officer, Commercial Court, Varanasi directing for deciding the application moved by defendant-respondent under Order VII Rule 10 and 11 CPC first, and also seeking direction upon court below to decide the application under Order VI Rule 17 CPC before the court below proceeds to decide the application under Order 7 Rule 10 and 11 CPC.

3. The facts, leading rise to the present petition, are that plaintiff-petitioner filed Original Suit No. 2 of 2025 before Commercial Court, Varanasi under Section 134 read with section 27(2) of the Trademark Act, 1999 read with Section 2(XVII) of Commercial Courts Act, 2015 (*hereinafter called as "the Act of 2015"*) seeking relief for permanent

injunction against defendant for using trademark ‘Sarkari Result’ and ‘sarkariexam.com’ and also sought relief of mandatory injunction for not using domain sarkariresult.com and close the social media platforms. In the said suit, an application 6C was filed for grant of temporary injunction. The injunction application was allowed on 12.06.2025 against which a Commercial Appeal No. 24 of 2025 was filed before Division Bench by defendants which was dismissed on 23.09.2025. Defendants challenged both orders of Commercial Court as well as Division Bench before Hon’ble Apex Court through Special Leave to Appeal (C) No. 38597 of 2025 in which the Apex Court on 16.01.2026 stayed the operation of order dated 23.09.2025 passed by Division Bench and order dated 12.06.2025 passed by Commercial Court. On 23.03.2026, defendants filed application under Order VII Rule 10 and 11 CPC on the ground that the court lacked jurisdiction to deal with the case and plaint be returned under Order VII Rule 10 CPC and further plaint be rejected. During pendency of said application, plaintiff-petitioner filed an application under Order VI Rule 17 CPC for amending his plaint on 09.08.2026. The court below, on 13.08.2026, found the application under Order VII Rule 10 and 11 CPC to be decided first before the application under Order VI Rule 17 CPC for amending the plaint. Hence, the present writ petition.

4. Sri Rahul Agarwal, learned senior counsel appearing for petitioner submitted that Commercial Court, Varanasi has jurisdiction to hear the matter and only formal amendment has to be made in the plaint regarding specific value of the suit which according to plaintiff is Rs.5,00,000/-, and the amendment application has to be heard first before application under Order VII Rule 10 and 11 CPC is decided. According to him, if plaint is returned or rejected, plaintiff would have opportunity of presenting a fresh suit and can file fresh suit under Order VII Rule 13 CPC. In order to avoid such contingency, application under Order VI Rule 17 CPC has been moved which needs to be adjudicated by court before proceeding to decide defendants’ application.

5. Reliance has been placed upon the decision of Madhya Pradesh High Court (Indore Bench), dated 30.06.2023, in case of **Suchitra Dubey vs. Sattar and others, Civil Revision No. 383 of 2022,** wherein the Madhya Pradesh High Court has taken a view that in view of Order VII Rule 13 CPC, amendment application filed under Order VI Rule 17 CPC needs to be adjudicated prior to taking up application under Order VII Rule 11 CPC. Relevant paras 14 and 15 of the said judgment are extracted hereasunder:-

> *"**14.** The position which hence emerges is that the provisions of Order 6 Rule 17 of the CPC are not restricted or controlled by provisions of Order 7 Rule 11 of the CPC. Where an application under Order 6 Rule 17 is filed and is pending then the same ought to be decided first prior to decision on the application under Order 7 Rule 11. The same would be more so when the application under Order 6 Rule 17 is filed pursuant to filing of an application under Order 7 Rule 11 and intends to remedy the defects as pointed out in the said application. Such consideration of an application under Order 6 Rule 17 would be in the interest of justice. If there is some objection as regards maintainability of the claim and that objection is sought to be remedied by plaintiff by appropriately amending the plaint, then such amendment application needs to be considered first.*
>
> ***15.** As per Order 7 Rule 13 of the CPC where a plaint is rejected under Order 7 Rule 11 then plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus, if the application under Order 7 Rule 11 of the CPC is decided first and the plaint is rejected it would still be permissible for plaintiff to file a fresh plaint and including therein the proposed amendment in the pleadings. That would not serve any purpose but would only be a prolongation of the proceedings and shall result in unnecessary expenditure and delay for both the parties. It would be proper to permit amendment of the plaint so as to remove the defect therein."*

6. Reliance has also been placed upon the decision of Delhi High Court rendered in case of **Neera Misra vs. Rakesh Chandra Misra, 2025 SCC Online Del 4882**. Relevant paras 29, 30 and 32 are extracted hereasunder:-

*"**29.** This Court in case titled as Wasudhir Foundation v. C. Lal &Sons, 1991 SCC OnLine Del 569 observed as follows:*

> *"5. This is the righteous path And, if this be so is it not necessary, in the ends of justice, to extend the beneficial legal principles ensconced in Order 6 rule 17 More so, when one hardly discerns any-thing in Order 7 rule 11 which may lead one to take the view that it takes away the power of the court to allow amendment or places hurdles in performance of its duty? **After all what is the effect of Order 7 rule 11? It is, if I understand correctly, that the plaintiff would not be precluded from filing a fresh suit in respect of the same cause of action. If he so desires see Order 7 Rule 13. If such be the effect, why not permit the amendment of the plaint so as to remove the defect and prevent the operation of the Rule? Why make him first invite the rejection of the plaint, then allow him to file a fresh suit at the expense of delay and heavy costs? Why not straightaway allow him to amend the plaint, remove the defect and permit him, thereby, to proceed with the same suit? Why this rigmarole?***
>
> *xxxxxxxxx*
>
> *7. **The ouster of Order 6 rule 17 will throttle the very life line of Order 7 rule 11. Instead of promoting, it would defeat the ends of justice**. I refuse to be a patty to such an approach.*
>
> *xxxxxxxxx*
>
> *9. **Order 6 rule 17 is thus held to be neither restricted nor controlled by Order 7 rule 11.**"*
>
> *(emphasis supplied)*

***30.** Likewise, in Rajesh Kumar Mehlawat (supra), this Court has noted that an application under Order VI Rule 17 CPC has to be considered first even if filed after an application under Order VII Rule 11 CPC. The relevant portion of the judgment read thus:*

> *"4. Though in the memorandum of the petition the thrust of the counsel for the petitioner/defendant is that the application under Order 6 Rule 17 should not have been considered when the arguments on the application under Order 7 Rule 11 had been heard but the counsel for the petitioner/defendant agrees*

> ***that the settled principle of law is that an application under Order 6 Rule 17 even if filed after an application under Order 7 Rule 11 or before the order on the application under Order 7 Rule 11 of CPC is pronounced, has to be considered first.***"
>
> *(emphasis supplied)*
>
> ***32.*** *With regard to amendment of the plaint, it is equally settled that an amendment which seeks to introduce an additional relief, the factual basis for which already exists in the plaint as originally filed, should be allowed. Reference in this regard may be had to the decision of Hon'ble Supreme Court in Pankaja (supra). The facts of the present case are similar to the facts in said case wherein the suit was originally filed seeking a decree of permanent injunction, as well as, possession of the suit property. However, in the written statement filed by the defendant therein, a contention was raised that a suit for injunction and possession without seeking a declaration of title was not maintainable."*

7. Reliance has also been placed upon a decision of Punjab and Haryana High Court rendered in case of **Dera Baba Bhumman Shah Sangar Sarista vs. Subhash Narula, 2020 SCC OnLine P&H 1625**. Relevant para 5 is extracted hereasunder:-

> *"**5.** In view of aforesaid position, at this stage, without meaning anything on the merits of the case, it would be just and appropriate to direct the trial Court to decide the application under Order 6 Rule 17 CPC. This revision petition is allowed. The impugned order is accordingly set aside. After lawful decision of the application under Order 6 Rule 17 CPC, the trial Court shall consider the application under Order 7 Rule 11 CPC in accordance with law. Nothing observed hereinabove, shall be construed to be an opinion on merits of the case. The trial Court shall decide both the applications under legal parameters."*

8. Lastly, reliance has been placed upon decision of Bombay High Court (Nagpur Bench) rendered in case of **Pramod vs. Shantaram Balkrishna Dhok, Writ Petition No. 6165 of 2016**, decided on 13.02.2017. Relevant para 6 is extracted hereasunder:-

> *"**6.** The judgment in the case of P.K. Roja vs. U.S. Rayudu and another relied upon by the learned Advocate for the respondent/defendant is on totally different point. In this judgment, it is laid down that once an application under Order VII Rule 11 of the Code of Civil Procedure is filed, the Court cannot proceed with the trial without disposing of that application. Consideration of the application under Order VI Rule 17 of the Code of Civil Procedure does not mean that the Court is proceeding with the trial of the civil suit. The above judgment does not assist the respondent in the facts of the present case. The other submission made on behalf of the respondent is required to be recorded and rejected. The learned trial Judge has not only committed patent illegality but has failed to exercise the jurisdiction vested in him by refusing to consider the application (Exhibit No.22) before considering the application (Exhibit No.18). The impugned order is unsustainable and is required to be set aside."*

9. Shri Anoop Trivedi, learned Senior Counsel appearing for defendant-respondent submitted that it is not only an application under Order VII Rule 11 CPC but also an application under Order VII Rule 10 CPC. The plaint is liable to be returned for want of subject-matter jurisdiction. According to him, Commercial Court does not have jurisdiction under Section 6 of the Act of 2015, as no disclosure of specified value has been made in the plaint which could attract jurisdiction of a Commercial Court. According to him, Section 2(1)(i) of the Act defines 'Specified Value' which provides that subject-matter in respect of suit to be determined under Section 12 should not be less than Rs.3 lakhs. From perusal of the entire plaint, one would not find specified value of the suit. He further submitted that court did not have territorial jurisdiction under Section 20 CPC for entertaining the said plaint. According to him, the plaint be returned for lack of territorial jurisdiction. He also submitted that in application filed by defendants, it has been further stated that plaint needs to be rejected in view of Clause (a) of Rule 11 of Order VII in absence of cause of action. He also contended that where there is a lack of jurisdiction of a court, application

under Order VII Rule 10 and 11 CPC needs to be decided first before an application under Order VI Rule 17 CPC is decided.

10. Reliance has been placed upon decisions of co-ordinate bench of this court rendered in case of **Tirkha vs. Ghasi Ram, 1935 SCC OnLine All 185** and **Jai Prakash Industries Ltd. vs. Lalit Bhasin, 2003 SCC OnLine All 308**, judgment of Delhi High Court in case of **HSIL Ltd. vs. Imperial Ceramic & Ors., MANU/DE/0641/2018**, judgment of Bombay High Court in case of **Vivienda Luxury Homes LLP vs. Gregory & Nicholas & Ors., MANU/MH/3956/2025**; **Akshay Quenim vs. Royce Savio Pereira, MANU/MH/6218/2025** and **Pyramid Alliance LLP vs. Karan Celista, MANU/MH/3964/2026** and judgment of Patna High Court in case of **Pandit Rudranath Mishir & Ors. vs. Pandit Sheo Shankar Missir, 1982 SCC OnLine Pat 103**.

11. I have heard respective counsel for the parties and perused the material on record.

12. Before adverting to decide the controversy in hand, a cursory glance of some of provisions of Code of Civil Procedure as well as the Act of 2015 is necessary for better appreciation of the case.

13. Section 16, Section 20, Order VII Rule 10 CPC, Order VII Rule 11 CPC and Order VII Rule 13 CPC are extracted hereasunder:-

> *"**Section 16. Suits to be instituted where subject-matter situate.**— Subject to the pecuniary or other limitations prescribed by any law, suits—*
>
> > *(a) for the recovery of immovable property with or without rent or profits,*
> >
> > *(b) for the partition of immovable property,*
> >
> > *(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*
> >
> > *(d) or the determination of any other right to or interest in immovable property,*
> >
> > *(e) for compensation for wrong to immovable property,*

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Section 20. Other suits to be instituted where defendants reside or cause of action arises.*—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—*

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[* * * *]*

Order VII Rule 10. Return of plaint.*—(1) [Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*

(2) ***Procedure on returning plaint****.—On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name*

of the party presenting it, and a brief statement of the reasons for returning it.

***Order VII Rule 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; 1

[(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 from 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.]

***Order VII Rule 13. Where rejection of plaint does not preclude presentation of fresh plaint**.—The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."*

14. Section 2(1)(i), Section 6 and Section 12 of the Act of 2015 are extracted hereasunder:-

*"**Section 2(1)(i).** "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 [which shall not be less*

than three lakh rupees] or such higher value, as may be notified by the Central Government.

***Section 6. Jurisdiction of Commercial Court**.— The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.*

Explanation.-- For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

***Section 12. Determination of Specified Value.**—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:---*

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; [and]

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; [***]

[* * * *]*

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act."

15. From Section 15 CPC onwards, place of suing has been provided. Section 16 specifically provides that suit is to be instituted where subject-matter is situated. While Section 17 provides for institution of suit where the immovable property is situated, whereas Section 18 provides that where it is not certain within whose local limit any immovable property is situated, suit may be filed within the jurisdiction of any such court. Section 19 similarly provides place for suing for compensation of wrongs to person or movables.

16. Section 20 is a residuary provision and covers those cases not falling within the limitation of Section 15 to 19. Order VII Rule 10 provides for the procedure of returning a plaint to be presented to a court in which suit should have been instituted.

17. In **Begum Sabiha Sultan vs. Nawab Mohd. Mansur Ali Khan, (2007) 4 SCC 343**, the Apex Court while dealing with return of plaint held that what is to be looked into is the plaint and the averments therein and it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit.

18. In **Harshad Chiman Lal Modi vs. DLF Universal Ltd., (2005) 7 SCC 791**, the Apex Court while dealing with a case where suit was instituted in a Delhi court and property was situated at Gurgaon, and after amendment in the written statement, question of jurisdiction was raised. The trial court found that the court at Delhi had no jurisdiction to try and entertain the suit, and plaint thereafter was ordered to be returned

to plaintiff for presenting to a proper court. The order was challenged before Delhi Court through revision which was dismissed and the matter travelled to Hon'ble Apex Court, wherein the Apex Court held as under:-

> *"**30.** We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.*
>
> ***31.** In Halsbury's Laws of England, (4th Edn.), Reissue, Vol. 10, para 317, it is stated:*
>
> > *317. Consent and waiver.—Where, by reason of any limitation imposed by a statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject-matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a*

court may contain provisions enabling the parties to extend the jurisdiction by consent."

32. *In Bahrein Petroleum Co. [(1966) 1 SCR 461 : AIR 1966 SC 634] this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.*

33. *In Kiran Singh v. Chaman Paswan [(1955) 1 SCR 117 : AIR 1954 SC 340] this Court declared : (SCR p. 121)*

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction … strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

(emphasis supplied)"

19. Rule 11 of Order VII provides ground for rejection of plaint in case it does not disclose the cause of action or where the relief is undervalued and plaintiff having been given time to correct the valuation has failed to do so, or where the relief claimed is properly valued but it has been insufficiently stamped, and compliance by plaintiff for providing requisite stamp-paper has not been done, or where suit appears to be barred by any law, the plaint may be rejected. However, Rule 13 of Order VII provides rejection of plaint on any of the grounds hereinabove mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action, meaning thereby that in case a plaint is rejected under Rule 11, fresh suit can be brought by plaintiff in view of Rule 13.

20. Section 2(1)(i) of the Act of 2015 defines specified value in relation to commercial disputes which was substituted by the Act 28 of 2018 providing that no suit would be maintainable in case the subject-matter is below Rs.3 lakhs in accordance with Section 12 of the Act.

21. Similarly, Section 6 provides for jurisdiction by commercial court, which states that commercial court shall have jurisdiction to try all suits and applications relating to commercial disputes of a specified value, meaning thereby that in order to bring the suit within the ambit of commercial court, the dispute of a specified value not being less than Rs.3 lakhs would be maintainable which has been provided under the definition of specified value.

22. In the instant case, it is an admitted fact that at the time of institution of suit before Commercial Court, Varanasi, the specified value of subject-matter was not disclosed in the suit. It was only after application under Order VII Rule 10 and 11 CPC was filed by defendants raising the question of subject-matter jurisdiction of the court and returning of plaint to be presented before proper court and also for rejecting the plaint as it did not disclose cause of action, that plaintiff-petitioner moved an application under Order VI Rule 17 CPC for amending his plaint.

23. Usually, while entertaining an amendment application, the Court takes liberal view and unless the amendment is barred by proviso to Rule 17 of Order VI, the court allows either party to alter or amend his pleadings.

24. However, in the instant case, the very jurisdiction of the court has been challenged having no subject-matter jurisdiction over the dispute which needs to be addressed by the court before taking the application under Order VI Rule 17 CPC.

25. The Apex Court in **DLF Universal Ltd. (supra)** while deciding a similar matter classified jurisdiction of a court into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. The

Apex Court held that so far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The Court further held that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. However, jurisdiction as to subject-matter is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

26. Considering the above judgment, Delhi High Court in **HSIL Ltd. (supra)** held that application under Order VII Rule 11 CPC has to be heard first before an application seeking amendment under Order VI Rule 17 CPC. Relevant paras 19, 20 and 21 are extracted hereasunder:-

> *"**19.** I have however wondered whether an application under Order VII Rule 11 CPC on the ground of the plaint not disclosing a cause of action or suffering from some other technical defect viz. of valuation, court fee paid or the claim therein being barred by any law, can be equated with an application under Order VII Rule 10 CPC on the ground of the Court not having territorial jurisdiction. This becomes important because of the consistent view of the High Courts mentioned above including of this Court that when the Court lacks territorial jurisdiction, it cannot even entertain an application for amendment of the plaint and which amendment would vest territorial jurisdiction in the Court. Reference may also be made to Hans Raj Kalra v. Kishan Lal Kalra ILR (1976) II Delhi 745 and Anil Goel v. Sardari Lal (1998) 75 DLT 641 though in the context of pecuniary jurisdiction.*
>
> ***20.** Having considered the matter, I am of the opinion that the judgments holding that application for amendment of plaint, even if filed to defeat the pending application under Order VII Rule 11 CPC, has to be heard first, will not extend to a case where averments contained in the plaint as existing does not disclose the Court to be having territorial jurisdiction and amendment is sought to incorporate the pleas to disclose the Court to be having territorial jurisdiction. I*

have reached the said conclusion relying on the dicta of the Supreme Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. (2005) 7 SCC 791 holding that a Court has no jurisdiction over a dispute in which it cannot give an effective judgment and even an agreement between the parties vesting jurisdiction in the Court which it otherwise does not have, is void as being against public policy. It was further held that where a Court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, it cannot take up the cause or the matter and an order passed by a Court having no jurisdiction is a nullity. It was yet further held that neither waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit. It was yet further held that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and a decree passed by a Court having no jurisdiction, is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings; a decree passed by a Court, without jurisdiction is a coram non judice.

***21.** Thus, if the plaint in these suits as it exists, does not disclose this Court to be having territorial jurisdiction, then the only option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint and which amendment, if allowed, would disclose the plaint as having the necessary averments for this Court to have jurisdiction to entertain the suit."*

27. Similar view was taken by Bombay High Court in case of **Vivienda Luxury Homes LLP (supra)** wherein suit was pending before commercial court and an amendment application along with application under Order VII Rule 11 CPC was moved. The Court distinguished between subject-matter jurisdiction and territorial jurisdiction and found that subject-matter jurisdiction travels to very epicenter of the dispute and is, in this aspect distinct from pecuniary or territorial jurisdiction as it accounts for the innate character and identity of a dispute. Such character or identity of a dispute is what dictates area of the law that is attracted and consequently determines the court of law that is conferred with the authority to decide the dispute. In other words, while territorial

jurisdiction may be treated as a technicality that may not after the court of first instance has ruled over a dispute, outweigh the cause of justice, a ruling by a court lacking subject-matter jurisdiction is a nullity. Relevant paras 23, 24, 25, 26 and 27 are extracted hereasunder:-

> *"**23.** This Court is in agreement with the position extracted hereinabove. It is trite that the ruling of a court that is not a court of competent jurisdiction is quorum non judice and therefore a nullity. However, there is a distinction between territorial jurisdiction of a court as opposed to the subject-matter jurisdiction of the court. As regards, territorial jurisdiction, it is a settled principle of the law that when a case has been tried by a Court on merits and a judgment is rendered, it should not be reversed purely on technical grounds unless it occasions a failure of justice. This position is congruent with section 21 of the Civil Procedure Code, 1908 and is underscored by the same principle of procedural law being the handmaiden of justice, which is not to be harnessed to defeat substantive law, that the learned counsel seeks to impress upon us. From a cumulative reading of what has been laid down as concerns subject-matter jurisdiction as well as the aforementioned ruling, it would reveal that a question subject-matter attacks the very foundation of a suit, hence it must be a primary consideration to be borne in the mind of the Court.*
>
> ***24.** This brings to fore two important considerations, firstly, that the respondents have sought a return of plaint, and not a rejection of plaint. The remedy that is sought by the respondents would not stand extinguished if the Trial Court opines that the petitioner applicant has successfully discharged its burden to establish the plaint as being ripe for return, but rather would just be directed towards, and subsequently decided upon by a Court of competent jurisdiction. Whereas to the contrary, if a court lacking in incompetent jurisdiction is allowed to try the matter on merits, any subsequent ruling would be nonest. An order under Order VII Rule 10 of the Civil Procedure Code, 1908 to return the plaint is not an adjudication on the merits of the case.*
>
> ***25.** Secondly, there exists a distinction between the subject-matter jurisdiction and the territorial jurisdiction of a Court of law that this court must bear in mind. Territorial jurisdiction refers to the geographical area wherein a Court is conferred with the power to take cognizance of and adjudicate upon disputes. While territorial*

jurisdiction is tied into the geographical area where a Court is competent to exercise its function, subject-matter jurisdiction has to do with the nature of the dispute. Subject-matter jurisdiction courts travel to the very epicentre of the dispute and is, in this aspect distinct from pecuniary or territorial jurisdiction as it accounts for the innate character and identity of a dispute. Such character or identity of a dispute is what dictates the area of the law that is attracted and consequently determines the court of law that is conferred with the authority to decide the dispute. In other words, while territorial jurisdiction may be treated as a technicality that may not after the court of first instance has ruled over a dispute, outweigh the cause of justice, a ruling by a court lacking subject-matter jurisdiction is a nullity.

26. *Further, the Court seized with the suit has to examine whether the essential ingredients that would invite the jurisdiction of the court are disclosed, and if it is found that such ingredients are missing, it would render the court lacking in jurisdiction. A court that does not have jurisdiction, cannot be allowed to confer itself with jurisdiction by way of an amendment of pleadings.*

27. *The argument of the learned counsel for the petitioner that an opportunity to rectify the defects has to be afforded to the petitioner, does not hold weight in light of the fact that, an amendment that seeks to rectify the absence of essential juridical facts conferring jurisdiction upon the court cannot be stated to be merely curing of defects. Such an amendment would lead to a change in the very nature of the dispute and isolate the character of the plaint that is filed from the character of the amended plaint. Further, to state that since the proceedings are underway, it would cause prejudice to the petitioners if the plaint is now returned, does not find favour with this court. No saving of judicial time can counteract the lack of jurisdiction. If for want of convenience of the petitioners, the suit is allowed to be heard and decided and subsequently, it is found that the suit was not instituted before a Court of competent jurisdiction based on subject-matter, the entirety of the judicial exercise will be futile and a nullity."*

28. In **Jai Prakash Industries (supra)**, the co-ordinate Bench of this Court had also taken a similar view and held as under:-

> *"**4.** In my opinion, the issue of jurisdiction should have been decided at the first instance. In Pandit Rudra Nath Mishir v. Pandit Sheo Shanker Mishir, AIR 1993 Pat 53, after referring the view of the Allahabad High Court in Tirkha v. Ghasi Ram, AIR 1935 All 842, it was held that granting of amendment postulates an authority of the Court to enter the suit. But where there is inherent lack of jurisdiction in the Court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In such a case, the Court would be exercising its jurisdiction which is not vested in it and, therefore, passing of any order would amount to usurping the jurisdiction not vested in it. Therefore, before the question of jurisdiction in allowing the amendment, the trial court must have decided the issue of jurisdiction."*

29. Thus, it is clear that in the instant case plaintiff had failed to disclose the specified value of the subject-matter in the suit filed before commercial court. The question as to jurisdiction of commercial court under Section 6 read with Section 12 and Section 2(1)(i) of the Act needs to be adjudicated as it goes to very epicenter of the dispute.

30. An amendment seeking to rectify the essential juridical facts conferring jurisdiction upon the court cannot be said to be curing the defects. Such an amendment would lead to change in the very nature of a dispute and isolate the character of the plaint that is filed from the character of the amended plaint.

31. Argument raised by petitioner counsel that no prejudice would be caused in case amendment application is decided prior to the decision on application under Order VII Rule 10 and 11 CPC, cannot be accepted in light of judgment of Apex Court rendered in case of **DLF Universal Ltd. (supra)**, judgment rendered by Delhi High Court in case of **HSIL Ltd. (supra)** and judgment rendered by Bombay High Court in case of **Vivienda Luxury Homes LLP (supra)**.

32. Thus, it is well settled that where subject-matter jurisdiction has been raised, the same needs to be addressed first prior to taking up of amendment application as the court which does not have jurisdiction of

subject-matter cannot pass any order for amending the plaint as it would be a nullity.

33. Subject-matter jurisdiction goes to the root of the case. Once there is a lack of inherent jurisdiction in the court to entertain the suit itself, it cannot make any order for amendment of plaint to bring the suit within the jurisdiction.

34. Considering the facts and circumstances of the case, I find that no interference is required in the order impugned. The court below had rightly directed for consideration of application under Order VII Rule 10 and 11 CPC of defendant first before deciding the application under Order VI Rule 17 CPC.

35. Writ petition fails is hereby dismissed.

36. However, no order as to costs.

(Rohit Ranjan Agarwal,J.)

October 08, 2026
V.S. SINGH