

AN OVERVIEW OF ORDER VII RULE 11 CPC

'An activist judge is the answer to irresponsible suits'

'It is dangerous to be too good'

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In the discharge of judicial duty, dealing with petition under Order VII Rule 11 Civil Procedure Code (*hereinafter* 'CPC') is unavoidable. Very often, the petitions are filed under the said provision. No doubt, judicial time is precious. It ought to be employed in the most efficient manner possible. Sham litigations are menace to the society should be minimised. Unnecessary litigations, not only waste the time of the court, but also cause unwarranted prejudice and harm to parties. Therefore, CPC enables the court to reject the plaint if certain conditions are satisfied.

A survey of various provisions of CPC would go to show that, apart from Order VII Rule 11, the Code enumerates the circumstances in which a civil suit can be dismissed without trial.

- (a) Dismissal as consequences of rejection of plaint under Order VII Rule 11 of the code in the grounds set out in Sub-section (i) to (v).
- (b) Dismissal under Order IX Rule 2 or Rule 3 or Rule 5 or Rule 8 for non-service of summary or non-appearance or failure to apply for fresh summons.
- (c) Dismissal under Order XI Rule 21 for non-compliance with an order to answer interrogatories or for discovery or inspection of documents.
- (d) Dismissal under Order XIV Rule 2(2) where issues both of law and fact arise in the same suit and the court is of opinion that the case or any part thereof may be dispensed with or on an issue of law only and it tries such issue relating to jurisdiction of the court or a bar to a suit created by any law for the time being in force first and dismisses the suit if the decision on the preliminary issue warrants the same.
- (e) Dismissal under Order XV Rule 1 of the code when at the first hearing of the suit it appears that the parties are not at issue on any question of law or fact.
- (f) Dismissal under Order XV Rule 4 of the code for failure to produce evidence.
- (g) Dismissal under Order XXIII Rule 1 and 3 of the code when a suit is withdrawn or settled of court.

Of all the provisions, it is the petitions for rejection of plaint under Order VII Rule 11 are often filed and the judges have to handle it properly. In this article, an attempt is made to give an over view of Order VII Rule 11 CPC so as to tackle the petitions in an effective manner.

Order VII Rule 11:

While filing an application under Order VII Rule 11 of the Code of Civil Procedure, the Court is bound to see whether the case on hand falls within six limbs stated. If the suit is not falling under any of those categories, the plaint cannot be rejected. (*V. Bragan Nayagi Vs. R.R. Jeyaprakasam, 2015(4) MLJ 538*)

Object of Order VII Rule 11 CPC:

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 sham litigation, so that further judicial time is not wasted. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai (2020) SCC Online, 563*)

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. (*Azhar Hussain Vs. Rajiv Gandhi 1986 Supp. SCC 315*)

The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised. (*Sopan Sukhdeo Sable Vs. Asstt. Charity Commr., (2004) 3 SCC 137*)

The scope of Rule 11 of Order VII CPC has been explained in various decisions and the legal principles deducible are that, if the Plaint does not disclose the cause of action or is barred by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order VII Rule 11 CPC being procedural is designed and aimed to prevent vexatious and frivolous litigation. (*Dr. L. Ramachandran Vs. K. Ramesh, 2015(4) LW. 585 (Mad) (DB), Para 26*)

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 12.5*)

Nature of Power:

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563 Para 11*)

Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. (*Sopan Sukhdeo Sable Vs. Asstt. Charity Commr., (2004) 3 SCC 137*)

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 12.10*)

It is akin that the power available to High Court under section 482 of the Code of Criminal Procedure in quashing criminal proceeding. (*Ferdous Finance (P) Ltd, Rep by its Mr. M. Ishad Ali, Chennai Vs. R. Thyagarajan, Chennai & Others, 2005(3) LW. 145 (Mad), Para 5*)

Order VII, Rule 11(d) of the Code has limited application. (*Kamala & Ors Vs. K.T. Eshwara Sa & Ors, 2008(5) MLJ 617: 2008(4) AIR SCW 5364(SC), Para 15*)

Role of the Court/ Judge dealing with Order 7 Rule 11 CPCs:

An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining party at the first hearing so that bogus litigation can be shot down at the earliest stage. The penal code is also resourceful enough to meet such men and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi: “It is dangerous to be too good”. (*T.Arivandandam Vs. T.V Satyapal and another, AIR 1977 SC 2421: (1978)1 SCJ 197, Para 5*)

The learned Munsif must remember 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, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. (*T. Arivandandam Vs. T.V. Satyapal & Anr.*)

The trial Court must remember that, if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (*Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137*)

The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shut down at the earliest stage (*A. Sreedevi Vs. Icharapu Ramakrishna Gowda (2006)1 MLJ 116, Para 17*)

The Courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. (*Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy, 2012 (7) SCC 788, Para 12*)

Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose off the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case. Without disposing of an application under Order VII Rule 11 of the CPC, the court cannot proceed with the trial. (*R. K. Roja Vs. U.S. Rayudu and Anr, 2016 SAR (Civil) 930, Page 6, 9*)

If there is no cause of action for the plaintiff to file the suit and ultimately rejected the same as well as rejected the petition. The question whether there is any cause of action or not can be ultimately decided only after issue of notice to the other side (in this case the plaintiff) and the Court cannot act as a spokesman of the defendants. (*Hindustan Petroleum Corporation Ltd Vs. C.M. Hari Raj and other, 2002 (1) CTC 742 (Mad), Para 17*)

The court cannot conduct a roving enquiry to find out whether the averments made in the plaint claiming how the suit was in time, are true or false. (*M. Thillaikkarasi vs Kalavathi, 2013(5) CTC 849, Para 5*)

Can it be exercised *Suo Moto*?

Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. (*Sopan Sukhdeo Sable Vs. Asstt. Charity Commr., (2004) 3 SCC 137*)

The power to strike off the plaint can be exercised even if the defendant did not file an application to reject the plaint under Order VII Rule 11 CPC (*Mani Vs. P. Ramakrishnan 2018(4) MLJ 182 (Mad)*)

Material to be considered for rejecting the plaint:

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 12.5*)

While deciding the application under Order VII, Rule 2 of the Code of Civil Procedure the Court can look to the documents referred to in the plaint. (*Sanjay Kaushish Vs. D. C Kaushiah AIR 1992 Del 118, Para 63*)

It is to be noted that when this court is called upon to exercise jurisdiction to reject the plaint under Order VII Rule 11 of CPC, the averments made in the plaint and the documents filed along with the plaint, which form part thereof alone will be taken into consideration and this court cannot consider the defence, pleas or materials submitted by the defendant for the purpose of rejecting the plaint (*Gunaseelan Vs. Valarmathi and 2 Ors, 2009(5) CTC 693, Para 13*)

“Different clauses in Order VII, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. For the purpose of invoking Order VII, Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.” (*Kamala & Ors Vs. K. T. Eshwara Sa & Ors, 2008(5) MLJ 617: 2008(4) AIR SCW 5364(SC), Para 15, 16*)

Test:

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 12.7*)

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. In *Hardesh Ores (P) Ltd. Vs. Hede and Co., (2007) 5 SCC 614* 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. (*Liverpool & London S.P. & I Assn. Ltd. Vs. M. V. Sea Success I & Anr. para 139*)

In the absence of the conditions mentioned in Rule 11 of Order VII CPC or any other valid grounds, the application filed under this Rule is liable to be dismissed. (*Balasubramiam Guhan Vs. T. Hemapriya 2005 (3) LW. 459 (Mad), Para 21*)

Stage at which power can be exercised:

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563 Para 12.9*), (*Saleem Bhai and Ors Vs. State of Maharashtra AIR 2003 SC 759*)

The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. (*Sopan Sukhdeo Sable Vs. Asstt. Charity Commr., (2004) 3 SCC 137*)

A direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. (*Saleem Bhai Vs. State of Maharashtra 2003(1) CTC 186 SC*)

Therefore, it is clear that merely because issues have been framed, it cannot be said that the application under Order VII Rule 11 CPC is not maintainable. (*2018-3-LW. 241, Para 11*)

After filing of the written statement, framing of issues including on limitation, evidence was led, the plaintiff was cross examined, thereafter before conclusion of trial, the application under Order VII Rule 11 was filed for rejection of plaint. It is also pertinent to mention that there was not even a suggestion to the plaintiff that the suit filed by him is barred by limitation. The trial court has committed error in rejecting the same at the belated stage that too without advertent to all materials which are available in the plaint. (*Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Ors. (2008)1 MLJ 45 SC, Paras 19 and 20*)

How to read and examine the plaint before exercising Order VII Rule 11 :

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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 12.8*)

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” means 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. (*Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 14*)

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 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 or 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. (*Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137*)

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How to exercise the power:

Only a part of the claim cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. (*Roop Lal Sathi Vs. Nachhattar Singh Gill* AIR 1982 SC 1559: (1982) 3 SCC 487).

If the plaint makes out a case indicating a cause of action, then falsity of the claim would be a matter to be determined at the time of trial and if at all the suit is found to be vexatious or based on false assertion, then the plaintiff would be liable for compensatory cost under 35-A of CPC. The intention of the party concerned is to be gathered primarily from the tenor and terms of 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. (*Gunaseelan Vs. Valarmathi and 2 Ors*, 2009(5) CTC 693, Para 13: (2010)1 MLJ 1056)

It has been held that while considering the rejection of plaint under O 7 Rule 11 CPC, the strength or weakness of the plaintiff's case is not to be seen and what is required to be disclosed by the plaintiff is clear right to sue. (*Astral Cables Ltd., Vs. The NSCI corporation Ltd*, 2011-2-LW. 332: 2011(7) MLJ 438 (DB))

It is to be noted that under Order VII Rule 11 of CPC there is a requirement of inclusion of cause of action. Ordinarily, a court of law is to presume that every allegation in the plaint is true. As a matter of fact, when the plaint raises arguable points which requires deeper deliberation and scrutiny, the same cannot be rejected in the eye of law. Also, that, a plaint cannot be rejected under Order VII Rule 11 of CPC, where the suit is required to be heard on merits after taking evidence in a given case. However, if the averments made in the plaint and the documents relied upon establish a cause of action, then the plaint should not be merely rejected based on the reason that the averments are not enough to prove the facts mentioned therein. Moreover, a court of law can examine the parties to clear the pleadings. (*R. Perumal Naicker Vs. R. Sakrapani*, (2013) 6 MLJ 119, Para 10, 11)

The power to strike off the plaint can be exercised even if the defendant did not file an application to reject the plaint under Order VII Rule 11 of CPC. (*Mani alias Nagamani & Ors. P. Ramakrishnan, 2018(4) MLJ 182, Para 9*)

The 1st respondent has paid proper court fee for the relief sought for when he originally filed the suit. Plaint cannot be rejected in part. Either it must be rejected in entirety or application for rejection of plaint must be dismissed. In the present case, the petitioners are seeking rejection of plaint for non-payment of court fee for the relief included by amendment. For such non payment the plaint cannot be rejected in entirety. (*K.L.R. Niranjan and another Vs. L. Leelakrishnan and others, (2018)5 MLJ 115, Para 18*)

As noted supra, the Order VII Rule 11 does not justify rejection of any particular portion of the plaint. Order VI Rule 16 of the Code is relevant in this regard. (*Sunnath Jamath Committee Vs. K. Anthonysamy, 2009(5) CTC 871(Mad) Para 18*)

Grounds:

Plaint does not disclose cause of action- Rule 11(a):

Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily. (*Usum Ingots & Alloys Ltd., Vs. Union of India and another (2004) 6 Supreme Court Cases, 254, Para 6*)

“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” (*Swamy Atmanand Vs. Sri Ramakrishna Tapovanam, para 24*)

It is a settled proposition of law that to reject the plaint under Order VII Rule 11 (a) of the Code, the petitioner / defendant should establish that there is no legally sustainable cause of action, to seek the relief as prayed for in the plaint. (*M/S. Narasu's Coffee Company vs R. P. Sarathy* 2014(3) LW 419(Mad); 2014(5) MLJ 710, Para 72)

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 (*Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, (2004) 3 SCC 137*)

It is an admitted fact that the averments in the plaint are sufficient to prove that where the cause of action is mentioned and averred in the plaint, there is no need to decide as to whether the cause of action averred in the plaint is true and correct. (*Electronic Machine Tools Limited rep. by its Branch Manager, Chennai Vs. Power Engineers, (2011)6 MLJ 929, Para 16*)

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. 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. (*Liver pool and London SP&I Association Vs. M.V. Sea success I and Anr. 2004 (9) SCC 512*)

Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (*ITC Ltd., Vs. Debt Recovery Tribunal 998(2) SCC 70*)

But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which

must fairly be left for decision at the hearing of the suit. (*Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another* 1962 AIR 941: 1962 SCR Supl. (2) 675)

In so far as Order VII Rule 11 CPC is concerned, when no cause of action is disclosed, the court will not unnecessarily protract the hearing of the suit. (*V. K. John Vs. Seetharam and Ors.* 2009(1) TLNJ 14(Civil) Division Bench, Para 32)

So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for strike it out. (*Liver pool and London SP&I Association Vs. M.V. Sea success I and Anr.*, (2004) 9 SCC 512).

Normally a plaint can be rejected only if there is absolutely no cause of action and the same cannot be rejected if there is a lack of cause of action. (*P. Chidambaram Vs. R. S. Rajakannappan*, 2012 (3) CTC 673, Para 32.2)

The trial court can reject a plaint only when it is found that any of the conditions under Rule 11 of Order VII of CPC exists. The trial court has gone into the merits of the case and rejected the plaint on the ground that the averments stated in the plaint have not been substantiated by documentary evidence which is clearly a matter of trial. The trial court can ascertain as to whether the plaint discloses cause of action or not, but cannot ascertain as to whether the plaintiff could be entitled to get the relief prayed for in the facts and circumstances disclosed in the plaint. (*M. Chinnaiyah Vs. Naina Mohammed 2. Noorjahan Beham*, 2012-5-L.W. 250, Para 5.)

It has been held that when the plaint discloses a cause of action, it could not be rejected on the ground that averments are not sufficient to prove the facts stated therein, for the purpose of obtaining the relief claimed in the suit, under Order VII Rule 11. (*Central govt. Employees Welfare Housing Organisation Vs. Consolidated Civil Construction Ltd.* 2012(1) MWN (civil) 633)

A cause of action would constitute bundle of facts. It implies a right to sue. There is a difference between a non-disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under section Order VII Rule 11 CPC would govern a case of non-disclosure of a cause of action. However, it does not govern a defective cause of action. (*Yrooj Ahamed Lords Enterprises Vs. Preethi Kitchen appliances Pvt.Ltd*, 2013(6) CTC 247, Para 5(a)(ii))

In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact (*Instituto Hispania Vs. Mrs. Vinolia Lobo, 2009(5) CTC 550, Para 15*)

Suit is undervalued - Rule 11(b)

In fact, an issue of Court Fee is a matter which is between the Revenue/Government and a litigant, who is supposed to pay the correct Court Fee. As a matter of fact, the Defendants are entitled to raise objections in regard to the payment of Court Fee by the Plaintiffs either through their Written Statement or by way of filing of application before evidence is taken in the main suit. Sections 12(2) and (3) of Tamil Nadu Court-Fees and Suits Valuation Act, 1955, confer a right to the defendants to pinpoint their objections in regard to the adequacy of the Court Fee paid by the Plaintiffs in a given case.

It is to be pointed out that a plaint can be returned to the Plaintiff under Order VII Rule 10 of the Code of Civil Procedure only if the Court in which the plaint is filed and prosecuted, suffers from lack of territorial or pecuniary jurisdiction. If a Court of Law has no jurisdiction, it must return the plaint although the claim is not properly valued or undervalued, as the case may be. A Court of Law returning the plaint has no jurisdiction on correcting the valuation in regard to the demand of Additional Court Fee or has to dismiss the suit for default under Order VII Rule 11 of the Code of Civil Procedure.

If a suit is not properly or correctly valued, an appropriate order to be passed by a Court of Law, is to call upon the Plaintiff to furnish the correct valuation. If a Court of Law holds that the relief prayed for by the Plaintiff has been undervalued and orders a party to correct the same, then, it is open to the Plaintiff to amend the valuation at any time before an order rejecting the plaint is made so as to limit the claim to the Court Fee paid, as per decision in *Ramakrishna Reddi Vs. Veera Reddi, AIR 1946 Mad 126*.

At this stage, this Court aptly points out that a cursory reading of the ingredients of Order 7 Rule 11(b) of the Code of Civil Procedure clearly point out that a Court of Law has to come to a conclusion that a relief claimed has been undervalued, which necessarily means that it is able to decide and specify proper and correct valuation of the relief and after determination of the correct value of the relief requires the Plaintiff to correct his valuation within a time to be determined by the Court. In as much as undervaluation of a suit goes to the crux of maintainability of the suit, a

Defendant is entitled to raise objections irrespective of the nature of the suit. (*L.P.Alaghappa Chettiar Vs V.Janardhanan, 2013(5) CTC 12(Mad) Paras 20,21,22,23,25*)

As per Order VII Rule 11(b) C.P.C. what the relief claimed in a suit 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, the plaint could be rejected. However, without providing time to pay the deficit court fee the court below could not have rejected the plaint. In such circumstances, the impugned order has to be set aside on the ground of violation of mandatory provision under O 7 Rule 11(b) of the code to meet the ends of justice. (*R. Kalavalli Vs. P. Sundaraj and Anr (2011)4 CTC 536, Para 9*).

On a reading of Order 7 Rule 11 C.P.C., Sub-clause 'c' of Rule 11, the Court is empowered to grant necessary time to make good the deficiency in the payment of court fee paid along with the plaint though it was insufficiently stamped at that time when it was presented. (*A. Sakthivel Vs. V. A. Shanmogavel 2003 (1) CTC 83 Mad, para 1*) (*R. N. Shanmugavadivel vs R. N. Myilsami, 2010(5) LW. 185(Mad), Para 15*)

Order VII Rule 11 (d):

Order VII Rule 11 (d) has limited applications. For its applicability it must be shown that the present suit is barred under law. Such a conclusion must be drawn from the averments made in the plaint. (*M. Nelson babu Vs. Kamalesh Babu and another, 2009(5) CTC 814, Para 11*)

The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Law within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. (*Dega Jayalakshmi & Others Vs. Kapoor Enterprises, Rep. by its Managing Partner, R.M. Lakshman Dass & Others, 2010(1) MLJ 1167(Mad), Para 25*)

Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. (*Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005(4) CTC 489(SC)*)

What section 11 of the Code of Civil Procedure says is that a question, which has been substantially and directly raised as an issue in a previously decided suit, shall not be tried by the court dealing with the subsequent suit. So, the said provision can be interpreted to mean that such a suit can be dismissed on the ground of bar of res judicata and it cannot be stretched too much to say that the bar of res judicata shall be ground for rejection of plaint. The question of res judicata shall be a mixed question of law and fact. It has got to be raised and decided. A plaint can be rejected based on the pleadings made in the plaint and the documents produced along with the plaint. A plaint cannot be rejected based on the defence statement of the defendant made in the written statement or any averments made in the affidavit filed in support of the application filed under Order VII Rule 11 CPC. (*G. Subramani Vs. V. Rajasekaran and Anr. 2013(4) CTC 468, Para 11*)

In so far as the other two grounds raised by the learned counsel for the petitioners that the suit is hit by principle of *Res Judicata* and Order II Rule 2 CPC are concerned, once again, being a mixed question of law and facts, the same cannot be gone into at this stage and the same can be decided only at the time of trial. (*M. Prince Manohar and others Vs. Bhima Lakshmi Narasammah and others 2014(1) CTC 160: 2014-1-L.W. 173: 2014(2) TLNJ 346 (CIVIL) 11 Para*)

Though the plea of limitation is always mixed question of law and facts, in the instance case, the entire perusal of the plaint averments itself clearly shows that the suit itself is barred by limitation. This court is of the view that it is a fit case which falls within the ambit of order VII rule 11 (d) of CPC for rejection of plaint. (*Balachandra Builders Vs. Anis and others, 2017(3) MLJ 52, Para 31 and 32*)

It is settled law as held by various Courts that where on the face of the plaint, a suit appears to be barred by any law, the Court shall dismiss the suit. But where it does not so appear, but requires further consideration or, in other words, if there be any doubt or if the Court is not sure and certain that the suit is barred by some law, the Court cannot reject the plaint under Clause (d) of Order VII Rule 11 of C.P.C. (*Kasthuri and others Vs. Baskaran and another, 2004(2) LW 429 Mad Para 19*)

The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order VII Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order VII Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be

assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. (*Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others*, 2006(4) LW. 896(SC), Para 15)

When a part of the relief sought for in the plaint is within time and even if another part of the relief sought for in the plaint is barred by limitation, a plaint cannot be rejection in part. A plaint cannot be rejected in part is a well settled proposition of law. (*Chandra Vs. Reddappa Reddy* 2011(3) LW. 936 (Mad), Para 17)

Order VII Rule 11 (e)

It appears to us that, the said clause being procedural would not require automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11 (e) or non-compliance as referred in Rule 11(f) the court should ordinarily give an opportunity for rectifying the defects, and in the event of the same not being done the court will have the liberty or the right to reject the plaint. (*Salem advocate bar Association Tamilnadu Vs. Union of India* AIR 2003 SC 189: 2003(1) SCC 49)

Other grounds:

The provisions of Rule 11 are not exhaustive and the court has got inherent powers to see that vexations litigations are not allowed to take or consume the time of the court. In appropriate cases, directions can be issued by the High court as well as the court in which the suit is filed not to entertain the suit. (*M. Gurusamy and Anr. Vs. G. Vijaya and Ors.*, 2008(1) MLJ 716, Para 5)

Abuse of process of law and re-litigation:

One of the examples cited as an abuse of the process of the court is relitigating. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a give set of facts among to an abuse of the process of the Court. Frivolous or vexatious proceedings may also amount to an abuse of process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or

not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be exercised only in special cases. The court should also be satisfied that there is no chance of the suit proceedings. (*M. Somasundaram and Anr Vs. V. Srinivasan* (2009)8 MLJ 1284, Para 44.)

It is clear that in the case of re-litigation, the court should strike off the plaint at the earliest instance and the filing of subsequent suit is a clear abuse of process of court and that should not be encouraged. (*N. Babu Vs. S. Shanmugam and others*, 2013-1-L.W. 491, Para 10)

The court has power to stop the vexatious proceedings when it is clear abuse of process of the court. (*K. K. Modi Vs. K. N. Modi* (1998)3 SCC 573)

The court is expected filter out and throw all unwanted and vexatious litigation which would be an obstruction to the decree holder in their journey to get justice (*Palanisamy Gounder Vs. Sankara Ramanathan and Ors* (1999(3) LW. 897, para 59)

One of the examples cited as an abuse of process of the court is re-litigation. The re-agitation may or may not amount to *res judicata*. If the same issue is re-agitated it is also amount to an abuse of process of court. (*AIR 1998 SC 1297, para 44*)

Judicial proceedings cannot be used to protect or perpetuate a wrong committed by a person who approaches the court (*Dalpat Kumar Vs. Prahlad Singh*, 1992(1) SCC 719)

Delay in service of summons:

There is no scheme formulated under the Code of Civil Procedure to reject the plaint on the ground that the plaintiff exhibited supine indifference in serving summons on the defendant for quite a long time. The plaint cannot be simply rejected as there has been inordinate delay in serving summons on the defendant. (*Apollo Tyres Ltd. Vs Transport Corporation Of India*, 2007(4) CTC 509 (Mad), Para 8)

Mis joinder - non-joinder of parties and misjoinder of cause of action :

The plaint could not be rejected by invoking Order VII Rule 11(d) of the Code since it could not be held that a suit which suffers from the defect either of misjoinder of parties or misjoinder of causes of action or both, is barred by any law. (*Prem Lala Nahata & Anr vs Chandi Prasad Sikaria*, 2007 (3) CTC 101(SC): 2007(2) MLJ 1177, Para 5)

Non-joinder of necessary parties would not come under the purview of barred by law as per Order 7 Rule 11 (d) of CPC. (*P. Govindasamy Vs Manickam, 2015(6) CTC 651S*)

Non filing of documents:

Non filing of document on which cause of action rests and missing of court records are only detrimental to plaintiff's case and will only benefit defendant and do not warrant rejection of the plaint. (*Metson Education and Development Association(P)Ltd Vs. The Church of South India Trust Association, 2008(1) CTC 521*)

Defective presentation of plaint:

It is well settled that a defective presentation of a plaint, cannot result in the rejection of the plaint. The grounds on which a plaint can be rejected are listed under O7 R 11CPC. A defect which is curable in nature does not fall within the ambit of O 7 R 11. (*K. Santhanam Vs. S. Kavitha through her sub - power agent K. Seerappan, (2011)3 MLJ 34, Para 17*)

Suppression of facts and misrepresentation of facts :

A reading of the said rule will show that neither suppression of fact nor misrepresentation, not even fraud, has been made a ground for rejection of plaint. Even the rule does not include abuse of process of court as a ground for rejection of plaint. Clauses (a) and (b) which deal with absence of disclosure of cause of action and the suit appearing from the statement to be barred by any law. Whether the plaint discloses a cause of action for the suit or not, has got to be decided only based on the averments made in the plaint and the documents produced along with the plaint. The cause of action alleged may not be true or may be a deliberate falsehood. The court dealing with the petition under Order VII Rule 11 cannot go into the question whether cause of action alleged in the plaint is true or false and take a decision based on the defence plea taken by the defendant or based on the documents produced by the defendant. On the other hand, there may be cases in which the plea made in the plaint itself having the effect of destruction of the plea regarding the cause of action and making such plea regarding cause of action illusory. Only in such cases, the court has to decide whether the cause of action alleged in the plaint is real or that the plaint has been drafted in an intelligent manner to camouflage an illusory cause of action as a real cause of action. A cause of action alleged in the plaint being illusory different from the cause of action alleged in the plaint being false. Only in the former case, the court can reject the plaint on the ground that the plaint does not disclose a cause of action and not in the latter case. The mere suppression of fact alone shall not be the ground for holding that the plaint lacks pleading regarding the cause of action. (*R. Arumugham Vs. P. R. Palanisamy and another, Para 10, 15*)

The plaintiffs have not approached the court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage as has been held by the Apex Court in *S.P. Chengalvaraya Naidu Vs. Jagannath*. This aspect of the matter has also been considered by the Hon'ble Supreme Court in its decisions in *Roshan Deen Vs. Preeti Lal ; Ram Preeti Yadav Vs. U.P. Board of High School and intermediate Education ; Ashok Leyland Ltd. Vs. State of T.N. and State of A.P. and Anr. Vs. T. Suryachandra Rao*. In view of the settled legal position of law, the case of the plaintiffs has to be thrown out at the threshold and in this case, it is the duty of the court to reject the Plaint. (*Poppat Jamal And Sons Rep. By Its ... Vs. N. M. Venkatachalapathy @ Babulal, 2006 (5) CTC 251: (2007) 2 MLJ 379, Para 10*)

ORDER II RULE 2:

Though, in those cases, the revision petitioner pleaded that the suit in OS NO. 52 of 2012 is barred under Order II Rule 2 CPC, the suit is at the primary stage and issues have to be framed and the parties must be given opportunity to explain or demonstrate to the effect that the suit was based on the different cause of action and therefore at the threshold, it is not advisable to reject his suit on the ground of Order II Rule 2 CPC. (*K. Baladhandayudam Vs. PSR. Sathiamoorthy, 2013-3-LW. 179, Para18*)

In so far as the other two grounds raised by the learned counsel for the petitioners that the suit is hit by principle of res judicata and Order II Rule 2 CPC are concerned, once again, being a mixed question of law and facts, the same cannot be gone into at this stage and the same can be decided only at the time of trial. (*M. Prince Manohar and others Vs. Bhima Lakshmi Narasammah and others*) DOJ 20.11.13 2014(1) CTC 160: 2014-1-L.W. 173: 2014(2) TLNJ 346 (CIVIL) , Para 11)

When suit becomes infructuous :

Thus, it is clear that by the subsequent event if the original proceeding has become infructuous, *ex debito justitiae*, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous. The application under Section 151 of CPC in this regard is maintainable. (*Shipping Corporation of India Ltd Vs. Machado Brothers and another, AIR 2004 SC 2093 : 2004(4)SCALE 39*)

Non - Observance of Order I Rule 8 CPC :

According to me, without going into the merits of the contentions raised by both the parties, at this stage, the suit cannot be struck down on the ground of non-compliance of Order I Rule 8 of CPC Further, the Hon'ble Judge P. Sadasivam, as he then was held in *Kamaraj bBhavan Lower Bazaar Road, Uthagamandalam, Vs. A. Rahim and others 1996(2) LW.456*, held that the failure of the plaintiffs to obtain permission under Order I Rule 8 of CPC is only a procedural irregularity and the permission can be obtained even during the pendency of appeal and in that reported case, the permission was granted in the second appeal stage. Therefore, in my opinion, plaint cannot be struck off on the ground that the suit was not filed complying with the provisions of Order I Rule 8 of CPC. (*Royal Villa Resident's Association Vs. The Project Management Committee and others, 2013 (4) CTC 205, Para 5*)

Order VII Rule 11 and foreign Judgment :

Even assuming that a judgment is not conclusive under Section 13, the plaintiff would be required to independently prove his case de hors the judgment of the foreign court. If the judgment of the foreign court is found to be conclusive, the plaintiff would be required to prove independently the validity of his claim. On the other hand, if the court comes to a conclusion that such judgment is not conclusive, the plaintiff may still establish his case by adducing appropriate evidence. In other words, such a matter cannot be decided at the threshold by taking recourse to Order VII Rule 11 CPC, but an issue has to be struck in the matter and the matter has to be decided.

Similarly, the question as to whether the foreign judgment was obtained by fraud or sustained a claim founded on a breach of any law in force in India was also required to be decided on conclusion of the trial by framing appropriate issue on that aspect and was not available to be raised in the application filed under Order VII Rule 11 CPC. (*Desert Valley Medical Inc Vs. A. Jayachandra Reddy*, 2005(2) llw. 487 (Mad), Para 17,18)

Order VII rule 11 and impounding of documents:

It is wrong on the part of the trial Court to reject the plaint even before the trial solely on the ground that the document has not been stamped in accordance with the provisions of the Indian Stamp Act. If for some reason, it had come to the conclusion that it is a bond, then it should either refuse to rely upon it or impound the same for the purpose of paying the necessary Stamp Duty and ought not to have rejected the suit at the threshold. (*Mariasusai Vs. A. Francis And Margaret*, 2007 (1) CTC 501, (2007) 1 MLJ 715(Mad), Para 8)

Title cannot be decided:

Whether the title traced by the plaintiff is legally acceptable one or not can be considered only during trial. Therefore, on that ground, the plaint cannot be rejected. (*P. Rajkumar Vs. Mrs. Mary Saroja* (2013(2) MWN (Civil) 89, Para 14)

Appeal memorandum- can it be rejected:

On the other hand, the rejection of the memorandum of appeal cannot be made on the same grounds available under Order VII Rule 11 of Code of Civil Procedure. (*S.R. Ramalingam Vs. R. Vivekanandan & Others*, 2008(1) LW 967(Mad): 2008(1) CTC 180, Para 21)

Therefore, the petitioner company having not moved the trial court for the relief, this court exercising its supervisory power is not inclined to reject the plaints. It is for the petitioner to take appropriate steps before the court concerned. (*P. Rajkumar Vs. Mrs. Mary Saroja*, 2013(2) MWN (Civil) 89 (Mad), Para 19)

Order VII Rule 11 and Preliminary Issues:

Citation of a false cause of action, fraud, misrepresentation or the filing of the suit being an abuse of process of court, can, at the best, be projected as a preliminary issue. All questions, which can be decided as preliminary issues, cannot be made as grounds for rejection of the plaint unless the ground is brought within the purview of Order VII Rule 11 CPC. The distinction between the

rejection of a plaint under Order VII Rule 11 CPC and the dismissal of the suit on a preliminary issue should be kept in mind. (*V. Bragan Nayagi vs R.R.Jeyaprakasam* , 2015(4) MLJ 538, Para 11)

Order XXIII Rule 3 and Order VII Rule 11 - Comparison:

It is pertinent to note that Order XXIII Rule 3 of Civil Procedure Code is not meant for rejecting the plaint. Order XXIII Rule 3 of Civil Procedure Code, is meant for recording the compromise or satisfaction and passing the decree in accordance therewith. Though the application has been filed Under Order XXIII Rule 3 of Civil Procedure Code, the prayer sought for in the application to reject the suit, is not maintainable, however, a plaint can be rejected only under Order VII Rule 11 of Civil Procedure (*N. K. Ramanuja Thatchariar vs S. Veeraraghava Thatchariar*, 2015(4) CTC 369 (Mad), Para 20,21)

Effect of rejection of plaint:

In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13. (*Sopan Sukhdeo Sable & Ors Vs. Assistant Charity Commissioner*)

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