

2022 LiveLaw (Del) 327

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE AMIT BANSAL
CS(COMM) 22/2021; 13th April, 2022

DR. RAMESH CHANDER MUNJAL & ORS. *versus* DR. SURAJ MUNJAL & ORS.

Code of Civil Procedure, 1908; Order VII Rule 10 - Suit cannot be rejected partially. [*Referred: Madhav Prasad Aggarwal and Anr. Vs. Axis Bank Limited And Anr., (2019) 7 SCC 158*] (Para 42)

Code of Civil Procedure, 1908; Order VII Rule 10 - Concealment by itself cannot be a ground for rejection of the plaint. (Para 46)

Plaintiffs Through: Mr. J.P. Sengh, Senior Advocate with Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Ajay Sharma & Ms. Manisha Mehta, Advocates.

Defendants Through: Mr. Ankit Jain with Mr. Nishant Datta, Mr. Pradeep Bhardwaj, Mr. Chirag, Mr. Mohit Bhardwaj & Mr. Abhay Pratap Singh, Advocates for D-1, 2 & 6. Mr. Asav Rajan, Advocate for D-7.

J U D G M E N T

I.A. No. 2352/2021 (of the defendant no.1 u/O.VII R.10 of the CPC) and I.A. No. 4637/2021 (of the defendant no.1 u/O.VII R.11 of the CPC)

1. By the present order, I shall dispose of the applications filed on behalf of the defendant no.1 namely, I.A. No. 2352/2021 under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) and I.A. No. 4637/2021 under Order VII Rule 11 of the CPC.

2. Notice was issued in I.A. No. 2352/2021 and I.A. No. 4637/2021 on 16th February, 2021 and 5th May, 2021 respectively and replies have been filed on behalf of the plaintiffs.

3. Upon a reading of the plaint it emerges that the plaintiffs are shareholders in the defendant no.4 Company, RC Healthcare Private Limited. The defendant no.5, SpectraRC Medicare Private Limited and the defendant no.6, Sight Avenue Private Limited, are companies having the same registered office as the defendant no.4 Company. The defendant no.1, Dr. Suraj Munjal and the defendant no.2, Dr. Ashita Munjal, are shareholders in the defendant no.4 Company. The defendant no.1 is also a director and shareholder of the defendant no.5 and the owner of the trade name 'The Sight Avenue', used by the defendant no.6. The defendant no.2 is also a shareholder of the defendant no.6. The defendant no.3, Mr. Daya Shanker Sharma, is a former director and shareholder of the defendant no.5.

4. The suit has been filed by the plaintiffs, *inter alia*, seeking mandatory and permanent injunction against the defendants no.1, 2, 3, 5 and 6, restraining them from passing off and violating the registered trademark and trade names of the defendant no. 4 Company, which owns and runs a famous eye hospital by the brand and trade name of 'Spectra Eye' at E-82A, Greater Kailash, Part-I, Delhi since 2009 and numerous other branches, and declaration in respect of the properties purchased by the defendants from the income and revenue of the defendant no.4 Company.

5. I.A. No. 2352/2021 has been preferred on behalf of the defendant no. 1 under Order VII Rule 10 of the CPC on the ground that this Court does not have the territorial jurisdiction to entertain the present suit. In support of the aforesaid submission, the counsel for the defendants no. 1, 2 & 6 (hereinafter, referred to as the 'contesting defendants') has made the following submissions:

(i) That at least two of the properties, in respect of which relief has been sought in the plaint, are situated in the Gurugram, Haryana, which is outside the jurisdiction of this Court.

(ii) In essence, the plaintiffs through prayers A and B of the plaint have sought the relief of possession in the present suit in respect of the immovable properties and such a suit for possession can only be filed where the subject properties are located. Reliance in this regard is placed on Section 16(a) and (d) of the CPC. It is further submitted that the proviso to Section 16 would not be applicable in the present case.

(iii) In this regard, reliance is placed on the judgments in **Harshad Chiman Lal Modi Vs. DLF Universal and Ors.**, MANU/SC/0710/2005 and **Vipul Infrastructure Developers Ltd. and Ors. Vs. Rohit Kochhar and Ors.**, MANU/DE/0546/2008 (DB).

6. I.A No. 4637/2021 has been preferred on behalf of the defendant no. 1 under Order VII Rule 11 of the CPC, on the three grounds as follows:

I. The present suit is barred under Section 430 of the Companies Act, 2013.

II. The present suit is not maintainable as no cause of action has arisen.

III. The suit has been undervalued for the purposes of Court fees.

7. In support of the contention that the present suit is not maintainable, in view of Section 430 of the Companies Act, the counsel for the contesting defendants has made the following submissions:

(i) Most of the reliefs prayed for in the present suit can be granted by the NCLT under Sections 241 and 242 of the Companies Act and, therefore, the bar under Section 430 would squarely apply to the present suit.

(ii) The defendant no.7, who is the husband of the plaintiff no.3 and son of the plaintiffs no.1 and 2, has already filed a company petition before the National Company Law Tribunal (NCLT), being CP No. 227/2017, in respect of similar reliefs, which are subject matters of present plaint. The said company petition is still pending. The plaintiffs and the defendant no. 7 are represented by the same counsel in various proceedings and are supporting each other in the present suit as well as in the proceedings before the NCLT.

(iii) In the aforesaid company petition, the defendant no. 7 has filed an application being C.A. No. 147/2020 (page 447 of the defendants' documents), seeking exactly the same reliefs, which have been sought in the present suit by the plaintiffs. The factum of the filing of this application has been concealed by the plaintiffs in the present suit.

(iv) The present suit has been filed only because the defendant no. 7, the petitioner in the aforesaid company petition, could not succeed in getting the reliefs before the NCLT.

(v) In the aforesaid company petition, the management of the defendant no.4 Company

was bestowed upon the defendant no.1 by means of the consent order dated passed on 4th October, 2017, which was slightly modified on 9th November, 2017, is still in force.

(vi) In this regard, reliance is placed on the judgments in **Vikram Jairath and Ors. Vs. Middleton Hotels Private Limited and Ors.**, MANU/WB/0524/2019 and **The Delhi & District Cricket Association Vs. Sudhir Kumar Aggarwal and Ors.**, MANU/DE/1751/2020.

8. In support of the contention that no cause of action has arisen, the counsel for the contesting defendants has made the following submissions:

(i) The present suit, filed as a derivative suit, is not maintainable as the plaintiffs are majority shareholders in the defendant no. 4 Company.

(ii) The suit is based on the siphoning off of funds by the defendants and, therefore, the relief sought, at best, can only be to recover the aforesaid alleged siphoned off funds. No relief lies *qua* the properties that were allegedly purchased by the defendants from the alleged siphoned off funds.

9. In support of the contention that the plaintiffs have failed to pay the requisite Court fees, the counsel for the contesting defendants has made the following submissions:

(i) The plaintiffs have undervalued the suit at around Rs.19,00,00,000/- as the final reliefs and interim injunctions have been sought in respect of properties, which are worth over Rs.50,00,00,000/-.

(ii) As per the provisions of Order XII Rule 6 of the CPC, the plaintiffs have admitted to the value of the suit, upon which the Court Fees shall be payable.

(iii) The plaintiffs have failed to pay the requisite Court fees of the aforesaid amount of Rs.19,00,00,000/- and have prayed that defendant no. 4 should be called upon to pay the Court fees, which is not permissible in law.

(iv) The relief on rendition of accounts has been undervalued. In respect of rendition of accounts, the plaintiffs have to estimate the amount and pay the requisite Court fees thereon.

(v) In this regard, reliance has been placed on the judgments in **Dr. Zubair Ul Abidin & Ors Vs. Sameena Abidin @ Sameena Khan**, 2014 SCC OnLine Del 3575 (DB) [Special Leave Petition (Civil) No.369-370 preferred whereagainst was dismissed on 16th January, 2015] and **Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar**, MANU/SC/0016/1979.

10. Per contra, the senior counsel appearing on behalf of the plaintiffs has made the following submissions in respect of the contention that this Court does not have the territorial jurisdiction to entertain the present suit:

(i) This Court has the territorial jurisdiction to entertain the present suit as the present case is covered under the proviso to Section 16 of the CPC, as the reliefs claimed are capable of being enforced through personal obedience of the defendant no.1, who admittedly works for gain in Delhi. Reliance in this regard is placed on the judgment in **Shivnarayan (Dead) By Legal Representatives Vs. Maniklal (Dead) Through Legal Representatives and Ors.**, (2020) 11 SCC 629.

(ii) The present suit would be maintainable before this Court even if one of the suit properties falls within the territorial jurisdiction of this Court. In this regard reliance is placed on Section 17 of the CPC read with Section 39(1)(c) of the CPC.

(iii) Even otherwise, the present suit is maintainable before this Court as part of the cause of action has arisen in Delhi. Reliance in this regard is placed on Section 20 of the CPC. The cause of action for filing the present suit arises from siphoning off of funds from the bank accounts of defendant no.4 Company held in Delhi, siphoning off of the business of the defendant no.4 Company, which operates out of Delhi, and infringement/passing off the trademarks owned by the defendant no.4 Company, by adopting deceptively similar marks by the defendants at Delhi.

(iv) While considering the applications filed under Order VII Rule 10 and Order VII Rule 11 of the CPC, the plaint should be read in a holistic manner and reliance cannot be made on few selective paragraphs of the plaint.

11. In so far as the objections raised by the contesting defendants that the present suit is barred in terms of Section 430 of the Companies Act is concerned, it is submitted by the senior counsel for the plaintiffs that:

(i) The present suit raises issues in respect of the title of the suit properties. Under the Companies Act, the NCLT does not have the jurisdiction to grant declaratory reliefs in respect of immovable properties. Detailed evidence would be required to be lead in this regard. Reliance in this regard is placed on the judgment in ***Aruna Oswal Vs. Pankaj Oswal and Ors.***, (2020) 8 SCC 79.

(ii) The defendant no. 1 has been taking contradictory stands in various legal proceedings between the parties. In CS(OS) 682/2017, the defendant no. 1 has raised issues of the title of shares of the defendant no.4 Company, owned by the plaintiffs and the defendant no.7, before a Civil Court. Further, in the reply filed by the defendant no. 1 to the CP No. 227/2017, it has been claimed that the said petition is not maintainable as the same has been filed by majority shareholders.

(iii) Even if the company petition has been filed by the defendant no. 7, being a shareholder of defendant no.4 Company, before the NCLT, it cannot be a ground for other shareholders of the said Company, the plaintiffs herein, for not filing the present suit.

(iv) In the proceedings before the NCLT, no prayers have been sought in respect of the declaration of the title of the suit properties, damages for passing off and trademark infringement and, therefore, the scope of the present suit is different.

(v) Proceedings under Sections 241 and 242 of the Companies Act are primarily proceedings between the members of the Company and may extend to employees, directors and management of the said Company. Whereas, the reliefs in the present suit have been sought against various parties/defendants that are not parties before the NCLT.

(vi) There cannot be any partial rejection of the plaint. Either the plaint has to be rejected has a whole or there can be no rejection at all. Reliance in this regard is made on the judgment in ***Madhav Prasad Aggarwal and Anr. Vs. Axis Bank Limited And Anr.***,

(2019) 7 SCC 158 and **Roop Lal Sathi Vs. Nachhattar Singh Gill**, (1982) 3 SCC 487.

12. On the question of concealment and no cause of action arising, the senior counsel for the plaintiffs has made the following submissions:

(i) Objections with regard to concealment cannot be a ground for rejection of the plaint under Order VII Rule 11 of the CPC. This is without prejudice of the contention of the plaintiffs that there has been no concealment.

(ii) The cause of action for filing the present suit are subsequent facts, which either occurred at a later point of time or came to the knowledge of plaintiffs at a later point of time after filing of the petition before the NCLT.

(iii) The present suit is a derivative suit filed on behalf of the plaintiffs to protect the interests of the defendant no.4 Company. Reliance in this regard is placed on the judgment in **Starlight Real Estate (Ascot) Mauritius Limited & Anr. Vs. Jagrati Trade Services Private Limited & Ors.**, 2015 SCC OnLine Cal 6583.

13. On the question of the non-payment of Court fees, the senior counsel for the plaintiffs has made the following submissions:

(i) It has specifically been stated in the plaint that at this stage, the plaintiffs cannot assign a definitive value to the relief claimed. Further, the plaintiffs have undertaken to deposit Court fees as may be found payable upon the rendition of accounts. Reliance in this regard is placed on **Surinder Kaur and Ors. Vs. S. Rajdev Singh and Ors.** 2005 SCC OnLine Del 1130 and **Vijay Singh @ Bijender Singh Vs. Narinder Singh**, (2004) 112 DLT 644.

(ii) Since, the present suit is a derivative suit filed by the shareholders of the defendant no.4 Company, seeking reliefs for the benefit of the defendant no.4 Company, I.A. No. 746/2021 has been filed on behalf of the plaintiffs, seeking permission of using the monies lying in the bank accounts of the defendant no. 4 Company to pay the Court fees.

(iii) No reliance can be placed on the provisions of Order XII Rule 6 of CPC as the defendants have failed to file any application in this regard nor have they shown any admission on behalf of the plaintiffs.

14. In rejoinder, it has been submitted on behalf of the contesting defendants that:

(i) Rules 39 and Rule 52 of the NCLT Rules, 2016 provide for recording of evidence and cross-examination and thus, the issues arising in the present suit can be decided by the NCLT.

(ii) In the alternative, the suit can be rejected partially. Part rejection of the plaint is permissible if it can be shown if the reliefs claimed in the plaint are separable. The Court has the power to direct the plaintiffs to file an application under Order VI Rule 17 of CPC to amend the plaint in a manner that the reliefs, which are subject matter of proceedings before the NCLT and, hence, not maintainable before this Court, can be ordered to be removed. Hence, it is submitted that only prayers E, F, G and I, relating to trademarks, be maintained in the present suit and the prayers C, D and J, which are subject matter of the proceedings before the NCLT, be rejected.

(iii) Further, prayers A and B *qua* the properties located in Gurugram are also liable to be

rejected. Section 17 of the CPC is not applicable in respect of suits claiming the relief of possession.

(iv) In support of I.A. No. 746/2021 and prayer H, whereby, the plaintiffs seek a direction to the defendant no.4 Company, to pay amount of requisite Court fees, no provision of law has been cited on behalf of the plaintiffs.

15. I have considered the rival submissions made by the parties and the record of the suit.

16. At the outset, it is relevant to set out the prayers in the plaint with regard to the reliefs as prayed for in the present suit:

“In the facts and circumstances mentioned above, it is therefore most respectfully prayed that this Hon’ble Court be pleased to decree the present suit and grant the following reliefs:

A. Declare that the pecuniary advantage and assets identified to have been gained by the Contesting Defendants individually or severally by siphoning off the monies and/ or by diverting business from the Defendant No.4 Company and hence, are in law, the assets of the Defendant No. 4 Company, and consequential reliefs and/ or directions in relation thereof for bringing the siphoned monies and/or assets back to the fold of the Defendant No. 4 Company may be passed for, including but not limited to:

a. Plot No. 243P, Sector 38, admeasuring 420 square meters, Gurugram, Haryana purchased by Defendant No. 1 vide Sale Deed dated 20.06.2017 for an amount of INR 2,35,00,000/- (Rupees Two Crores Thirty Five Lakhs Only);

b. Entire 8th Floor, MPD Towers, DLF Phase V, Gurugram purchased by Defendant No. 1 vide Sale Deed 21.01.2018 for an amount of INR 15,38,37,500/- (Rupees Fifteen Crores Thirty Eight Lakhs Thirty Seven Thousand and Five Hundred Only);

c. Half portion of Ground Floor (North West Side), E-82A, Greater Kailash Part - I purchased by Defendant No. 1 vide Sale Deed dated 19.08.2019 for an amount of INR 1,58,00,000/- (Rupees One Crore Fifty Eight Lakhs Only);

B. Direct the Defendant No. 1 to hand over the possession of the following properties to the Defendant No. 4 Company:

a. Plot No. 243P, Sector 38, admeasuring 420 square meters, Gurugram, Haryana purchased by Defendant No. 1 vide Sale Deed dated 20.06.2017 for an amount of INR 2,35,00,000/- (Rupees Two Crores Thirty Five Lakhs Only);

b. Entire 8th Floor, MPD Towers, DLF Phase V, Gurugram purchased by Defendant No. 1 vide Sale Deed 21.01.2018 for an amount of INR 15,38,37,500/- (Rupees Fifteen Crores Thirty Eight Lakhs Thirty Seven Thousand and Five Hundred Only);

c. Half portion of Ground Floor (North West Side), E-82A, Greater Kailash Part - I purchased by Defendant No. 1 vide Sale Deed dated 19.08.2019 for an amount of INR 1,58,00,000/- (Rupees One Crore Fifty Eight Lakhs Only);

C. Grant permanent injunction restraining the Defendants No. 1, 2, 3, 5 and 6, its proprietors, partners, promoters, directors, servants, principal officers, dealers,

distributors, agents, franchisees and/ or any one acting for or on their behalf from running businesses relating to, akin to or similar to, the business of Defendant No. 4 directly or indirectly, whether managed, contributed and/ or owned by them being unauthorized and illegally, dishonestly and malafidely attempting to take advantage of the hard earned reputation and goodwill built and earned the Defendant No. 4;

D. Permanent injunction against the Contesting Defendants from continuing or carrying out the competing businesses directly or indirectly in contravention of their fiduciary duty to protect the interests of the company, and to return to the fold of the Defendant No.4, such diverted business;

E. Permanent injunction restraining the Defendants No. 1, 2, 3, 5 and 6, its proprietors, partners, promoters, directors, servants, principal officers, dealers, distributors, agents, franchisees and/ or any one acting for or on their behalf from using marks, tradenames, devices, brands which are identical or deceptively similar to or are a colourable imitation or substantial reproduction of the marks, tradenames, devices, brands owned by the Defendant No. 4 having all or some of the distinctive features which form an integral part of the registered trademark owned by the Defendant No. 4, for business other than that of the Defendant No. 4 which would otherwise amount to infringement of the Plaintiffs' statutory and common law rights;

F. Direct the Defendants No. 1, 2, 3, 5 and 6, its proprietors, partners, promoters, directors, servants, principal officers, dealers, distributors, agents, franchisees and/ or any one acting for or on their behalf to deliver all the infringing material bearing the marks, tradenames, devices, brands which are identical or deceptively similar to or are a colourable imitation or substantial reproduction of the marks, tradenames, devices, brands owned by the Defendant No. 4 having all or some of the distinctive features which form an integral part of the registered trademark, for business other than that of the Defendant No. 4;

G. Rendition of accounts in respect of businesses, relating to, akin to or similar to, the business of the Defendant No. 4 Company by using the tradename, brand name, goodwill of the Defendant No. 4 including the business being conducted at E-82A, Ground Floor and Basement, Greater Kailash Part - I, whether managed, contributed and/ or owned by the Defendants No. 1, 2, 3, 5, 6 directly or indirectly from 13.06.2017 by piercing the corporate veil of the Defendants No. 5 and 6 Companies and the other entities and the accounts of the profits earned by the Contesting Defendants by unauthorizedly and illegally dishonestly and malafidely attempting to take advantage of the hard earned reputation and goodwill built and earned the Defendant No.4 and decree of the amount so found due in favour of the Defendant No. 4 till date (including but not limited to all the Contesting Defendants and their held companies and proprietorships);

H. Mandatory injunction directing the Defendant No. 1 to facilitate along with the Defendant No. 7 (both being the only two directors of the Defendant No. 4 company) for the payment of the court fee payable in the present suit from the accounts of Defendant No. 4, as the suit has been filed for the benefit of the Defendant No. 4 Company.

I. Pass an order directing the Defendants No. 1, 2, 3, 5 and 6 to pay damages to the Defendant No. 4 company in light of the infringement and passing off committed by them

directly or indirectly;

J. Pass an order directing the Defendants No. 1, 2, 3, 5 and 6 to state on affidavit the list of the assets purchased by them during the period commencing from 13.06.2017 till date and the source of funds for the same;

K. Pass such other order/direction as deemed necessary in the facts of the present case and in the interest of justice.

L. Pass a decree for all the reliefs sought hereinabove.”

17. First, I propose to take up IA No. 2352/2021 filed on behalf of the defendant no.1 under Order VII Rule 10 of the CPC, seeking return of the plaint on the ground of lack of territorial jurisdiction of this Court to entertain the present suit.

18. As noted above, the contention of the contesting defendants is that at least two of the properties, in respect of which relief has been claimed in the present suit, are located in Gurugram, Haryana and the reliefs of declaration and possession in respect of the aforesaid properties cannot be granted by this Court.

19. It may be relevant to refer to the applicable provisions of the CPC with regard to territorial jurisdiction of a Court to entertain a suit, which read as under:

“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,

xxxx xxxx xxxx

(d) or the determination of any other right to or interest in immovable property,

xxxx xxxx xxxx

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.

Explanation. —In this section “property” means property situate in 1[India].

17. Suits for immovable property situate within jurisdiction of different Courts. —*Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.*

xxxx xxxx xxxx

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—

XXXX XXXX XXXX

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

20. Undoubtedly, two of the properties in respect of which the reliefs have been claimed in the plaint are situated in Gurugram, Haryana. The reliefs claimed in respect of the said properties are that of a declaration (prayer A) and a direction to the defendant no.1 to hand over possession of the aforesaid properties (prayer B). In terms of Section 16 of the CPC, the general rule is that where a relief has been sought in respect of a right or an interest in an immovable property, the suit would have to be filed in a Court in whose jurisdiction the said properties are located. However, an exception is provided to the aforesaid rule under the proviso to Section 16 of the CPC. Where a relief is sought in the plaint in respect of an immovable property, and which relief can be entirely obtained through the personal obedience of a defendant, the suit can be instituted in the Court within whose jurisdiction the said defendant resides or works for gain. Section 17 of the CPC is also in the nature of an exception to the provisions of Section 16 of the CPC and specifically provides that where in a suit, reliefs are sought in respect of one or more immovable properties that are located within the jurisdiction of different courts, the plaintiff may file a suit in any of the courts within whose jurisdiction any portion of the property is situated.

21. In the present case, the plaintiffs have sought a specific direction to the defendant no.1 in prayer B to hand over possession of the immovable properties. Therefore, a relief has been sought that can entirely be obtained through the personal obedience of the defendant no.1. Clearly, this is covered under the proviso to Section 16 of the CPC, as admittedly, the defendant no.1 resides and works for gain within the territorial jurisdiction of this Court.

22. Furthermore, one of the properties in respect of which the reliefs have been claimed in the present suit, is located in Greater Kailash, Part-I, Delhi, which lies within the territorial jurisdiction of this Court. Therefore, in terms of Section 17 of CPC, the present suit has been validly instituted before this Court. In this regard, reference may be made to the observations of the Supreme Court in ***Shivnarayan (Deceased) By Lrs.*** (supra), as relied upon by the plaintiffs, with regard to Sections 16 and 17 of the CPC, which are set out as under:

“33. Sections 16 and 17 CPC are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16.

34. From the foregoing discussions, we arrive at the following conclusions with regard to ambit and scope of Section 17 CPC:

34.1. The word “property” occurring in Section 17 although has been used in “singular” but by virtue of Section 13 of the General Clauses Act it may also be read as “plural” i.e. “properties”.

34.2. The expression “any portion of the property” can be read as portion of one

or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

34.3. A suit in respect of immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

34.4. A suit in respect of more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.”

23. To arrive at the aforesaid conclusion, the Supreme Court relied upon the provisions of Section 39(1)(c) of the CPC, which provides for transfer of a decree. Paragraph 27 of the aforesaid judgment, which deals with the aforesaid aspect may also be referred to:

“27*. Now, we come to the submission of the learned counsel for the appellant based on Section 39 sub-section (1)(c) CPC. It is submitted that Section 39(1)(c) CPC is also a pointer to what is intended in Section 17. **The scheme as delineated by Section 39 indicates that when a decree is passed by a court with regard to sale or delivery of immovable property situated outside the local limits of the jurisdiction of that court it may transfer the decree for execution to another court.** The provision clearly indicates that a decree of court may include immovable property situate in local limits of that court as well as property situated outside the local limits of the jurisdiction of the court. Section 39(1)(c) reinforces our conclusion that as per Section 17 suit may be filed with regard to immovable property situated outside the local limit of the jurisdiction of the court. We may, however, add that passing a decree by a court with regard to immovable property situate outside the local jurisdiction of the court passing the decree may not only confine to Section 17 but there may be other circumstances where such decree is passed. Section 20 CPC may be one of the circumstances where decree can be passed against the defendant whose property may situate in local jurisdiction of local limits of more than one court.”

24. The counsel for the defendants has placed reliance on the judgment of the Supreme Court in **Harshad Chiman Lal Modi** (supra), to contend that the proviso to Section 16 of the CPC cannot be interpreted so as to enlarge the scope of main provisions of Section 16.

25. There is no quarrel with the proposition of law that a proviso cannot be given a wide interpretation so as to the defeat the main provisions. However, it has specifically been noted in **Harshad Chiman Lal Modi** (supra) that the proviso would apply, if the relief sought in the suit can be obtained through the personal obedience of the defendant. In fact, in the same judgment in paragraph 13, the Supreme Court has specifically noted that Section 17 of the CPC supplements Section 16 of the CPC and in effect is another proviso to Section 16.

26. The only contention made by the counsel for the contesting defendants in this regard is that Section 17 of the CPC inherently cannot apply in suits for possession. In my view, there is no basis for said contention and the same is rejected.

27. The counsel for the contesting defendants has also placed reliance on the judgment of the Division Bench of this Court in *Vipul Infrastructure Developers Ltd.* (supra) [Special Leave Petition (Civil) No.10169-10171/2008 preferred whereagainst is pending] to contend that passing of a decree of possession would necessarily involve delivering possession of the said property to the plaintiffs and if the said property is located outside the jurisdiction of the Court, the proviso to Section 16 of the CPC would not be applicable.

28. In my view, the aforesaid judgment is not applicable to the facts and circumstances of the present case as the aforesaid observations were made by the Division Bench in the context of a suit, where the relief of specific performance of the contract was sought. In the present case, as is evident from the prayer B, in the plaint, the plaintiffs have sought a specific direction, whereby the defendant no.1 be directed to hand over possession of the suit properties. In the event that the decree is required to be executed, as per the provisions of the Section 39(1)(c) of the CPC, the said decree may be transferred to the competent courts in Gurugram, Haryana for execution.

29. At this stage, while deciding an application under Order VII Rule 10 of the CPC, the Court has only to see the averments made in the plaint and, therefore, in light of the averments made in the plaint, in my view, the proviso to Section 16 of the CPC and Section 17 of the CPC would be applicable to the present case.

30. In any event, there can be no denial of the fact that the provision of Section 17 of the CPC is applicable to the facts and circumstances of the case, as one of the properties in which relief is sought is situated within the jurisdiction of this Court.

31. Besides prayers A and B, there are other prayers made in the suit. It may also be noted that it is not the case of the contesting defendants that the prayers not relating to the suit properties, i.e. prayers C onwards, lie outside the territorial jurisdiction of this Court.

32. Therefore, the contesting defendants have failed to make out a case for the return of the plaint under Order VII Rule 10 of the CPC.

33. Next, I proceed to consider I.A No. 4637/2021 preferred on behalf of the defendant no. 1 under Order VII Rule 11 of the CPC.

34. The first ground taken by the contesting defendants for rejection of the plaint is that under Order VII Rule 11(d) that the plaint is barred by Section 430 of the Companies Act. In this regard, it has been contended on behalf of the contesting defendants that most of the reliefs sought under the present plaint lie within the domain of the NCLT under Sections 241 and 242 of the Companies Act and, therefore, in terms of the bar under Section 430 of the Companies Act, this Court is debarred from granting such reliefs. In fact, a Company Petition bearing CP No. 227/2017 has already been filed before the NCLT by the defendant no.7, who is acting in concert with the plaintiffs herein. In this regard, prayers A, C, D, and J are those prayers in respect of which, the contesting defendants have contended that the jurisdiction of this Court is barred.

1430. Civil court not to have jurisdiction.— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for

the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

35. At this stage, it is deemed prudent to reproduce the reliefs as prayed for in the Company Petition bearing CP No.227/2017 as follows:

“75. In the facts and circumstances of the present case, the Petitioner respectfully pray that this Hon'ble Board be pleased to:

A. Declare that all actions done by Dr. Suraj Munjal as stated in Paras 50 - 58 during his tenure as a director are oppressive against the Petitioner and other shareholders and amount to mismanagement of the Respondent No. 1 Company under Section 241 and 242 of the Companies Act, 2013 and hence, be declared as void and legal;

B. Declare that action of Dr. Suraj Munjal and Mr. Dayashanker Sharma of running a business of a similar nature to that of the Respondent No. 1 Company as oppressive and amounting to mismanagement;

C. Pass an injunction directing calling of a board meeting to decide on the requisition received by the board from Respondent No. 5;

D. Pass an Injunction directing that all the revenues collected by SpectraRC Medicare Private Limited since its incorporation be brought to the account of the Respondent No. 1 Company;

E. Pass an injunction against the Company from allowing and recording any change in the shareholding of the Company;

F. Frame a scheme for the managing and controlling the Company and for running its operations, by excluding Dr. Suraj Munjal;

G. Set aside the transfer of INR 20,00,000/- transferred from the bank account of the Respondent No. 1 Company to Respondent No. 2. and declare that the said act was fraudulent and detrimental to the Company;

H. Pass a direction that the acceptance of the resignation of various employees of the Respondent No.1 Company by the Respondent No.2 (if any), is illegal;

I. Pass a direction that the issuance of the offer letter and its consequent acceptance by the relevant of various employees of the Respondent No.1 Company by the Respondent No.2, is illegal;”

36. Insofar as reliefs A and B claimed in the present suit are concerned, the plaintiffs seek declaratory relief that the immovable properties purchased on account of siphoning off of monies from the defendant no.4 Company by the defendant no.1, should be declared as assets of the defendant no.4 Company and possession thereof be handed over to the defendant no.4 Company.

37. In my considered view, the aforesaid reliefs are beyond the scope of a petition filed under Sections 241 and 242 of the Companies Act. The determination of the aforesaid issues would require detailed evidence. In fact, as observed from a perusal of the reliefs

sought in the Company Petition bearing CP No.227/2017, no such reliefs have been claimed as a part of the company petition.

38. In this regard, the senior counsel for the plaintiffs has correctly relied upon the decision of the Supreme Court in **Aruna Oswal** (supra), wherein it has been observed that question of right, title and interest is essentially a question of civil rights between the parties and can only be decided in a civil suit. The relevant observations of the Supreme Court in paragraphs 29 and 31 are reproduced below:

“29. It is also not disputed that the High Court in the pending civil suit passed an order maintaining the status quo concerning shareholding and other properties. Because of the status quo order, shares have to be held in the name of Mrs Aruna Oswal until the suit is finally decided. It would not be appropriate given the order passed by the civil court to treat the shareholding in the name of Respondent 1 by NCLT before ownership rights are finally decided in the civil suit, and propriety also demands it. The question of right, title, and interest is essentially adjudication of civil rights between the parties, as to the effect of the nomination decision in a civil suit is going to govern the parties' rights. It would not be appropriate to entertain these parallel proceedings and give waiver as claimed under Section 244 before the civil suit's decision. Respondent 1 had himself chosen to avail the remedy of the civil suit, as such filing of an application under Sections 241 and 242 after that is nothing but an afterthought.

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31. We refrain to decide the question finally in these proceedings concerning the effect of nomination, as it being a civil dispute, cannot be decided in these proceedings and the decision may jeopardise parties' rights and interest in the civil suit. With regard to the dispute as to right, title, and interest in the securities, the finding of the civil Court is going to be final and conclusive and binding on parties. The decision of such a question has to be eschewed in instant proceedings. It would not be appropriate, in the facts and circumstances of the case, to grant a waiver to the respondent of the requirement under the proviso to section 244 of the Act, as ordered by the NCLAT.”

39. The reliance of the contesting defendants on the judgment in **The Delhi & District Cricket Association** (supra) is misplaced as the said case was concerned with the appointment of an ombudsman, which formed a part of the conduct and management of the affairs of the company, and therefore, the jurisdiction of the Civil Court was held to be barred in the said case.

40. Admittedly, some of the reliefs claimed in the plaint, which pertain to enforcement of intellectual property rights, namely prayers E, F, G, and I can only be granted by a Civil Court and cannot be a subject matter of proceedings under the Companies Act, even as per the contesting defendants.

41. Even if the contention of the contesting defendants is accepted that there is similarity of reliefs sought under prayers C and D in the present suit with the relief sought under the Company Petition bearing CP No.227/2017, whereby the defendants are sought to

be enjoined from continuing or carrying out the competing businesses, it may be relevant to note that the defendants no.5 and 6, in respect of whom the present reliefs are sought, were not parties to the proceedings before the NCLT. Furthermore, in my view, there cannot be a partial rejection of a suit under the provisions of Order VII Rule 11 of the CPC. Reference in this regard may be made to the observations of the Supreme Court in **Madhav Prasad Aggarwal & Anr.** (supra), relevant paragraphs whereof are set out below:

*“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). **In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.***

11. In view of this settled legal position we may now turn to the nature of reliefs claimed by Respondent 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant, Respondent 1 herein. No more and no less.

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. **In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate**

stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

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14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by Respondent 1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief "cannot be entertained" in exercise of power under Order 7 Rule 11 (d) CPC. That power is limited to rejection of the plaint as a whole or not at all."

42. Though, the contesting defendants have relied upon various judgments in support of the contention that the partial rejection of the plaint is permissible, in view of the categorical observations of the Apex Court in **Madhav Prasad Aggarwal and Anr.** (supra), no reliance can be placed on the said judgments.

43. In any event, the proceedings before the NCLT had been instituted by the defendant no.7 and not by the plaintiffs herein. Just because one of the shareholders has chosen to invoke their grievance under the provisions of the Companies Act, cannot imply that another shareholder with similar grievance cannot invoke their grievance before a Civil Court, if the jurisdiction of the Civil Court is otherwise made out.

44. In respect of the contention of the contesting defendants that the present suit, filed as a derivative suit, is not maintainable as the plaintiffs are majority shareholders in the defendant no. 4 Company, it may be relevant to note that a derivative action on behalf of a company is filed to redress a wrong done to a company by the persons in control of the company. In the normal circumstances, the company itself would have filed a suit, but is unable to do so on account of the wrong doers being in control of the company. Therefore, the concept of derivative action was derived by courts in the United States of America, where shareholders/persons file an action to redress or undo the wrong done to the company, on behalf of the company. Therefore, in reality, company is the actual plaintiff. It cannot be said that the present action is not maintainable in this regard because the plaintiffs are majority shareholders in the defendant no.4 Company. In this regard, it may be relevant to refer to the observations made by the High Court of Calcutta in **Starlight Real Estate (Ascot) Mauritius Limited** (supra):

"23. While making an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 a defendant has to show that the plaint filed in the suit and the statements contained therein are clearly barred by law. In the instant case, the defendant no.1 has not been able to show the same. There is no law which bars a suit like the instant suit. There is no bar in the majority shareholders of a company filing a suit to protect the interest of the company by joining the company as a proforma defendant, particularly when the directors on record of the company are the persons who are acting contrary to the interest of the company. None of the decisions relied on behalf of the defendant no.1 says that a suit like the instant suit is barred by law. Such decisions at best say that ordinarily when such a suit is filed, it can be filed with the company as one of the plaintiffs. Such decisions say that the suit has to be for the benefit of the company and not against

the company...”

45. The contesting defendants have further urged that since the suit is based on the alleged siphoning off of funds by the defendants, the relief sought, at best, can only be to recover the aforesaid alleged siphoned off funds and no relief lies *qua* the properties that were allegedly purchased by the defendants. In my opinion, whether the reliefs, in terms of prayers A and B *qua* the properties, allegedly purchased from the siphoned off funds, can be granted or not cannot be the basis of rejection of plaint under Order VII Rule 11 of the CPC. The Court has ample powers to mould reliefs at the time of passing the final judgment and whether the reliefs as claimed in the plaint can be granted or not cannot be determined at this stage.

46. It has been vehemently contended on behalf of the contesting defendants that the factum of the filing of C.A. No. 147/2020 by the defendant no.7 has been suppressed by the plaintiffs. As regards the alleged suppression/concealment on behalf of the plaintiffs, in the said application, interim reliefs against the respondents therein have been sought to restrain them from carrying on competing business. However, no declaratory reliefs in respect of the title of the suit properties and reliefs based on intellectual property rights have been sought. The proceedings before the NCLT and the order dated 4th October, 2017 have been duly disclosed by the plaintiffs in the plaint. In this regard, reference may be made to the documents filed by the plaintiffs, of which the company petition being CP No. 227/2017 forms a part. The judgment in **Vikram Jairath** (supra) is not applicable to the facts and circumstances of the present case, as in the said case the plaintiffs therein had suppressed the fact that they also instituted proceedings before the NCLT. In any event, concealment by itself cannot be a ground for rejection of the plaint under the provisions of Order VII Rule 11 of the CPC.

47. As regards the objections taken by the contesting defendants that the suit has not been valued properly for the purposes of Court fees, the plaintiffs have rightly placed reliance on the judgment in **Surinder Kaur** (supra), which was rendered while determining an application under Order VII Rule 11 of the CPC, seeking dismissal of the suit for the rendition of accounts upon deficiency in Court Fees. Relevant portions of the said judgment are reproduced below:

*“18. On the other hand, the learned counsel appearing for the plaintiffs while relying upon the cases of M/s. Commercial Aviation and Travel Company and others v. Mrs. Vimla Pannalal, AIR 1988 SC 1636 and Bombay Ammonia Pvt. Ltd. (supra) contended that it is only a fond hope of the plaintiffs that an amount of even more than Rs. 50 crores may be due to the plaintiffs upon correct rendition of accounts by the defendants. There is no arbitrariness and the plaintiff's claim would be covered under Rule 4, the provisions of Section 7 (4) of the Court Fee Act and the exception to the Rule of the Suit being valued identically for the purposes of court fee and jurisdiction. The principle of law cited on either side can hardly be a matter of dispute. **The plaintiffs cannot act arbitrarily in valuing the suit for the purposes of court fee and jurisdiction. Wherever the suit for rendition of accounts is filed and it is not practically probable for the plaintiff to exactly value the suit for the purposes of court fee and jurisdiction, he can avail of the benefit of payment of fixed court fee with an undertaking to make up the deficiency in payment of court fee, once the accounts are settled and a definite***

amount is determined by the court, which the plaintiff would be entitled to receive. The application of the plaintiff to pay court fee on that amount can fully be protected by decree being subject to payment of court fee at that stage, of course, limited in such suits.

19. In the present case, the reference to Rs. 40 or 50 crores firstly relates only to renovation and furnishing of the hotel and does not even on the bare reading of the plaint, reflect to be the entire value of the assets and accounts of the partnership or as a true and correct depiction of the settled account or share of an individual partner. The figure arrived at by the plaintiffs should be definite and essentially must be based upon such determining factors which *ex facie* indicate an acceptable value of the assets of the partnership and its business, including all its aspect. **Merely because some figure has been indicated in the pleadings or correspondence exchanged between the parties in regard to renovation and furnishing of the hotel, would not determine the complete settled accounts of the partnership so as to make the plaintiffs liable to pay the ad valorem court fee on the fond hope or an estimated figure. The plaintiffs would obviously be liable to pay the court fee on final determination arrived at by the court upon true and correct rendition of accounts, as admittedly the defendants are carrying on the business, though their pleading is that the partnership has already been dissolved.**”

To similar effect is the judgment of this Court in **Vijay Singh** (supra).

48. It has been specifically stated by the plaintiffs in paragraphs 82 and 83 of the plaint that at this stage, the plaintiffs are able to assign a only an estimated value to the said relief and they undertake to deposit such further Court fees, as may be payable, upon rendition of accounts. The said paragraphs 82 and 83 of the plaint are reproduced as follows:

“82. That the above valuation has been done on the basis of an estimate available with the Plaintiffs on the basis of the limited documents available with respect to the Defendant No. 4. Hence, the Plaintiffs seek liberty of this Hon'ble Court to update and amend the valuation, when deemed necessary. Further, the Plaintiffs has filed court fees of INR 2,00,000/- (Rupees Two Lakhs Only). Since, the present suit is a derivative suit, permission is being sought to seek payment of the total court fees (including the balance) from the accounts of the Defendant No. 4 (which has sufficient funds to meet the said due). Furthermore, the Plaintiffs undertake to deposit such court fees, as directed by this Hon'ble Court to be paid in respect of the reliefs being sought in the present suit.

83. That the Plaintiffs have sought for reliefs having value of a cumulative sum of Rs.19,31,39,500/- (Rupees Nineteen Crores Thirty One Lakhs Thirty Nine Thousand and Five Hundred Only) and hence, this Hon'ble Court has pecuniary jurisdiction to try this suit. Further, it is submitted that the documents annexed with the present suit are the true copies of their original.”

49. Furthermore, one of the prayers in the present suit, prayer H, is for directing the defendant no.1 to facilitate, along with the defendant no.7, the payment of the Court fees payable in the present suit from the accounts of defendant No.4 Company, as the suit has been filed for the benefit of the Defendant No. 4 Company.

50. The plaintiffs in the present case have sought for reliefs having value of a cumulative sum of Rs.19,31,39,500/-. Further, the plaintiffs have filed Court fees of Rs.2,00,000/-. In the opinion of this Court, even though the plaintiffs have given a tentative value of Rs.50,00,00,000/- in the plaint, that is only an estimate and cannot be a basis for the plaintiffs to be asked to pay *ad valorem* Court fees on the said figure. Since in the present case also, the plaintiffs have already given an estimate, they can avail the benefit the making up the deficiency once the accounts are settled and the amount is determined. In this regard, the contesting defendants' reliance placed on the provisions of Order XII Rule 6 of the CPC is misplaced as there is no clear-cut admission on behalf of the plaintiffs. The above valuation has been done on the basis of an estimate available with the plaintiffs on the basis of the limited documents available with respect to the defendant No.4 Company. Furthermore, the plaintiffs have undertaken to deposit such Court fees, as be directed by this Court to be paid in respect of the reliefs being sought in the present suit. Thus, the plaintiffs would only be liable to pay the Court fees upon the final determination that is arrived by the Court, of the amounts payable after rendition of accounts.

51. The judgment in ***Dr. Zubair Ul Abidin & Ors.*** (supra) cited on behalf of the contesting defendants was in the context of the plaintiff not paying Court Fees on the estimated amount of damages in the suit. The same was not in the context of Court Fees payable on the relief of rendition of accounts and, therefore, it has no relevance in the facts and circumstances of the present case. In ***Meenakshisundaram Chettiar*** (supra), as relied upon by the contesting defendants, the Supreme Court observed that if the Court comes to the conclusion that the plaintiff has undervalued the suit, the same can be rejected under Order VII Rule 11 of the CPC. Upon applying the principles of ***Meenakshisundaram Chettiar*** (supra) and on a consideration of the entire circumstances of the case, I do not find that the estimate of the relief as given by the plaintiffs is inadequate or unreasonable or a deliberate under-estimation.

52. Note also has to be taken of the application being I.A. No. 746/2021, in terms of which the plaintiffs have sought a direction that since the present suit is a derivative suit filed for the benefit of the defendant no. 4 Company, the defendant no. 4 Company should be directed to pay the requisite Court fees. Notice in this application has been issued on 15th January, 2021. The defendants no.1 to 6 are yet to file replies to the said application.

53. In my view, till the time I.A. No. 746/2021 is decided, the present suit cannot be rejected under the provisions of Order VII Rule 11 of CPC on account of deficiency of Court fees.

54. In light of the aforesaid observations, I do not find any merit in I.A. No. 2352/2021 and I.A. No. 4637/2021 and the same are dismissed.

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55. List the present suit along with the pending applications on 29th July, 2022.