M/S. Frost International Ltd. vs M/S. Milan Developers And Builders (P) ... on 1 April, 2022

Author: B.V. Nagarathna

Bench: B.V. Nagarathna, M.R. Shah

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1689 OF 2022

M/S FROST INTERNATIONAL LIMITED APPELLANT(S)

VERSUS

M/S MILAN DEVELOPERS AND
BUILDERS (P) LIMITED & ANR. RESPONDENT(S)

JUDGMENT

NAGARATHNA J.

1. This appeal is preferred by defendant no.1 in C.S. No.1065 of 2009 filed before the Court of Civil Judge (Senior Division) Bhubaneswar, by assailing order dated 19 th January, 2016 passed by the High Court of Orissa at Cuttack in WP(C) No.7059 of 2013. By the said order, the application filed by the appellant herein/defendant no.1 under Order VII Rule 11 of the Code of Civil Procedure 1908 (for short, the 'CPC') has been ordered to be reconsidered by the District Court at Khurda, Bhubaneswar (revisional court) by restoring C.R.P. No.5 of 2012 filed by the defendant no.1 herein. The said revision was filed by defendant no.1 being aggrieved by the dismissal of the said application being C.S. No.1065 of 2009 by the trial court, namely, the Court of Civil Judge (Senior Division), Bhubaneswar, praying for rejection of the plaint under Order VII Rule 11 of the CPC.

2. For the sake of convenience, the parties herein shall be referred to in terms of their rank and status before the trial court.

3. Briefly stated, the facts of the case are that, respondent no.1 herein/plaintiff had filed a suit against the appellant herein/defendant no.1 and respondent no.2 herein/defendant no.2 seeking the following reliefs:

> "(i) Let it be declared that the plaintiff had handed over the cheque to Sri Dilip Das, Advocate as a security;
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> (ii) Let it be declared that the said cheque has been illegally handed over by the defendant no.2 to the defendant no.1 by violating term and condition of the memorandum of understanding dated 17.01.2009;
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> (iii) Let it be declared that the plaintiff is not liable to give delivery of 3876 MT of iron ore fines to the defendant no.1 nor the cheque amount since the defendant no.1 has failed to save the plaintiff's plot from cancellation;
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> (iv) Let the cost of the suit be decreed in favour of the plaintiff and against the defendants;
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> (v) Let any other decree/decrees be passed in favour of the plaintiff to which the plaintiff is entitled to under law and equity."

4. According to the plaintiff, which is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956, it is engaged in the business of export of iron ore from Paradeep Port while defendant no.1 is also a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Kanpur, Uttar Pradesh, and also having its Branch at Kolkata in West Bengal. Defendant no.1 carries on business at Paradeep Port, Orissa in supplying and exporting iron ore from the said Port to various destinations overseas. That plaintiff had a plot namely Plot No.RS□4 on licence from Paradeep Port Trust Authority for the purpose of its export business in iron ore. That defendant no.1 and the plaintiff had entered into a Cooperation Agreement on 24 th December, 2007 but according to the plaintiff, the same was not given effect to. That defendant no.1, through its Managing Director Sunil Banna, tried to blackmail the plaintiff in various ways and threatened him that he would intimate Paradeep Port Trust Authority that the plaintiff had sub□let his licence in respect of Plot No.RS□4 to defendant no.1 by violating the terms and conditions of licence.

According to the plaintiff, defendant no.1 in January 2009 stated that plaintiff had illegally exported stock of 4000 MT of iron ore and when the plaintiff through its Managing Director refuted the claim of defendant no.1, a complaint was lodged at Paradeep Police Station on 8th January, 2009 and thereafter, on 10th January, 2009 alleging theft of 4000 MT iron ore fines belonging to defendant no.1.

According to the plaintiff, defendant no.1 lodged another false complaint with the Paradeep Port Trust Authority to the effect that the plaintiff was violating the terms and conditions of his licence in respect of Plot No.RS□4 which had been sub□let to defendant no.1 and a copy of the Cooperation

Agreement dated 24th December, 2007 which was in fact not acted upon was also filed along with complaint. Acting on the said complaint, Paradeep Port Trust Authority had issued show cause notice to the plaintiff on 20th January, 2009 and thereafter, cancelled the licence of the plaintiff vis□a□vis Plot No.RS□4 by letter dated 18 th February, 2009.

5. Being apprehensive of the cancellation of the licence to Plot No.RS□4, the Managing Director of the plaintiff Company agreed to the proposal of the representative of defendant no.1 viz., Rabindra Banthia, that in case plaintiff agreed to supply 3876 MT of iron ore fines to defendant no.1, they would manage to withdraw their complaint and would save the licence of the plot from cancellation.

6. That in January, 2009, plaintiff had outstanding dues of Rs.21.50 lakhs against defendant no.1 and at the behest of defendant no.2, a Memorandum of Understanding (for short, 'MoU') was arrived at on 17th January, 2009 on certain terms and conditions that defendant no.1 would take steps to protect the licence of the plot given to the plaintiff from cancellation in seven days' time and it was further agreed that defendant no.1 would give a cheque of Rs.21.50 lakhs to the plaintiff towards the outstanding dues to the plaintiff. Similarly, the plaintiff would issue a cheque for Rs.56 lakhs in favour of defendant no.1 and the same would remain in the custody of Sri Dilip Das, Advocate □defendant no.2 as security, which is equivalent to the cost of 3876 MT of iron ore. The plaintiff would supply 3786 MT of iron ore fines to defendant no.1 if defendant no.1 succeeded in protecting the licence of the said plot of the plaintiff from being cancelled. Accordingly, plaintiff furnished a cheque for Rs.56 lakhs in favour of defendant no.1 and handed over the same to Sri Dilip Das, Advocate □defendant no.2 in the suit, as security. Defendant no.2 wrote a letter to the Managing Director of the plaintiff on 20th January, 2009 intimating therein that both cheques would be in his custody and the cheque drawn by the plaintiff amounting to Rs.56 lakhs would not be handed over to defendant no.1 unless defendant no.1 fulfilled its undertaking as per the MoU dated 17th January, 2009. Further, the cheque would be handed over to defendant no.1 only when the plot licence of the plaintiff was saved from cancellation by defendant no.1 and if the plaintiff failed to supply the iron ore to defendant no.1.

7. According to the plaintiff, defendant no.1 did not take any step to save the licence of the plot of the plaintiff from cancellation and the licence was cancelled on the complaint of defendant no.1 by letter dated 18 th February, 2009 by the Paradeep Port Trust Authority. According to the plaintiff, the question of handing over the cheque to defendant no.1 by defendant no.2 did not arise at all. Plaintiff had approached the High Court in a writ petition vis□a□vis the cancellation of the licence in respect of the plot and an order of stay on the cancellation was granted.

It is the further case of the plaintiff that when the matter stood thus, defendants no.1 and 2 colluded with each other and defendant no.2 committed breach of trust and betrayed the plaintiff as the cheque for Rs.56 lakhs was handed over by defendant no.2 to defendant no.1. On receipt of the cheque, defendant no.1 pressurized the plaintiff to either supply 3876 MT iron ore fines or they would present the cheque for encashment. Since the plaintiff did not agree to supply iron ore, defendant no.1 presented the cheque for encashment but the same was dishonoured as the plaintiff had issued stop payment instructions to the Bank on coming to know about the collusion between defendant no.1 and defendant no.2. Thereafter, defendant no.1 issued notice under Section 138 of

the Negotiable Instruments Act, 1881 (for short, the 'N.I. Act') through their advocate on 10th June, 2009 to the plaintiff through its Managing Director, to which a reply was sent on 23 rd June, 2009. It was, inter alia, stated in the reply that the defendants were trying to harass the plaintiff and having no other alternative, the plaintiff filed the suit seeking a declaration that the cheque which was dishonoured was handed over by the plaintiff to defendant no.2 as a security and that defendant no.1 had not acquired any right over the said cheque as the plaintiff had no liability to discharge vis□ à□vis defendant no.1. It was averred in the plaint that defendant no.1 was liable to pay a sum of Rs.21.50 lakhs to the plaintiff towards its outstanding dues for which a cheque was issued on 17th January, 2009 which was also kept with defendant no.2 and in respect of which the plaintiff reserved its right to initiate appropriate proceeding for recovery of the said amount from defendant no.1. There were further correspondences between the parties and ultimately the aforementioned suit was filed by the plaintiff against the defendants.

8. On receipt of the summons sent by the trial court, defendant no.1 appeared and filed an application under Order VII Rule 11 of CPC seeking rejection of the plaint on the ground that the suit was not maintainable being barred under the provisions of the Specific Relief Act, 1963 (for short, the 'SR Act') and secondly, the suit was frivolous and instituted as a subterfuge to defeat the legitimate claim of defendant no.1 without having any right to sue. Objection was filed to the said application by the plaintiff. The said application was considered by the trial court and dismissed by refusing to reject the plaint.

9. Being aggrieved, defendant no.1 preferred C.R.P. No.5 of 2012 before the Court of District Judge, Khurda at Bhubaneswar under Section 115 of the CPC. By order dated 20 th March, 2013, the revisional court allowed the said revision petition, set aside the order of the trial court refusing to reject the plaint, and rejected the plaint. Being aggrieved, the plaintiff filed W.P.(C) No.7059 of 2013 before the High Court of Orissa at Cuttack which set aside the order of the revisional court and remanded the matter to the said court for fresh consideration by holding that the revisional court had exceeded its jurisdiction in rejecting the plaint. Being dissatisfied with the order of the High Court defendant no.1 has preferred this appeal.

10. We have heard Mrs. Rajdipa Behura, learned counsel for the appellant and Sri Anirudh Sanganeria, learned counsel for the respondents and perused the material on record.

11. Learned counsel for the appellant submitted that the High Court was not right in setting aside the order passed by the revisional court and remanding the matter to the said court for reconsideration of the application filed by the appellant under Order VII Rule 11 of CPC on the premise that revisional court had exceeded its jurisdiction. It was contended that the application under Order VII Rule 11 of the CPC was filed by the appellant/defendant no.1 in the suit filed by respondent no.1/plaintiff seeking rejection of the plaint on the ground that the prayers sought in the suit could not have been granted and the suit as such was not maintainable and was barred under the provision of Section 41 of the SR Act. Further there was no cause of action for the plaintiff to file the suit against the defendants. The trial court did not appreciate the reasons as to why an application was filed by defendant no.1 seeking rejection of the plaint and dismissed the same. Being aggrieved the appellant/defendant no.1 filed revision petition in C.R.P. No.5 of 2012 before the

District Court having regard to Section 115 of the CPC and particularly proviso thereto as, if the application filed by defendant no.1 under Order VII Rule 11 of CPC was to be allowed by the revisional court, then, the proceedings before the trial court would conclude. The revisional court rightly appreciated the case of appellant herein and rejected the plaint. However, the High Court on a writ petition filed by the plaintiff held that the revisional court while exercising its power of revision had exceeded its jurisdiction by rejecting the plaint instead of remanding the matter to the trial court to do so. While adverting to Section 115 of the CPC [vide Orissa Act 26 of 1991, Section 2 (w.e.f. 7th November, 1991)], learned counsel for the appellant contended that when the trial court failed to exercise jurisdiction vested in it and refused to reject the plaint by allowing the application filed under Order VII Rule 11 of the CPC by the appellant herein, the revisional court rightly allowed the said revision and rejected the plaint which finally disposed of the suit in terms of the second proviso to the said Section. It was contended that the High Court has not taken into consideration the Orissa amendment and has further misconstrued the object and import of Section 115 of the CPC vis□a□vis the provisions of the revisional court and has erroneously set aside the order of the revisional court rejecting the plaint and remanding the matter to the revisional court for fresh consideration.

12. Drawing our attention to the order of the High Court, it was contended that the said order is contrary to Section 115 of CPC (Orissa amendment) and hence the impugned order may be set aside and the order of the revisional authority may be restored. It was contended by learned counsel for the appellant that as against the order of the revisional authority rejecting the plaint, respondent no.1 herein/plaintiff could not have filed a writ petition.

13. Per contra, learned counsel for respondent no.1/plaintiff supported the impugned order passed by the High Court and contended that when a plaint is rejected by allowing an application filed under Order VII Rule 11 of CPC, it results in a decree being passed within the meaning of Section 2(2) of the CPC and hence the High Court directed the revisional court to consider the matter afresh and if necessary, to remand the matter to the trial court for considering the aspect regarding rejection of plaint. Learned counsel for respondent no.1/plaintiff contended that there is no merit in this appeal and the same may be dismissed.

14. Having heard learned counsel for the respective parties the following points would arise for our consideration:

> (a) Whether the High Court was justified in setting aside the order passed by the revisional court in C.R.P. No.5 of 2012 and thereby remanding the matter to the said court for reconsideration on the premise that the revisional court had exceeded its jurisdiction in rejecting the plaint?
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> (b) What order?

The reliefs sought by the plaintiff in the suit have been extracted above.

15. Having regard to the averments in the plaint summarised above and the reliefs sought in the plaint, defendant no.1/appellant herein filed an application under Order VII and Rule 11 of CPC seeking rejection of the plaint. The rejection of the plaint was sought for three reasons :□firstly, the suit was barred under the provisions of the SR Act; secondly, the suit was frivolous and was filed as a subterfuge to defeat the legitimate claim of defendant no.1; and thirdly, the suit has been deliberately undervalued. Objections were filed to the said application of defendant no.1. By order dated 19 th May, 2012, the trial court dismissed the said application. Being aggrieved, defendant no.1 filed C.R.P. No.5 of 2012 under Section 115 (Orissa amendment).

16. The revisional court considered the revision and allowed the application filed under Order VII Rule 11 of CPC which had the effect of finally disposing of the suit. It is against the said order that the plaintiff filed the writ petition before the High Court which was allowed and the matter was remanded to the revisional court for fresh consideration with an observation that the revisional court may, in turn, remand the matter to the trial court if necessary. This was on the premise that the revisional court had exceeded the jurisdiction vested in it by acting illegally in allowing the application filed under Order VII Rule 11 of CPC.

17. In order to consider the correctness of the impugned order passed by the High Court, it would be useful to refer to Section 115 of the CPC as well as the Orissa Amendment. For immediate reference, the same are extracted as under:

> "115. Revision — (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:
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> Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.
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> (2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
>
> (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.—In this Section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding." ORISSA AMENDMENT "115. Revision ☐The High Court, in cases arising out of original suits or other proceedings of the value exceeding one lakh rupees, and the District Court, in any other case including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 1991 may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such Subordinate Court appears ☐

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this Section;

Provided further that the High Court or the District Court shall not, under this Section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceedings, except where ☐

(i) the order, if so varied or reversed would finally dispose of the suit or other proceedings; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation ☐In this Section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit or other proceeding"."

18. On a perusal of the same it is noted that the Orissa amendment differs from the main Section 115 of CPC in the following ways:

> (i) Firstly, the main Section 115 deals with revisional powers of the High Court only, whereas, Section 115 of CPC (Orissa amendment) confers the power of revision not only on the High Court but also on the District Court which may call for the record of any case which has been decided by any court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, if such subordinate court appears ☐(a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction, so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. In such a case,

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit.

(ii) Secondly, sub-section (2) of Section 115 of the main provision, states that the High Court shall not, under the said Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. But under the second proviso to Section 115 of CPC (Orissa amendment), the High Court or the District Court shall not under the said Section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceeding, except where – (i) the order, if so varied or reversed would finally dispose of the suit or other proceedings; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Thus, the first proviso to main Section 115 of CPC restricts the revisional power of the High Court inasmuch as a revision is maintainable only if it is filed by a party who is aggrieved by an order passed by the court subordinate to the High Court on an order deciding an issue which, had it been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding. But as per the second proviso to Section 115 of CPC (Orissa amendment), the High Court or the District Court, as the case may be, under the said Section can vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding only if the order if so varied or reversed would finally dispose of the suit or other proceeding or the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made. In other words, under Orissa amendment to Section 115 of CPC, an express power is conferred on the High Court or the District Court, as the case may be, being the revisional courts, to vary or reverse an order of the court subordinate thereto only when it would finally dispose of the suit or other proceedings or if the impugned order is allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

19. It would also be pertinent to mention that the instant suit was filed in the year 2009 and therefore the Orissa amendment to Section 115 CPC vide Orissa Act 26 of 1991, Section 2, would be applicable. However, by Orissa Act 14 of 2010, Sub-Section 2, Section 115 was amended by the Orissa Legislature and second proviso to Section 115 has been amended and Sub-Section 2 of Section 115 has been added which states that the High Court or District Court, as the case may be, shall not under this Section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where the order, if it has been made in favour of the party applying for revision, would finally dispose the suit or other proceeding.

20. Further, clause 1 of the second proviso of Section 115 has been omitted by the amendment made in the year 2010 and Sub-Section 3 has been added. This provision states that a revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court or District Court, as the case may be. Sub-Section 1 of Section 115 is in pari materia with the Orissa Amendment of 1991 except its reference to the Orissa

Amendment Act of 2010. For immediate reference, Section 115 of the CPC as per the 2010 amendment made (Orissa Amendment) is extracted as under:

> "Amendment of Section 115. □In the Code of Civil Procedure, 1908 (5 of 1908), for Section 115, the following Section shall be substituted, namely:□□
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> 115. Revision.□□(1) The High Court, in cases arising out of original suits or other proceedings of the value exceeding five lakhs rupees and the District Court, in any other cases, including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 2010, may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears□□
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> (a) to have exercised a jurisdiction not vested in it by law; or
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> (b) to have failed to exercise a jurisdiction so vested; or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit:
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> Provided that in respect of cases arising out of original suits or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this Section (2) The High Court or the District Court, as the case may be, shall not under this Section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceedings, except where the order, if it had been made in favor of the party applying for revision, would have finally disposed of the suit or other proceedings.
>
> (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court or District Court, as the case may be.

Explanation□□In this Section, the expression, "any case which has been decided" includes any order deciding an issue in the course of a suit or other proceeding.".

[Vide the Orissa Act 14 of 2010, s. 2]"

21. Therefore, we hold that the High Court was not right in observing that the revisional court had exceeded its jurisdiction and it could not have allowed the application filed under Order VII Rule 11 of CPC and thereby reversed the order of the trial court and finally disposed of the suit. In fact, the High Court has failed to appreciate the second proviso to Section 115 of CPC (Orissa amendment) in its true perspective. The revisional court, being the High Court or the District Court, as the case may

be, can reverse an order which would finally dispose of the suit or other proceeding. That is exactly what has been done by the revisional court being the District Court in the petition being C.R.P. No.5 of 2012.

22. Hence, we find that the High Court was not justified in setting aside the said order and remanding the matter to the revisional court (District Court) to consider afresh, the application filed by defendant no.1/appellant herein under Order VII Rule 11 of CPC seeking rejection of the plaint. In fact, we would observe that exercise of jurisdiction by the revisional court in the instant case is in accordance with second proviso to Section 115 of CPC (Orissa amendment).

In this regard, we could also usefully refer to the following decisions: □

(a) Gajendragadkar, CJ., in a judgment passed by the five Judges Bench of this Court in Pandurang Dhondi Chougule and Others vs. Maruti Hari Jadhav and Others – [AIR 1966 SC 153] dealt with the question of jurisdiction under Section 115 CPC, as follows:□"10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115."

(b) Nariman, J. while discussing Section 115 CPC and proviso thereto held that revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders in the case of Tek Singh vs. Shashi Verma and Another – [(2019) 16 SCC 678]. The following observations were made in the said case:□"6. Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh [DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807 : (1970) 2 SCR 368] this Court held: (SCC pp. 811□12, para 5) "5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the court to try the dispute itself.

Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District

Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause

(c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with." Therefore, in the instant case the High Court was not right in holding that the revisional court had no jurisdiction to reject the plaint filed under Order VII Rule 11 of CPC. The reasoning of the High Court is contrary to the express proviso of Section 115 (Orissa Amendment).

23. No doubt rejection of a plaint is a decree within the meaning of Section 2(2) of CPC and an appeal lies from every decree passed by any court exercising original jurisdiction to the Court authorised to hear appeals from a decision of such court. However, it must be borne in mind that when a revisional court rejects a plaint, in substance, an application filed under Order VII Rule 11 is being allowed. Under such circumstances, the remedy by way of a writ petition under Article 227 of the Constitution could be availed and respondent no.1/plaintiff has resorted to the said remedy in the instant case; although if the plaint had been rejected by the trial court i.e. court of original jurisdiction, it would have resulted in a right of appeal under Section 96 of CPC.

24. Having regard to the second proviso to Section 115 of CPC (Orissa amendment), a revisional court while allowing the application filed under Order VII Rule 11 of CPC would in substance reject the plaint but since the said decree is not passed by the court of original jurisdiction, namely the trial court, the remedy by way of writ petition under Article 227 of the Constitution would be available to the aggrieved party and respondent no.1 has availed the said remedy.

25. Having held as above, we now proceed to consider, whether, the revisional court (District Court) was justified in allowing the application filed under Order VII Rule 11 of CPC and thereby rejecting the plaint filed by the plaintiff/respondent no.1 herein. Before proceeding further, it would be useful to refer to the following judgments of this Court in respect with Order VII Rule 11 CPC:

> a) In T. Arivandandam vs. T.V. Satyapal & Anr. – [(1977) 4 SCC 467], this Court observed, in the following words, that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory:□"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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 Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the 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, (Cr. XI) 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."

b) In Azhar Hussain vs. Rajiv Gandhi – [1986 Supp SCC 315], this Court discussed the very purpose of the power conferred under Order VII Rule 11 CPC by observing thus:

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

c) In Sopan Sukhdeo Sable and Ors. vs. Assistant Charity Commissioner and Others ☐ [(2004) 3 SCC 137], it was held that 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. The law ostensibly does not contemplate any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. It was held that the word 'shall' is used to clearly imply that a duty is cast 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. Elaborating on the aspect of cause of action by quoting I.T.C Ltd. vs. Debts Recovery Appellate Tribunal and Ors. – [(1998) 2 SCC 70], it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code 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 of the Code.

d) This Court in Liverpool & London S.P. & I Assn. Ltd. vs. M.V. Sea Success I & Anr. ☐[(2004) 9 SCC 512] held that a plaint must be construed as it stands without any amendments. The same is extracted herein as follows☐"139. Whether a plaint discloses a cause of action or not is essentially a question of fact.

But whether it does or does not, must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed."

e) We could allude to the exposition of this Court in Madanuri Sri Rama Chandra Murthy vs. Syed Jalal – [(2017) 13 SCC 174], wherein it was held as under:□"7. .....The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

f) In Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others – [(2020) 7 SCC 366], Indu Malhotra, J., while dealing with an appeal against an order allowing rejection of a suit at the threshold, had an occasion to consider various precedents discussing the intent and purpose of Order VII Rule 11 CPC while setting out principles in relation to the same. It was held that the provision of Order VII Rule 11 is mandatory in nature and that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) is 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. The relevant portion of the judgment is extracted as below:□"23.1 X X X X X 23.2 The remedy under Order 7 Rule 11 CPC is an independent and special remedy wherein the court is empowered to summarily dismiss a suit at the threshold, without proceedings to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11

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

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

23.5 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. 23.6 Under Order

VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7 X X X X X 23.8 Having regard to Order 7 Rule 14, the documents filed with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. 23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration."

g) In a recent judgment of Rajendra Bajoria and Others vs. Hemant Kumar Jalan and Others □ [2021 SCC Online SC 764], this Court while elucidating on the underlying object of Order VII Rule 11 CPC and considering various precedents of this Court, held as under : □"20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted."

26. Relying on the case of Hardesh Ores (P.) Ltd. vs. Hede & Co. – [(2007) 5 SCC 614], it was 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. Further delving upon the ratio in D. Ramachandran vs. R.V. Janakiraman – [(1999) 3 SCC 367], it was held that 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.

27. It was further held that if on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. Placing reliance on Saleem Bhai vs. State of Maharashtra – [(2003) 1 SCC 557], it was held that 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.

28. On a reading of the plaint, in the instant case it is noted that it discloses a cause of action inasmuch as the MoU dated 17th January, 2009, entered into between the plaintiff and defendant no.1 in the presence of defendant no.2 and the acts done pursuant to the said MoU is the basis for the grievance of the plaintiff. According to the plaintiff, a cheque for Rs. 56 lakhs was issued by him in favour of defendant no.1 and handed over to Sri Dilip Das, Advocate – defendant no.2 as security with an understanding that the said cheque will not be handed over by defendant no.2 to defendant no.1 unless defendant no.1 fulfils its undertaking and carries out the responsibility of saving the licence to plot No. RS□4, issued in favour of the plaintiff by the Paradeep Port Trust Authority, from being cancelled. As a result, the plaintiff would continue to remain as the licensee of the Paradeep Port Trust Authority vis□a□vis the said plot. According to the plaintiff, defendant no.1 did not take any step to save licence of the plaintiff from cancellation and it was cancelled on the basis of the complaint made by defendant no.1 vide letter dated 18th February, 2009, by the Paradeep Port Trust Authority. Hence, the question of defendant no.2 handing over the cheque for Rs. 56 lakhs to defendant no.1 did not arise. Further, plaintiff was pressurized to either supply 3876 MT of iron ore fines to defendant no.1 or else defendant no.1 would present the cheque for encashment. Since plaintiff did not agree to the illegal demand of defendant no.1, the cheque for Rs.56 lakhs which had been handed over by defendant no.2 to defendant no.1, was presented by defendant no.1 and it was dishonoured. According to the Plaintiff, defendant no.2 and defendant no.1 colluded with each other to make an illegal gain and defendant no.2 could not have handed over the cheque to defendant no.1. Hence, a letter was written to the Bank directing them to stop the payment of the cheque and the same was conveyed to the defendants. The said cheque was dishonoured. Defendant no.1 issued notice under Section 138 of NI Act dated 10th June, 2009, to the plaintiff through its Managing Director, to which a reply was given on 23rd June, 2009. According to the plaintiff, defendant no.1 owes the plaintiff Rs. 21.50 lakhs but the plaintiff does not have to pay anything to defendant no.1. Hence, defendant no.1 is duty bound to return the cheque to the plaintiff but, on the other hand, the defendants are trying to harass the plaintiff by presenting the cheque and hence certain reliefs were sought in the suit. The relief of declaration was sought to the effect that the cheque handed over by the plaintiff to defendant no.2 was as a security; that the cheque had been illegally handed over by defendant no.2 to defendant no.1 in violation of the terms and conditions of the MoU dated 17th January, 2009 and that the plaintiff is neither liable to deliver 3876 MT of iron ore fines to defendant no.1 nor to pay an amount of Rs. 56 lakhs since defendant no.1 had failed to save the licence of plaintiff's plot from cancellation by the Paradeep Port Trust Authority.

29. At the outset, we hold that on perusal of the plaint averments, the plaintiff has indeed made out a cause of action for filing the suit. In fact, in para 2 of the application filed under Order VII Rule 11 CPC, defendant no.1 has also encapsulated the averments made in the plaint. Therefore, on that score the plaint cannot be rejected.

30. The other contention of defendant no.1 is that from the pleadings and averments in the plaint and the prayers sought therein, it appears that only certain declaratory reliefs have been sought and further, consequential reliefs have been omitted to be prayed. Hence, the suit is barred under the provisions of the SR Act and is liable to be dismissed and the plaint is liable to be rejected under Order VII Rule 11 CPC.

31. In the objections filed to the application under order VII Rule 11 CPC, it has been averred that the plaint averments would clearly show a cause of action for filing the suit and further that the suit is not barred by any law. Further, the declaratory reliefs have been valued properly and appropriate court fee has been paid. Hence, the application is liable to be rejected.

Thus, the main thrust of the application seeking rejection of the plaint is that apart from the fact that the plaint does not disclose a cause of action which has been negated by the revisional court and rightly so, plaintiff has sought only declaratory reliefs and has not sought further or consequential reliefs. In the circumstances, the suit is barred under the provisions of the SR Act.

Section 34 of the SR Act reads as under:

> "34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
>
> Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee." The proviso to Section 34 states that no court can make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The said question will have to be considered at the time of final adjudication of the suit as the question of granting further relief or consequential relief would arise only if the court grants a declaration. If the plaintiff is unsuccessful in seeking the main relief of declaration, then, the question of granting any further relief would not arise at all. Therefore, omission on the part of the plaintiff in praying for further consequential relief, would become relevant only at the time of final adjudication of the suit.
>
> Hence, in view of the above, the plaint cannot be rejected at this stage by holding that the plaintiff has only sought declaratory reliefs and no further consequential reliefs.

32. The other reason cited for rejection of the plaint is that the suit is an attempt on the part of the plaintiff to deprive defendant no.1 of its legitimate dues. In other words, the plaintiff is seeking a declaration that the cheque for Rs. 56 lakhs issued in the name of defendant no.1 and handed over to defendant no.2 in turn to be handed over to defendant no.1 at the appropriate time was only as a security. According to the plaintiff it was not liable to pay the cheque amount to defendant no.1 since defendant no.1 had not fulfilled its obligations under the terms of the MoU. The declaratory reliefs sought are worded as under:

"(i) Let it be declared that the plaintiff had handed over the cheque to Sri Dilip Das, Advocate as a security;

(ii) Let it be declared that the said cheque has been illegally handed over by the defendant no.2 to the defendant no.1 by violating term and condition of the memorandum of understanding dated 17.01.2009;

(iii) Let it be declared that the plaintiff is not liable to give delivery of 3876 MT of iron ore fines to the defendant no.1 nor the cheque amount since the defendant no.1 has failed to save the plaintiff's plot from cancellation;" Hence, it is contended by defendant no.1 that the suit filed by the plaintiff is an attempt to frustrate the possibility of the defendant no.1 initiating action under the provisions of the N.I. Act for the dishonour of cheque. In this regard, reference could be made to Sections 118 (a) and 138 of N.I. Act, which reads as under:

"118. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

XXX XXX XXX

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing,

to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

33. On a reading of the same, it is clear that there is a rebuttable presumption that every negotiable instrument including a cheque was made or drawn for a consideration and every such instrument when it has been accepted is for a consideration.

34. In the instant case, on a reading paragraph 13 of the plaint, it is evident that cheque issued had been dishonoured and defendant no.1 had issued notice under Section 138 of N.I. Act on 10th June, 2009, to the plaintiff and its Managing Director replied to the same through their advocate on 23rd June, 2009. Therefore, it is evident that the plaintiff by seeking the aforesaid reliefs is in substance frustrating the right of defendant no.1 to take steps under the provisions of N.I. Act for releasing the amount of cheque issued by the plaintiff to defendant no.1 for a sum of Rs. 56 lakhs by filing a civil suit and/or by initiating a criminal prosecution. In other words, by seeking such a declaration that the cheque was issued as a security and that the same was illegally handed over by defendant no.2 to defendant no.1 in violation of the terms and conditions of the MoU, the plaintiff in substance is making an attempt to frustrate proceedings being initiated under Section 138 of the N.I. Act or for recovery of the amount by filing a civil suit.

35. On a holistic reading of the plaint and on consideration of the reliefs sought by the plaintiff, we find that the said reliefs are barred by law inasmuch as no plaintiff can be permitted to seek relief in a suit which would frustrate the defendants from initiating a prosecution against plaintiff or seeking any other remedy available in law. In fact, the attempt made by the plaintiff to seek such a declaratory relief is, in substance, to seek a relief of injunction against the defendants, particularly defendant no.1, but framed it in the nature of a declaratory relief. In other words, the plaintiff has sought an injunction against defendant no.1 from seeking remedies in law on account of the cheque issued by the plaintiff for a sum of Rs. 56 lakhs being dishonoured.

36. We may refer to Sections 41 (b) and (d) of SR Act which are extracted as under: □"41. Injunction when refused. □xxx

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

xxx xxx xxx

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;" In the above context, following decisions are useful to be referred to:☐

(a) In the case of Cotton Corporation of India Limited vs. United Industrial Bank Limited and Ors. ☐ [(1983) 4 SCC 625], this Court highlighted the equitable principle underlying Section 41 (b) of the Specific Relief Act, 1963 as under: ☐"8. It is, therefore, necessary to unravel the underlying intendment of the provision contained in Section 41(6). It must at once be conceded that Section 41 deals with perpetual injunction and it may as well be conceded that it has nothing to do with interim or temporary injunction which as provided by Section 37 are dealt with by the Code of Civil Procedure. To begin with, it can be said without fear of contradiction that anyone having a right that is a legally protected interest complains of its infringement and seeks relief through court must have an unhindered, uninterrupted access to law courts. The expression 'court' here is used in its widest amplitude comprehending every forum where relief can be obtained in accordance with law. Access to justice must not be hampered even at the hands of judiciary. Power to grant injunction vests in the court unless the legislature confers specifically such power on some other forum. Now access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefore, no other court can by its action impede access to justice. This principle is deducible from the Constitution which seeks to set up a society governed by ride of law. As a corollary, it must yield to another principle that the superior court can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate court. Save this specific carving out of the area where access to justice may be impeded by an injunction of the court, the legislature desired that the courts ordinarily should not impede access to justice through court. This appears to us to be the equitable principle underlying Section 41(b). Accordingly, it must receive such interpretation as would advance the intendment, and thwart the mischief it was enacted to suppress, and to keep the path of access to justice through court unobstructed."

(b) In the case of Ratna Commercial Enterprises Ltd. vs. Vasutech Ltd. – [AIR 2008 Del 99], it was held: ☐"29. The other issue concerns the maintainability of the suit itself in terms of the Section 41(d) of the Specific Relief Act, 1963 ('SRA') which reads as under:

> "41. An injunction cannot be granted .... (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter." The law concerning the interpretation of Section 41(d) of the SRA is fairly well settled. It has been held In Re N.P. Essappa Chettiar AIR 1942 Mad. 756 and in Gauri Shanker v. District Board AIR 1947 All. 81 that a suit to restrain criminal proceedings being initiated is not maintainable. In Aristo Printers Pvt. Ltd. v. Purbanchal Trade Centre AIR 1992 Gau. 81 a Division Bench of the Gauhati High Court was dealing with a case where cheques issued by the plaintiff to the defendant had been dishonoured and notice had been issued to the defendant under Section 138 NI Act. The plaintiff then filed a suit to restrain the defendant from instituting proceedings under the NI Act. The Court referred to a judgment of the Hon'ble Supreme Court in State of Orissa v. Madan Gopal Rungta AIR 1952 SC 12 and Cotton Corporation of India Ltd. v. United Industrial Bank Ltd. AIR 1983 SC 1272 and held that "an order of injunction of the

nature issued in this case cannot be granted and the hands of the criminal court cannot be fettered by the civil court."

30. The decision of this Court in Atul Kumar Singh v. Jalveen Rosha AIR 2000 Del 38 was in a case where the plaintiff had issued four cheques issued in favour for the defendant for a value of Rs. 7 lakhs. The cheques when presented were dishonoured. After service of notice under Section 138 NI Act, the plaintiff filed a suit for a declaration that "the defendant is not entitled to any benefit on account of holding the cheques" and to injunct the defendant "from using or claiming any benefit by virtue of possessing the instruments." This Court, while allowing the defendant's application for rejecting the plaint, held that (AIR, p.40):

"The reliefs claimed in this suit are in substance for an injunction restraining the defendant from prosecuting the criminal case instituted against the plaintiff.

Section 41(b) of the SRA denies to the Court the jurisdiction to grant an injunction restraining any person from prosecuting any proceedings in a Court. Consequently, the injunction sought by the plaintiff cannot be granted since it would have the effect of preventing the defendant from prosecuting the criminal case against the plaintiff." Further, the nature of the declaratory reliefs sought already arises out of the MoU dated 17 th January, 2009, between the plaintiff and defendant no.1 in respect of which the plaintiff could seek appropriate remedies, if there is a breach of the said MoU by defendant no.1, but the plaintiff cannot seek declaratory reliefs to the effect that the plaintiff was not liable to carry out his obligation under the terms of the MoU. If the plaintiff has failed to do so then the defendant no.1 would have a cause of action against the plaintiff, but there cannot be a frustration of the right to seek a remedy in law by means of seeking declaration under a contract or MoU as in the instant case.

37. Moreover, the right of defendant no.1 to prosecute the plaintiff owing to the dishonour of the cheque issued by the plaintiff for a sum of Rs. 56 lakhs cannot be frustrated by seeking a declaration that the said cheque was handed over as a security. Such a declaration cannot be ex facie granted as it would be contrary to the provisions of the N.I. Act and particularly Section 118(a) thereof. If the plaintiff is aggrieved on account of breach of the terms and conditions of the MoU committed by defendant no.1 then it could seek appropriate reliefs in accordance with law. Whether the plaintiff was not liable to issue the cheque for Rs. 56 lakhs to defendant no.1 under the terms of the MoU is a matter which has to be considered in an appropriate proceeding to be initiated by defendants on account of dishonour of the said cheque under Section 138 of the N.I. Act. The plaintiff can always prove that it had no legal liability or debt to be discharged vis□a□vis defendant no.1 under the terms of the MoU, if any proceeding is to be initiated by defendant no.1 on account of the dishonour of the said cheque. Further, if defendant no.1 is to seek any relief for the non□supply of 3876 MT of iron ore fines by the plaintiff under the very same MoU then the plaintiff is entitled to take appropriate defences as are available in law. If the plaintiff has a grievance against the defendants and particularly defendant no.1, arising from the MoU, such prayers have not been sought by the

plaintiff. Such reliefs could have been sought by the plaintiff inasmuch as there is no prayer seeking recovery of Rs. 21.50 lakhs from defendant no.1 which according to the plaintiff is due to it.

38. In the circumstances, we hold that while the plaintiff has certain grievances arising from the MoU, against the defendants which may give rise to seek appropriate remedies in law, the aforesaid three declaratory reliefs sought in the plaint are barred by law. Hence, the plaint is liable to be rejected in exercise of jurisdiction under Order VII Rule 11 CPC. In our view, the revisional court was justified in rejecting the plaint but the High Court has erroneously set aside the order of the revisional court without appreciating the facts and circumstances of the case and has simply remanded the matter to the revisional court to reconsider the revision afresh on the premise that the revisional court did not have the jurisdiction to reject the plaint under Section 115 of the CPC.

39. In the result, the impugned Order of the High Court is set aside and the Order of the revisional court passed in C.R.P. No.5 of 2012 dated 23.02.2013 is restored. The plaint in C.S. No. 1065 of 2009 is rejected. This appeal is accordingly allowed.

40. However, it is clarified that the rejection of the plaint would not come in the way of the plaintiff filing a suit against defendant no.1 for seeking appropriate reliefs in accordance with law, if so advised.

Parties to bear their respective costs.

.....J. [M.R. SHAH] .....J. [B.V. NAGARATHNA] NEW DELHI;

April 01, 2022.