Arunesh Punetha vs Boston Scientific Corporation And Ors. on 25 August, 2005

Author: Swatanter Kumar

Bench: Swatanter Kumar

JUDGMENT

Swatanter Kumar, J.

1. In the present case, simple but questions of some importance arise for consideration. They are:-

> 1. Whether mis-joinder of cause of action or mis-joinder of parties can be a ground for rejection of a plaint within the contemplation of the provisions of Order VII Rule 11 of the CPC?
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> 2. Whether there can be a partial rejection of a plaint under Order VII Rule 11?

2. It is an undisputed canon of codified civil jurisprudence that the legislative intent behind the provisions of Order VII Rule 11, is to bring the finality to a civil lis before the court at the very threshold, provided, the grounds stated therein for rejection of a plaint are satisfied. Rejection of plaint in contra-distinction to return of a plaint practically terminates the proceedings before the court of a competent jurisdiction. The orders of the court passed under these provisions have serious repercussions on the rights of the parties and as such they need to be construed strictly and would not normally admit a liberal or an enlarge construction which would bring within its ambit and scope of the provisions what is not specifically provided. Proviso to Rule 11 introduced by amending Act 104 of 1976 effective from 1st February, 1977 is suggestive of the fact that enforcement of the rigour of these provisions to a limited extent as indicated in the proviso, leaves it as a discretion of the court despite the fact that the plaintiff might not have undervalued the suit and fails to pay the requisite court fee within the time allowed by the court, still the court would allow extension of time, provided, it is satisfied that the plaintiff was prevented by any cause of an exceptional nature and if time was not extended, it would cause grave injustice to the plaintiff. While in relation to sub-clause (a) and Â(c) to (f), the law has not vested any discretion as is indicated in the proviso which relates to sub-clause (b) of Rule 11 of Order VII of the Code. The ambit and scope of Order VII Rule 11 has always been a subject of detailed discussion by the courts. Before the facts of the present case are stated, reference to the general principles of these provisions could usefully be referred. These principles were discussed in some elaboration by the Punjab & Haryana High Court in the case of ABN-AMRE Bank v. the Punjab Urban Planning and Development Authority 1999(3) PLR 479 , where the court held as under:-

6. The first controversy that arises from the aforestated complex facts is whether the court is to look into the plaint alone for determining the merit of an application under Order 7 Rule 11 of the Code of Civil Procedure or it has to examine the pleadings of the respective parties and the documents along therewith.

7. It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provisions of Order 7 Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various courts so as to take within its ambit even the documents filed by the plaintiff Along with plaint or subsequent thereto but prior to the hearing of such application. It would be more so where the documents have been referred to in the plaint itself. But the defense raised by the defendants in his written statement or the documents filed along therewith certainly falls beyond the zone of consideration, where an application for rejection of a plaint is being considered by the Court. The language of the rules does not admit any scope for doubt that the written statement filed by the defendant cannot be referred or relied upon by the applicants for decision of such application. Whether the plaint discloses any cause of action or not, is a question found on the basic cause of action pleaded by the plaintiff in his plaint. It must thus necessarily be construed that language of Rule 1 is circumscribed by the limitation or reading the plaint at best with its supporting documents. A Full Bench of this Court in the case of Harnam Singh v. Surjit Singh, , held as under:-

It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favor. In other words, it is a bundle of facts which taken with the law applicable to him gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defense, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff.

8. The above view has been accepted by all the courts. Reference in this regard can be made to cases Mrs. Pramilla Khosla v. Rajnish Kumar Khosla, , Bhagwan Das v. Goswami Brijesh Kumarji and Ors, , Dosal Private Limited and another v. Narmada Seaways Limited and Ors and (1986-2) 89 PLR 219. Thus, I have no hesitation in coming to the conclusion that this Court must look into the plaint and the documents filed on record and more particulary the documents, which have been referred in the plaint to determine the merits of the application filed by the defendant-applicant -petitioner under Order 7 Rule 11 of the Code of Civil Procedure.

9. Learned counsel for the petitioner Mr. V.N. Kaura, contended that the plaintiff has no cause of action to approach the Civil Court as it had executed a letter in full and final settlement of its claim arising from the transaction between the parties. In alternative it was contended by Mr. Kaura that the basic ingredients of fraud or mis-representation has neither been stated nor the averments in the plaint validly constitute a ground of fraud, mis-representation or undue influence and as such the plaint does not disclose a valid cause of action in law. Resultantly, the plaint should be rejected.

10. On the other, learned counsel for the respondent, Mr. Awasthi argued that the plaint and the documents filed on record fully discloses an actionable cause in favor of the plaintiff. He further contended that an application for amendment is already pending before the trial Court which itself will frustrate the alleged defense pointed out by the petitioner before this Court. It is also argued by Mr. Awasthi that the matter can be gone into only upon conclusion of complete evidence and not by means of filing the present application. Mr. Awasthi contended that the impugned order passed by the learned trial court does not call for any interference within the limited scope of revisional jurisdiction of this Court.

11. Well accepted canone of civil jurisprudence makes a clear distinction between "plaintiff has no cause of action" and "the plaint does not disclose cause of action". In the earlier part, there is complete absence of a right to sue. While in the latter, the right to sue may exist, but it is not well founded on the basis of the averments made in the plaint. The plaint lacks essential and material particulars which would give an effective cause of action to the plaintiff. Where on fact of it, the plaint does not disclose any cause of action, the plaint may be liable to be rejected, but where the parties are to produce oral and documentary evidence to substantiate and support their cause of action and relief claimed for in the plaint, the Court has to consider the entire material placed on record and the suit would be liable to the decided on merit.

12. The above distinction was clearly stated by a Full Bench of Allahabad High Court in the case of Jagannath Prasad and Ors. v. Smt. Chandrawati and another, .

13. In the recent case State of Orissa v. Klockner and Company and Ors, , the Hon'ble Supreme Court of India while approving the following view taken by the learned Single Judge of the High Court dismissed the Special Leave Petition.

From the discussion in the order it appears that the learned trial judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7 Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may

be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petitioner filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20.4.1982 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint.

14. In the light of the above settled principles one has to look into the contents of the letter dated 7th July, 1993, which according to the applicant negates the right of the plaintiff to sue, having received a sum of Rs. 10,4,82,541.11 paise only in full and final settlement of all the claims of the Punjab Housing Development Board (plaintiff) in respect of or arising there from or in connection with the said investment of rupees more than 9 crores. The bare reading of the plaint itself shows that the plaintiff has challenged the validity, legality of the letter dated 7th July, 1993 and has prayed for its cancellation in paragraph 20 of the plaint. It is pleaded that the said letter does not effect the right of the plaintiff to recover its total amounts. The Board has filed the suit for recovery of rs. 65,58,981/- as already noticed. The plaintiff has taken up the ground of mis-representation, concealment of facts and fraudulent conduct on the part of the present petitioner. In addition to reference to the specific documents executed between the parties, a reference has been made to the notice dated 7th August, 1993, served by the Board through its counsel upon the petitioner withdrawing the letter dated 7th July, 1993 much prior to the institution of the suit and calling upon the defendant (petitioner) to pay its amounts. Various preliminary objections have been taken with regard to the maintainability of the sit and also the plea of waiver and estoppel. In other words, various documents placed on record by the parties and more particularly the documents referred to in the plaint on their adjunct reading with the averments made in the plaint raises friable issues on which the parties will be leading complete and required evidence."

21. The right of the plaintiff bank, thus, to recover the amount to the above limited extent, even if it is assumed that the letter dated 7th July, 1993, is valid and proper cannot be frustrated, the amount being less than the amount claimed in the plaint. Thus, in any case the plaint to the limited extent discloses cause of action in favor of the plaintiff bank and against the defendant. What will be the merit of this claim is again a question to be gone into by the Court at the appropriate stage and upon conclusion of evidence. Partial rejection of a plaint is again not permissible. The provisions of Order 7 Rule 11 of the Code of Civil Procedure are intended to finally determine the rights of the parties at earlier stage on the limited grounds stated in the rule. A Bench of this court in the case of Bansi Lal. v. Som Parkash and Ors, held as under:-

> This rule (Order 7 Rule 11), does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relief on Raghubans Puri v. Jyotis Swarupe, 29 All. 325, Appa Rao v. Secretary of State, 54 Mad. 416 and Maqsud Ahmad v. Mathura Datt and Co., AIR (23) 1936 Lah. 1021.
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> I am, therefore, of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must,

therefore, be allowed and the rule made absolute, and I order accordingly.

22. The concept of partial rejection is apparently in-applicable to the provisions of Order 7 Rule 11 of the Code of Civil Procedure, it would have its limited application in regard to the provisions of Order 6 Rule 16 of the Code. There could be partial striking out of pleadings but no rejection of plaint. Partial acceptance or rejection or even admission of appeals in absence of a specific rule to that effect was described by the Hon'ble Supreme Court of India not a proper exercise of jurisdiction. In this regard, reference can be made to the case of Ramji Bhagala v. Krishnagrao Karirao Bagre and another . This is not even the main controversy between the parties in the present case. Thus, I see no reason to discuss this contention in any further ilucidation.

23. To bring out the cause of action, a plaint must state necessary conditions to maintain a suit. The merit of those conditions and/or terms is inconsequential at this stage, for consideration of such application. What evidence the plaintiff would lead to prove his case or what probable defense the defendant would raise is not the concern of the Court at that initial stage of proceedings. Cause is the proper generic terms. Its construction must and has to be decided keeping in mind the facts and circumstances of each case. The steps taken in the suits are proper in law and on facts of the case, they call for no need to retrace the order passed by the learned trial Court.

3. The Supreme Court in a very recent judgment titled as Liverpool & London S.P. & I. Association Ltd. v. M.V.Sea Success I and another , discussed at great length not only the ambit and scope of these provisions but also commented upon certain vital issues in relation to maintainability and adjudication of an application under Order VII Rule 11 of the Code. This judgment in fact has been heavily relied upon by the learned counsel appearing for the non-applicant/plaintiff in support of his submissions. While describing the meaning of cause of action, the court held as under:-

> 128. As by reason of an order passed under Order 7 Rule 11 of the Code of Civil Procedure, the rights conferred upon the parties are determined one way or the other, stricto sensu it would not be an interlocutory order but having regard to its traits and trappings would be a preliminary judgment.
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> 129.It is true that in Shah Babulal Khimji it it stated that an order rejecting the plaint would be appealable but it does not expressly state that an order refusing to reject would not be appealable. Therein this Court gave 15 instances where an order would be appealable which are only illustrative in nature.
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> 130.Such observations have to be understood having regard to the concept of finality which is of three types:-
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> (1)a final judgment (2)a preliminary judgment (3)intermediary or interlocutory judgment.

131 In our opinion an order refusing to reject the plaint falls in the category of a preliminary judgment and is covered by the second category carved out by this court.

135. Yet again in Samar Singh v. Kedar Nath 1987 Supp SCC 563 it has been held:- (SCC p.665 para4) "In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition in concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that the 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.

Rejection of plaint

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

Cause of action

140. A cause of action is a bundle of acts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence.

149. In D. Ramachandran v. R.v. Janakiraman it has been held that the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action.

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale)

155. The reason for the aforementioned conclusion is that if a legal question is raised by the defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the Code of Civil Procedure which may amount to prejudging the matter.

4. Further while discussing the scope and nature of the order passed under Order VII Rule 11 and what could constitute a cause of action in contra-distinction to no cause of action, the Supreme Court held as under::-

> 132. It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plaint will finally determine his right in terms of Order 7 Rule 11 of the Code of Civil Procedure.

> 133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which is in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain v. Rajiv Gandhi 1986 Supp SCC 315 SCC at pp. 324-35.)

5. In this very case, the Supreme Court, with approval, reiterated the principle that the cause of action should not be misunderstood as absence of full particulars. While referring to the provisions of Order VII Rule 14 of the CPC, it also held that the documents are required to be taken into consideration for the purposes of disposal of application under Order VII Rule 11 (a) of the CPC.

6. The court, thus, has to consider the averments made in the plaint, documents filed by the parties and the contents of the application under Order 7 Rule 11 of the Code. Once these documents are examined in the present case, it is clear that the plaintiff has claimed different reliefs against the defendants. The plaintiff has prayed for passing of a decree for a sum of Rs. 35 lacs as damages for illegal termination of his services against defendant Nos. 1 to 3 jointly and severally , further he prays for a decree of another sum of Rs. 35 lacs as damages on account of defamation against the defendants jointly and severally, still further he prays for passing of a decree for a sum of Rs. 30 lacs as damages for illegal, irregular and excessive distress caused by the defendants jointly and severally to him. Lastly, he also prays for the relief of interest and costs in the suit.

7. It is the pleaded case of the plaintiff that he was an erstwhile employee of M/s. Boston Scientific Corporation, defendant No. 1. Defendant No. 2 is the regional headquarters of defendant No. 1 while defendant No. 3 is the Indian Branch of defendant Nos. 1 and 2. It is specifically averred in the very first paragraph of the plaint that defendant Nos. 1 to 3 are corporate entities under the Boston Scientific Corporation. Defendant No. 4 was the Managing Director of defendant No. 3. The plaintiff has further pleaded that he was appointed as Product Sales Specialist by the defendants vide letter dated 23.5.2000 on a gross annual emolument of Rs. 3,51,560/- based at Delhi. According to him, he had worked very had and achieved high sales targets right from inception and was promoted as Senior Products Sales Specialist and was also accorded different honours during the year 2001. The plaintiff was awarded Certificate of Recognition for Sales Achievement in Balloon King given in the Mid Year Sales and Marketing Meeting at Lonavla, Maharashrtra, and India. The work was also appreciated by the defendants for his valuable contribution. He was also granted the right to purchase 500 shares of Boston Scientific common stock at an option price of $ 42.51 per share.

8. To the utter shock and surprise of the plaintiff, certain baseless allegations were made against him that some insurance fraud schemes were prevalent in Batra Hospital, New Delhi and the plaintiff participated in the same and the plaintiff was responsible for violation of the rules on provision of free/poor patient product to Batra Hospital etc. Such allegations affected the character, good name, reputation, integrity of the plaintiff. He requested the persons concerned to give

imputation of such charges to him in writing as he would like to give a detailed reply. No such charge-sheet was served upon him. However, he was questioned and the investing team acted in a highly arbitrary, haphazard and in a manner violative of the basic principles of natural justice and fair play. The plaintiff was thereafter shocked to receive a letter from defendant No. 3 on 9.2.2004 alleging therein that serious charges of misconduct were raised with regard to work of the plaintiff and they had been confirmed by audit, interviews and outside verifications. The defendants felt that they had lost confidence in the plaintiff and the answers given by the plaintiff to the investing team were affirmatively dishonest. Defendant No. 3 is stated to have alleged in the letter dated 20.2.2004 addressed to Dr. Rajiv Aggarwal of the Department of Cardiology, Batra Hospital & Research Centre, New Delhi that the employment agreements of the concerned employees wherein the plaintiff's name was also mentioned was terminated and that the company was in the process of initiating legal action against these employees. It was stated that the plaintiff had siphoned Boston Scientifics' money to the tune of 4 crores and also brought shame and disgrace to the company. Thereafter defendant No. 3 took out a public notice in leading daily newspapers through M/s. Associated Law Advisors stating therein that four employees as stated therein including the plaintiff were no more in the employment of the company and hence no longer authorised to deal with the defendants' products. The letter of termination dated 9.2.2004 had been served upon the plaintiff. It is the case of the plaintiff that the defendants' company had assumed that it did not require the services of the plaintiff by resorting to the policy of hire and fire according to the defendants whims and fancies. The plaintiff then served a notice dated 1.3.2004 on the defendants requiring them to prove the allegations and threatening them that the plaintiff would file a suit for damages to the extent of Rs. 10 crores against them. This notice was replied to by defendant No. 3 on 17.3.2004 through its advocates controverting the averments made therein. The plaintiff thus raises various objections on different facts, the order of his termination and claims the afore-stated reliefs against the defendants.

9. The different defendants in the suit have filed different applications under order 7 Rule 11 read with Section 151 of the CPC for rejection of the plaint and consequently dismissal of the suit qua the respective defendants.

10. IA No. 1504/2005 is filed by defendant No. 3 wherein it is stated that plaintiff was an employee of defendant No. 3 and has falsely averred in the plaint that he was employee of defendant No. 1 and as such, the suit of the plaintiff is liable to be dismissed as he has not approached the court with clean hands and in fact has made false averments. According to this defendant, the suit is bad for mis-joinder of parties and mis-joinder of cause of action. There is nothing in common against the defendants either in terms of transaction or their legal status. Thus the suit is bad for mis-joinder of parties and cause of action.

11. IA 2317/2005 has filed by defendant No. 1 under the same provisions stating that the plaintiff was probably employed by defendant No. 3 which is an independent legal body. It is specifically denied that defendant No. 3 is not the branch office of defendant No. 1 nor plaintiff is employee of defendant No. 1. It is also stated that defendant No. 2 has no relationship whatsoever with the plaintiff and defendant No. 2 is neither a necessary nor a proper party to the suit. There is no cause of action against defendant No. 2. As such, the suit against defendant No. 2 should be dismissed.

12. While IA 2318/2005 is still another application filed under the same provisions on behalf of defendant No. 1. It is stated that the plaintiff has no cause of action whatsoever against defendant No. 1 and in fact he has abused the process of law by making false averments. He was never employee of defendant No. 1. Defendant No. 2 is a corporation having its registered office in the United State of America and does not have any branch office in India nor has defendant No. 2 employed anyone in India. Then it is prayed that the name of defendant No. 1 be struck of from the array of the parties and the plaint of the plaintiff against defendant No. 1 be rejected.

13. On 1st August, 2005 when the matter was argued, the court passing the following order:-

> Learned counsel appearing for defendants No. 1,2 and 3 submits that defendants No. 1,2 and 3 are independent corporate bodies and are to be sued in their own name and would bear their liabilities and obligations.
>
> Arguments heard.
>
> Judgment reserved

14. As already stated that the court has not only to look into the plaint but even the supporting documents filed by the plaintiff particularly when the documents filed by the plaintiff are the very foundation of his claim. According to the plaintiff as well as the defendants, it is clear that defendant Nos. 1 to 3 are independent bodies corporate and are to sue or to be sued in their own names and maintain a separate entity in business in relation to performance and discharge of their obligations and consequent liabilities. This admitted fact is of some importance keeping in view the facts and circumstances of the present case, the controversies arisen for determination and the relief claimed by the plaintiff. Furthermore, the averments made in the plaint have to be taken as correct at least prima facie for the purposes of decision of such an application. According to the plaintiff, he was employed by defendant No. 1 vide letter dated 23.5.2000 as Product Sales Specialist based at Delhi. This letter was issued on the letter head of Boston Scientific. According to this letter, the plaintiff was interviewed with the persons of Boston Scientific and the plaintiff was offered a position with that concern based at Delhi. Under the term commencement of employment, it was stated that "your employment will commence on your date of joining and will be with Boston Scientific International B.V., Delhi Office". The performance of the plaintiff was to be reviewed on completion of one year of employment with Boston Scientific. This letter (offer of appointment) was singed by Mr. Tajinder Kumar, Manager, Human Resources, Boston Scientific International B.v. India and following offer was made to the plaintiff:-

> Please sign below to signal your acceptance of this offer and return a copy of this letter complete with your acceptance to me immediately. We are looking forward to your joining the Boston Scientific team.
>
> This was replied to by the plaintiff as under:-

I have read and understood the above terms and hereby accept the foregoing offer on the terms and conditions stated and confirm my commencement date_____
Signed: Date: 25.05.2000 Sd/-

ARUNESH PUNETHA

15. Boston Scientific International B.v. Delhi Office in which the plaintiff was offered an appointment has been imp leaded as defendant No. 3 in the suit. Defendant No. 4 is stated to be Managing Director of defendant No. 3. The service of the plaintiff was terminated according to him as well on 27th February, 2004 which reads as under:-

PUBLIC NOTICE On behalf of our clients M/s. Boston Scientific International B.V.-India Branch we hereby give Notice to all concerned that the following persons are no longer in the employment of our clients and hence no longer authorised to deal with their products or represent or act on their behalf in any manner whatsoever:-

1.Mr. Gurmit Singh Chugh s/o Mr. Kartar Singh

2.Mr. Shailendra Sondhi s/o of Mr. S.B. Sondhi

3.Mr. Arunesh Punetha s/o Mr. T.C. Punetha

4.Ms. Punita Sharma Arora w/o of Mr. Deepak Arora Associated Law Advisors, New Delhi Attorneys to Boston Scientific International B.V.-India Branch Dated: February 25, 2004

16. The above public notice, in fact, was repeated by defendant No. 3 through its counsel again. The notice dated 14.4.2004 served by the plaintiff through his counsel on defendant No. 3 was duly replied to by defendant No. 3 through its counsel refuting the allegations made in the notice. Before dwelling on the merits of the present case, it will be relevant to refer to para 44 of the plaint relating to cause of action which reads as under:-

The cause of action first arose on 09.02.2004 when the Defendants raised altogether false, baseless, vague, general and unsubstantiated allegations against the Plaintiff, without specifying the nature of misconduct if any committed by him or giving him opportunity of being heard, and unceremoniously threw him out of employment. If thereafter arose on various dates when the Defendants took out offensive advertisements in leading newspapers announcing such termination of the services of the Plaintiff as it he had committed some misconduct. It thereafter arose on 20.02.2004 when Defendant No. 4 acting on behalf of Defendant No. 3 published and circulated a letter of even date making various false and baseless allegations of fraud, misappropriation of funds etc against the Plaintiff and posted the same to various doctors and leading hospitals in Delhi. The cause of action also arose on

various dates when Defendant No. 4 made false representations to placement agencies regarding alleged misconduct, misappropriation of funds etc by the Plaintiff, thus affecting the career and reputation of the Plaintiff. The cause of action is a continuous one, and runs every day."s

17. The averment of the plaintiff in para one of the plaint that he was appointed by defendant No. 1 ex facie does not appear to be correct. Admittedly, the plaintiff was appointed to the post of Product Sales Specialist vide letter dated 23.05.2000 which itself though was issued on the letter head of Boston Scientific but on unambiguous terms the plaintiff was offered an appointment by B.S. International B.v. Delhi office. He was interviewed by the staff of the concern and he had accepted this appointment without any protest. In face of the document relied upon by the plaintiff himself, it cannot be said even at this stage of the suit that plaintiff was employee of defendant No. 1 particularly when the said fact is disputed even by all the defendants except defendant No. 3 who had admitted that plaintiff was employee of defendant No. 3. Thus, previty of contract giving rise to any rights and/or obligations between the parties is only between the plaintiff and defendant No. 3. The public notice terminating the services of the plaintiff was also issued on 27.02.2004 and 05.03.2004 by defendant No. 3 through its counsel. Neither there is any averment with definite facts nor any other documentary evidence to support this vague averment made in the opening of the plaint. The plaintiff can obviously not plead contrary to a written document which is signed by both the parties and is accepted even at this stage of the suit. If the averment of the plaintiff that he is employee of defendant No. 1 is to be accepted at this stage, essentially, his claim against other defendants would have to be rejected. The plaintiff has prayed for a decree against all the defendants for his wrongful termination and keeping in view the letter dated 23.05.2000 and admission of defendant No. 3, it is a necessary consequence that plaintiff is employee of defendant No. 3 and not of defendant No. 1. Even from reading of the plaint in its cumulative manner and with due reference to the documents which are the very foundation of plaintiff's case, it is abundantly clear that plaintiff was offered and he had accepted appointed from defendant No. 3 and thus the relationship of employment emerged between the parties in the opinion of the court. The plaintiff cannot back-track from this issue and would be bound by the letter of appointment which he has placed on record. The admission of the plaintiff that all the defendants are corporate bodies and have their separate independent entity being companies duly incorporated, would further show that merely on vague averment and without expression of a definite cause of action, the plaintiff cannot be permitted to expose the said defendants to vague and purposeless litigation. Except the defendants who are his employers and against whom some definite averments have been made, constitute a proper cause of action which of course the plaintiff would have to prove during the course of trial.

18. Now coming to the application filed by defendant No. 2. It is not the case of the plaintiff that he is employee of defendant No. 2. All that has been said against this defendant in the entire plaint, is that defendant No. 2 is the regional headquarters of defendant No. 1 while defendant No. 3 is the Indian branch of defendant Nos. 1 and 2 and defendant Nos. 1 to 3 are corporate entities. Except this averment in para 1 of the plaint, it is stated in para 30 of the plaint that "it was alleged that there was no reason for sending the notice to Defendants No. 1 and 2. It was further alleged that the same was done to cause "unnecessary harassment" and lastly in the prayer clause it is stated that decree be passed against the Defendants No. 1 to 3, jointly and severally. Would such an averment by itself

even prima facie be covered under the expression 'cause of action'? There has to be a nexus between the bundle of facts stated and the cause of action made out by the plaintiff. It is the right to sue read in conjunction with the facts giving birth to such cause that ultimately becomes a cause of action as recognised in law. Everything that is brought to the court by way of a legitimate action must arise from a lawful cause as causa causae est causa causait.

19. In view of the above well-enunciated principles, it can safely be stated that cause of action has to be a bundle of facts which would give rise to a legitimate action in favor of plaintiff and against the defendant in the entire plaint whether it relates to termination, defamation or even otherwise. No averment or allegation has been made by the plaintiff against the said defendant. It is obligatory on the part of the plaintiff to show that the entire plaint read together in conjunction with the documents placed on record, discloses a cause of action. Once the plaintiff fails to show the same, the plaint obviously would attract the rigours of Order VII Rule 11 (a) of the Code. Even during the course of argument, learned counsel appearing for the plaintiff was not able to satisfactorily answer as to what is the cause of action against the defendant No. 2. There is no document placed on record which is executed by defendant No. 2 except reply to the notice of plaintiff by defendant No. 3 on 17th March, 2004 through its advocates raising an objection why notice was sent to defendant Nos. 1 and 2 and with the remarks and taking up the plea that they have no relationship of any kind with the plaintiff and the notice has been sent to them primarily with the intention of harassing them. This also is evident only from reply to the notice and there is no averment much less a definite alone by the plaintiff against the said defendant. Even the para in relation to cause of action which has been reproduced (supra) does not state that plaintiff has any cause of action against defendant No. 2. Thus the plaint of the plaintiff and the documents placed on record not only fail to disclose any cause of action against defendant No. 2 but also that there is not even an iota of averment made against the said defendant in the plaint.

20. Thrust of the submissions made on behalf of defendant No. 3 is that the plaint of the plaintiff is liable to be rejected for mis-joinder of cause of action and/or mis-joinder of parties. It is also the contention that as there cannot be a partial rejection, the whole suit of the plaintiff deserves to be dismissed at the very threshold. The argument is that cause of action in relation to termination and defamation against different defendants on different grounds, could not be clubbed together by the plaintiff. The order of termination has been issued by defendant No. 3 while other defendants have nothing to do with it and cause of action, if any, against defendant No. 4 for alleged defamation would be an independent cause of action which is incapable of being clubbed under the provisions of the Code. Cause for damages and wrongful termination could be clubbed together but claim for damages on account of defamation and harassment or distress cannot be joined as one cause of action. While, on the other hand, the contention on behalf of the counsel appearing for the plaintiff/non-applicant is that paras 1,5 and 8 of the plaint when read together show a complete cause of action which has different links of the same chain of cause of action and as such there is neither any mis-joinder of cause of action nor mis-joinder of parties. Subject to what has been already discussed above, it may be stated at the very outset of the discussion on this application that a ground for mis-joinder of cause of action or parties cannot be a ground for rejection of a plaint within the ambit and scope of Order VII Rule 11 of the CPC. Order VII Rule 11 contemplates rejection of a plaint on the grounds stated therein. Mis-joinder of cause of action and/or mis-joinder

of parties is not explicitly stated to be a ground for rejection of a plaint in that provision. Strenuous argument was raised on behalf of the applicant that a plaint suffering from defect of mis-joinder of parties and/or cause of action would be liable to be rejected under Clause 'd' of Order VII Rule 11 of the Code. Under this provision, the plaint shall be liable to be rejected in the cases where the suit appears, from the statement in the plaint, to be barred by any law. The contention is that mis-joinder of parties and/or cause of action would bar the plaintiff from claiming a relief and ultimately a suit may be liable to be dismissed on that ground. As such it would automatically have to be treated as a bar to the maintainability of the suit. This argument is apparently mis-conceived. Firstly, it cannot be disputed that mis-joinder of cause of action or parties is not a stated ground per se for rejection of a plaint. Secondly, it cannot in law be treated as a bar to the maintainability of the suit. The purpose of rejecting a plaint is to avoid vexatious, frivolous or a suit which in the eye of law is not maintainable. It is the maintainability of the suit which will be a paramount consideration before the court. While considering such an objection at the threshold of the proceedings, it is obligatory upon the plaintiff to frame a suit so as to afford ground for final decision upon the subjects and disputes and to prevent further litigation. The suit of the plaintiff should include the whole of the claim of the plaintiff which he is entitled to make in respect of the cause of action. Rule 3 of Order 2 deals with joinder of cause of action which enables a plaintiff to unite in the same suit, several causes of action against the same defendant. In other words, the plaintiff has a right to join causes of actions against the defendants in a common suit. However, such joinder of cause of action, if are mis-joined, the defendant in the suit under Rule 7 of Order 2 is required to take such objection at the earliest opportunity failing which it could be said that the defendant has waived the objection. Even if the plea of the defendant in regard to mis-joinder of cause of action has any merit, the court in exercise of its power under Rule 6 of the same Order may even direct separate trials on each cause of action or make such orders as may be expedient in the interest of justice. Similarly, a plaintiff can also join different persons as defendants where any right to relief in respect to or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons whether jointly and/or severally. It is equally the obligation of the defendant to take such objection at the earliest opportunity in terms of Rule 13 of Order 1. Under Sub-rule 2 of Rule 10 of Order I of the Code, the power is vested in the court to strike out or add parties. The argument raised on behalf of the applicant is completely mis-placed in view of the unambiguous language of Rule 9 of Order I which provides that no suit shall be defeated by reason of mis-joinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as record the right and interest of the parties actually before it. Exception to the Rule, of course, is in regard to non-joinder of a necessary party which is not the case herein. Thus the bare reading of the relevant provisions of the CPC shows that no suit can normally be dismissed for non-joinder of parties or cause of action with the exceptions as stated and in any case not at the threshold of the proceedings while taking recourse to the provisions of Order VII Rule 11 of the CPC. In this regard, not only the plaintiff but the defendant would also require an opportunity to substantiate their contention of mis-joinder of parties or cause of action.

21. The court has to give a meaningful reading to the plaint and if it is a manifestly vexatious or merit-list in the sense of not disclosing the clear right to sue, the court may exercise its powers under this provision and consider the request for rejection of a plaint. Non-disclosure of cause of action would not be understood as non-disclosure of complete facts. The plaintiff is to prima facie

show that he has an actionable remedy in law on the facts stated in the plaint read in conjunction with the documents. Even where the plaintiff has not paid the adequate court fee, the court normally would grant him an opportunity to make up the deficiency in payment of court fee and not dismiss the suit under Order VII Rule 11 of the Code. Reference can be made to the case of Buta Singh v. UOI . Ends of justice and opportunity to prove a case are the twin essentials running like a golden thread under the provisions of the CPC. The claim of the plaintiff in regard to joinder of cause of action or parties is a subject matter which can safely be gone into by the court during the course of the trial and by passing appropriate directions as afore-noticed. None of them can be read into the provisions of Order VII Rule 11 clause 'd' by necessary implication or otherwise. The language of the legislature is unambiguous and incapable of being such an interpretation. Where the court would not unnecessarily limit the powers of the court under a provision, there it would also not permit enlargement of such power by incorporating what is not even intended by the legislature to be included in such provision. As far as defendant No. 3 is concerned, the plaintiff has shown from the bare reading of the plaint that it has sufficient and definite cause of action against the said defendant.

22. Defendant No. 4 has not even filed such an application.

23. In view of my above discussion, IA Nos. 2318/2005 and 2317/2005 filed by defendant Nos. 1 and 2 are accepted and their names are ordered to be deleted from the plaint of the plaintiff, however, leaving the parties to bear their own costs. While IA No. 1504/2005 filed by defendant No. 3 is dismissed again leaving the parties to bear their own costs.