

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

ON THE 13th OF MAY, 2024

FIRST APPEAL No.90 OF 2017

BETWEEN:-

**STAR AGRONOMICS LIMITED THR.
DIRECTOR DUSHYANG SINGH S/O SHRI
RAMESH SINGH A/A 35 MUKHTYAR
GANG SATNA (MADHYA PRADESH)**

.....APPELLANT

**(BY SHRI SIDDHARTH SHARMA- ADVOCATE)
AND**

- 1. RIO TINTO INDIA PVT. LTD. THR.
MANAGINJG DIRECTOR S. VIJAY
AYYAR S/O NAMALUM 21 FLOOR, DLF
BUILDING NO.5 TOWER ADLF CYBER
CITY PHASE-3 GUDGAON HARYANA
(HARYANA)**
- 2. DIRECTOR (EXTERNAL AFFAIRS AND
COMMERCIAL) KAMAL KANT S/O
NAMALUM RIO TINTO EXPLORATION
INDIA PVT. LTD. BLOCK -9 5TH MANZIL
CORPORATE WINGH DB CITY ARERA
HILLS IN FRON OF ZONE 1 BHOPAL
(MADHYA PRADESH)**
- 3. DIRECTOR SIDDHARTH JAIN RIO
TINTO EXPLORATIN INDIA PVT LTD
UNIT NO. 103-A RIGHT WING 3RD FLOR
CAPITAL COURT PLAT NO. MS 1 LSC
MUNIRIKA PHASE 3 NEW DELHI
(DELHI)**
- 4. ADVIROR EXTERNAL RELATION
KAMAL SETHI S/O NAMALUM RIO
TINTO EXPLORATIN INDIA PVT LTD**

**BANDA GOAN BAKSWAHA 471318
CHHATARPUR (MADHYA PRADESH)**

- 5. COLLECTOR CHHATARPUR THE STATE
OF MADHYA PRADESH DISTT.
CHHATARPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI RAVINANDAN SINGH – SENIOR ADVOCATE WITH SHRI
MUNAWWAR NASEEM – ADVOCATE FOR THE RESPONDENTS NO.1 TO 4)**

(SMT. EKTA GUPTA – PANEL LAWYER)

This appeal coming on for admission this day, the court passed the following:

ORDER

With the consent of the parties, matter is heard finally at motion stage.

2. Present first appeal has been filed by the appellant under Section 96 of CPC being aggrieved by order dated 03.12.2016 passed by 2nd Additional District Judge, Chattarpur, whereby, while allowing the application under Order 7 Rule 11 CPC filed by respondents/defendants, plaint filed by appellant, which has been registered as Civil Suit No.110A/2016 has been rejected.

3. Brief facts of the case are that appellant/plaintiff is a registered company having its due incorporation under the provisions of Companies Act and the suit was filed by the Company represented through one of the directors duly authorized by the resolution of the Board. The case of appellant/plaintiff before the trial Court was that the respondents/defendants No.1 to 4 were the owners of the land situated at Village Baxwaha having an area of 6.68 hectares and 3.28 hectares which they want to sale along with all existing infrastructures/structure. On 03.10.2016, an advertisement was issued in Dainik Bhaskar Newspaper and sealed tender was invited from the interested persons and as per advertisement

the participants were required to be submitted their tender by 5.30 PM on 20th October, 2016 alongwith requisite bank draft. Appellant/plaintiff has submitted that tender, after completing all formalities, which was opened and the appellant was declared to be successful bidder. It was specific case of the appellant/plaintiff and also have been pleaded in Paragraph 6 of the plaint that acceptance of the offer of the appellant/plaintiff has been duly communicated by the respondent/defendant No.2 and as a proof of the said acceptance CD containing recording of said conversation was filed along with the requisite certificate under Section 65-B of the Evidence Act with plaint and thus forming integral part of pleadings. Certain mails were exchanged for completion of formalities, however, the respondents/defendants have not shown inclination and the appellant/plaintiff came to know from the newspaper that the respondents/defendants are intending to alienate the property to someone else. Hence, appellant/plaintiff has filed a civil suit under Section 10 of the Specific Reliefs Act making a prayer for execution of the right accrued through the contract which has been concluded between the parties.

4. Learned counsel for the appellant submits that Court below has passed the impugned order on the basis of assumption and presumption. The court below has failed to appreciate that at the time of adjudication of the application filed under Order 7 Rule 11, the Court is only required to look into the averments made in the plaint. The trial Court has lost the sight to the fact that in paragraph 6 and 7 of the plaint, there is a specific averment made by the appellant/plaintiff that the contract has been concluded and the said averment read with the documents filed along with the plaint is disclosing triable cause of action requiring adjudication by the Civil Court. It is submitted that Court below has also failed to appreciate that whether there is concluded contract in the given facts and circumstances of the case itself an issue requiring adjudication only

after adducing the evidence during trial. The CD filed along with plaint clearly established communication of acceptance the CD was part of challan.

5. Learned counsel for the appellant further submits that court below has committed an error in deciding a factual issue without extending opportunity to appellant/plaintiff to adduce the evidence and prove his case. Learned Court below has also failed to appreciate that absence of written contract cannot be a ground for rejection of plaint as there was specific averments made in the plaint that the offer extended by the appellant/plaintiff has been accepted by the respondent/defendant and the same has also been communicated. It is settled principle of law that communication of acceptance of offer satisfy requirement of valid contract and will give cause of action to appellant for specific performance of contract.

6. Learned counsel for the appellant also submits that Court below has exceeded its jurisdiction while interpreting various clauses of contract and arriving at a conclusion that respondent No.4/defendant No.4 was not authorized to communicate the acceptance and there is no concluded contract. The Court has failed to appreciate that the clauses of bid and contract can be interpreted only in the light of evidence adduced during trial. It is submitted that Court below has failed to appreciate that the said issue is a pure question of fact, which cannot be adjudicated at this stage. The Court below while deciding the application under Order 7 Rule 11 has adjudicated a pure question of fact and has arrived at a conclusion on the basis of assumption and presumption, and goes beyond averment made in plaint, which apparently bad in law and beyond jurisdiction of Court.

7. Learned counsel for the appellant also submits that plaintiff has filed certificate under Section 65-B of the Evidence Act along with CD. Cause of action was clearly pleaded in relevant paras of plaint. Trial Court has wrongly

allowed defendants' application under Order 7 Rule 11 CPC on the basis of clause-8 of tender as well as note-4 and 5. Trial Court while disposing of defendants application has discussed plaintiffs case on merits and has gone to the extent of mini trial. It is also urged that while deciding application under Order 7 Rule 11 CPC with respect to accrual of cause of action, merits of the case cannot be discussed and evidence cannot be taken into consideration and neither different clauses of tender etc. can be interpreted/assessed. After referring on *Jageshwari Devi & Ors. Vs. Shatrughan Ram* (2007) 15 SCC 52, it is urged that at the most, plaintiffs case will be a case pertaining to defective cause of action and it is not a case of non-disclosure of cause of action. Trial Court has disposed off application after discussing merits of the case under Order 7 Rule 11(A) CPC. Only disclosure of cause of action is sufficient. Plaintiffs case can be dismissed only if there is non-disclosure of cause of action. It cannot be dismissed for defective cause of action. Further, plaint has to be read as a whole and not partially. Instant case relates to "concluded contract". It is also urged that whether in the present case, contract comes within the purview of concluded contract or not is matter of evidence. At this stage, it cannot be presumed that there is no concluded contract.

8. With respect to above submissions, learned counsel for the appellant has relied upon *D. Ramachandran Vs. R.V. Janakiraman and Others* (1993) 3 SCC 267 and *Eideco Housing and Industries Limited Vs. Ashok Vidyarthi and Others* 2023 SCC Online SC 1612. On above grounds, it is urged that appeal filed by appellant be allowed and impugned order passed by the trial Court be set aside and application filed by respondents/defendants under Order 7 Rule 11 CPC be dismissed.

9. Learned Senior counsel for the respondents/defendants, after referring to various clauses of NIT/tender, especially, clause-8 and 11 and note-4 and 5 of

notice for sale of land, submits, that in the instant case, there was no contract/agreement between the parties. It is also urged that while deciding application under Order 7 Rule 11 CPC, Court can look into documents filed along with the plaint. In the instant case, no agreements/contracts between the parties were ever executed. Further, defendant No.2 is not an authorized person on behalf of defendant No.1 to enter into contract/agreement with plaintiff. It is also urged that transcript is dated 25.10.2016, whereas, transaction took place between plaintiff and defendant No.2 is dated 27.10.2016.

10. With respect to above submissions, learned Senior counsel for the respondents has relied *Dahiben Vs. Arvinbhai Kalyanji Bhanushali & Ors.* (2020) 7 SCC 366, *Sayed Ayaz Ali Vs. Prakash G. Goyal & Ors.* (2021) 7 SCC 456, *P.V. Gururaj Reddy & Anr. Vs. P. Neeradha Reddy & Ors.* (2015) 8 SCC 331, *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal & Ors.* (1998) 2 SCC 70, *Jageshwari Devi & Ors. Vs. Shatrughan Ram* (2007) 15 SCC 52 and *M/s Reiance Cement Co. Pvt. Ltd. Vs. Manminder Singh & Ors.* in Civil Revision No.361/2022. On above grounds, it is urged that there is no illegality or perversity in the order passed by trial Court. Hence, appeal filed by appellant be dismissed.

11. I have heard learned counsel for the parties and perused record of the case.

12. Perusal of application filed by respondent/defendants reveals that it has been filed primarily on the ground of non-disclosure of cause of action in the plaint filed by plaintiff.

13. Hence, before proceeding further, it would be appropriate to refer the pronouncements relied upon by both the parties.

General Principles Governing Exercise of power under Order 7 Rule 11 CPC:-

14. Hon'ble Apex Court in *Eideco Housing and Industries Limited Vs. Ashok Vidyarthi and Others* 2023 SCC Online SC 1612 has summarized general principles governing exercise of power under Order 7 Rule 11 CPC as under:-

“17. In Kamala and others v. K. T. Eshwara Sa and others,(2008) 12 SCC 661, this Court opined that for invoking clause (d) of Order VII Rule 11 C.P.C., only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject- matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of [Section 12](#) of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject- matter thereof, the application for rejection of plaint should be entertained.”

(emphasis supplied)

18. Similar was the view expressed in [Shakti Bhog Food Industries Ltd. v. Central Bank of India](#) and another (2020) 17 SCC 260 and [Srihari Hanumandas Totala v. Hemant Vithal Kamat and others](#) (2021) 9 SCC 99.

19. The law applicable for deciding an application under [Order VII Rule 11 C.P.C.](#) was summed up by this Court in [Dahiben v. Arvindbhai Kalyanji Bhanusali \(Gajra\)](#) dead through legal representatives and (2020) 10 SCC 366 Relevant parts of paragraph 23 thereof are extracted below:

“23 to 23.1 x x x

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 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](#) 1986 Supp SCC 315, 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, in the following words :

“12. ... The whole purpose of conferment of such powers 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 in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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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.[Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I. (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“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 their entirety, a decree would be passed.”

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be

looked into. The plaint has to be construed as it stands, without addition or subtraction of words. 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. [D. Ramachandran v. R.V.Janakiraman](#), (1999) 3 SCC 267; See also [Vijay Pratap Singh v. Dukh Haran Nath Singh](#), AIR 1962 SC 941].

23.13. 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 7 Rule 11 CPC](#).

23.14. The power under [Order 7 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, as held by this Court in the judgment of [Saleem Bhai v. State of Maharashtra](#), (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in [Azhar Hussain v. Rajiv Gandhi](#), 1986 Supp SCC 315. Followed in [Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba](#), 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

20. The same view was reiterated in *Kum. [Geetha v. Nanjundaswamy](#) 2023 SCC On-line 1407*

15. Hon’ble Apex Court in *[Sayyed Ayaz Ali Vs. Prakash G. Goyal & Ors.](#) (2021) 7 SCC 456* has held as under:-

“**10.4.** It was necessary for the plaintiff to seek a declaration that the sale deeds were executed merely as a security for the repayment of the loan and a failure to seek such a declaration would come within the purview of the proviso to Section 34 of the Specific Relief Act, 1963.

10.5. The trial court having allowed the application under Order 7 Rule 11(d) CPC committed an error in granting time to the plaintiff to amend the plaint to seek proper relief and pay court fees. Where the rejection of the plaint takes place under Order 7 Rule 11(d), there would be no question of granting time to the plaintiff to rectify the defects in the plaint. Where the suit appears

from the statements in the plaint to be barred by any law, the defects are not curable.”

“Cause of Action “ – Order 7 Rule 11 (a) CPC

16. Hon’ble Apex Court in *Dahiben Vs. Arvinbhai Kalyanji Bhanushali & Ors.* (2020) 7 SCC 366, while interpreting term “cause of action” and other related aspects in relation to Order 7 Rule 11 CPC, has held as under:-

“24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In *Swamy Atmananda v. Sri Ramakrishna Tapovanam* [*Swamy Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

(emphasis supplied)

24.2. In *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467 this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is mani-

festly 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....”

(emphasis supplied)

24.3. Subsequently, in *ITC Ltd. v. Debts Recovery Appellate* (1998) 2 SCC 70 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

27. In *Khatri Hotels (P) Ltd. v. Union of India* (2011) 9 SCC 126 : this Court held that the use of the word “first” between the words “sue” and “accrued”, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh* (1991) 4 SCC 1 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

17. Hon'ble Apex Court in *D. Ramachandran Vs. R.V. Janakiraman and Others* (1993) 3 SCC 267 has held as under:-

“ 8. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.”

18. Hon'ble Apex Court in *P.V. Gururaj Reddy & Anr. Vs. P. Neeradha Reddy & Ors.* (2015) 8 SCC 331 has held as under:-

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

19. Honb'le Apex Court in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal & Ors.* (1998) 2 SCC 70 has held as under:-

“16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law

and a clear right to sue should be shown in the plaint. (See *T. Arivandandam v. T.V. Satya-pal* [(1977) 4 SCC 467]).

20. Hon'ble Apex Court in *Jageshwari Devi & Ors. Vs. Shatrughan Ram* (2007) 15 SCC 52 has held as under:-

“3. We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 CPC no exception can be taken to the order.”

Findings:-

21. Now facts of the case would be examined in the light of above legal propositions for deciding controversy between the parties. With respect to above, para-3 to 12 of plaint are relevant and material which are as follows:-

“3. यह कि प्रतिवादीगण की कंपनी की भूमि ग्राम बक्सवाहा में आवासीय व औद्योगिक भूमि स्थित है, जिसका रकवा क्रमशः आवासीय का 6.685हे. एवं औद्योगिक का 3.28हे. रकवा था, जिसमें पुराने उद्योग की मशीनें भी लगी थी, व अधोसंरचना भी था जिसका सम्पूर्ण विवरण अनुलग्न “अ” में दर्ज है, अनुलग्न “अ” वादपत्र का ही भाग है।

4. यह कि दिनांक-03.10.2016 के दैनिक भाष्कर समाचार पत्र में प्रतिवादी क्रमांक-1 ता 4 ने उक्त अनुलग्न “अ” में दर्शित भूमि व उसकी अधोसंरचना (सम्पूर्ण मशीने, भवन व कारखाना) विक्री करने की निविदा प्रकाशित की व उक्त निविदा दिनांक-20.10.2016 को 5.30 बजे दिन तक शीलबंद लिफाफे में निर्धारित राशि का बैंक ड्राफ्ट के साथ जमा करने का निर्देश था, उक्त निविदा का विज्ञापन अनुलग्न “ब” है व दावे का अंग है।

5. यह कि वादी की कंपनी ने उक्त अधोसंरचना जो अनुलग्न "अ" में दर्शित है उसे खरीदने का निर्णय लिया उक्त निर्णय के अनुसार वादी को अधिकृत किया, वादी ने समय-सीमा के अंदर बैंक ड्राफ्ट यूनियन बैंक आफ इण्डिया शाखा सतना से दो डी.डी. क्रमांक क्रमशः 923119 राशि 345000/- एवं 923118 राशि 236250/-रुपये दिनांकित 19.10.2016 बनवाकर निविदा फार्म के साथ प्रतिवादी कंपनी के प्रतिनिधि के साथ छतरपुर कार्यालय जाकर दोपहर 12 बजे जमा किया, उक्त निविदा फार्म की कापी एवं ड्राफ्ट की कापी अनुलग्न "स" व "द" है!

6. यह कि प्रतिवादी क्रमांक-1 ता 4 ने निविदा प्रपत्र समयावधि बाद खोला व निविदा प्रपत्र चूंकि अकेला आया था, इसलिये उसे स्वीकार कर स्वीकरोक्ति दिनांक-25.10.2016 को फोन से दी, उक्त स्वीकरोक्ति वादी ने अपने फोन पर संग्रहीत की जिसमें वादी एवं प्रतिवादी क्रमांक-2 से बात-चीत हुयी, धारा 65 बी साक्ष्य अधिनियम के प्रमाण पत्र के साथ उक्त बात-चीत की सीडी पेश है, जो अनुलग्न "य" व "र" है। उसका मूल वादी के मोबाइल फोन में संग्रहीत है।

7. यह कि वादी ने अपनी अभिस्वीकृति प्रतिवादी क्रमांक-2 को ई-मेल के द्वारा भी वादी ने भेजा, वादी की अभिस्वीकृति की ई-मेल की कापी अनुलग्न "ल" है, जिसके संबंध में साक्ष्य अधिनियम की धारा 65बी का प्रमाण पत्र अनुलग्न "व" है जो दावे का अंग है।

8. यह कि वादी ने प्रतिवादी क्रमांक-1 ता 4 के संपर्क करने का प्रयास किया लेकिन वे बहाना बनाकर विक्रय पत्र तहरीर कराने से बचने लगे, तब प्रतिवादी क्रमांक-2 के कार्यालय में जाकर वादी ने दिनांक-27.10.2016 को बात किया व प्रतिवादी क्रमांक-2 को जानकारी दी कि उसके पास राशि की व्यवस्था है, आप लोग तुरंत विक्रयपत्र तहरीर कराये, लेकिन प्रतिवादी क्रमांक-2 विक्रय पत्र तहरीर कराने व शेष राशि स्वीकार करने में आना कानी कर समय की मांग की।

9. यह कि वादी ने अनुबंधित सम्पत्ति जो अनुलग्न "अ" में दर्शित है उसकी शेष विक्रय की राशि की व्यवस्था करके विक्रय पत्र तहरीर कराने का अनुरोध किया, व इस हेतु ई-मेल से पत्र भी प्रतिवादी क्रमांक-1 को भेजा व शेष प्रतिवादीगण को उक्त पत्र को ई-मेल से भेजा जो अनुलग्न "श-1" है उक्त पत्र की प्राप्ति की अभिस्वीकृति पत्र "श-2" है, इनके संबंध में धारा 65-बी साक्ष्य अधिनियम का प्रमाण पत्र "श-3" है जो वाद पत्र के भाग है।

10. यह कि प्रतिवादीगण 1 ता 4 अनुलग्न "अ" में दर्शित सम्पत्तियों का विक्रयनामा तहरीर कराने में टाल-टूल करने लगे, उसी समय अचानक डी. बी. पोस्ट नामक अखबार में दिनांक-04.11.2016 को एक समाचार छपा कि प्रतिवादी क्रमांक-1 ता 4 वादी को विक्रयनामा तहरीर ना कराकर अन्य को सम्पत्ति व्ययन करने का प्रयास कर रहे हैं, उक्त समाचार पत्र की प्रति अनुलग्न "ष" है, जो वाद पत्र का भाग है।

11. यह कि समाचार पत्र में उक्त समाचार पढ़ने के बाद प्रतिवादी क्रमांक-2 से संपर्क करने का प्रयास किया, लेकिन प्रतिवादी क्रमांक-2 से संपर्क नहीं हो पाया, प्रतिवादी क्रमांक-3 से दिनांक-04.11.2016 को संपर्क हुआ तो उन्होंने प्रति. से बातचीत मोबाइल पर एवं साक्ष्य अधि. प्रमाणपत्र अतुल

‘य’ एवं ‘र’ संविदा के अनुसार दस्तावेज पंजीकरण कराने में असमर्थता व्यक्त की, जिस कारण वादी को वाद कारण प्राप्त हो गया।

12. यह कि वादी ने विधि पूर्वक संविदा हेतु निविदा फार्म भरा था, व वांछित राशि का ड्राफ्ट यूनिजन बैंक आफ इण्डिया शाखा सतना से दो डी.डी. क्रमांक क्रमशः 923119 राशि 345000/- एवं 923118 राशि 236250/-रुपये दिनांकित-19.10.2016 बनवाकर भेजा जिसे प्रतिवादी क्रमांक-1 ता 4 ने स्वीकार किया व वादी की निविदा स्वीकार की गयी, यह जानकारी दी, व वादी सदैव राशि के साथ दस्तावेज पंजीयन कराने के लिये तैयार है, लेकिन प्रतिवादी क्रमांक-1 ता 4 वगैर किसी विधिक वजह के संविदा को भंग करने पर आमदा है, इसलिये उक्त संविदा के अनुपालन के लिये विधिक निर्देश वादी प्राप्त करने का मुस्तहक है।”

22. Thus, plaintiff has filed present suit on above grounds for specific performance of contract under Section 10 of Specific Relief Act.

23. Sole issue before this Court is whether parties entered into any contract/agreement and there was any “concluded contract”/“executable contract”/“enforceable contract” between the parties. Perusal of plaint averments as well as documents filed along with plaint clearly reveal that parties did not enter into any agreement or contract and there was no contract/“executable contract”/“concluded contract”/“enforceable contract” between the parties.

24. Perusal of documents filed along with plaint, especially, NIT/tender and plaint averments itself do not show that there was any stipulation in tender to the effect that parties can enter into oral/implied agreement or there can be any oral/implied agreement/contract between the parties with respect to the bid. As per terms and conditions of NIT/tender, the successful bidder was required to execute contract/sale agreement etc.

25. Further, note-4 and 5 of “notice for sale of land” reads as under :-

“4. Tendering process can be withdrawn by Seller at any point of time during the whole process without any obligation to bidders.

5. Seller has sole discretion of selecting and accepting the bids.”

26. Clause-8 of terms and conditions of the tender reads as under:-

8. “Tendering Process can be withdrawn at any point during the process of tender without any reason and Seller will not have any liability towards bidder. In such case, Bid submitted by Bidder will be returned along with EMD amount.”

27. Further, there is nothing on record to show that the person with whom plaintiff’s conversation took place, as per the transcript/CD attached with the plaint, was an authorized person on behalf of the respondent company to enter/execute agreement/accept bid on behalf of the Company.

28. Thus, in the instant case, there is no valid concluded/executable/enforceable contract/agreement between the parties on record. Hence, in view of discussion in the foregoing paras, in this Court’s opinion, it is not a case of defective cause of action, instead, it is a case where plaint *ex-facie* does not disclose any cause of action. For reaching the “above conclusion”, merits of the case/evidence of the case is not required to be discussed/assessed and examined at all. Further, construction and interpretation of terms and conditions of the tender document etc is not required at all. Above conclusion is inevitable/apparent from plaint and documents filed along with plaint.

29. I have also gone through the impugned order and perusal of the same reveal that trial Court has discussed and examined all the aspects in detail and order passed by the trial Court is as per law and facts of the case. No interference is required in the same.

30. Hence, in this Court’s opinion, trial Court has rightly dismissed plaintiff suit on the ground that it does not disclose any cause of action. No interference is required in the same.

31. Hence, in view of discussion in the foregoing paras, and appeal filed by the appellant is **dismissed** and findings recorded by Tribunal are affirmed.

(ACHAL KUMAR PALIWAL)

JUDGE

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