

Special Legal Issues Seminar

“CPC Order VII Rule 11 - Dismissal-In-Limine of Different Types of IP Lawsuits”

Object and Purpose

- ❖ A court of civil jurisdiction will be administered by the provisions of the Civil Procedure Code, 1908 (*CPC*).
- ❖ The court is vested with the duty to appropriately inspect the plaint before a suit is established, to decide the subject of dismissal.
- ❖ **Order VII Rule 11** of CPC is visualized with the provisions of the dismissal of the plaint by the Court.
- ❖ The litigant cannot be forced to record a written statement or a composed proclamation without settling on such an application if any.
- ❖ This rule can be applied at any phase of the procedures.

Relevant Provisions of the Code of Civil Procedure, 1908

❖ **Order VII Rule 11- Rejection of Complaint**

The complaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the complaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the complaint to be barred by any law;
- (e) [where it is not filed in duplicate];
- (f) [where the plaintiff fails to comply with the provisions of rule 9];

❖ **Order II Rule 2- Suit to include the whole claim.**

Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

- ❖ **Order VII Rule 7** - Relief to be specifically stated.
Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.
- ❖ **Order VII Rule 12** - Procedure on rejecting plaint.
- ❖ **Order VII Rule 13** - Where rejection of plaint does not preclude presentation of fresh plaint.
- ❖ **Section 20** - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction (c) The cause of action, wholly or in part, arises.
- ❖ **Section 151** - Saving of inherent powers of Court.
Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

- ❖ **Order VII Rule 11 (a) - When the cause of action is not mentioned in the plaint** – To establish a lawsuit, the reason should be unequivocally referenced to in the plaint. In the absence of such reference the plaint can be dismissed by the Court. It is the sole reason behind why a civil suit exists. It determines the legitimate damage which the individual who is instituting a suit has endured.
- ❖ **Order VII Rule 11(b) - The relief claimed in the plaint is undervalued** – If the amount of compensation that is being demanded by the plaintiff is lesser than the requisite, the plaint can be rejected. Such a claim needs to be corrected within the time which is prescribed by the Court.
- ❖ **Order VII Rule 11(c) - a plaint is rejected by the Court if it has been written on a paper which has not been duly stamped and authorized.**
- ❖ **Order VII Rule 11(d) - If the suit is barred by any Statute.**

Relevant Case Laws

- ❖ ***Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success, [(2004) 9 SCC 512]***
 - *“...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...”*
 - *“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.”*
 - *“The idea underlying Order 7 Rule 11A is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit...the Courts would interpret the provisions in such a manner so as to save expenses, achieve expedition, avoid the court's resources being used up on cases which will serve no useful purpose”*

Relevant Case Laws (Contd.)

❖ *Azhar Hussain v. Rajiv Gandhi*, [1986 Supp SCC 315]

- *“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....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”.*

❖ *Khatri Hotels Private Limited v. Union of India*, [(2011) 9 SCC 126]

- The period of limitation will begin to run from the date when the **first right** to sue accrues. [Emphasis supplied]

❖ *Rajendra Bajoria v. Hemant Kumar Jalan*, [LL 2021 SC 483]

- *“...conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to..”;*
- The court also observed that if relief sought is not allowed under law, the plaint may be rejected.

Relevant Case Laws (Contd.)

- ❖ ***Urooj Ahmed, Lords Enterprises (India) v. Preethi Kitchen Appliances Private Limited and Ors. [2014(57)PTC139(Mad)]***
 - *“A cause of action would constitute bundle of facts. It implies a right to sue. There is difference between a non disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under Order VII Rule 11 of C.P.C., would govern a case of non disclosure of a cause of action. However it does not govern a defective cause of action.”;*
 - *“A question as to whether a plaint discloses a cause of action is a question of fact which has to be governed on the basis of the claims made therein in entirety. The Court has to take the averments as true and then apply its mind as to whether a plaint discloses a cause of action or not.”.*

Relevant Case Laws (Contd.)

❖ ***Sayyed Ayaz Ali v. Prakash G Goyal & Ors.*, [2021 (4) ALD 222]**

- Court cannot grant liberty to amend plaint while rejecting it under Order VII Rule 11(d) CPC.

❖ ***Vari Pharma v. Apex Laboratories Pvt. Ltd. and Ors.*, [2015(64)PTC57(Mad)]**

- ZINCOVIT v. ZINKOWIT
- “*the plaint can be rejected only when it does not disclose any cause of action and the said power could be used only when the Court is of the view that absolutely the plaintiff has no arguable case at all*”;
- “*...questions of disputed facts...can be decided only at the time of trial.*”.

Relevant Case Laws (Contd.)

❖ ***Nusli Neville Wadia v. Ivory Properties & Ors.*, [AIR 2019 SC 5125]**

- “...it cannot be laid down as proposition of law under Order VII Rule 11(d) that plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.”.

❖ ***ITC Limited v. Rakesh Behari Srivastava and Ors.*, [AIR 1997 All 323]**

- “...amended pleading means pleading that stood after the amendment and once the Court had allowed consideration of the application under Order 7,. Rule 11, C.P.C. the whole of the pleading that stood after amendment was to be looked into to find out it there was any cause of action.”.

❖ ***IPEG Inc. and Ors. v. Kay Bee Engineers and Ors.*, [AIR 2016 Guj 104]**

- “....no clear and genuine cause of action made out....a case of clever drafting creating an illusion of a cause of action which has to be nipped in the bud.” .

Relevant Case Laws (Contd.)

❖ *Dahiben v. Arvindbhai Kalyanji Bhanusali*, [(2020) 7 SCC 366]

The Court explained the provisions of Order VII Rule 11 in detail as below:

- Determine whether the plaint discloses a cause of action by closely scrutinizing the plaint, in conjunction with the documents that are relied on and if any are barred by law.
- Documents filed along with the plaint in consonance with the provisions of Order VII Rule 14
- The pleas taken by the defendant in the written statement and application for rejection of the plaint would be irrelevant.
- Provision under Order VII Rule 11 CPC 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.
- The provisions of Order VII Rule 11 are mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out.

THANK YOU!

Questions?

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