

Civil Procedure Code, Order 19 Rule 1: Non-filing of an affidavit in support of an application may be an irregularity but not an illegality or inherent defect that cannot be cured.

Civil Procedure Code, Order 7 Rule 1: The pecuniary value of the suit for jurisdiction and court fee purposes is the same. However, a plaintiff cannot claim a substantive relief against recovery and enforcement of a [contract](#) under the garb of relief for injunction simplicitor

Civil Procedure Code, Order 7, Rule 10: The plaint can be returned for want of cause of action. Only the averments made in the plaint are considered, and the defendant cannot take advantage of averments in the written statement

Civil Procedure Code, Section 148 and Order 8, Rule 1: Delay in filing a written statement can be condoned, even if not strictly mandatory, based on the peculiar facts and circumstances of the case

Civil Procedure Code, Sections 2 and 20 and Order 7, Rule 1: The place of cause of action is determined from the bundle of facts of the case as a whole. Objection to the place of action must be raised at the first instance. Once an integral or material part of the cause of action arises within the jurisdiction of a court, that court cannot be said to have no jurisdiction

Debt Recovery Tribunals Act, Section 18: A suit for injunction can be entertained by a civil court, but if the plaintiff refers to the protection available under the Debt Recovery Act, the suit will not be maintainable

Specific Relief Act, Section 34: A suit for declaration without claiming further relief is not maintainable. However, the court may grant an opportunity to amend the suit in the interest of justice before dismissing it

2006 PLRonline 0103 (Del.)

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Maharaji Educational Trust v. Punjab & Sind Bank, 2006 PLRonline 0103 (Del.)

DELHI HIGH COURT

Before:- Swatanter Kumar, J.

Maharaji Educational Trust & Anr. – Plaintiffs

Versus

Punjab & Sind Bank & Anr. – Defendants

CS(OS) No. 1339 of 2005.

12.1.2006.

Specific Relief Act, Section 34 -

Court Fees Act, Section 7(iv)

Civil Procedure Code, Order 7, Rule 10

Civil Procedure Code, Section 148 and Order 8, Rule 1

Delhi High Court Rule (Original Side), Chapter 6, Rule 3

Civil Procedure Code, Sections 2 and 20 and Order 7, Rule 1

Civil Procedure Code, Order 7 Rule 1

Court Fees Act, Section 17(iv)(c)

Debt Recovery Tribunals Act, Section 18

Civil Procedure Code, Order 19 Rule 1

Cases Referred :-

1. *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*, (1979)2 SCC 409 : 1979(2) SCR 641.
2. *New Holland Tractors (India) Pvt. Ltd. v. Raja Industrial Works*, IA 6689/2005 in CS (OS) 501/2004, decided on 8th September, 2005.
3. *ABN-Amro Bank v. Punjab Urban Planning and Development Authority*, 1993(3) PLR 479.
4. *Liverpool and London S.P. & I. Association Ltd. v. M.V. Sea Success I*, 2003 X AD (S.C.) 53 : (2004)9 SCC 512.
5. *Arunesh Punetha v. Boston Scientific Corporation*, CS (OS) No. 951/2004) decided on 25.8.2005.
6. *D. Ramachandran v. R.V. Janakiraman*, 1999(2) RCR (Civil) 272 : 1999 III AD (S.C.) 25 : (1999)3 SCC 267.
7. *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp. SCC 315.
8. *Pramod Kumar Gupta v. Skylink Chemicals*, 2001 VI AD (Delhi) 256 : 93(2001) DLT 143.
9. *Skipper v. Atma Ram Properties Pvt. Ltd.*, 1994 IV AD (Delhi) 97 : 56(1994) DLT 514.
10. *Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav*, (1918) PC 188.
11. *Emperor v. Ralla Ram*, AIR 1946 Lahore 94.
12. *Karam Ilahi v. Muhammad Bashir*, AIR 1949 Lahore 116.
13. *Shivasangappa Irsangappa v. Muchkhandeepa Irsangappa*, 1932 Bombay 160.
14. *Bombay Ammonia Pvt. Ltd. v. Rajkumar*, 115(2004) DLT 609.
15. *Sri Krishna Chandra v. Mahabir Prasad*, AIR 1933 Allahabad 488.

16. *S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar*, 1958 SC 245 : 1958 SCR 1021.
17. *Purushottam Dass v. Har Narain*, 1978 APEXSOFT (Delhi) 4 : 14(1978) DLT 8 (FB) : AIR 1978 Delhi 114 (FB).
18. *Anil Rishi v. Gurubux Singh*, AIR 1999 Punjab and Haryana 121.
19. *Nemi Chand v. Edward Mills Co. Ltd.*, 1953 SCR 197.
20. *ICICI Bank Limited v. Coventry Coil-Omatic (Haryana) Limited*, IV (2005) BC 91.
21. *Shamsher Singh v. Rajinder Prashad*, AIR 1973 Supreme Court 2384.
22. *Ratlam Straw Board Mills Pvt. Ltd. v. Union of India*, Suit No. 286/1970 decided on 26.3.1975.
23. *Surinder Kaur v. S. Rajdev Singh*, 2006(1) RCR (Civil) 772 (Delhi).
24. *Automatic Electric Limited v. R.K. Dhawan*, 57(1995) DLT 49.
25. *Sarjiwan Singh v. Delhi Vidyut Board*, 2004(3) RCR (Civil) 352 : 2004 III AD (Delhi) 259 : 110(2004) DLT 633.
26. *Eastman Kodak Co. v. MR. Electronics*, 1995(2) R.R.R. 608 : 1994 Rajdhani Law Reporter 476.
27. *United India Insurance Co. Ltd. v. Samir Chandra Chaudhary*, 2005 VI AD (S.C.) 254 : V (2005) SLT 442.
28. *Commercial Aviation and Travel Company v. Mrs. Vimla Pannalal*, AIR 1988 Supreme Court 1636.
29. *Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd.*, 1997(4) RCR (Civil) 669 : 1997 IV AD (Delhi) 24 : 67(1997) DLT 673.
30. *Gopalakrishna Pilai v. Meenakshi Aval*, AIR 1967 Supreme Court 155.
31. *J.V. Vinnisami Thever v. J. V.R. Chellasami Thevar*, AIR 1921 Madras 17.
32. *Abhay Chand Ram Chand v. Ram Chand Wazir Chand*, AIR 1966 Punjab 526.
33. *Ganga Ram v. Shiv Lal*, AIR 1964 Punjab 260.
34. *Ghulam Mohiuddin v. Official Assignee*, AIR 1978 Calcutta 463.
35. *Dulana Dei @ Dolena Dei v. Balaram Sahu*, AIR 1993 Orissa 59.
36. *Delhi Development Authority v. K.R. Builders (P) Ltd.*, 119(2005) DLT 196 (DB).
37. *Sukhwinder Pal Bipan Kumar v. State of Punjab*, AIR 1982 Supreme Court 65.
38. *State of Bombay v. Purshottam Jog Naik*, AIR 1952 Supreme Court 317.
39. *Enkay Construction Co. v. Delhi Development Authority*, 2000 VI AD (Delhi) 530 : 86 (2000) DLT 748 : 2000 Rajdhani Law Reporter 457.
40. *Kailash v. Nankhu*, 2005(2) RCR (Civil) 379 : 2005 IV AD (S.C.) 468 : (2005)4 SCC 480.
41. *Rani Kusum v. Kanchan Devi*, 2005(3) RCR (Civil) 727 : 2005 VII AD (S.C.) 192 : JT 2005(7) SC 409.
42. *Topline Shoes Ltd. v. Corporation Bank*, 2002 V AD (S.C.) 455 : JT 2002(5) SC 111.

For the Plaintiffs :- Mr. Madan Bhatia, Senior Advocate with Mr. Neageshwar Pandey and Mr. Anup Kumar Sinha, Advocates.

For the Defendants :- Mr. P.L. Bhandari and Mr. Sanjeev Bhandari, Advocates.

JUDGMENT

Swatanter Kumar, J. – The plaintiffs have filed the present suit praying for passing of

decree of declaration against the defendants declaring that the communication dated 22nd August, 2005 is illegal, void, *mala fide* and is vitiated by falsehood and fraud. Plaintiffs had also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Civil Procedure Code (for short 'CPC') being IA No. 7513/2005. On 22nd September, 2005 the Court passed the following order :

"22.9.2005

Present : Mr. Madan Bhatia, Sr. Advocate with Mr. N. Pandey and Mr. A.K. Sinha for the plaintiff

IA 7514/2005 in CS (OS) 1339/2005

Exemption prayed for allowed subject to just exceptions. The proper documents shall be filed within two months from today.

IA stands disposed of.

CS (OS) J 339/2005

Issue summons by Registered AD, in the ordinary manner and Dasti as well, returnable on 3.10.2005.

IA 7513/2005

Issue notice, returnable on 3.10.2005.

In the meanwhile the defendants are restrained from taking any cohesive steps in furtherance to the order dated 22.8.2005.

Compliance to Order 39, Rule 3 of the Civil Procedure Code be made within three days. In the event of default of service, interim protection shall be liable to be vacated.

Order Dasti.

September 22, 2005

Swatanter Kumar, J."

2. The case was adjourned to 3rd October, 2005 when the defendants appeared and they were granted time to file reply to the application and written statement. On that very day, the Counsel for the defendant had raised the argument that the plaint of the plaintiff was liable to be rejected and suit dismissed under Order 7 Rule 10 and 11 of the Civil Procedure Code. Thus, the Court had directed the parties to argue that issue at the very first instance. Arguments under these provisions, thus, were heard on 7th November, 2005.

3. Learned Counsel appearing for the defendants forcefully argued that the plaint of the plaintiffs is liable to be rejected and suit liable to be dismissed (under the provisions of

Order 7 Rule 10 and 11 of the Civil Procedure Code) and the interim order granted to the plaintiffs vide order dated 22nd September, 2005 is thus, liable to be vacated, amongst others on the following grounds :

(a) The relief of declaration prayed by the plaintiffs without claiming any consequential relief is barred under Section 34 of the Specific Relief Act.

(b) This Court has no territorial jurisdiction to entertain and decide the present suit as no cause of action or part thereof has arisen within the territorial jurisdiction of this Court. The impugned letter dated 22nd August, 2005 was issued by the Bankers from Meerut to the office of the plaintiff at Ghaziabad and nothing in relation thereto had happened within the territorial jurisdiction of this Court.

(c) This plaintiffs have not paid the *ad valorem* Court-fee in accordance with the provisions of Section 7(iv) of the Court Fee Act as the plaintiffs have valued the suit for the purposes of jurisdiction at Rs. 24 crores but have paid the fixed Court-fee of Rs. 20/-, claiming that the plaintiffs are liable to pay the fixed Court-fee of Rs. 20/-, the suit being one for declaration.

4. In order to examine the merit or otherwise of the contentions raised on behalf of the defendants for rejection of the plaint/dismissal of the suit at the very threshold of the proceedings, it will be necessary to refer to the facts giving rise to the present suit as they appear from the record.

5. The plaintiff, which is a Charitable Educational Trust, having its registered office in the State of Tamil Nadu, have also an Educational Trust at Ghaziabad of which plaintiff No. 2 is the Chairman. A medical college under the name of 'Santosh Medical College, Ghaziabad' was started which was affiliated to Choudhary Charan Singh University. According to the plaintiff, the college had the requisite permission from the Government as well as was duly approved by the Medical College of India to impart medical education in terms of Section 8 of the Indian Medical Council Act. There was also a dental college.

6. On 7th May, 1997, the plaintiff had sent a communication to the defendant-bank making a proposal for term loan of Rs. 12 crores for purchase of hospital equipment, machinery, furniture and fixtures. Vide letter dated 19th October, 1997, defendant No. 1 communicated to the plaintiffs that the credit facilities as per the note of the Management Committee for sanction of defendant No. 1 had been sanctioned in their favour and the said note contained the terms and conditions of sanction. Contract of loan was this, concluded and a sanction of term loan of Rs. 9.36 crores was sent to the parties on 19th October, 1997. The plaintiffs had also applied to HUDCO for grant of working capital on 23rd March, 1998. The said loan was sanctioned to the extent of Rs. 10 crores as per letter of HUDCO dated 4th June, 1998 and one of the conditions was that the plaintiff was to furnish a bank guarantee. The acceptance there of was communicated. Because of certain disputes with HUDCO, the plaintiff vide their letter dated 18th October, 1999 applied to defendant No. 1 for a loan of Rs. 15 crores to meet the liabilities in relation to HUDCO, to meet the running expenditure of the college and for completion of the college building. On 26th November, 1996,

defendant No. 1 had communicated to the plaintiffs that the sanctioned loan of Rs. 10 crores has to be utilised as per the statement made therein. The plaintiffs, according to the defendants, were not able to repay their dues as per terms of the agreement and as such they filed an original application before the Debts Recovery Tribunal (for short 'DRT') at Allahabad on 21st January, 2002 for decree for Rs. 26,75,98,861/- representing claims under the contracts including interest till date together with *pendente lite* and future interest @ 15% p.a with quarterly rests. The said claim was contested. Certain orders were passed by the Debts Recovery Tribunal in relation thereto.

7. During the pendency of the aforestated application, the plaintiffs made a proposal of compromise under 'One Time Settlement Scheme' in accordance with the guidelines of Reserve Bank of India (RBI) to defendant No. 1. Defendant No. 2 was appointed as Officer on Special Duty by Government of India with powers of the Chairman of defendant No. 1 and to perform his functions from 18th June, 2005. Plaintiffs were informed by the defendants on 21st June, 2005 requiring them to meet them for discussion of the matter. It is the case of the plaintiffs that plaintiff No. 2 met defendant No. 2 in his office on 20th June, 2005 and during the course of meeting a startling suggestion was made to plaintiff No. 2 to sell all the colleges and hospitals to a very rich person who was very influential and powerful, failing which defendant No. 2 would have to pass adverse orders to the interest of the plaintiffs. Plaintiff No. 2 brushed aside the aforesaid suggestion made by defendant No. 2 with a shock and made an offer to defendant No. 2 to liquidate the entire alleged claim of defendant No. 1 by payment of Rs. 22 cores in accordance with the guidelines issued by the RBI. He asked the plaintiffs to make a formal offer. On 5th July, 2005 the plaintiffs made the offer in writing to the defendants by means of a letter in which they had offered to make a payment of Rs. 22 crores and enclosed therewith a cheque of Rs. 22 crores stating that it should be encashed only if the 'One Time Settlement Scheme' was approved. Plaintiff No. 2 was again called by the defendant No. 2 and they met on 6th July, 2005 wherein the plaintiff No. 2 was asked to enhance the amount of settlement from Rs. 22 crores to Rs. 24 crores and also to pay the same amount immediately. On 23rd July, 2005 the plaintiffs in accordance with the demand made by the defendants increased the offer of settlement from Rs. 22 crores to Rs. 24 crores and as per the demand of the defendants also gave a bank draft for a sum of Rs. 1 crore in lieu of the post-dated cheque dated 23rd July, 2005 for a sum of Rs. 2 cores, which was already given. According to the plaintiffs they had accepted both the demands put forward by the defendant No. 2 and as such a concluded contract came into existence as the said bank draft was encashed by the defendants. However, on 22nd August, 2005 the plaintiffs were shocked to receive a communication by fax, which reads as under :

"Reg : Offer of settlement

We are referring to your letter dated 5.7.2005 and 23.7.05 offering to settle the outstanding of your accounts. Please be informed that the settlement amount offered by you vide your letter dated 23.7.2005 is not acceptable to the Bank.

The amount of Rs. 1 crore offered by you as token money is kept under No Lien Account with the bank."

8. The whole case of the plaintiffs is that encashment of the draft was subject to the acceptance of the settlement proposal submitted vide letter dated 7th July, 2005 and thereafter the defendants cannot be permitted to go back from the acceptance of the said proposal as they had encashed the bank draft.

9. Referring to the judgment of the Supreme Court in the case of **M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and ors., (1979)2 SCC 409 : 1979(2) SCR 641**, it is stated that the defendants are stopped from altering the proposal and from taking any action in furtherance to their communication dated 22nd August, 2005.

10. The suit was contested by the defendants and a detailed written statement was filed on 5th November, 2005 which has been allowed to be taken on record vide separate order of the date, in IA No. 9006/2005.

11. The averments made in the written statement are that a loan was taken and the plaintiffs have failed to make the said payments and the defendants have already obtained a decree from the Debts Recovery Tribunal against the plaintiffs for a sum of Rs. 26,75,98,861/- together with *pendente lite* and future interest in TA No. 333/2004. It is also stated that the plaintiffs have misrepresented before this Court, that letter dated 22nd August, 2005 had been issued by the defendants from Delhi merely because plaintiff No. 2 appeared before the Independent Settlement Advisory Committee at Delhi and that the same would not give jurisdiction to this Court. It is stated that all transactions between the parties took place at Meerut. The recovery certificate order dated 25th August, 2005 had been issued at Meerut and the plaintiffs had already filed an appeal against the said order before the Appellate Tribunal, but such an appeal cannot be entertained under Section 19 of the Act, unless 75% of the amount is deposited. To avoid that situation the plaintiffs have *mala fide* filed the present suit. According to the defendants, the present suit would also be barred in view of the provisions of the DRT Act inasmuch as the plaintiffs are trying to achieve indirectly, what they cannot achieve directly in view of the pendency of the proceedings before the Appellate Tribunal.

12. In regard to the communication in question dated 22nd August, 2005 it is stated that the plaintiffs were always informed that no proposal less than the decretal amount can be accepted and future interest on prime lending rates from the date of filing of the suit till payment alone would be considered. At the time of appearance before the Independent High Powered Advisory Committee on 2nd August, 2005 the plaintiff No. 2 was clearly told the status of the compromise offer made by them and the plaintiffs gave certain clarifications vide their letter dated 3rd August, 2005 which were rejected and the defendant-bank communicated the rejection vide letter dated 22nd August, 2005. It is also stated on behalf of the defendants that the payment of Rs. 1 crore and raising the amount to Rs. 24 crores from Rs. 22 crores was merely an offer which has been rejected and it gives no right to the plaintiffs to challenge the letter dated 22nd August, 2005, as rights of the parties are fully governed by the order of the DRT dated 25th August, 2005. The communication dated 22nd August, 2005 was sent prior to the final order passed by the DRT, Lucknow on 25th August, 2005 as such the communication is of no consequence as the parties were already pursuing their respective remedies before the competent Forum.

The present suit, according to the defendants, is not maintainable in view of the preliminary objections taken. On this premise, it is submitted that the suit is liable to be dismissed and interim orders liable to be vacated.

13. It is a settled principle of law that in order to take up the pleas under Order 7 Rule 10 and 11 of the Code, the party concerned has to essentially take the averments made in the plaint as correct. Such a plea being the plea of demurrer the defendants cannot take advantage of the averments made in the written statement or the factual narration to show that averments made in the plaint are incorrect. The Court would take into consideration the plaint as a whole and the documents placed by the plaintiffs on record, in order to examine such pleas. This principle of law is no more *res-integra* and has been settled by various judgments of the Court. In this regard, reference can be made to the judgment of this Court in the case of **New Holland Tractors (India) Pvt. Ltd. v. M/s. Raja Industrial Works and Ors., IA 6689/2005 in CS (OS) 501/2004, decided on 8th September, 2005** :

“4. It is further a settled canon of civil jurisprudence that the Court while considering an application under Order 7, Rule 11 of the Civil Procedure Code has to assume that the facts averred in the plaint are primarily correct particularly when such averments are supported by the documents in the case. Reference in this regard can be made to the judgment of **ABN-Amro Bank v. The Punjab Urban Planning and Development Authority, 1993(3) PLR 479**, where the Court held as under :

“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 provision of Order 7, Rule 11 of the Civil Procedure Code. 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 admit even the documents filed by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application... ..”

5. Reference can also be made to the judgment of Supreme Court in **Liverpool and London S.P. & I. Association Ltd. v. M.V. Sea Success I and Another, 2003 X AD (S.C.) 53 : (2004)9 SCC 512**, wherein the Supreme Court held as under :

“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.”

14. As such taking of the written statement on record would more or less be inconsequential for the purposes of adjudicating the contentions raised on behalf of the

defendants in relation to the maintainability of the suit, rejection of the plaint and/or consequential dismissal of the suit under these provisions. Thus, in view of the above settled principle of law, the Court would proceed to discuss these objections.

Territorial Jurisdiction

15. According to the plaintiffs, the communication dated 22nd August, 2005 was received by the plaintiffs at New Delhi and the proceedings before the authorities had taken place at New Delhi. Vide letter dated 23rd July, 2005 the plaintiffs had written to the Chairman, Punjab and Sind Bank, New Delhi that on the advice they had increased the offer from Rs. 22 crores to Rs. 24 crores and that they had also given a post-dated bank draft for a sum of Rs. 1 crore for the same. It was stated in this letter that encashment of the draft is subject to acceptance of settlement proposal submitted vide letter dated 7th July, 2005. A bank draft was also issued by the Canara Bank, New Delhi. The rejection of the request of the plaintiffs was sent by the Meerut Office of the Bank to the plaintiffs at Ghaziabad. Vide its letter, besides informing the plaintiffs that the offer was not acceptable, it was also stated "the amount of Rs. 1 crore offered by you as token money is kept under no lien account".

16. In the written statement filed on behalf of the defendants, it has been admitted that the plaintiff had appeared before the Settlement Advisory Committee (High-Powered Committee) at New Delhi. This Committee at Delhi was to hear the plaintiffs and was to make the recommendations to the Board of Directors, who were then to take a final view on 'whether to accept or reject the offer ?' The High Powered Committee is stated to be presided over by a retired Judge. It also cannot be disputed that the offers were sent to Delhi which were not accepted by the Committee at Delhi and consequently the communication dated 22nd August, 2005 was issued by the defendant-bank to the plaintiffs at Ghaziabad. In these circumstances, it cannot be stated that no cause of action has arisen within the territorial jurisdiction of this Court. The proceedings of the meeting of Independent Settlement Advisory Committee, were admittedly held at the Head Office of the Bank at New Delhi wherein the plaintiff appeared and participated in the proceedings. Not only one, but from the record it appears that a chain of meetings had taken place at Delhi. If there was no dispute with regard to acceptance and/or rejection of the offer made by the plaintiffs, probably everything would have concluded at Delhi. Mere communication of letter (dated 22nd August, 2005) at Ghaziabad from Meerut Office would not divest this Court of the territorial jurisdiction. Keeping in view the limited relief that has been claimed in the present suit, it cannot be said that no integral part of the cause of action has arisen within the territorial jurisdiction of this Court. Reference can be made to a recent judgment of this Court in *New Holland Tractors (India) Pvt. Ltd. (supra)*, wherein while referring to the different judgments of the Supreme Court the Court held as under :

"8. It may be noticed that the objection as to place of sue has to be taken at the first instance in terms of Section 21 of the Code. In terms of Section 20 of the Code, the suit shall be instituted in a Court within the local limits of whose jurisdiction cause of action wholly or in part arises. The expression 'cause of action' has received liberal but definite construction in various pronouncements of the Court. The cause of action which would determine jurisdiction of the Court in consonance with these provisions essentially has to

be material part of the entire chain of cause of action. The cause of action alleged to have arisen within the territorial jurisdiction of the Court must be substantial in reference to the transaction in question. At this stage usefully reference can be made to certain principles governing the jurisdiction of the Court under Order 7, Rule 11, in a recent judgment of this Court in the case of **Arunesh Punetha v. Boston Scientific Corporation and Others, (CS (OS) No. 951/2004), decided on 25.8.2005** where the Court held as under :

“3. The Supreme Court in a very recent judgment titled as **Liverpool and London S.P. and I. Association Ltd. v. M.V. Sea Success I and Another, (2004)9 SCC 512**, 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 8, 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 :

xxx xxx xxx

Cause of action

140. A cause of action is a bundle of facts 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, 1999(2) RCR (Civil) 272 : 1999 III AD (S.C.) 25 : (1999)3 SCC 267**, 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, (1994) 2 SCC 392).

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 Civil Procedure Code which may amount to prejudging the matter.”

4. Further while discussing the scope and nature of the order passed under Order 7, Rule 11 and what could constitute a cause of action in contradistinction 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 Civil Procedure Code.

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 Civil Procedure Code, 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 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.**)'

9. Reliance by the plaintiff has also been placed upon another judgment of this Court in the case of **Pramod Kumar Gupta v. M/s. Skylink Chemicals, 2001 VI AD (Delhi) 256 : 93(2001) DLT 143**, in support of his contention that as per the averments made in the plaint, the defendants had approached the plaintiff for carrying on the business and for signing of the agreement in question at Delhi in addition to the fact that the Letter of intent was signed and confirmed at Delhi would sufficiently provide territorial jurisdiction of this Court.

10. Furthermore, an applicant raising an objection in regard to maintainability of the suit at the very threshold of the proceedings has to at least *prima facie* take the averment made in the plaint as correct unless the documents placed on record including that of the plaintiff demonstrate that the plaint is patently veracious based on falsehood and such averments cannot be taken as correct. Reference in this regard can be made to the judgment of this Court in **Skipper v. Atma Ram Properties Pvt. Ltd., 1994 IV AD (Delhi) 97 : 56(1994) DLT 514.**

11. It may not be permissible to rely on such facts. That certainly is not the case here. The documents afore-referred to some extent support the case of the plaintiff and the pleas raised by the defendants can only be substantiated during the course of full trial. From the documents it is clear that integral cause of action has arisen within the territorial of this Court as per the averments made in the plaint and it cannot be said at this stage of the proceedings that this Court has no territorial jurisdiction to entertain and decide the present suit."

17. From the facts as pleaded in the plaint and particularly paragraphs 42 to 45, 84, 90 to 92, which at least at this stage, cannot be stated to be factually and entirely incorrect, part of the correspondence placed by the plaintiffs on record does support the case of the plaintiffs in regard to the issue of territorial jurisdiction. Once integral or material part of the cause of action has arisen within the territorial jurisdiction of this Court, keeping in view the limited relief claimed by the plaintiffs in the present suit it cannot be said that this Court has no territorial jurisdiction to entertain and decide the present suit.

Whether the suit is barred in view of the provisions of Section 34 of the Specific Relief Act. ?

18. The plaintiffs have prayed for a decree of declaration declaring that the communication dated 22nd August, 2005 sent by the defendants to the plaintiffs repudiating the settlement which had taken place between the parties and any action taken thereupon, is

wholly illegal, void, *mala fide*, vitiated by falsehood and fraud. This prayer of the plaintiffs has to be examined in light of the averments made in the plaint and the undisputed facts on record emerging from the documents filed by the plaintiff itself. The factum of taking loan, disbursement, default and certain other disputes arising between the parties in relation to repayment, finally led to the filing of an application under Section 20 of the DRT Act. The final order dated 25th August, 2005 was passed under the provisions of DRT Act for recovery of Rs. 26,75,98,861.00 against which the plaintiff has already filed an appeal before the Debts Recovery Appellate Tribunal, which is stated to be pending. During the pendency of these proceedings the parties exchanged certain correspondence whereafter at Delhi, the plaintiff had discussed the matter with defendant No. 2, against whom serious *mala fides* are alleged, but later had appeared before the Independent Settlement Advisory Committee (High-Powered Committee, at Delhi). As per the letters placed on record by the plaintiff they had initially proposed to bring a full and final settlement of the dues of the bank by paying a sum of Rs. 22 crores and had annexed a cheque for Rs. 2 crores. Subsequently, the amount was raised to Rs. 24 crores and a bank draft of Rs. 1 crore was sent to the bank. This bank draft has admittedly been encashed. According to the bank, and as is clear from the letter dated 22nd August, 2005, the amount was kept under "no lien account" with the bank. Vide this letter itself, it was stated that the offer made by the plaintiffs vide letter dated 5th July, 2005 and 23rd July, 2005 was not acceptable to the bank. The contention on behalf of the defendants is that the plaintiffs have failed to claim any consequential relief and the suit simplicitor for declaration challenging the legality of the said letter dated 22nd August, 2005 would be hit by the provisions of Section 34 of the Specific Rent Act. The provisions of the said section 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 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.

xxx xxx xxx

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."

19. It is also contended that the intent of filing of the present suit is to indirectly frustrate the proceedings before the Debts Recovery Appellate Tribunal. This Court has no jurisdiction to interject into the proceedings pending before the Tribunal; and even for that reason the present suit would not be maintainable.

20. At the very outset it has to be examined whether the plaintiffs could and ought to have claimed further relief and whether the relief of declaration by itself is or is not available to the plaintiffs.

Determination in regard to payment of ad valorem Court fee :

21. The gist of the claim raised by the plaintiff is that the communication dated 22nd August, 2005 sent by the defendants to the plaintiff repudiating the settlement which had taken place between the parties be held to be illegal, void *mala fide*, vitiated by falsehood and fraud. The plaintiffs have admitted that large sums are due to the defendants and even during the course of arguments it was not so disputed that the proceedings were pending and an order adverse to the interest of the plaintiff has already been passed by the Debts Recovery Tribunal. According to the plaintiffs, the parties entered into a settlement and the plaintiff offered to pay a sum of Rs. 24 crores in full and final settlement of the bank's claims and as demanded by the defendants, the plaintiffs had even agreed and given on 23rd July, 2005 a sum of Rs. 1 crore by a pay order. According to the plaintiffs, a contract had concluded between the parties on these terms and the balance amount was to be paid in installments and repudiation of this contract by the defendants vide letter dated 22nd August, 2005 repudiating the settlement of 23rd July, 2005 is sought to be cancelled and declared illegal. In substance, what the plaintiffs are asking the Court to declare in the garb of the relief claimed is that there is a settlement between the parties settling the claim of the bank for a sum of Rs. 24 crores. The cause of action is based on the letters of 23rd July, 2005 and 22nd August, 2005. The Debts Recovery Tribunal having jurisdiction over the matter has already passed an order dated 25th August, 2005 for recovery of Rs. 25,75,98,861/-. The parties are pursuing their legal remedies against and on the basis of the said order. In these circumstances, the plaintiffs have valued the suit for the purposes of jurisdiction and Court fee as under :

"93. That the value of the suit for the purpose of jurisdiction is Rs. 24.00 crores. Therefore, this Hon'ble Court has pecuniary jurisdiction to entertain the present suit.

94. That the plaintiffs are seeking a relief of declaration on which fixed Court fee of Rs. 20/- is payable and the same has been paid."

22. Thus, the short but pertinent question that falls for consideration of the Court is whether the suit has been valued properly for the purposes of Court-fee and jurisdiction in accordance with law or not ?

23. The learned Counsel appearing for the plaintiff, while relying upon the judgments in the case of ***Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav, (1918) PC 188; Emperor v. Ralla Ram, AIR (33) (1946) Lahore 94; Karam Ilahi v. Muhammad Bashir and Ors., AIR 1949 Lahore 116; Shivasangappa Irsangappa v. Muchkhandeepa Irsangappa, 1932 Bombay 160; Bombay Ammonia Pvt. Ltd. v. Rajkumar and Ors., 115(2004) DLT 609; Sri Krishna Chandra v. Mahabir Prasad and Ors., AIR 1933 ALL 488; S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar, 1958 SC 245 : 1958 SCR 1021; Purushottam Dass v. Har Narain, 1978 APEXSOFT (Delhi) 4 : 14(1978) DLT 8 (FB) : AIR 1978 Delhi 114 (FB); Anil Rishi v. Gurubux Singh, AIR 1999 Punjab and Haryana 121; Nemi Chand and Another v. The Edward Mills Co. Ltd. and Anr., 1953 SCR 197; ICICI Bank Limited v. Coventry Coil-Omatic (Haryana) Limited and Ors., IV (2005) BC 91; M/s. Motilal***

Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors., (1979)2 SCC 409, has argued that the Court Fee Act was not to arm a litigant with a weapon of technical plea against his opponent, but to secure revenue for the benefit of the State. It is also argued that the suit falls under Section 7(iv)(c) of the Court Fee Act and the plaintiffs are entitled to pay the fixed Court fee as per Article 17 Schedule 11 of the Court Fee Act, i.e. the fixed Court-fee.

24. It is further argued that in view of the law aforesaid the plaintiffs would be liable to pay only a fixed Court-fee as the letter dated 22nd August, 2005 does not relate to any specific amount but is a letter simplicitor declining to accept or rescind the contract, alleged to have been entered on 23rd July, 2005. As such the plaintiffs are liable to pay only a fixed Court-fee.

25. While questioning the legality and correctness of these submissions the learned Counsel appearing for the defendants while relying upon the judgments of the Supreme Court in the case of ***Shamsher Singh v. Rajinder Prashad and Others, AIR 1973 Supreme Court 2384*** and ***Ratlam Straw Board Mills Pvt. Ltd. v. Union of India and Anr., Suit No. 286/1970 decided on 26.3.1975*** has argued that the plaintiffs were required to pay *ad valorem* Court-fee at least on Rs. 24 crores which was the subject matter of the letter dated 23rd July, 2005, as per the own showing of the plaintiffs itself. It is also the contention of the defendants that the present suit besides being an abuse of the process of law is an attempt to invoke the jurisdiction which is not vested in the Court and as well as the plaintiff has not correctly valued the suit for the purposes of the Court-fee and jurisdiction. The attempt on the part of the plaintiff is to indulge in Forum shopping, thus offending the very basic rule of law.

26. No doubt, the plaintiff is entitled to value the suit at his discretion, but equally rule is the principle that such discretion has to be founded on some basis and must be exercised in consonance with the provisions of the Court-fee Act and the law regulating that. Such discretion cannot be arbitrary to the extent that it offends even the statutory provisions of the Court Fee Act. In this regard, reference can also be made to the judgment of this Court in the case of ***Smt. Surinder Kaur and Ors. v. S. Rajdev Singh and Ors., IA Nos. 3144-45/2005 and 475/2005 in CS(OS) No. 1806/1999, decided on 27th October, 2005*** where the Court held as under :

“12. These applications under Order 7, Rule 11 of the Civil Procedure Code are mainly based on the contention that the plaintiff has not valued the suit property for the purposes of Court-fee and jurisdiction. The claim of the plaintiff is based upon a rational and relevant material which admittedly was in possession of the plaintiff and the plaintiff has arrived at the relevant figures in relation to mesne profits as well as for rendition of accounts on such computed basis, as such the plaintiff should have paid the *ad valorem* Court-fee on the amounts claimed, and could not take the benefit of paying a fixed Court-fee. The other contention raised is that the plaint of the plaintiff is liable to be rejected in view of the provisions of Section 16(c) of the Specific Relief Act, 1963 and also on the ground that the plaintiff has not made any averment that he was always ready and willing to perform his part and incur the obligations for extension of lease. While relying upon the judgments of

the Supreme Court and this Court reported in ***Automatic Electric Limited v. R.K. Dhawan*, 57(1994) DLT 49; *Eastman Kodak Co. v. MR. Electronics*, 1995(2) R.R.R. 608 : 1994 Rajdhani Law Reporter 476; *United India Insurance Co. Ltd. and Anr. v. Samir Chandra Chaudhary*, 2005 VI AD (S.C.) 254 : V (2005) SLT 442; and *Bombay Ammonia Pvt. Ltd. v. Raj Kumar and Ors.*, 2005 I AD (Delhi) 221 : 115(2004) DLT 609**, in support of the above contention, the learned Counsel appearing for the applicant has also made reference to the documents on record and averments made in the plaint, in support of this contention.

While referring to paragraph 71 of the plaint, it is argued that the plaintiff has claimed mesne profits for illegal use of the property after 1st July, 1999, while the suit was filed on 16th August, 1999. The plaintiff has further assessed the mesne profits @ Rs. 50 lacs per month which obviously according to the plaintiff, is the amount payable for unauthorized and illegal use of the assets and properties of the partnership, as such the plaintiff was liable to pay *ad valorem* Court-fee on the amount of Rs. 50 lacs; calculated prior and after filing of the suit. In reply to the preliminary objections, a stand in this regard has also been taken by the defendants in the written statement. Plaintiff in the replication stated that the partnership had not been dissolved and affairs of the partnership had not been wound up and defendants have been using the property of the partnership firm while running the hotel business. The plaintiff could not, in law, thus be stated to have filed a suit on imaginary mesne profits, but the claim of the plaintiffs specific i.e. Rs. 50 lacs per month and thus, he was required to pay the *ad valorem* Court-fee on the sum of Rs. 50 lacs prior to the institution the suit. However, for *pendente lite* mesne profits the plaintiff could file the suit by fixing a fixed Court fee with an undertaking that he would pay the Court-fee on the amount assessed and decreed in his favour by the Court at the relevant time. Such a statement has vaguely been made but the plaintiff was certainly liable to pay the Court-fee on the amount claimed prior to the institution of the suit. The claim in the plaint is with effect from 1st July, 1999 while the suit was filed on 16th August, 1998. Therefore, for this period the plaintiff ought to pay the *ad valorem* Court-fee and cannot pursue the suit by payment of fixed Court-fee. It is a settled principle of law that except for the exceptions specifically provided under Section 7(4) of the Court-fee Act, the plaintiff is required to value the suit for the purposes of Court-fee and jurisdiction identically. The plaintiff cannot be permitted to exercise arbitrariness in claiming the amounts and in payment of Court-fee. The learned Counsel appearing for the plaintiff while relying upon the judgments of the Supreme Court in the case of ***M/s. Commercial Aviation and Travel Company and Others v. Mrs. Vimla Pannalal*, AIR 1988 Supreme Court 1636**, and judgment of this Court in the case of ***Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd.*, 1997(4) RCR (Civil) 669 : 1997 IV AD (Delhi) 24 : 67(1997) DLT 673**, contended that determination of damages by the plaintiffs not based on any fixed criteria and the mesne profits like a suit for unsettled accounts has been filed on a hope of the plaintiff that he would get the claimed amount, as such the plaintiff would not be liable to pay *ad valorem* Court-fee on this amount. Reliance in this regard was rightly placed upon the judgment of the Supreme Court in the case of ***Gopalakrishna Pillai and Others v. Meenakshi Aval and Others*, AIR 1967 Supreme Court 155**, to argue that the relief of past mesne profits on a stated amount by the claimant has to be valued and *ad valorem* Court fee paid thereupon.

13. It has already been discussed above that the plaintiff in relation to the relief of mesne profits, prior to the institution of the suit, cannot take benefit of paying fixed Court-fee. Of course, the mesne profits *pendente lite* or future would have to be determined and then alone a fixed amount would be arrived at and the plaintiff would be called upon to pay an ad valorem Court-fee on the said amount, but for the amount which has already been claimed would squarely-fall outside the ambit of Rule 4(I) of the Punjab High Court Rules as applicable to this Court read with Section 7(4) of the Court Fee Act and Section 9 of the Suit Valuation Act. The plaintiff would be required to pay the ad valorem Court-fee on the amount claimed by him prior to the institution of the suit. It was for the plaintiff to claim or give up the mesne profits or damages prior to the institution of the suit. Once he has opted to claim the mesne profits of a calculated sum, it will be obligatory upon the plaintiff to make the payment of *ad valorem* Court-fee on the said amount.

14. In accordance with the provisions of the amended Civil Procedure Code, plaint of the plaintiff cannot be rejected on this ground at the first instance. Plaintiff would be entitled to an opportunity for making up the deficiency in payment of Court-fee. In the event he fails to make up the deficiency now, after direction of the Court, then alone the Court would be in a position to reject the plaint of the plaintiff under the provisions of Order 7, Rule 11 of the Civil Procedure Code. At this stage, the contention of the applicant for rejection of the plaint cannot be accepted.”

27. While examining this issue, the Court has to read the plaint of the plaintiff as a whole and then find out as to what relief is being claimed and what is the intent of the plaintiff. If the plaintiffs in the garb of the relief of declaration or injunction simplicitor is in fact, claiming a much greater relief, then the liability to pay the Court-fee would be relatable to such a claimed relief. Wherever the fixation of Court-fee is patently arbitrary, is not in conformity with the provisions of the Court Fee Act and The Suits Valuation Act, 1887, and is intended to claim a substantive relief (of the nature to prevent recovery of money) in the garb of a relief for simplicitor injunction and is an attempt to choose the Forum for litigating, without any rationale basis, in that event objection of a defendant in regard to payment of ad valorem Court-fee would have to be examined by the Court. If any of the above questions are answered against the plaintiffs, the obvious result would be direction of payment of appropriate Court-fee to the plaintiffs.

28. In the present case there is no doubt that the Debts Recovery Tribunal has already passed an order for recovery of Rs. 26,75,98,861.00 against the plaintiffs. The plaintiffs claim to have entered into a settlement vide letter dated 23rd July, 2005, where an amount of Rs. 24 crores is stated to be the amount for settlement and the plaintiffs have paid the fixed Court-fee making his cause of action on the basis of the letter dated 22nd August, 2005 wherein the bank refused to accept the request of the plaintiffs for settlement of the entire matter for a total sum of Rs. 24 crores. The obvious attempt on the part of the plaintiffs is to stop the recovery in furtherance to the order of the Debts Recovery Tribunal and enforce the letter dated 23rd July, 2005, which is stated to be the settlement, settling the claim of the bank for a sum of Rs. 24 crores. In any event the subject matter of the suit relates to the said letter which is for settlement for a sum of Rs. 24 crores. As such the plaintiffs are trying to settle their accounts and are wanting to invoke the agreement which

according to the plaintiffs is a concluded contract, and they are to pay the Court fee, which is the *ad valorem* Court-fee, *ex facie* payable on such documents. By praying for injunction of a letter declining such a request on the basis that there is a binding contract founded on the principle of estoppel, what the plaintiff prays is enforcement of a contract which is for a consideration of Rs. 24 crores. It is not a case of claiming the relief of declaration simplicitor, but in substance, is to enforce the agreement alleged to have been entered into between the parties and prevent the bank from acting in furtherance to the order of recovery as well as for the letter dated 22nd August, 2005 to be declared void and *mala fide*, thus, enforcing the settlement dated 23rd July, 2005, which of course has to be examined on its own merits during the course of the trial. But the obligation on the part of the plaintiff to pay *ad valorem* Court-fee is an irresistible conclusion on the basis of the judgments afore-stated. Judgment in the case of Shamsher Singh (*supra*), has been correctly relied upon by the Counsel appearing for the defendants. In that case the Supreme Court took the view that a suit by a son against his father and the mortgagee/deed holder for a declaration that the mortgage executed by the father in respect of the joint family property was null and void for want of legal necessity and consider action, though couched in a declaratory form, is in substance a suit either for setting aside the decree or for a declaration with consequential relief of injunction and as such the Court-fee under Section 7(iv)(c) payable is *ad valorem*. The Court also took the view that the Court while deciding the question of Court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for and mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for.

29. In the very case of Rachappa Subrao Jadhav Desai (*supra*), relied upon by the learned Counsel for the plaintiffs, the Privy Council stated the dictum that practice of valuing a prayer for a declaratory decree at a certain amount as being the value on which the fee nearest to Rs. 10 would be leviable was condemned. Even in the case of **Shivasangappa Irsangappa v. Muchkhandeep Irsangappa** (*supra*), the Bombay High Court also stated the principle that it would further follow from the remarks of the Privy Council that in a simple declaratory suit it is the real value of the property and not the notional value that would determine the valuation or jurisdiction, apart from the valuation for the purposes of Court-fee. The plaintiff under Section 8 of The Suits Valuation Act, is required to identically value the suit for the purposes of Court-fee as well as jurisdiction, except for the exceptions specifically provided under the Court Fee Act. In terms of the law stated in the case of S. Rm. Ar. S. Sp. Sathappa Chettiar (*supra*), the Supreme Court had stated that computation of Court-fee in suits falling under Section 7(iv) of the Court Fee Act depends upon the valuation which the plaintiff in his option puts on his claims. Once he exercises his option and values his claim, such value must also be the value for the purposes of jurisdiction under Section 8 of the Suits Valuation Act. The value for the purposes of Court-fee, therefore, determines the value for the purposes of jurisdiction in such a suit and not vice versa.

30. In the present case, there is hardly any discretion with the plaintiffs to value the suit differently than the one declared in the letter and the compromise itself which the plaintiffs intend to question. Even if for the sake of arguments, the order of recovery, passed by the

Debts Recovery Tribunal is not looked into, the Court has to essentially examine the contents of the compromise as well as the letter declining to accept such an offer. In both these documents valuation have been reflected as Rs. 24 crores.

31. The reliance placed by the plaintiffs on different judgments is hardly of any help as none of those cases is applicable to the case of the plaintiffs on any settled canons of *ratio descendi*. The cumulative reading indicates that the plaintiffs in the garb of a relief for injunction simplicitor is in fact and in substance claiming the relief of injunction against recovery as well as enforcement of a concluded contract between the parties. As per their own showing in the plaint, the value of the suit is more than Rs. 24 crores and as such the plaintiffs' liability to pay the *ad valorem* Court-fee on such an amount is obvious. On the contrary, in the judgments relied upon by the plaintiffs, the Court itself have enunciated the principle that liability to pay the Court-fee has to be examined in view of the averments made.

32. Another objection which has been raised in regard to the very maintainability of the suit by the defendants is that the jurisdiction of the Civil Court is barred under Section 18 of the Debts Recovery Tribunal Act. The attempt on the part of the plaintiff is to overreach an order of recovery already passed by the authorities under the provisions of the Act.

33. The Counsel appearing for the plaintiffs, while relying upon the judgments in the cases of **J.V. Vinnisami Thever and Ors. v. J.V.R. Chellasami Thevar and Ors., AIR 1921 Madras 17; Abhay Chand Ram Chand v. Ram Chand Wazir Chand and Ors., AIR 1966 Punjab 526; Ganga Ram v. Shiv Lal, AIR 1964 Punjab 260 (267)**, contended that the bar as contained in proviso to Section 42 (now Section 34 of the Specific Relief Act) is not attracted in the present case as there is no occasion for the applicant to claim any consequential or further relief except declaration prayed for in relation to the letter dated 23rd July, 2005. The proviso to Section 34 would not apply as the further disputes thereto would fall within the jurisdiction of the Debts Recovery Tribunal under the provisions of the Debts Recovery Tribunal Act. The provisions of Section 34 of the Act make it obligatory upon the plaintiffs to claim further and complete relief and provides for a bar that no Court shall make any such declaration where the plaintiffs being able to seek further relief than a mere declaration of title omits to do so. Once a statute specifies as to how the suit is to be instituted and that it must contain complete relief including the further relief which a party is required to pray, then there will be no escape from compliance to such procedure. The provisions of Section 34 of the Specific Relief Act are mandatory and cannot be left to the discretion of a party. In the present case, the real intent of filing the present suit is to bind the bank vide settlement dated 23rd July, 2005 and prevent the recovery of the amounts claimed by the bank in furtherance to the orders of the Debts Recovery Tribunal dated 25th August, 2005. The relief simplicitor of declaration in relation to the letter dated 22nd August, 2005 is hardly a composite or complete relief. The plaintiffs have to claim a further relief of injunction restraining the defendants from making any other recoveries except as prayed, its settlement or a specific relief in regard to enforcement of the agreement dated 23rd July, 2005. The animus of the plaintiff is primarily to prevent recovery which otherwise is in furtherance to the orders of the DRT. The other relief could be with regard to enforcement of the agreement dated 23rd July, 2005 wherein the claim is sought to be

settled for a sum of Rs. 24 crores. In either of the situations, the plaintiffs have failed to ask for a further and necessary relief which he ought to ask in order to complete his remedy in the suit and for proper adjudication of the matters in issue.

34. The contention of the plaintiffs that the proviso to Section 42 would not be attracted as the rights and obligations of the parties are controlled under DRT and the plaintiffs cannot ask for any further relief while relying upon the case of J. V. Vinnisami Thever (*supra*), is without any merit. In the event the plaintiffs raise such a contention then the very maintainability of the suit in face of the bar to the maintainability of the suit under Section 18 of the Act would be the first, paramount and legal impediment in the way of the plaintiffs to claim any relief in the present suit. The order passed by the DRT dated 25th August, 2005 is subject to the appellate proceedings in accordance with the provisions of Section 20 of the Act. It will not be appropriate for this Court to touch upon the merits of the order passed by the DRT and/or the results thereof, as it is bound to prejudicially effect the interest of one or the other party in those proceedings. In the case of **Ghulam Mohiuddin v. The Official Assignee and Others, AIR 1978 Calcutta 463**, where the plaintiff had filed a suit for declaration that list in favour of the defendant was null and void and omitted to pray for the relief of the suit, it was held that the said suit is not maintainable. It is also a settled principle of law that the Court will not make declaration of title where the plaintiff being able to seek relief than a mere declaration omits to do so (refer AIR 1961 Punjab 278). Still in another case where the suit for declaration of title in relation to the suit land was filed and the plaintiff was able to seek consequential relief of confirmation of possession or injunction on the date of the suit and omitted to do so, it was held that bar of Section 34 would be attracted in such cases, **Dulana Dei @ Dolena Dei v. Balaram Sahu and two Others, AIR 1993 Orissa 59**.

35. The plaintiffs have failed to comply with the provisions of Section 34 of the Act and have failed to ask for a further and necessary relief. The suit normally would be liable to be dismissed. However, in the interest of justice an opportunity is granted to the plaintiffs to amend the suit within two weeks from today. In the event the plaintiffs fail to take such appropriate steps, the suit of the plaintiffs shall be liable to be dismissed.

IA No. 9006/2005 in CS (OS) No. 1339/2005 :

36. IA No. 9006/2005 is an application filed by the defendants under Section 148 read with Section 15 of the Civil Procedure Code (for short Civil Procedure Code) along with Chapter 6 Rule 3 of the Delhi High Court Rules (Original Side) for condonation of delay in filing the written statement in the suit. The plaintiff has filed a suit praying for a decree of declaration that the communication dated 22nd August, 2005 issued by the defendants is illegal, *mala fide* and is vitiated by falsehood and fraud.

37. The suit came up for hearing before the Court on 22nd September, 2005 when notice/summons were issued to the defendants, returnable on 3rd October, 2005 and while issuing notice on the interim application, the defendants were restrained from taking any coercive steps in furtherance to the communication dated 22nd August, 2005.

38. On 3rd October, 2005 the defendants were served and the learned Counsel appearing for the defendants at the very outset wanted to argue that the plaint of the plaintiff was liable to be rejected under Order 7 Rule 10 and 11 of the Civil Procedure Code and suit liable to be dismissed. However, the Court had required the defendants to file a written statement to the suit and reply to the application within 10 days and directed the defendant to file rejoinder/reply within two weeks thereafter. In the order it was specifically directed that the parties shall address the arguments on the pleas/objections of the defendants in relation to provisions of Order 7 Rule 10 and 11, Civil Procedure Code. Thereafter, the written statement was filed by the defendants on 5th November, 2005 in the Registry of this Court. The arguments were heard on 7th November, 2005 and the judgment was reserved.

39. On 8th November, 2005 the defendants had also filed an application for condonation of delay in filing the written statement and prayed that the written statement and the reply to the injunction application be taken on record. This application was vehemently opposed by the learned Counsel appearing for the plaintiff on the grounds that; firstly, the application was not supported by an affidavit properly sworn and verified, and that the High Court Rules (Original Side), Chapter 6 Rule 2 do not permit taking of the written statement on record, secondly, when the written statement was filed on 5th November, 2005. It was not even accompanied by any application for condonation of delay, and lastly that, no exceptional circumstances have been stated for granting condonation of delay. The learned Counsel appearing for the plaintiff/non-applicant in support of his contentions has relied upon the judgments in the cases of **Delhi Development Authority and Anr. v. K.R. Builders (P) Ltd., 119(2005) DLT 196 (DB); Sukhwinder Pal Bipan Kumar and Ors. v. State of Punjab and Ors., AIR 1982 Supreme Court 65; State of Bombay v. Purshottam Jog Naik, AIR 1952 Supreme Court 317; and Enkay Construction Co. v. Delhi Development Authority, 2000 VI AD (Delhi) 530 : 86 (2000) DLT 748 : 2000 Rajdhani Law Reporter 457.**

40. In the application, the applicants/defendants have stated that some time beyond the period of 10 days was taken in filing of the written statement because of the reason that the defendants had to take instructions from a Branch situated at Sahibabad, Dist. Meerut from where the communication had been issued and had also to take records of the decree dated 25th August, 2005 filed before the Debt Recovery Tribunal, Allahabad into consideration. It is stated that on account of the Diwali vacations, the High Court was closed with effect from 30th October, 2005 and as such the written statement could not be filed prior to 5th November, 2005 (re-opening), on which date the same was filed. It is stated that in view of the order passed by the Court, there is no need for the applicant to seek extension of time, but the present application has been filed to avoid any technical objection and in the interest of justice. The application has been filed subject to the various pleas taken by the defendants in the suit as to the very maintainability of the suit under Order 7 Rule, 11 of the Civil Procedure Code.

41. The facts as they emerge from the record are that summons/notice was issued to the defendants vide order dated 22nd September, 2005 and they appeared on 3rd October, 2005 when they were allowed time to file the written statement, within 10 days. The 10

days expired on 13th October, 2005 and certainly by the time the written statement had not been filed. There were intervening Diwali holidays and immediately thereafter, the written statement was filed on 5th November, 2005, not accompanied by an application for condonation of delay. As far as the summons issued to the defendants are concerned, they were issued requiring the defendants to file the written statement within 30 days from the date of service. They were also required to file the defendants by 3rd October, 2005. The defendants were served on 30th September, 2005, thus they could file the written statement by 30th October, 2005. The written statement was actually file immediately after the Diwali Vacations on 5th November, 2005. The time to file the written statement stood curtailed by the order of the Court on 3rd October, 2005. The application for condonation of delay in filing the written statement, being IJ No. 9006/2005 has been filed subsequently. The short question that falls for consideration of the Court is "Whether sufficient circumstances have been stated in the application under consideration for condonation of delay in filing the written statement and issuance of a direction that the same be taken on record ?" A Division Bench of this Court in the case of **DDA v. K.R. Builders (P) Ltd.** (supra), while harmoniously construing the provisions of Order 8 Rule 1 of the Civil Procedure Code and Rule 3 of Chapter 6 of the High Court Rules had held that Rules of the Original Side Rules were to prevail. The Court in the said judgment held as under :

"This Rule thus provides for one extension of time to be granted to the defendant ordinarily for filing the written statement. The proviso to the Rule provides for a second or any further extension to be granted on an application supported by an affidavit setting forth a sufficient ground. The expression 'any further extension' in this proviso does not contemplate unending extensions to be granted on asking. At the same time, it cannot be said that it bars a third extension after the second one. This expression, however, in our view, should receive a restricted interpretation for a variety of reasons more particularly to curb phenomenon of delayed disposal of suits."

42. All that is emphasised in this judgment is persistence of the Original Side Rules over the provisions of Civil Procedure Code and the jurisdiction of the Court to grant even a third extension after the second one, provided sufficient cause and special circumstances are shown.

43. Firstly, the defendants have not asked for any second or third extension. The arguments relatable to the objections under Order 7, Rule 11 were heard on 7th November, 2005 and judgment was reserved. Thereafter, the present application has come up for consideration. The judgments relied upon by the learned Counsel appearing for the plaintiff on proper *ratio descendi* have hardly any application to the facts and circumstances of the present case. Grant of even a third opportunity is not prohibited, as per the Division Bench judgment of this Court.

44. These Rules of Procedure Under Order 8, Rule 1 of the Code have been held to be 'directory' and not 'mandatory'. Their primary object is to achieve ends of justice rather than to frustrate the same. Reference can be made to the judgments of the Supreme Court in the case of **Kailash v. Nanhku and Others, 2005(2) RCR (Civil) 379 : 2005 IV AD (S.C.) 468 : (2005)4 SCC 480**, where the Supreme Court considered at great length the

historical background of introduction of the amended provisions of Order 8 in the Code and their effect. It was held by the Court :

“41. Considering the object and purpose behind enacting Rule 1 Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement through the period on days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact – the entire life and vigour – of the provision. The delaying tactics adopted by the defendants in Law Courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the Judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

42. Ordinarily, the time schedule prescribed by Order 8, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendants and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8, Rule 1 of the Code was being allowed to be beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court. In no case, shall the defendant be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his Counsel. The Court may impose costs for dual purpose : (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8, Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8, Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.”

45. Still in a more recent judgment again the Supreme Court in the case of ***Smt. Rani Kusum v. Smt. Kanchan Devi and Ors., 2005(3) RCR (Civil) 727 : 2005 VII AD (S.C.) 192 : JT 2005(7) SC 409***, discussed the principles governing provisions of Order 8 in the above regard with some elaboration and held as under :

“Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

In ***Topline Shoes Ltd. v. Corporation Bank, 2002 V AD (S.C.) 455 : JT 2002(5) SC 111***, the question for consideration was whether the State Consumer Disputes Redressal Commission could grant time to the respondent to file reply beyond total period of 45 days in view of Section 13(2) of the Consumer Protection Act, 1986. It was held that the intention to provide time frame to file reply is really made to expedite the hearing of such matters and avoid unnecessary adjournments. It was noticed that no penal consequences had been prescribed if the reply is not filed in the prescribed time. The provision was held to be directory. It was observed that the provision is more by way of procedure to achieve the object of speedy disposal of the case.

The use of the word ‘shall’ in Order 8, Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word ‘shall’ is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

In construing this provision, support can also be had from Order 7, Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other

order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the Court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8, Rule 1. There is no restriction in Order 8, Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order 8, Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the Legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8, Rule 1."

18. The Bench in para 54 after considering the Committee's report has observed as follows :

"Having regard to the constitutional obligation to provide fair, quick and speedy justice, we direct the Central Government to examine the aforesaid suggestions and submit a report on this court within four months."

19. After elaborating the purpose for introduction of Order 8 Rule 1, this Court in Kailash's case (supra), at paragraph 45 observed that no straitjacket formula can be laid down except that observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The conclusions have been summed up in para 46. The relevant portion reads as follows :

"(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1, Civil Procedure Code is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1, Order 8, Civil Procedure Code is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1, Civil Procedure Code is not completely taken away.

(v) Though Order 8 Rule 1, Civil Procedure Code is a part of procedural law and, hence, directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provisions in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period

of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a case."

45. The above judgments of the Supreme Court clearly indicate that Rules of Procedure of the kind afore-referred are primarily 'directory' in nature and they could be moulded to meet the ultimate object of doing justice between the parties and to achieve the ends of justice. The High Court (Original Side) Rules may have persistence over the provisions of the Code, but in face of the judgments of the Supreme Court and even a Division Bench judgment of this Court, they cannot be termed as 'strictly mandatory' so as to invite an inevitable conclusion that wherever the written statement is not filed within the prescribed time, every application for condonation of delay has to be dismissed by the Court, irrespective of the facts stated in that application and attendant circumstances thereto. In the present case, in the opinion of the Court, the applicant has shown sufficient cause and in fact, has filed the written statement within the period stated in the summons served upon the defendant on 30th September, 2005. It is not that the applicant has attempted to delay the suit. It is not even disputed that the proceedings before the Debts Recovery Tribunal, Allahabad, are pending and there is a serious contest on facts and law between the parties. As already noticed above, the Counsel appearing for the defendants was prepared to argue the matter in regard to the objections raised by him under Order 7 Rule 10 and 11 of the Civil Procedure Code, without filing any written statement. In fact, the period for filing the written statement and reply to the application was curtailed for the first time by the order of the Court dated 3rd October, 2005. The contention raised on behalf of the plaintiffs/non-applicant that they had alleged *mala fides* against defendant No. 2 and the present application is a mere attempt to delay the suit and cause prejudice to the plaintiffs, is without any merit and in fact, is not even supported by the record. The applicants have not caused any delay in the progress of the suit. The law of procedure essentially must be construed to ensure that no party to the lis permitted to abuse the process of law and does not prolong the proceedings before the Court unduly. The reasons stated in the application for filing the written statement late, are apparently sufficient causes for extension of a short period, as the Court had granted only 10 days time to file the written statement and the applicant had to collect materials from different places in relation to the proceedings pending in other Forums between the same parties. The plea that the application is not supported by a proper affidavit is of no consequence. At best, it is an irregularity which could be cured and is not an illegality which would render the application liable to be dismissed on that ground alone. Nothing prohibits the Court from taking into consideration even an oral prayer for condonation of delay in filing the written statement specially in the peculiar facts and circumstances of the present case.

46. For the reasons afore-recorded, the application for condonation of delay is allowed. The written statement is permitted to be taken on record.

47. IA stands disposed of accordingly.

Application allowed.