In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

F.A. No. 127 of 2024
Punalur Paper Mills Ltd and Others
Vs.
M/s. Lindsay Towers Private Limited

With

F.A. No. 81 of 2025
And
CAN 1 of 2024
Punalur Paper Mills Ltd and Others
Vs.
IndusInd Bank Limited and Others

With

F.A No. 8 of 2025
And
CAN 1 of 2024
Punalur Paper Mills Ltd and Others
Vs.
M/s. Lindsay Towers private Limited(renamed as Kahm Industries Private Limited) and Others

For the appellants	:	Mr. Souradipta Banerjee, Mrs. Fatima Hassan, Mr. Asif Sohail Tarafdar…Advs.
For the respondents	:	Mr. Jishnu Saha, Sr. Adv. Mr. Sakya Sen, Sr. Adv. Mr. Ishaan Saha, Mr. Tanuj Kakrania, Ms. Jiya Bose, Ms. Shreya Goenka Ms. Tapashya Bhattacharya…Advs.
For the IndusInd Bank Limited in FA No. 81 of 2025	:	Mr. Arnab Basu Mallick, Adv.

Heard on	:	25.11.2025,12.03.2026,19.03.2026, 15.07.2026,16.07.2026,23.07.2026 & 28.07.2026
Reserved on	:	28.07.2026
Judgment on	:	17.08.2026

Sabyasachi Bhattacharyya, J.:-

1. The three appeals arise out connected suits. By judgments passed on the same date, that is, April 6, 2024, the learned Trial Judge dismissed the plaints in respect of two suits filed by the appellants as well as rejected a counter claim, also filed by the appellants, in a suit instituted by the respondents, all under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short, "the Code").

2. The respective dates of filing of the said suits and counter claim are given in the following chart;-

Suits No. /counter claim (with Appeal No)	**Who filed**	**Filing date**
i) TS 314 of 2021	Respondents	March 4, 2021
ii) TS 613 of 2021 (FA 81 of 2025)	Appellant	May 21, 2021
iii) Counter claim in TS 314/2021 (FA 127 of 2024)	Appellants	July 16, 2021
iv) TS 430 of 2022 (FA 8 of 2025)	Appellants	February 21, 2022

3. For the sake of convenience, the reliefs respectively sought in the said suits/counter claim and the grounds of rejection are enumerated below:-

Suit/Counter claim	Principal relief(s)	Ground(s) of rejection
1. TS No. 314 of 2021 (respondent)	Declaration that agreement dated 15.5.2010 is in force and subsisting + right to operate bank account	___________
2. Counter claim in TS 314 of 2021(Appellant)	Declaration that 15.5.2010 agreement is illegal, void, not binding on defendant no. 1/appellant	i) Limitation ii) Order II Rule 2
3. TS 613 of 2021 (Appellant)	Declaration that plaintiff/ appellant alone is entitled to operate bank account	No cause of action disclosed.
4. TS 430 of 2021 (Appellant)	Deed of Conveyance dated 5.5.2003 is void, illegal and inoperative + cancellation of delivery of the same.	i) Limitation ii) Order XI Rule 2 iii) No real cause of action disclosed.

4. Learned counsel for the appellants contends that the scope and object of Order VII Rule 11 of the Code of Civil Procedure is extremely narrow and the said provision is resorted to in exceptional cases. The examination of the court under the said provision is confined exclusively to the averments contained in the plaint and the documents relied upon by the plaintiff. The court cannot undertake a mini trial while deciding such an application.

5. Learned counsel submits that in the instant case, however, the learned Trial Judge proceeded on an evaluation of rival pleadings and interpretation of documents, embarking upon an enquiry into the truthfulness of the allegations and deciding on the facts of the case. It is argued that such approach was patently contrary to the said provision.

6. In support of such contention, learned counsel cites *Popat and Kotecha Property v. State Bank of India Staff Association,* reported at *(2005) 7 SCC*

510, and *Mayar (H.K) Ltd. & Ors. v. Owner & Parties, Vessel, M.V. Fortune Express & Ors.*, reported at *(2006) 2 ICC (SC) 479*.

7. Secondly, learned counsel contends that rejection of a part of a plaint or counter claim is impermissible. In the present case, it is submitted, the appellants' pleadings disclosed numerous independent and inter-connected causes of action involving fraud, breach of fiduciary duty, corporate authority, operation of bank accounts and actionable claims relating to acquisition compensation, involving interpretation of contractual documents and validity of subsequent transactions. Even assuming, without admitting, that any one relief was arguable, the remaining causes of action unquestionably survived and required adjudication upon evidence. However, the learned Trial Judge rejected the plaints/counter claim of the appellants in their entirety.

8. Learned counsel places reliance on *Sopan Sukhdeo Sable & Ors. v. Charity Commissioner & Ors*, reported at *(2004) 3 SCC 137*, in support of the proposition that the court cannot reject only a part of the plaint under Order VII Rule 11 of the Code; the plaint must either be rejected as a whole or not at all.

9. Learned counsel appearing for the appellants next contends that fraud gives rise to triable issues. Since the appellants had pleaded in detail that the Deed of Conveyance dated April 5, 2003 was procured through fraud, conflict of interest and suppression of material facts, the learned Trial Judge was required to save the suit for trial and only decide the issues upon evidence to be led by the parties. Instead, the learned Trial Judge converted a summary jurisdiction into a final adjudication on the merits of the disputes.

10. Fourthly, learned counsel for the appellant argues that limitation, particularly in cases of fraud, is a mixed question of law and fact. Since the appellant specifically pleaded that fraud was discovered only upon subsequent disclosure of documents, examination of acquisition records, bank statements and connected proceedings, the learned Trial Judge ought not to have rejected the plaints/counter claim of the appellant at the threshold. The circumstances prevailing in the year 2003, it is submitted, were to be analysed to come to a conclusion as to whether the sale was legal or valid.

11. Next arguing on the question of applicability of Order II rule 2 of the Code, learned counsel argues that the said question is not a pure question of law but at best a mixed question of fact and law. Procedural omission to specifically seek relief under Order II Rule 2 of the Code, it is submitted, cannot defeat or prejudice substantive rights of the plaintiff/counter claimant. Moreover, the counter claim of the appellants flows directly from the respondents' own suit seeking enforcement of the agreement dated May 15, 2010. Once such declaration was sought regarding the validity and enforceability of the agreement, the appellant became entitled to challenge the said agreement by way of a counter claim.

12. Since the appellant had already taken steps for amendment to obtain appropriate leave, rejection on the ground of Order II Rule 2 was bad in law.

13. It is argued that the learned Trial Judge proceeded on the assumption that the respondents had acquired every conceivable right under the Deed of

Conveyance dated April 5, 2003, which was erroneous and was a matter of trial.

14. Thus, the rejection of the counter claim filed in Title Suit No. 314 of 2021 was bad in law.

15. Referring to the rejection of the plaint in Title Suit No. 613 of 2021, learned counsel submits that the plaint did not seek adjudication of title to the property or determination of rights under the Deed of Conveyance dated April 5, 2003 but was directed primarily against the bank for regulation of the designated account maintained in the name of the appellant no.1-company and for protection of moneys lying therein. The respondents were originally not defendants therein but were impleaded subsequently. Nevertheless, the learned Trial Court permitting them to convert a banking dispute into a suit for adjudication of title, contractual rights and entitlement to acquisition compensation, which exercise falls wholly outside the scope of order VII Rule 11 of the Code. The plaint, it is argued, clearly disclosed a cause of action arising from the discovery of manipulated bank statements, apprehension of unauthorised withdrawals and the necessity of protecting acquisition compensation payable to the appellant-company, all of which were the subject-matter of a full-fledged trial.

16. In Title Suit No. 430 of 2022, on the other hand, the learned Trial Judge rejected the plaint principally on the ground of limitation while ignoring the appellant's specific plea of fraud, regarding which the plaint contained detailed averments explaining the circumstances in which fraud came to light.

17. Mr. T.K. Sundaresan , it is submitted, became associated with the appellant no.1-company only upon a change in management, pursuant to the Share Purchase Agreement dated May 14, 2010, and had signed the agreement dated May 15, 2010 merely in his capacity as a shareholder and not as a Director or authorised signatory of the appellant-company. Although the new management was aware that the suit property had been sold under the Deed of Conveyance dated April 5, 2003, neither Mr. T.K. Sundaresan nor the other shareholders had any knowledge of the fraudulent circumstances surrounding the transaction. Such knowledge was acquired only upon discovery of the manipulated bank account on March 24, 2021, followed by examination of the Deed of Conveyance and acquisition records as well as arbitral proceedings and compensation orders.

18. The learned Trial Judge, it is argued, failed to apply Section 17 of the Limitation Act, 1963, as per which, in cases of fraud, commencement of limitation depends on the date of discovery of the fraud and the facts surrounding such discovery. These are mixed questions of law and fact and cannot be determined without evidence. By rejecting the plaint solely on the basis of the date of execution of the conveyance, it is argued that the learned Trial Judge rendered Section 17 *otiose*.

19. The impugned judgment, it is argued, effectively records finding on fraud, title, limitation, fiduciary obligation, corporate governance and transfer of actionable claim without a trial, which are wholly beyond the permissible jurisdiction under Order VII Rule 11 of the Code.

20. Learned counsel cites *Dalip Singh v. Meher Singh Rathee*, reported at *(2007) 7 SCC 650*, in support of the proposition that the plea of bar under Order II

Rule 2 or Order XXIII Rule 1 of the Code is a mixed question of fact and law and cannot be entertained unless specifically pleaded in the written statement, issues are framed thereon, and parties are afforded an opportunity to lead evidence. The *sine qua non* for applicability of Order II Rule 2 is the identity of cause of action in the earlier and subsequent suits and omission of relief without leave of court, which necessarily requires examination of the pleadings of the two suits. In the absence of the same, the plaintiff is deprived of opportunity to rebut the same.

21. Next relying on *Sopan Sukhdeo Sable & Ors. v. Charity Commissioner & Ors*, reported at *(2004) 3 SCC 137*, it is reiterated that the court cannot reject only a part of the plaint. Even assuming without admitting that any other relief claimed in the counter claim is barred, the challenge to the cancellation of the Power of Attorney constitutes an independent and maintainable cause of action which survived for adjudication. Thus, the learned Trial Judge proceeded erroneously in rejecting the plaint as a whole.

22. Next relying on *Sheikh. Noor & Another v. Sheikh. G.S. Ibrahim (Dead) by Lrs*, reported at *AIR 2003 SC 4163*, learned counsel argues that a transferee is not automatically entitled to recover past arrears or benefits arising out of property unless there is a specific and valid assignment of such rights in his favour.

23. The learned Trial Judge committed a patent error of law and fact in presuming that the respondents acquired an automatic right to receive compensation for acquisition merely by virtue of the Deed of Conveyance of 2003.

24. Relying on *Biswanath Banik and Another v. Sulanga Bose and Others*, reported at *(2022) 7 SCC 731*, learned counsel next contends that for the purpose of Order VII Rule 11 (d) of the Code, the court must confine itself strictly to the averments made in the plaint, and rejection on the ground of limitation is permissible only when such bar is apparent on the face of the plaint.

25. The learned Trial Judge, it is submitted, failed to take into consideration such settled legal proposition.

26. Learned counsel for the appellant then cites *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I & Another*, reported at *(2004) 9 SCC 512*, to argue that Order VII Rule 11(a) of the Code empowers the court to reject the plaint where no cause of action is disclosed, but does not permit the court to reject the plaint on the ground that the averments made therein are insufficient to ultimately prove the case. So long as the plaint discloses a cause of action, sufficiency or correctness of the same is a matter of trial and cannot be adjudicated at the threshold.

27. Learned counsel further relies on *Saranpal Kaur Anand v. Praduman Singh Chandhok & Ors.*, reported at *(2022) 8 SCC 401*, to argue that when a party relies upon fraud, the pleadings must set out material particulars which, if taken as a whole, establish fraud. Moreover, the court must proceed on a demurrer and accept the averments in the plaint as true. It may draw necessary inferences from the facts stated. In the present case, although the plaint clearly set out the basis for exclusion of limitation by claiming delayed discovery and lack of knowledge, the learned Trial Judge failed to proceed on the basis of such averments and went on to reject the plaint of Title Suit No. 430 of 2022.

28. Thus, it is contended that the impugned judgments ought to be set aside.

29. In reply, learned senior counsel appearing for the plaintiffs/respondents argues that Section 130(1) of the Transfer of Property act, 1882 (for short, “the TP Act”) provides for the transfer of actionable claims (with or without consideration) by the execution of any instrument in writing signed by the transferee or his duly authorised agent. The said Section provides that on the execution of such instrument, the transfer of the actionable claims shall be complete and effectual, whereupon the rights and liabilities of the transferor, whether by way of damages or otherwise, shall vest in the transfer. In May 2010, the majority shareholders of the appellant no.1-company transferred their shares in the company in favour of 15 individuals referred to as confirming parties, including one Mr. T.K. Sundaresan. It is in view of such transfer of majority shareholding that the agreement dated May 15, 2010 was entered into in order to obtain from such new shareholders confirmation of a transfer which had already taken place by the Deed of Conveyance dated April 5, 2003.

30. Learned senior counsel argues that in the plaint of Title Suit No. 613 of 2021, the appellant admitted in paragraph no. 2 that a registered Deed of Conveyance dated April 5, 2003 was obtained from the plaintiffs in respect of the land and multi-storied building situated at the subject-property. While alleging that the deed was brought into existence by undue influence and fraud, the appellants accepted that no proceeding for the cancellation of the same had been initiated, by stating that the plaintiff “is initiating separate proceeding for cancellation" and that, till that date, "no steps are taken in respect of pending legal proceeding basing on such documents".

31. In paragraph 4 of the plaint, the plaintiffs/appellants alleged that for the purpose of realisation of the said amount arising out of land acquisition proceedings, several shareholders of the plaintiff no.1-company, as confirming parties but without having any authority and without any resolution of the company, entered into a clandestine agreement with M/s. Lindsay Towers Private Limited (the predecessor-in-interest of the respondent no. 1-company) to maintain and operate separate bank account.

32. In paragraph no. 5 of the plaint, the appellants proceeded to allege that the agreement of 2010 was a clandestine deal with other shareholders of the appellant without any authorisation of the company and without any resolution. Again, in paragraph no. 7 of the plaint, it was stated that the appellants had decided to take appropriate action for cancellation of the agreement dated March 15, 2010 in separate appropriate proceeding. However, no challenge was preferred to the said agreement in the suit, despite the plaint thereof proceeding on the premise that the agreement was a clandestine agreement, without offering any explanation as to why the appellants did not proceed to challenge the same in Title Suit No. 613 of 2021 itself.

33. Learned senior counsel for the respondents submits that it is settled law that a meritless or vexatious plaint, which does not disclose a clear right to sue, should be dismissed under Order VII Rule 11 of the Code. Reference is made in the said context to *T. Arivandandam v. T.V. Satyapal*, reported at

(1977) 4 SCC 467 and to *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, reported at *(2017) 13 SCC 174*.

34. It is further argued by the respondents that Title Suit No.613 of 2021 was also clearly barred by limitation, since the plaintiffs/appellants had clearly admitted that that their action was founded on the alleged fraud accompanying the execution and registration of the conveyance of 2003 and the agreement dated May 15, 2010, admitting that no action to avoid the same had been taken till that date.

35. Insofar as the counter claim in Title Suit No. 314 of 2021 was concerned, it is argued that the same was filed on July 20, 2021, without any statement to the effect that the appellant was not aware of the Conveyance of April 5, 2003 or of the agreement dated May 15, 2010.

36. Thus, the counter claim was hopelessly barred by limitation. It is settled law that cause of action is a bundle of facts which entitles the plaintiff to the reliefs claimed in the suit and there cannot be any doubt that the relief of declaration, that the agreement dated May 15, 2010 was illegal and void, could not be and was not premised on the receipt of the notice of filing of Title Suit No. 314 of 2021. Learned senior counsel argues that it is settled law that where a plaint or counter claim, on the face of it, is found to be barred by limitation, it can be rejected on such ground.

37. Learned senior counsel cites *Dahiben v. Arvindbhai Kalyanji Bhanusali*, reported at *(2020) 7 SCC 366*, in support of such argument.

38. The counter claim was also meritless and vexatious, not disclosing a clear right to sue and did not disclose any cause of action, it is submitted.

39. That apart, no explanation was furnished in the counter claim as to why the agreement dated May 15, 2010, which merely recognised the right of the respondent no. 1 to receive the compensation already transferred by the conveyance of 2003, should be treated as a fresh agreement for a settlement of the actionable claim of compensation. In view of the clear acceptance in the agreement of 2010 that the actionable claim had already been transferred by the conveyance of 2003, it is argued that there could not be any question of the said agreement being an independent agreement for transfer.

40. In the plaint of Title Suit No. 430 of 2021, it is submitted, the plaintiffs/appellants alleged that the Deed of Conveyance dated April 5, 2003 was a complete sham transaction and that the fraud played on the plaintiff no.1-company by the defendant no. 2, by selling the property at a pittance, came to light much later to the present management of the plaintiff. However, there was significantly no averment in the plaint as to when the appellants came to learn of the alleged fraud.

41. In paragraph 53 of the plaint, the plaintiffs/appellants simply alleged that in view of the "demonstrated attempt of the defendants to rely on the Deed of Conveyance", the plaintiffs were entitled to have the sale of the property under the Deed of Conveyance dated April 5, 2003 to be adjudged void and to have the same delivered up and cancelled. No details as to why the conveyance of 2003 was vitiated on the ground of fraud, however, were disclosed.

42. Insofar as the prayer under Order II Rule 2 of the Code is concerned, learned senior counsel cites *Channappa(D) v. Parvatewwa (D),* reported at

(2026) SCC Online SC 552, to argue that the counter claim filed by the appellant in Title Suit No. 314 of 2021 and the plaint of Title Suit No. 430 of 2022 were clearly barred under the said provision.

43. That apart, Title Suit No. 613 of 2021 was filed on May 21, 2021, whereas the counter claim was filed on July 15, 2021. It is settled law, learned senior counsel argues, that while a plaintiff can seek leave of the court under sub-rule (3) of Rule 2 of Order II of the Code at any time before the date of the decree of the first suit, such leave must be obtained prior to the date of institution of the second suit. For such proposition, learned senior counsel cites a Division Bench judgment on the Bombay High Court in the case of *Canning Mitra Phoenix Limited Vs. M/s. Popular Construction and Another*, reported at *Mh. L.J. 812*.

44. In support of the proposition that the respondents became entitled to rejection of the plaint of Title Suit No. 613 of 2021 and Title Suit No. 430 of 2022 and the counter claim in Title Suit No. 314 of 2021 simply on the basis of the averments made in the plaint and counter claim, learned senior counsel cites *Dahiben (supra)*[1] and *N.V. Srinivasa Murthy v. Mariyamma (Dead) & Ors.*, reported at *2005 5 SCC 548*. Thus, it is contended that the learned Trial Judge was justified in passing the impugned judgments and deemed decrees.

45. Heard learned counsel for both sides.

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

46. As noted above, by three different judgments, two plaints in two different suits and a counter claim, all filed by the appellants, were rejected by the learned Trial Judge, which are the subject-matter of the present appeals.

47. From the decisions relied on by the parties, in particular *Popat and Kotecha Property (supra)*[2] , *Mayar (H.K) Ltd. & Ors. (supra)*[3] and *Biswanath Banik and Another (supra)*[4]*,* the principles governing rejection of plaint are clearly elucidated, to which there cannot be any quarrel. The court, while considering an application under Order VII Rule 11 of the Code for rejection of plaint, has to confine itself to the averments made in the plaint and the documents relied on, referred to, or filed with the plaint. For such purpose, a plain and meaningful reading of the averments of the plaint as a whole has to be undertaken to understand the true purport of the same.

48. The above propositions are undisputed. Proceeding on the very basis of such propositions, we delve into an examination in respect of each of the proceedings, according to the chronology of the plaints/counter claim.

Title Suit No. 613/2021

49. The rejection of plaint in the said suit is the subject-matter of FA 81 of 2025. Among the pleadings of the appellants which are under consideration here, the plaint of Title Suit No. 613 of 2021 was the first on point of time, having been filed on May 21, 2021. It is to be noted that by then the

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[2] ***Popat and Kotecha Property v. State Bank of India Staff Association,* reported at *(2005) 7 SCC 510***

[3] ***Mayar (H.K) Ltd. & Ors. v. Owner & Parties, Vessel, M.V. Fortune Express & Ors.*, reported at *(2006) 2 ICC (SC) 479***

[4] ***Biswanath Banik and Another v. Sulanga Bose and Others*, reported at *(2022) 7 SCC 731***

respondent no. 1, KAHM Industries Private Limited (previously known as Lindsay Tower Private Limited), had already filed a suit, bearing Title Suit No. 314 of 2021, seeking a declaration that the agreement dated May 15, 2010, entered into between the parties, was still in force and subsisting, further seeking the right to operate the bank account where compensation for acquisition of the subject property was/is being deposited. Although a counter claim was also filed by the appellant no.1 Punalur Paper Mills Limited in the said suit, the same was filed later on point of time, only on July 16, 2021, after the institution of Title Suit No. 613 of 2021.

50. The plaint of Title Suit No. 613 of 2021 was rejected primarily on the ground that no real cause of action was disclosed. In order to comprehensively adjudicate the issue, we are to look at the plaint of the said suit and the documents relied on therein.

51. Before doing so, we take note of the fact that a registered Title Deed dated April 5, 2003 and a notarised agreement dated May 15, 2010 feature throughout the pleadings in all the three suits and the counter claim, having been referred to by both the parties. Secondly, one Sri. T.K. Sundaresan has filed all the pleadings on behalf of the appellant no.1-company, both in its two suits and counter claim, in the capacity of Chairman and Managing Director of the appellant no.1-company. Sri. T.K. Sundaresan also features as one of the confirming parties and signatories to the Agreement of 2010.

52. Coming back to the plaint of Title Suit No. 613 of 2021, the reliefs sought therein are focused around a bank account with M/s. IndusInd Bank.

Apparently, the compensation for acquisition of the subject-property has been deposited therein.

53. The first declaration sought in the suit is that the plaintiff/appellant no.1 (Punalur) is entitled to operate the said account through its authorised signatory Sri. T.K. Sundaresan, its Chairman and Managing Director, whereas the second relief is a declaration that the defendant-bank (IndusInd) has no authority to permit persons who are not associated with the appellant no.1-company in any manner whatsoever to operate the said bank account. The other reliefs are ancillary thereto.

54. It is well- settled that cause of action of a suit is comprised of the bundle of facts leading to the reliefs claimed. Looking at the various paragraphs of the plaint, we find that in paragraph no. 2 thereof, the plaintiff/appellant refers to the registered Deed of Convenience dated April 5, 2003, although alleging that the same was tainted by undue influence and fraud. Conspicuously, it is further stated in paragraph no. 2 of the plaint that the plaintiff/appellant "is initiating separate proceedings for cancellation" and further that "Till this day no steps are taken in respect of the pending legal proceedings basing on such document".

55. Again, in paragraph nos. 4 to 9 of the plaint, the plaintiff/appellant refers to the agreement dated May 15, 2010, stating that it was a "clandestine deal with other shareholders of the plaintiff-appellant", allegedly without any due authorisation of the company and without any resolution and without the Chairman and Managing Director being signatories to the said document. It is also alleged that the agreement was not signed by the Directors of the company, nor accepted by the Board of Directors, which was a condition precedent as per the agreement.

56. Conspicuously, in paragraph no. 7 of the plaint, the plaintiff/appellant alleged that it had "decided to take appropriate action for cancellation of the said agreement dated 15th May, 2010 in separate appropriate proceedings".

57. Interestingly, in paragraph no. 8 of the plaint, the plaintiff/appellant also refers to the earlier suit, bearing Title Suit No. 314 of 2021, filed by M/s. Lindsay and the *ad interim* injunction order passed therein. In paragraph no. 13 of the plaint, it is alleged that after receiving a copy of the injunction order passed in Title Suit No. 314 of 2021, the IndusInd Bank issued a letter on April 16, 2021, informing the plaintiffs/appellants that the hands of the bank were tied and the bank was unable to accede to the request of the plaintiffs regarding operation and closure of the bank account. In paragraph no. 16, the plaintiff/appellant stated that "in view of the aforesaid facts and circumstances", it was essential to pass appropriate orders restraining the bank from permitting any person other than the plaintiff to operate and/or to encash any amounts from the concerned account. In paragraph no. 18, it was stated that the plaintiff was "therefore" entitled to a decree for declaration that it alone was entitled to operate its own account.

58. Although, in paragraph no. 21, the cause of action for the suit was stated to arise on February 25, 2021, when the Directors of the plaintiff-company unanimously resolved to appoint Sri. T.K. Sundaresan, the Chairman and Managing Director of the plaintiff-company, as authorised signatory in the bank, and lastly on April 16, 2021, when the bank refused to accept the request of the plaintiff, it is evident from the earlier paragraphs of the plaint that the mere appointment of Sri. T.K. Sundaresan as authorised signatory could not have been the trigger for filing the suit.

59. In the teeth of the categorical admission of the existence of the 2003 registered Deed of Conveyance and 2010 Agreement and the necessity to seek cancellation of those, as pleaded in the plaint of Title Suit No. 613 of 2021 itself, there cannot be any manner of doubt, from a plain and meaningful reading of the plaint, that unless the said Deed and Agreement were cancelled, the plaintiff could not have any right to operate the bank account itself.

60. Both the documents being referred to in the plaint, there was no bar for learned Trial Judge to look into the contents of the same as well.

61. From a perusal of the Deed of 2003, it is found that the plaintiff Punalur not only transferred its right, title and interest in the immovable property concerned, but unequivocally assigned/transferred the right to receive present and future compensation in respect of acquisition of such property as well in favour of M/s. Lindsay.

62. The Agreement of 2010 did not evidence any independent transfer of right but merely recognised the earlier transfers, already effected by the 2003 Deed, and also recorded the agreement of the confirming parties to the 2010 Agreement, that is, the then majority shareholders of the appellant no.1-company (including Sri. T.K. Sundaresan), that necessary Powers of Attorney and other acts would be done and executed by the appellant-company in pursuance of the 2003 transfer, particularly with regard to the operation of the bank account containing the corpus of the acquisition compensation.

63. Notably, Sri. T.K. Sundaresan was a party to the 2010 agreement.

64. No challenge has been thrown to the veracity of the signature of Sri. T.K. Sundaresan therein but it has merely been alleged that the agreement was a "clandestine deal" without due authorisation of the company and/or without any resolution by the Board of Directors or the Chairman and Managing Director being signatories to the said document.

65. Hence, in the absence of any challenge to the 2003 deed and/or the 2010 agreement in the plaint despite admitting their existence, the reliefs sought in the plaint regarding the bank account containing the acquisition compensation which was transferred by the 2003 deed (as acknowledged by the 2010 agreement) *ex facie* could not be granted.

66. Section 31 of the Specific Relief Act, 1963 (in short, "the 1963 Act") provides that any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

67. Thus, law contemplates that a person who would be prejudiced if an instrument is allowed to stand has to challenge the same by way of a regular suit, seeking cancellation/adjudication of the instrument to be void or voidable. Despite having clearly admitted the existence of the 2003 deed and the 2010 agreement, the appellant no.1 merely stated that it "was initiating separate proceedings for cancellation" and that it had "decided to take appropriate action for cancellation in separate appropriate proceedings". Moreover, no prayer was even made within the contemplation of Order II

Rule 2 of the Code seeking the leave to challenge those documents in a later proceeding, let alone such leave being granted.

68. Hence, *ex facie,* on the basis of the cause of action made out in the plaint itself, it was clear that without assailing the said two documents, the reliefs sought therein could not be granted.

69. In *Mayar (H.K) Ltd. & Ors.(supra)*[5] it was held that cause of action is a bundle of facts and if some cause of action is disclosed requiring adjudication, it would not be a ground for rejection of plaint that the plaintiff may not ultimately succeed. However, in the suit at hand, even if the plaint averments of the appellants were to be taken as gospel truth, no cause of action would be disclosed for seeking exclusive right of operation of the bank account-in-question in the teeth of the admitted documents of 2003 and 2010.

70. Again, in *Madanuri Sri Rama Chandra Murthy (supra)*[6] a later judgment, it was held that a meritless and vexatious plaint not disclosing clear right to sue ought to be rejected. In *Popat and Kotecha Property (supra)*[7] it was also observed that if the plaint creates an illusion of a cause of action by clever drafting, without disclosing a clear right to sue, the same may be rejected. The said judgments echo the principles laid down in *T. Arivandandam (supra)*[8], the landmark decision where it was observed by the Hon'ble

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[5] ***Mayar (H.K) Ltd. & Ors. v. Owner & Parties, Vessel, M.V. Fortune Express & Ors.*, reported at *(2006) 2 ICC (SC) 479***

[6] ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, reported at *(2017) 13 SCC 174***

[7] ***Popat and Kotecha Property v. State Bank of India Staff Association*, reported at *(2005) 7 SCC 510***

[8] ***T. Arivandandam v. T.V. Satyapal*, reported at *(1977) 4 SCC 467***

Supreme Court that a meritless and vexatious plaint which does not disclose a clear right to sue should be "nipped in the bud".

71. It was further observed that the party is not required to be compelled to litigate unnecessarily, unless a clear right to sue is disclosed in the plaint itself.

72. Thus, the learned Trial Judge was perfectly justified in rejecting the plaint as *ex facie* meritless and vexatious, not disclosing a clear right to sue in the context of the reliefs claimed therein, and consequentially nipping the suit in the bud. We do not find any legal or factual error in such adjudication.

<u>Counter claim in Title Suit No. 314 of 2021</u>

73. The rejection of the said counter claim was on two-fold grounds – limitation and bar under Order II Rule 2 of the Code.

74. The present appellant, being the defendant/counter claimant in the suit, seeks to impress upon the court that in view of the predecessor-company of respondent no. 1, namely Lindsay having claimed a declaration that the agreement dated May 15, 2010 was in force and subsisting and seeking reliefs thereon, the defendant/appellant automatically became entitled to seek a counter claim challenging such agreement. Such proposition is unknown to law.

75. The limitation for filing a suit/counter claim is determined by the commencement of the cause of action, and not the action of others. In the present case, irrespective of who is or was in the management of the appellant-company at the relevant point of time, Punalur being a company, thus, a separate juristic entity in the eye of law, its actions cannot be disowned by it merely because of a subsequent change of its management. The doctrine of indoor management also steps in, since transactions with third parties cannot be vitiated by internal squabbles in the company, even if any.

76. Proceeding on the premise of such maxim, it is an admitted position that there exists a registered Transfer Deed of the year 2003 and a subsequent Agreement of 2010, both executed by the appellant-company. The majority shareholders of the appellant-company (including Sri T.K.Sundaresan, who has filed both the present suits and the counter claim in the capacity of Chairman and Managing Director of the appellant) were also confirming parties thereto.

77. Thus, evidently, the limitation period for assailing the 2003 Deed as well as 2010 Agreement started to run from the respective dates of execution of the said documents.

78. In paragraph 40 of the counter claim, the cause of action of the same has been claimed to arise in the second week of March, 2021, when the Directors of the defendant no. 1/appellant received notice of injunction together with the copies of the plaint and injunction application in respect of Title Suit No. 314 of 2021, initiated by M/s. Lindsay. In the said paragraph, it was further averred that only in the second week of March, 2021, the counter claimant first became aware of the "suppression that was made by KAHM and other office bearers of the plaintiff-company". However, such incident, by itself, does not furnish any real cause of action for filing the suit at all. The agreement was clearly referred to by the appellant in its own earlier suit, being Title Suit No. 613 of 2021, but no challenge to the same was preferred in the said suit, despite such remedy being available at the relevant juncture; nor was any leave under Order II Rule 2 of the Code sought for challenging the agreement in the earlier suit, till the date of filing of the counter claim.

79. Moreover, it was not stated categorically by the counter claimant that it was not aware of the 2010 Agreement at the time of its execution at all. The only ground of challenge is lack of sanction and/or ratification by the Board of Directors and absence of authority on the part of the shareholders, including Sri. T.K. Sundaresan, who was acting on behalf of the counter claimant in the counter claim itself, to execute such agreement.

80. Thus, there being no averment at all in the counter claim that the counter claimant/appellant did not have any knowledge of the agreement contemporaneously with its execution, the counter claim was *ex facie* time-barred.

81. Although, under certain circumstances, the question of limitation may be a mixed question of law and fact, it is not so if the time-bar is evident from averments in the plaint/counter claim itself, as in the present case. In *Madanuri Sri Rama Chandra Murthy (supra)*[9], under similar circumstances, the plaint was held to be barred by limitation if it is evident on the face of it.

82. We need not look further or appreciate any evidence or even the quality of the cause of action pleaded in the plaint to arrive at such finding. As discussed above, a plain and meaningful reading of the averments made in the counter claim as a whole itself discloses that it is *ex facie* barred by

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[9] ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, reported at *(2017) 13 SCC 174***

limitation. In *Biswanath Banik and Another (supra)*[10] , in similar context, it was held that a plaint can be rejected on the ground of limitation when it is apparent on the face of the plaint. The said principle is applicable to the counter claim of the appellant, filed in Title Suit No. 314 of 2021.

83. On the question of Order II Rule 2 of the Code, the said provision stipulates that where a plaintiff omits to sue in respect of, or internally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Sub-rule (3) of Rule 2 provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, *except with the leave of the court*, to sue for of such reliefs, he shall not afterwards sue for any relief so omitted.

84. On a composite reading of the *Dahiben (supra)*[11] and *Channappa(D) (supra)*[12] decisions as well as the Division Bench judgment of the Bombay High Court in *Canning Mitra Phoenix Limited (supra)*[13], it is clear that the cause of action in the earlier and later suits are required to pertain to the same bundle of facts for Order II Rule 2 to be attracted. Although leave under Order II Rule 2 may be sought even after institution of the suit at a subsequent stage, the same has mandatorily to be sought prior to institution of the second suit.

85. In the present case, not only was no such leave granted in Title Suit No. 613 of 2021, which was filed by the appellant earlier, no prayer under Order II

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[10] ***Biswanath Banik and Another v. Sulanga Bose and Others*, reported at *(2022) 7 SCC 731***

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

[12] ***Channappa(D) v. Parvatewwa(D)* ,reported at *(2026) SCC Online SC 552***

[13] **Canning Mitra Phoenix Limited Vs. M/s. Popular Construction and Another, reported at Mh. L.J. 812**

Rule 2 was also made before filing the counter claim. Despite such vital omission, the appellant boldly asserted about the 2003 Deed as well as the 2010 Agreement in the earlier suit and also pleaded its intention to challenge those in a different proceeding. Still, for unexplained reasons, such reliefs were neither incorporated in the earlier suit nor any leave under Order II Rule 2 was prayed for. The appellant having boldly asserted in the plaint of Title Suit No. 613 of 2021 about the existence of the said document and the necessity to challenge the same, in the absence of leave under Order II Rule 2, the subsequent counter claim of the appellant in Title Suit No. 314 of 2021, assailing the agreement dated May 15, 2010, is clearly barred under Order II Rule 2 of the Code as well.

86. Thus, the rejection of the counter claim of the appellant Punalur in Title Suit No. 314 of 2021, which is the subject-matter of FA 127 of 2024, is legally sound and no interference is called for.

Title Suit No. 430 of 2022

87. The plaint in Title Suit No. 430 of 2022, which is the subject-matter of FA 8 of 2025, was rejected on three-fold grounds – Limitation, bar Order II Rule 2 and non-disclosure of any real cause of action.

88. Insofar as the first two grounds are concerned, the same ratio on which we have held above that the counter claim in Title Suit No. 314 of 2021 was barred is also applicable to the plaint of Title Suit No. 430 of 2022, the same having been filed even after the counter claim in Title Suit No. 314 of 2021. Nowhere within the four corners of the plaint of Title Suit No. 430 of 2022 was it denied that the Deed of Conveyance dated May 5, 2003 was executed by the appellant-company, nor has any explanation been furnished for the delay in instituting the suit. Since the relevant claims in Title Suit No. 430 of 2022 emanated from the self-same bundle of basic facts which were part of the cause of action in the counter claim in Title Suit No. 314 of 2021 and the plaint of Title Suit No. 613 of 2021, Title Suit No. 430 of 2021 was clearly barred by Order II Rule 2 of the Code and by limitation. In order to avoid unnecessary repetition, we rely on the logic of holding so in respect of the counter claim in Title Suit No. 314 of 2021, which holds true with regard to the rejection of the plaint in Title Suit No. 430 of 2022 as well.

89. With regard to non-disclosure of real cause of action, in paragraph no. 53 of the plaint of Title Suit No. 430 of 2022, the plaintiff/appellant claimed that in view of the "demonstrated attempt of the defendants to misuse the Deed of Conveyance", the plaintiff reasonably and bona fide apprehended that the defendants were attempting to enrich themselves illegally on the basis of the same and it was in those circumstances that plaintiff was entitled to have the Deed of Conveyance dated May 5, 2003 to be adjudged, void, cancelled and delivered up. However, subsequent attempts to "misuse" a Deed of Conveyance, that too a registered one, does not furnish, even *ex facie*, any ground for challenging the same beyond the limitation period. The document, relied on/referred to by both the parties, is a registered deed of conveyance and carries a presumption of validity. Although such presumption is rebuttable in evidence, at least a plausible cause of action has to be disclosed for assailing the same in the plaint itself.

90. The common refrain throughout the plaint is that the "misuse" of the said deed was the trigger for the suit to be filed, assailing the same. In paragraph

51, as components of fraud, it has been stated that necessary shareholders' approval or consent of the Board of Directors was not obtained before executing the same. However, such allegations do not comprise of any act of fraud on the part of the defendant-company. Fraud, for the purpose of assailing a deed of conveyance, has to pertain to the execution of the impugned deed itself and events contemporaneous thereto, and cannot arise out of subsequent use or misuse of the deed. Thus, no clear cause of action to sue, vis-à-vis the reliefs sought in the suit, was disclosed in the plaint of Title Suit No. 430 of 2022 to sufficiently entitle the plaintiff-company to the reliefs sought.

91. In any event, the suit being *ex facie* barred by limitation and under Order II Rule 2 of the Code, this question is not of much moment.

92. Before parting with the matter, we must take note of the ratio laid down in *Sopan Sukhdeo Sable & Ors. (supra)* [14], where it was held that a plaint cannot be partially rejected.

93. There cannot be any quarrel to such proposition. However, despite careful scrutiny of the plaints of both the suits of the appellant and its counter claim, we do not find any clear segregation of different causes of action leading to different reliefs. The facts pleaded therein cumulatively lead to the reliefs and there is no separate, segregable cause of action giving rise to separate relief, independent of the other reliefs sought in any of the plaints or the counter claim. A single chain of events was pleaded in the plaint, leading to the reliefs sought. Hence, the question of partial rejection of plaint

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[14] ***Sopan Sukhdeo Sable & Ors. v. Charity Commissioner & Ors*, reported at *(2004) 3 SCC 137***

did not arise at all. Thus, the cited decision does not come to the aid of the appellant.

94. Again, *Sheikh. Noor & Another(supra)*[15] has been relied on by the appellant to argue that on a transfer of property, the transferee is not automatically entitled to recover past arrears or benefits arising out of the property, which can only arise where there is express assignment entitling the transferee to enforce such rights.

95. On the other hand, learned senior counsel for the respondent no. 1 relies on Section 130 of the Transfer of Property Act, 1882 (for short, "the TP Act"). Section 130 of the TP Act, unlike Section 54 thereof, does not mandate the registration of the written instrument effecting transfer of an actionable claim. Section 54 clearly stipulates that a transfer of a tangible immovable property of the value of Rs. 100/- and upwards can be made only by a registered instrument, which is also substantiated by the requirement stipulated under Section 17, read with Section 49, of the Registration Act, 1908 in case of a transfer of immovable property.

96. As opposed thereto, there is nothing in Section 17 of the Registration Act or Section 130 of the TP Act which mandates compulsory registration of a written instrument for transfer/assignment of an actionable claim, with or without consideration. What is required is only a written instrument recording such transfer/assignment which, according to Section (1) of Section 130 of the TP Act, completes and effectuates the transfer of such actionable claim, whereupon all the rights and remedies of the transferor,

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[15] ***Sheikh. Noor & Another v. Sheikh. G.S. Ibrahim(Dead) by Lrs*, reported at *AIR 2003 SC 4163***

whether by way of damages or otherwise, vest in the transferee, whether such notice of transfer as stipulated thereafter be given or not.

97. Sub-section (2) of Section 130 further stipulates that the transferee of an actionable may, upon the execution of such instrument of transfer, sue or institute proceedings for the same in his own name and without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

98. In the aforesaid legal backdrop, a perusal of the 2003 Deed acquires utmost relevance.

99. We find from the registered Deed of Conveyance dated April 5, 2003 that the right, title and interest in the immovable property mentioned therein was thereby transferred in favour of M/s. Lindsay Properties, the predecessor company of the present respondent no. 1.

100. In the habendum portion of the said deed, Clause (c) stipulates, *inter alia*, that the purchaser shall solely and exclusively be entitled to receive and appropriate the amounts of compensation then pending or as may thereafter become payable on account of and in respect of the "said portions in possession of the occupiers", the particulars whereof were stated in Paragraph 1 of the Second Schedule thereunder written, which were the subject-matter of the proceedings of acquisition/requisition by the State Government and of the pending writ applications and proceedings thereunder. Clause (d) of the deed stipulates that in case of the said portions being acquired, the purchaser shall solely and exclusively be entitled to receive the amounts of compensation as may be awarded or paid on account of such acquisition and in this regard, the vendor shall have no right or claim of any nature whatsoever.

101. Clause (e) of the deed provides that in case of a payment of compensation money to the vendor on account of and in respect of such portions of property, the vendor shall forthwith make over such compensation money to the purchaser.

102. As per clause (f) thereof, the vendor shall not be entitled to claim any right, title or interest in respect of said portions and/or the amounts of compensation then payable or as may thereafter become payable on account therefor, which would absolutely belong to the purchaser.

103. In Clause (g), it is stipulated that save and except the obligations mentioned thereinabove, at its own cost and in its own name, the vendor would take appropriate steps to pursue the several writ petitions and other legal proceedings concerning or related to the concerned premises/building and further to cause delivery of vacant and peaceful possession of the building in favour of the purchaser.

104. Notably, in Clause (a) of the said Clause, the vendor agreed, notwithstanding anything to the contrary contained in the deed, in its own name and at its own costs, to pursue all pending writ petitions and other legal proceedings concerning or relating to the transferred premises.

105. Thus, the right to receive present and future compensation was exclusively conferred upon the purchaser M/s. Lindsay and the vendor, Punalur, was divested of the same in terms of the clauses of the registered Deed of Conveyance of 2003. The subsequent Agreement of 2010 merely recognised the earlier transfer, as apparent from its very clauses, and did not independently constitute any transfer. In the 2010 Agreement, all the then majority shareholders of the appellant-company, including Sri T.V. Sundaresan, were confirming parties and consented to it and agreed to do all acts and execute Power of Attorney pursuant to the rights conferred on M/s. Lindsay, the purchaser, in terms of the transfer deed of 2003.

106. Thus, no new right, title or interest was created by dint of the 2010 document and the same was not required to be registered or stamped separately at all. In such view of the matter, the objection as to there being no automatic transfer of the actionable claim to receive compensation does not hold water at all.

107. The powers of attorney or revocation thereof subsequently executed were only consequential acts, having no bearing either on the challenge to the 2010 Agreement or the 2003 Deed of Conveyance. Thus, the reliefs, if any, sought in respect of the said powers of attorney were merely consequential and ancillary reliefs, not determining the cause of action for the principal reliefs, which are the determinants in rejection of plaint.

108. Lastly, the appellant has, in vain, sought to project an order of the Hon'ble Supreme Court passed in an earlier stage to constitute a mandate on the Trial Court to decide the suits and counter claim on its merits.

109. Unfortunately, it is not so. The said order of the Hon'ble Supreme Court, dated September 26, 2022, was passed in the context of a direction to furnish security in respect of the bank account in question. In the passing, the Hon'ble Supreme Court observed then that the direction was subject to the decision in the suit. By way of clarification, it was observed therein that the observations made in the order of the Hon'ble Supreme Court were only for the purpose of disposal of the appeal before the High Court (which had gone up in connection with the interlocutory order passed in the suit) and would not be treated as binding and conclusive findings. It is in such specific context that the Trial Court, it was observed, would determine the rights and pleas raised by the parties, "in accordance with law and based upon the evidence led by the parties".

110. However, the premise of such observation was that the Hon'ble Supreme Court had not conclusively decided the issues raised in the suit and it would be open to the Trial Court to decide those. By itself, such observation could not, by any stretch of imagination, preclude the Trial Court from rejecting the plaint in the event it found the parameters of Order VII Rule 11 of the Code to be satisfied. Hence, such argument of the present appellant is specious and is not tenable in the eye of law.

111. In such view of the matter, the rejection of the plaint in Title Suit No. 430 of 2022 was justified and lawful and ought not to be interfered with.

Conclusion:

112. In view of the above observations, the appeals fail.

113. Accordingly, FA 127 of 2024 is dismissed on contest, thereby affirming the impugned judgment and deemed decree dated April 6, 2024 passed by the learned Chief Judge, City Civil Court at Calcutta in Title Suit No. 314 of 2021, rejecting the counter claim filed by the appellant in the said suit.

114. Similarly, FA 81 of 2025 is also dismissed on contest, thereby affirming the judgment and deemed decree dated April 6, 2024 passed by learned Chief

Judge, City Civil Court at Calcutta in Title Suit No. 613 of 2021, rejecting the plaint filed therein.

115. FA 8 of 2025 is also dismissed on contest, thereby affirming the judgment and deemed decree dated April 6, 2024 passed by the learned Chief Judge, City Civil Court at Calcutta in Title Suit No. 430 of 2022, rejecting the plaint filed therein.

116. Consequentially, CAN 1 of 2024, filed in connection with F.A. No. 81 of 2025, and CAN 1 of 2024, filed in connection with F.A. No. 8 of 2025, are also dismissed.

117. Interim orders, if any, stand vacated.

118. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)