

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AD-COM 2 OF 2026

With

IA No.: CAN 1 of 2026

Sri Vineet Mohan Gupta & Anr.

Vs.

Canara Bank & Ors.

For the Appellants : Mr. Chayan Gupta, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Tanay Agarwal, Adv.
Mr. Shivam Bhimsaria, Adv.
Ms. Akansha Singhanian, Adv.

For Respondent : Mr. Supriyo Mahapatra, Adv.
Nos 1 & 7 : Mr. Kishwar Rahman, Adv.

Hearing Concluded on : June 12, 2026
Judgment on : July 2, 2026

DEBANGSU BASAK, J.:-

1. Plaintiffs in Title Suit Com 110/2024 filed before the Commercial Court at Rajarhat, North 24 Parganas have preferred the present appeal against the order dated February 19, 2026 dismissing

the suit under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. By the impugned order, learned Judge has dismissed the suit of the appellants on the ground that, the suit was barred under Section 95 of the Insolvency and Bankruptcy Code, 2016.

3. Learned Advocate appearing for the appellants has contended that, learned Judge took into consideration subsequent events for the purpose of invoking Order VII Rule 11(d) of the Code of Civil Procedure, 1908. He has referred to Sections 63 and 231 of the Insolvency and Bankruptcy Code, 2016. He has also referred to Sections 95 and 96 thereof. He has contended that, the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 were initiated subsequent to the filing of the suit.

4. Learned Advocate appearing for the appellants has contended that, under Section 95 of the Insolvency and Bankruptcy Code, 2016, the appellants have the right to defend such proceedings only. He has pointed out that, the provisions of the Insolvency and Bankruptcy Code, 2016 do not permit the appellants to make any counter claim. Under Section 96 of the Insolvency and Bankruptcy Code, 2016, the moratorium for the period from the date of filing of the application under Section 95 till the admission thereto comes

into operation. On the aspect of jurisdiction of the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 learned Advocate for the appellants has relied upon **2020 (13) SCC 308 (Embassy Property Developments Private Limited Vs. State of Karnataka and Others)**, **2021 (7) SCC 209 (Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta)** and **(2023) SCC OnLine Bom 33 (Rajendra Prasad Bansal, In Re Reliance Comm. Ltd. Vs. Rajendra P. Bansal)**.

5. Learned Advocate appearing for the appellants has contended that, the embargo under Sections 63 and 231 of the Insolvency and Bankruptcy Code, 2016 are akin to Section 18 of the Recovery of Debts and Bankruptcy Act, 1993. He has relied upon **2023 (1) SCC 1 (Bank of Rajasthan Limited Vs. VCK Share and Stock Broking Services Limited)** in support of such contention.

6. Learned Advocate appearing for the appellants has referred to the prayers made in the plaint and the averments therein. He has contended that, the declaratory reliefs that the appellants sought for in the plaint are to be granted by Civil Courts only. He has relied upon Section 34, 38 and 39 of the Specific Relief Act, 1963 in this regard.

7. Learned Advocate appearing for the appellants has contended that, the bar to filing and maintaining civil suit is to be strictly construed. He has relied upon **2019 SCC OnLine SC 2299 (Escorts Heart Institute and Research Centre Ltd. Vs. Delhi Development Authority and Others)**, **1981 SCC OnLine Del 140 (M/s. Oriental Building and Furnishing co. Ltd. Vs. Union of India)**, **2012 (1) Mah L.J. 687 (United India Insurance Co. Ltd. Vs. Vulcan Association and Others)** and **2007 SCC OnLine Cal 359 (ESAB India Limited Vs. Board of Trustees for the Port of Kolkata & Ors.)** in support of such contention.

8. Learned Advocate appearing for the appellants has contended that, the averments made in the plaint are required to be considered as true and correct under Order VII Rule 11 of the Code of Civil Procedure, 1908. Maintainability of the suit has to be determined on the date of its presentation. Subsequent events cannot be taken into consideration. He has relied upon **AIR 2020 Cal 136 (Pyari Devi Chabiraj Steels Pvt. Ltd. Vs. Axis Bank Limited)** in support of the contention that, the suit is maintainable.

9. Learned Advocate appearing for the appellants has contended that while considering the rejection of the plaint, only the averments made therein and the documents filed with the plaint are to be

considered. He has relied upon **2025 SCC OnLine SC 2240 (Karam Singh Vs. Amarjit Singh & Ors.)**, **2003 (1) SCC 557 (Saleem Bhai and ors Vs. State of Maharashtra and Ors)**, **1999 SCC OnLine Del 744 (Manohar Lal Chatrath & Anr Vs. Municipal Corporation of Delhi)** and **2025 SCC OnLine SC 975 (P. Kumarakurubaran Vs. P. Narayanan and Ors.)** in support of such contention.

10. Learned Advocate appearing for the respondent nos. 1 and 7 has contended that, the respondent no. 1 as the lead banker of Consortium of Banks, lent and advanced various credit facilities to a company. Appellants had issued personal guarantees for repayment of such credit facilities.

11. Learned Advocate appearing for the respondent nos. 1 and 7 has contended that, the respondent no. 1 issued a demand notice dated November 17, 2023 recalling the credit facilities. The appellants had assailed such demand notice before the Orissa High Court by way of a writ petition being WP(C) 41170 of 2023. He has referred to the order dated August 22, 2024 passed by the Orissa High Court in such writ petition. He has contended that, the suit was filed by the appellants subsequent thereto.

12. Learned Advocate appearing for the respondent nos. 1 and 7 has contended that, the claim of the appellants before the Civil Court was barred on the principles of res judicata. He has contended that the appellants are bound by the order dated August 22, 2024 passed by the Orissa High Court.

13. Learned Advocate appearing for the respondent nos. 1 and 7 has relied upon Section 129 of the Contract Act, 1872. He has however, contended that, no document releasing the personal guarantees of the appellants was executed by all the members of the consortium. He has relied upon **(2021) 224 Comp Case 416 (Gouri Shankar Jain Vs. Punjab National Bank), 2006 (11) SCC 506 (Syndicate Bank Vs. Channaveerappa Beleri)** and **2010 (12) SCC 458 (H.R. Basavaraj Vs. Canara Bank)** to indicate the law on continuing guarantees under Section 129 of the Indian Contract Act, 1872.

14. Learned Advocate appearing for the respondent no. 1 and 7 has relied upon **2024 (5) SCC 435 (Dilip B. Jiwarajka Vs. Union of India & Ors.)** and **(2024) 252 Company Cases 499 (Vineet Saraf Vs. Rural Electrification Corporation Ltd.)** in support of his contentions regarding the scope and ambit of proceedings under the Insolvency and Bankruptcy Code, 2016.

15. Learned Advocate appearing for respondent no. 1 and 7 has contended that the civil court has no jurisdiction by virtue of Insolvency and Bankruptcy Code, 2016, being a special legislation and complete code. He has relied upon **2026 SCC OnLine Del 7 (Roseland Buildtech (P) Ltd Vs. Vihaan 43 Reality (P) Ltd.), 2025 257 Company Cases 344 (Mohammed Enterprises (Tanzania) Ltd Vs. Farooq Ali Khan and Ors.), Civil Revision Petition No. 872 of 2024 (Kennigton Industries Pvt Ltd & Ors Vs. Spads Textiles Limited), 2025 SCC OnLine Ker 5688 (Vysali Pharmaceuticals Limited & Anr. Vs. T. Beena & ors.)** and **2025 SCC OnLine Bom 2799 (Mohato Industries Ltd. Vs. Vibha)** in support of his contentions.

16. Learned Advocate appearing for the respondent nos. 1 and 7 has contended that, the notice dated November 17, 2023 is a notice under the Insolvency Rules. Therefore, the appellants were aware that insolvency proceedings will be filed. Consequently, since the appellants had filed the suit subsequent to the demand notice dated November 17, 2023, the suit was barred. In support of such contention, he has relied upon **2024 (3) SCC 250 (Urban Improvement Trust Vs. Gordhan Dass)** and **1977 (4) SCC 467 (T.Arivandandam Vs T.V. Satyapal).**

17. In reply, learned Advocate appearing for the appellants has contended that the personal guarantees of the appellants stood discharged. He has drawn the attention of the Court to the letter dated October 27, 2022 in this regard. He has also referred to the Minutes of the Meeting dated December 20, 2021.

18. Referring to the order dated January 7, 2025, learned Advocate appearing for the appellants has contended that, 8 out of 12 Members of the Consortium had released the personal guarantees of the appellants, and 4 members did not.

19. Appellants and Mr. Jitendra Mohan Gupta are sons of late Mr. Bhagatram Gupta who had expired on February 21, 2021. According to the appellants, Mr. Jitendra Mohan Gupta had looked after the affairs of respondent No. 13.

20. The respondent No. 13 had obtained credit facilities from the respondent Nos. 1 to 12. The respondent No. 1 is the lead consortium banker of such credit facilities that the respondent Nos. 1 to 12 had granted to the respondent No. 13.

21. According to the appellants, on the death of Mr. Bhagatram Gupta, the appellants had approached the consortium bankers for release of their personal guarantees. 8 out of the 12 consortium bankers had released the personal guarantees of the appellants. Mr.

Jitendra Mohan Gupta had also agreed that, he would ensure that all the consortium bankers released the personal guarantees of the appellants.

22. After the death of Mr. Bhagatram Gupta a consortium meeting had taken place on August 10, 2021 where the respondent No. 1 released the personal guarantees of the appellants and requested the other consortium bankers to take note of the same. By a letter dated October 29, 2021 the respondent No. 13 had requested the respondent Nos. 1 to 12 to release the personal guarantees of the appellants.

23. Subsequent to the death of Mr. Bhagatram Gupta on February 21, 2021, the respondent Nos. 1 to 12 had entered into a consortium agreement dated October 1, 2021 with the respondent No. 13. Such consortium agreement dated October 1, 2021 had been amended on August 26, 2022. Several deeds of accession dated November 25, 2022 and March 31, 2023 had also been executed.

24. In a consortium meeting held on December 20, 2021, the respondent Nos. 1 and 4 had acknowledged that they released the personal guarantees of the appellants.

25. From time to time respondent No. 1 had issued sanction letters dated April 22, 2022, October 17, 2022, October 27, 2022,

December 21, 2022 and March 16, 2023. According to the appellants, such sanction letters do not contain the requirement of personal guarantees of the appellants.

26. By a letter dated November 17, 2023, the respondent No. 1 had demanded repayment of the credit facilities extended by the consortium members to the respondent No. 13.

27. Appellants had challenged the demand notice dated November 17, 2023 issued by the respondent No. 1 before the High Court at Cuttack in WP (C) 41170 of 2023. By an order dated August 22, 2024, the Orissa High Court had disposed of such writ petition by holding that, the notice dated November 17, 2023 allows the appellants to agitate their points before the National Company Law Tribunal.

28. Appellants had filed a suit for declaration and injunction being Title Suit COM 110/2024 before the learned Commercial Court at Rajarhat on November 6, 2024. In such suit, the appellants had joined all Members of the Consortium as defendants and the principal borrower as the proforma defendant. Plaintiffs had prayed for the following reliefs in such suit:-

“(a) Declaration that the personal guarantee executed by the plaintiffs in favour of the defendant Nos. 1 to 12

for debts of the defendant No. 13 have stood discharged and/or has been released;

(b) Perpetual injunction restraining the defendant Nos. 1 to 12 from contending that the plaintiffs are guarantors to any of them in respect of financial assistance transactions between them and the defendant no. 13, in any manner whatsoever;

(C) Perpetual injunction restraining the defendant Nos. 1 to 12 from giving any effect to and/or acting in furtherance to of any of the Deeds of Guarantee executed by the plaintiffs;

(d) Receiver;

(e) Injunction;

(f) Costs;

(g) Such further and/or other relief or reliefs.”

29. In the suit, appellants had filed an application for injunction. Learned Commercial Court had refused to grant ex parte ad interim injunction on the ground that there would be a probability of Securitization and Reconstruction of Financial Assets and Security Interest Act, 2002 (SARFAESI) proceeding being initiated against the appellants. Appellants had carried an appeal directed against such order of refusal being FMAT 504 of 2024 which was disposed of by an order dated January 7, 2025 without interference.

30. Respondent no. 1 had filed two proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the appellants being CP(IB)/32/KB/2025 against the appellant no. 1 and CP(IB)/33/KB/2025 as against the appellant no. 2 on January 15,

2025. The National Company Law Tribunal had by its order dated February 4, 2025 appointed Resolution Professional in respect of the two proceedings.

31. By an order dated February 4, 2025 NCLT had admitted both the proceedings being CP(IB)/32/KB/2025 and CP(IB)/33/KB/2025. Records suggest that the two proceedings have now been fixed on July 30, 2026 before the NCLT.

32. In the suit, the respondent No. 1 had filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 on February 11, 2025. In such petition under Order VII Rule 11 of the Code of Civil Procedure, 1908, respondent No. 1 had taken the point of bar under Section 96 of the Insolvency and Bankruptcy Code, 2016 as well as the order dated January 7, 2025 passed by the Orissa High Court in WP(C) No. 41170 of 2023.

33. By the impugned order, learned Judge has invoked Section 96 of the Insolvency and Bankruptcy Code, 2016 to dismiss the suit. Section 96 of the Insolvency and Bankruptcy Code, 2016 is as follows:-

“S. 96. Interim-Moratorium. – (1) When an application is filed under Section 94 or Section 95-
(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall

cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period-

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-Section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-Section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

34. Section 96 of the Insolvency and Bankruptcy Code, 2016 deals with interim moratorium. It postulates that when an application under Section 94 or 95 of the Insolvency and Bankruptcy Code, 2016 is filed, interim moratorium will commence from the date of the application and shall cease to have effect on the date of admission of such application. It provides that, during interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to be stayed and that, creditor of the debtor shall not initiate any legal action or proceeding in respect of any debt. Sub Sections (2) and (3) of Section 95 of the Insolvency and Bankruptcy Code, 2016 are not relevant in the facts and circumstances of the present case.

35. For Section 96 of Insolvency and Bankruptcy Code, 2016 to come into operation, there must be a pending application under Section 94 or 95 thereof.

36. Section 96 of Insolvency and Bankruptcy Code, 2016 provides for interim moratorium for specific period of time and in specified circumstances. So far as the period of interim moratorium is concerned, it pegs the commencement date to be the date on which the application under Section 94 or 95 of the Section 96 of the Insolvency and Bankruptcy Code, 2016 was filed. The terminus of the interim moratorium is pegged at the date of admission for such application. In the facts of the present case, moratorium commenced on January 15, 2025 and terminated on February 4, 2025.

37. Section 96 provides for interim moratorium of the periods specified under two circumstances. Section 96(1)(b)(i) of the Insolvency and Bankruptcy Code, 2016 provides that interim moratorium in respect of pending proceedings while Section 96(1)(b)(ii) thereof puts an embargo on initiation for any legal action in respect of any debt of the debtor.

37A. It is trite law that, the liability of the guarantor is co extensive as that of the principal debtor unless there is a contract of the contrary. A creditor can choose to initiate proceedings for recovery

either jointly or severally against the debtor or the guarantor. ***Channaveerappa Beleri (supra)***, ***H.R. Basavaraj (supra)*** and ***Gouri Shankar Jain (supra)*** are some of the authorities for such proposition.

38. In the facts and circumstances of the present case, personal guarantees of the appellants, are debts till such time, such personal guarantees are waived or the appellants are released therefrom. According to the appellants they stand released from their personal guarantees. The appellants are entitled to file and maintain a suit seeking a declaration that they stand released from their personal guarantees. Such a declaratory suit is within the jurisdiction of a Civil Court. Pendency of a proceeding under Section 95 of the Insolvency and Bankruptcy Code, 2016 would however impact the suit if filed within the period of embargo under Section 96(1)(b)(ii) or Section 101 thereof.

39. Appellants had filed the suit, in which the impugned order was passed, on November 6, 2024. The respondent no. 1 had filed proceedings under Insolvency and Bankruptcy Code, 2016 on January 15, 2025. Appellants had therefore filed the suit prior in point of time than the applications under Section 95 of the

Insolvency and Bankruptcy Code, 2016 filed by the respondent no. 1.

40. We need not enter into the issue as to whether or not the respondent no. 1 as the consortium lead banker can initiate proceedings under the Insolvency and Bankruptcy Code, 2016 as against the appellants for debts allegedly due on account of personal guarantees of the appellants to some of the members of the consortium bankers. Such issue is kept open to be decided by the appropriate forum.

41. The foundational fact on which, Section 96 of the Insolvency and Bankruptcy Code, 2016 comes into operation is the filing of a petition either under Section 94 or 95 of the Insolvency and Bankruptcy Code, 2016. In the facts and circumstances of the present case, a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 was filed on January 15, 2025 which is subsequent to the suit which was filed on November 6, 2024.

42. Since, Section 95 proceedings was filed subsequent to the suit, then, the scenario envisaged under Section 96(1)(b)(i) would apply till the date of admission that is, February 4, 2025. Section 96(1)(b)(i) directs stay of any pending proceeding in respect of the

debt which is the subject matter of a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016.

43. In view of Section 96 of the Insolvency and Bankruptcy Code, 2016, therefore, interim moratorium had commenced on and from January 15, 2025 when Section 95 petition was filed before the NCLT. The suit being pending on the date of commencement of the moratorium, it could not have been dismissed under Section 96 of the Insolvency and Bankruptcy Code, 2016.

44. There is another moratorium in respect of applications under Sections 94 and 95 of the Insolvency and Bankruptcy Code, 2016 that is, under Section 101. Under Section 101 of the Insolvency and Bankruptcy Code, 2016, when an application of Sections 94 or 95 is admitted under Section 100, a moratorium commences in relation to all debts. Moratorium however ceases at the end of the period of 180 days beginning from the date of admission of the application till the date NCLT passes an order on the repayment plan under Section 114, whichever is earlier.

45. In the facts and circumstances of the present case, the two petitions were admitted on February 4, 2025. 180 days since its admission is already over for a valid moratorium under Section 101

of the Insolvency and Bankruptcy Code, 2016 to exist on the date of the impugned order.

46. Prescription of moratorium for limited period of time under the Insolvency and Bankruptcy Code, 2016 therefore re-emphasises the view that pending civil proceedings are not stayed indefinitely nor are they required to be dismissed as barred by law, if such civil proceedings were instituted prior in point of time.

47. The effect of Sections 231 and 238 of the Insolvency and Bankruptcy Code, 2016 on the already instituted suit prior to the invocation of the provisions of the Insolvency and Bankruptcy Code, 2016 requires consideration.

48. Sections 231 and 238 of the Insolvency and Bankruptcy Code, 2016 are as follows:-

“S. 231. Bar of jurisdiction. – No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”

“S. 238. Provisions of this Code to override other laws.- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or

any instrument having effect by virtue of any such law.”

49. Section 231 of Insolvency and Bankruptcy Code, 2016 imposes a bar of jurisdiction on Civil Courts. It provides that no Civil Court shall have jurisdiction in respect of any matters in which the adjudicating authority or the Board is empowered by or under the Insolvency and Bankruptcy Code, 2016 to pass any order and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such adjudicating authority or Board under the Insolvency and Bankruptcy Code, 2016.

50. There are two parts to Section 231. The first part oust the jurisdiction of Civil Court. The second part prohibits orders preventing implementation of the process under the Insolvency and Bankruptcy Code, 2016. The underlying mandatory requirement for any of the two parts of Section 231 to be validly attracted is the pendency of a proceeding under the Insolvency and Bankruptcy Code, 2016.

51. There are specific provisions in the Insolvency and Bankruptcy Code, 2016 for stay of proceeding and ouster of jurisdiction, such as Sections 96 and 101. They modulate the specific arena they address. They provide for stay of pending

proceeding before a Civil Court while prohibiting fresh filing during a specific period of time. Stay and embargo recedes on the eventuality specified for their recession occurring.

52. When these specific provisions of stay and ouster of jurisdiction do not require dismissal of a pending proceeding. Section 231 of the Insolvency and Bankruptcy Code, 2016 should not be read to prescribe ouster of jurisdiction of Civil Court en masse on the initiation of proceeding under the Insolvency and Bankruptcy Code, 2016. Section 231 of the Insolvency and Bankruptcy Code, 2016 mandates and require that order of Civil Courts do not impede the due conclusion of the proceeding before the Adjudicating Authority or the Board.

53. Section 231 of the Insolvency and Bankruptcy Code, 2016 seeks to insulate proceedings before an order of Adjudicating Authority and the Board from interference by Civil Court. On a strict construction of Section 231 it prescribes ouster of Civil Courts jurisdiction only in the specific scenarios prescribed elsewhere in the Insolvency and Bankruptcy Code, 2016, such as Section 96 and 101 and not otherwise, and that too, if the Civil Court proceeding was instituted subsequent to the filing of the NCLT proceeding.

54. Section 238 of the Insolvency and Bankruptcy Code, 2016 lays down that, the provisions of the Insolvency and Bankruptcy Code, 2016 shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect by virtue of any such law. Our attention has not been drawn to any material fact apart from the suit filed as noted above and the two proceedings under Section 95 pending before the NCLT for us to invoke or dwell on Section 238 of the Insolvency and Bankruptcy Code, 2016 in the facts and circumstances of the present case.

55. Insolvency and Bankruptcy Code, 2016 has provided for moratorium as well as bar on the civil courts jurisdiction in different situations. Essentially, if there is a pending proceeding before a civil court, then, on initiation of proceedings under the Insolvency and Bankruptcy Code, 2016 such civil proceedings are to remain stayed for the time period specified in the Insolvency and Bankruptcy Code, 2016. In the event, the civil suit is filed subsequent to the moratorium coming into effect under the Insolvency and Bankruptcy Code, 2016 then, there may be an issue of dismissal of such civil suit. However, in the facts and circumstances of the present case, we are not called upon to pronounce affirmatively on such a situation.

56. Interplay of Sections 231 and 238 along with the relevant sections relating to moratorium under the Insolvency and Bankruptcy Code, 2016 may have to be considered if, the civil suit was filed subsequent to the initiation of the proceedings under the Insolvency and Bankruptcy Code, 2016 which is not the factual scenario here. We therefore refrain ourselves from pronouncing on such a scenario.

57. In the scenario of a pending civil proceedings instituted prior to the initiation of proceedings under the Insolvency and Bankruptcy Code, 2016 the civil court will not pass an order of injunction in respect of any action taken or to be taken in pursuance to any order passed by the NCLT under the Insolvency and Bankruptcy Code, 2016.

58. Again, nothing has been drawn to our attention to suggest that, the learned Trial Judge passed any order in respect of any action taken report to be taken in pursuance to any order passed by the NCLT under the Insolvency and Bankruptcy Code, 2016.

59. The issue as to whether the jurisdiction of a Civil Court under Section 9 of the Code of Civil Procedure, 1908 stands ousted by any special statute or not has received consideration of the Hon'ble Supreme Court a number of times. In **VCK Share and**

Stock Broking Services Limited (supra) Hon'ble Supreme Court has considered the bar of jurisdiction of Civil Court under Section 18 of the Recovery of Debts and Bankruptcy Act, 1993. There the Hon'ble Supreme Court has relied upon a Constitution Bench decision reported at ***1968 (3) SCR 662 (Dhulabhai and Others Versus State of Madhya Pradesh)*** and three Judges Bench decision reported at ***2023 (6) SCC 220 (Dwarka Prasad Agarwal Versus Ramesh Chandra Agarwal)***. It has observed that, Section 9 of the Code of Civil Procedure, 1908 confers jurisdiction upon Civil Court to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and that such bar is not to be readily inferred. It has also held that, provision seeking to bar jurisdiction of a Civil Court requires a strict interpretation and that the Court would normally lean in favour of the construction which would uphold the jurisdiction of the Civil Court.

60. Referring to Section 18 of the Recovery of Acts due to Banks and Bankruptcy Act, 1993, ***VCK Share and Stock Broking Services Limited (supra)*** has held that, a jurisdiction of a Civil Court to try a suit filed by a borrower against the banker or a financial institution is not ousted by virtue of the scheme of the Act

of 1993 in relation to the proceedings for Recovery of Debt by banker or the financial institution.

61. In the context of bar of jurisdiction under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Calcutta High Court in ***Pyari Devi Chaniraj Steels Pvt. Ltd. (supra)*** has held that bar of jurisdiction under Section 34 of the Act of 2002 was limited to the suit of the nature which is within the competence of the Debt Recovery Tribunal to decide under Section 17 thereof.

62. *Embassy Property Developments Private Limited (supra)* has held that, NCLT is not a civil court. NCLT and NCLAT have been constituted under Sections 408 and 410 of the Companies Act, 2013 and not under the Code of 2016. It has noted the scheme of the Insolvency and Bankruptcy Code, 2016. It has held that, NCLT can exercise jurisdiction only in respect of matters which the Insolvency and Bankruptcy Code, 2016 permits it to do.

63. *Gujarat Urja Vikas Nigam Ltd. (supra)* has considered the residual clause under Section 60 (5) (c) of the Code of 2016 and held that, NCLT has jurisdiction to adjudicate disputes which arise solely and which relate to the insolvency of the corporate debtor. However, in doing so, NCLT and NCLAT have to ensure that they do not usurp

the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or related to the insolvency of the corporate debtor.

64. *Rajendra Prasad Bansal (supra)* has held that the NCLT is a statutory Tribunal and therefore its powers are circumscribed by the provisions of the statute which confers jurisdiction upon it. It has also held that unlike a civil court, the NCLT does not have general jurisdiction under Section 9 of the CPC.

65. *Escorts Heart Institute and Research Centre Ltd. (supra)* has considered the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in the facts and circumstances of that case. It has held that, the proceedings initiated under the Act of 1971 was not maintainable in view of the suit filed in respect of the land for which notice for eviction was issued under the Act of 1971.

66. *M/s Oriental Building and Furnishing Co. Ltd., New Delhi (supra)* has considered the jurisdictional issue arising from the interplay between the Arbitration Act, 1940 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It has held that, Section 15 of the Act of 1971 was not a bar to refer the matter to arbitration. It has also held that, there is nothing in the Act of 1971

or the Arbitration Act, 1940 barring the arbitration proceeding and is of the view that the matter can be referred to arbitration notwithstanding the fact that the Estate Officer may have chosen to take action under the Act of 1971.

67. In ***United India Insurance Co. Ltd. (supra)*** the Bombay High Court has held that a suit for injunction by tenants claiming car-parking rights was under the jurisdiction of the Court of Small Causes under Section 41(1) of the Presidency Small Causes Court Act. It has reiterated the well settled law that the issue of jurisdiction has to be determined on the basis of the averments made in the plaint and on the prima facie reading it is clear that there is no remedy available for the tenant under the Act of 1971 to seek injunction and that the bar under Section 15 of the Act of 1971 is not attracted.

68. ***ESAB India Limited (supra)*** has decided the question of jurisdictional bar under Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Court has observed that the suit did not appear to be barred under Section 15 of the Public Premises Act, but the plaintiff still failed to establish a prima facie case for interim injunction, so the impugned order was upheld.

69. *Karam Singh (supra)* has held that, whether the suit is barred by any law or not is to be determined on the basis of the averments made in the plaint and nothing else.

70. *Saleem Bhai and others (supra)* has held that, for the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code of Civil Procedure, 1908, the averments made in the plaint are relevant. The pleas taken by the defendant in the written statement are wholly irrelevant at such stage.

71. *Manohar Lal Chatrath (supra)* has held that Order VII Rule 11(d) CPC permits rejection of plaint only when a suit is barred by law appearing from the statements in the plaint including the documents filed with the plaint, and nothing more.

72. *P. Kumarakurubaran (supra)* has noticed various authorities of the Supreme Court under Order VII Rule 11 of the Code of Civil Procedure, 1908. In the facts of that case, the decision to reject the claim on the ground of limitation under Order VII Rule 11 of the Code of Civil Procedure, 1908 had been set aside.

73. *T. Arivandandam (supra)* has found the suit filed by the plaintiff therein to be an abuse of process of court. The suit that has

been filed by the appellants herein cannot be classified as an abuse of process of Court.

74. *Urban Improvement Trust (supra)* has noted that, the jurisdiction of civil courts to try suits of civil nature is expansive and that, the onus to prove the ouster of jurisdiction is on the party which has alleged the same. It has also held that, in cases where the jurisdiction of the Civil Court is barred by a statute, the test is to determine if the authority or tribunal constituted by the statute has the power to grant the reliefs that the Civil Courts would normally grant in suits filed before them.

75. Authorities noted above, in the context of an application under Order VII Rule 11 (d), have laid down that the court in seisin of such an application is required to: –

- (i) keep in consideration that the rejection of a plaint under Order VII Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold;
- (ii) conditions precedent to the exercise of such powers are stringent;
- (iii) examine and read the plaint as a whole, and nothing else;
- (iv) the defence available to the defendants or the pleas taken by them in the written statement or any application filed by

them cannot be the basis to decide the application under Order VII Rule 11 (d);

- (v) on a meaningful and not formal reading of the plaint if the plaint is found to be manifestly vexatious and meritless, not disclosing a clear right to sue, powers under Order VII Rule 11 can be exercised;
- (vi) only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected;
- (vii) Order VII Rule 11 can be invoked at any stage.

76. *Dilip B. Jiwarajka (supra)* has dealt with the challenge to the constitutional validity of Sections 95 to 100 of the Insolvency and Bankruptcy Code, 2016. It has observed that, no judicial adjudication is involved at the stages envisaged in Sections 95 to 99 of the Insolvency and Bankruptcy Code, 2016. It has held that, no judicial determination takes place until the adjudication authority decides under Section 100 whether to accept or reject the application. Sections 95 to 100 have been held not to be unconstitutional as they do not violate Article 14 and 21 of the Constitution.

77. In the context of a writ petition challenging a demand notice issued under Rule 7 (1) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 the Delhi High Court in ***Vineet Saraf (supra)*** has held that, the relief prayed for in the writ petition could be granted by the NCLT.

78. *Roseland Buildtech (supra)* has held that, the plaint in question was a classic example of a proceeding which though clothed as a civil declaratory action, was in reality impermissible collateral attack on the jurisdiction and functioning of NCLT under Insolvency and Bankruptcy Code, 2016. The court has held that entertaining such civil suits filed subsequent to the NCLT proceedings would render otiose the legislative intent behind the creation of a specialized fora and encouraging forum shopping and procedural circumvention.

79. *Kennigton Industries Pvt Ltd (supra)* has held that, when the civil court has no jurisdiction by virtue of Sections 33(5) and 63 of the Insolvency and Bankruptcy Code, 2016, the authority of the civil court to pass any order goes to the root of the matter and lack of jurisdiction nullifies the order, if any.

80. *Vysali Phamacueticals Limited (supra)* has held that, it is the incumbent duty of the Court to suo moto verify whether the suit is maintainable before such court or not. In the facts and

circumstances of that case, the Trial Court had failed to notice the pending liquidation proceeding before the NCLT which invoked Section 63 that barred the Civil Court jurisdiction to entertain any suit.

81. *Mohato Industries Ltd (supra)* has noticed that, the suit is liable for rejection under Order VII Rule 11 read with Section 151 of CPC, as the suit was filed after the moratorium came into effect. It has held that it is not necessary to only look into the pleadings in the plaint while considering the application under Order VII Rule 11, specifically when the Insolvency and Bankruptcy Code, 2016 is a special legislation which empowers NCLT to pass orders prohibiting parties to initiate proceedings while moratorium period is in effect. The fact situation in this appeal is different. Suit was filed prior to the moratorium coming into effect.

82. *Mohammed Enterprises (supra)* has held that, the Insolvency and Bankruptcy Code, 2016 is a complete and self-contained code and any unjustified interference with the CIRP initiated under Insolvency and Bankruptcy Code, 2016 breaches the legal discipline.

83. In this case, the learned Trial Judge has dismissed the plaint of the appellants on the ground of the same being barred under Section 96 of the Code of 2016.

84. On the date, when the suit was filed by the appellants, that is November 6, 2024, there was no proceeding under the Insolvency and Bankruptcy Code, 2016 as against any of them. The demand notice dated November 17, 2023 which was issued prior to the filing of the suit on November 6, 2024 is of no consequence in view of the provisions of Section 96 of the Insolvency and Bankruptcy Code, 2016. Section 96 of the Insolvency and Bankruptcy Code, 2016 comes into operation only after an application under Section 94 or 95 has been filed before the NCLT. It has no manner of application when, a notice has been issued.

85. In the suit, the appellants had prayed for declaration and perpetual injunction with regard to personal guarantees that they executed in favour of the 12 defendants in the suit. All 12 defendants in the suit have not instituted the two insolvency proceedings as against the appellants.

86. The plaint cannot be rejected in part, that is to say that, it cannot be rejected only for the defendants who had approached the NCLT. Appellants as plaintiffs were entitled to file a suit before a civil

court to have declaration and perpetual injunction as prayed for therein as against all the defendants. As has been noted, all the defendants have not approached the NCLT. The suit was therefore maintainable as against the defendants who did not approach the NCLT, if not as against all. Consequently, the plaint could not have been rejected as part of a plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

87. There was no embargo on the appellants when they had filed the suit to seek the reliefs as they sought therein. They cannot be asked to wait till the respondents herein decide to invoke the Insolvency and Bankruptcy Code, 2016. Our attention has not been drawn to any provisions of law which require the appellants before us to wait till the bankers decided to invoke the provisions of the Insolvency and Bankruptcy Code, 2016 on the claim of personal guarantee as against the appellants. In other words, no law has prohibited the appellants to approach a Civil Court and pray for the reliefs as done in the present suit, when they did so.

88. Significantly after having issued the demand notice on November 17, 2023, the respondent No. 1 had approached the NCLT only on January 15, 2025.

89. In view of the above, the impugned order dismissing the suit cannot be sustained. Impugned order dated February 19, 2016 is set aside. Title Suit Com No. 110 of 2024 is remanded to the learned Trial Court for disposal.

90. AD COM 2 of 2026 is allowed without any orders as to costs. IA No. CAN 1 of 2026 is disposed of accordingly.

[DEBANGSU BASAK, J.]

91. I agree.

[MD. SHABBAR RASHIDI, J.]