* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **I.A. Nos.6063/2010 & 2737/2014 in C.S. (OS) No.76/2010**

Decided on : 2nd July, 2014

KOHLI ONE HOUSING & DEVELOPMENT PVT. LTD.
…… Plaintiff
Through: Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Shailen Bhatia, Mr. Amit Jain, Mr. Vaibhav Kashyap & Mr. Saurabh Verma, Advocates.

Versus

C.S. AGGARWAL & ORS. …… Defendants
Through: Mr. Nidhesh Gupta, Senior Advocate with Mr. Abhijat & Mr. Harsh Hari Haran, Advocates for D-1 & 3.
Mr. Sanjay Bajaj, Mr. Ajay Bahl & Mr. Tushar Parashar, Advocates for D-2 with D-2 in person.
Mr. T.K. Ganju, Senior Advocate with Mr. Rohit Gandhi, Adv. for D-4 to 13.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This order shall dispose of the application being I.A. No.6063/2010 filed under Order VII Rule 11 CPC by defendant Nos.4 to 13 which is pending for the last more than four years and in respect of which a preliminary issue was framed on 16.1.2014 "as to whether the plaint as

framed qua defendant Nos.1, 2, 4 to 13 or any one of them is liable to be rejected?" It shall also decide the application filed by the plaintiff under Order VI Rule 17 CPC being I.A. No.2737/2014.

2. Briefly stated the plaintiff, a private limited company, has filed a suit for recovery of approximately Rs.78 lacs against defendants numbering 13 out of which an amount of approximately Rs.43 lacs is stated to be the principal amount and the balance is stated to be the interest @ 24 per cent with quarterly rest till the time of filing of the suit.

3. The case which has been setup by the plaintiff is that defendant No.3, M/s. Rockman Projects Ltd. is a company owned and controlled by defendant No.1, C.S. Agarwal and defendant No.2, D.K. Jain. Both of them are the Directors of the said defendant No.3 company. In addition to this, defendant No.2, D.K. Jain and his family members also own defendant No.4 company, M/s. Rajdhani Nursuries Pvt. Ltd. The said defendant No.4 is a holding/parent company of most of the companies of defendant Nos.5 to 11. The defendant Nos.12 and 13 are the Directors of these family companies, defendant Nos.4 to 11. It has been alleged in the plaint that the plaintiff company had advanced a sum of Rs.43 lacs to defendant No.3 on execution of a Memorandum of Understanding dated

18.6.2007 to develop a Special Economic Zone (hereinafter referred to as 'SEZ'). The said Memorandum of Understanding was signed by defendant No.1 on behalf of defendant No.3 company, M/s. Rockman Projects Ltd. on the basis of Board Resolution. Along with the Memorandum of Understanding, it has been alleged that maps of various parcels of land were annexed and also signed by defendant No.1. It has been alleged that for developing this SEZ, the two companies were to float a Special Purpose Vehicle (hereinafter referred to as 'SPV') to which the entire land holding as envisaged in the Memorandum of Understanding was to be transferred. The defendant No.1 had agreed to buy 74 per cent of the shareholding of the Special Purpose Vehicle for a sum of Rs.185 crores out of which, Rs.43 crores was paid. It has been alleged that a part of this amount of approximately Rs.11 crores or so out of Rs.43 crores, was diverted by defendant No.3 in the defendant Nos.4 to 11 companies, namely, M/s. Rajdhani Nursuries, the holding company of M/s. Superquick Holdings Pvt. Ltd., M/s. Monsoon Finance Ltd., M/s. Urgent Holdings Ltd., M/s. German Gardens Ltd., M/s. Tower leasing and Finance Ltd., M/s. Super Prompt Holdings Ltd., M/s. Rajdhani Securities Ltd. of which defendant Nos.12 and 13, namely, Archana Jain

and S.K. Jain respectively, who are alleged to be related to defendant No.2, are the Directors and hence these companies and the two Directors were also impleaded as parties.

4. Along with the plaint, an application for *ex parte ad interim* injunction was also filed. The court issued summons.

5. The suit for recovery came up for the first time for hearing along with an application for an *ex parte ad interim* stay before this court on 19.1.2010. Summons and notices were directed to be issued to the defendants for 17.3.2014.

6. On 25.1.2010, that is just after five days or so, an application filed by defendant Nos.1 and 3 under Section 151 CPC for seeking an *ex parte ad interim* injunction of *status quo* with regard to certain properties, details of which were mentioned in para 18 of the application, came up for hearing before the court. The plaintiff was curiously present and supported the application of defendant Nos.1 and 3 for passing an *ex parte ad interim* order of *status quo* against the properties mentioned in para 18 of the application which was neither owned by the plaintiff nor by the applicant/defendant Nos.1 & 3. It may be pertinent here to mention that the land of more than 175 acres, details of which were

attached to Memorandum of Understanding allegedly belonged to defendant No.2 essentially through its family companies of defendant No.4 to 11.

7. On receipt of summons by defendant Nos.4 to 11, they filed an application being I.A. No.6063/2010 which was listed before this court for the first time on 7.5.2010 when the notice was issue and thereafter, this application, despite the pleadings having been completed, has remained pending during all these years. It was in pursuance to this application that a preliminary issue was framed on 16.1.2014 by this court that "as to whether the plaint as framed is liable to be rejected qua defendant Nos.1, 2, 4 to 13 in its entirety or against any one of them?"

8. There is no dispute about the fact that while considering the application of a party for rejection of the plaint under Order VII Rule 11 CPC, what is to be essentially seen by the court is the averments made in the plaint and the documents relied upon by them in support of such averments. The defence of the defendants need not be referred to at all. It is in this context that arguments on this application were heard from both the sides.

9. Mr. T.K. Ganju, the learned senior counsel appearing for defendant Nos.4 to 13 had vehemently contended that a perusal of the plaint in its entirety does not show that any cause of action has accrued in favour of the plaintiff and against the defendant Nos.4 to 11 which are the companies and juristic persons of which defendant Nos.12 and 13 happen to be the Directors. It has been stated that at best, if the allegations of the plaintiff are taken to be the correct, the only averment made in the plaint qua these defendants is that money was given to defendant No.1, C.S. Agarwal in the capacity of a Director of defendant Nos.3, M/s. Rockman Projects Ltd. in pursuance to the Memorandum of Understanding dated 18.6.2007 had alleged to have been diverted by defendant No.3 in the companies owned by family members of defendant No.2. It was contended that the companies being juristic persons and there being admittedly no allegation of money being advanced by the plaintiff to any of the companies, that is, defendant Nos.4 to 11, or to their Directors, defendant Nos.12 and 13, there was no cause of action accruing in favour of the plaintiff and against the said defendants for filing the suit.

10. Elaborating this argument further, the learned senior counsel has also contended that there is no privity of contract between the plaintiff

and defendant Nos.4 to 13 and in the absence of that, it was not open to the plaintiff to have filed a suit against the said defendant Nos.4 to 13 as they were neither necessary nor proper parties to the suit. On the contrary, it was contended by him that the impleading of these defendant Nos.4 to 13 was essentially done by the plaintiff so that it brings to bear pressure on defendant No.2 in the capacity of a Director so that he succumbs to the dictates of the plaintiff.

11. As regards the lifting of the corporate veil is concerned, it was contended by the learned senior counsel that there is no averment in this regard in the pleadings and, therefore, this plea cannot be considered and it is an afterthought.

12. The learned senior counsel has lastly contended that as a matter of fact, the defendant Nos.1 and 2, who were the Directors of defendant No.3 company have fallen apart on account of their differences and the present suit has been filed by the plaintiff in collusion with defendant No.1, C.S. Agarwal, only in order to settle the score with defendant No.2 and, therefore, the companies which are independent entities in law and in which some family members of defendant No.2 are the Directors, have been impleaded as parties.

13. The learned senior counsel has referred to number of authorities on all these aspects of privity of contract, lack of cause of action and the collusion between the plaintiff and defendant No.1 in order to file the present suit. These judgment are *Church of Christ vs. Ponniamman Educational Trust; 2012 (8) SCC 706, Kasturi vs. Iyyamperumal & Ors.; (2005) 6 SCC 733, Anjumnath Vs. British Airways Plc.; ILR (2007) 2 Delhi 1187, B. Rath vs. David Ball; ILR (2007) 1 Delhi 96, T. Arivandandam vs. T.V. Satyapal; (1977) 4 SCC 467, I.T.C. Ltd. vs. Debts Recovery Appellate Tribunal; (1998) 2 SCC 70, Motor Industries vs. Capital Fuel Injection; 2012 (9) AD (Delhi) 121, Binatone vs. Computers vs. Setech Electronics; 2009 (162) DLT 537, Pacific Convergence vs. Data Access; 2005 VIII AD (Delhi) 569* and *L.I.C. vs. Escorts; (1986) 1 SCC 264*.

14. Mr. N.K. Kaul, the learned senior counsel for the plaintiff has vehemently contested the submissions made by Mr. Ganju, the learned senior counsel. He has contended that the plaintiff has already filed an application under Order VI Rule 17 CPC being I.A. No.2737/2014 seeking amendment of the plaint so as to amplify its case with regard to the cause of action. Since the application for amendment has been filed,

notice be issued to the defendants on the said application and thereby invite the reply to the same. It is contended that the said application for amendment ought to be decided first before deciding the application bearing No.6063/2010 filed under Order VII Rule 11 CPC. In this regard, the learned senior counsel has referred to judgments passed in *Gaganmal Ramchand vs. The Hongkong & Shanghai Banking Corporation; AIR 1950 Bombay 345, Hari Bhagwan Sharma & Others vs. Badri Bhagat Jhandewalan Temple Society & Others; 27 (1985) DLT 68, Wasudhir Foundation vs. C. Lal & Sons & Ors.; (1991) 45 DLT 556, Binu Anand Khanna vs. Ratan Tata, Chairman, Taj Group; 2006 III AD (Delhi) 129, Nellimarla Jute Mills Company Ltd. vs. Rampuria Industries & Investments Ltd.; 2009 (3) CHN. 24, Surinder Kaur & Ors. vs. S. Rajdev Singh & Ors.; 128 (2006) DLT 460.*

15. So far as the application of the defendants under Order VII Rule 11 CPC for rejection of the plaint is concerned, Mr. Kaul, the learned senior counsel has vehemently contested the submissions made by Mr. Ganju that defendant Nos.4 to 11 or its Directors have no concern with the transaction purported to have been entered into between the plaintiff and defendant No.3 through its Directors, Defendant Nos.1 and 2, on account

of the fact that he has stated that a criminal case for cheating and various other offence has been registered on the basis of a complaint lodged by the plaintiff. In this regard, he has drawn the attention of the court to not only the contents of the FIR but also the order passed by the criminal court while enlarging the accused persons, namely, C.S. Agarwal and D.K. Jain, on anticipatory bail, the defendant No.2 has been put to terms by directing him to make deposit in court or pay to the plaintiff/complainant, a sum of Rs.5.18 crores, which shows his complicity in committing the fraud. It has been stated that while deciding the maintainability of a plaint at this stage, the court is enjoined to lift the corporate veil so as to see that the defendants or its companies have defrauded the plaintiff and made it to part with substantial amount of money.

16. In this regard, the learned senior counsel has referred to the judgments passed in *Ashish Poly Fibers (Bihar) Ltd. vs. State Bank of India; 2009 (107) DRJ 1 (DB)*, *PNB Finance Limited vs. Shital Prasad Jain & Others; AIR 1982 Delhi 125* and *Sopan Sukhdeo Sable & Ors. vs. Assistant Charity Commissioner & Ors.; (2012) 11 SCC 341*.

17. I have considered the rival contentions carefully and gone through the judgments. There is no dispute about the fact that Order VII Rule 11 CPC does not control the application under Order VI Rule 17 CPC as has been held by the Division Bench of Bombay High Court in *Gaganmal's* case (*supra*) and in appropriate cases where the application under Order VII Rule 11 CPC is pending adjudication and an application under Order VI Rule 17 CPC is filed by the plaintiff that can be entertained by the court in its discretion. In *Gaganmal's* case (*supra*) while holding so, the Bombay High Court had permitted the amendment of the plaint to the plaintiff in appeal and it was permitted to amplify the facts constituting the cause of action.

18. In *Hari Bhagwan Sharma's* case (*supra*), our own High Court had also permitted amendment of the plaint by the plaintiffs in the said case while the application under Order VII Rule 11 CPC was pending in order to rectify insufficiency of cause of action by furnishing additional particulars. This was a case which was filed with a view to sue a defendant society in the representative capacity under Section 92 of the CPC but what is noticeable in this judgment is that the amendment to the plaint must be *bona fide* (emphasis added). It was also observed that such

an amendment to the plaint can be allowed in the facts of that case as an application under Order VII Rule 11 CPC was still pending.

19. A fact is said to be *bona fide* only when it is done in good faith and due care and attention is shown to be preceding that. Therefore, what this court will have to see in the facts of the present case would be whether due care and attention was observed by the plaintiff in filing the application for amendment.

20. In *Wasudhir Foundation's* case (*supra*), the view of the Division Bench of the Bombay High Court and *Gaganmal's* case (*supra*) has been reiterated by observing that if ouster of application under Order VI Rule 17 CPC is done, it will throttle the very life line of Order VII Rule 11 CPC and instead of promoting, it would defeat the ends of justice. In *Binu Anand's* case (*supra*) also, our own High Court had permitted the amendment of the plaint and similar are the other judgments to which I need not refer to in detail as I agree with the submissions made by the learned senior counsel for the plaintiff on the proposition of law that an application under Order VI Rule 17 CPC cannot be refused to be entertained while the application under Order VII Rule 11 CPC is still pending provided it is shown to be *bona fide* and meeting other

requirements of law on the basis of which amendment is permissible. The other judgments cited by the learned senior counsel for the plaintiff are also on the similar lines though facts of no two cases are similar, for example, in one of the suit for specific performance, the plaintiff was permitted to plead that he was and is 'ready and willing' to perform his part of the agreement though such an averment was not originally made and it resulted in filing of an application under Order VII Rule 11 CPC for rejection of the plaint. The amendment was allowed.

21. Therefore, the judgments which have been relied upon by the plaintiff no doubt lays down that the court may in its discretion permit the amendment of a plaint before deciding the application under Order VII Rule 11 CPC provided that the amendment sought is *bona fide* and there are traces of cause of action already existing in the plaint which are sought to be amplified rather than building up a new case to enrope unconnected parties only as a matter of strategy to bring to bear pressure on certain party. Further, this has to be seen from the case to case basis rather than being done blindly so as to result in grave injustice to one of the parties.

22. Coming back to the facts of the instant case, I am of the considered view that not only *prima facie* but even from the facts, the background of the case and the way the stay order has been passed by the court on 25.1.2010 on the application of defendant Nos.1 & 3, the application seeking amendment is not only *mala fide* but is a gross abuse of the processes of law. The reasons to form this view are as under :-

(i) The suit has been filed by the plaintiff for recovery of Rs.78 lacs against 13 defendants in which the application for rejection of plaint has been filed by defendant Nos.4 to 11 which are companies and juristic person in law of which defendant Nos.12 and 13 happen to be the Directors. No doubt, they may be or are related to defendant No.2, who is impleaded as defendant in the capacity of Director of defendant No.3 company but that is not at all material for deciding the issue raised by the plaintiff.

(ii) The case which is setup in the plaint is that defendant No.3 company, through its Director, defendant No.1, had entered into a Memorandum of Understanding on 18.6.2007 by virtue of which a Special Economic Zone, on a certain parcel of land, was to be developed in Gurgaon. This SEZ was to be developed with the help of a special

purpose vehicle in which 74 per cent of the shares were to be owned by the plaintiff for a total consideration of Rs.185 crores or so and the balance was to be owned by defendant No.3 company. The said Memorandum of Understanding is not in dispute. One of the vital terms and conditions of this Memorandum of Understanding was contained in the last clause which read as under :-

> *"12. That both the parties agree that in the event of the SEZ notification does not take place on or before 31st December, 2008 due to unforeseen circumstances as well as change in the government policies, Kohli will have the liberty to either get refund of the amount paid or to pay the balance amount to the company and get 74% of above land registered in his name/nominee(s) on or before 31st December, 2008 for the sale consideration mentioned hereinabove. However, if the said transaction does not take place in the prescribed period, i.e., 31st December, 2008, the MOU shall stand cancelled/terminated. Further, Rockman Projects agree that if they decide to initiate other SEZ projects in Haryana including the present SEZ, the company would first offer them to Kohli."*
>
> *Sd/-*

(iii) In pursuance to this Memorandum of Understanding, an amount of Rs.43 crores by way of two different transactions, once Rs.40 crores and the other Rs.3 crores, have been given to defendant No.3 company represented by defendant No.1. It is alleged in the plaint that out of this

amount of Rs.43 crores, different amounts, details of which are given in para 26 of the plaint, have been handed over to various companies which are defendant Nos.4 to 11. It is also stated that the defendant No.4 is the holding company of the defendant companies, defendant Nos.5 to 11. The defendant No.2 is a person, who is a Director of defendant No.3 company and whose close relatives are the Directors of the said defendant Nos.4 to 11 companies and, therefore, they are impleaded as parties to the suit as defendant Nos.12 and 13. The suit is essentially for recovery of money based on a document in writing to which neither defendant No.2 is a signatory (which may be immaterial because he is being impleaded as Director of defendant No.3 company) nor are the defendant Nos.4 to 13. The latter defendants are neither the parties to the negotiation nor is any allegation made in the plaint against them for joint or several liability. There is no privity of contract between the plaintiff and these defendants. Thus, there is complete lack of cause of action to sue defendant Nos.4 to 11 and its Directors, defendant Nos.12 and 13 for recovery of the aforesaid amount.

(iv) In addition to the lack of cause of action, there is no disclosure of any cause of action to sue defendant Nos.4 to 13 in the plaint. It may be

pertinent here to mention that there is no cause of action or there is lack of cause of action is one thing meaning that the defendants cannot be sued at all and the other is that the plaint does not disclose any cause of action although, there may be one. Reference can be made to the judgment of our own High Court in case titled *B. Rath versus David Ball & Ors.; ILR (2007) I Delhi 96* where this distinction between the two concepts has been elaborated with reference to judicial precedents. In the present case, as the suit for recovery is based on a document called Memorandum of Understanding, therefore, there is no cause of action to sue the defendant Nos.4 to 13 because of lack of privity of contract.

(v) So far as the registration of an FIR for various offences and the release of defendant No.2 with the condition to deposit or pay Rs.5 crores is concerned that is a separate issue and does not entitle the plaintiff to sue the defendant Nos.4 to 13. In that FIR also, D.K. Jain, defendant No.2, is an accused. Whether the said accused has cheated the plaintiff in furtherance of common intention with C.S. Agarwal or on other companies, which are juristic persons, is for criminal court to decide. But these facts of registration of FIR, release on bail, etc., can certainly not

give rise to cause of action to file the present suit, more so, when there are no averments in this regard in the plaint.

(vi) Assuming, though not agreeing that there was cause of action, still the plaint does not disclose one. There is no mention of joint and several liability of all the defendants. The suit is based on a document and not on tortuous liability, therefore, how could the suit be filed against the defendant Nos.4 to 13?

(vii) The suit came up for hearing for the first time on 19.1.2010 and the notices were issued to the defendants by all modes, returnable for 17.3.2010. Before the service could be affected for 17.03.2010, on 25.1.2010 itself an application under Section 151 CPC seeking status quo with regard to the properties, the details of which have been mentioned by them in para 18 of the application, is filed by the defendant Nos.1 & 3. These are the properties which are not admittedly owned by defendant No.3 company or by defendant No.1. These properties are stated to be belonging to defendant Nos.2 & 4 to 11 of which, defendant Nos.12 and 13 are the Directors. It has been alleged that there was a lease agreement dated 30.11.2006 between defendant No.3 and these companies and further an agreement to sell dated 5.2.2007 whereby defendant No.3 of

the aforesaid transaction had paid a sum of Rs.11 crores and another sum of Rs.2.80 crores to defendant No.2. Accordingly, it was prayed that these properties being owned by defendant No.2, the parties may be directed to maintain *status quo* as of that date.

(viii) The learned senior counsel for the plaintiff had appeared, accepted notice on behalf of the plaintiff and stated that *status quo* order to the suit properties be passed which will operate against all the parties and in view of the submissions made before the court, the court was persuaded to pass an order of *status quo* in respect of the properties, details of which are mentioned in para 18 of the said application which has continued for the last more than four years although the application for an *ex parte ad interim* injunction has to be decided within a period of 30 days from the date of grant of such an *ex parte ad interim* injunction either confirming or vacating the stay order.

23. On 17.3.2010, the defendant Nos.2, 4 to 11, 12 and 13 against whom essentially the stay order is passed put in appearance for the first time and prayed for a complete set of paper book. The matter was adjourned to 30.8.2010 but they filed an application on 07.05.2010 under

Order VII Rule 11 CPC on 7.5.2010 on which notice is issued to the plaintiff for 30.8.2010.

24. The reply to the application is filed by the plaintiff and it has defended its plaint by categorically stating that the application under Order VII Rule 11 CPC deserves dismissal as sufficient cause of action to maintain the present suit is shown in the plaint yet when the court takes up the matter after a considerable lapse of time for hearing and frames a preliminary issue with regard to the rejection of the plaint on 16.1.2014 that wisdom dawns on the plaintiff to file an application under Order VI Rule 17 CPC seeking amendment of the plaint.

25. The fact that no stay is granted to plaintiff and despite contesting the application for rejection of plaint for years together yet filing an application for amendment of plaint when they know that they have obtained stay order by filing an application in collusion through defendant Nos.1 & 3 clearly shows that there was not only active collusion between two parties but also that the action of the plaintiff in filing it was *mala fide*.

26. The plaintiff filed the reply to the application under Order VII Rule 11 CPC and contesting the said application on merits stating that cause of

action has been disclosed and then turning turtle after four years and filing an application seeking amendment is clear indication that the application is not *bona fide* or rather it is *mala fide*. It also shows that no due care and attention was observed by the plaintiff. If they would have observed so then application for amendment would have been filed in 2010 itself.

27. The lapse of time of four years in filing the application by the plaintiff when they saw that their chances to continue this *ex parte ad interim* injunction order is coming to an end that they have filed this application under Order VI Rule 17 CPC is not only *mala fide* but a gross abuse of processes of law and, therefore, this application for amendment of plaint under Order 6 Rule 17 CPC has to be rejected. Accordingly, this answers the first submission made by the learned senior counsel for the plaintiff.

28. The next submission of the learned senior counsel Mr. Kaul with regard to lifting of corporate veil and fastening the liability on defendant Nos.4 to 13. In this regard, I agree with the submission made by Mr. Ganju the learned senior counsel for defendant Nos.4 to 13 that before advancing any submission on facts, there must be a factual

foundation averred in the plaint. In other words, before this submission of learned senior counsel Mr. Kaul with regard to lifting of corporate veil is examined or accepted, the plaintiff ought to have pleaded in the plaint that it is a case where the plaintiff has been defrauded by the defendants especially defendant No.2, who with the help of defendant Nos.4 to 13. There is no such averment made in the plaint. The case which has been setup is that the plaintiff had entered into a Memorandum of Understanding for development of certain parcels of lands as SEZ with defendant No.3, a juristic person. The agreement was signed on the basis of the resolution passed by the company, defendant No.3, with the help of its Director, defendant No.1. The only allegation is that the company has advanced approximately Rs.11 crores or so to defendant No.4, the holding company of defendant Nos.5 to 11 companies of which defendant Nos.12 and 13 are the Directors and there is some relationship between the said companies and its Directors with defendant No.2, the other Director of defendant No.3. There is not even an averment of joint and several liability averred in the plaint, although there is no occasion to claim so because the liability is sought to be enforced on the basis of a written document, namely, Memorandum of Understanding, therefore,

there is no question of lifting of corporate veil and that too corporate veil of what because money has been given to defendant No.3 of which defendant Nos.1 and 2 are the Directors and not to defendant Nos.4 to 13.

29. I have gone through the judgments cited by Mr. Kaul, the learned senior counsel, in this regard. The judgments are not at all applicable to the facts of the present case as the facts of these cases, except the one, are totally distinguishable. Further, it is well settled that before the preposition of law, which in the instant case pertains to lifting of corporate veil and enforcement of law qua defendant Nos.4 to 13 is concerned, there must be some *pari materia* of the facts before such a principle of law which has been enunciated in the said judgment is made applicable to the facts of the case in hand. Reference in this regard can be made to the judgments of the Apex Court in *Sushil Suri vs. CBI; AIR 2011 SC 1713* and *Haryana Finance Corporation & Anr. vs. Jagdamba Oil Mills and Anr; 2002 (3) SCC 496*.

30. On this touchstone the only judgment which is nearest to the facts of the present case happens to be the judgment of our own High Court in *Saurabh Exports vs. Blaze Finlease and Credits Pvt. Ltd & Others; 129 (2006) DLT 429* where the court in a suit for recovery of money had

observed that the court was well within its power to lift the corporate veil as the company with which an amount of Rs.15 lacs was deposited, was a family company and the Directors were held liable for repayment of money which was received on behalf of the company. This was a case where the plaintiff, namely, Saurabh Exports had filed a suit for recovery of Rs.21 lacs against defendants **jointly and severally** (emphasis added). The plaintiff, a proprietary concern, was engaged in a business of exports. The defendant No.1, a private limited company, namely, Blaze Finlease and Credits Pvt. Ltd., was engaged in the business of leasing and financing. The defendant Nos.2 and 3 were the Directors of the said company and defendant No.4 was husband of defendant No.3 and brother of defendant No.2. The defendant No.1 company had invited short-term deposits at good interest and the defendant No.4 is stated to have represented his brother and wife, who are defendant Nos.2 and 3 and also the Directors of defendant No.1 company. It is in this background of facts that the court, after completion of pleadings, had dealt with one of the issues, whether defendant Nos.2 and 4 are personally liable for the amount claimed in the plaint. The answer to this issue was given in affirmative by the court on account of the fact that the company with

whom the amount was invested was essentially a family company. The defendant No.4, who was not a holder of any office in defendant No.1 company but still it was he who had represented and allegedly met the plaintiff persuading him to invest the money in defendant No.1 company and it was in this background that the court had directed lifting of corporate veil.

31. While as the facts of our case are totally different. The money has been given by defendant No.3 company with which the defendant Nos.4 to 13 have absolutely no concern. The money which has been given under a document in writing to which defendant Nos.4 to 13 are not the parties and, therefore, there is no privity of contract. There is no allegation in the plaint that at any point of time, the defendant Nos.4 to 13 represented to them to go ahead with the transaction as was done in the case of *Saurabh Exports* (*supra*). There is no allegation of any joint and several liability arising between the plaintiff on the one side and the defendant on the other. The only allegation which is made in the plaint is that the money which was given to defendant No.3 company through defendant No.1, who happen to be one of its Directors and the other Director being defendant No.2 was partly to the tune of Rs.11 crores or so

diverted to the companies, defendant Nos.4 to 11, but that is not sufficient enough to fasten the liability on them. In other words, no cause of action accruing in favour of the plaintiff and against the defendant to sue them nor are these facts disclosed in the plaint and thus, there is complete lack of cause of action including the non-disclosure, therefore, the judgment cited by the learned senior counsel is distinguishable and not applicable to the facts of the present case.

32. The judgments which have been cited by Mr. Ganju, the learned senior counsel are not being referred to so as not to make the order bulky except the one which is often quoted with regard to the wholesome reading of the plaint in the case of *T. Arivandandam vs. T.V. Satyapal; (1977) 4 SCC 467*. In that celebrated judgment, Hon'ble Justice Mr. Krishna Iyer has observed as under :-

> *"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Or. VII r. 1 1 C.P.C.*

taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

6. The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned."

33. Having regard to the aforesaid discussion, I feel that the court has arrived at the following conclusions :-

(i) The application under Order VI Rule 17 CPC has been considered. It is felt that the application seeking amendment is *mala fide* and is liable to be rejected summarily.

(ii) There is no cause of action in favour of the plaintiff and against defendant Nos.4 to 13 to file a suit for recovery on account of the fact that there is no privity of contract. In addition, there is non-disclosure of facts

which would squarely make the court responsible to proceed ahead with the trial of the suit qua defendant Nos.4 to 13 as there is no allegation of any liability or a joint and several liability.

(iii) As a matter of fact, there is collusion between the plaintiff and defendant Nos.1 and 3 inasmuch as the stay has been obtained on the application filed by the said defendant Nos.1 & 3 to which the plaintiff consented to.

(iv) There is no question of applicability of lifting of doctrine of corporate veil to the facts of the present case as there are neither pleadings in this regard nor is the doctrine applicable to the facts of the present case.

34. For the reasons mentioned above, the application of the plaintiff under Order VI Rule 17 CPC being I.A. No.2737/2014 is rejected while as the application of defendant Nos.4 to 13 being I.A. No.6063/2010 is allowed and the plaint qua them is rejected.

35. So far as the name of defendant No.2 is concerned, since he has been impleaded as a party in the capacity of Director of defendant No.3, therefore, he is to remain the defendant. Let amended memo of parties be filed by the plaintiff within a period of one week.

C.S. (OS) No.76/2010

1. List before the Joint Registrar for admission/denial of documents on 26th August, 2014.

2. The parties are given one final opportunity to file documents in original, if they have not chosen to file the same till date.

3. List before the court for framing of issues on 14th October, 2014.

V.K. SHALI, J.

JULY 02, 2014
'AA'