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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th April, 2026
Pronounced on: 15th July, 2026

\+ CS(OS) 200/2024, I.A. 39173/2024 & I.A. 39980/2024

AMRIT ENVIRONMENTAL TECHNOLOGIES PRIVATE LIMITED .....Plaintiff

Through: Mr. Manish Kaushik and Mr. Mishal Johari, Advs.

versus

UNION OF INDIA .....Defendant

Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Vivek Sharma and Mr. Amulya Mishra, Advs. for UOI

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

I.A. 39173/2024 (Under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908)

INTRODUCTION:

1. The present suit has been filed seeking recovery of interest amount from 01st December, 2012 till 31st August, 2023 to the tune of Rs. 2,53,70,525/- (Rs. Two Crores Fifty-Three Lacs Seventy Thousand Five Hundred Twenty-Five Only), on the ground of inordinate delay in releasing, and unlawfully withholding, the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only) (**"interest subsidy amount"**), payable by the defendant to the

plaintiff company, in terms of the Notification bearing *No. 3/4/2003-CPG* dated 21st July, 2003 (**"Notification"**), along with compound interest at monthly rests at the rate of 12% per annum, till the date of payment of the interest.

2. The present application has been filed on behalf of the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**"CPC"**), seeking rejection of the plaint on the grounds that the suit is not maintainable for, *inter-alia,* non-disclosure of any subsisting cause of action, and for being barred by limitation.

FACTUAL MATRIX:

3. The facts in brief, as given in the plaint, are as follows:

3.1 The defendant had issued the Notification dated 21st July, 2003, for providing interest subsidy amounts at the rate of 2%, to biomass-based power projects, subject to a maximum of Rs. 02 Crores, per project. The said scheme contemplated central financial assistance in the form of grants-in-aid, and subsidies under the Biomass Energy and Co-generation Programmes.

3.2 Pursuant to the aforesaid Notification dated 21st July, 2003, the plaintiff established a Biomass Power Plant of 7.5 MW capacity at *RIICO Industrial Area, Keshwana, Kotputli, District Jaipur, Rajasthan*.

3.3 On 12th November, 2005, the State Bank of India, Commercial Branch, Indore (**"SBI Indore"**) sanctioned a term loan in favour of the plaintiff for an amount of Rs. 20,90,00,000/- (Rupees Twenty Crores Ninety Lacs Only), which was subsequently increased to Rs. 21,90,00,000/- (Rupees Twenty-One Crores Ninety Lacs Only) on account of an additional term loan. On 19th December, 2005, the State Bank of Mysore, Indore Branch sanctioned a further loan of Rs. 8,40,00,000/- (Rupees Eight Crores Forty Lacs Only) in favour of the plaintiff.

3.4 Thereafter, the plaintiff informed SBI Indore that it was eligible and qualified for seeking benefit of interest subsidy amounts under the Notification dated 21st July, 2003. The plaintiff also forwarded the requisite papers to the defendant, through SBI Indore. On 30th October, 2006, Rajasthan Rajya Vidyut Parasaran Limited (**"RRVPL"**) issued a communication certifying commissioning of the plaintiff's Biomass Power Plant.

3.5 Since the interest subsidy amounts were not released by the defendant, the plaintiff filed a writ petition being *W.P.(C) 353/2008* before this Court, seeking grant of the interest subsidy amounts, in terms of the Notification dated 21st July, 2003. The said writ petition was disposed of *vide* judgment dated 18th February, 2011, whereby, directions were issued to SBI Indore to furnish requisite information/documentation to the defendant for the purpose of grant of interest subsidy amount at the rate of 2% to the plaintiff. Furthermore, the defendant was directed to take a decision regarding grant of interest subsidy amount to the plaintiff in terms of the Notification dated 21st July, 2003.

3.6 The defendant challenged the aforesaid judgment dated 18th February, 2011 by way of an intra-court appeal bearing *LPA 435/2011*, which came to be dismissed as withdrawn *vide* order dated 16th May, 2011.

3.7 Thereafter, the defendant filed an application being *CM 10532/2011* seeking modification of the judgment dated 18th February, 2011. The Court, *vide* order dated 10th August, 2011, noted that the said application was misconceived and hence, dismissed the same.

3.8 Subsequently, the defendant rejected the request of the plaintiff for grant of interest subsidy amount *vide* letter dated 11th August, 2011. Aggrieved thereby, the plaintiff filed another writ petition being *W.P.(C) 8070/2011* before this Court.

3.9 During the pendency of *W.P.(C) 8070/2011*, the defendant issued another letter dated 18th October, 2012 stating that it had no objection in considering the plaintiff's case within the framework of the Notification dated 21st July, 2003. In view thereof, *W.P.(C) 8070/2011* came to be disposed of, as not pressed *vide* order dated 19th October, 2012.

3.10 Pursuant thereto, SBI Indore submitted a fresh interest subsidy claim, along with calculations and supporting documents, to the defendant *vide* communication dated 26th October, 2012.

3.11 Since the interest subsidy amounts continued to remain unreleased, various communications and legal notices came to be exchanged between the parties. In the year 2014, a Committee chaired by Dr. N.P Singh was constituted by the defendant – Ministry of New and Renewable Energy (**"MNRE"**), for consideration of the plaintiff's request for release of interest subsidy amount.

3.12 It is pertinent to note that by the year 2014, the Biomass Power Plant of the plaintiff had become non-operational. On 29th April, 2014, the Committee stipulated that the plaintiff's Biomass Power Plant be made operational, prior to release of the interest subsidy amounts. However, no such condition had been provided for under the Notification dated 21st July, 2003.

3.13 Subsequently, the defendant sought operational data of the plaintiff's project for a period of three years, after commissioning of the Biomass Power Plant of the plaintiff, and the same was supplied by the plaintiff company. Accordingly, by way of *Sanction Order No. 4/1/2008-CPG* dated 01st October, 2014 (**"Sanction Order"**), the defendant disbursed the interest subsidy amount, i.e., Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only) to SBI Indore.

3.14 In terms of the record before this Court, disputes thereafter arose between the parties regarding disbursal of the interest subsidy amount to the plaintiff.

3.15 The plaintiff company issued a legal notice dated 02nd February, 2015, to SBI Indore and the MNRE, seeking release of the interest subsidy amounts as per the Notification. SBI Indore issued a reply to the said legal notice on 09th March, 2015, claiming that it had no objection in disbursing the interest subsidy amount if the Biomass Power Plant of the plaintiff is made operational.

3.16 On 11th June, 2015, SBI Indore returned the interest subsidy amount to the defendant. The plaintiff filed an application dated 16th June, 2015, under the Right to Information Act, 2005 (**"RTI Act"**), seeking reasons for return of the interest subsidy amount to the defendant. Thereafter, SBI Indore, *vide* letter dated 08th July, 2015, stated that the interest subsidy amount had been returned to the defendant on 11th June, 2015, owing to the absence of any confirmation from the plaintiff as to whether their Biomass Power Plant had been made operational.

3.17 Aggrieved thereby, the plaintiff filed another writ petition being *W.P.(C) 8827/2015* before this Court, seeking release of the subsidy amount under the Notification dated 21st July, 2003.

3.18 In the meanwhile, *vide* reply dated 20th December, 2016 by SBI Indore to the RTI application, the plaintiff was provided with a letter dated 19th May, 2015 of the defendant, wherein, the interest subsidy amount, as released to SBI Indore, was sought back by the defendant, along with interest, in case the Biomass Power Plant of the plaintiff was not made operational.

3.19 During pendency of *W.P.(C) 8827/2015*, the defendant issued a communication dated 26th April, 2023 to the plaintiff, stating therein that the interest subsidy amount payable to the plaintiff in terms of the Notification would be disbursed. It is pertinent to note that the amount mentioned in the said communication was Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only). In view of the aforesaid communication by the defendant, the plaintiff herein, i.e., the petitioner in *W.P.(C) 8827/2015*, was satisfied and the aforesaid writ petition came to be dismissed as withdrawn *vide* order dated 17th May, 2023.

3.20 Pursuant to the aforesaid communication by the defendant and withdrawal of the writ petition, the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only), came to be released to the plaintiff on 31st August, 2023.

3.21 However, the plaintiff has thereafter instituted the present suit against the defendant, seeking recovery of interest on the interest subsidy amount, on account of alleged delay in release of the same.

SUBMISSIONS OF THE PARTIES:

4. For the purpose of the present application, the defendant has made the following submissions:

4.1 The plaint neither discloses any subsisting cause of action nor raises any legally enforceable claim against the defendant. The present suit has been instituted only with a view to create an illusory cause of action, and is also barred by limitation.

4.2 While considering an application under Order VII Rule 11 of CPC, the Court is required to examine the plaint as a whole, along with the documents filed by the plaintiff itself. From a meaningful reading of the plaint and the documents annexed thereto, if the suit is found to be barred by law or fails to disclose any real cause of action, the plaint is liable to be rejected at the threshold itself.

4.3 The plaintiff has approached this Court by suppressing material facts and by presenting an incomplete and misleading narration of the litigation history between the parties, and as such, is guilty of ***supressio veri*** and ***suggestio falsi***. The plaint fails to disclose that the plaintiff had accepted the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only), without any protest or demur. The plaintiff herein had withdrawn the earlier writ petition, i.e., *W.P.(C) 8827/2015*, *vide* order dated 17th May, 2023, upon being satisfied with the letter dated 26th April, 2023, issued by the MNRE, i.e., the defendant herein.

4.4 The aforesaid order dated 17th May, 2023, specifically records that upon being satisfied with the letter dated 26th April, 2023, learned counsel for the petitioner therein sought leave to withdraw the writ petition. Further, the aforesaid order has never been challenged by the plaintiff, and has now attained finality.

4.5 The plaintiff thereafter accepted the interest subsidy amounts on 31st August, 2023, without any reservation of rights or seeking liberty from this Court to pursue any separate proceedings for interest on the delayed payment. Thus, once the plaintiff accepted the principal amount unconditionally, and permitted the earlier writ proceedings to attain finality, the plaintiff is now estopped from instituting the present suit seeking interest upon the same amount.

4.6 The present suit is barred by the principles of waiver, acquiescence and estoppel as where a party, despite being fully aware of its rights, consciously elects not to enforce the same, and accepts the benefits arising out of a transaction without protest, the party would be prevented by the principles of waiver and acquiescence to enforce such rights. Further, once relief has been accepted without protest, and the earlier proceedings have been withdrawn, subsequent proceedings, seeking additional relief arising from the same cause of action, would not be maintainable.

4.7 The plaintiff had multiple opportunities in the earlier writ proceedings to seek all consequential reliefs, including, interest arising out of the alleged delay in release of the interest subsidy amounts. However, despite full knowledge of the alleged delay, the plaintiff consciously chose not to claim any interest in any of the earlier proceedings, i.e., *W.P.(C) 353/2008*, *W.P.(C) 8070/2011* and *W.P.(C) 8827/2015*.

4.8 Even the legal notices issued by the plaintiff over the years primarily sought implementation of the orders passed in the writ proceedings, and release of the interest subsidy amount.

4.9 The legal notice dated 05th January, 2013, issued by the plaintiff, did not contain any claim for interest on delay, whatsoever. Interest on delay was sought for the first time *vide* legal notice dated 08th August, 2014.

4.10 However, even in the said notice, interest had not been sought for the delay occasioned from 01st December, 2012, as is being sought by way of the present suit. Rather, the plaintiff had sought interest for the delay caused in payment of interest subsidy amounts, after issuance of the said legal notice dated 08th August, 2014. It is pertinent to note that the aforesaid legal notice dated 08th August, 2014, itself stood withdrawn *vide* another legal notice dated 16th September, 2014 issued by the plaintiff subsequently.

4.11 In the present suit, contrary to the legal notice dated 08th August, 2014, the plaintiff has wrongly calculated interest from 01st December, 2012, inflating the valuation of the suit. Accordingly, the present suit is also liable to be rejected on the ground of lack of pecuniary jurisdiction.

4.12 The plaintiff issued another legal notice dated 02nd February, 2015 directing the defendant to comply with the orders dated 18th February, 2011 and 19th October, 2012 of this Court in *W.P.(C) 353/2008* and *W.P.(C)*

8070/2011, respectively. Furthermore, *vide* the said legal notice, the plaintiff also sought simple interest at the rate 12% per annum on the interest subsidy amounts, without disclosing any specific period for claim of such interest. Moreover, under Section 3(1)(b) of the Interest Act, 1978 (**"Interest Act"**), in the absence of any written contract thereto, interest can be claimed only from the date of issuance of a written notice demanding such interest.

4.13 It was only after the interest subsidy amount stood released and accepted by the plaintiff on 31st August, 2023, that the plaintiff, for the first time, issued a legal notice dated 16th December, 2023, claiming interest from 01st December, 2012 till 31st August, 2023, i.e., the date of realization of interest subsidy amount, along with compound interest with monthly rests at the rate of 12% per annum. The present suit is, thus, an afterthought and a clear attempt to create an artificial cause of action, after unconditional acceptance of the interest subsidy amount.

4.14 The plaintiff is further guilty of improvising its case by seeking compound interest with monthly rests at the rate of 12% per annum through the present suit, whereas, *vide* the legal notice dated 02nd February, 2015, the plaintiff had only sought simple interest at the rate of 12% per annum. The notices, prior to the legal notice dated 16th December, 2023, at best referred to simple interest, and therefore, the present claim for compound interest is wholly unsupported, by the Notification dated 21st July, 2003, or by law.

4.15 The present suit is also barred under Order II Rule 2 of the CPC, as the claim for interest arises out of the same transaction, namely, the alleged delayed release of interest subsidy amount, which formed the basis of the earlier writ petitions instituted by the plaintiff. Having omitted to claim such relief in the earlier proceedings, and having failed to obtain liberty from the Court to institute fresh proceedings, the plaintiff cannot be permitted to reagitate issues arising out of earlier writ proceedings, by instituting a separate civil suit.

4.16 Had the plaintiff been aggrieved by the order dated 17th May, 2023 passed in *W.P.(C) 8827/2015*, the appropriate remedy available to the plaintiff was either to seek review of the said order, or to prefer an appeal against the said order. The plaintiff cannot now circumvent the finality attached to the earlier proceedings, by instituting the present suit.

4.17 The plaintiff's contention that the cause of action to claim interest arose only upon receipt of the interest subsidy amount on 31st August, 2023, is wholly misconceived and contrary to settled principles of law, as the "right to sue" accrues when there is a clear and unequivocal infringement of a right. Even according to the plaintiff, the alleged delay in release of interest subsidy amount commenced during the years 2006-2007, and therefore, the alleged cause of action, if any, arose at that stage itself, and not upon the release of the interest subsidy amount by the defendant in the year 2023.

4.18 The Notification dated 21st July, 2003, which forms the very basis of the plaintiff's claim, does not contain any provision entitling the plaintiff to claim interest on delayed disbursement of the interest subsidy amount. The Notification does not contemplate payment of any compensation, damages or interest in the event of delay, as the subsidy contemplated is in the nature of grants-in-aid, and is not a commercial transaction. Therefore, in the absence of any statutory or contractual provision, no legally enforceable right exists in favour of the plaintiff to claim interest, upon the alleged delay in release of interest subsidy amount.

4.19 The delay, if any, in processing the interest subsidy amount cannot be attributed to the defendant, as the same occurred due to various factors, including, change in the management of the plaintiff company, failure on the part of SBI Indore, being the lead bank, to furnish requisite documents, and withdrawal of the subsidy for biomass-based power projects with effect from 26th December, 2006.

4.20 The interest subsidy amount had already been released by the defendant to SBI Indore *vide* communication dated 01st October, 2014. Reliance is placed upon the communication dated 09th March, 2015 issued by SBI Indore, wherein, it is stated that the interest subsidy amount was being held in the form of a fixed deposit (**"FD"**), and would be released subject to compliance by the plaintiff. Thus, the amount had been retained by SBI Indore due to plaintiff's non-compliance, and the same cannot be attributed to the defendant.

4.21 The plaintiff has deliberately suppressed the aforesaid facts, and has falsely attempted to attribute the entire delay to the defendant. Thus, the present suit is not only misconceived, but also constitutes an abuse of the process of Court.

4.22 The plaint is wholly vexatious, illusory and barred by law, and hence, the present application deserves to be allowed, and the present suit is liable to be rejected under Order VII Rule 11 of CPC, along with exemplary costs.

5. *Per contra*, the plaintiff in its reply to the present application, has opposed the same by making the following submissions:

5.1 The plaint, read as a whole, clearly discloses a complete and subsisting cause of action. The defendant, under the guise of the present application under Order VII Rule 11 of CPC, seeks adjudication upon disputed questions of fact and merits of the present case, which is impermissible at this stage.

5.2 The plaintiff was entitled to interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only) under the Notification dated 21st July, 2003, issued by the defendant. The plaintiff applied for grant of the subsidy on 18th July, 2006, and fulfilled all eligibility conditions thereto. Despite repeated findings in favour of the plaintiff in earlier rounds of litigation, the defendant failed to release the interest subsidy amount for nearly seventeen years, and ultimately disbursed the same only on 31st August, 2023.

5.3 The present suit does not pertain to the principal amount, which already stands released. The gravamen of the present suit is the loss and injury caused to the plaintiff due to prolonged deprivation of funds from 01st December, 2012 till 31st August, 2023.

5.4 The plaintiff received the interest subsidy amount that it was legally entitled to receive, after an inordinate delay of seventeen years. The defendant has not provided any compensation for the impact of inflation and deprivation of funds faced by the plaintiff, during the said period of delay.

5.5 At the stage of considering an application under Order VII Rule 11 of CPC, this Court is only required to examine whether the plaint discloses a cause of action, and not whether the plaintiff is ultimately likely to succeed in the suit. The averments made in the plaint are required to be taken as being correct for the purpose of the present application, and in light thereof, the present plaint *prima facie* raises a triable issue, as to whether the defendant has validly discharged the due amount, without accounting for the inordinate delay in the form of compensation.

5.6 The plaintiff had established a 7.5 MW Biomass Power Plant upon the legitimate expectation arising from the Notification dated 21st July, 2003. The subsidy under the said Notification was intended to reduce the burden of interest on project financing. However, due to non-release of the interest subsidy amount, the plaintiff was compelled to service and repay its loan liabilities to SBI Indore and State Bank of Mysore from its own resources.

5.7 Had the interest subsidy amount been released within a reasonable period of time, the same would have been adjusted against the loan accounts of the plaintiff, substantially reducing the interest burden payable to the banks. By the time the interest subsidy amount was eventually released, the plaintiff had already repaid the entire loan amount, along with interest. Thus, the very purpose and economic utility of the subsidy scheme stood frustrated due to delayed disbursal.

5.8 The conduct of the defendant itself demonstrates that retention of money necessarily carries an element of interest. After release of subsidy amount to SBI Indore *vide* Sanction Order dated 01st October, 2014, the defendant subsequently sought recall of the said amount, along with interest. Thus, the defendant itself claimed interest upon retention of money by SBI Indore. Likewise, the plaintiff is equally entitled to compensation for wrongful withholding of the interest subsidy amount by the defendant, for nearly seventeen years.

5.9 The plaint specifically narrates the prolonged history of litigation undertaken by the plaintiff to secure release of the interest subsidy amount. This Court directed release of the interest subsidy amount *vide* order dated 18th February, 2011 in *W.P.(C) 353/2008*. Despite the same, the defendant failed to release the amount, continued to shift stands and impose conditions *dehors* the Notification dated 21st July, 2003, thereby, compelling the plaintiff to institute further proceedings, including, *W.P.(C) 8070/2011* and *W.P.(C) 8827/2015*.

5.10 After release of the interest subsidy amount to SBI Indore in the year 2014, the defendant sought to impose fresh conditions requiring operational status of the plaintiff's Biomass Power Plant, even though such conditions were not stipulated under the Notification dated 21st July, 2003. Subsequently, the defendant recalled the interest subsidy amount from SBI

Indore, along with interest. Thus, the delay in releasing the interest subsidy amount is attributable to the defendant, and such arbitrary conduct of the defendant resulted in continued unlawful deprivation of plaintiff's legitimate entitlement, while the defendant itself sought interest over the interest subsidy amount.

5.11 The cause of action for the present suit arose only upon release of the interest subsidy amount on 31st August, 2023, by the defendant without any compensatory adjustment for the prolonged delay. It is only after the clearance of the due interest subsidy amounts that the final claim upon the accrued amount for the purpose of compensation could be materialised.

5.12 The present suit arises from a distinct and independent injury, namely, deprivation of use of money for an unreasonable period. Therefore, the suit has been filed within the limitation period.

5.13 The defendant's contention regarding absence of an express clause for payment of interest under the Notification dated 21st July, 2003, is legally untenable as the plaintiff's claim is not founded upon contractual interest, but upon settled principles of equity, restitution and compensatory justice.

5.14 Wrongful detention of money, which is legally due, gives rise to a valid claim for compensatory interest, even in the absence of express contractual or statutory stipulations, as interest constitutes compensation for delayed payment, and offsets decline in value of money over time.

5.15 Issues of limitation and cause of action constitute mixed questions of law and fact, which cannot be conclusively adjudicated in an application under Order VII Rule 11 of CPC. For the purpose of deciding the present application, only averments contained in the plaint are required to be considered, and the same are deemed to be correct. So long the plaint discloses triable issues, rejection thereof is impermissible.

5.16 Defendant's allegations regarding suppression of facts are vague and unsupported by any particulars. All relevant facts concerning earlier proceedings, correspondences and release of interest subsidy amount have been specifically disclosed in the plaint itself.

5.17 Non-claim of interest in earlier writ proceedings does not bar institution of the present suit. The earlier writ petitions concerned release of the interest subsidy amount itself, whereas, the present suit concerns compensation arising out of prolonged deprivation of money. Thus, the present cause of action is distinct and independent from the earlier writ proceedings. Moreover, the earlier writ proceedings did not culminate in any adjudication upon the entitlement of the plaintiff to compensatory interest, and therefore, neither the principles of *res judicata* nor constructive *res judicata* would apply in the present case.

5.18 Claims involving compensation and quantification of monetary loss ordinarily require appreciation of evidence, and fall outside the limited scope of writ jurisdiction.

5.19 The defendant seeks a mini-trial under the guise of the present application by inviting this Court to examine the merits of the plaintiff's claim and disputed factual issues. Such an exercise is wholly beyond the scope of Order VII Rule 11 of CPC.

5.20 The present application under Order VII Rule 11 of CPC deserves to be dismissed as the present plaint discloses substantial triable issues, which require adjudication after leading of evidence.

FINDINGS AND ANALYSIS:

6. This Court has heard learned counsels for the parties, and has perused the plaint as well as the documents filed therewith.

7. It is a settled principle of law that the Courts, while considering an application under Order VII Rule 11 of CPC, are required to examine the

plaint as a whole, along with the documents filed by the plaintiff. The Courts are vested with a narrow scope of scrutiny while examining an application under Order VII Rule 11(a) of CPC. This means that without considering the likelihood of success of the suit, the Courts are required to examine whether the plaint discloses a valid cause of action. The Courts cannot go into the question of whether the cause of action alleged in the plaint is true or false.

8. Where from a meaningful reading of the plaint and the documents annexed thereto, the plaint is found to disclose no real cause of action, then the Courts are empowered to reject the plaint at the threshold itself. In an application under Order VII Rule 11(a) of CPC, the Court has to decide whether the cause of action alleged in the plaint is real, or whether the plaint has been drafted in an intelligent manner to camouflage an illusory cause of action as a real cause of action. A cause of action alleged in the plaint as being illusory, is different from the cause of action alleged in the plaint as being false. The former is liable to be rejected by the Court in an application under Order VII Rule 11(a) of CPC.

9. In this regard, reference may be made to the judgment of the Supreme Court in the case of ***Dahiben Versus Arvindbhai Kalyanji Bhanusali (Gajra) And Others***, ***(2020) 7 SCC 366,*** wherein, the Supreme Court while elaborating upon the object of Order VII Rule 11(a) of CPC, held that if the cause of action is not disclosed in the plaint, the Court must reject the plaint without giving unnecessary time to the plaintiff. Furthermore, it was held that if, on a meaningful reading of the plaint, it is found out that the suit is manifestly vexatious, without any merit or does not disclose any "right to sue", the same would lead to rejection of the plaint. The Court must examine the plaint, in conjunction with the documents relied upon by the plaintiff, and if it is *prima facie* found that clever drafting has been done to create an

illusory cause of action, the Court is bound to reject the plaint. The relevant paragraphs from the said judgment are extracted as below:

> *"xxx xxx xxx*
>
> ***23.3**. **The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.***
>
> *xxx xxx xxx*
>
> ***23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC**.*
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> ***23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case**.*
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> ***23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.***
>
> *xxx xxx xxx*
>
> ***24.2.** In T. Arivandandam v. T.V. Satyapal this Court held that **while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words :** (SCC p. 470, para 5)*
>
> > ***"5. … 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, he should exercise his power under Order 7 Rule 11 CPC 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.…"

24.3. Subsequently, in ITC Ltd. v. Debts Recovery Appellate Tribunal this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalal held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

xxx xxx xxx"

(Emphasis Supplied)

10. Likewise, in the case of ***Rajendra Bajoria And Others Versus Hemant Kumar Jalan And Others (2022) 12 SCC 641,*** the Supreme Court has held that it is the duty of the Court to determine whether the plaint disclosed a cause of action, by scrutinizing the averments in the plaint, read with the documents relied upon, or whether the suit is barred by any law. Further, it was held that when the plaint does not disclose a cause of action, the Court would not permit the plaintiff to unnecessarily prolong the proceedings. The Supreme Court also emphasized that the reliefs sought must flow from, and should be the culmination of the cause of action pleaded in the plaint and if no relief can be granted to the plaintiff under the law, the suit should be thrown out at the threshold/the plaint must be rejected. Accordingly, it was held as under:

"xxx xxx xxx

15. ***It could thus be seen that this Court has held that reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its power under***

<u>Order 7 Rule 11 CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself</u>.

xxx xxx xxx

*17. **<u>It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold. This Court, therefore, upheld the order passed by the trial court of rejecting the suit and that of the appellate court, thereby affirming the decision of the trial court. This Court set aside the order passed by the High Court, wherein the High Court had set aside the concurrent orders of the trial court and the appellate court and had restored and remanded the suit for trial to the trial court.</u>***

18. Therefore, the question that will have to be considered is as to whether the reliefs as claimed in the plaint by the plaintiffs could be granted or not. We do not propose to do that exercise, inasmuch as the Division Bench of the High Court has elaborately considered the issue as to whether, applying the provisions of the said Act read with the aforesaid clauses in the partnership deed, the reliefs, as claimed in the plaint, could be granted or not. The relevant discussion by the High Court reads thus : (Hemant Kumar Jalan case, SCC OnLine Cal paras 32-37)

xxx xxx xxx

37. What should the Court do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the plaintiffs and the defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the defendants to go through the ordinarily long drawn process of trial of a suit at huge expense, not to speak of the anxiety and un-peace of mind caused by a litigation hanging over one's head like the Damocles's sword. No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint. The plaintiffs have not prayed for leave to amend the *plaint. When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of action.* ***The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and the prayers made in a plaint are inextricably intertwined. In the present case, the cause of action pleaded and the reliefs claimed are not recognised by the law of the land. Such a suit should not be kept alive to go to trial."***

(emphasis in original)

xxx xxx xxx

20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order 7 Rule 11 CPC are required to be strictly adhered to. ***However, under Order 7 Rule 11 CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order 7 Rule 11 CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted***.

xxx xxx xxx"

(Emphasis Supplied)

11. Reference may also be made to another judgment of the Supreme Court in the case of ***Liverpool & London S.P. & I Association Ltd. Versus M.V. Sea Success I And Another, (2004) 9 SCC 512.*** In this case, the Supreme Court held that whether a plaint discloses a cause of action or not is essentially a question of fact. However, the same must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. It is the substance, and not merely the form, which has to be looked into. The Supreme Court held that

the test under Order VII Rule 11 of CPC is whether, if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. Thus, the Supreme Court held as follows:

> *"xxx xxx xxx*
>
> *139. **Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed**.*
>
> ***Cause of action***
>
> *140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence.*
>
> *xxx xxx xxx*
>
> *151. **In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown.** In Vijai Pratap Singh v. Dukh Haran Nath Singh this Court held: (AIR pp. 943-44, para 9)*
>
>> *"By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. **The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of***

<u>law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him</u>**.**

xxx xxx xxx"

(Emphasis Supplied)

12. Tested on the aforesaid anvil, this Court proceeds to delve on the factual matrix of the present case. It is to be noted that the present suit has been filed seeking recovery of interest for the period between 01st December, 2012 till 31st August, 2023, to the tune of Rs. 2,53,70,525/- (Rupees Two Crore Fifty-Three Lacs Seventy Thousand Five Hundred Twenty-Five Only), along with compound interest with monthly rests at the rate of 12% per annum, on the ground of inordinate delay by the defendant in releasing the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only) payable to the plaintiff, in terms of the Notification dated 21st July, 2003.

13. In the present case, the plaintiff has submitted that the interest sought over the interest subsidy amount is compensatory in nature, and that the same could be calculated and claimed only after the payment of the interest subsidy amount, i.e., the principal amount. Thus, as per the plaintiff, the cause of action in the present suit is continuing in nature, and is distinct and independent from the previous writ proceedings, wherein only release of the interest subsidy amount was sought.

14. This Court finds no merit in the aforesaid submission of the plaintiff. From a meaningful and holistic reading of the plaint and the documents annexed thereto, it is apparent that the claim for interest is intrinsically connected with the plaintiff's claim for release of the interest subsidy amount. The same is not founded upon any independent or subsequent transaction, and flows directly from the alleged delay in payment of the interest subsidy amount. The plaintiff, by way of clever drafting, has

submitted that the exact computation of interest became possible only after release of the interest subsidy amount.

15. However, the delay in the release of the interest subsidy amount was already within the plaintiff's knowledge during the previous rounds of litigation. It is a matter of record that despite alleging prolonged delay at the stage of filing the earlier writ petitions, the plaintiff did not seek any relief towards interest for the period preceding those proceedings. In writ petitions being *W.P.(C) 353/2008*, *W.P.(C) 8070/2011* and *W.P.(C) 8827/2015*, the plaintiff not only failed to claim future interest, but also failed to seek interest for the delay already suffered, till the date of instituting the respective writ petitions. The action, or rather the inaction, on part of the plaintiff to not seek the interest in the previous proceedings, does not automatically give rise to a real or fresh cause of action upon payment of the principal amount.

16. Accordingly, it is evident that the plaint, as filed, fails to disclose a real cause of action. The plaintiff, by way of clever drafting, has tried to camouflage an illusory cause of action as a real one. Merely because the exact computation of interest became possible after release of the interest subsidy amount, the same does not give rise to a real, valid or fresh cause of action. Without going into the issue of whether the cause of action pleaded in the plaint is false or unsustainable, it is found that the same is rather wholly illusory. The plaint is, therefore, liable to be rejected under Order VII Rule 11(a) of CPC.

17. This Court also notes that there has been a history of litigation between the parties. The plaintiff had filed three writ petitions, being *W.P.(C) 353/2008*, *W.P.(C) 8070/2011*, and *W.P.(C) 8827/2015*, seeking release of the interest subsidy amount. However, it is undisputed that the plaintiff never

sought interest on the ground of delay, over the interest subsidy amount in any of previous rounds of litigation between the parties.

18. In this regard, the litigation history between the parties is represented in a tabular format, in the following manner:

Sno.	Case	Status	Relief sought
1.	***W.P.(C) 353/2008:*** *Amrit Environmental Technologies P. Ltd Versus Union of India and Anr.* ***(Filed by the plaintiff herein)***	▪ The writ petition was disposed of *vide* order dated 18th February, 2011. ▪ The Court directed SBI Indore to furnish to MNRE the requisite information/documents for the purposes of grant of 2% interest subsidy to the plaintiff herein on the principal loan amount availed by the plaintiff from the SBI. Further, SBI was directed to write to MNRE in response to the letter dated 18th September, 2006 complying with all the requirements stated therein. Within four weeks of receipt of the said letter, MNRE was directed to take a decision on grant of 2%	▪ Issuance of a writ/order/direction in the nature of mandamus, directing the respondents to grant 2% interest subsidy on a principal sum of Rs. 21.90 Crores to the petitioner company as promised by them *vide* policy dated 21st July, 2003, in the interest of justice. ▪ Costs of litigation.

		interest subsidy to the petitioner in terms of the policy dated 21st July, 2003. If still aggrieved by such decision, it was open to the plaintiff herein to seek appropriate remedies as may be available to it.	
2.	***<u>LPA 435/2011:</u>*** *Union of India and Anr.* *Versus* *Amrit Environmental Technologies Pvt. Ltd and Anr.* ***(Filed by the defendant herein)***	▪ The appeal was dismissed as not pressed *vide* order dated 16th May, 2011.	—
3.	***<u>C.M.APPL.10532/2011</u>*** *in* ***<u>W.P.(C)353/2008:</u>*** *Amrit Environmental Technologies P. Ltd* *Versus* *Union of India and Anr.* ***(Filed by the defendant herein)***	▪ This application was filed for modification of the order dated 18th February, 2011 passed in *W.P.(C)353/2008.* ▪ The Court *vide* order dated 10th August, 2011 noted that the application was misconceived, and cannot be entertained. Thus, the application was dismissed.	—
4.	***<u>W.P. (C) 8070/2011:</u>*** *Amrit Environmental Technologies Pvt. Ltd*	▪ This writ petition was disposed of *vide* order dated 19th October,	▪ Issuance of appropriate writ/order/direction

	Versus *UOI and Anr.* ***(Filed by the plaintiff herein)***	2012. ▪ The said order noted that the respondent had issued a letter dated 18th October, 2012 to the plaintiff herein, stating that it does not have any objection to consider this matter within the framework of the Notification dated 21st July, 2003. ▪ The said order further noted that the plaintiff herein was agreeable to the terms contained in the said communication. Counsel for the plaintiff herein further stated that he did not wish to press the writ petition as the relief prayed for, stood satisfied. ▪ ***<u>No interest was sought by the plaintiff.</u>***	setting aside the impugned letter dated 11th August, 2011 and further directing the respondents to grant 2% interest subsidy on the loan amount of Rs. 21.90 Crores to the petitioner company as per the Notification dated 21st July, 2003, along with costs of litigation. ▪ ***<u>No interest sought by the plaintiff for delay.</u>***
5.	***<u>W.P.(C)8827/2015:</u>*** *Amrit Environmental Technologies Pvt. Ltd*	▪ The petition was dismissed as withdrawn *vide* order	—

	Versus *Union of India and Ors.* ***(Filed by the plaintiff herein)***	dated 17th May, 2023. ▪ The said order noted that the respondent had handed over a letter dated 26th April, 2023 to the plaintiff herein. Being satisfied, the plaintiff herein withdrew the writ petition. ▪ ***<u>No interest was sought by the plaintiff.</u>*** ▪ ***<u>Furthermore, the plaintiff did not seek leave of the Court to file a subsequent suit arising out of the same cause of action</u>.***	

19. A perusal of the prior litigations between the parties on the basis of the documents filed by the plaintiff, as mentioned in the aforesaid table, shows that neither any claim for interest was made by the plaintiff, nor any such liberty in that regard was granted by the Court, in any of the aforesaid proceedings.

20. The plaintiff was aware of the alleged delay in payment of the interest subsidy amount, and it could have, at the relevant stage itself, claimed all consequential reliefs flowing therefrom, including, interest on the delayed payment. However, despite such knowledge and opportunity, the plaintiff consciously chose not to seek interest in any of the earlier proceedings. The

omission was, therefore, not inadvertent, but an intentional decision on the part of the plaintiff.

21. The writ petition, i.e., *W.P.(C) 8827/2015* was dismissed as withdrawn by this Court, *vide* order dated 17th May, 2023. The said order clearly records that the respondent no. 1 therein, i.e., the defendant herein, had handed over a letter dated 26th April, 2023 to the petitioner therein, i.e., the plaintiff.

22. The aforesaid letter dated 26th April, 2023, as filed on record by the plaintiff, expressly mentioned that the amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only), was to be released by the defendant to the plaintiff. The order dated 17th May, 2023 further records that the plaintiff, upon being satisfied with the aforesaid letter, sought withdrawal of the petition.

23. Thus, perusal of the order dated 17th May, 2023 passed in *W.P. (C) 8827/2015*, filed along with the plaint, manifestly shows that the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only), was duly accepted by the plaintiff herein, without any protest or demur, and the petition was withdrawn by the plaintiff herein, unconditionally. More importantly, neither any liberty was sought by the plaintiff, nor any liberty was granted by the Court, to pursue any subsequent claim for interest.

24. The aforesaid order dated 17th May, 2023, has not been challenged in appeal or review by the plaintiff, and has accordingly attained finality. Pursuant thereto, the interest subsidy amount, i.e., the principal sum of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only), as released by the defendant, was accepted by the plaintiff on 31st August, 2023.

25. Thus, clearly the plaintiff accepted the interest subsidy amount released by the defendant, without any protest or reservation of any further

rights. The record reflects that the plaintiff voluntarily chose not to seek interest for the alleged delay caused in release of the interest subsidy amount. The plaintiff had full knowledge of the delay, and had multiple opportunities to seek all consequential reliefs. However, the plaintiff consciously chose to pursue only the principal claim relating to interest subsidy amount.

26. Accordingly, in terms of the aforesaid order dated 17th May, 2023, the plaintiff held an articulated position of being satisfied with the amount mentioned in letter dated 26th April, 2023. The plaintiff cannot now be permitted to hold a stance, in derogation of his previously held position. Thus, the plaint is barred by the principle of acquiescence in terms of Order VII Rule 11(d) of the CPC.

27. At this stage, it would be fruitful to refer to the judgment of the Supreme Court in the case of ***Bhargavi Constructions and Another Versus Kothakapu Muthyam Reddy and Others, (2018) 13 SCC 480***, wherein, the Supreme Court held that the scope of Order VII Rule 11(d) of CPC, to reject a plaint on the ground that it is "barred by law", is not confined to statutory prohibitions alone, but also extends to prohibitions imposed by judicial decisions. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> *28. **The question as to whether the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code includes "judicial decisions** of the Apex Court" came up consideration before the Division Bench of the Allahabad High Court in Virendra Kumar Dixit v. State of U.P. The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under: (SCC OnLine All)*
>
> > *"15. **Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law**."*

29. This very issue was again considered by the Gujarat High Court (Single Bench) in Hermes Marines Ltd. v. Capeshore Maritime Partners FZC The learned Single Judge examined the issue and relying upon the decision of the Allahabad High Court quoted supra held in para 53 as under: (Hermes case, SCC OnLine Guj)

> *"53.* ***In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause (d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the courts in judicial precedents. The judicial precedent of the Supreme Court in Liverpool & London Steamship Protection and Indemnity Assn. Ltd. v. M.V. Sea Success I, has been followed by the decision of the Division Bench in Croft Sales & Distribution Ltd. v. M.V. Basil. It is, therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word "law" as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law****."*

30. Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in Shahid S. Sarkar v. Mangala Shivdas Dandekar. The learned Judge placed reliance on the decisions of the Allahabad High Court in Virendra Kumar Dixit v. State of U.P. and the Gujarat High Court in Hermes Marines Ltd. and held as under: (Shahid case, SCC OnLine Bom paras 18 & 19)

> *"18. ...* ***The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all courts within the territories of India. There is nothing even in CPC to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in Hermes Marines Ltd. …***
>
> *19.* ***One must also not lose sight of the purpose and intention behind Order 7 Rule 11(d). The intention***

<u>appears to be that when the suit appears from the statement in the plaint to be barred by any law, the courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a defendant is able to establish that the plaint ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty-bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a defendant."</u>

31. Similarly, issue was again examined by the High Court of Jharkhand (Single Judge) in Mira Sinha v. State of Jharkhand. The learned Judge, in para 7 held as under: (SCC OnLine Jhar)

*"7. **<u>In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order 7 Rule 11(d) CPC application is maintainable only when the suit is barred by any law. The expression "law" included in Rule 11(d) includes the law of limitation and, it would also include the law declared by the Hon'ble Supreme Court</u>**."*

32. We are in agreement with the view taken by the Allahabad, Gujarat, Bombay and Jharkhand High Courts in the aforementioned four decisions which, in our opinion, is the proper interpretation of the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code. This answers the first submission of the learned counsel for the respondents against the respondents.

xxx xxx xxx"

(Emphasis Supplied)

28. In this regard, reference is also made to the case of ***Asha Sharma & Ors. Versus Sanimiya Vanijiya P. Ltd. & Ors., 2012 SCC OnLine Del 2749,*** wherein, a Division Bench of this Court affirmed the judgment of the Single Judge, dismissing a suit under Order VII Rule 11(d) of CPC on the basis of, *inter alia*, the principles of acquiescence. The Court held that the power of a Court to reject a plaint which is an abuse of the process of the law is not restricted to Order VII Rule 11 of CPC, and if it is warranted, the inherent

power of the Court can always be invoked. The relevant paragraphs of the aforesaid judgment, read as under:

> *"xxx xxx xxx*
>
> *20. **The learned Single Judge has correctly applied the law pertaining to estoppel by pleading as also acquiescence** by correctly appreciating the decisions reported as (1911) 2 KB 1125 Cooke v. Rickmen, (2006) 7 SCC 756 : (2006) 133 Comp Cas 794, Jai Narain Parasrampura v. Pushpa Devi Saraf and (2007) 10 SCC 528, Deewan Singh v. Rajendra Prasad Ardevi.*
>
> *21. Submission urged by learned senior counsel for the appellants that Order VII Rule 11(d) of the Code of Civil Procedure relates to when the suit appears from the statement in the plaint to be barred by law, and that the plea of estoppel by pleading cannot apply for the plaint to be rejected, is noted and rejected by us for the reason the law pertaining to estoppel by pleading would result in a suit being barred by law. Needless to state, if with reference to previous pleadings in a suit, a party is barred from pleading to the contrary in a subsequent suit, the principle of estoppel by pleading is squarely attracted.*
>
> *22. **Besides, a Court of Record has inherent power which a court of justice must possess to prevent misuse of its procedures in relation to an action initiated which would amount to an abuse of the process of the law. In the decision reported as (2006) 3 SCC 100 Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express, the Supreme Court had held that the power of a Court to reject a plaint which is an abuse of the process of the law is not restricted to Order VII Rule 11 of the Code and if it is warranted, the inherent power of the Court can always be invoked.***
>
> *xxx xxx xxx*
>
> *24. Suffice would it be to state that admissions made in documents or made orally can be explained by the maker of the statement and in that context previous admissions contained in documents, cannot attract Order VII Rule 1(d) of the Code, but admissions in pleadings stand on a different footing and if a matter pertaining to a ownership of a property or execution of a sale-deed, though not a matter in issue, but arose properly for consideration or was relevant in the context of a claim made or a claim defended, pleadings would be not only relevant but would also attract the principle of estoppel by pleading.*
>
> *xxx xxx xxx"*

(Emphasis Supplied)

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29. It would also be relevant to refer to judgment in the case of ***Sean Dushyant Manchanda and Another Versus Rabia Manchanda and Others, 2023 SCC OnLine Del 3534***, wherein, this Court noted that the plea of acquiescence requires a party to give up rights of which he/she has full knowledge, and a plaint can be rejected on account of acquiescence, if it is in derogation of an inconsistent plea taken in earlier proceedings. The Court in the aforesaid judgment laid down certain principles with respect to applications under Order VII Rule 11 of CPC, in the following manner:

> *"xxx xxx xxx*
>
> *17. For the purpose of the present case, the following principles laid down in these judgments are of relevance: —*
>
> *A. The power under Order VII Rule 11 of the CPC can be exercised at any stage of a suit.*
>
> *B. **The determination of such an application requires a holistic and meaningful reading of the plaint in its entirety. The plaint and the documents annexed thereto can be looked at, but not the written statement of the defendants or any defences raised by them**.*
>
> *C. **Order VII Rule 11(d) does not apply only in the case of statutory prohibitions, but also to causes of action, that are barred on account of judicial decisions.***
>
> *D. **The provisions of Order VII Rule 11 of the CPC are not exhaustive and the power to stem frivolous or vexatious litigation is inherent in the Court.***
>
> *E. **The doctrine of estoppel is an equitable doctrine which bars a litigant from making assertions inconsistent with earlier statements upon which the other party has placed reliance. The rules of approbate/reprobate, doctrine of election of causes of action and doctrine of acquiescence are all species of the larger doctrine of estoppel.***
>
> *F. **A plaint can be rejected on account of estoppel by pleading and acquiescence if it is in derogation of an inconsistent plea taken in earlier proceedings.***
>
> *G. **To examine questions of this nature, which are akin to a plea under Order II Rule 2 of the CPC, it is necessary that the***

> ***pleadings in the earlier suit be placed in evidence, so that the identity of the causes of action can be demonstrated.***
> *H.* ***The plea of acquiescence requires a party to give up rights of which he/she has full knowledge. Such a plea is not available in the face of fraud committed by the other party.***
> *xxx xxx xxx*
>
> *30. What is the consequence of this analysis upon the fate of the present suit? The remedy sought by the defendants of rejection of plaint without trial is no doubt a drastic one. However, the judgments of the Supreme Court, inter alia in Sopan Sukhdeo Sable, K. Akbar Ali and Dahiben, emphasise the responsibility of the Court to thwart vexatious litigants.* ***The judgment in Mumbai International Airport (P) Ltd., makes it clear that inconsistent pleas cannot be permitted. In Asha Sharma, the Division Bench has held that such a plea — of "estoppel by pleadings" — can indeed be used to reject a plaint under Order VII Rule 11 of the CPC. The said judgment was sought to be distinguished on the basis that the case there was one of an admission in a pleading which was inconsistent with the case pleaded in a subsequent suit. I do not see any distinction on principle between the two situations. In the present case also, one has only to look at the pleading of the plaintiff in the 2012 suit to come to the conclusion that the plaintiff has elected to claim the proceeds of sale of the suit property, a position entirely at odds with the present claim for reversal of the very same sale.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

30. It is the plaintiff's own case that there has been an inordinate delay of seventeen years in release of the interest subsidy amount. Despite being aware of the said delay, the plaintiff never raised any claim for interest on the delay in any of the earlier proceedings between the parties. Rather, the plaintiff was satisfied with the letter dated 26th April, 2023, which explicitly provided that MNRE shall disburse the interest subsidy amount of Rs. 1,96,67,074/- (Rupees One Crore Ninety-Six Lacs Sixty-Seven Thousand Seventy-Four Only). Thus, the plaintiff was satisfied by the said disbursal of the said interest subsidy amount, and sought unconditional withdrawal of the

writ petition, i.e., *W.P.(C) 8827/2015*. Despite having full knowledge, the plaintiff accepted the interest subsidy amount unconditionally, and voluntarily gave up his rights as to interest on delay, if any. Thus, the principle of acquiescence squarely applies in the present case, and the plaint is liable to be rejected.

31. Furthermore, it is also to be noted that the plaintiff had also issued several legal notices seeking compliance with the orders passed by the Court, and release of the interest subsidy amount. Significantly, in some of the notices, the plaintiff did raise a claim for interest, on account of the alleged delay in payment of the interest subsidy amount. However, no interest was sought by the plaintiff for the delay caused from 01st December, 2012. A brief tabular representation of the said notices is set out below:

S. no.	**Legal Notice**	**Particulars**
1.	Legal notice dated 05th January, 2013	▪ Plaintiff called upon the defendant to make payment of interest subsidy amount. However, no claim for interest on delay was raised.
2.	Legal notice dated 08th August, 2014	▪ The plaintiff sought interest for the first time by way of this notice at the rate of 12% per annum. ▪ However, in the said notice, interest was not sought by the plaintiff for the delay caused from 01st December, 2012, as it is sought in the present suit. Rather, interest

		was sought for the delay caused in payment of the subsidy amount after issuance of the said legal notice dated 08th August, 2014. ▪ The said legal notice was withdrawn by the plaintiff *vide* a subsequent legal notice dated 16th September, 2014.
3.	Legal notice dated 02nd February, 2015	The plaintiff sought interest at 12% per annum without specifying the time period for interest.
4.	Legal notice dated 16th December, 2023. ***(Notice of present suit under Section 80 of CPC)***	The plaintiff, for the first time, sought interest from 01st December, 2012 till 31st August, 2023, i.e., the date of realization of interest subsidy amount, along with compound interest at 12% at monthly rests, till the date of payment of the interest component.

32. It is evident that the plaintiff never sought interest from the period starting from 01st December, 2012 till 31st August, 2023, on any occasion before the release of the interest subsidy amount. Further, it is also undisputed that the plaintiff had never sought interest over the interest subsidy amount in the previous rounds of litigation. The interest subsidy amount was released by the defendant on 31st August, 2023, and it was only after accepting the entire interest subsidy amount unconditionally, that the

plaintiff sought interest, by way of the legal notice dated 16th December, 2023, from 01st December, 2012 till 31st August, 2023, along with compound interest with monthly rests at 12% per annum.

33. Therefore, in the background of the aforesaid legal position, considering the facts of the present case as disclosed from the plaint and the documents on record, it is apparent that the present suit is barred under Order VII Rule 11(d) of CPC, on account of the principle of acquiescence.

34. Another question that arises before this Court is the issue of limitation. For the purpose of determining the limitation period to file the present suit, it is necessary to refer to the relevant provisions of the Limitation Act, 1963 (**"Limitation Act"**). Article 113 of the Limitation Act provides that in any suit, for which no period of limitation is provided elsewhere in the Schedule under the Limitation Act, the period of limitation shall be three years from the date when "right to sue" accrues. Furthermore, Section 9 of the Limitation Act provides that once the time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it.

35. Thus, for filing a suit seeking recovery of interest from the defendant, the plaintiff had to seek his relief within three years from the date the interest became due.

36. It is the case of the plaintiff that the interest subsidy amount was due and payable to the plaintiff since the year 2006. As per the plaint, the cause of action, for the purpose of the present suit, arose when the interest subsidy amount was released by the defendant, without any interest over the said amount, to compensate for the delay caused in release of payment. Furthermore, the plaintiff has submitted that the interest on the interest subsidy amount could only be calculated and claimed post the release of the interest subsidy amount, and thus, the suit is within the period of limitation

as the interest subsidy amount was finally released by the defendant on 31st August, 2023.

37. The aforesaid submission of the plaintiff not only appears to be inconsistent with the relief sought in the plaint, but is also contrary to the scheme of the Limitation Act. The plaintiff makes a categorical assertion in the plaint that the interest subsidy amount was due since the year 2006. At the same time, the plaintiff itself seeks interest for delay from 01st December, 2012 till 31st August, 2023. Notably, no explanation has been furnished in the plaint as to why the claim for interest has been computed from 01st December, 2012, and not from the year 2006.

38. Even if the averments mentioned in the plaint are taken at their face value, the interest, according to the plaintiff, became due at least from 01st December, 2012. The law in this regard as encapsulated under Article 113 of the Limitation Act, is clear that the limitation period to file a suit for interest is three years from the date when the "right to sue" arises. Consequently, the limitation period, for filing the present suit seeking such interest, expired in December, 2015, i.e., much prior to the institution of the present suit.

39. Even otherwise, it is pertinent to note that Section 3(1)(b) of the Interest Act states that in the absence of a written contract, interest can be claimed only from the date of a written notice. The plaintiff, in the present case, claimed interest for the first time *vide* legal notice dated 08th August, 2014, which was subsequently withdrawn *vide* legal notice dated 16th September, 2014. Therefore, interest could only be claimed, if at all, from 08th August, 2014. The plaintiff has calculated interest from 01st December, 2012. Even if the case of the plaintiff is examined from this standpoint, the limitation period would still have expired long before the filing of the present suit.

40. Reference at this stage is made to the judgment in the case of ***Indian Evangelical Lutheran Church Trust Association Versus Sri Bala & Co., 2025 SCC OnLine SC 48***, wherein, the Supreme Court held that upon a holistic reading of the plaint, the same could be rejected as being barred by law of limitation. Article 113 of the Schedule to the Limitation Act provides that a suit has to be instituted within three years from the date when the "right to sue" accrues. Thus, the time under Article 113 of the Limitation Act commences to run when the "right to sue" accrues, i.e., when the cause of action, or the right to prosecute to obtain legal relief, arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe that right by the defendant, against whom the suit is instituted. The Supreme Court further relied on Section 9 of the Limitation Act, to hold that once limitation has started to run, it will continue to do so, unless it is arrested by reason of any express statutory provision, and rejected the plaint in the following manner:

> *"xxx xxx xxx*
>
> ***8.8. <u>Thus, on a holistic reading of the plaint it could be rejected as being barred by law of limitation. However, it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule. We wish to discuss the relevant Article under the Limitation Act applicable to the facts of the present case which is Article 113 for the second suit with a preface on the law of limitation.</u>***
>
> ***9.*** *The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond. The Limitation Act therefore does not confer any substantive right, nor defines any right or cause of action. The law of limitation is based on delay and laches. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete*

cause of action unless there is a person who can sue and a person who can be sued. ***There is also another important principle under the Law of Limitation which is crystallized in the form of maxim that "when once the time has begun to run, nothing stops it".***

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9.3. *Further, to say that a suit is not governed by the law of limitation runs foul of the Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must, subject to the provisions of Sections 4 to 24, be dismissed, although limitation has not been set up as a defence. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Limitation Act.* ***The court's function on the presentation of plaint is simply to examine, whether, on the assumed facts, the plaintiff is within time. The court has to find out when the "right to sue" accrued to the plaintiff.***

9.4. Further, if a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for under the Limitation Act. It prescribes a period of three years from the date when the "right to sue" accrues. *Under Article 120 of the erstwhile Limitation Act, 1908, it was six years, which has been reduced to three years under Article 113 of the present Act.* ***According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1].***

9.5. This Court in Shakti Bhog Food Industries Ltd. v. Central Bank of India, (2020) 17 SCC 260, stated that the expression used in Article 113 of the 1963 Act is "when the right to sue

accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas Article 113, being a residuary clause, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

xxx xxx xxx

9.7. *In the present case, the earlier suit was filed by the respondent/plaintiff in July, 1993 on the basis of Article 54 referred to above and the plaint in the said suit was rejected on 12.01.1998. The second suit being O.S. No. 49/2007 was filed on the strength of Order VII Rule 13 of the Code for the very same cause of action and for seeking the very same relief of specific performance of the agreement dated 26.04.1991 as the plaint in the earlier suit was rejected on 12.01.1998. Therefore, it cannot be said that the second suit namely O.S. No. 49/2007 was filed as per Article 54 of the Limitation Act. Since this is a suit filed for the second time after the rejection of the plaint in the earlier suit, in our view, Article 54 of the Limitation Act does not apply to a second suit filed for seeking specific performance of a contract. Then, the question is, what is the limitation period for the filing of O.S. No. 49/2007. We have to fall back on Article 113 of the Limitation Act.*

9.8. ***Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues.*** *This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract which is on the happening of an event. No doubt, the second suit which is the present suit filed by the respondent/plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue by means of a fresh suit was only after 12.01.1998.* ***The expression "when the right to sue accrues" in Article 113 of the Limitation Act need not always mean "when the right to sue first accrues". For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same vide M.V.S. Manikyala Rao v. M. Narasimhaswami, AIR 1966 SC 470. Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the***

right asserted by the plaintiff in the suit. Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.

9.9. Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act.

9.10. In the facts and circumstances of the present case, it is also necessary to apply Section 9 of the Limitation Act while applying Article 113 thereto. Section 9 reads as under:

> ***"9. Continuous running of time.—***
> ***Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:***
> ***Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."***

Section 9 is based on the general principle that when once limitation has started to run, it will continue to do so unless it is arrested by reason of any express statutory provision. Period of limitation can be extended, inter alia, when cause of action was cancelled such as by dismissal of a suit. Ordinarily, limitation runs from the earliest time at which an action can be

<u>brought and after it has commenced to run, there may be revival of a right to sue where a previous satisfaction of a claim is nullified with the result that the right to sue which has been suspended is reanimated [Pioneer Bank Ltd v. Ramdev Banerjee, (1949-50) 54 CWN 710]. In that case, the court distinguished between suspension and interruption of limitation period.</u>

9.11. <u>Once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that bringing an action stops running of time for the purpose of that action only</u> *[Andrew McGee, Limitation Periods, 4th Edn., Sweet & Maxwell, chapter 2, para 1]. The Indian law also follows the English law [James Skinner v. Kunwar Naunihal Singh, ILR (1929) 51 All 367, (PC)]. Intervention of court in proceedings would prevent the period of limitation from running and date of courts' final order would be the date for start of limitation [N Narasimhiah v. State of Karnataka, (1996) 3 SCC 88].*

[Source : Tagore Law Lectures, U N Mitra, Law of Limitation and Prescription, Sixteenth Edition, Volume 1, Sections 1-32 & Articles 1-52]

9.12. *Applying the aforesaid dictum to the facts of the present case, it is observed that the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself. The plaint in the said suit was rejected on 12.01.1998. The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it. This is on the basis of Order VII Rule 13 of the Code. However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007. The cause of action by then faded and paled into oblivion. The right to sue stood extinguished.* ***<u>The suit was barred in law as being filed beyond the prescribed period of limitation as per Article 113 to the Schedule to the Limitation Act. Hence the second suit is barred under Order VII Rule 11(d) of the Code. We therefore have no hesitation in rejecting the plaint in O.S No. 49/2007 filed by the respondent herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts. Thus, on the basis of Order VII Rule 11(d) of the Code read with Article 113 of the Limitation Act by setting aside the impugned orders of the High Court and the trial court and by allowing the application filed under Order</u>***

VII Rule 11(d) of the Code. Consequently, this appeal is allowed.

xxx xxx xxx"

(Emphasis Supplied)

41. Thus, it is a settled position that the "right to sue" accrues when there is a clear and unequivocal infringement of a right. The "right to sue" ordinarily means the right to seek relief by means of legal proceedings, and the suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe that right by the defendant.

42. Applying the aforesaid principles to the facts of the present case, it is evident that the alleged infringement, if any, can be said to have arisen in the years 2006-2007, i.e., at the time when the interest subsidy amount was not released, within the period as claimed by the plaintiff. The plaint itself discloses that the interest subsidy amount was due and payable to the plaintiff since the year 2006. Therefore, the "right to sue", if any, accrued at the time of such alleged delay/non-payment, and not upon the eventual release of the interest subsidy amount on 31st August, 2023.

43. The plaintiff has sought to contend that the cause of action to claim interest arose only upon receipt of the interest subsidy amount on 31st August, 2023, when the plaintiff allegedly realised that compensation for delay had not been paid.

44. However, the plaintiff's contention that the cause of action arose only upon receipt of the principal amount, is wholly misconceived and contrary to settled law, as also being barred by limitation. The plaintiff, by way of clever drafting, is effectively seeking to link the cause of action to the subsequent release of the interest subsidy amount, in order to circumvent the bar of limitation by treating quantification of the interest as a fresh starting point of limitation.

45. However, the said contention of the plaintiff that the claim for interest could arise only upon release of the subsidy amount, on the ground that the exact computation could be made only thereafter, is *ex facie* unsustainable in view of Section 9 of the Limitation Act. The said provision clearly establishes that once time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it. Therefore, the right, if any, to claim such interest arose way back in the year 2012 as per the averments and claims made in the plaint, and the same cannot be revived by linking it to subsequent events of "computation" or "quantification".

46. From the pleadings and documents on record, it is evident that it was only after accepting the interest subsidy amount without protest that the plaintiff, *vide* legal notice dated 16th December, 2023, claimed interest retrospectively from 01st December, 2012. Accordingly, the present suit filed by the plaintiff is clearly an afterthought.

47. Therefore, on a complete, holistic and meaningful reading of the plaint, it becomes clear that the suit is *ex facie* barred by limitation. The plaint is, thus, barred by law, and is liable to be rejected under Order VII Rule 11(d) of CPC.

48. Accordingly, the present suit is liable to be rejected at the threshold as it does not disclose any subsisting or legally enforceable cause of action.

49. In the present case, the plaintiff has submitted that it is entitled to compensation in the form of interest, for the extraordinary delay caused in disbursal of the interest subsidy amount. The plaintiff further submits that the delay is attributable to the defendant and, therefore, the plaintiff deserves an opportunity to establish its rights and claims in the trial.

50. The question before this Court, however, is not whether the plaintiff is otherwise entitled to interest over the delayed disbursal of the interest subsidy amount, nor whether the delay is attributable to the defendant. The

moot question is whether the plaintiff has failed to disclose a real cause of action in the plaint, and whether the plaint is barred by law from seeking such relief, on account of its own inaction to claim the same in the earlier proceedings.

51. To this effect, suffice it to note the legal maxim ***vigilantibus non dormientibus jura subveniunt***, which means that "*the law assists only those who are vigilant and not those who sleep over their rights*".

52. The defendant has contended that the present suit is also barred under Order II Rule 2 of the CPC. However, the said contention is misplaced. Order II Rule 2 of CPC curtails the "right to sue" in respect of claims relinquished or omitted in the earlier suit. The same is distinct from Order VII Rule 11(d) of CPC, which bars the filing of a suit under any law, on a meaningful reading of the plaint. In this regard, reference is made to the decision in the case of ***S. Valliammai and Others Versus S. Ramanathan and Another, 2026 SCC OnLine SC 603***, wherein, the Supreme Court held that the application of Order II Rule 2 of CPC cannot be construed to be a ground for rejection of the plaint under Order VII Rule 11(d) of the CPC, in the following manner:

> *"xxx xxx xxx*
>
> ***5.13. <u>Bar to sue is distinct from a suit being barred by any law. In the former, a suit cannot be commenced at all and, therefore, would have to be dismissed on the application of Order II Rule 2 of the Code, while in the latter case, a suit can be commenced but is not entertainable owing to a bar in law. Under Order II Rule 2, a suit can be dismissed after recording evidence depending upon the facts and circumstances of the case and on the analysis of the cause of action in a former suit and a subsequent suit. In the case of rejection of a plaint, recording of evidence on the bar to file a suit may not be necessary in all circumstances. It all depends on the nature of the bar.</u>***

5.14. To sue, according to Webster Dictionary, is "to seek justice or right by legal process". According to Strouds' Judicial Dictionary, (Fifth Edition, p.2540) the words "to sue" is said to have meaning generally speaking, 'of bringing action'. Thus, the word 'sue' means to institute or commence a proceeding and has reference to the point of time when the suit is instituted and not to any subsequent stages of the suit. The word 'sue' means to take any legal proceedings in accordance with the provisions of the Code.

5.15. Thus, the right to sue is circumscribed by what is stated under Order II Rules 1 and 2 of the Code. Order II Rule 2(1) states that every suit ***shall*** *include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court. With regard to relinquishment of part of the claim and omission to sue for one of several reliefs, the consequences are stated in sub-rules (2) and (3) of Order II Rule 2 of the Code. Thus, under the said sub-rules the right to sue in respect of relinquishment of a claim or omitted reliefs in the absence of conditions occurring therein would not arise. Therefore, sub-rules (2) and (3) of Order II Rule 2 deal with claims and reliefs.*

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5.17. ***Turning to Order VII Rule 11 (d), it deals with rejection of plaint and not the right to sue being barred. A rejection of a plaint is as per clauses (a) to (f) mentioned in Order VII Rule 11. Order VII Rule 11 (d) states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Therefore, the crucial words are, the filing of the suit being barred by any law. The issue, whether the suit is barred by any law has to be determined from the statement in the plaint. The expression "statement in the plaint" would mean not only a meaningful reading of the averments in the plaint but also a meaningful reading of the documents appended to the plaint. Thus, it is on a meaningful reading of the plaint and the annexed documents, the suit should appear to be barred by any law. Hence, the written statement or any other document cannot be taken into consideration in order to ascertain whether the suit is barred by any law.***

5.18. ***When the expression "barred by any law" is read in juxtaposition with Order II Rule 2 of the Code, it is already noted that Order II Rule 2 does not bar the filing of any suit but sub-rules (2) and (3) forbids the suing for certain claims***

<u>which have been relinquished or certain reliefs which have been omitted to sue in the earlier suit in respect of which a plaintiff cannot sue for those claims or reliefs by filing a subsequent suit.</u>

5.19. <u>On the other hand, the bar to filing of any suit in law under Order VII Rule 11(d) is distinct. The law must bar the filing of a suit either by an express bar or by an implied bar.</u> *An example of an express bar of a suit is in Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act, 2002") which reads as under:*

> *"**34. Civil court not to have jurisdiction.—** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine 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 power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."*

If Section 34 of the SARFAESI Act, 2002 applies in a case, then, such a suit is barred in law. ***<u>If on a meaningful reading of the plaint a suit is barred in law, then the plaint itself has to be rejected. In other words, the suit can be filed but the plaint has to be rejected for reasons enumerated in Order VII Rule 11 of the Code such as the suit being barred by any law. When a plaint is rejected, a fresh suit could be filed only in terms of Order VII Rule 13 which is extracted above. The said provision would however not apply, if there is absence of a cause of action, the suit is hit by limitation or on the principle of res judicata or is otherwise barred by law.</u>***

5.20. <u>As opposed to the above, under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is "no bar to sue" but "the suit is barred by law from being filed". There is a subtle but distinct difference between the two. If the conditions under sub-rules (2) and (3) of Order II Rule 2 of the Code are satisfied in a case, it would be a case of there being a curtailment of the right to sue for the claims relinquished or omitted in the earlier suit. It is not a case where the plaint has to be rejected as it is barred by the provision of Order II Rule 2 [sub-rules (2) and (3)]. In other words, the</u>

application of Order II Rule 2 of the Code to a case can result in rejection of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself. But it does not result in rejection of the plaint under Order VII Rule 11 (d) of the Code.

5.21. ***We think that in a case where Order II Rule 2 of the Code applies, there is no legal bar to filing a suit but the reliefs sought for or the claims made therein cannot be granted if the conditions mentioned therein apply. For arriving at such a conclusion, there has to be evidence let in in order to determine whether the provision of Order II Rule 2 would apply to the suit or not. On the other hand, in the case of Order VII Rule 11(d), if there is express or implied bar for filing of a suit under any law then on a meaningful reading of the plaint, it has to be rejected. The suit need not proceed to record evidence on merits but only to the extent where evidence is necessary to be recorded for the purpose of rejection of the plaint such as on the ground of the suit being bit by law of limitation or on the principle of res judicata. Thus, the bar created by any law to the filing of a suit is different from a plaintiff suing for certain claims or reliefs which he could not have claimed or sued having regard to Order II Rule 2 of the Code. Therefore, in our view, the application of Order II Rule 2 cannot be construed to be a ground for rejection of the plaint under Order VII Rule 11(d) of the Code.***

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7. ***A juxtaposition of the above discussion with the discussion for rejection of a plaint under Order VII Rule 11(d) of the Code must be made. On a conjoint reading of Order II Rule 2 with Order VII Rule 11(d) of the Code, it emerges that the plea under Order II Rule 2 of the Code cannot be a basis or a ground for rejection of the plaint. In other words, it is for the defendant to establish by way of evidence, the bar of the subsequent suit under Order II Rule 2 of the Code filed by the very same plaintiff. In such an event, on a comparative analysis of the plaint filed in the first suit and the plaint filed in the second suit, if the Court comes to the conclusion that the second suit was filed on an identical cause of action which led to the filing of the first suit and there was an omission to make the claim or to reserve the reliefs to be claimed in the first suit in a subsequent suit, then the bar under Order II Rule 2 of the Code would apply to the subsequent suit or the second suit. Then the claims or reliefs not maintainable would be rejected as the plaintiff could not have sued for those reliefs by filing a***

<u>second suit, although technically, the filing of such a suit was not barred by any law. On the other hand, if the cause of action for filing the second suit is totally distinct from the cause of action from filing the first suit and the reliefs claimed are distinct, subject-matter of the suits are different and if the parties to the suit are also different then in such a case, the plea under Order II Rule 2 of the Code would not arise at all. The above are, inter alia, the heads of distinction to be analysed while analysing the plaints in the first/former suit and a subsequent suit.</u>

xxx xxx xxx"

(Emphasis Supplied)

53. Considering the conspectus of facts and circumstances in the present case, and for the reasons mentioned aforesaid, the plaint in the present case fails to disclose a valid, real and subsisting cause of action. Additionally, the plaint is barred by limitation and the principle of acquiescence. Therefore, the plaint is liable to be rejected under Order VII Rules 11(a) and 11(d) of CPC.

54. Considering the detailed discussion hereinabove, the present plaint is liable to be rejected at the threshold under Order VII Rule 11 of CPC. Accordingly, for the aforesaid reasons, the present application is allowed.

55. The present plaint, i.e., *CS(OS) 200/2024* is rejected.

<u>CS(OS) 200/2024</u>

56. In view of allowing the application of the defendant, i.e., *I.A. 39173/2024*, under Order VII Rule 11 of CPC, the present suit stands dismissed.

57. All pending applications are also disposed of.

MINI PUSHKARNA
(JUDGE)

JULY 15, 2026
c