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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 02nd July, 2025*

+ CM(M) 1108/2025 & CM APPL. 37619-37621/2025
M/S. ACCUFIL AUTOMATION

.....Petitioner

Through: Mr. Prateek Choudhary and Mr.
Ravinder Kumar, Advocates.

versus

CHITKARA BEVERAGES & ORS.

.....Respondent

Through: Mr. Rahul Malik, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner (defendant No.1 before the learned Trial Court) is defending a suit which seeks damages to the tune of Rs.51,99,000/-.
2. The issues have already been framed and the case is at the stage of plaintiff's evidence and it was at the abovesaid stage that the defendant No.1 moved an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that there was no cause of action.
3. The petitioner is aggrieved by dismissal of his such application.
4. This Court has gone through the impugned order dated 06.05.2025 and according to the observations appearing therein, the application was held as not maintainable under Order VII Rule 11 CPC as the aspect which had been highlighted by the defendant No.1 in their abovesaid application could be appreciated only once the evidence was led.
5. The relevant observations in this regard are as under:-



“Ld. Counsel for defendant has submitted that no cause of action arose to plaintiff to file the present suit. On this account it has been stated that no written agreement was executed between both parties qua which plaintiff could claim liquidated damages as claim in the present suit. It has been further submitted that plaintiff has failed to link the claim with act of defendant. It has been further submitted that plaintiff has not filed bank statement, but has filed report of Chartered Accountant only, which contains number of unexplained entries. On the basis of these submissions, it has been stated that no cause of action arise to plaintiff to file the present suit.

Heard. What could be the effect of non-existence of written agreement between parties qua claim of liquidated damages; whether the act of defendant is linked to claim of plaintiff or not; whether entries made in Chartered Accountant report are genuine or not, can be considered only during evidence. Under these circumstances, it is found that the present application is not maintainable U/o VII Rule 11 CPC to reject the plaint. Hence, calling reply of the application from plaintiff, may amount to delay in disposal of matter. Considering the entire facts and circumstances, the present application filed by defendant stands dismissed. IA stands disposed of accordingly.”

6. This Court has also taken note of the averments appearing in the plaint.

7. Learned counsel for the petitioner/defendant No.1 submits that even as per the averments appearing in para 12 of the plaint, according to plaintiff, the loss suffered by him is only on account of diversion of funds, time and efforts for financing the proposed project of the defendant and, therefore, the alleged cause of action has no connection or bearing, whatsoever, with the damages being sought.

8. Para 12 to 14 of the plaint read as under:-

“12. That the loss suffered by the Plaintiff is immense on account of having diverted his funds, time and efforts for financing the proposed project of the Defendant. The present suit has been filed to the extent of seeking the damages towards actual loss and recovery of the amounts pending on account of excess payments being made.

13. That after repeated requests were made by the Plaintiff for resolution of the disputes, the Defendant out-rightly rejected any sort of steps towards resolution. Plaintiff having no choice and recourse



against the illegal, prejudiced and biased attitude of the Defendant was left with no choice but to approach the court of law against the wilful and malicious wrongs of the Defendant against the Plaintiff firm.

14. That the cause of action arose in favour of the Plaintiff and against the Defendant firm firstly on 09.11.2016 after the expiry of three months from the date of the first payment, it again arose on every such occasion when the promise towards the promised commissioning of the project were breached and it again arose on the date of commissioning of the project i.e. 22.04.2018, since the plant failed to operate. The cause of action further arose on every such occasion when the Defendant failed to rectify the faults in the plant and it finally arose when the Defendant in the month of March 2019 when the Defendant completely rejected to make good the plant and return the balance amounts on account of the excess in the payments received by the Defendant. The Plaintiff was compelled to sell the plant and machinery at a huge loss on 12.03.2019, the loss and the balance still not having been paid the cause of action continues to accrue in favour of the Plaintiff.”

9. The case is already at the stage of trial and by no stretch of imagination it can be said that the suit entails rejection for not disclosing any cause of action.

10. The question whether the plaintiff is entitled to any damages or whether the damages being sought has any direct co-relation or connection with the alleged breach or not is a subject matter of trial and cannot be decided in a cursory and summary manner, without giving due opportunity of leading evidence to the parties. Therefore, this Court does not find any illegality or perversity in the impugned order.

11. Moreover, the suit in question is commercial in nature and interference by invocation of Article 227 of Constitution of India has to be under exceptional circumstances, which do not exist here. Reference be made *Black Diamond Trackparts (P) Ltd. v. Black Diamond Motors (P) Ltd., (2022) 1 HCC (Del) 737* wherein this Court observed as under:-



“5. Before proceeding further, it may be noted that the power under Article 227 of the Constitution of India being one of judicial superintendence cannot be exercised to upset conclusions, howsoever erroneous they may be, unless there was something grossly wrong or unjust in the impugned order shocking the court’s conscience or the conclusions were so perverse that it becomes absolutely necessary in the interest of justice for the court to interfere. The powers under Article 227 will be used sparingly. The Supreme Court has observed in India Pipe Fitting Co. v. Fakhruddin M.A. Baker (1977) 4 SCC 587 and in Mohd. Yunus v. Mohd. Mustaqim (1983) 4 SCC 566 that the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution of India is limited to overseeing that an inferior court or tribunal functions within the limits of its authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision without anything more is not enough to attract this jurisdiction. Even in the judgment relied upon by the learned senior counsel for the respondent/plaintiff mentioned above, the Division Bench of this court has again cautioned that Article 227 of the Constitution of India be used sparingly in such suits which under the CPC are revisable and which remedy has been taken away by the Commercial Courts Act, 2015, in order to preserve the legislative intent and give effect to the purpose behind the Commercial Courts Act, of expeditious disposal of commercial suits.”

(emphasis supplied)

12. Finding no merit or substance in the present petition, same is accordingly dismissed in *limine*.
13. All the pending applications are also disposed of in the aforesaid terms.

**(MANOJ JAIN)
JUDGE**

JULY 2, 2025/ss/js