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

Date of decision: 24<sup>th</sup> MARCH, 2026

IN THE MATTER OF:

+ **I.A. 13426/2023 & I.A. 10753/2020**

IN

**CS(COMM) 717/2019**

**IPL SUGARS & ALLIED INDUSTRIES LTD.** .....Plaintiff

Through: Mr. Jeevesh Nagrath, Senior Advocate with Mr. Vivek Singh, Ms. Kirti Mewar, and Ms. Kriti Sharma, Advs

versus

**SHRI S.B. BHAD SOLE PROPRIETOR M/S. ENGINEERS**

.....Defendant

Through: Mr. Anil K Airi, Senior Advocate with Mr. Sudeep Dey, Mr. Vishal Tyagi, Mr. Harsh Gautam and Ms. Sadhna Sharma, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**I.A. 13426/2023**

1. The instant Suit has been filed for a recovery of Rs. 30,68,92,600/- along with interest @ 12% per annum from the Defendant.
2. Facts as borne out from the Plaint are stated as under:
  - i. The Plaintiff Company, incorporated under the Companies Act, 1956, having its registered office at 10-B, Rajendra Park, Pusa Road, New Delhi – 110060, is a subsidiary of Indian Potash Limited and engaged



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*inter alia* in the business of production and sale of sugar and allied products.

- ii. In the year 2011, pursuant to a global tender, the Plaintiff Company acquired a Sugar Unit at Motipur, Bihar [**“Motipur Sugar Unit”**] from the Bihar State Corporation Ltd. Pursuant to this, the Government of Bihar granted a 60-year lease for the said Sugar Unit in favor of the Plaintiff.
- iii. The Defendant approached the Plaintiff Company and made an offer for carrying out the works of erection and commissioning of a sugar plant along with civil works at the Motipur Sugar Unit. Later, on 28.09.2011, the Plaintiff issued a Letter of Intent [**“LOI”**] for the design, manufacture, supply, erection and commission, including civil work and construction for 3500 TCD sugar plant expandable to 5000 TCD and 20 MW Cogen Power Plant (excluding boiler and turbine within battery limit) at the Motipur Sugar Unit [**“the Project”**].
- iv. Pursuant to the issuance of the LOI, the Plaintiff made an advance payment of Rs. 24 crores on 01.11.2011 and 20.01.2012.
- v. It is stated that before the acquisition of the Motipur Sugar Unit by the Plaintiff Company, the same was acquired by the Government of Bihar. Subsequent to the issuance of the LOI and the advance payments made by the Plaintiff, it transpired that the Government of Bihar came to file a writ petition before a Division Bench of the Patna High Court, which came be dismissed.
- vi. Against the dismissal of the writ petition, the Government of Bihar preferred a Special Leave Petition before the Apex Court being SLP (Civil) No. 14616-18 of 2014, whereby leave was granted *vide* Order



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dated 11.08.2014 and the case was re-numbered as Civil Appeal No. 7663-65 of 2014.

- vii. In order to get clarity on its rights and commence its works under the Project at the Motipur Sugar Unit, the Plaintiff attempted to get the matter resolved with the Government of Bihar, which persuaded the Government of Bihar to file an application for early hearing of Civil Appeal No. 7663-65 of 2014 before the Apex Court, though the same had to be withdrawn on 14.08.2015.
- viii. It is stated that the Plaintiff was advised not to make any investment on the Motipur Sugar Unit till the matter is decided by the Apex Court. Accordingly, *vide* a Letter dated 02.02.2016, the Plaintiff conveyed to the Defendant that the Project could not be executed on account of *force majeure* conditions.
- ix. It is further stated that the Plaintiff also initiated arbitration proceedings *inter alia* against the Government of Bihar, wherein the Plaintiff claimed the amount paid by it to the Defendant, i.e., Rs.24 crores from the Government of Bihar.
- x. The arbitration proceedings culminated in an Arbitral Award dated 25.10.2019 passed by the Arbitral Tribunal, whereby the Plaintiff was awarded a sum of Rs. 6 crores, payable by the Government of Bihar to the Plaintiff company.
- xi. Subsequently, the Plaintiff and Defendant held several meetings to decide on a future course and closure/termination of the contract between the parties herein. It is stated that on 22.02.2016, it was agreed that the Defendant shall give a proposal for closure of the contract. It is also stated that an offer of providing works at a distillery



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unit in Rohana Kalan, Uttar Pradesh, in place of the Project at the Motipur Sugar Unit, was also given by the Defendant to the Plaintiff. However, despite several follow-ups by the Plaintiff, no response was forthcoming from the Defendant.

- xii. On 27.07.2016, a meeting took place between the parties at the Delhi Office of the Plaintiff Company, in order to explore possible alternative options, whereby it was agreed that the parties will try to resolve the issues amicably. It is stated that in the said meeting, the Defendant requested the Plaintiff for shifting of the contract under the LOI to some other site.
- xiii. Again, after the meeting between the parties on 27.07.2016, the Defendant fell silent and no positive response was received by the Plaintiff.
- xiv. A disagreement arose between the parties after an email was sent by the Plaintiff on 18.10.2018, stating that the Project had to be closed due to circumstances beyond the Plaintiff's control, while also expressing dismay over the Defendant having withheld a huge amount of Rs. 24 crores. Contents of this email were disputed by the Defendant. Rather, the Defendant put forth a case by way of a letter dated 03.02.2019, that the purchase order was terminated in the month of February 2016 itself and it was the Defendant who incurred losses amounting to Rs. 25,36,67,137/- due to the cancellation of the LOI. However, the Plaintiff maintains that no proof of loss was tendered by the Defendant.
- xv. Later, by way of a letter dated 08.07.2019, the Plaintiff terminated the LOI and called upon the Defendant to refund the advance amount of



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Rs. 24 crores along with interest @ 18% per annum. The entire contents of this letter were disputed by the Defendant in its reply dated 14.07.2019, which constrained the Plaintiff to issue a legal notice dated 24.07.2019, again calling upon the Defendant to refund the advance amount of Rs. 24 crores, along with interest. Yet again, this was disputed by the Defendant.

xvi. Thus, the present Suit was thereafter filed by the Plaintiff, seeking recovery of Rs. 30,68,92,600/- along with interest @ 12% per annum from the date of the Suit till date of the payment in full by the Defendant to the Plaintiff.

3. Summons in the Suit were issued on 23.12.2019. Written Statement and the counter claims have been filed on behalf of the Defendant. Replication along with an affidavit of admission/denial of the Defendant's documents has also been filed by the Plaintiff.

4. In the Written Statement, a preliminary objection was taken by the Defendant that the Suit is barred by limitation. It is stated by the Defendant that the Plaintiff, after initiating arbitration proceedings claiming a sum of Rs. 24 crore from the Government of Bihar, was awarded a sum of Rs. 6 crores by the Arbitral Tribunal. It is the case of the Defendant that by applying the doctrine of election, the present Suit is not maintainable as the Plaintiff has only now decided to turn its lance against the Defendant to claim the balance amount, even though nothing prevented the Plaintiff from impleading the Defendant in the same arbitral proceedings. It is, therefore, the case of the Defendant that the Plaintiff has not come before this Court with clean hands and is guilty of forum shopping.

5. It has been emphasized by the Defendant that the present Suit has



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been instituted only on 13.12.2019, while the LOI is dated 28.09.2011. Time was the essence of the Contract between the parties whereby the supply, erection and commissioning at the Motipur Sugar Unit had to be completed by 30.09.2012. It is argued on behalf of the Defendant that even taking the *terminus quo* for completing the Project would start running from the receipt of drawings by the Plaintiff which was in the January, 2012, the Project should have been completed by the September, 2012. If September, 2012 is taken as the date for calculating the limitation, the Plaint should have been filed on or before the 2015. It is stated that the Plaintiff deliberately withheld a very vital fact from this Court, that the Plaintiff terminated the contract with the Government of Bihar on 21.10.2013 and once the contract was terminated with the Government of Bihar, it was impossible for the performance of the main Contract. The Plaintiff, though initiated its claims against the Government of Bihar within the period of limitation, kept quiet and did not proceed against the Defendant. Even if the Plaintiff was entitled to maintain two separate proceedings, one against the Government of Bihar and one against the Defendant, the Suit should have been filed on or before October, 2016. In any event, after termination of the contract on 21.10.2013, the same became impossible to be performed beyond 21.10.2013. It is stated that the present Suit, therefore, is hit by limitation. Though several other grounds have also been taken in the Written Statement, they have not been deliberated over by this Court at this juncture.

6. Apart from filing the Written Statement and counter-claims, an application being I.A. 10753/2020 has also been filed by the Defendant under Order VII Rule 11 of the CPC for dismissal of the Suit primarily on the ground of limitation and that the Plaint does not disclose any valid cause



of action.

7. It is the case of the Defendant that the LOI was executed on 28.09.2011 between the Applicant/Defendant and the Plaintiff. The Contract was to be executed by 30.09.2012. An amount of Rs. 12,00,00,000/- was paid by the Plaintiff to the Defendant on 01.11.2011 and an Advance Bank Guarantee of an equivalent amount was also furnished by the Defendant to the Plaintiff.

8. It is stated that the Applicant/Defendant mobilized all its resources and started manufacturing of the customized material as demanded by the Plaintiff under the LOI, however, the Plaintiff itself defaulted in performing its contractual obligations by not lifting the manufactured material by the Defendant and by instructing the Defendant to hold delivery. The same situation prevailed till the end of contractual period i.e., till 30.09.2012. In view of the above, it is the case of the Defendant that when the Plaintiff was filed on 13.12.2019, no cause of action existed. As far as the question of limitation is concerned, the reasons for filing of I.A. 10753/2020 under Order VII Rule 11 of the CPC read as under:-

*“5. The applicant further states that the present suit is barred by limitation and is hence liable to be dismissed. In this regard the following facts as stated in the suit by the plaintiff are as follows:-*

*a) The project pertained to the year 2011. The LOI is dated 28.09.2011 which made time to be the essence of contract. As per the LOI/contract, and in terms thereof the supply, erection and commissioning had to be completed latest by 30/09/2012. Admittedly, the plaintiff has failed to perform its contractual obligations within the stipulated time and no extension of time was agreed upon by the parties. The amount of*



*Rs. 12,00,00,000/- ( Twelve crore) under the said LOI was paid on 01.11.2011 as advance and again a sum of Rs. 12,00,00,000/- (Twelve crore) on 20.01.2012 on receipt of drawings by the plaintiff. The plaintiff itself allowed the time for performance of contract to elapse. The limitation period for plaintiff to claim amounts, if any, under the contract would be 01.11.2014 for the initial amount of Rs. 12 crores and 20.01.2015 for second sum of Rs. 12 crores. The contract had to be executed and completed latest by 30.09.2012. Even if the cause of action is treated to have arisen on 30.09.2012 the plaintiff could have instituted the suit on or before 30.09.2015.*

*b) Vide email dated 02/02/2016, plaintiff terminated the LOI with the applicant after acknowledging the efforts and performance of contractual obligations by the applicant/ defendant. Plaintiff in the said email admitted its own default and regretted the inconvenience caused to the applicant/ defendant in execution of the project.*

*c) The plaintiff has deliberately withheld the important documents from this Hon'ble Court however perusal of the arbitral award dated 25/10/2019 (attached alongwith the plaint), it is revealed that the plaintiff (way back in the year 2013 itself) vide its letter dated. 21/10/2013 had itself terminated its main agreement concerning the project in question with State of Bihar for the project. Once the plaintiff itself had terminated its main contract with State of Bihar, the question of seeking performance from the applicant under LOI dated 28/09/2011 could not have arisen. The contract became impossible to perform on termination of main contract on 21/10/2013 by the plaintiff itself. Further the plaintiff had raised its claim on State of Bihar on 31.10.2013 and on 23.05.2014. The plaintiff however, have deliberately concealed these facts from the*



*applicant/defendant that it had terminated its contract with State of Bihar and sought reimbursement of its expense. Further as per plaintiff it had further intimated to State of Bihar its clear intention not to go ahead with implementation of the project vide letter dt. 27.02.2015 Plaintiff however with malafide intentions concealed all the above referred letters and communicated only the factum of termination to applicant/ defendant on 02/02/2016.”*

9. Since the Defendant specifically raised a question of limitation and cause of action, the Plaintiff filed an application being I.A. 13426/2023 under Order VI Rule 17 of the CPC for amendment of the Plaint. The Plaintiff, by the said application, seeks permission from this Court to add various paragraphs in the Plaint. Relevant paragraphs which are sought to be amended and inserted reads as under:-

*“4(a). That the Plaintiff made payment of Rs. 24.00 Crores only after receiving Bank Guarantee of Rs. 12 crores from the Defendant. It is stated that it was mutually understood between the parties that the payment received by the Defendant from the Plaintiff was an advance payment and therefore, even though as per Letter of Intent, the project was to be erected and commissioned by 30.09.2012, the Plaintiff from time to time apprised the Defendant about the pending litigation on account of which the Defendant extended the Bank Guarantee from time to time till the year March, 2016. Thus, by any stretch of imagination, the contract was not closed on the aforesaid date i.e. 30.09.2012 or any other date claimed by the Defendant. The Defendant itself on 19.05.2015 gave confirmation of amount. If the contract had repudiated, there was no reason for the Defendant to issue any confirmation in the year 2015.*

*7(a). That vide email dated 02.02.2016, the Plaintiff*



*proposed for a meeting for closure/ termination of contract to the Defendant. The Plaintiff informed the Defendant that the Motipur Sugar Plant, Bihar Project could not be executed due to force majeure and because of the circumstances beyond the control of the Plaintiff. The Plaintiff further proposed to the Defendant to have a joint meeting to close the matter in mutual interest and satisfaction of both the Parties. The Defendant was further requested to propose 2-3 dates convenient to him for the proposed meeting. It is explicitly clear from the said communication that the Plaintiff had only proposed to discuss the terms for closure, however, the said letter cannot by any stretch of imagination be construed as repudiation of the contract.*

*"11a. That while exploring the options for negotiation qua adjustment of advance money paid by the Plaintiff to Defendant under LOI dated 28.09.2011, the Defendant replied to the Plaintiff's email dated 27.06.2016 vide his letter dated 11.07.2016 and gave "Techno Commercial Offer for design, manufacturer and supply of three numbers bare batch type pans of 60T capacity". Further, vide email dated 13.07.2016, Defendant shared the said offer again. It is clear from the contents of the email that Parties were under negotiation qua adjustment of advance money paid by the Plaintiff to Defendant. The relevant portion of the said letter/ offer dated 11.07.2016 is reproduced herein below:-*

*"We trust that you will find our offer in line with your requirement and await your favourable response.."*

*13a. That the Defendant summarized the discussion that took place in the meeting dated 27.07.2016 between the Parties vide Defendant's email dated 14.08.2016 issued to the Plaintiff, wherein Defendant*



*admitted that the discussion covered two issues i.e. (a). negotiation of 60 TPH pan batch type 3 nos. and (b). options to settle the existing orders issued to SS Engineers. It may also be relevant to mention here that offer with respect to 60 TPH was also given by the Defendant for closure/ adjustment of the advance money in his possession. The contents of the email dated 14.08.2016 issued by the Defendant clearly reflect that the negotiation was going on between the Parties with respect to advance money paid by Plaintiff to Defendant.*

*20a. That w.e.f. February, 2016 to 14.07.2019, the Parties explored various options for negotiation qua adjustment of amount of Rs. 24.00 Crores available with the Defendant of the Plaintiff, which had been paid by the Plaintiff under LOI and was yet unutilized. The Defendant vide his reply dated 14.07.2019 refused to refund the amount due and payable to the Plaintiff, which as such, amounted to complete break down of the negotiation going on between the Parties.*

*27. That the cause of action for filing the present suit arose when the Parties entered into LOI dated 28.09.2011. It arose when the Defendant furnished the Bank Guarantees and extended the same from time to time. It arose when the Parties negotiated for adjustment of advance amount in alternative supplies. The cause of action arose when the negotiation failed and the plaintiff terminated the contract on 8.7.2019. The cause of action arose when the defendant issued false & frivolous reply dated 14.7.2019. The cause of action also arose when plaintiff got legal notice issued on 24.7.2019. The cause of action arose when the Award dated 25.10.2019 was passed by the Ld. Arbitrator granting Rs. 6 Crores in favour of the plaintiff and against the Bihar Government with respect to payment made by plaintiff to the defendant. The suit is within limitation.”*



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10. The Defendant has filed a reply to I.A. 13426/2023.

11. It is trite law that if an application under Order VII Rule 11 of the CPC has been filed by the Defendant for rejection of the Plaintiff and subsequently, the Plaintiff has filed an application under Order VI Rule 17 of the CPC for amendment of Plaintiff, then the Courts must decide the latter first and then consider the effect of the amended Plaintiff on the application under Order VII Rule 11 of the CPC, for the reason that any amendment to the Plaintiff, if permitted, dates back to the filing of the Plaintiff.

12. Learned Senior Counsel for the Plaintiff states that by way of the proposed amendment, no new case has been made out and the amendment only sets out the relevant facts which were not mentioned in the Plaintiff, to explain as to why the Suit was filed in the year 2019 and further brings out the nature of negotiations, discussions and deliberations which are continuously taking place between the parties by way of meetings and correspondences to demonstrate as to when all the cause of action arose.

13. It is the case of the Plaintiff that it acquired the Motipur Sugar Unit from Bihar State Sugar Corporation Ltd., pursuant to the global tender. Consequently, a lease for a period of 60 years was granted by the Government of Bihar.

14. For installation of the machinery in the Motipur Sugar Unit, negotiations started between the Plaintiff and Defendant and a LOI was issued by the Plaintiff *qua* the Defendant for the said purpose of installation of the plant and the machinery.

15. A sum of Rs. 24 crore was paid by the Plaintiff to the Defendant on 01.11.2011. However, unfortunately, the Project was put on hold because of certain disputes between the land owners and the Government of Bihar. A



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writ petition was also filed before a Division Bench of the Patna High Court challenging the lease of the Motipur Sugar Unit in favor of the Plaintiff. The writ petition was dismissed, and the decision of the Patna High Court was taken up for challenge before the Apex Court in SLP (Civil) No. 14616-18 of 2014, which is still pending for adjudication.

16. It is submitted on behalf of the Plaintiff that the Project was put on hold, but the Contract between the Plaintiff and the Defendant was never terminated. It is also stated that the fact that the Plaintiff had terminated the Contract with the Government of Bihar is immaterial for the purpose of adjudicating the application under Order VII Rule 11 because an application under Order VII Rule 11 is to be decided only on the basis of the Plaintiff's averments. It is also stated that the Contract was being extended from time to time, which is evident from the fact that the Advance Bank Guarantee was continuously extended by the Defendant, which indicates a subsisting relationship between the parties.

17. Learned Senior Counsel for the Plaintiff submits that, no doubt the Plaintiff had invoked arbitration proceedings against the Government of Bihar but at the same time, proposals were being exchanged between the Plaintiff and the Defendant, where the Plaintiff requested the Defendant to consider setting up of the plant and the machinery on the other sites of the Plaintiff. These correspondences exchanged between the parties are also made part of the documents filed along with the Plaintiff's application.

18. It is stated by the learned Senior Counsel for the Plaintiff that since no new cause has been pleaded, there is no attempt by the Plaintiff to agitate a dead claim by way of the amendment and only facts which transpired between the parties before the filing of the Suit and not after, are being



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canvassed in the amendment, there ought to be no impediment in allowing of the amendment of the Plaintiff.

19. The application seeking amendment of the Plaintiff has been objected to by the Defendant, by stating that the Plaintiff is attempting to raise contradictory pleas, and the amendments which are sought to be introduced, cannot co-exist with the Plaintiff as originally framed and filed before the Court.

20. It is argued by the learned Senior Counsel for the Defendant that the application seeking amendment was filed only after arguments under Order VII Rule 11 of the CPC were advanced by both the sides and nothing has been mentioned in the application seeking amendment of the Plaintiff as to why these facts were not mentioned in the Plaintiff. He further states that the present Suit is a commercial suit and Order XI Rule 1(5) of the CPC as amended by the Commercial Courts Act, 2015, has to be kept in mind and the reasons given in the instant application under Order VI Rule 17 of the CPC does not satisfy the test laid down in Order XI Rule 1(5).

21. Heard learned Senior Counsels for the Parties.

22. The law applicable to the application under Order VI Rule 17 is now crystallized. The Apex Court in Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Others, (2022) 16 SCC 1 after considering the gamut of case laws has laid down the parameters as how the application under Order XVI Rule 1 has to be dealt with.

23. The Apex Court has held that if any amendment does not result in injustice, the amendment does not seek to withdraw a clear admission made by the party which confers right on the other side and if the amendment does not raise a time-barred claim resulting in divesting of the other side's



valuable accrued right, the amendment should be liberally dealt with. Paragraph No.71 of the Judgment, which deals with the applicability of Order II Rule 2 in the case of amendment of plaint which is not considered and also other principles to be followed by the courts when dealing with an application seeking amendment of the Plaint is reproduced:-

*“71. Our final conclusions may be summed up thus:*

*71.1. Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negatived.*

*71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word shall, in the latter part of Order 6 Rule 17CPC.*

*71.3. The prayer for amendment is to be allowed:*

*71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.*

*71.3.2. To avoid multiplicity of proceedings, provided*

- (a) the amendment does not result in injustice to the other side,*
- (b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and*
- (c) the amendment does not raise a time-barred claim,*



*resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*71.4. A prayer for amendment is generally required to be allowed unless:*

*71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

*71.4.2. The amendment changes the nature of the suit.*

*71.4.3. The prayer for amendment is mala fide, or*

*71.4.4. By the amendment, the other side loses a valid defence.*

*71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

*71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

*71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

*71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*



*71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

*71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi* [*Vijay Gupta v. Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897].”*

24. Applying the parameters as stated by the Apex Court to the facts of this case, this Court is of the opinion that the amendments which are being sought for by the Plaintiff, are in nature of elaborating the facts based on the documents which are already on record and to demonstrate that the



negotiations between the parties were going on and the negotiations only broke when the Plaintiff finally terminated the contract with the Defendant in the year 2018.

25. At this juncture, it is apposite to refer to judgment of the Apex Court in Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited, (2020) 14 SCC 643. Paragraph No. 28 of the said judgment which deals with the effect of negotiations on limitation reads as under:-

*“28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.”*

26. The said Judgment in Geo Miller (Supra) has been followed by a Co-ordinate Bench of this Court in Alstom Systems India Pvt Ltd v. Zillion



Infraprojects Pvt Ltd, (2022) SCC OnLine Del 5312. Paragraph No. 20 of the said Judgment reads as under:-

*“20. Para 28 of the judgment in Geo Miller, on a holistic reading, holds that, where the parties were bonafide negotiating towards an amicable settlement, and the negotiation history was before the Court (in this case, the learned Arbitral Tribunal), the Court was required to find out the “breaking point” at which any reasonable party would have abandoned efforts in arriving at the settlement and contemplated referral of the dispute to arbitration. Once this “breaking point” is ascertained that date “would then be treated as the date on which the cause of action arises for the purpose of limitation”.”*

27. The arguments taken by the Defendant under Order XI Rule 1 (5) will be taken up by this Court while considering an application being I.A. 14204/2023 which has been filed by the Plaintiff under Order XI Rule 1 (5) of the CPC as to whether the Plaintiff has satisfactorily explained as to why these documents are not filed along with the plaint and only the Advance Bank Guarantee and the letters with respect to the bank have been filed along with the documents in any event the Advance Bank Guarantee were being read out periodically.

28. In view of the above, this Court is of the opinion that the parameters under Order VI Rule 17 of the CPC are now satisfied and the same is allowed.

29. The application is disposed of.

30. Let the amended Plaint/written statement be filed within a period of four weeks. Thereafter, let the amended written statement be filed as per the time stipulated under law.



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31. List before the learned Joint Registrar for further proceedings on 11.05.2026.

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32. The present application under Order VII Rule 11 has been filed by the Defendant seeking rejection of the plaint.

33. Learned Senior Counsel for the Defendant contends that even if the I.A. No. 13426/2023 is allowed, it will not still bring the Plaintiff within the period of limitation. It is stated that when the Plaintiff terminated the contract with the Government of Bihar, the contract could not be performed at all and therefore, the cause of action would start running against the present Defendant also from that day.

34. It is further stated that the very same claim was raised against the Government of Bihar in the arbitration proceedings and nothing prevented the Plaintiff from raising the same claim against the Defendant also by separate proceedings within the period of limitation, which commenced from the date on which the contract with the Government of Bihar was terminated.

35. *Per contra*, learned Senior Counsel appearing for the Plaintiff contends that the negotiations between the parties were still going after 2013 and the termination of the contract by the Plaintiff with the Defendant, took place only in the year 2018. It is further stated that the Plaintiff and the Defendant were under negotiations which fact is evident from the correspondences between the parties and that the breaking point took place only in the year 2018.

36. The law relating to rejection of a plaint under Order VII Rule 11 of the CPC is crystallized through various judgments of the Apex Court. The



Apex Court in Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510, has held as under:

““13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In *Saleem Bhai v. State of Maharashtra* [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under



*Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)*

*17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*

*18. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*

*19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.*

*20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the*



*Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”*

37. It is further settled law that limitation is a mix question of law and fact. The material on record does demonstrate the fact that the Advance Bank Guarantee were constantly renewed till 14.08.2016 which demonstrates that the parties decided to go ahead with the Contract, even though the Plaintiff had terminated the contract with the Government of Bihar 21.10.2013. Despite the contract being terminated, the Defendant kept the Advance Bank Guarantee alive, which is a fact that the negotiations were on.

38. The documents filed along with the Plaint also indicate that there were certain negotiations going on for installation of plant and the machinery at another site of the Plaintiff, which is demonstrated by the Letters dated 27.06.2018 and 18.10.2018, which is even after the Advance Bank Guarantee had stopped being renewed. This, in the opinion of this Court, does indicate that the parties were under negotiations at least till 18.10.2018 regarding the alternate places where the plants and machinery could be installed. The effect of these documents, as to whether it was only the one-sided correspondences or not will be all matters of proof in trial and cannot to be decided at the stage of Order VII Rule 11.

39. As per the Plaint, the Contract was terminated by the Plaintiff against the Defendant only on 18.10.2018 and therefore, applying the law laid down



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in the Geo Miller (supra), limitation can be calculated only from the date when the contract was terminated. The effect of the said Letter dated 18.10.2018 as well as the issue as to whether the time for filing the instant Suit had already started running in the year 2014 or not, will all be decided in trial and not at this juncture.

40. Therefore, this Court is not inclined to accept the submissions advanced on behalf of the Defendant at this juncture.

41. However, it is made clear that all these issues will be dealt with at the stage of trial and that all the observations made in this Order are only limited to issue as to whether the Plaint should be rejected or not at this stage under Order VII Rule 11 of the CPC and are not a final conclusion on the issue of limitation, which would be decided in trial after considering all the material on record at the relevant time.

42. The present Application, accordingly, stands rejected.

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43. List on 11.05.2026 before the Joint Registrar.

44. List before the Court on 29.07.2026.

**SUBRAMONIUM PRASAD, J**

**MARCH 24, 2026**

*Prateek/AP*