IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

BEFORE
THE HON'BLE JUSTICE BISWANATH SOMADDER
AND
THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

A.P.O. NO. 3 OF 2017

With
C.S. NO. 369 OF 2014

MERLIN PROJECTS LIMITED
VERSUS
PAWAN KUMAR AGARWAL
With
A.P.D. NO. 6 OF 2017
With
C.S. NO. 369 OF 2014

MERLIN PROJECTS LIMITED
VERSUS
PAWAN KUMAR AGARWAL

For the Appellant: Mr Abhrajit Mitra Sr. Adv.,
Mr. Aniruddha Roy, Adv.,
Ms. Shankersan Sarkar, Adv.,
For the Respondent: Mr. Utpal Bose, Sr. Adv.,
Mr. Pushan Kar, Adv.,
Mr. Aniruddha Sinha, Adv.,
Mr. Sagnik Mazumdar, Adv.,
Mr. Rishav Karnani, Adv.

Heard on: 07.11.17, 11.01.18, 18.01.18, 25.01.18, 06.02.18, 08.02.18, 13.02.18, 15.02.18, 22.06.18, 29.06.18, 20.07.18, 03.08.18, 17.08.18, 24.08.18, 16.11.18, 30.11.18, 11.1.19, 01.02.19, 01.3.19, 29.03.19, 14.06.19, 21.6.19, 05.07.19, 19.07.19, 02.08.19, 16.8.19 and 30.08.19

Judgment on: 01.10.2019.

BISWANATH SOMADDER, J. :-

1. The two appeals, being A.P.O. No. 3 of 2017 and A.P.D. No. 6 of 2017, arise out of a judgment and order passed by a learned Single Judge on July 20, 2016, wherein an application,

being G.A. No. 3675 of 2016, to amend a plaint in a civil suit, being C.S. No. 369 of 2014, was rejected and an application,being G.A. No. 1118 of 2015, for the dismissal of the said suit, was upheld under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

2. The facts of the case, for the purposes of deciding the two appeals, are as follows:-

i. The appellant, i.e. Merlin Projects Limited (hereinafter “Merlin”) entered into negotiations with the co-owners of a plot of land, under Municipal holding No. 86/90, B.L. Shah Road, P.S. Behala, Kolkata-700 053(hereinafter “the said premises”), for the purposes of developing/purchasing the said premises.

ii. Pursuant to such negotiations, Merlin entered into a Memorandum of Understanding (hereinafter "M.O.U.") on August 24, 2002with Pawan Kumar Agarwal and Giniya Devi Agarwal, being the defendants in the suit C.S. No. 369 of 2014, who jointly had a 1/12thundivided share in the ownership of the said premises. In this M.O.U., the parties incorporated the broad terms of their arrangement for developing the said premises with the expectation of a development agreement later on. Merlin also transferred Rs.11,000/- to Pawan Kumar Agarwal and Giniya Devi Agarwal, under the said M.O.U., as an interest free security deposit.

iii. The development agreement contemplated under the said M.O.U. with Pawan Kumar Agarwal and Giniya Devi Agarwal could not be executed, and Rs.11,000/- paid as a security deposit by Merlin was refunded to the latter by a payment instrument dated December 8, 2008, with the said M.O.U. being cancelled by an undated letter before the return of the security amount. However, Merlin claimed to have not encashed the said Rs.11,000/- and stated that it continued to have possession over the said premises.

iv. According to Merlin, there were negotiations thereafter.Pawan Kumar and Giniya Devi agreed to not cancel the said M.O.U. whilst giving a go-by to the cancellation, inter alia, by not attempting to remove Merlin's men from the said premises. When Merlin allegedly found that Pawan Kumar and Giniya Devi along with the other co-owners of the said premises were trying to deal with the said premises or dispose of their interest in it – in alleged contradiction of their purportedly extended M.O.U. – it filed a suit on July 17, 2014, i.e. C.S. No. 369 of 2014, in this Court,wherein it was prayed for:-

(a) A decree for specific performance against Pawan Kumar and Giniya Devi, jointly and severally, of the terms and acts agreed under the said M.O.U. of August 24, 2002.

(b) Alternatively, a decree for declaration that the said M.O.U. of August 24, 2002 was valid and subsisting and a decree for specific performance thereof.

(c) A decree for permanent injunction restraining Pawan Kumar and Giniya Devi, and their men, servants and agents from dealing with, disposing of, encumbering, alienating or creating any third party interest with regard to their shares.

(d) Temporary injunction.

(e) Receiver/Commissioner

(f) Attachment/Attachment before judgment.

(g) Costs

(h) Such further or other relief or reliefs.

v. The defendant no. 2 in the instituted suit, i.e. Pawan Kumar Agarwal filed an application on April 2, 2015, being G.A. No. 1118 of 2015, praying for the following reliefs:-

(a) That the filed plaint be rejected and/or taken off the file and the suit being C.S. No. 369 of 2014 be dismissed.

(b) In the alternative, the leave granted under clause 12 of the Letters Patent be revoked.

(c) Stay of all further proceedings in the suit named during the pendency of the application.

(d) Ad interim order in terms of prayers above.

(e) Costs of and incidental to this application be borne by Merlin.

(f) The passing of such other or further order or orders as the Hon'ble Court may deem fit and proper.

This application was based, inter alia, on the grounds thatthe suit was barred by the laws of limitation: that the suit did not declare a right to sue or a cause of action; that the suit did not involve a concluded agreement that was capable of enforcement since the said M.O.U. had been terminated in December, 2008 with the security being repaid; that the defendant no. 1, i.e. Giniya Devi had passed away on December 21, 2013; and that the suit lay outside the Calcutta High Court's Ordinary Original Civil Jurisdiction.

vi. In response to this application, Merlin filed an affidavit-in-opposition that was affirmed on November 19, 2015. In this affidavit, Merlin denied all allegations and contentions made by the defendant no. 2 in the application, being G.A. No. 1118 of 2015. The affidavit stated that the demise of the defendant no. 1, i.e. Giniya Devi Agarwal on December 21, 2013 was not brought to the knowledge of the plaintiff by the defendant no. 2, i.e. Pawan Kumar Agarwal. Merlin claimed that it had requested Pawan Kumar Agarwal for disclosure of the names of the heirs of Giniya Devi by its advocate's letter of August 24, 2015, to which it had received no reply. Merlin also claimed in the affidavit that upon further investigation, it had found the certified copy of an agreement dated June 5, 2014, between all the branches of the Agarwalla family, who owned the said premises, including the defendants in C.S. No. 369 of 2014, on one hand and one veteran developer, Jagdamba Commercial Pvt.Ltd.(in short "Jagdamba"), on the other

hand. It was alleged that there were negotiations between the defendants and Jagdamba since September, 2009 with unregistered agreements therafter, while simultaneously Merlin had been represented with the willingness of proceeding with the said M.O.U. by the defendants and other owners of the said premises. Jagdamba – as alleged by Merlin – was thus supposed to be a necessary party to be added to the suit, having purportedly acted in collusion and conspiracy with all the members of the Agarwalla family despite being well aware of the plaintiff's agreements in respect of the said premises including the said M.O.U.

vii. Apart from trying to make out a case for addition of Jagdamba as a party to the suit, Merlin sought for the other co-owners of the said property, i.e., other members of the Agarwalla family to be added as parties to the suit. Merlin also sought to bring some further facts to light by the aforesaid affidavit in order to prove the subsistence and continuance of the said M.O.U. It alleged the existence of a jural relationship by furnishing electronic mail excerpts between Merlin and the defendants' advocate, Mr. NirupamSaraogi, dated December 30, 2008 and January 2, 2009, which supposedly led to the finalisation of the development agreement evolving from clause 3 of the said M.O.U. that was approved by the senior-most member of the Agarwalla family (the owners of the said premises), one Narayan Agarwalla. It was also alleged that the conclusion of the development agreement was reflected in the payment of legal fees through cheques, being no. 582707 on December 30, 2008 and no. B37614 on May 20, 2008, that were made in favour of Mr. Saraogi, the advocate involved in the preparation of the purported development agreement. In addition Merlin claimed possession of portions of the premises, namely, godowns 1, 2 and 3.

viii. In response to Merlin's affidavit, the defendant no. 2, i.e.,Pawan Kumar Agarwal, filed an affidavit-in-reply affirmed on December 15, 2015 in respect of the said application, being G.A. No. 1118 of 2015. This affidavit – apart from denying all contentions in the plaintiff's affidavit – stated that there had been gross suppression of

material facts by the plaintiff, i.e. Merlin; the plaintiff was not in possession of the suit premises or any part thereof; the suit was also barred by section 34 of the Specific Relief Act, 1963, along with the laws of limitation; most pertinently, the plaintiff in relation to the suit property on or about November 10, 2009 had filed a suit for temporary injunction before the Court of the learned 5th Civil Judge (Junior Division) at Alipore, being Title Suit No. 3302 of 2009 (***Merlin Projects Ltd. v. Sri Amar Chand Agarwal &Ors.***), wherein Merlin had claimed their alleged right over the suit property by virtue of the said M.O.U.; from a meaningful reading of the pleadings of Title Suit No. 3302 of 2009 and C.S. No. 369 of 2014, it would transpire that both these case were more or less the same, thus being barred by section 10 of the Code of the Civil Procedure, 1908 as well as by Order VII, Rule 11 of the said Code.

ix. The plaintiff, in the instituted suit C.S. No. 369 of 2014, i.e. Merlin filed an amendment application on November 19, 2015, being G.A. No. 3675 of 2015. This application, at the outset, sought for the addition of parties necessary for complete and effective adjudication of all disputes arising out of the said M.O.U. dated January 24, 2002due to the death of defendant no. 1 as on December 21, 2013 and the subsequent agreement between Jagdamba and the Agarwalla family dated June 5, 2014. The parties sought to be impleaded were as follows: Amar Chand Agarwal, Kailash Chand Agarwal, Om Prakash Agarwala, all sons of late Shrinarain Agarwal, Raj Kumar Agarwal, son of Novranglal Agarwal, Sitaram Agarwal, Ramavtar Agarwal, Kishan Lal Agarwal, Prahlad Agarwal, all sons of late Ganpat Lal Agarwal, Phool Devi Agarwal, Binod Kumar Agarwal, Pramod Kumar Agarwal, Ashok Kumar Agarwal, Sarita Parasrampuria, Sabita Agarwal and Jagdamba Commercial Pvt. Ltd. Secondly, the amendment application sought to reassert the claims of fact that the plaintiff had made in the affidavit-in-opposition affirmed on November 19, 2015 (see (vi) and (vii) above). In addition, the application asserted that the plaintiff sought for a perpetual injunction against the creation of third party interests for the protection of its possession of godowns no. 1, 2 and 3 in the said premises. Thereafter, by a supplementary affidavit affirmed on May 2, 2016,the plaintiff

also sought to correct some grammatical and clerical errors in the proposed application for amendment of the original plaint.

x. The defendant no. 2, i.e., Pawan Kumar Agarwal filed an affidavit-in-opposition affirmed on May 16, 2016 to the aforesaid application, being G.A. No. 3675 of 2015, denying the allegations levelled therein and stating, inter alia, that : (i) the application for amendment filed by the plaintiff could not stand for the purpose of recording the death of the very person against whom the suit had been filed and since the death was prior to the institution of the suit, the application should fail on that ground alone; (ii) the amendment sought would not only change the nature and character of the suit but would also introduce a complete new cause of action; (iii) the paragraphs sought to be incorporated in the suit by the amendment were beyond the scope of the said suit and cause of action purported therein; (iv) it was evident from a meaningful reading of the plaint that Jagdamba did not appear to be either a proper or necessary party, as any alleged agreement between Jagdamba and the co-owners of the suit property did not affect the issues of the present suit; (v) the inclusion of all other parties in view of the purported development agreement made pursuant to the said M.O.U. also had no ground, as there existed no executed development agreement but merely a draft unsigned agreement, and the presence of all Agarwallas was not necessary for adjudication of disputes arising out of the said M.O.U. dated August 24, 2002.

xi. The learned Single Judge, after perusal of the facts and pleadings on record, delivered the impugned judgment on July 20, 2016. Relevant parts of the judgment are reproduced hereinbelow:-

> ".....The substance of the suit as originally filed was that the plaintiff had entered into a memorandum of understanding with the original defendants (the first of whom was dead before the suit was filed; but, thankfully, the second was the only heir of the deceased first defendant) in the year 2002 which contemplated that a development agreement would be entered into by the original defendants and the other co-owners of a Tollygunge property. The original defendants held 8.33% undivided share in the entire property. The memorandum of understanding, a copy whereof is incorporated as a part of the original plaint, envisaged a development agreement to be concluded within a year of the execution of such memorandum. The development agreement in respect of the entirety of the

premises was never entered into or executed. Though the original defendants were not required to expressly terminate the memorandum of understanding of 2002 as it was only an understanding to enter into a development agreement, they effected a formal termination in December, 2008 by returning the token sum of Rs.11, 000/- which had been received from the plaintiff. The original plaint was founded on the plaintiff not encashing the instrument by which the sum of Rs. 11, 000/- was returned by the original defendants. It was sought to be asserted that since the original memorandum of understanding of 2002 still survived, the plaintiff was entitled to specific performance of the development agreement envisaged therein. In other words, an understanding to enter into a development agreement of 12 years prior to the institution of the suit was cited for bringing a suit to claim title to a valuable property.

By the amendment which has been proposed, the plaintiff relies on a draft development agreement, which is unexecuted and unsigned, apparently prepared by a lawyer who may have been engaged by the plaintiff to take care of the partition in the Agarwala family."

".....It is also evident from the proposed amended plaint that all the co-owners of the land in question have entered into a development agreement with the proposed sixteenth defendant [i.e. Jagdamba Commercial Pvt. Ltd.] and such agreement has been registered."

".....The original defendants, or the surviving original defendant, has applied for rejection of the plaint. The rejection is on the ground that the claim is hopelessly barred by limitation, even if the proposed amendment is taken into account; and, there does not appear to be any cause of action for the suit being instituted or the same being continued with. The first defendant says that in view of Article 54 in the Schedule to the Limitation Act, 1963, this suit could not have been instituted against the original defendants in 2014 nor could it had been instituted against the proposed added defendants at the time that the amendment application was filed in 2015. The surviving original defendant has relied on the judgments of the Supreme Court reported at (1997) 2 SCC 611 and AIR 2011 SC 41. In either case, the Court recognised that the claim for specific performance was carried after the expiry of the period of limitation. Paragraph 13 of the plaint as it now stands claims that the memorandum to enter into a development agreement was entered into in August, 2002. The subsequent averments speak of the plaintiff paying the token amount of Rs.11,000/- to the original defendants and the plaintiff obtaining possession of the part of the premises in the possession of certain branches of the Agarwala family almost simultaneously. The impression given in the original plaint is that the plaintiff is in possession of the premises, though it is evident from the application to amend the plaint and the proposed amendments that the plaintiff is not in possession of the entirety of the premises but may only be in possession of a couple of godowns thereat. It is not even clear from the plaint or its proposed amended version as to what is the extent of the area covered by the suit property."

".....In addition, the last sentence of paragraph 21I of the proposed amended plaint has been placed with much vigour to assert that the cancellation of the agreement of 2002 had been given a go-by. It is also mentioned elsewhere in the plaint that the fact that the original or the proposed added defendants had given a go-by to the cancellation of the agreement in 2002 is evident from the fact that they had not attempted to dispossess the plaintiff from the couple of godowns at the property that the plaintiff claims to be in possession of.

It is elementary that a suit for specific performance of a contract has to be filed within three years of the date fixed for the performance; or if no such date is fixed, within three years of the time when the plaintiff has notice that the performance is refused.

As far as the original defendants are concerned, it is evident that the time fixed for the performance of whatever was required to be performed by the 6 August, 2002 agreement expired after a year of the execution of such agreement. In any event, such agreement was specifically terminated by what is described in the plaint to be an undated letter which was made over by the original defendants to the plaintiff along with an instrument for payment dated December 8, 2008 for the refund of the sum of Rs.11,000/-. There is no averment in the plaint of anything done by the original defendants thereafter for the plaintiff to obtain the benefit of any provision of the Act of 1963 for the clock of limitation to stop running and the cause of action qua the agreement of 2002 to be alive to be pursued at the time of the institution of the suit in 2014. Merely because the plaintiff did not encash the instrument for payment or the original defendants or any other took no step to evict the plaintiff from a part of the premises allegedly under the plaintiff's possession would be of no relevance in counting the period of limitation.

By the proposed amendment, the plaintiff claims a veritable development agreement having been entered into between the plaintiff and original defendants and all the owners of the land in question. However, there was never any development agreement entered into between the plaintiff and the original defendants or between the plaintiff and the other owners. The unsigned and undated document of 2009 which is cited as the development agreement cannot be seen to be a concluded contract and, specific performance thereof would not be permissible nor would the plaintiff be entitled thereto."

".....If the proposed amendments to the plaint are taken into consideration and the proposed amended plaint is seen to be one filed on the date of the institution of the suit, even then the plaintiff would have no cause of action against the Agarwala defendants and, as a consequence, against the proposed sixteenth defendant. At the highest, the nebulous agreement between the plaintiff and the proposed added defendants was entered into in or about the year 2009. The suit was instituted in 2014 and even if the proposed amendment dates back to the date of the institution of the suit, the claim on such count would be barred by limitation.

Since the suit as originally instituted was after the expiration of the period prescribed by the laws of limitation, it was incumbent on the plaintiff to plead the grounds upon which exemption from such law was claimed. Again, since the proposed amendment would, at the highest, date back to the date of institution of the suit, which date was after the expiration of the period prescribed by the laws of limitation in respect of the additional reliefs claimed, the plaintiff ought to have indicated the grounds to explain the delay or claim exemption in accordance with law therefor. The original plaint and the proposed amended plaint are singularly lacking in such aspect. Indeed, it has been submitted on behalf of the plaintiff that the proposed amendment seeks merely to amplify what is already stated in the original plaint; though it is evident from the proposed amended plaint that an altogether different claim is sought to be made by the proposed amendment."

".....If the plaintiff has no cause of action or no right to pursue the cause of action against the Agarwala defendants, the plaintiff has no right to chase the proposed sixteenth defendant, at least not in this Court or via the present suit. Since the suit fails primarily on the ground of limitation and the plaint disclosing no cause of action, the aspect of this suit being a suit for land has not been gone into; though plaintiff may have failed even on such count."

"……The plaint relating to CS No. 369 of 2014 is dismissed on being ex-facie barred by limitation and not disclosing any cause of action. As a consequence, GA No. 1118 of 2015 succeeded and GA No. 3675 of 2015 failed."

3. Before us two questions of law arise:-

i. Whether the learned Single Judge was right in applying the provisions contained under Order VII, Rule 11 of the Code and deciding that the limitation period had expired, without allowing the application for amendment of the plaint or making determination of facts in relation to the amended plaint?

ii. Whether the learned Single Judge was right in admitting the application for rejection of the plaint and in deciding that no cause of action was disclosed by the plaintiff in the present case?

4. The submission advanced on behalf of the appellant-Merlin was very attractive, initially. Learned senior counsel had submitted that the learned Single Judge ought to have allowed the plaint to be amended and ought to have proceeded to decide the limitation question, only after making certain determination of facts; such as, whether the appellant had certain godowns in the said premises, as stated in the amended plaint and/or whether the purported development agreement existed. In this context, the learned senior counsel placed reliance on two decisions of the Hon'ble Supreme Court in ***C. Natarajan v. Ashim Bai & Anr.***, reported in **A.I.R. 2008 S.C. 363**, (paragraphs 10-13, 18) and ***Nandkishore Lalbhai Mehta v. New Era Fabrics Pvt. Ltd.*** reported in **(2015) 9 S.C.C. 755**, (paragraphs 8, 9, 35-37).

5. We notice that the Hon'ble Supreme Court at paragraph 10 of ***Natarajan (supra)*** had followed its earlier decision in ***Popat and Kotecha Property v. State Bank of India Staff Association***, reported in **(2005) 7 S.C.C. 510**. ***Popat (supra)***, in turn, refers to and relies upon ***Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner & Ors.***, reported in **(2004) 3 S.C.C. 137** which lays down the general principles for examining a plaint and its maintainability under provisions of Order VII Rule 11. These principles are reproduced hereinbelow:

> "12. 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] .)

13. 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.

14. 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.

15. 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 or 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."

6. In relation to the question of limitation barring a suit under Order VII, Rule 11 of the C.P.C, 1908, the general principles of law laid down in ***Sopan (supra)***, were taken into consideration both in ***Popat (supra)*** and ***Natarajan (supra)***. In ***Natarajan***, the cause of action arose in 1994, when there was alleged trespass to the plaintiff's property, while the suit therein was filed in 2001. The suit sought for the reliefs of declaration of plaintiff's title to the suit property and consequential injunction restraining the defendants from interfering with plaintiff's possession. In the alternative, recovery of vacant possession. The trial judge dismissed an application for rejecting the plaint on the ground of limitation, while the High Court reversed the trial court's ruling by stating that the three year limit had expired for the main relief sought for, i.e. declaration of title. The Supreme Court, while allowing the appeal observed as follows in paragraph 19:

"We have noticed hereinbefore that the defendant, inter alia, on the plea of identification of the suit land vis-a-vis the deeds of sale, under which the plaintiff has claimed his title, claimed possession. The defendant did not accept that the plaintiff was in possession. *An issue in this behalf is, therefore, required to be framed and the said question is, therefore, required to be gone into. Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In a situation of this nature, in our opinion, the application under Order VII Rule 11(d) was not maintainable*. The contentions raised by the learned counsel for the respondent may have to be gone into at a proper stage. Lest it may prejudice the contention of one

party or the other at the trial, we resist from making any observations at this stage." (e.a.)

7. The ratio of ***Natarajan (supra),*** which follows the general principles laid down in ***Sopan (supra)*** implies that the rejection of a plaint on the ground of limitation under the provisions of Order VII, Rule 11 may require a determination of fact requiring evidence to be adduced – only in certain cases – so as to allow the Court to determine when the limitation period begins. In the instant case, however, the original plaint never asserted the existence of the development agreement or the possession of certain godowns in the said premises. Rather, an entirely new case was sought to be made out in the amendment application. As such, the learned Single Judge was not required to conduct a fact finding exercise in order to decide on the question of limitation.

8. Going into such a fact-finding enquiry in order to arrive at such a conclusion would offend the very basic principles governing the scope of Order VII, Rule 11(a) of the Code of Civil Procedure, 1908. It would mean allowing the plaintiff to introduce a new case by way of an amendment to the plaint that would change the very cause of action of the suit from an alleged violation of an M.O.U. to an alleged violation of a purported development agreement made pursuant to that said M.O.U., as rightly held by the learned Single Judge. In other words, our present case is quite distinguishable from ***Natarajan (supra)***. That case dealt with a fact situation where the Court had to determine whether the plaintiff was actually in possession or not since the factum of such possession was being disputed by the defendant, as stated in paragraph 9 of ***Natarajan (supra)***. The situation here is completely different. Acceptance of the amended plaint and not rejecting the original plaint on the ground of limitation is to allow a suit to metamorphose into a new cause of action, which clearly circumvents the laws of limitation that bars the suit and requires rejection of the plaint.

9. So far as ***Nandkishore (supra)*** is concerned, the appellant therein had waived the stipulation/condition of obtaining the consent of the labour, but inspite of the efforts, the agreement never materialised. The question of the suit being barred by limitation never arose and therefore the applicability of Order VII, Rule 11(d) was not even an issue before the Court.

10. This brings us to the second issue. On facts we notice that the M.O.U. had been cancelled by the defendants. The cause for seeking an action, inter alia, for specific enforcement of the M.O.U., therefore, does not exist since the M.O.U itself does not exist and/or subsist. In a recent pronouncement of the law by the Hon'ble Supreme Court in ***Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar v. Krishna Nandan Singh &Anr.***, on September 2, 2019, in Civil Appeal No. 6760 of 2019, it was held as follows in paragraph 10:

> "10. This Court in ***Church of Christ Charitable Trust and Educational Society Represented by its Chairman v. Ponniamman Educational Society Represented by its Chairman/Managing Trustee*** [reported at **(2012) 8 SCC 706**] has referred to the earlier judgment of this Court in ***A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem*** [reported at **(1989) 2 SCC 163**] to explain that the cause of action means every fact which, if traversed would be necessary for the plaintiff to prove in order to seek a decree and relief against the defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the defendant to infringe and violate the right or breach an obligation. In ***T. Arivanandam v. T.V. Satypal and Another*** [reported at **(1977) 4 S.C.C. 467**] this Court has held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('Code', for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action."

11. Following the ratio as discussed above, it can, therefore, be held that in the facts and circumstances of the instant case, the same is squarely applicable as the plaintiff has been unable to disclose a clear right to sue and a mere contemplation or possibility that a right may be infringed without any basis for that right – but solely depending upon the amendment application being allowed – would not be sufficient to hold that the plaint discloses a cause of action. Thus, the second issue is answered in the affirmative.

12. The learned Single Judge's decision, therefore, requires no interference and consequentially, both appeals are liable to be dismissed and stand accordingly dismissed. No order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on a priority basis.

(MOUSUMI BHATTACHARYA, J.) **(BISWANATH SOMADDER, J.)**

Later

After the judgment has been pronounced in Court, learned advocate representing the appellant prays for stay of operation of the judgment which is considered and refused.

(MOUSUMI BHATTACHARYA, J.) **(BISWANATH SOMADDER, J.)**