IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 434 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 87 OF 2022

PRIYANKA COMMUNICATIONS (INDIA) PVT. LTD. AND OTHERS)...APPLICANTS

IN THE MATTER BETWEEN

TATA CAPITAL FINANCIAL SERVICES LTD.)...PLAINTIFF

V/s.

PRIYANKA COMMUNICATIONS (INDIA) PVT. LTD. AND OTHERS)...DEFENDANTS

Mr.Somiran Sharma a/w. Mr.Rehmat Lokhandwala and Mr.Abuzar Khan i/by Pan India Legal Services LLP, Advocate for the Applicants/Original Defendants.

Mr.Chetan Kapadia, Senior Advocate a/w. Mr.Rohan Sawant, Mr.Aman Saraf, Ms.Aishwarya Mehta i/by Manilal Kher Ambalal & Co., Advocate for the Respondent/Plaintiff.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 17th DECEMBER 2026
PRONOUNCED ON : 8th JUNE 2026

ORDER :

1. This Interim Application has been filed by the Applicant/Original Defendants seeking rejection of the plaint in the Commercial Summary

Suit No.87 of 2022 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC").

2. The Respondent / Original Plaintiff has filed the present Commercial Summary Suit *inter alia* seeking a decree against the Applicants/ Original Defendants in respect of the amount due and payable by the Applicants / Original Defendants under the Working Capital Demand Loan ("WCDL") dated 2nd August 2018 extended by the Respondent / Original Plaintiff to the Applicants / Original Defendants as well as under the Letters of Guarantee of Defendants no.2 and 3 also dated 2nd August 2018 in respect of the said facility for an amount of Rs.36,10,74,412.84 outstanding as on 1st September 2020 along with interest, other costs, charges and expenses on the basis that the liability arising out of the said facility has been admitted by the Applicants / Original Defendants in its Balance Sheet of the year 2018.

3. The brief facts of the case are that around 2015, the Respondent / Original Plaintiff extended a Channel Finance Facility of Rs.5 crores to the Defendant no.1 and in 2016 the Applicant/Original Defendant No. 1 company availed a Working Capital Demand Loan for an amount of Rs. 5 crores. The Applicants/Original Defendants no.2

and 3 executed Personal Guarantees securing the said facility. Subsequently, the Channel Finance Facility was enhanced by a further sum of Rs.2.5 crores viz. in around 2017 the WCDL availed by the Applicant/Original Defendant No.1 was enhanced to Rs.30 crores and unconditional and unequivocal Personal Guarantees of the Applicants/Original Defendants No.2 and 3 were executed in favour of the Respondent/Original Plaintiff. It has been submitted that the amounts due under this facility were duly repaid.

4. On 17th May 2017, the Respondent/Original Plaintiff issued a Sanction Letter bearing reference no.CF/WCDL-FLIP/Mum/1335020, setting out the terms governing the enhanced facility. The Applicants/Original Defendants accepted the Sanction Letter without demur.

5. On 17th June 2017, the parties executed a Loan Agreement in furtherance of the Sanction Letter dated 17th May 2017. The Loan Agreement incorporated the terms of the Sanction Letter formed an integral part of the Facility Documents. The Applicants/Original Defendants No.2 and 3 also executed unconditional and unequivocal Personal Guarantees securing the facility.

6. On 31st August 2017, the Respondent/Original Plaintiff executed a Security Trustee Agreement and an Inter-Se Agreement with other Consortium Banks in respect of the facilities extended to the Applicants/ Original Defendants.

7. On 16th January 2018, at the request of the Applicants/Original Defendants, the Respondent/Original Plaintiff revised the sanctioned amount under the WCDL from Rs.30 crores to Rs.25 crores by issuing a fresh Sanction Letter.

8. On 29th January 2018, the Respondent/Original Plaintiff issued a Modification Letter setting out the revised terms and conditions of the facility. The Respondent/Original Plaintiff expressly stipulated that the modification would not affect the obligations of the Guarantors. Also, on the same day i.e. on 29th January 2018, the Applicants/Original Defendants vide their letter accepted the modified terms and conditions and also admitted a draw down of Rs. 10 crores and the fact that the modification would not in any way alter the obligation of the Guarantee executed by the Applicants/Original Defendants No.2 and 3.

9. On 23rd February 2018, the Respondent/Original Plaintiff was inducted into the consortium of Banks pursuant to the execution of a Deed of Accession.

10. On 22nd May 2018, the Applicants / Original Defendants addressed a renewal request to the Respondent/Original Plaintiff seeking renewal of the WCDL and confirming that all existing terms would continue to bind the parties unless inconsistent with any Renewal Letter issued.

11. On 28th May 2018, the Respondent/Original Plaintiff renewed the WCDL facility till 14th August 2018. The Renewal Letter formed part of the Facility Documents.

12. On 28th May 2018, the Applicants/Original Defendants executed a Revival Letter admitting that a sum of Rs.24,96,46,250.01 was due and payable to the Respondent/Original Plaintiff as on 29th May 2018, along with other costs and charges.

13. On 31* July 2018, at the request of the Applicants/ Original Defendants, the Respondent/Original Plaintiff enhanced the facility by

Rs.5 crores, restoring the aggregate facility amount to Rs.30 crores. The Sanction Letter was unconditionally signed and accepted by the Applicants/Original Defendants.

14. In furtherance of the Sanction letter dated 31st July 2018, the parties executed a WCDL Agreement on 2nd August 2018, recording the mutually agreed terms pursuant to the 31st July 2018 enhancement. The Applicants/ Original Defendants No.2 and 3 also executed a Joint Guarantee Letter confirming their obligation to repay Rs.30 crores forthwith on demand.

15. On 19th November 2018, the Respondent/Original Plaintiff executed an additional Deed of Accession with the consortium banks.

16. It has been submitted that as on January 2020, the Applicants/Original Defendants had failed and neglected to pay an amount of Rs.61,12,142.69-.

17. On 17h March 2020, the Respondent/Original Plaintiff, through its advocates, issued a demand notice calling upon the Applicants/ Original Defendants to pay Rs.37,61,45,284/- along with interest, being the outstanding amount due and payable.

18. On 22nd September 2020, the Respondent/Original Plaintiff instituted the present Commercial Summary Suit before this Court seeking recovery of the amounts due, as detailed in the Particulars of Claim annexed at Exhibit P.

19. The Applicants / Original Defendants have filed this application on the following grounds :

(i) Suit is barred under Order II Rule 2 of the Civil Procedure Code, 1908 ("CPC").

(ii) Suit is barred by Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

(iii) Suit is barred by Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act).

(iv) Suit is barred as the mandatory provision of pre-mediation has not been followed by the Plaintiff.

(v) Suit is liable to be dismissed in light of Rule 227 of the Bombay High Court Original Side Rules, 1980.

(vi) There is no admitted amount.

20. It has been submitted on behalf of the Applicants/Original Defendants that the Respondent/Plaintiff's belated reliance on Section 8 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act") is wholly misconceived. By the order dated 24th September 2025, this Court has already recorded that the Defendants, having taken instructions were not desirous of referring the Suit to arbitration and intended to pursue their application under Order VII Rule 11 CPC. The statutory preconditions of Section 8(1) and 8(2) were not satisfied: the Respondent/Plaintiff had already filed their first statement on the substance of the dispute by filing the present Suit. The Applicants/Original Defendants have filed their leave-to-defend application. No Section 8 application had ever been filed by the Applicants/Original Defendants and no original or certified copy of the alleged arbitration agreement had been filed before this Court. It has been submitted that the right to seek reference under Section 8 belongs exclusively to the Defendant and is waivable, and once the defendant elects not to invoke arbitration, the Plaintiff cannot compel a reference. Relying upon the decision of the Delhi High Court in ***Sultan Chand & Sons (P) Ltd. vs. Kartik Sharma***[1], it has been submitted that once the Defendant withdraws or chooses not to pursue a Section 8 application,

1 2024 SCC Online Del 7281

the Plaintiff has no independent right to insist on arbitration (paragraphs 13 and 16). It is submitted in the present case, the Applicants/Original Defendants have consistently defended the Suit from its inception on 22nd September 2020, and the Respondent /Plaintiff having itself chosen to institute this civil suit and invoked the jurisdiction of this Court, cannot now reverse it's position and seek a reference to arbitration. The Respondent/Plaintiff's submission under Section 8 is therefore unsustainable and deserves rejection.

21. It is submitted by the Applicants/Original Defendants that the present suit is liable to be rejected at the very threshold under Order VII Rule 11 of the CPC, sub-rule (a) and (d) as:

(a) that the plaint does not disclose any cause of action against the Defendants; and

(d) that the suit, on the statements made in the plaint itself, appears to be barred by law.

22. It is submitted on behalf of the Applicants/Original Defendants that it is a settled principle of law, reiterated consistently by the Hon'ble Supreme Court, that while deciding an application under Order VII Rule 11(a) of the CPC on the ground that the plaint does not disclose a

cause of action, the Court can look only at the averments in the plaint and the documents annexed to the plaint. No part of the defence, and no external material, is permissible to be considered. The Court cannot look into the contents of the written statement, the Defendant's reply, or even the documents annexed to the Order VII Rule 11 of the CPC application, except to the limited extent of verifying an admitted or undisputed statutory bar. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***G. Nagaraj vs. B. P. Mruthunjayanna[2],*** wherein the Hon'ble Supreme Court held at paragraph 6 as under :

> *"6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint."*

23. It is submitted that in addition, the test of exercising the power under Order VII Rule 11 of the CPC is whether the averments made in the plaint, taken in entirety and in conjunction with the documents relied upon by the Respondent/Plaintiff, would result in a decree being passed if unrebutted and reliance is placed on the decision of the

2 2023 SCC Online SC 1270

Hon'ble Supreme Court in ***Dahiben v. Arbindbhai Kalyanji Bhanushali***[3]**,** and in particular paragraph 23.11, where the Court has held that the plaint must be rejected where, even if the averments are taken at face value, they do not disclose a complete and enforceable cause of action capable of culminating in a decree.

24. It is submitted that the plaint itself conclusively establishes that no cause of action survives for adjudication in the present suit. Mr.Sharma submits that at paragraph 14, the Respondent/Plaintiff categorically plead that the Suit is founded upon the Working Capital Demand Loan (WCDL) Facility allegedly availed by Defendant No.1 and guaranteed by Defendants No.2 and 3. That, the Respondent/Plaintiff's identify the WCDL facitlity and the alleged outstanding sum of Rs. 30 crores as the sole substantive basis of the suit. It is submitted that, however, at paragraph 16, the Respondent/Plaintiff expressly and unequivocally state:

> *"Hence, the Plaintiff craves ...* ***to omit to sue the Defendants and/or any other person/party in respect of the present WCDL facility in their capacity as borrowers and guarantors for the said amount of Rs. 30 Crores with interest thereon,*** *against each of them and the Plaintiff reserves its right to seek further reliefs, remedies and adopt appropriate proceedings as per law arising out of the said WCDL facility, for which the*

3 (2020) 7 SCC 366

Plaintiff omits to sue in the present Summary Suit and for all the reliefs other than those claimed herein."

25. It is submitted that by this pleading, the Respondent/Plaintiff formally abandoned their right to sue on the very WCDL claim that they assert as the foundation of the suit.

26. On behalf of the Applicants/Original Defendants it is submitted that the Respondent/Plaintiff further pleaded at paragraph 17 of the plaint that the cause of action arose on 4th February 2020 when the Applicants/Original Defendants allegedly failed to discharge their obligations "under and in respect of the facility" and that such cause of action is continuous by reason of the demand notice dated 17th March 2020. It is submitted that the said notice exhibited as Exhibit N reads that at paragraph 15 the Respondent/Plaintiff asserted that the alleged default pertains to the sum of Rs. 5.6 crores under the One Time Temporary Limit Facility (OTTF) sanctioned under the sanction letter dated 19th August 2019 whereas at paragraph 19, the Respondent /Plaintiff has raised a consolidated demand of Rs. 37.61 crores, entirely on the basis of the alleged default of Rs. 5.6 crores under the OTTF facility. It is submitted that, therefore, it is evident from the Respondent

/Plaintiff's own document that the sole trigger for the recall of the WCDL facility and the basis of the alleged cause of action in this Suit was the alleged default of Rs. 5.6 crores under the OTTF facility.

27. It is submitted that, however, the Respondent/Plaintiff had itself invoked arbitration in respect of this very dispute concerning the alleged Rs. 5.6 crores default, and the arbitral proceedings arising from the same sanction letter dated 19th August 2019 are pending. Once the Respondent/Plaintiff elected to refer the principal and foundational dispute-namely, whether there was any default of Rs.5.6 crores to arbitration, the alleged cause of action pleaded in the plaint cannot survive before this Court, because the recall of the WCDL facility is entirely contingent upon the determination of that very dispute. If the core allegation of default of Rs.5.6 crores is subjudice in arbitration, then no independent cause of action remains to be adjudicated in the summary suit.

28. It is submitted that a Plaintiff who elects to sue under Order XXXVII must strictly satisfy the criteria of Order XXXVII Rule 2(1)(b) CPC. This provision permits only suits for recovery of a "debt or liquidated demand in money" payable by the Defendant, arising from a

written contract, an enactment (where the sum is fixed), or a guarantee (with or without interest). The sum claimed must be a fixed or readily ascertainable amount, plainly due on the face of the written instrument itself, without needing extrinsic computation or invoking penal rates. Order XXXVII is an *exceptional* procedure – it abrogates the normal right to defend unless leave is obtained – and therefore its invocation is confined to claims where liability is clear, admitted, and evidenced by a written document for a liquidated sum. It is submitted that the Delhi High Court in the case of ***IFCI Factors Ltd. v. Maven Industries Ltd.,***[4] has emphasized that an Order XXXVII of the CPC suit is maintainable "only if the cause of action in the plaint *commences and concludes* with a written document that itself unequivocally admits and fixed the defendant's liquidated liability" (or involves negotiable instruments of specified kinds). It is submitted that a plaint that fails to meet these stringent statutory requirements does not disclose any cause of action fir for a summary suit and must be rejected *in limine* under Order VII Rule 11(a) of the CPC.

29. Relying upon the decisions in the case of ***Kesoram Industries & Cotton Mills Ltd. Vs Commissioner of Wealth Tax (Central) Calcutta***[5]

4 2015 SCC Online Del 14773
5 1965 SCC Online SC 11

(paragraphs 13 to 33); ***The Commissioner of Welath Tax, Madras vs. Pierce Leslie and Co. Ltd. Kozhikode***[6] (paragraphs 11 and 12); ***Lal Logistics India vs. Quantum International***[7] (paragraph 10); ***Sai Om Petro Specialities Ltd., Mumbai vs. M Industries, Mumbai***[8] (paragraph 9; ***GE Capital Services India vs. Dr. K. M. Veerappa Reddy***[9] (paragraph 4) and ***IFCI Factors Ltd. vs Maven Industries Ltd.***[10] (paragraphs 9 and 16) it has been submitted that the expression "liquidated amount in Order XXXVII Rule 2 of the CPC and the scheme of Order XXXVII of the CPC read with the expression 'debt' in Order XXXVII of the CPC can only refer to crystallized dues, liquidated, admitted, acknowledged debt/monetary claim. It is submitted that a debt is a present obligation to pay an ascertained or ascertainable sum of money, whether the amount is payable in praesenti or in futuro and that to constitute a 'debt' on a written contract, (i) there must present obligation to pay whether the amount is payable immediately or in the future: and (ii) the amount must be ascertained or ascertainable (Debitum in praesenti, solvendum in future). Contingent debt or a debt which will accrue in future with no obligation to pay at present is not a debt.

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6 (1962) SCC Online Mad 270
7 2011 (5) Mh LJ 931
8 2011(5) Mh.L.J.740
9 2015 SCC Online Delhi 13007
10 2015 SCC Online Del 13519

30. It is submitted that the plaint on its face demonstrates non-compliance with the above requirements. The Suit is based on a composite money claim of Rs.36.10 crore (as on 1st September 2020) comprising multiple components (a) the principal loan amount, (b) accrued interest at 13.5% per annum, (c) an additional penal interest at 2% per annum totalling Rs.2.25 Crores, and (d) other miscellaneous charges (as per "Exhibit P" to the plaint). Such a claim is not a "liquidated" or ascertained demand arising directly from one instrument, instead, it is a running account balance that includes a penal levy and unspecified charges. The inclusion of a *penal interest* component, by its very nature, disqualifies the claim from summary procedure - a penal interest is a contingent or punitive charge for default, not a part of the principal debt envisaged in the original contract. Its quantum accrues over time and necessitates an account of payments and defaults, which means the total sum cannot be derived from the four corners of any single written contract. It is submitted that in *GE Capital Services India v. K.M. Veerappa Reddy (supra)*, a Suit claim similarly comprised principal, interest, "penal interest and other charges" after adjusting prior payments and the Delhi High Court held that such an amount-essentially a "balance due at the foot of the account" - is not a liquidated amount payable under a written

instrument, and hence "cannot be treated as falling under Order XXXVII of the CPC". The Court underscored that Order XXXVII of the CPC was never intended for sums that "have to be arrived at by looking at different documents, different transactions over different dates, entries in the statement of accounts and various other facts", as opposed to a single, unequivocal written obligation. It is submitted that, thus, the very nature of the plaint claim here – requiring aggregation of principal, normal interest, penal interest, and charges – takes it outside the purview of the Order XXXVII. It is not a fixed debt, but a computed claim requiring accounting and evidence, which means the plaint fails to disclose a cause of action within Order XXXVII's limited scope.

31. It is further submitted that that a Special Leave Petition (SLP) was filed against the judgment in *GE Capital Services India v. K.M. Veerappa Reddy (supra),* Special Leave to Appeal (C) No. 1815/2016 and the Hon'ble Supreme Court, by a three Judges Bench, dismissed the Special Leave Petition vide order dated 5 February 2026.

32. Without prejudice to the above submissions, the Applicants/Original Defendants have submitted that they have, in their pleadings, clearly and unequivocally denied any liability to the

Respondent/Plaintiff and have disputed the entire claim made in the present suit. That, the Applicants/Original Defendants have not admitted any portion of the alleged dues and have, in fact, initiated independent proceedings seeking damages against the Respondent/Plaintiff, being Suit No. 207 of 2024, which is pending adjudication before this Court. It is submitted that these submissions under Order VII Rule 11 of the CPC are therefore without prejudice to the Applicants/Original Defendants substantive defences and counterclaims, all of which are expressly reserved.

33. It is submitted that there is no written contract or acknowledgment for Rs. 36.10 crores - last acknowledgment was of Rs.24.96 crores in 2018. It is submitted that the absence of any specific written contract or written acknowledgment admitting the full suit amount further undermines the Plaintiff's cause. The only acknowledgment mentioned in the plaint is a revival letter and a balance sheet from 2018, wherein an outstanding of Rs. 24.96 crore was allegedly acknowledged by the Defendants. It is submitted that there is no document on record post-2018 in which the Applicants/Defendants have acknowledged or promised to pay the enhanced sum of Rs. 36.10 crore. It is submitted that in other words,

the plaint does not point to any written instrument that on its face reflects the crucial figure now claimed. This, it is submitted, is fatal under Order XXXVII of the CPC. It is submitted that in ***Inventa Cleantec Pvt. Ltd. v. Amit Mudgal"***,[11] the Delhi High Court set aside a summary decree where the plaint was based on ledger balances and invoices but failed to plead the material particulars of the written contracts (invoices) in the plaint itself. It is submitted that the Court held that, from a reading of such a plaint, the suit "cannot be said to be falling in any of the categories prescribed in Order XXXVII Rule 1(2)" and hence summons under Order XXXVII ought not to have been issued. It was emphasized that if the plaintiff does not "unequivocally plead the suit to be based on a written contract" and instead sues on a running account or composite claim, the case is not maintainable as a summary suit. That principle applies squarely here. Learned Counsel submits that in the instant case, the plaint is founded on a derived figure (Rs. 36.10 crore) that is not anchored to any single contract document pleaded in the plaint. It is submitted that the facility sanction letters and agreements are merely historical; they do not quantify the amount due after years of transactions. Beyond the stale 2018 acknowledgment of a lesser amount, it is submitted that the Plaintiff offered no written

11 2016 SCC OnLine Del 5144

acknowledgment of liability for Rs. 36.10 crore. It is submitted that, therefore, on the plaint's own showing, the claim does not "arise directly and only from a written instrument" as required. The cause of action is incomplete and speculative - it would require the court to venture outside the plaint and documents to determine how Rs. 36.10 crore was arrived at, which Order XXXVII of the CPC forbids.

34. It is submitted that the WCDL facility documents don't quantify or admit the Suit Amount. The Respondent/Plaintiff has annexed certain Working Capital Demand Loan (WCDL) Agreements and related documents, but these do not rescue the plaint. These documents are pre-disbursal facility agreements - essentially sanction letters or standard loan terms executed at the inception of the loan, evidence that a credit facility was granted, but nowhere do they contain any acknowledgment by the defendants of a debt due in the sum of Rs.36.10 crore. The amounts mentioned in those agreements (e.g. the sanctioned limit) are far different from the Suit claim, and the agreements do not state that the Applicants/Original Defendants unconditionally owe Rs. 36.10 crore as of 1st September 2020. At best, such documents prove the existence of a loan contract, but Order XXXVII of the CPC requires more than just a contract - it requires that

the liability for the amount sued upon be apparent on the face of a written instrument. Here, one would have to take the WCDL agreements, then add loan advanced, loan repaid, interest computations, default interest, and other charges over time to arrive at the claimed figure. That exercise violates the very rationale of Order XXXVII of the CPC. It is submitted that the Delhi High Court has observed that *Order XXXVII was not intended to cover scenarios where the court must "go into various documentation... of different years and periods, and examine the statement of accounts containing balances due which are different than the amounts mentioned in the original agreements".* It is submitted that the liability must arise directly and unequivocally from the written contract relied upon and if further calculations, external transactions, or multiple documents are needed, the case falls outside Order XXXVII of the CPC, and "only after looking at all these documents and facts" can the amount be determined, then the Suit is not a true Order XXXVII action. In short, it is submitted that the WCDL agreements here establish a lending relationship but do not themselves evidence an admitted debt of Rs. 36.10 crore. The Respondent/Plaintiff's cause of action actually depends on subsequent events (payment repayment, accumulation of interest, imposition of penalty, part-payments, etc.) which are outside the four corners of the

written contract. Therefore, the suit, as pleaded, cannot be maintained under the summary procedure.

35. Opposing the application filed by the Defendants, it is submitted that the Applicants/Original Defendants did not advance or press most of the grounds pleaded in the captioned application during the course of oral arguments. The argument urged was that there is no admitted amount and therefore the captioned Suit is not maintainable under Order XXXVII of the CPC. Therefore, in light of the failure of the Applicants/Original Defendants to argue any of the other grounds pleaded in the captioned application, it be recorded there that the Applicants/Original Defendants had opted to not press these grounds and the application be decided only on the basis of the ground pressed. It is submitted that in any case and without prejudice to the argument that grounds not orally argued before this Court ought not to be considered, each of the grounds raised in the captioned application have been addressed in the reply filed by the Respondent/Original Plaintiff to the captioned application.

36. It is submitted on behalf of the Respondent/Plaintiff that it was also orally argued by the Applicants/Orig Defendants that the plaint

does not contain any averment stating that the captioned Suit has been instituted under Order XXXVII of the CPC. The ground was raised for the first time during the oral submissions and therefore cannot be considered. In any case, it is apparent from a bare perusal of the plaint which is filed as a Summary Suit, especially the cause-title of the plaint itself, that the same has been instituted under Order XXXVII of the CPC and even the averments of the plaint unequivocally assert that the plaint is in fact a Summary Suit.

37. It is submitted that, the only ground pressed by the Applicants/Original Defendants was that there is no admitted amount and that a suit for recovery of an amount that stands at the foot of an account is not maintainable as a summary suit under Order XXXVII of the CPC and hence, there is no cause of action under Order XXXVII of the CPC in the present case.

38. It is submitted that while deciding an application under Order VII Rule 11 of the CPC, only the averments in the plaint can be looked into, and the plaint is required to be read as a whole. If the plaint discloses a cause of action upon the bare reading of its averments, then a plaint cannot be rejected under the provisions of

Order VII Rule 11 of the CPC. Whether the cause of action is weak is not an issue that can be considered under Order VII Rule 11 of the CPC. The same must be considered only at the stage of hearing the Summons for Judgment filed by the Respondent/Original Plaintiff, in order to decide whether leave to defend ought to be granted or not.

39. With respect to the following judgments referred to by the Applicants / Original Defendants in the compilation of judgments :

(i) Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth Tax (supra)

(ii) The Commissioner of Wealth Tax vs. Pierce Leslie and Co. Ltd. (supra)

iii) GE Capital Services India v. Dr. K.M. Veerappa Reddy (supra)

(iv) IFCI Factors Ltd. v. Maven Industries (supra)

(v) Mechelec Engineers & Manufacturers v. Basic Equipment Corpn.[12]

(vi) Vidya Projects (P) Ltd. v. Essel Infraprojects Ltd.[13]

(vii) AMA Industries Pvt. Ltd., Nagpur and Others vs. Akhtar Parvez Maimoon[14]

(vii) Surya Pharmaceuticals Ltd., through Harvinder Kaur Jatana vs.

12 (1976) 4 SCC 687
13 (2025) SCC OnLine Del 6788
14 (2023) SCC OnLine Bom 1665

State Bank of India[15]

(vil) Cuddlore Powergen Corporation Ltd. vs. Chemplast Cuddalore Vinyls Limited and Another[16]

(viii) M/s Sultan Chand and Sons Pvt. Ltd vs. Kartik Sharma (supra)

(ix) Lal Logistics India (A divisional of Lal Container Line (India) Ltd.) vs Quantum International & Ors. (supra)

(x) Sai Om Petro Specialities Ltd. Mumbai vs M. Industries, Mumbai (supra)

it is submitted that the case laws relied upon by the Applicants/Original Defendants are wholly irrelevant to an application under Order VII Rule 11 of the CPC. It is submitted that the settled legal position is that an Application under Order VII Rule 11 of the CPC is confined strictly to the averments in the plaint and the Court ought not to examine disputed questions of fact or the merits of the claim in an application under Order VII Rule 11 of the CPC. It is submitted that in fact, the judgments cited by the Applicants/Original Defendants are themselves for the stage of hearing the Summons for Judgment and Leave to Defend applications and therefore, cannot be relied upon in an Application under Order VII Rule 11 of the CPC. In fact, reliance on

15 (2025) SCC OnLine Bom 1133
16 (2025) SCC OnLine SC 82

these judgments demonstrate that the objections of the Applicants/Original Defendants are only in relation to the merits of the captioned Suit, that can only be considered at the stage of hearing the Summons for Judgment.

40. It is submitted that in any case and without prejudice, the Respondent/Original Plaintiff submits that the Revival Letter dated 28th May 2018, executed by the Applicants/Original Defendant No.2 and Defendant No.3, expressly acknowledges the amount payable to the Respondent/Original Plaintiff, more particularly in the paragraph 2, which is reproduced hereinbelow:

> *"2. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the said Credit Facility as on 29.05.2018 is Rs. 249,646,250.01 (Rupees Twenty Four Crore Ninety Six Lakh Forty Six Thousand Two Hundred Fifty Rupees and One Paise Only) and interest as well as other amounts outstanding under the Credit Facility ("Outstanding Dues") and undertake to make payment of the aforesaid amount in the manner set out in the said documents mentioned in the Schedule (hereinafter referred to as the "Documents")*

41. It is further submitted that the balance sheet of the Applicant/Original Defendant No.l also records and acknowledges the debt with respect to the WCDL under the Cash Credit and the other facility.

42. It is submitted that therefore and in any case, a bare perusal of the plaint clearly discloses a cause of action and the Applicants/Original Defendants have in fact unequivocally admitted its liability and the amount of its liability. Consequently, the plaint cannot be rejected under Order VII Rule 11 of the CPC.

43. It is further submitted that the dispute ought to be referred to arbitration with respect to a Sanction Letter dated 19th August 2019 in relation to a separate One Time Temporary Facility of Rs. 5.6 crores given by the Respondent/Original Plaintiff to the Applicants/Original Defendants. It is submitted that the same is entirely separate and distinct from the subject matter of the captioned Suit. The Respondent/Original Plaintiff had filed Commercial Arbitration Application No. 168 of 2023 under Section 11 of the Arbitration Act. Subsequently, this Court vide order dated 15th October 2024 appointed Mr.Shanay Shah as the Sole Arbitrator.

44. It is submitted that the order of this Court dated 15th October 2024 was challenged by the the Applicants/Original Defendants vide SLP No. 27566 of 2024. That, on 13th May 2025 the Hon'ble Supreme Court had dismissed the SLP directing that the issues of law and fact be

raised before the Arbitral Tribunal. Therefore, the appointment of the Sole Arbitrator stood confirmed by the Hon'ble Supreme Court.

45. It is submitted that pertinently, in the reply filed by the Applicants/Original Defendants to the Summons for Judgment No. 36 of 2023, the Applicants/Original Defendants have expressly contended that the captioned Suit is "barred by Section 8 of the Arbitration Act". The said Paragraph No. 3 (VII) of the Affidavit in Reply is reproduced herein below: -

> *"The Plaintiffs have already initiated petitions under Section 9 & Section 11 of the Arbitration Act, 1996. The same are being opposed by the Defendants as not maintainable for various reasons, and at present the SLP of the Defendants is pending before the Hon'ble Supreme Court, and Hon'ble Supreme Court has given stay on the execution of the award. Without prejudice to the said affirmation that the Arbitration Petitions are not maintainable, the present suit will be barred under Section 8 of the Arbitration Act, if it is to be held that the said arbitration applications are maintainable.*

46. It is submitted that the Applicants/Original Defendants contended that as the Respondent/Original Plaintiff has already initiated applications under Sections 9 and 11 of the Act with respect to the one time temporary facility of Rs. 5.6 crores and if it is held by the Hon'ble Supreme Court that the applications filed by the

Respondent/Original Plaintiff are maintainable, then it must be held that the captioned Suit is barred by Section 8 of the Act. It is submitted that as a matter of fact, the Hon'ble Supreme Court has by order dated 13th May 2025 passed in the SLP No. 27566 of 2024 rejected the challenge to the appointment of the Sole Arbitrator.

47. It is submitted that in light of the above and strictly without prejudice to the Respondent/Original Plaintiff's contention that the one-time temporary facility of Rs. 5.6 crores is entirely distinct from the subject matter of the captioned Suit and that the same does not overlap with the cause of action in the captioned Suit, as the Applicants /Original Defendants have raised an objection under Section 8 of the Act, they are bound to be referred to arbitration for the subject matter of the captioned Suit.

48. The Respondent/Original Plaintiff has placed reliance on the judgment of the this Court in ***Jashu Patel v. Shivdatta Joshi***[17] where this Court held that:

> *"3. The issue therefore, will turn on the meaning of the expression "first statement on the substance of dispute" as found in section 8. Does it only mean the filing of the written*

17 2002 SCC OnLine Bom 1168

statement in the suit or does it include any application or reply dealing with the substance of the dispute. In that context it would be useful to refer to the judgment in the case of ***P. Anand Gajapathi Raju v. P.V.G. Raju (Dead)***[18]*. Considering section 8 the Apex Court has stated:*

> *"5. The conditions which are required to be satisfied under sub-section (1) and (2) of section 8 before the Court can exercise its powers are:*
> *(1) there is an arbitration agreement;*
> *(2) a party to the agreement brings an action in the Court against the other party;*
> *(3) subject matter of the action is the same as the subject matter of the arbitration agreement;*
> *(4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute."*

4. Since the judgment is adverted to it is also set out therein that the provision is mandatory and that has been expressed by the Apex Court in the following words: "The language of section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the award."

5. From the above, it is clear that the Court while interpreting the provision is bound to consider the issue in view of the mandatory nature of the language of section 8. There essentially must be an arbitration agreement/clause and the arbitration clause must cover the subject matter of the suit…"

18 (2000) 4 SCC 539

49. It is submitted that, thus the provisions of Section 8 of the Act are mandatory and that in the present case, there is undisputedly an arbitration agreement in Clause 21 of the WCDL. Mr.Kapadia, learned Senior Counsel for the Respondent/Plaintiff has also submitted that it is undisputed that a party to the arbitration agreement, i.e. the Respondent/Original Plaintiff has brought an action against the other party to the arbitration agreement i.e. the Applicants/Original Defendants. That lastly, it is the Applicants /Original Defendants' own allegation that the cause of action in the captioned Suit is the same as that of the arbitration agreement. Mr.Kapadia as submitted that, therefore, all the requirements of Section 8 have been satisfied once the Applicants/Original Defendants raised an objection thereunder. Therefore, the captioned Suit ought to be referred to arbitration.

50. It has been submitted in view of the above submissions, captioned application therefore deserves to be dismissed with costs. Further, it is submitted that the captioned Suit ought to be referred to arbitration.

51. Having heard the learned Counsel and having considered their submissions, in my view, a bare perusal of the plaint clearly discloses a cause of action and also that there is an admission of liability by the

Applicants/Original Defendants: the Revival Letter dated 28th May 2018 executed by the Applicants/Original Defendant no.2 and Defendant no.3 acknowledges the amount payable to the Respondent/Original Plaintiff in paragraph 2 thereof which has also been set out in the submissions above; the balance sheet of the Applicant/Original Defendant no.1 also records and acknowledges the debt with respect to the WCDL under the Cash Credit and the other facility. It is also observed from paragraphs 14, 15 and 17 of the plaint that the plaint discloses a cause of action. Therefore, the plaint cannot be rejected under Order VII Rule 11 of the CPC. Moreover, the Interim Applicant has only pressed for the ground that there is no admitted amount, and that a suit for recovery of an amount that stands at the foot of an account is not maintainable as a Summary Suit. All these and other grounds do not in any way infer non-disclosure of cause of action in the Plaint or being barred by law, to invite an order of rejection of the Plaint under Order VII Rule 11 of the CPC but may be taken up as grounds of defence. The Interim Application No.434 of 2025 is, therefore, dismissed.

52. However, as regards referring the Suit to arbitration is concerned, the Respondent/Original Plaintiff has submitted before this Court that in view of the arbitration agreement in the Working Capital Demand

Loan Agreement, the matter be referred to arbitration. On 11th September 2025 Mr.Kapadia, learned Senior Counsel appearing for the Respondent / Original Plaintiff had drawn this Court's attention to the application for leave to defend / reply dated 29th November 2022 filed by the Defendants and in particular to Clause VII at page 40 to an objection on behalf of the Defendants viz. the Interim Applicants that the Suit was barred by Section 8 of the Arbitration Act, after which a submission was made by Mr.Kapadia that since there was already an arbitrator appointed in a connected matter and that if Mr.Sen's clients (learned Senior Counsel appearing for the Defendants at that time) were desirous of referring the Suit to arbitration, his client viz. the Plaintiff had no objection. Accordingly, this Court had requested Mr.Sen to take instructions in the matter. However, when the matter was called out on 24th September 2025, this Court was informed that the Defendants were not desirous of referring the dispute to an arbitrator and would like to pursue the Interim Application under Order VII Rule 11 of the CPC, which has been dismissed as above. This Court was also informed that another Counsel would argue the Interim Application under Order VII Rule 11 of the CPC and accordingly, on 26th November 2025, this Court heard the learned Counsel in the matter and closed the matter for orders.

53. A perusal of Clause VII at page 40 clearly indicates that the Defendants had objected to the maintainability of the Suit under Section 8 of the Arbitration Act, in their reply/leave to defend dated 29th November 2022.

54. For the sake of convenience, Section 8 of the Arbitration Act, is usefully quoted as under :

> *"**8. Power to refer parties to arbitration where there is an arbitration agreement** - (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:*
>
> *Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.*

> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

55. As can be seen, that an authority before whom an action is brought in a matter, which in the present case is this Court, which is the subject matter of an arbitration agreement, the said authority shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any other Court, the authority shall refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists. Sub-clause (2) of the said Section provides that the application shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. The Plaint at page 142 Clause 21 contains the arbitration agreement between the parties. As noted above, the Defendants have in their leave to defend/reply to the Summons for Judgment objected to the maintainability of the Suit under Section 8 of the Arbitration Act. The learned Senior Counsel appearing for the Respondent/Plaintiff has before this Court during the arguments as well as in the written submissions, requested that the matter be

referred to arbitration. It is indeed true that Section 8 of the Arbitration Act is mandatory but it also cannot be ignored that Section 5 of the said Act clearly brings out the object of the Act viz. that of encouraging resolution of disputes expeditiously and where there is an arbitration agreement, Section 8 has to be construed keeping the legislative intent in mind. In my view, the legislative intent requires a Court to interpret Section 8 widely and not in a restrictive fashion, as would be the case if it were to be held that a separate Interim Application ought to have been filed making the same plea as made before this Court by the learned Senior Counsel on 11th September 2025 and in the written submissions filed in this Court, as the same would take away or rather delay reference of disputes to be adjudicated by the agreed mode of arbitration. Even otherwise, as noted above, not only the written submissions filed on behalf of the Respondent/Plaintiff has complied with this requirement but also as noted above, in the reply/leave to defend, the Interim Applicants have in Clause VII at page 40, objected to the maintainability of the Suit under Section 8 of the Arbitration Act meeting the requirements of the said Section.

56. In this view of the matter, since the Working Capital Demand Loan Agreement dated 2nd August 2018 clearly indicates in paragraph

21 page 142 of the plaint that a valid arbitration agreement existed between the parties, the dispute between the parties be referred to arbitration. Accordingly, the parties are referred to arbitration in accordance with the arbitration agreement contained in Clause 21 of Working Capital Demand Loan Agreement dated 2nd August 2018.

57. The arbitrator to be appointed by the parties in accordance with the provisions of the Arbitration Act.

58. In view of the reference of the parties to arbitration, the Commercial Summary Suit No.87 of 2022 stands disposed.

59. Refund of Court fees as per Rules.

60. In view of the disposal of the Commercial Summary Suit, the pending Summons for Judgment also to accordingly stand disposed.

61. The Registry is directed to return the original documents, if any, to the Plaintiff.

62. In view of the above, it would not be necessary to individually deal with each of the arguments / judgments cited by the learned Counsel.

(ABHAY AHUJA, J.)