

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 4354/2021

Arta Broch Ceramics Private Limited, 1011/2, Chandan Metals Compound, Next to B IDC, Opposite Gorwa Lake, Gorwa, Vadodara-390016 (Gujarat) through its director and authorized signatory Mr. Rishabh Tanuj Patel.

----Petitioner/Defendant

Versus

Clay Craft (India) Private Limited, F-766 A, Road Number-1 (D), V.K.I. Area, Jaipur (Rajasthan) through its director Pradeep Kumar Agrawal.

----Respondent/plaintiff

Connected with

S.B. Other Original Suit No. 2/2022

M/S Clay Craft (India) Pvt. Ltd.  
F-766-A, Road No. ID, V.K.I. Area, Jaipur (Raj.), Through Director Pradeep Kumar Agrawal

----Petitioner/Plaintiff

Versus

M/S Arta Broch Ceramics Pvt.Ltd.  
Chandan Metals Compound Gorwa B IDC Ke Aage, Vadodara-390016 Gujrat (India) Through Authorized Signatory/Managing Director Director/Manager /Representative

----Respondent/Defendant

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For : Mr. Siddharth Bapna  
Petitioner/defendant(s) : Mr. Meyul Mittal  
For : Mr. G.D.Bansal  
Respondent/plaintiff  
(s)

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**JUSTICE ANOOP KUMAR DHAND**

Order

Reserved on 06/05/2025  
Pronounced on 14/05/2025  
Reportable

**S.B. Civil Writ Petition No. 4354/2021**

For the sake of convenience, the parties in the present writ petition are being referred to as per their status and position before the trial court.

1. By way of filing this writ petition, a challenge has been led to the impugned order dated 23.02.2021 passed by the Commercial Court No. 1, Jaipur (hereinafter referred as 'Commercial Court') by which the suit filed by the plaintiff has been ordered to be registered.

2. Counsel for the defendant submits that on earlier occasion also, a similar suit was filed by the plaintiff before the Commercial Court No. 1, Jaipur Metropolitan-II, wherein after receipt of the notice, an application was submitted by the defendant under Order 7 Rule 11(d) CPC read with Section 12A of the Commercial Courts Act, 2015 for rejection of the plaint on the ground of territorial jurisdiction, stating that no cause of action arises with the plaintiff to file suit before the Commercial Court. Counsel submits that the said application submitted by the defendant was partly allowed by the Commercial Court holding that neither the defendant is residing within the territorial jurisdiction of the Commercial Court nor he has any office in Jaipur, therefore, no cause of action arises with the plaintiff to institute the suit before the Commercial Court at Jaipur. Counsel submits that considering the above aspect of the matter, the suit was returned to the plaintiff under Order 7 Rule 10 CPC for filing the same before the Competent Court of Law. Counsel for the defendant submits that the plaintiff, without assailing the aforesaid order dated 21.01.2021 before the Appellate Court by way of filing misc. appeal under Order 43 Rule 1 CPC or without filing any review

petition under Order 47 Rule 1 CPC, again presented the same suit before the Commercial Court and the same was ordered to be registered without issuing any notice to the defendant. Counsel submits that under these circumstances, there was no reason or occasion available with the Commercial Court to entertain the same suit which was once returned to the plaintiff for filing the same before any Competent Court of law having jurisdiction. Hence, under these circumstances, the order dated 23.02.2021 is not sustainable in the eyes of law and the same is liable to be quashed and set aside.

3. Per contra, counsel for the plaintiff opposed the arguments raised by counsel for the defendant and submitted that when the order dated 21.01.2021 was passed by the Commercial Court, the suit was not rejected rather the same has been returned to the plaintiff to submit the same before the Competent Court of Law. Counsel submits that after passing the aforesaid order, the plaintiff discovered certain bills, vouchers and invoices issued by the defendant which indicate that the products were sold within Jaipur, giving rise to the territorial jurisdiction of the Competent Court at Jaipur, hence, the same suit was again submitted by the plaintiff before the Commercial Court. Counsel submits that there is no provision for issuing a preliminary notice to the defendant, at the stage of institution of suit and notices were issued to the defendant after registration of suit. Upon receipt of the said notices, the defendant submitted a similar application under Order 7 Rule 11(d) CPC seeking rejection of plaint on the ground of territorial jurisdiction. Counsel submits that the said application, filed by the defendant was rejected by the Commercial Court vide

order dated 09.09.2021 by passing a reasoned and speaking order and the same has not been assailed by the defendant neither before this Court nor before any other Competent Court of law, hence, under these circumstances, the order dated 09.09.2021 has attained finality and the present writ petition is not maintainable and is liable to be rejected on this count alone.

4. In rebuttal, counsel for the defendant submits that once a legal order has been passed by the Commercial Court on 21.02.2021 which was assailed before this Court, by way of filing instant writ petition, there is no need to assail the successive order dated 09.09.2021 before any Competent Court of law. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District**, reported in **AIR 1961 SC 372**. Counsel submits that in view of the submissions made hereinabove, the impugned order dated 23.02.2021 passed by the Commercial Court be quashed and set aside.

5. Heard and considered the submissions made at Bar and perused the material available on record.

6. Perusal of the record indicates that a suit for permanent injunction and violation of registered design was submitted by the plaintiff against the defendant, under the Designs Act, 2000 (for short, 'the Act of 2000') before the Commercial Court stating therein that the plaintiff Company is a manufacturer and seller of the crockery items of various designs in the market and its products have unique identification, based on its design. The designs are registered under the Act of 2000 by the competent

authority. But by copying its design the defendant is causing huge losses to the plaintiff. Hence, the plaintiff filed the instant suit before the Commercial Court with the following averments in para 15,16, 17 which are reproduced as under:-

“15. यह कि वादी कम्पनी ने प्रतिवादी कम्पनी से कई बार अपनी पंजीकृत डिजाईन की नकल नहीं किये जाने बाबत निवेदन किया तथा प्रतिवादी कम्पनी को अपनी पंजीकृत डिजाईन के बाबत भी अवगत कराया किन्तु प्रतिवादी कम्पनी द्वारा केवल मात्र वादी कम्पनी को यह आश्वासन दिया जाता रहा कि प्रतिवादी कम्पनी के द्वारा वादी कम्पनी की पंजीकृत डिजाईन को उपयोग में लेना बन्द कर दिया जावेगा लेकिन प्रतिवादी कम्पनी द्वारा वादी कम्पनी की पंजीकृत डिजाईन को उपयोग में लेना बन्द नहीं किया गया है तथा वादी कम्पनी की पंजीकृत डिजाईन की लगातार नकल की जा रही है, इस कारण उक्त वाद प्रस्तुत किये जाने का वाद कारण उत्पन्न हुआ है, जो कि अभी तक बदस्तुर निरन्तर जारी है।

16. यह कि प्रस्तुत वाद हेतु वाद स्थायी निषेधाज्ञा, आदेशात्मक निषेधाज्ञा एवं क्षतिपूर्ति की गणना का होने के कारण, स्थायी निषेधाज्ञा की मालियत 600/-रूपये आंकी जाती है एवं आदेशात्मक निषेधाज्ञा की मालियत 600/-रूपये आंकी जाती है तथा क्षतिपूर्ति की गणना हेतु मालियत 1000/-रूपये आंकी जाती है तथा दंडात्मक हर्जाना रूपये 50,00,000/- (अक्षरे पचास लाख रूपये) वसूली हेतु वाद माननीय वाणिज्यिक न्यायालय के समक्ष प्रस्तुत किया गया है, जिस पर नियमानुसार देय न्याय शुल्क क्रमशः 15/-रूपये, 15/-रूपये, 25/-रूपये तथा 2,02,125/-रूपये होता है, इस प्रकार वाद पत्र 2,02,180/-रूपये न्याय शुल्क पर प्रस्तुत किया जा रहा है।

17. यह कि प्रस्तुत वाद डिजाईन एक्ट 2000 में निहित विधिक प्रावधानों के तहत माननीय न्यायालय के अधीन है, जिसे की सुनने एवं फैसले करने का क्षेत्राधिकार केवल जिला न्यायाधीश के स्तर के अधिकारी को है एवं उक्त वाद वाणिज्यिक विवाद से सम्बन्धित है, अतः उक्त वाद की सुनवाई का क्षेत्राधिकारी एवं श्रवणाधिकार माननीय न्यायालय को प्राप्त है।”

7. After service of the summons of the above suit, the defendant submitted an application under Order 7 Rule 11 (d) read with Section 12A of the Commercial Courts Act, 2015 (for short, 'the Act of 2015') before the Trial Court stating therein that the Commercial Court has no territorial jurisdiction to entertain the suit, as the defendant neither resides nor carries any business or works for gain at Jaipur and no cause of action arise with the

plaintiff to file suit at Jaipur and a prayer was made to return the suit to the plaintiff.

8. The above application submitted by the defendant under Order 7 Rule 11 (d) CPC was partly allowed vide order dated 21.01.2021 and the plaint was ordered to be returned to the plaintiff under Order 7 Rule 10 CPC for submitting the same before the Competent Court. It was specifically observed by the Competent Court in para 10 and 11 of the order dated 21.01.2021 that

“10. वर्तमान प्रकरण में यह बात स्पष्ट रूप से स्थापित है कि प्रतिवादी कम्पनी का कार्यालय [1011/2](#), चन्दन मेटल कम्पाउण्ड, नेक्सट टू बीआईडीसी, गोरवा लेक के पीछे गोरवा, वडौदरा वडौदरा, गुजरात 390016 में है। वादी ने अपने वाद-पत्र में यह कहीं कथन नहीं किया है कि प्रतिवादी-कम्पनी का कोई भी कारोबार जयपुर में होता हो और इस कारण से जयपुर में वाद कारण उत्पन्न हुआ है तो ऐसी दशा में धारा 22 डिजाईन एक्ट 2000 व धारा 15 व 20 सिविल प्रक्रिया संहिता 1908 के प्रावधानों को दृष्टिगत रखते हुए वादी का यह दावा जयपुर के स्थानीय क्षेत्राधिकार में प्रस्तुत होने योग्य नहीं पाया जाता है, क्योंकि वादी ने अपने दावे में यह कहीं कथन नहीं किया है कि प्रतिवादी जयपुर में भी अपने कम्पनी के उत्पादों का विक्रय, वितरण अथवा अन्य कार्य करता है, जिससे कि वह लाभ प्राप्त करता है, अथवा उसका कोई कार्यालय अथवा वितरक जयपुर में भी है और जहाँ पर कारोबार करके लाभ का अर्जन कर रहा है, तो ऐसी दशा में इस न्यायालय के विनम्र मत में स्थानीय क्षेत्राधिकार इस न्यायालय को सुनवाई का होना नहीं पाया जाता है। इस आधार पर यह दावा जयपुर में वाद कारण उत्पन्न नहीं होने के आधार पर आदेश 7 नियम 11 (डी) सी.पी.सी. सपठित धारा 151 सी.पी.सी. सपठित धारा 12-ए कॉमर्शियल कोर्ट्स एक्ट 2015 के अन्तर्गत प्रस्तुत प्रार्थना-पत्र आंशिक रूप से स्वीकार किये जाने योग्य है।

—आदेश—

11. अतः प्रतिवादी-प्रार्थी की आरे से प्रस्तुत प्रार्थना-पत्र अन्तर्गत आदेश 7 नियम 11 (डी) सपठित धारा 151 सी.पी.सी. सपठित धारा 12-ए कॉमर्शियल कोर्ट्स एक्ट 2015 आंशिक रूप से स्वीकार किया जाता है। वादी को उसका वाद सक्षम न्यायालय में प्रस्तुत करने हेतु आदेश 7 नियम 10 सी.पी.सी. के अन्तर्गत लौटाये जाने का आदेश दिया जाता है। अतः विधि अनुसार वादी का वाद सक्षम न्यायालय में प्रस्तुत करने हेतु लौटाया जाए।”

The aforesaid order was not assailed by the defendant by way of filing any misc. appeal under Order 43 Rule 1 CPC or review under Order 47 Rule 1 CPC. Hence the same has attained finality.

9. After passing of one month i.e. on 23.02.2021, the plaintiff submitted an application under section 151 CPC for taking and admitting the same plaint and Temporary Injunction Application on record. It was averred in the said application that the defendant is doing business of the disputed designs at Jaipur and after collecting copies of certain invoices, bills, vouchers, alleged to have been issued by the defendant, this application was submitted by the plaintiff with the averment that due to sale of disputed designs by the defendant in Jaipur and across the nation through its website, the Commercial Court at Jaipur has territorial jurisdiction to entertain, hear and try the suit.

10. Without issuing notice of the above application under Section 151 CPC, the suit was re-registered and after registration of the suit, CIS number was generated and notices of the plaint were issued to the defendant vide impugned order dated 23.02.2021.

11. Aggrieved by the above order dated 23.02.2021, the defendant has approached this Court by way of filing this writ petition.

12. The summons/notices received by the defendant for appearance before the trial Court on 24.03.2021 were enclosed with the plaint wherein no new averments were made by the plaintiff about the reasons and cause of action arisen at Jaipur.

13. Perusal of the contents and the pleadings in the plaint indicate that there is not a single difference, even of a comma or full

stop, between the plaint, filed prior to passing the order dated 21.01.2021 for returning the plaint, and the plaint which was filed after the above order. All pleadings in the paragraphs of the plaint are verbatim same and similar. Para 17 of both the plaints indicate that the averments are same with regard to the cause of action for filing suit before the Commercial Court. In the successive suit, not a single averment has been made, in any of the paras or even in para No. 17 of the plaint, that the defendant is doing business by copying the design of the plaintiff at Jaipur or at any place falling within the jurisdiction of the Commercial Court.

But overlooking all these material facts, the application filed by the plaintiff under Section 151 CPC was entertained and the same suit, which was earlier returned, was allowed to be re-registered with CIS number vide impugned order dated 23.02.2021.

14. For entertaining a plaint and for rejection of a plaint, the contents of the averments made/pleaded in the plaint are required to be seen and if no cause of action has arisen, then the suit can be rejected under Order 7 Rule 11 CPC. For ready reference, the provisions contained under Order 7 Rule 11 CPC are reproduced as under:-

**“ Order 7 Rule 11 CPC rejection of Plaint**

The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

Perusal of the provision under Order 7 Rule 11 CPC clearly indicates that a plaint can be rejected if it does not disclose any cause of action.

While exercising the powers under Order 7 Rule 11 CPC, the Court is required to read the averments of the plaint as a whole to find out whether it discloses any cause of action or not. It is only if the averments made in the plaint do not disclose any cause of action, the plaint can be rejected. The Hon'ble Apex Court in the case of **P.V. Guru Raj Reddy and Anr. Vs. P. Neeradha Reddy and Ors.** (Civil Appeal No. 5254/2006 decided on 13.02.2015) has held that rejection of the plaint under Order 7 Rule 11 CPC is a drastic power conferred upon the Courts to terminate the civil action at the threshold.

In the matter of **G. Nagaraj and Anr. Vs. B.P. Mruthunjayanna and Ors.** reported in **2023 SCC Online SC 1270**, it has been held by the Hon'ble Apex Court in para 6 and 7 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.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action."

15. Likewise, Section 20 CPC specifies the place where suit can be instituted based on the local limits of jurisdiction where defendant resides and where the cause of action arises. Section 20 CPC is reproduced as under:-

**"20. Other suits to be instituted where defendants reside or cause of, action arises -**

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."

16. Similarly, Section 15 CPC deals with the institution of suits, and the same is reproduced as under:-

**"15. Court in which suits to be instituted:-**

Every suit shall be instituted in the Court of the lowest grade competent to try it. "

Hence, it is clear that while deciding the application under Order 7 Rule 11 CPC, the Court's focus is mainly on the contents of the plaint. The cause of action needs to be explicitly mentioned

in the plaint and if it has not been mentioned, the plaint is liable to be rejected.

17. After taking into count the above provisions, the Commercial Court allowed the application in part, submitted by the defendant under Order 7 Rule 11 CPC vide order dated 21.01.2021 and returned the plaint to the plaintiff under Order 7 Rule 10 CPC for submitting the same before the competent Court of law.

18. Without incorporating the new facts in the plaint, that the defendant is doing its business at Jaipur by copying the product design of the plaintiff and without showing a single averment in any of the paras in the plaint as to how cause of action has arisen at Jaipur, which gave cause to the plaintiff to re-institute the same plaint, which was returned earlier by the same Court when no cause of action has arisen with the plaintiff. Unless and until the new facts are not incorporated in the plaint, about the cause of action, such plaint cannot be entertained.

19. Merely on the basis of certain averments made in the application under Section 151 CPC that the defendant is doing its business by copying the designs of the plaintiff at Jaipur and mere issuance of the bills, vouchers, invoices of the same at Jaipur cannot be a sufficient ground to institute the same suit before the same Court, which earlier returned the same plaint to the plaintiff. A plaint without specific averments, about cause of action, cannot be allowed to be maintained, on the basis of any application submitted under Section 151 CPC.

There is a famous saying "Nip the Evil in the Bud". Meaning thereby, a clear rejection is better than a fake promise. A "suit" is a proceeding by a party against the other party before the civil

Court of law and if such suit does not disclose any cause of action to proceed further, there is no reason to continue the same.

Whenever, any application under Order 7 Rule 11 CPC is submitted, it is prime duty of the Court to appropriately scrutinize the plaint, so as to come to the conclusion, whether it discloses any cause of action to proceed further or is it liable to be returned to the plaintiff for its presentation before the appropriate Court of law. Once a plaint is returned to the plaintiff, the same should not be entertained on the basis of the same averments made earlier in the same plaint.

20. Unless and until a fresh suit with new averments regarding the cause of action is presented, the previously returned suit cannot be re-instituted or tried. In the absence of specific pleadings, the Commercial Court cannot entertain a suit that was previously returned, due to lack of jurisdiction, based on the assertions made about the defendant's business in Jaipur in any application submitted under Section 151 CPC. The averments made in any application under Section 151 CPC cannot be considered as part of the formal pleadings in the previous plaint, and therefore, the suit cannot be re-registered on that basis alone. The originally returned plaint does not contain any such pleadings stating that the defendant carry-out business at Jaipur or within the territorial jurisdiction of the Commercial Court, which could provide the plaintiff a ground to re-register or re-institute the same returned plaint before the same Court, which has already returned the plaint under Order 7 Rule 10 CPC, for filing the same before the Competent Court of law.

Hence under the aforesaid facts and circumstances of the case, the impugned order dated 23.02.2021 is legally not sustainable in the eyes of law and is liable to be quashed and set aside.

21. This Court finds no merit and substance in the arguments raised by counsel for the plaintiff that after re-registration of the suit on 23.02.2021, the application filed by the defendant under Order 7 Rule 11 CPC was rejected by the Commercial Court vide order dated 09.09.2021 and the said order was not assailed by the defendant before any Court of law. Once it is found by this Court that the re-registration order dated 23.02.2021 of suit, is legally not sustainable in the eyes of law, then the successive order passed by the Commercial Court could not come in the way of the defendant as the order dated 23.02.2021 was challenged by him before this Court in instant petition prior to rejection of its application under Order 7 Rule 11 CPC on 09.09.2021.

22. In the case of **Calcutta Discom Company Ltd. (Supra)**, the five Judges Constitution Bench of the Hon'ble Apex Court has held as under:-

"..... When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused."

23. Thus, after passing the order dated 21.01.2021, there was no reason or occasion available with the Commercial Court to entertain the application filed under Section 151 CPC for re-instituting the same returned plaint, without there being any amendments made in the averments in the plaint with regard to

the fact that the defendant is running or conducting its business at Jaipur or within the territorial jurisdiction of the Commercial Court.

Hence, the order dated 23.02.2021 passed by the Commercial Court is illegal and without jurisdiction and this Court can issue appropriate orders to prevent the same.

24. In view of the discussions made herein above, the impugned order dated 23.02.2021 is quashed and set aside and the instant writ petition stands allowed. The Commercial Court is directed to return the plaint to the plaintiff to file the same before the appropriate forum of law.

25. Stay application and all the pending applications (if any) stands disposed of.

**S.B. Other Original Suit NO. 2/2022**

26. Since the suit itself has been ordered to be returned to the plaintiff to file the same before the appropriate forum of law, this Original Suit be also sent back to the Commercial Court for returning the same to the plaintiff.

27. The other original suit is not required to be decided by this Court.

28. For statistical purposes, this Other Original Suit No. 02/2022 stands disposed of in the light of the provisions as mentioned in para 15 and 16 of this order.

29. Office is directed to return the record of the Original Suit to the Commercial Court.

**(ANOOP KUMAR DHAND),J**