

(2025) 11 DEL CK 1964

In the Delhi High Court

Case No : CS(COMM) No. 892 Of 2023, I.A. 25294 Of 2023, 31835, 32699 Of 2024

Envitech Consultants India Pvt Ltd

APPELLANT

Vs

Rudrabhishek Enterprises Limited & Ors

RESPONDENT

Date of Decision : 24-11-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11

Copyright Act, 1957 — Section 2(k), 4, 14, 16, 17, 17(d), 18, 19, 19A, 28, 30, 30A, 31, 31A, 51, 56, 57, 58, 62

Micro, Small And Medium Enterprises Development Act, 2006 — Section 16

Citation : (2025) 11 DEL CK 1964

Hon'ble Judges : Tejas Karia, J

Bench : Single Bench

Advocate : Vivekanand Sharma, Joydip Bhattacharya, Surendra Kumar, Ipsita Biswas

Final Decision : Dismissed

Judgement

Tejas Karia, J

I.A. No. 8257/2024

1. The present Application has been filed by Defendant No. 1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") seeking rejection of Plaint filed by the Plaintiff.

2. Plaintiff is a consultancy start-up and registered Micro, Small and Medium enterprise, engaged in the business of consultancy services into water supply, sanitation, waste management, public health engineering and the environmental and sustainable development.

3. Defendant No. 1 is an enterprise engaged in the business of urban development and infrastructure consultancy.

4. The present Suit concerns alleged act of copyright infringement by the

Defendants of works of Detailed Project Reports ("DPRs") for large-scale surface-source based water supply schemes on district-level scale and setting covering Chitrakoot district in Uttar Pradesh ("Subject Work") and reliefs of permanent injunction, rendition of accounts, damages and other reliefs under Sections 55, 57, 58 read with Section 62 of the Copyright Act, 1957 ("Act").

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 1:

5. The learned Counsel for Defendant No. 1 made the following submissions:

5.1. Defendant No. 1 is engaged in the business of Urban Development and Infrastructure Consultancy. Defendant No. 1 was awarded a consultancy contract to provide consultancy services for preparation of DPRs for 3 districts, i.e., Banda, Hamirpur and Chitrakoot by the State Water Sanitation Mission ("SWSM"), Lucknow, Government of Uttar Pradesh ("U.P.") vide Letter of Award dated 01.01.2019 and consequent Contract dated 05.01.2019.

5.2. In relation with the preparation of the Subject Work, Defendant No. 1 came in contact with the Plaintiff, which was introduced by one Mr. Vivekanand Sharma, a former employee of Defendant No. 1, who worked with Defendant No. 1 as a General Manager-Infrastructure Services from 11.03.2019 to 29.04.2019. However, Mr. Vivekanand Sharma persuaded Defendant No. 1 to appoint the Plaintiff as sub-contractor, while concealing that it was his own company as he himself was a director in the Plaintiff-company. Thereafter, the Plaintiff was awarded Work Order / Agreement No.: RE-NO20-PO-00049 dated 16.05.2019 ("Work Order / Agreement") on back-to-back basis by Defendant No. 1 for preparing the Subject Work for a total amount of ₹ 2,61,00,000/- (Rupees Two Crore Sixty One Lakh Only) as per the rates in the Plaintiff's quotation vide ref. No. ET/P/190515/01 dated 15.05.2019. In terms of the Work Order / Agreement, the Plaintiff was supposed to carryout actual physical topographical survey of the area and then prepare the Subject Work and submit to Defendant No. 1 in editable format along with the survey data. However, the Plaintiff failed to do even the basic work, i.e., actual physical topographical survey, which was a prerequisite for preparing any DPR of such nature. Further, the Plaintiff directly submitted the defective and incomplete draft DPRs, without the actual survey data to the SWSM at the eleventh hour on 31.05.2019, denying any opportunity to Defendant No. 1 for reviewing the draft DPRs.

5.3. Since the defective and incomplete DPRs were rendered totally meaningless without the actual topographical survey data, Defendant No. 1 was compelled to terminate the Work Order/Agreement vide email dated 15.10.2019 and engaged two separate contractors, i.e., Defendant No. 2 for again preparing the DPRs afresh for Chitrakoot District and one M/s Manohar Enterprises for carrying out the actual topographical survey. Defendant No. 1 has not infringed the Subject Work as Defendant No. 1 had to get the entire work done afresh from other contractors at additional cost.

5.4. Since the inception, the Plaintiff was well aware of the terms and conditions

of the Letter of Award dated 01.01.2019 and consequent Contract dated 05.01.2019 executed between SWSM and Defendant No. 1, and the same is evident from the Plaintiff's documents filed along with the Plaint. However, the Plaintiff has deliberately not filed the complete terms and conditions of the Contract dated 05.01.2019 executed between SWSM and Defendant No. 1 wherein it has been specifically stipulated at Clause 3(j) that all the documents, designs plans etc. prepared under the said contract would be the property of SWSM. Therefore, the Plaintiff's claim of copyright over the Subject Work is completely baseless, and the Plaintiff is guilty of concealment and suppression of material facts going to the root of the case.

5.5. Apart from the documents filed by the Plaintiff along with the Plaint, the Plaintiff had later filed the alleged infringing material separately in a pen drive with leave of the Court granted vide order dated 22.12.2023. The alleged infringing material, which now forms part of the documents filed along with the Plaint contains various drawings contained in the folder 'Chitrakoot 'Drawings_13-19-20240108T093004Z-001' in the pen drive material filed by the Plaintiff. A perusal of the said drawings show that they were made for the client namely 'State Water Sanitation Mission'. Therefore, the Plaintiff cannot claim any ownership over the said drawings / alleged infringing materials.

5.6. In the pen drive, material filed by the Plaintiff, it has also filed Package-2 and Package-4 DPRs allegedly prepared by the Plaintiff. In Paragraph No. 1 under the head 'Authority' of the said package-4 Detailed Project Report 'Naraina Khera and other villages in package 04 Block-04 Manikpur' the Plaintiff has mentioned that:

"This Project Report of Group of Villages Water Supply Scheme has been prepared as per instructions of Executive Director, State Water & Sanitation Mission, Department of Rural Development, Government of Uttar Pradesh vide letter no. 1709/W-409/2019/19 dated 01.01.2019"

Further in Package-2 Detailed Project Report 'Khadar Chilli Rakas and other villages, Block Ram Nagar', the Plaintiff has mentioned under the head 'Authority' that:

"The project report of Multi Villages Piped Water Supply scheme has been prepared as per instructions of Executive Director, State Water & Sanitation Mission, Department of Rural Development, Government of Uttar Pradesh vide latter no. 1709/W-409/2019/19 dated 01.01.2019".

Thus, it was in specific knowledge of the Plaintiff that the project was commissioned at the instructions of the Government i.e., SWSM and the Subject Work was prepared at the instance of SWSM, Lucknow, Government of U.P. Consequently, in terms of Section 17 (d) of the Act, SWSM, Lucknow, Government of U.P. is the first owner of the copyright in the subject DPRs and not the Plaintiff. The same is evident from Paragraph Nos 20, 30, 31, 40 and 43 of the Plaint.

5.7. Irrespective of the contrasting stands of the parties on facts, a purely legal issue has been raised by the Defendant No. 1 through the present Application as to whether the Plaintiff can claim ownership of copyright over the Subject Work in view of Section 17(d) of the Act which stipulates that in the absence of any agreement to the contrary the government shall be the owner of the copyright therein, Section 2(k) of the Act which defines 'Government Work' as 'a work which is made or published by or under the direction or control of the Government or any department of the Government' and in light of express admission on the part of the Plaintiff, as evident from the Plaint, about its knowledge since inception that the Subject Work was a 'Government Work' and that the first ownership of the Subject Work statutorily vests with the Government. Therefore, the Plaintiff, not being the owner of the Subject Work, has no cause of action to file the present Plaint, and the same deserves to be rejected as being barred by law.

5.8. The Plaint filed by the Plaintiff is also liable to be rejected under Order VII Rule 11 of the CPC as the relief claimed by the Plaintiff is undervalued. The Plaintiff in the prayer clause 'D.' has sought the following relief:

"Plaintiff be awarded damages for losses and injuries suffered including exemplary penal damages and all the revenues earned by Defendant No. 1 with the pendent lite and past and future compound interest as per terms of Plaintiff's invoice or as per section 16 of the MSMED Act at prescribed rates from the respective dates, whichever higher"

A perusal of the prayer clause 'D.' shows that the damages have been claimed by the Plaintiff in terms of the invoice raised by the Plaintiff which has been annexed with the Plaint as Document-10. The invoice dated 03.08.2019 was raised by the Plaintiff for an amount of ₹ 4,31,05,155/-. However, the Plaintiff has valued the said relief of damages at ₹ 2,00,00,001/- despite the clear averment that the damages have been sought in terms of the aforesaid invoice. Therefore, the Plaintiff ought to have valued the said relief at the value of the alleged invoice dated 03.08.2019 and requisite court fees thereon should have been paid by the Plaintiff. Since the Plaintiff has not valued the relief properly and not paid the appropriate court fees the present Plaint should be rejected being undervalued.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

6. The learned Counsel for the Plaintiff made the following submissions: 6.1. A Plaint and meaningful reading of section 28 of the Act reveals the non-obvious nature of ownership of copyright in 'Government Works'. Section 28 of the Act draws a distinction between 'Government work' and 'Government work, where Government is the first owner of the copyright therein'.

6.2. Intellectual works made autonomously by the Plaintiff, a subcontractor company in the course of its business by independently taking risk for the rewards and for earning revenue for itself, in trade with another contractor company i.e., Defendant No. 1 who is also in business / trade

with the Government for earning revenue, by using the Plaintiff's own skills, judgment, creativity and intellectual labour in the independent manner, is not a 'Government work' per se within the meaning of section 17(d) read with section 2(k) of the Act, merely on the grounds that the work was 'commissioned by' Government or 'made for' Government or 'made at the instance of' Government, solely because the direction / instruction to start the work was issued by the Government by awarding a Letter of Award dated 01.01.2019 on Defendant No. 1 who separately directed / instructed to start the work by awarding another distinct Work Order / Agreement to the Plaintiff. Such irrational interpretation as suggested by Defendant No. 1 would frustrate the very objectives of the Act and adversely affect the public policy with chilling effects on public interest and Government itself.

6.3. To be entitled for protection under Section 17(d) of the Act, Defendant No. 1 must show that its case squarely falls within Section 17(d) of the Act which is an exception against the governing rule in section 17 of the Act, wherein the governing rule is, "Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein". It is stated in the Plaint that the Plaintiff is the author and owner, which is sufficient at this stage to apply governing rule under Section 17 of the Act. It is for Defendant No. 1 to push the case within exception under Section 17(d) of the Act. Defendant No. 1 must satisfy that its case squarely falls within the exceptions within Section 17(d) of the Act, i.e., firstly, the condition precedent in Section 17 of the Act that its case satisfies all other provisions of this Act, qua "Subject to the provisions of this Act...", secondly, that the exception within Section 17(d), qua "...in the absence of any agreement to the contrary" operates in its favor.

6.4. To be able to satisfy these conditions, Defendant No. 1 must satisfy essentially Sections 4, 14, 16, 18, 19, 19A, 30, 30A, 31, 31A, 51, 56, 57 and the other provisions of the Act. To comply with the same, Defendant No. 1 must show that:

- a) There existed a bilateral written agreement between the Government and the Plaintiff, wherein the copyright was wholly assigned by the Plaintiff to the Government by way of transfer of ownership and title of copyright. There is a distinction between 'in the absence of any agreement' and 'in the absence of any agreement to the contrary';
- b) Such agreement was neither terminated nor expired, at the time of acts or omissions allegedly constituting infringement;
- c) Government had fulfilled all terms and conditions of such agreement including full payment of the valuable consideration / royalties to the Plaintiff for the Subject Work, prior to presuming ownership and title of copyright;
- d) Government used the copyright and title of ownership, only in compliance with terms and conditions of such agreement as well as the Act lawfully and

e) Government assigned or granted license to Defendant No. 1 for exploiting copyright in the Subject Work.

A meaningful reading of the Plaint as a whole, gives the answers to the above questions in negative. Indisputably there was no agreement at all between the Plaintiff and the Government. In cases where there is no written agreement at all between parties, the very question of deviating from the rule as envisaged under Section 17 and applying exception under Section 17(d) of the Act does not arise.

6.5. As per Plaint, the Government has also taken same position and cornered itself on the ground of absence of agreement between the Government and the Plaintiff. The Government did not respond to the Plaintiff's request for payment of consideration / royalty by Defendant No. 1 even for the first sale of the Subject Work in spite of written communication with Government through executive director and principal secretary, Government of U.P. and despite meeting with executive director and other key staff of SWSM. Thus, presuming ownership of copyright in the Subject Work without complying to all of the above, would constitute copyright infringement in hands and gloves both by Defendant No. 1 as well as Government, jointly and severely, considering the strict liability nature of copyright infringement.

6.6. There is a distinction between 'Government works in public domain' such as the Supreme Court judgments and topographic survey data of the Survey of India etc. and the 'works wherein copyright is allegedly owned by the Government but such works are not in public domain'. While the former ones can be accessed and copied without playing foul of the Law as far as such acts comply to the Government policy and terms and conditions and do not adversely affect the public interest / national security, the later ones cannot be copied without written assignment or license given to Defendant No. 1 by the claimed owner-Government, prior to doing the acts or omissions that constitute infringement. Such assignment / license must also comply to all the requirements of the Act.

6.7. It is the case of Defendant No. 1 that Government is the owner of copyright in the Subject Work but it has not stated in its Application that the copyright in the Subject Work was assigned or licensed to it by the Government and for what purpose, and to what extent, and on what consideration / royalties, and on what other terms and conditions etc. In absence of the same, Defendant No. 1's claim is entirely in the vacuum.

6.8. It would be unreasonable to believe that Government by itself presumed the 'acquisition' ownership and title of copyright in the Subject Work, enriched itself and distributed assignment / license to Defendant No. 1 to make unauthorised copy of the Subject Work, for giving the Subject Work to Defendant No. 2 for reproduction while maintaining originality and allowed Defendant No. 1 to reduce its cost of production from few crores to few lakhs while knowingly causing loss of entire income to the Plaintiff but despite all this, it paid full revenue to

Defendant No. 1 as per its Letter of Award dated 01.01.2019 but did not pay or ensure the payment of consideration / royalty to the Plaintiff for the Subject Work.

6.9. If statutory provision under Section 17(d) of the Act bars the Plaintiff to file a suit alleging infringement, it equally bars Defendant No. 1 to take any defense for its own acts of infringement on the ground of claimed ownership of Government without stating and producing any assignment or license, especially when Government is not party to the Suit.

6.10. A meaningful reading of the Plaintiff as a whole suggests the allegations that Defendant No. 1 misappropriated the Subject Work for reproducing, modifying the Subject Work in the name of completion for deliberately making colourable imitation and for preparing surface source based DPRs for Banda district and also for other DPRs in other projects and continuously doing so along with dissemination through Defendant No. 3's servers, the present Suit survives for damages and reliefs on these grounds alone, even if ownership and title of copyright in the Subject Work was to be owned by the Government.

6.11. A meaningful reading of the Plaintiff suggests that Defendant No. 1 also removed the authorship of the Plaintiff and earned completion and experience certificate, recognition, credentials and reputation and used them in bidding, marketing, business promotion etc. Defendant No. 1 qualified and secured more tender awards in Quality and Cost Based Selection ("QCBS") system of bids evaluation thus secured immediate and perpetual business gains. By terminating the Work Order / Agreement immediately before final Expenditure Finance Committee ("EFC") approval and by removing the authorship of the Plaintiff, Defendant No. 1 deprived Plaintiff of the authorship and completion and experience certificate, recognition, credentials thus reputation which it could have otherwise earned through Defendant No. 1 or the Government. The present Suit survives for damages and reliefs on these grounds alone.

6.12. Even if Defendant No. 1 succeeds in proving ownership and title of copyright with the Government, even then the other causes of actions survive. These causes of actions include damages and other reliefs for infringement of the Plaintiff's moral rights, legal rights, and for unjust enrichment to Defendant No. 1 and Government, and for breach of trust or confidence by Defendant No. 1 in the Work Order / Agreement with the Plaintiff, and for misappropriation and dissemination / distribution of confidential information and for breach of contract etc., wherein all of which independently caused losses and injuries to the Plaintiff. The present Suit survives for damages and reliefs on each of these causes of actions alone.

6.13. Defendant No. 1's claim that the Government is the owner of copyright in the Subject Work is an afterthought. Government on various occasions directed Defendant No. 1 for providing specific desired numbers of copies and sometimes demanded additional copies of Subject Work, if required additionally.

Government never made additional copy under the misbelief of ownership of copyright, even for a single copy of the Subject Work. Every copy of the Subject Work submitted to the Government through Defendant No. 1 was required to be and, thus, was a certified original copy, signed by the Plaintiff on every page. Infringing copy of the Subject Work which were infringed by making unauthorised copy and by giving it to Defendant No. 2 for reproduction, is the uncertified copy which was never submitted to the Government.

6.14. An express admission by Defendant No. 1 that projects executed in past i.e., past record and reputation earned by a consultancy company leads to award of more projects thus more revenues and profits, immediately and perpetually, the growth. Plaintiff has claimed damages for infringing acts of Defendant No. 1 which deprived it in earning such past record and reputation thus direct loss of revenues, profits and growth.

6.15. The Work Order / Agreement between Defendant No. 1 and the Plaintiff was a % rate revenue sharing contract with an express and clear mention that:

"The quantity shown in above table is tentative. It can be increased or decreased as per site condition and client requirements. The same rate shall be applicable if quantum of work increased or decreased."

The unit rate with respect to % of DPR cost, as sought by the Plaintiff in its quotation was 0.49% but Defendant No. 1 reduced it to 0.45% of DPR cost for the resources Defendant No. 1 promised initially but never gave in time when needed and rather gave them to Defendant No. 2, after terminating the Work Order / Agreement on frivolous grounds.

6.16. It is an express admission by Defendant No. 1 that Letter of Award dated 01.01.2019 awarded by the Government of U.P. to Defendant No. 1 and the subsequent Work Order / Agreement awarded by Defendant No. 1 to the Plaintiff were two distinct and independent work orders / agreements with no relation or connection with each other. The Subject Work was prepared in the course of independent business / trade autonomously, using Plaintiff's own skills, judgment, creativity and intellectual labour in the independent manner. Therefore, the Plaintiff's awareness or unawareness of the project being 'commissioned by' or 'prepared for' SWSM / Government of U.P. has no bearing on Plaintiff's sole authorship and ownership of the copyright in the Subject Work. A perusal of the drawings in standard format indicating that they were 'made for' SWSM, or that the project was 'commissioned' or 'at the instance of' SWSM / Government of U.P., equally has no bearing on such authorship and ownership. The mentioning of terms such as 'authority', 'instructions' has no bearing on the Plaintiff's sole authorship and ownership of the copyright in the Subject Work. The name of the sole author and owner is also clearly mentioned in the Subject Work at the designated place, as per the Act.

6.17. As regards the valuation of the Suit, a perusal of the prayer clause 'D.' when read with the Plaint as a whole in a meaningful manner, leads to correct

valuation of the Suit. The term refers to the interest component.

ANALYSIS AND FINDINGS:

7. Before adverting to the legal position governing rejection of plaint under Order VII Rule 11 of the CPC, it is necessary to take into account the averments made in the Plaint.

8. The Plaint, inter alia, avers that:

i. The Subject Work was prepared by the Plaintiff under a back-to-back revenue sharing contract with Defendant No. 1 wherein ownership and all rights including intellectual property rights were wholly reserved with sole author and owner Plaintiff.

ii. Defendant No. 1 voluntarily formalised the performance-based arrangement dated 29.04.2019 into a formal Work Order / Agreement with the Plaintiff, a start-up company for providing consultancy services for preparing the Subject Work and that the contract was drafted on the basis of its arrangement with SWSM on its request and approval of SWSM.

iii. The Plaintiff accordingly prepared its original schemes, calculations, literary and artistic works, drawings, and reports and arranged them into five DPRs and submitted stage-I edition draft DPRs including all data to Defendant No. 1, and satisfied-Defendant No. 1 submitted the same DPRs to SWSM vide its covering letter No. REPL/BK/0519/292A dated 31.05.2019 on its letterhead with seal and signature and received by SWSM with seal and signature. Thus, Plaintiff with its timely performance and tireless efforts secured unconditional acceptance of DPRs and project time extension thus rescued Defendant No. 1 from bigger losses of termination, blacklisting and legal action by SWSM.

iv. By mid of October 2015, the Plaintiff secured formal approvals from all stakeholders at all levels including SWSM, State Level Technical Committee, State Government, Project Finance Appraisal Department, Lucknow and lastly the final presentation to the EFC of State Government was scheduled for cabinet's financial sanction thus the Plaintiff completed Chitrakoot DPRs and the project.

v. By this time, Defendant No. 1 had become entitled for the Subject Work fee by SWSM for stage-II i.e., submission of final DPRs and stage- III i.e., approval of DPRs however it could not raise its invoices to SWSM owing to its delays in other two districts awarded to it by SWSM, for which it was constantly demanding and exploiting Plaintiff to work beyond contracted scope of work for other districts. Thus, despite completion of the Subject Work, the Plaintiff could not raise its stage-II and III invoices to Defendant No. 1 due to back-to-back payment term of contract with Defendant No. 1.

vi. At this stage, when the Plaintiff started pressing for its long standing assured dues of Stage- I DPRs, the Plaintiff on 15.10.2019 received a conditional termination email on the ground of want of DPRs. This termination took place

prior to the final stage of budgetary allocation, even though the Plaintiff had, throughout, acted on behalf of Defendant No. 1 in preparing, submitting and securing successive approvals of the DPRs at the earlier stages.

vii. Defendant No. 1 transferred and stored the infringing digital copies of the Subject Work on several computers, laptops, mobiles, servers and other devices across offices, and made them globally downloadable via peer-to-peer file sharing with the assistance of Defendant No. 3. Defendant No. 1 vide formal contract dated 24.10.2019 hired Defendant No. 2 exclusively for reproduction of the Subject Work while maintaining their originality. It created inexpensive alternative and fraudulently terminated and disabled Plaintiff and caused loss of entire income and injury to it and made unlawful profits by unlawful means, knowing very well that all this would prejudice and cause losses and injuries to the Plaintiff.

viii. Defendant No. 1 directed and ensured the intended reproduction through Defendant No. 2 and misused infringing copies of the Subject Work and reproduced the Subject Work by copy-paste, digitization, sampling, tracing and submitted to SWSM. It also misused infringing works and revised and corrected Banda district DPRs in same project and reformed small ground-water based DPRs into new large-scale surface-water based DPRs. It also misused the Subject Work and prepared other DPRs in other projects. It also misused infringing works along with the credentials for bidding in tenders, marketing, branding through brochure, website etc. It labelled all these infringing works as its own and portrayed as sole author and owner and issued, distributed, displayed and published them to its clients and others and earned unlawful immediate and perpetual gains and continuously doing it and deprived Plaintiff of these gains.

ix. Owing to special status of Chitrakoot's geographical, historical and heritage importance its DPRs maintain special status thus its potential related to credentials, recognition, reputation and publicity. Defendant No. 1 used them for business development and activities including exhibitions, seminars, conferences, events and other publications and campaigns and gained widespread publicity and promotion and ensured perpetual gains and irreparably deprived Plaintiff of these benefits of its own work.

9. In this background, the main issue for consideration is that whether the allegations as averred in the Plaint, if taken as true, establish a cause of action.

10. For this purpose, it is important to first outline the law governing the rejection of a plaint under Order VII, Rule 11 of the CPC.

11. In *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 SCC 706, the Supreme Court observed that:

"14. In *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* [(1989) 2 SCC 163] , this Court explained the meaning of "cause of action" as follows: (SCC p. 170, para 12)

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

[Emphasis supplied]

12. The Gujarat High Court in the case of *Jadavbhai Jerambhai Chavda v. Koli Savsi Amra*, 2023 SCC OnLine Guj 3815, setting out the principles governing rejection of plaint under Order VII Rule 11 CPC has observed that:

"17. It is settled rule of law that plea of rejection of plaint is founded on the 'Plea of Demurrer'. A person raising such plea under Order 7 Rule 11 of CPC has to take the facts as stated by the plaintiff in plaint as correct. Pleadings which is gathered from the plaint and documents filed by the plaintiff are only to be seen. The defense of the defendant is irrelevant at the stage of deciding application under Order 7 Rule 11 of CPC. To be noted that presumption of prima facie correctness is attached with plaint. The person intend to reject the plaint at threshold is bestow with the onus to show that despite presumption of prima facie correctness of the plaint still the plaint is not maintainable as it is barred by provision of law or lacking cause of action or barred by other exigences stated under Order 7 Rule 11 of CPC. Despite tentative admission of correctness of the plaint, if plaintiff is not disclosing complete or even partial cause of action or the relief claimed in the plaint or it is barred by law, plaint is liable to be rejected within the provisions of Order 7 Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under the provision of Order 7 Rule 11 of CPC, the Court has to look alone into the plaint and documents annexed therewith.

18. The language of Order 7 Rule 11 of CPC does not admit any scope for doubt that the written statement filed by the defendant cannot be referred or relied nor averments made in the application for decision. Whether the plaint discloses any cause of action or not or relief claimed in the plaint is barred by limitation, is a question found on the basic cause of action pleaded by the plaintiff in his plaint. It must thus necessarily be construed that language of Rule is circumscribed by the limitation of reading the plaint at best with its supporting documents.

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23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, which reads as:

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

[Emphasis supplied]

13. The remedy under Order VII Rule 11 of CPC is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained under Order VII Rule 11 of CPC. The power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 of CPC are required to be strictly adhered to. Under Order VII Rule 11 of CPC, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

14. In the present case, a careful reading of the Plaint reveals that the Plaintiff's claims are not restricted to copyright ownership or infringement. The Plaint contains specific averments of removal of authorship, loss of reputation and experience certificates, breach of contract, unjust enrichment by Defendant No. 1, and misappropriation and dissemination / distribution of confidential information. The Plaint avers that the Subject Work was authored and prepared by the Plaintiff and that there exists no agreement assigning or licensing the ownership or exploitation rights in the Subject Work to Defendant No. 1 and that in such circumstances, Defendant No. 1 had no entitlement to misappropriate, reproduce, distribute or commercially exploit the DPRs prepared by the Plaintiff. The Plaint further avers that Defendant No. 1 by terminating the Work Order / Agreement immediately before the final EFC approval and by removing the authorship of the Plaintiff assumed control over the manner in which the Subject Work was used, reproduced, distributed, performed and displayed; labelled the Subject Work as its own with its registered trade mark and a copyright notice in its favour; published, misused and distributed the Subject Work to third parties; and thereby derived immediate and continuing commercial and reputational

gains while depriving the Plaintiff of its authorship of the Subject Work, completion and experience certificate, recognition, credentials and thus reputation which the Plaintiff could have otherwise earned.

15. The Plaintiff also avers that Defendant No. 1 removed the authorship of the Plaintiff and earned completion and experience certificate, recognition, credentials and reputation and used them in bidding, marketing, business promotion etc. and that Defendant No. 1 qualified and secured more tender awards in QCBS system of bids evaluation securing immediate and perpetual business gains.

16. Section 57 of the Act protects the author's moral rights, including the right to claim authorship and the right to restrain or seek redress for any distortion, mutilation, modification or other act prejudicial to the author's moral rights. The Plaintiff specifically pleads acts that fall squarely within the scope of moral-rights protection.

17. This Court in the case of *Amar Nath Sehgal v. Union of India*, 2002 SCC OnLine Del 390 observed that:

"11. Copyright is a bundle of rights which the author can exploit independently for economic benefit by exercising these rights. A copyright owner may exploit his work himself or license others to exploit any one or more of the rights for a consideration which may be in the form of royalty or a lumpsum payment. Copyright apart, the author of a work has certain moral rights as well. These are:—

1. The right to decide whether to publish or not to publish the work (droit de divulgation—the right of publication);
2. The right to claim authorship of a published or exhibited work (droit a la paternite— the right of paternity);
3. The right to prevent alteration and other actions that may damage the author's honour or reputation (droit au respect de loeuvre—the right of integrity).

(See *Intellectual property* by W.R. Cornish, 2nd Ed. page 309). These rights remain with the author even after transfer of copyright and the protection lasts during the whole of the copyright term. Some of the moral rights have been given statutory recognition under Section 57 of the Copyright Act, 1957 (for short 'the Act'). Relevant part of Section 57 of the Act reads as under:— 57. Author's special right

(1). Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation,

modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation”

These rights are independent of the author's copyright. They exist even after the assignment of the copyright, either wholly or partially.”

[Emphasis supplied]

18. This Court in the case of *Amar Nath Sehgal v. Union of India*, 2005 SCC OnLine Del 209 dealt with the issues, inter alia, (1) whether the plaintiff therein had rights under Section 57 of the Act in the impugned work although the copyright in the same was vested to the defendant therein i.e. the government; (2) whether the defendant therein violated the plaintiff's rights under Section 57 of the said Act and (3) whether the plaintiff therein suffered any damage. While deciding these issues in favour of the plaintiff and against the defendants, this Court held that the plaintiff has a cause to maintain an action under Section 57 of Act notwithstanding that the copyright in the concerned work stood vested in the defendants therein and further observed that:

“25. When an author creates a work of art or a literary work, it is possible to conceive of many rights which may flow. The first and foremost right which comes to one's mind is the “Paternity Right” in the work, i.e. the right to have his name on the work. It may also be called the ‘identification right’ or ‘attribution right’. The second right which one thinks of is the right to disseminate his work i.e. the ‘divulgarion or dissemination right’. It would embrace the economic right to sell the work or valuable consideration. Linked to the paternity right, a third right, being the right to maintain purity in the work can be thought of. There can be no purity without integrity. It may be a matter of opinion, but certainly, treatment of a work which is derogatory to the reputation of the author, or in some way degrades the work as conceived by the author can be objected to by the author. This would be the moral right of “integrity”. Lastly, one can conceive of a right to withdraw from publication ones work, if author feels that due to passage of time and changed opinion it is advisable to withdraw the work. This would be the authors right to “retraction”.

26. Except for the ‘divulgarion or dissemination right’ which perhaps is guided by commercial considerations, the other three rights originate from the fact that the creative individual is uniquely invested with the power and mystique of original genius, creating a privileged relationship between a creative author and his work. As I understand, this is the source of the last three rights noted in para 25 above and, therefore, could be captioned under the banner “The Authors Moral Rights”.

27. The community of nations set the International Standards for moral rights protection of the author under the ‘Berne Convention For the Protection of Literary and Artistic Works’. Since its inception in 1886, the Berne Convention has been the primary instrument of International Copyright Law. Article 6bis of the Berne Convention enjoins the members of the Berne Union to provide legal

recognition for the moral rights of attribution and integrity in a work in which copyright exists. Article 6bis of Berne Convention reads:—

“(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.”

xxxx

29. Under Article 6bis of the Berne Convention, the moral right of integrity enables the author to seek appropriate legal remedies if the moral right of attribution and integrity in his work is violated. The moral rights set out in the Berne Convention are significant because they continue to be vested in the author even after he has parted with his economic rights in his work.

[Emphasis supplied]

19. Taken together, the averments that (a) the Plaintiff authored the Subject Work (b) Defendant No. 1 labelled the Subject Work as its own and portrayed itself as the sole author and owner and issued, distributed, displayed and published them to its clients and others and earned unlawful immediate and perpetual gains and continuously doing it and depriving the Plaintiff of the same, among other averments, prima facie disclose infringements of the Plaintiff's moral rights under the Act. These are allegations which for the limited purpose of Order VII Rule 11 of the CPC, constitute a cause of action appropriate for judicial determination.

20. Considering the averments made in the Plaint as true, the Plaintiff retains statutory moral rights under Section 57 of the Act, which subsist with the author regardless of ownership, and enable the pursuit of relief against distortion, mutilation or denial of attribution. Section 57 of the Act protects the author's right of paternity as also the right of integrity. Distortion, mutilation or modification if established to be prejudicial to the author's reputation or honour are actionable. The averments premised on inter alia breach of contract and damages for reliefs for infringement of author's moral rights give rise to a cause

of action in the present Suit. Therefore, the Plaint cannot be rejected under Order VII Rule 11 CPC.

21. As regards the question that whether the Subject Work is a 'Government work' within the meaning of Section 2(k) and Section 17(d) of the Act is a complex legal and factual question that the Court is not required to delve into at this stage. The Supreme Court *Cryogas Equipment (P) Ltd. v. Inox India Ltd.*, 2025 SCC OnLine SC 780 has observed that

"(g) Order VII Rule 11(a) of the CPC empowers a court to reject a plaint if the plaintiff fails to disclose a cause of action. In determining this, the court is not required to delve into complex legal questions but must simply assess whether the allegations, if taken as true, establish a cause of action without evaluating the likelihood of success. Since the plaintiff explicitly sought copyright protection over the 'Proprietary Engineering Drawings'; the literary work associated with the internal parts of Cryogenic trailers; and the know-how for their manufacture or assembly, the rejection of the plaint was unwarranted.

(h) When determining whether a plaint discloses a cause of action, the court is not required to conduct an elaborate inquiry into complex legal or factual issues. The court's role is limited to assessing whether any of the allegations indicate a cause of action. As long as the claim presents some cause of action or raises questions appropriate for judicial determination, the fact that the case may be weak or unlikely to succeed is not a valid reason for striking it out. For rejecting a plaint, it is unnecessary to evaluate whether the averments substantiate the ownership claim made by the defendant. Likewise, if the defendant raises a legal issue in the written statement, it cannot be adjudicated through an application under Order VII Rule 11 of the CPC, as doing so would amount to pre-judging the matter."

[Emphasis supplied]

22. The Supreme Court in the case of *Central Bank of India v. Prabha Jain*, (2025) 4 SCC 38 has further observed that:

"23. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the Sarfaesi Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7 Rule 11CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7 Rule 11CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the Sarfaesi Act and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11CPC.

24. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order 7 Rule 11 application. This is because if the civil

court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.”

[Emphasis supplied]

23. In view of the foregoing, the question of whether the Subject Work qualifies as a ‘Government work’ under Sections 2(k) and 17(d) of the Act involves legal and factual question that cannot be determined at the threshold. At this stage, the Court is only required to ascertain whether the Plaint, when read as a whole, discloses a cause of action. Since the averments in the Plaint, taken at face value, raise issues warranting judicial determination, the rejection of the Plaint under Order VII Rule 11 of the CPC is unwarranted.

24. As regards the objection raised by Defendant No. 1 concerning the valuation of the relief under prayer clause ‘D.’, this Court finds no merit in the said objection. The reference to the Plaintiff’s invoice in the prayer clause ‘D.’ is confined to the determination of the applicable rate of interest, and not to the quantification of the damages themselves.

25. It is a settled law that when there exist no objective standards, the plaintiff has the right to value the relief claimed according to his own estimation and such valuation has ordinarily to be accepted by the Court. It is only in cases where, on a consideration of the facts and circumstances, the valuation appears arbitrary, unreasonable, or demonstrably undervalued that the court may interfere. Further, under Order VII Rule 11 of the CPC, a plaint can be rejected for undervaluation only if, after the court determines the correct valuation, the plaintiff fails to correct it within the time fixed.

26. The Supreme Court in *Tara Devi v. Sri Thakur Radha Krishna Maharaj*, (1987) 4 SCC 69 has held that where the valuation made by the plaintiff is not arbitrary and has a reasonable nexus with the relief claimed, the same should ordinarily be accepted unless shown to be demonstrably undervalued. Courts have consistently held that where no objective standard exists to determine the precise amounts of damages, the plaintiff’s bona fide and provisional valuation must ordinarily be accepted. The objection of Defendant No. 1 proceeds on a misconstruction of the prayer clause ‘D.’, inasmuch as the invoice is only a reference point for determining past and future compound interest and does not represent the measure of damages for losses and injuries suffered. Accordingly, the objection of Defendant No. 1 on this count stands rejected.

27. Therefore, no ground is made out for rejection of Plaint under Order VII Rule 11 of the CPC. Accordingly, the Application stands dismissed.

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28. List on 16.01.2026.