

(2019) 12 CAL CK 0010
In the Calcutta High Court

Case No : Appeal From Order (APO) No. 261 Of 2015 In Civil Suits (CS) No. 284 Of 2014, Original Side Cross Objection Tender (OCOT) No. 2 Of 2015

Starlight Real Estate (Ascot) Mauritius Limited And Another APPELLANT
Vs

Jagrati Trade Services Private Limited And Others RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 31(5), 34, 34(2), 34(3)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 34
Code Of Civil Procedure, 1908 — Section 9, Order 1 Rule 10(2), Order 6 Rule 16, Order 7 Rule 11, Order 7 Rule 11(d), Order 7 Rule 13

Citation : (2019) 12 CAL CK 0010

Hon'ble Judges : Sanjib Banerjee, J;Kausik Chanda, J

Bench : Division Bench

Advocate : Surajit Nath Mitra, Suman Dutt, Deepak Jain, Ranjan Bachawat, Sanjay Ginodia, Sushovit Dutt Majumder, Sarosij Dasgupta

Final Decision : Allowed

Judgement

Sanjib Banerjee, J

1. The plaintiffs are in appeal against the partial rejection of their plaint on the first defendant's application under Order VII Rule 11 of the Code of Civil Procedure, 1908. The first defendant has also joined in the fray with its cross-objection and insists that the entirety of the plaint ought to have been rejected. It may be worthwhile to refer to the narrative in the plaint before attempting to discover the plaintiffs' cause of action in respect of the matters complained of or the cause of action as disclosed in the plaint and the legal basis for the reliefs claimed therein.

2. According to the plaint, following the relaxation of the norms as to foreign investment in the real estate business in the country, the plaintiffs caused the proforma defendant to be incorporated in India with a paid-up capital or reserves

equivalent to US \$ 10 million with the intention that the proforma defendant and the first defendant Indian collaborator would be the promoters of the second defendant joint venture company to take up real estate projects in India. The joint venture agreement was entered into in July, 2007. According to the plaintiffs, who control 100 per cent of the paid-up capital in the proforma defendant, though several directors were appointed on the board of the proforma defendant, by or about the end of April, 2009, the third defendant remained as the sole director of such company. The sense that the plaint conveys is that since the plaintiffs, who were the only shareholders of the proforma defendant, were foreign companies and had their place of business in Mauritius, the third defendant Indian resident was entrusted by the plaintiffs for ensuring that the papers and documents of the proforma defendant were prepared in time and maintained in order. The case sought to be made out by the plaintiffs is that despite the plaintiffs' substantial investment in the proforma defendant and such company being incorporated to further the plaintiffs' business interests in this country, the third defendant purported to hijack such company, aligned completely with the persons in control of the first defendant Indian collaborator of the plaintiffs and siphoned off almost the entirety of the funds invested by the plaintiffs in the proforma defendant.

3. The plaint narrates that sometime in 2009 the third defendant purported to induct the fourth and fifth defendants as directors on the board of the proforma defendant and caused payments of Rs.1 crore each to be released from the till of the proforma defendant to all three directors. According to the plaintiffs, they apparently met and decided to revoke the authority of the third and fourth defendants to operate the bank account of the proforma defendant and even held an extraordinary general meeting of the proforma defendant by the end of December, 2009 to remove the defendant Nos.3 to 5 from the board of directors of the proforma defendant and to induct others therein. However, the plaintiffs lament, that since the third defendant had not ensured that the accounts of the proforma defendant were audited in time, the plaintiffs or their representatives had no access to the relevant portal of the Ministry of Corporate Affairs to file the statutory forms for the removal of the defendant Nos.3 to 5 as directors of the proforma defendant.

4. It appears that sometime in 2011, a writ petition came to be filed in the Bombay High Court by the proforma defendant, through the aegis of the defendant Nos.3 to 5 directors, seeking a direction on the bankers of the proforma defendant to honour two cheques of Rs.15 crore and Rs.5 crore that had been signed on behalf of the proforma defendant and made out in favour of the second defendant joint venture company. Upon the bankers of the proforma defendant revealing before the Bombay High Court that the shareholders of the proforma defendant had advised the bank to not allow any further transactions pertaining to the proforma defendant, the Bombay High Court required notices to be issued to the plaintiffs and, upon the plaintiffs objecting to the money being paid to the second defendant, the writ petition failed. A subsequent writ petition

was filed by the second defendant against, inter alia, the bankers of the proforma defendant in the Bombay High Court in 2012 for the same purpose. Again, upon notice being issued to the plaintiffs and the plaintiffs opposing the prayers carried by the second defendant to the Bombay High Court, such attempt to divert substantial funds from the proforma defendant to the second defendant, where the persons in control of the Indian collaborator of the plaintiffs had wrested control, was averted.

5. Before continuing with the plaintiffs' story any further, it is necessary to notice one paragraph from the plaint. Paragraph 31 of the plaint appears immediately after a paragraph referring to the disposal of the second writ petition by the Bombay High Court by an order dated January 8, 2014. Paragraph 31 of the plaint is set out:

"31. The plaintiffs state that the plaintiffs in the meantime did not take any step against the defendant nos. 3, 4 and 5 as the proforma defendant did not have any activity apart from holding its substantial fund. Inasmuch as such fund was lying in the account of the proforma defendant with the Hongkong and Shanghai Banking Corporation Ltd. which could not be operated by the defendant nos. 3, 4 and 5, the plaintiffs also did not have any apprehension of losing any further money because of any unauthorized or illegal activities of the said defendants."

6. The rest of what is stated in the plaint makes for interesting reading and may even arouse the suspicion of the court or evoke sympathy for the plaintiffs; but when the action cannot be entertained, the merits of the matter cannot be addressed since the action would have been found to be devoid of the requisite legal basis.

7. According to the plaintiffs, sometime in July, 2014 they received a letter from the bankers of the proforma defendant informing them that following an execution case instituted in this court, a receiver was appointed with a direction on the bank to pay the receiver a sum in excess of Rs.28.51 crore from the account of the proforma defendant. The plaintiffs claim to have discovered thereafter that the defendants connived and conspired to procure an arbitral award that required the proforma defendant to make the relevant payment to the second defendant, which was already in the control of the Indian collaborator or in the control of persons at the helm of the first defendant Indian collaborator. The plaintiffs make out that the execution proceedings were levied on the basis of an arbitral award that was apparently procured. The plaintiffs claim that the arbitration clause in the joint venture agreement provided for arbitral proceedings to be conducted in Singapore, but the proforma defendant and the second defendant, both under the clutches of persons in control of the first defendant, had purported to alter the arbitration clause without notice to the other parties to the joint venture agreement to obtain the contrived arbitral award of May 16, 2013.

8. On the basis of the allegations recounted above, the plaintiffs instituted CS

284 of 2014 to claim divers reliefs ranging from declarations that the purported award of May 16, 2013 was illegal and not binding on the proforma defendant to a decree for delivery up and cancellation of the award; from a declaration that the defendant Nos.3 to 5 had no authority to represent the proforma defendant to a decree for setting aside the purported award and consequential reliefs by way of injunction.

9. By the judgment and order impugned dated May 14, 2015, the interlocutory court, in essence, held that the challenge to the arbitral award could not be maintained and was barred by limitation but, in the same breath, observed as follows in the penultimate paragraph thereof:

"In so far as other reliefs are concerned, in my view, they are required to be adjudicated at the trial and the suit cannot be dismissed as against the other defendants. Since the prayer for setting aside of the award is barred by law, I hold that the suit so far as it relates to setting aside of the award against the defendant No.1 is concerned is not maintainable. The application is allowed in part."

10. Thus, according to the interlocutory court, the challenge to the arbitral award as fashioned in the plaint could not be pursued since the mechanism for challenging an arbitral award is contained in the Arbitration and Conciliation Act, 1996 and no remedy against an arbitral award may be sought beyond such statute.

11. The plaintiff-appellants assert that the plaint could never have been rejected in part, whether or not the reliefs claimed pertaining to the arbitral award could be carried to trial or could even be countenanced by court. The plaintiffs submit that the rejection of the plaint that Order VII Rule 11 of the Code contemplates is the sweeping aside of the entirety of the plaint without going into the merits thereof and Order VII Rule 13 of the Code permits the presentation of a fresh plaint despite the rejection of a previous plaint in respect of the same cause of action carried by the plaintiffs. It is, thus, contended by the plaintiffs, that the court does not pronounce opinion as to whether a plaintiff has a cause of action against the defendants in respect of the subject-matter of the suit, but at the Order VII Rule 11 stage the court only ascertains whether the plaint discloses any cause of action. The plaintiffs suggest that there is a difference between a person having a cause of action and the plaint that such person has filed disclosing a cause of action. The plaintiffs exhort that it is only the disclosure of the cause of action in the plaint that the court is concerned with while adjudicating an objection in the nature of demurrer. Similarly, the plaintiffs submit, that in respect of the other substantial limb under sub-rule (d) of Order VII Rule 11 of the Code, the court will reject a plaint only if the suit appears from the statements in the plaint to be barred by a law. The plaintiffs say that the other sub-rules under Order VII Rule 11 of the Code are technical in nature, whether pertaining to valuation or regarding the documents filed and the like; but the only two substantive provisions are sub-rules (a) and (d).

12. The plaintiffs submit that since the two of them hold the entire shares in the proforma defendant, the proforma defendant cannot be seen to be independent of the plaintiffs notwithstanding the proforma defendant being a separate juristic person. According to the plaintiffs, it is obvious as to what has happened with their Indian company and how a solitary director in the Indian company has conspired with the persons in the control of the plaintiffs' Indian collaborator to bring about a situation where the plaintiffs' money is gone with the plaintiffs having no company or project or asset to show against the same. The plaintiffs say that the real estate business in India was to be undertaken by the second defendant joint venture company where such company would have equal or joint participation of the plaintiffs and of the human agencies of the Indian collaborator.

13. The plaintiffs complain that even if there was a dispute between the plaintiffs and the first defendant Indian collaborator or the persons associated with the first defendant, such persons may have proceeded against the plaintiffs by way of an appropriate action. The plaintiffs say that instead, the persons in control of the first defendant have resorted to a subterfuge by winning over the plaintiffs' nominee on the board of the proforma defendant and by bringing about an arbitral award without any notice to the plaintiffs prior to the enforcement of the award being accomplished. The plaintiffs submit that the plaintiffs may not have learnt of the arbitral award or of the plaintiffs' money parked in the proforma defendant being wrongfully routed to the second defendant unless the bankers of the proforma defendant had informed the plaintiffs regarding the same.

14. The plaintiffs say that by the time they discovered that an arbitral award had been made against the proforma defendant, it was too late to invoke Section 34 of the Act of 1996 to challenge the award. The plaintiffs further submit that, in any event, Section 34 is confined to the parties to the arbitral reference and the stipulation as to the time to challenge the award under Section 34 of the Act is limited to the parties to the reference. The plaintiffs maintain that there is no law that prohibits a non-party to the reference which is adversely affected or prejudiced by an arbitral award from challenging such award by way of a suit. The plaintiffs exhort that there must be a remedy which has to be available to a person who is wronged and, merely because the plaintiffs may not have been entitled to challenge the award under Section 34 of the Act of 1996 or the plaintiffs may have missed the time within which to launch such challenge, it will not imply that the plaintiffs will be precluded from challenging the award and wear the same as an albatross around their necks.

15. The plaintiffs refer to the reliefs claimed in the suit and submit that insofar as they have claimed a declaration that the defendant Nos.3 to 5 did not have the authority to represent the proforma defendant, such prayer can only be canvassed by way of a suit and could not have been carried to a court under Section 34 of the Act of 1996. The plaintiffs also contend that irrespective of whether the plaintiffs were or are entitled to challenge the arbitral award of May 16, 2013, they are entitled to a decree restraining the first and second

defendants from receiving any payment from the proforma defendant. It is the plaintiffs' further contention that a claim for damages would, in any event, lie against the defendants and, as such, since the court can mould the reliefs claimed in a suit even at the final stage of the trial, no question arises of the plaint being rejected.

16. In aid of the principal contention of the plaintiffs that the order impugned is incurably bad as no partial rejection of a plaint is conceived of or permissible, the plaintiffs rely on the judgments reported at (2018) 11 SCC 780 (Sejal Glass Limited v. Navilan Merchants Private Limited) and (2019) 7 SCC 158 (Madhav Prasad Aggarwal v. Axis Bank Limited). In Sejal Glass Limited, the court clearly enunciated, as a rule, that "if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial." The relevant rule, which is as old as the Code and is elementary in a civil action, implies that either the plaint has to be rejected as a whole or not at all. The judgment in Sejal Glass Limited went on to observe that "If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order VI Rule 16 CPC would apply". It also expressed the view that both Order VII Rule 11 and Order VI Rule 16 are provisions which apply on a demurrer.

17. In Madhav Prasad Aggarwal, the court held that "the relief of rejection of plaint in exercise of powers under Order VII Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s)." In the context of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the court went on to observe that "The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order VI Rule 16 CPC at the appropriate stage."

18. The plaintiffs have brought a judgment reported at (2012) 9 SCC 496 (Benarsi Krishna Committee v. Karmyogi Shelters Private Limited) to emphasise on the following sentence appearing in paragraph 15 of the report:

"15. ... Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of a vakalatnama."

The question that arose in the case of Benarsi Krishna Committee was whether the service of an arbitral award on the agent of a party would amount to service on the party itself, having regard to the provisions of Section 31(5) and Section 34(3) of the Act of 1996. However, the plaintiffs seek to rely on the sentence quoted above to suggest that the rights and the conditions attached to the exercise of such rights under Section 34 of the Act of 1996 are confined to a party to an arbitration agreement or the arbitral reference and cannot be extended to a non-party prejudiced or affected by the arbitral award. The dictum cannot be stretched to cover the exceptionable legal proposition that the

plaintiffs seek to propound.

19. The plaintiffs also place reliance on a judgment reported at (2010) 14 SCC 274 (Ashish Ranjan v. Anupma Tandon) for the proposition that a person cannot be rendered remediless. Again, it was for the plaintiffs to discover the appropriate remedy available to them; the institution of a vicarious action cannot be countenanced on the ground that no other remedy may have been available to the plaintiffs.

20. According to the first defendant, at whose behest the plaint has been rejected in part, the plaint in the present case does not disclose any cause of action and, as such, it ought to have been rejected as a whole and not in part. The first defendant has filed a cross-objection where the same ground has been canvassed. The first defendant submits that since the arbitral award was not passed against the plaintiffs, but was passed against an independent juristic entity which was under the control of a director admittedly nominated or chosen by the plaintiffs, the plaintiffs cannot bypass the proforma defendant and challenge the award, particularly since the proforma defendant has embraced the arbitral award and has accepted the order passed in the execution proceedings levied for implementation of the arbitral award and has not protested or challenged the same.

21. The first defendant asserts that it has no obligation to justify the arbitral award or demonstrate that good grounds existed for the second defendant to make a claim in the arbitral reference. The first defendant submits that since the entire action in this case pertains to the arbitral award and all the reliefs, whether directly or indirectly, are relatable to the arbitral award of May 16, 2013, the interlocutory court ought to have thrown the plaint out as the plaintiffs could never have had any cause of action against the arbitral award and the plaint disclosed none.

22. The first defendant suggests that it is the arbitral award of May 16, 2013, and such award alone, which is the cause for the plaintiffs' entire grievance as expressed in the suit and not one relief pertains to any matter other than such award. According to the first defendant, it may have been possible for the plaintiffs, on the basis of what is pleaded in the initial part of the narrative in the plaint, to pursue the three directors in the proforma defendant who had obtained Rs.1 crore each from the proforma defendant, but the plaint does not disclose any cause of action even in such regard; and even if the plaint did disclose such cause of action, since the payments to the directors were by October, 2009 and the suit was instituted in the year 2014, such claim would have been ex facie barred by limitation. The first defendant submits that apart from the complaint against the defendant Nos. 3 to 5 for such persons obtaining interest-free unsecured loans of Rs.1 crore each from the proforma defendant, the rest of the plaint is pegged to and exclusively directed against the arbitral award of May 16, 2003.

23. It is the submission of the first defendant that since the plaintiffs are mere shareholders of the proforma defendant and complain of the perceived wrongful acts of the directors qua the proforma defendant, it is for the proforma defendant to sue the persons who have allegedly wronged the proforma defendant and the plaintiffs have no right in such regard. It is the same submission which is made in respect of the plaintiffs' challenge to the arbitral award since the award cannot be seen, in law to prejudice or affect the plaintiffs in any manner except to the limited extent that the plaintiffs are shareholders of the proforma defendant.

24. The first defendant maintains that partial rejection of a plaint is possible and relies on a judgment reported at (2012) 8 SCC 706 (Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust) where the court observed as follows at paragraph 30 of the report:

"30. ... we hold that the learned Single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the first defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the second defendant in the suit and rightly rejected the plaint as against the first defendant ..."

25. The first defendant places reliance on a single bench judgment of this court reported at (2014) 3 WBLR (Cal) 263 (Sudha Khemka v. Central Bank of India) for the proposition that in the light of the modern enactments, the old rule that a plaint cannot be severed and rejected no longer applies. However, it appears that the relevant observation at paragraph 15 of the report to the effect that "the partial rejection of a plaint may be possible to throw out such matters which are capable of adjudication by the Debts Recovery Tribunal under the said Act of 2002" may be in the nature of an obiter dictum but is not a part of the ratio decidendi discernable from the judgment. In that case, the entirety of the plaint was rejected upon the court finding, at paragraph 16 of the report, that "all the reliefs claimed ... are capable of adjudication before the appropriate Debts Recovery Tribunal. ..."

26. Apropos the first defendant's reliance on the Church of Christ Charitable Trust case, the plaintiffs have referred to a Division Bench judgment of this court reported at (2018) 2 CHN (Cal) 42 (Laxmi Niwas Mittal v. Lindsay International Private Limited) to suggest that the Division Bench chose the dictum in Sejal Glass Limited over the dictum in the earlier two-judge bench verdict in Church of Christ Charitable Trust. However, it is apparent from paragraph 27 of the report in Laxmi Niwas Mittal that despite the court noticing the apparent contradiction between the dicta in Church of Christ Charitable Trust and Sejal Glass Limited, what was observed in the opening sentence of paragraph 27 implied that in the context of the decision it was not necessary to resolve the apparent conflict or choose one view over the other:

"27. Though nothing may turn on such question in this case, it appears that the traditional view in the interpretation of Order VII Rule 11 of the Code has uniformly been that a plaint has to be rejected either as a whole or not at all ..."

27. Individuals may carry on business or other functions by themselves or in conjunction with other individuals. When a person carries on business himself the business entity is said to be the proprietorship concern of the individual and though the business entity may have a name that is not relatable to the name of the individual, such business entity has no independent identity and is not regarded as a separate juristic person. It is the individual who may sue and be sued for any matter pertaining to the business entity. Two or more persons may get together and form a partnership firm where, upon registration of the partnership firm, it is regarded as a juristic entity capable of suing and being sued; or else the compendium of persons forming the unregistered firm would sue or be sued. Certain modifications to the general rule have now come in upon limited liability partnership firms being recognised.

28. However, when two or more persons form a company, which has per force to be registered, the company is a separate juristic person de hors its shareholders even though one of the shareholders may directly or indirectly control the entire shareholding in the company. Further, in a company the liability of its shareholders is limited to the extent of their investment in the company and creditors of the company cannot, ordinarily, chase the shareholders or the assets of the shareholders to satisfy their claim against the company unless fraud or some gross impropriety is cited or the shareholders are shown to have siphoned off company funds.

29. It is not necessary in the context to refer to societies or associations or even trade unions through which individuals may function as a collective.

30. There is no doubt that it is the shareholders of a company who control the same but the day-to-day affairs and the management of a company is usually entrusted, in accordance with the articles of association thereof, to a board of directors of the company. When directors of a company are in place, the shareholders of the company cannot carry out the day-to-day management of such company; though the shareholders have the authority to remove any director that they may wish to as long as they muster the numerical strength to have an appropriate resolution passed. In corporate jurisprudence, the shareholders of a company as a collective and the company are completely separate and distinct juristic persons and the formal divide is scarcely blurred. If a decision is taken by the board of directors of a company which the shareholders may not approve of, the governing statute and, invariably the articles of association of the company, provide a remedy to the shareholders to remove all or any of the directors and to replace them. The new directors may undo the wrong committed by the perceived recalcitrant directors. However, if the wrong done by the perceived recalcitrant directors is irreversible, the company may sue such directors for the loss occasioned to the company. As and

by way of a default mechanism, in company jurisprudence a derivative action is permissible when the wrongdoers are themselves in control of the company and may not permit any action in the name of the company to remedy the wrong. A derivative action, as the word itself suggests, is where the *eo nomine* plaintiffs derive their authority from the company itself and, in the classical form of a derivative action in company jurisprudence, the shareholders must sue for and on behalf of the company, where the wrongdoers are arrayed as the defendants and the company is also arrayed as a defendant but all the reliefs in the suit are for the benefit of the company and no relief claimed can be for the personal benefit of the *eo nomine* plaintiffs other than what may indirectly result to them by virtue of such *eo nomine* plaintiffs being shareholders of the company.

31. On a plain reading of the plaint - since a more searching reading of the plaint is unnecessary in the present case - the wrongs alleged to have been committed are wrongs committed qua the company. It is true that the plaintiffs parked their funds in the company but, upon the company receiving such funds, they became the funds of the company and the allegations in the plaint that the defendants made merry with the funds of the proforma defendant have to be seen, legally, to be monies apparently stolen from the proforma defendant company; and not from the plaintiffs.

32. In this case, on the basis of the allegations in the plaint which have to be taken as true and correct while assessing a demurrer, the defendant Nos. 3 to 5 are accused of siphoning Rs.1 core each from the till of the proforma defendant in 2009. Even if it is assumed that it was so done as the plaintiffs allege, whether or not the plaint discloses any cause of action, it is *ex facie* apparent that the suit filed in the year 2014 prohibits the pursuance of such claim. To boot, no relief in such regard has been claimed. The remainder of the suit revolves around the arbitral award and the money flowing out of the proforma defendant to the second defendant joint venture company as a result.

33. It was, undoubtedly, the proforma defendant which suffered the arbitral award and the proforma defendant as an independent juristic entity had a right to question such award. In the absence of the proforma respondent having questioned the award - whatever may be the circumstances or reasons therefor - a vicarious challenge to the award cannot be maintained by any other. At the highest, even if the proforma defendant had not challenged the award because wrongdoers were in control of such company, it was open to the plaintiffs to sue the perceived wrongdoers or the recipients of the money as long as the plaintiffs sued on behalf of the company and the action was instituted as such. The cause of action was that of the company; never mind the beneficial consequence to the plaintiffs if the money were to be recovered.

34. This is not a hyper-technical point as to the form of the action; it is the matter of substance that goes to the root of the claim and even if the plaintiffs had brought a derivative action, they could not have challenged the award but they could have sued the wrongdoers and the perceived unlawful recipients of

the proforma defendant's money in damages, where the damages were suffered by the proforma defendant.

35. The plaint is fashioned as a frontal attack on the arbitral award and all the reliefs from (a) to (g) pertain to the arbitral award and the arbitral award alone.

36. It is possible to imagine several scenarios where an arbitral award or a decree of court is made against a person, but it affects another who was not a party to the arbitral reference or to the suit. Clearly, in such a scenario, such a person cannot be proceeded against in the enforcement of the arbitral award or the execution of the decree. The fallacy in the plaintiffs' case here is that they claim to be affected or prejudiced by the arbitral award or the enforcement thereof in course of the execution proceedings instituted in this court. Legally speaking, the award of May 16, 2013 was not rendered against the plaintiffs or either of them. Again, the arbitral award was not enforced against the plaintiffs or either of them. Clearly, the arbitral award was against the proforma defendant and it was also enforced against the proforma defendant and the money went out of the bank account of the proforma defendant. If at all, the plaintiffs are to blame for the circumstances in which they find themselves. It is the plaintiffs' admission that the third defendant was appointed on the board of directors of the proforma defendant. Though the plaintiffs claim that there were other directors on such board; but, upon the resignation of such other directors, the third defendant came to be the sole surviving director of the proforma defendant. Ordinarily, there cannot be a single-member board of directors of any company and when a director finds himself to be the lone member of the board of a company, usually, such director has the power and authority to induct another and, thereafter, for the two together to co-opt or induct further directors as the articles of association of the relevant company may provide.

37. Without being overly critical, it is plain to see that there is no legal basis to the claim in the plaint. For instance, the plaintiffs claim that the plaintiffs held a meeting on December 15, 2009 and revoked the authority of the third and fourth defendants as the signatories of the bank account of the proforma defendant. Ordinarily, such authority to designate an authorised signatory is a management activity which is entrusted to the board of directors of the company and the shareholders of the company, even all of them as a collective, cannot usurp such authority. Again, the plaintiffs claim that they held an extraordinary general meeting of the proforma defendant on December 22, 2009. However, ordinarily, general meetings of a company, including any extraordinary general meeting, is convened by the board of directors of the company and not by its shareholders. Though the shareholders of any company can requisition a meeting and, subject to the articles of association of the relevant company and the provisions of the governing statute, the board of directors is obliged to convene an extraordinary general meeting upon a notice in such regard being issued by the requisite number of shareholders, even an extraordinary general meeting cannot be directly called by the requisitioning shareholders in the absence of the board of

directors failing to convene such requisitioned meeting within the statutorily ordained time.

38. On the most charitable reading of the plaint - which is what is required of a court in seisin of an objection in the nature of demurrer - it discloses no semblance of any cause of action against any of the defendants whether in respect of the arbitral award of May 16, 2013 or otherwise. As noticed above, only the party aggrieved by an arbitral award may challenge the award; and the plaintiffs are not parties to the award of May 16, 2013. At any rate, no suit is maintainable to challenge an arbitral award, particularly since the Act of 1996 is the entire repository in respect of the arbitration law in the country and all matters pertaining to arbitration in this country are covered by such statute and the rights and remedies pertaining to arbitral references and arbitral awards are governed thereby. The Act of 1996 is, after all, an amending and consolidating Act and unless other statutes provide for statutory arbitration and alternative mechanisms for challenge (for example, the Micro, Small and Medium Enterprises Development Act, 2006, the National Highways Act, 1956 and the West Bengal Co-operative Societies Act, 2006), it is only the Act of 1996 that may be looked into in respect of any matter pertaining to arbitration in this country and any remedy in respect thereof. It is utterly puerile to suggest that since there is no express provision in any statute prohibiting the challenge to an arbitral award by way of a civil suit, Section 9 of the Code permits such a challenge. The authority of a court to receive and try a suit of a civil nature under Section 9 of the Code is tempered by the caveat in its last limb, "excepting suits of which their cognizance is either expressly or impliedly barred." In the remedy against an arbitral award being exclusively covered by the Act of 1996, which is the complete Code as regards arbitration law in this country, a challenge to an arbitral award de hors the Act of 1996 has to be regarded as impliedly barred within the meaning of the relevant expression in Section 9 of the Code.

39. In the light of the above discussion, it is completely unnecessary in the present context to embark on an exercise to discover whether it is permissible to partially reject the plaint. The plaint in this case cries out to be rejected in its entirety as being an animal that is not known to legal science. Whatever other remedy may be available to the plaintiffs against the defendants, the plaintiffs are not entitled to any of the reliefs claimed in the present suit even if all the allegations in the plaint are accepted at face value. Expressed in another way, the plaint plainly does not disclose any modicum of cause of action. If the plaintiffs are not legally entitled to canvass any of the reliefs claimed, the plaint is liable to be rejected. The rejection here is of the plaint as a whole.

40. It may be observed, in passing, that the tools available to a court for the initial scrutiny of a plaint, as to whether it discloses a cause of action or whether all the parties need be proceeded against or all the reliefs claimed can be considered, include not only Order VII Rule 11 of the Code for the rejection of the plaint but also Order VI Rule 16 thereof for striking out any pleadings and

Order I Rule 10(2) for striking out any unnecessarily improper defendant. Such provisions are available to be applied by a civil court at all stages of the suit.

41. Since the plaint pertaining to the present suit is found not to disclose any cause of action and the plaintiffs are found not to be legally entitled to any of the reliefs claimed, the plaint is liable to and is rejected as a whole. Accordingly, the plaintiffs' appeal, APO 261 of 2015, fails and the first defendant's cross-objection, OCO 2 of 2015, succeeds. The order impugned stands appropriately modified.

42. The plaintiffs will pay costs assessed at Rs.50,000/- to the first defendant.

43. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.