

(1990) 08 MAD CK 0085
In the Madras High Court
Case No : O.S.A. No. 136 of 1990

Wilson Chemicals, Madras-10

APPELLANT

Vs

M/s. Pidilite Industries Ltd., Bombay 400021

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)

Citation : (1990) 08 MAD CK 0085

Hon'ble Judges : Somasundaram, J; Nainar Sundaram, J

Bench : Division Bench

Advocate : K.V. Padmanabha Rao for Mr. C. Srinivasaraghavan, for the Appellant; S. Chellasamy for Mr. D. Sadasivam, for the Respondent

Judgement

Nainar Sundaram, J.—This Original Side Appeal is directed against the order of the learned single Judge in Application No. 1945 of 1990 in C.S. No. 52 of 1989. The applicant in that application is the defendant in the suit. The respondent in that application is the plaintiff in the suit. That application was taken out by the defendant for rejecting the plaint in the suit. The provisions quoted and relied on by the defendant are O.7, R.11, clause (a) and (d) of the Code of Civil Procedure, hereinafter referred to as the Code. In the copy of the Judge's summons in that application furnished to us in the typed-set of papers, instead of clause (d), clause (b) has been typed out and Mr. K.V. Padmanabha Rao, learned counsel for the defendant, says that it is a typographical error. O.7, R.11, clause (a) of the Code speaks about rejection of the plaint where it does not disclose the cause of action. Clause (d) speaks about the rejection of the plaint where the suit appears from the statement in the plaint to be barred by any law. The learned single Judge dismissed the application and this has obliged the defendant to prefer this Original Side Appeal. There is one guiding factor, which cannot be lost sight of while looking into this question and that is; for the purpose of assessing the case under O.7, R. 11, clauses (a) and (d) of the Code, the plaint allegations alone have got to be looked into and it is not proper to go

into the merits of the plaint allegations and in particular in the light of the contest raised by the opposite side and then decide as to whether the plaint should be rejected. O.7, R.11, clauses (a) and (d) of the Code have got a limited sphere to play and their play cannot be extended beyond the sphere. This is a well settled proposition. O.7. R. 11(a) of the Code speak about a case where the plaint does not disclose a cause of action. O.7. R.11(d) of the Code speaks about a case where the suit appears from the statement in the plaint to be barred by any law. Both ways the plaint averments or statements or allegations should decide the question and not the case of contest of the opposite side on the plaint allegations. In this view, we are not inclined to interfere and accordingly, this Original Side Appeal is dismissed. No costs.

2. It is needless to state that the order passed by the learned single Judge in the Original Side being one on an interlocutory application, any of the reasons expressed by him shall not be taken into account for deciding the contest in the suit. It shall certainly be done on merits independently. Further more, we find that in O.S.A. Nos. 60 and 61 of 1989, judgment dated 26-6-1989, arising out of the same litigation, the first Bench of this Court has directed that the suit shall be expeditiously disposed of and the same be listed in the month of January, 1991 itself for final disposal. We are sure that this direction will be taken note of by the learned single Judge, sitting in the Original Side, who is seized of the suit for final hearing.