2026:DHC:6139

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order reserved on: 23.07.2026
Order delivered on: 31.07.2026

\+ CS(OS) 44/2025

SANSKAR PROJECTS AND HOUSING LIMITED AND OTHERS .....Plaintiffs

versus

REALPRO REALTY SOLUTIONS PRIVATE LIMITED AND OTHERS .....Defendants

Advocates who appeared in this case:

For the Plaintiffs : Mr. H.L. Tiku, Sr. Adv. with Ms. Yashmeet Kaur, Ms. Bharti Kochhar and Mr. Llitesh Wadhwa, Advs.

For the Defendants: Mr. Avishkar Singhvi, Mr. Bharat Garg and Mr. Naved Ahmed, Advs.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

TUSHAR RAO GEDELA, J.

I.A.1542/2025 (Exemption)

1. This is an application filed on behalf of the plaintiffs under Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as the *'CPC'*) seeking exemption from filing original documents.

2. Exemption allowed, subject to just exceptions. However, original documents with proper margins be filed within four weeks with an advance copy

to the defendants.

3. The application stands disposed of.

I.A.1543/2025 (Exemption)

4. This is an application filed on behalf of the plaintiffs under Section 151 of CPC seeking exemption from filing legible and certified copies of documents.

5. Exemption allowed, subject to just exceptions. However, legible/certified/clear copies of the documents with proper margins be filed within four weeks with an advance copy to the defendants.

6. The application stands disposed of.

I.A.1544/2025 (Seeking Additional time to file Court fees)

7. The present application has been filed by the plaintiffs under Section 149 read with Section 151 of CPC, seeking extension of time for depositing the requisite Court fees.

8. Since the plaintiffs have already deposited the Court fees, the application stands infructuous.

9. The application stands disposed of being infructuous.

I.A.1545/2025 (Condonation of delay)

10. The present application has been filed on behalf of the plaintiffs under Section 151 of the CPC seeking condonation of delay of 5 days in re-filing the present suit.

11. For the reasons stated therein, the application is allowed. The delay of 5 days in re-filing the present suit stands is hereby condoned.

12. The application stands disposed of.

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13. Present suit has been filed seeking following prayers:

"a) Pass a decree by awarding damages of Rs. 10,00,00,000/- (Rupees Ten crores Only), in favour of the Plaintiff(s) and against the Defendant no. 1;

b) pass a decree of mandatory injunction directing the Defendant no. 2 to take down the article dated August 8, 2022 from their website https://economictimes.indiatimes.com and Defendant no. 3 to take down the article dated August 9, 2022 from their online platform https://www.moneycontrol.com pertaining to the Plaintiff No. I or in the alternative direct them to publish an update to these articles that the insolvency proceedings are dismissed. The said Defendants be also restrained from now posting, circulating or publishing the said article in respect of the plaintiffs on any online or offline platform.

c) Pass an order awarding exemplary costs and costs of the Suit in favour of Plaintiffs and against the Defendants;"

14. It is the case of the plaintiffs that the plaintiffs comprise three companies incorporated under the Companies Act, 1956, engaged in the business of real estate development in Delhi since 2005. The plaintiffs state that they have established goodwill and reputation in the real estate industry.

15. The plaintiffs submit that on 09.12.2020, defendant no.1 entered into a business arrangement with plaintiff no.1 for sharing investments, profits, and losses in the ratio of 75:25. The plaintiffs state that defendant no.1 failed to fulfil its financial obligations and thereafter initiated corporate insolvency proceedings against plaintiff no.1 under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (hereinafter referred to as *"NCLT"*), Delhi. The plaintiffs further submit that the petition was dismissed on 14.02.2023, and the appeal preferred by defendant no.1 before the National Company Law Appellate Tribunal (hereinafter referred to as *"NCLAT"*) was also dismissed on 13.12.2023.

16. The plaintiffs further submit that the insolvency proceedings and the publications by defendants nos.2 and 3 on online platforms regarding the filing of the proceedings caused serious harm to the plaintiffs' reputation and goodwill. The plaintiffs state that despite the dismissal of the proceedings, the publications continue to remain accessible without any update reflecting the dismissal, adversely affecting their business and reputation. Hence, the plaintiffs have filed the present suit seeking compensation, damages, and a decree of mandatory injunction.

17. A piquant situation has arisen in the present suit, in that, the defendants have entered appearance even before summons were to be issued. Having appeared the defendants have raised objections in respect of the claim that (i) that the plaint does not disclose a cause of action and (ii) that the suit is barred under Article 74 and 75 of the Limitation Act, 1963. Predicated thereon, defendant, without issuance and acceptance of summons, exhorts this Court to dismiss the suit *in limine*.

18. Mr. Avishkar Singhvi, learned counsel appears for defendant no.1 and submits that the suit of the plaintiffs are premised on alleged malicious prosecution initiated by the defendants against the plaintiffs in the proceedings bearing Company Petition (IB) no.44/PB/2022 preferred before the NCLT. The said proceedings are stated to have been dismissed by the NCLT on 14.02.2023.

19. Mr Singhvi, learned counsel referred to para 39 of the plaint to submit that the cause of action paragraph itself does not disclose any cause for the plaintiff to have instituted the suit against the defendants. However, after some

arguments, learned counsel sought leave to take all such objections at an appropriate stage, in case, this Court would be inclined to issue summons.

20. In the aforesaid factual matrix, Mr. Singhvi, learned counsel invites attention to Article 74 of the Limitation Act, which prescribes a limitation of one year from when the plaintiff is acquitted or the prosecution is otherwise terminated, to institute a suit based on malicious prosecution. He would contend that the proceedings before the NCLT having terminated on 14.02.2023, such termination would fall within the ambit of *"....prosecution is otherwise terminated"*, used in Article 74 of the Limitation Act. If that be so, according to learned counsel, the present suit having been filed on 17.01.2025 is grossly beyond the period of limitation prescribed and as such ought to be dismissed *in limine*.

21. As a matter of fact learned counsel would submit that the other limb of his argument is in respect of the suit also being premised on defamatory publications/libel which are stated to have been published in the Newspapers on 08/09.08.2022 by the defendant no.2. He would stoutly contend that even if this Court were to examine the limitation *qua* the publications alleged to be defamatory and published in August, 2022, the provision which prescribes the limitation for suits for malicious prosecution/defamation predicated on libel, is Article 75 of the Limitation Act.

22. He would submit that Article 75 prescribes a limitation of one year for suits seeking compensation for libel from the date when the libel is published. According to him, if the plaintiff itself admits that the alleged defamatory article were published on 08-09.08.2022, the filing of the present suit based on such

libel on 17.01.2025 is clearly beyond the limitation prescribed under the Limitation Act and as such highly time barred. He relies on the following judgements:-

a. Bhaskar Narhar Deshmukh vs. Kisanlal Sadasukhdas: 1967 Mah. LJ 171 (DB)

b. Vasant Rao Bapurao Chiddarwar vs. Raghunathrao Anantrao Deshmukh: 1990 Mh.LJ 491

c. Nilkanth Baliram Sawarkar vs. Vidyanand Balkrishna Ogale: 2019(2) Mh. LJ 265

d. Bhim Singh vs Gurmit Singh and Ors: 2024:PHHC:046041

e. Thangavel Udayar vs. R.K.Raju Mudaliar: 1996 SCC Online Mad 459

23. Predicated on the aforesaid two legal objections, Mr. Singhvi, learned counsel prays that the present suit be dismissed being highly time barred.

24. *Per contra*, Mr. H.L Tiku, learned senior counsel appearing for the plaintiff vehemently and forcefully refutes the submissions made on behalf of the defendants.

25. At the outset, Mr. Tiku, learned senior counsel forcefully contends that at this stage the Court is only required to see the averments of the plaint and the documents annexed therewith and issue summons to the defendant. It is only after the defendants enter appearance following service of summons, that the defendant may raise all the aforesaid objections in its written statement. He also contended that even the Court would consider these objections only once such written statement is filed and taken on record.

26. He further contends that there is no application filed by the defendant under Order VII Rule 11 of the CPC, nor can any such application be conceived of at this stage of the proceedings for this Court to consider and rule on any of the aforesaid objections. He would contend that even if the defendant has any valid objection in the manner as argued, the same can be taken up not only in the written statement but also in an application under Order VII Rule 11 CPC, if so desired. If such an application is ever filed, the defendant may at that point in time raise an appropriate objection to which the plaintiff would be entitled to file a reply justifying its stand. According to learned senior counsel the suit not having reached that stage yet, no such argument or submission on behalf of the defendant ought to be entertained by this Court.

27. So far as the argument based either on Article 74 or Article 75 of the Limitation Act is concerned, learned senior counsel would submit that the term *"....prosecution is otherwise terminated"* occurring in Article 74 cannot be reckoned with the date when the NCLT dismissed the aforesaid Company Petition on 14.02.2023 but with the culmination of the appellate proceedings before the NCLAT on 13.12.2023. Learned senior counsel submitted that it was on 13.12.2023 that the NCLAT dismissed the appeal filed by the defendant and granted liberty to pursue appropriate remedies. According to him, the term *"....prosecution is otherwise terminated"* is attracted and applicable to the date of dismissal of the appeal by NCLAT on 13.12.2023, inasmuch as it was on that day that the proceedings finally got terminated. He would contend that appeals are ordinarily a continuation of the initial proceedings, whether those are suits or any other such similar proceedings. Thus, if the limitation of one year as

prescribed under Article 74 is to be reckoned from 13.12.2023, the suit having been filed on 12.12.2024 is clearly within the period of prescribed limitation. Therefore, the suit is clearly within limitation and summons be issued to defendants.

28. Learned senior counsel would also contend that the judgements which have been relied upon by the defendant have clearly been distinguished by the coordinate Benches of this Court wherein, in similar factual matrix, the Court construed that the term *"....prosecution is otherwise terminated"* is co-terminus with the Appellate proceedings. Learned senior counsel relied upon the following judgements:-

a. Laxmi Narayan Soni vs. Roop Chand Soni MANU/1206/2002 (DHC)

b. Tirlok Chand Bansal vs. Bharat Bhushan Bansal MANU/DE/8041/2017 (DHC)

ANALYSIS AND CONCLUSION

29. This Court has heard the arguments of Mr. H.L. Tikku, learned Senior Counsel for the plaintiff and Mr. Avishkar Singhvi, learned counsel for the defendant no.1 and examined the judgments relied upon by the parties.

30. That the defendant is not precluded from appearing in advance even before summons are issued and assist the Court on the aspects of law and facts of the case, is no more *res integra*. The learned Division Bench of this Court in ***Bright Enterprises Private Limited & Anr. vs. MJ Bizcraft LLP & Anr.: 2017 SCC OnLine Del 6394*** and as also the Coordinate Bench in **CS(OS) 262/2029**

titled ***"Tajnunissa & Anr. vs. Mr. Vishal Sharma & Ors."*** decided on **23.07.2021**, have categorically held that the defendant can be given an audience even before summons are issued limited to objections which may be within the purview of Order VII Rule 11 of the CPC. As a corollary, it is also clear that ordinarily a Court would issue summons in any suit which is instituted before it, save and accept certain situations and instances as contemplated above. The Supreme Court in ***Dahiben vs. Arvindbhai Kalyanji Bhanusali, 2020 (7) SCC 366,*** has held as under:

> ***"23.*** *We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*
>
> ***23.1.*** *We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*
>
> > *"**11. 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 written 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;*
> > *(e) where it is not filed in duplicate;*
> > *(f) where the plaintiff fails to comply with the provisions of Rule 9:*
> > *Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers 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-papers, 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."*

(emphasis supplied)

23.2. *The remedy under Order 7 Rule 11 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 in this provision.*

23.3. *The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

> *"12. … The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

__23.7.__ Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

> *"__14. Production of document on which plaintiff sues or relies__.—*
> *(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*
> *(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*
> *(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.*
> *(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."*
>
> *(emphasis supplied)*

__23.8.__ Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

__23.9.__ 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.

__23.10.__ At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

__23.11.__ The test for exercising the power under Order 7 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 [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

> *"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."*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not* *disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.*

24. *"Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmananda v. Sri Ramakrishna Tapovanam [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)*

> *"24. A cause of action, thus, 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."*

(emphasis supplied)

24.2. *In T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

> *"5. … The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing.…"*

(emphasis supplied)

24.3. *Subsequently, in ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.*

***Bright Enterprises** (supra)*

"18. From the above and particularly upon examining the provisions of Section 27 and Order 5 Rule 1(1) CPC, it is evident that when a suit is regarded as having been "duly instituted", a summons may be issued to the defendant. The use of the expression "duly instituted" has to be seen in the context of the provisions of Orders 6 and 7 CPC. In the present matter, it is nobody's case that the suit had not been duly instituted in the sense that it did not comply with the requirements of Orders 6 and 7 CPC. It is neither a case of return of a plaint under Order 7 Rule 10 nor a case of rejection of a plaint under Order 7 Rule 11 CPC. The present case is one of dismissal of the suit itself on merits. Therefore, the only thing that needs to be examined is whether the Court had a discretion to issue or not to issue summons given that the suit had been duly instituted. In our view, the use of the word "may" does not give discretion to the Court and does not make it optional for it to issue summons or not. This is further fortified by the fact that the first proviso to Order 5 Rule 1(1) itself gives a situation where summons must not be issued and that happens when a defendant appears at the presentation of the plaint and admits the plaintiff's claim. Therefore, in such a situation, there is no requirement for issuance of summons and that is why the word "may" has been used in Order 5 Rule 1(1). In all other cases, when a suit has been "duly instituted" and is not hit by either Order 7 Rule 10 or Order 7 Rule 11 CPC, summons has to be issued to the defendant.

19. In the present case, the learned Single Judge has neither returned the plaint under Order 7 Rule 10 nor rejected the plaint under Order 7 Rule 11 CPC. Therefore, it was incumbent upon the learned Single Judge to have issued summons to the respondent-defendants, particularly because the respondent-defendants had not appeared at the time of presentation of the plaint and did not admit the claim of the appellant-plaintiffs. The Rule of audi alteram partem is embedded in Order 5 Rule 1 sub-rule (1) read with Section 27 CPC.

20. We may also point out that there is a clear distinction between "return of a plaint", "rejection of a plaint" and "dismissal of a suit". These three concepts have different consequences. A dismissal of a suit would necessarily result in a subsequent suit being barred by the principles of res judicata, whereas this would not be the case involving "return of a plaint" or "rejection of a plaint". What the learned Single Judge has done is to have dismissed the suit of the appellant-plaintiffs at *the admission stage itself without issuance of summons and this, we are afraid, is contrary to the provisions of the statute."*

***Tajunissa** (supra)*

"10. Section 148A of the CPC deals with the right to lodge a caveat. The provision opens with the words "where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted". The provision goes on to say that before any such application, in a suit which stands instituted or is about to be instituted, is heard, a person affected by the outcome of the application may claim a right of hearing in a caveat. We are not concerned with any such application. Even otherwise, this provision, in my view, cannot, expressly or by necessary implication, deny the defendant a right of audience, to urge objections under Order VII Rule 11 even prior to the issuance of summons in a suit.

11. Order V Rule 1 deals with the procedure for issuance of summons. Without going into the intricacies of the provision, it is clear that this petition, too, does not deny the defendant the right of audience, if the defendant is present and seeks to urge that the plaint should be rejected under Order VII Rule 11 even before summons are issued.

12. Though, initially, Mr. Das sought to urge – as noted above –that every "duly instituted suit" had necessarily to invite issuance of summons, he modified his stance, during arguments, to concede that the Court does have the power to reject a suit under Order VII Rule 11(d), without issuing summons, should grounds for such rejection be made out.

13. Given this position, it appears a trifle incongruous to deny the Court the opportunity of hearing the defendant in that regard, even if the defendant is present. This appears, to me, to be straining the CPC to breaking point, and far beyond its legitimate limits. Order VII Rule 11 enumerates grounds on which the maintainability of a suit can be questioned and its rejection sought. No doubt, it is open to a defendant to raise such an objection after summons are issued in a matter. However, when the Court has in categorical terms held that, even prior to issuing summons, a suit may be rejected on the grounds envisaged in Order VII Rule 11 (which position Mr. Das, too, acknowledges), there cannot, in my view, be any bar to the Court hearing the defendant in that regard, if the defendant is present. If the submission of Mr. Das were to be accepted, it would mean that, despite the presence of the defendant, the Court has to decide the maintainability of the suit under Order VII Rule 11 without hearing the defendant and only by hearing the plaintiff. This, in my view, *is not a position which flows from any provision of the CPC to which Mr. Das has invited my attention. Even more empirically, it would also deny the right of the Court to competent legal assistance, despite its availability, which is fundamental to administration of justice.*

14. Mr. Das, learned Senior Counsel candidly acknowledges that though, in his perception, the defendant's right of audience at the present stage stands discountenanced by the aforesaid provisions of the CPC, he is not in possession of any judicial authority which can support such a stand."

31. It is clear as crystal from the ratio laid down by the Supreme Court in ***Dahiben*** *(supra)*, judgments of the learned Division Bench and coordinate Bench in ***Bright Enterprises*** *(supra)* and ***Tajunissa*** *(supra)* respectively, of this Court that not only can a court give audience to a defendant prior to issuance of summons, it can, under the provisions of Order VII Rule 11 of CPC, even before issuance of summons, reject a plaint for justifiable reasons.

32. Thus, in view of the above authoritative pronouncements, it is open to this Court to be assisted by learned counsel for the defendant while considering whether summons need to be issued in the present suit.

33. Adverting to the controversy germane to the suit, it would be relevant to note that the suit is instituted for compensation on account of (i) malicious prosecution and (ii) defamatory publication/libel. In such circumstances, the limitations governing such suits are postulated under Articles 74 and 75 of the Limitation Act, 1963 respectively.

34. For convenience, Articles 74 and 75 of the Limitation Act is extracted hereunder:

Article	**Description of Suit**	**Period of limitation**	**Time from which period begins to run**

74	For compensation for a malicious prosecution	One year	When the plaintiff is acquitted or <u>**the prosecution is otherwise terminated**</u>.
75	For compensation for libel	One year	When the libel is published.

(emphasis supplied)

35. Article 74 prescribes one year limitation from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. In the present case, the issue of "plaintiff is acquitted" does not arise and it is only the term "...prosecution is otherwise terminated" which requires consideration by this Court. Both the learned counsel had relied on certain judgments which according to them support their respective contentions.

36. Prior to examining as to which of the judgments would be more apposite to this case, this Court would independently consider the term "...... prosecution is otherwise terminated". To the mind of this Court, if the argument of the counsel for the defendant that the dismissal of its petition before the NCLT on 14.02.2023 is taken to be the date from which one year limitation period has to be reckoned, it would lead to an incongruity and absurdity. If the term is literally interpreted to mean that the termination of prosecution is co-terminus with the proceedings coming to a finality at the first stage of such proceedings, the usage of the said term would be surplusage for the reason that the acquittal of the plaintiff by itself would also entail the same result. It is trite that the legislature in its wisdom would not have used two terms or words employing the word 'or' between them unless it was intended that both the terms would be used and read disjunctively and in all probability, for varied situations.

37. It appears to this Court that the term "...... prosecution is otherwise terminated" would envisage a situation where the plaintiff may have been acquitted but such acquittal has been appealed and would finally terminate with the appellate order upholding such acquittal. If not read so, it would lead to an anomalous situation. This is for the reason that assume a situation where the plaintiff is acquitted and such acquittal is appealed before the Appellate Court and in the *interregnum* the plaintiff sues for malicious prosecution within the period contemplated in Article 74 and finally the Appellate Court allows the appeal and convicts the plaintiff, the suit may be rendered infructuous or held to be not maintainable. It appears that in order to avoid such an anomalous situation and incongruity, the legislature inserted the term "...... prosecution is otherwise terminated". If perceived in any way other than the above, the resulting situation could be one of uncertainty and inconsistency which is required to be avoided.

38. Apart from the aforesaid interpretation, it would now be appropriate for this Court to examine first the judgments of the Coordinate Bench rendered by this Court in the similar context. This Court in ***Tirlok Chand*** *(supra)*, held as under:

> *"16. The Division Bench of High Court of Bombay in Bhaskar Narhar Deshmukh supra further reasoned (i) a prosecution may end, either in acquittal or conviction; (ii) if it is the first, then it is governed by the first part of the Article, and if it is the second, there can be no case for a suit; (iii) a prosecution may also result in an order of discharge, or in a dismissal of the complaint if the complainant is absent on the date fixed for the hearing; (iv) the words "the prosecution is otherwise terminated" are intended for such cases; (v) whenever the Legislature intended that the time should commence to run from the final order, it has expressly said so in the Limitation Act; (vi) the only effect of filling an appeal or a revision application to a superior Court against an order of acquittal would be to stay further proceedings in the suit for malicious prosecution and it is only if that revision application or appeal is dismissed, that the*

suit can be proceeded with; (vii) though the words "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated" but the word "finally" cannot be added to these words; (viii) a mere appeal cannot be said to do away with the effect of the original acquittal and cannot therefore suspend the period of limitation for compensation for a malicious prosecution which commences to run on the order of acquittal.

19. Having considered the reasoning given by the High Courts of Bombay, Allahabad and Orissa relying whereon the plaintiff appears to have filed this suit even during the pendency of the appeal against the order of acquittal and the reasoning given by the High Courts of Allahabad, Madras, Oudh, Nagpur, Punjab and Haryana, Rajasthan, Madhya Pradesh, Jammu and Kashmir as well as this court, I am not only bound to follow the view taken by this court but even otherwise I agree with the said reasoning and do not have anything further to add. I may also notice that the High Court of Allahabad also, in Bhagat Raj Vs. Garai Dulaiya MANU/UP/0171/1937: AIR 1938 All 49 (DB) & Madho Lal Vs. Shyam Sunder Vaish1969 SCC Online All 74 (DB) has taken the same view. The High Courts of Karnataka and Calcutta in Basappa Sangappa Timmapur Vs. Narayanappa Kariyappa Holokoti 1973 SCC Online Kar 69(DB) and Bibhuti Bhusan Chakravarti Vs. Tarun Gupta MANU/WB/0064/1978 AIR 1978 Cal 302 respectively are also of the same view.

20 Resultantly this suit for compensation for malicious prosecution filed during the pendency of the appeal against the order of acquittal is held to be premature and the plaint liable to be rejected on this ground alone."

39. It is relevant to note that this Court in ***Tirlok Chand Bansal*** *(supra)* has considered the judgment of the learned Division Bench of Bombay High Court in ***Bhaskar Narhar Deshmukh*** and held that a suit filed for compensation for malicious prosecution during the pendency of the appeal against the order of acquittal was held to be premature and the plaint was liable to be rejected on that ground. Equally, the judgment of this Court in ***Laxmi Narain Soni*** *(supra)* while interpreting Article 74 has clearly held as under:

7. Having regard to the fact that the complainant had preferred an appeal, the order of acquittal could not be said to have attained finality. Expression "prosecution has otherwise terminated" must, therefore be interpreted in that context. It is only when the order of acquittal attains finality the cause of action would arise for filing a suit for compensation on the ground of malicious prosecution. In this view of the matter the learned Court below had committed manifest error in holding that the date of judgment by the Appellate Court was not relevant.

8. The Chief Justice speaking for Madras High Court in inter alias held: "The wording "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated". In our opinion the Article provides that time shall run when the plaintiff is acquitted or when the prosecution comes to an end in some other manner. If the acquittal is followed by other proceedings the prosecution is terminated not by the acquittal but by the order passed in the subsequent proceedings and this construction was placed on the Article by a Bench of this Court consisting of Bakewell and Phillips, JJ. in AIR 1920 Mad. 151:57 IC 635."

40. A cumulative reading of both the judgments leave no doubt in the mind of this Court that the interpretation rendered in the preceding paragraphs above, clearly align with the ratio laid down by the Coordinate benches of this Court in the aforesaid two judgements. In other words, the term "...... prosecution is otherwise terminated" in Article 74 of the Limitation Act for the purposes of calculating limitation shall be reckoned from the date when the appellate order is passed.

41. Learned counsel for the defendant relied upon the decision of the learned Division Bench of the Bombay High Court in ***Bhaskar Narhar Deshmukh*** *(supra)* in support of his contentions. Having perused the said judgment, this Court is of the considered opinion that the learned Division Bench actually renders the same opinion which has been rendered by this Court in the preceding

paragraphs as also ***Tirlok Chand Bansal*** *(supra)*. Thus the reliance on ***Bhaskar Narhar Dashmukh*** *(supra)* is misplaced.

42. The judgments in the case of ***Bhim Singh vs. Gurmeet Singh & Ors., in RSA 289/1993 of the High Court of Punjab & Haryana***, ***Akbar Ali vs. State & Ors., 2014 SCC OnLine Delhi 1547,*** relied upon by the defendant are cases where the plaintiffs were acquitted and thus falling within the first part of the Article 74 of the Limitation Act. It is undisputed that in the present case, it is a second part of Article 74 using the term "...... prosecution is otherwise terminated" which is called for interpretation. Therefore, the said judgments are inapplicable.

43. The other contention of the defendant is that the instant suit is barred under Article 75 in respect of libel based on alleged defamatory publication on 8-9/8/2022. The defendant relied upon the judgment of a Single Judge of Madras High Court in ***Thangavel Udayar*** *(supra)*, wherein after a full fledged trial, the Court concluded that the suit for damages not having been instituted within one year from the day when libel was published, was barred by time.

44. Though on law, the opinion rendered by the Madras High Court may not be disputed, however, it is to be borne in mind that the present suit is a composite one against both the defendants alleging that the publication is at the instance and behest of defendant no.1 and it appears that the facts *qua* both the defendants are intermingled and intertwined. It is verily possible that such facts may require evidence to be led by parties to prove or disprove the allegations. In other words, post issuance of summons, the defendants would also be at liberty to raise appropriate objections and demonstrate that these instances are neither interlinked nor intertwined. At this stage, i.e. the pre summoning stage,

considering such an issue, which may require leading evidence, may be premature and avoidable. Thus, the issue is left to be decided at an appropriate stage. [See: ***Dahiben*** (*supra*)]

45. Having regard to the interpretation given to the term "...... prosecution is otherwise terminated", it needs to be noted that, undeniably the NCLAT dismissed the appeal of the defendant no.1 on 13.12.2023. Though the defendant has claimed that the present suit was instituted on 17.01.2025, however, there is no evidence to that effect. In contradistinction thereto, the plaintiff has stated and handed over the Bench the e-filing acknowledgment issued by the Registry of this Court clearly indicating that the suit was filed on 12.12.2024. If that is so, then undoubtedly, the suit has been instituted within one year from the date when the cause of action to sue for malicious prosecution in terms of Article 74 of the Limitation Act, arose and accrued in favour of the plaintiff.

46. So far as the issue of objections raised in respect of cause of action by the defendant no.1 is concerned, learned counsel had fairly agreed to raise the same at an appropriate stage, thus not being dealt with, leaving the rights reserved.

47. Before this Court closes this issue, it would also be relevant to note that apart from the jurisdiction conferred upon this Court by virtue of provisions of Order VII Rule 11 of CPC as interpreted by the Supreme Court in ***Dahiben (supra)***, it needs to be underscored that so far as the issue of limitation is concerned, a Civil Court, is even otherwise, under an obligation to consider the same under Section 3 of the Limitation Act, 1963. [Please see: ***Pathapati Subba Reddy v. Collector (LA), (2024) 12 SCC 336***].

48. *Ergo*, this Court in exercise of the jurisdiction conferred upon it by virtue of the provisions of section 3 of the Limitation Act, 1963, has considered the objection on limitation and dismissed the objections raised by the defendants.

49. In view of the above, let the plaint be registered as a suit.

50. Issue summons.

51. Summons accepted by Ms. Amrita Sharma, learned counsel appears on advance service on behalf of defendant no.1, who waives issuance of formal summons to defendant no.1.

52. Summons be issued to the defendant no.2 by all permissible modes upon the plaintiff taking steps within one week.

53. The written statement shall be filed by the defendants within 30 days from the date of the receipt of summons. Alongwith the written statement, the defendants shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

54. Liberty is granted to the plaintiff to file replication, if any, within 30 days from the receipt of the written statement. Along with the replication filed by the plaintiff, an affidavit of admission/denial of the documents of defendants be filed by the plaintiff, without which the replication shall not be taken on record.

55. In case any party is placing reliance on a document, which is not in their power and possession, its details and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

56. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the prescribed timelines.

57. List before the Joint Registrar (Judicial) on 09.10.2026 for completion of service and pleadings.

58. List before the Court on 30.11.2026.

TUSHAR RAO GEDELA, J

JULY 31, 2026
rl/kct