IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL NO. 119 OF 2025
IN
COMMERCIAL SUIT NO. 272 OF 2015

WITH
INTERIM APPLICATION (L) NO. 23947 OF 2025
IN
COMMERCIAL APPEAL NO. 119 OF 2025

Cadila Healthcare Ltd now known as Zydus Lifesciences Limited .. Appellant

Versus

Roche Products India Pvt Ltd .. Respondent

...

Dr. Veerendra Tulzapurkar, Senior Advocate a/w Mr. Akash Rebello, Mr. Bijal Chhatrapati, Ms. Shanaya Cyrus Irani and Mr. Siddhesh S Pradhan i/b J. Sagar Associates, for the Appellants.

Dr. Birendra Saraf, Senior Advocate a/w Mr. Ishwar Nankani, Mr. Huzefa Khokhawala, Mr. Abhishek Tiwari and Mr. Mihir Dalawai i/b Mr. Nankani and Associates, for Respondent No.1 to 3.

CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.
DATED : 16th OCTOBER, 2026

JUDGMENT:- (Per Bharati Dangre, J)

1. Order VII Rule 11 of the Code of Civil Procedure, permit the plaint to be rejected in the following cases:-

> *"(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so 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*

Ashish

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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.]"

The present case before us is based on clause (a) and (d) of the said provision.

2. M/s. Cadila Healthcare, (hereinafter referred to as 'Cadila') the Plaintiff [Appellant before us] engaged in manufacturing and marketing of various pharmaceutical products, claim that it is also involved in high end Research and Development of bio-similars in India and in the overseas market. As per the Plaintiff, the products are manufactured in-house on a commercial scale in a highly sophisticated commercial facility for Recombinant Protein and Monoclonoal Antibodies.

The Defendant, Roche Products (India) Private Limited (hereinafter referred to as 'Roche'), a company registered under the Companies Act is the importer and marketer of innovator molecule 'Trastuzumab' in India.

A formulation patent of the Drug was granted to Roche, however, the same expired on 03/05/2013 and Cadila claims that since that time it does not have any valid patent in respect of the Drug

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in India.

3. Department of Biotechnology, New Delhi drafted and introduced the Bio-Similar Guidelines, which are applicable to similar biologics developed in India and as per the said guidelines, Cadila carried out a pre-clinical study and its data was reviewed by the experts in the field and it was permitted to conduct toxicology studies.

Upon the necessary steps being taken, Cadila received the Manufacturer and Marketing authorization from Drugs Controller General of India, Respondent No.4, for launch of Bio-similar drug and it is on 27/11/2015, it received the manufacturing licences for launch of the bio-similar drug.

4. Cadila i.e. the plaintiff gained knowledge that Roche had initiated several proceedings against other Indian companies, who had launched/proposed to launch their bio-similar version of drug in India and therefore, it had an legitimate apprehension that even its right to launch in market its bio-similar drug shall face interference and hence it instituted Commercial Suit No. 272 of 2015, where it prayed for the following reliefs:-

> *"(a) that this Hon'ble Court be pleased to declare and confirm that the Plaintiff is entitled and has a right to launch and market is biosimilar of Trastuzumab;*
>
> *(b) that this Hon'ble Court be pleased to order and declare that the Defendant Nos.1 to 3 is not entitled to question the approvals and licenses granted by the Defendant Nos 4 & 5, to the Plaintiff in respect of the Plaintiff's biosimilar of Trastuzumab;*
>
> *(c) that this Hon'ble Court be pleased to pass a permanent order of injunction restraining Defendant Nos.1 to 3 from interfering with and/or preventing the Plaintiff from launching and marketing its biosimilar of Trastuzumab;"*

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5. The defendant Roche took out a Notice of Motion in the Suit seeking the following relief:-

> *"(a) This Hon'ble Court be pleased to pass an order of dismissal of the above Suit, being Suit No.1073 of 2015 as barred by law;*
>
> *In the alternative:*
>
> *(b) Suit No.1073 of 2015 be rejected/dismissed under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908;"*

The affidavit in support of the Notice of Motion specifically pleaded thus:-

> *"3. I say that the Plaint as filed is liable to be rejected for the following reasons:*
>
> *a) the reliefs sought in the Plaint disclose that the Suit is barred by law:*
>
> *b) the Plaint does not disclose a cause of action; and*
>
> *c) in any event, the purported cause of action sought to be made out against the Applicants in the Plaint does not survive and the Suit has become infructuous.*
>
> *4. I say that, at the outset, as evident from the Plaint, the Suit and the reliefs sought therein are directly barred under Section 41 (b) of the Specific Relief Act, 1963, as amended (such Act, the "Specific Relief Act"). It is settled law that under Section 41 (b) of the Specific Relief Act, jurisdiction of a court is barred in granting injunctions refraining any person from initiating or prosecuting any proceedings in court. Since the Plaintiff's admitted apprehension in the Plaint is that the Applicants may initiate legal proceedings against it and the relief sought in the Suit is to restrain the Applicants from such action, the Suit is clearly barred under Section 41(b) of the Specific Relief Act and the Plaint deserves to be rejected on this ground alone."*

6. It was specifically pleaded that the Plaint did not disclose the cause of action at the time of filing of the Suit and paragraph 45 and 46 in the Plaint seek to frame a cause of action on the basis of which the reliefs are sought a careful reading of the plaint would reveal that the Suit has been filed on the sole basis of the Plaintiff's

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apprehension that the applicants are likely to initiate legal proceedings against it in relation to the launch and marketing of its drug 'Vivitra'. The application specifically disclosed the following grounds for rejection of the plaint :

> *"5...The Plaintiffs averments in the Plaint that it apprehends that the Applicants have "aggressively initiated and pursued proceedings against other Indian companies" and that the Applicants are "likely to initiate some similar action against it in an attempt to thwart the launch and marketing of the Plaintiff's biosimilars of Trastuzumab" do not disclose on actionable right or a cause of action to file the Suit. An apprehension that legal proceedings may be initialed against the Plaintiff is not a legally recognisable claim and does not give rise to a cause of action in favour of the Plaintiff."*

7. It is this Notice of Motion, which was contested before the learned Single Judge, who on consideration of the material placed before him and on appreciation of the submissions, in the backdrop of the provision in form of Order VII Rule 11 derived the following conclusion:-

> *"74. In my view, a Suit cannot be filed on the basis of an apprehension that legal proceedings would be initiated in future. In any event, the plaint does not indicate any cause of action that there will be Defendant's interference with the launch and marketing of the similar drug. Admittedly, the Suit rests entirely on a mere apprehension that the Defendant No.1 to 3 might interfere with the drug's launch and marketing. A Suit cannot be sustained on such speculative grounds, especially when the Plaintiff's drug was not only launched in 2015, but is also being marketed and sold since 2015 without any interference. Moreover, Roche's suit against the Plaintiff in the Delhi high Court has been held to be maintainable, and the Plaintiff's submissions as on future interference, through legal proceedings, are vague, without any legal or factual basis and unsubstantiated."*

As a result of the above, the Notice of Motion was allowed and the Suit came to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. It is this order dated

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9/06/2025, which is challenged in the Appeal.

8. We have heard learned Senior Counsel Dr. Tulzapurkar, for the Appellant/ Cadila and learned Senior Counsel Dr. Birendra Saraf, for Respondent Nos.1 to 3.

Dr. Tulzapurkar would invite our attention to the pleadings in the Suit and in specific paragraph 50 and 51 depicting the cause of action. According to him, specific, para 50 has set out the territorial jurisdiction for filing of the Suit and for the cause of action, he would invite our attention to para 51.

It is his contention that the plaintiff never sought injunction and he would invite our attention to the Exhibit G amended to the plaint, under the caption "Roche position on Similar Biotherapeutic Products – Biosimilars" and a specific observation in the said document reflecting thus:-

> *"Manufacturers who bring a therapeutic product to the market and claim their product is a biosimilar' without being able to provide necessary scientific evidence are not acting in a transparent and responsible manner. Roche will continue to take all necessary steps to avoid related misunderstanding and will oppose the use of misleading claims that are unsubstantiated due to lack of reasonable data."*

According to Dr. Tulzapurkar, the plaintiff, therefore instituted the Suit by pleading that the cause of action arose in October, 2015, when the plaintiff sought approval for manufacture and marketing of biosimilar of Trastuzumab and when the plaintiff gained knowledge about the successive suits and proceedings initiated by Roche against various Indian companies, who announced that it intended to take all necessary steps to prevent the manufacture and sell of the biosimilars.

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9. Dr. Tulzapurkar would submit that the plaintiff had obtained authorization from Drug Controller to manufacture and sell a drug similar to that of Roche and admitted that it had obtained a patent but it expired on 3/05/2013, which prompted the plaintiff to manufacture the drug similar to the patented drug. Not only this, various other Indian manufacturers also obtained authorizations or applied for authorizations to manufacture a similar product/drug. He would submit that Roche in order to perpetuate its monopoly and with a view to evergreen its expired patent published an International Position Paper threatening to take 'all necessary steps' against manufacturers of the biosimilar drug and also adopted proceedings against other Indian Companies to prevent and obstruct them from producing biosimilar products and this was a cause of action for the Plaintiff to file a Suit.

According to him, the Suit is not based on mere apprehension or speculation as what the learned Single Judge has held but the plaint disclose a cause of action based on which, it sought a declaration that it is entitled and has a right to launch and market the biosimilar of Trastuzumab, apart from the declaration that the plaintiff shall not be questioned in respect of the approvals and license granted by Roche. However, according to the learned senior counsel, the learned Single Judge, has wrongly rendered a finding that the Suit has become infructuous and that it do not disclose any cause of action.

He would place reliance upon the well settled law on the subject of Order VII Rule 11 and he would rely upon the following decisions:-

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(i) Eldeco Housing & Ind Ltd vs Ashok vidyarthi and Ors[1]

(ii) Liverpool & London S.P. and I Association Ltd Vs M. V. Sea Success I and Anr[2]

(iii) Sopan Sukhdeo Sable and Ors Vs Assistant Charity Commissioner and Ors[3]

(iv) Dahiben Vs Arvindbhai Kalyanji Bhaunsali (Gajra)[4].

(v) Puja Aggarwal vs Pravesh Narula[5]

10. Relying upon the aforesaid pronouncements, the learned Senior Counsel would submit that the rejection of plaint is a drastic step and therefore the conditions enumerated in Order VII Rule 11 of CPC must be strictly adhered to. He would submit that under the said provision a duty is cast upon the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with other documents relied upon, in finding whether the Suit is barred by law. Thus, according to him, it is only when 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 VII Rule 11. Further, it is also urged that the real object of the provision is to keep out of courts irresponsible law suits and, only when the court is prima facie of the view that the suit is an abuse of process of the Court, in the sense that it is bogus and irresponsible litigation, the jurisdiction under Order VII, Rule 11 of the Code shall be exercised. However, it is his specific contention that the learned Single Judge failed to consider this aspect and has rather misread and misconstrued the plaint and omitted and added words while reading the pleadings. Apart from

1 2023 SCC Online SC 1612
2 2004 9 SCC 512
3 2004 3 SCC 137
4 2020 7 SCC 366
5 2020 SCC Online Del 852

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this, it is also his contention that merely because the commercial suit was not withdrawn since at some point of time some talks of settlement were initiated, that ought not to have weighed before the trial Judge.

Reliance on the subsequent events along with the material other than the plaint by the learned Single Judge, which included the orders passed by the Delhi High Court in the suit filed by Roche in which Cadila had filed similar application under Order VII Rule 11 and which came to be rejected, appeared to have weighed too heavily with the learned Judge, is the submission of the learned counsel.

In short, his submission is, that the impugned order is contrary to judicial pronouncements as the learned Single Judge has failed to appreciate the binding precedents, which have permitted the exercise of the power only in exceptional circumstances as terminating the civil action at the threshold is a drastic step.

11. Dr. Saraf vehemently contested the submission advanced on behalf of the Appellant and according to him, the position in law revolving around Order VII Rule 11 is well settled and it involves three basic elements namely, while rejecting a plaint on any of the ground set out in Order VII Rule 11, the plaint shall be read as a whole; there should be a disclosure of cause of action clearly in the plaint and it shall not be illusory; whether the cause is barred by any law shall be determined on reading of the pleadings.

Dr. Saraf, has read to us the pleadings in the plaint as contained in para 45 onwards. A a meaningful reading of the said paragraphs, he would submit that the plaintiff apprehended that Roche was likely to

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initiate similar action against it so as to thwart the launch and marketing of its biosimilar Trastuzumab despite the fact that the authorities had appropriately examined and considered its application and conferred license which made it entitle to launch and market its biosimilar.

From reading of paragraph 48 and 49, it is contention of Dr. Saraf that the plaintiff Cadila in its suit has projected the defense that would be available, including that Roche did not have a locus standi to file a suit if it at all wanted to do so. According to Dr. Saraf, whatever would have been the stand that Cadila would have adopted had Roche sued it, they were all projected as the grounds for seeking the relief in the Suit. Further, according to Dr. Saraf, in Para 50, the plaint contain a pleading as to how the Court will have the territorial jurisdiction, whereas, but para 51 did not disclose as to what was the cause of action but it only disclosed the cause of action with a view point of limitation.

In addition, to Dr. Saraf, it is in light of the pleadings in the petition, as stated therein, the plaintiff sought the reliefs including a relief of restraining Roche from instituting any proceedings.

12. According to Dr.Saraf representing the Respondent, applying the principle of law well settled, if the plaint is to be read as a whole, it is evidently clear that Cadila sought a declaration that it shall not be prohibited from launching and marketing its biosimilar of Trastuzumab and a declaration was sought that it had a right to launch and market a biosimilar. It is urged by Dr. Saraf that Roche had filed a suit in Delhi High Court, in which Cadila filed an application under Order VII Rule 11 and this application was

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rejected.

In the said suit, Roche had raised a challenge to the permissions granted in favour of Cadila and in any case, in light of the pendency of the suit, it is always open for the plaintiff to defend the said suit.

13. Dr. Saraf would rely upon the judgment in case of *Frost International Ltd vs. Milan Developers & Builders Pvt Ltd and Anr*[6] , to submit that seeking a relief in a suit which would frustrate the defendants from initiating a prosecution against the plaintiff or seeking any other remedy available in law, such a relief is barred in law. He would also invoke the principle of law laid down in *Cotton Corporation of India Limited vs United Industrial Bank Limited*[7] . Apart from this, reliance is also placed upon a comparatively recent decision of the Hon'ble Apex Court in *Correspondence RBANMS Educational Institution vs Gunashekar and Anr*[8], where the parameters for adjudicating the application under Order VII, Rule 11 has been clearly set out by observing that it serve as a crucial filter in civil litigation, enabling the courts to terminate the proceedings at the threshold, where the plaintiff's case even if accepted in its entirety fail to disclose any cause of action or if it is barred by law, either expressed or by implication. It is held by the Hon'ble Apex Court that the power to reject the plaint under the said provision is not merely procedural but substantive and it is aimed at preventing abuse of judicial process and ensuring that the Court's time is not wasted on fictitious claims failing to disclose any cause of action to sustain the

6 2022 8 SCC 633
7 (1983) 4 SCC 625
8 2025 SCC Online SC 793

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suit as barred by law.

As regards the submission of Senior Counsel Mr. Tulzapurkar, that subsequent events cannot be at all looked into, he would place reliance upon the decision in case of *Kedar Nath Agrawal (Dead) and Anr vs. Dhanraji Devi (Dead) by LRs and Anr*[9]

14. In the light of the contesting submissions, in the position of law being well settled by this time, and a series through a catena of decisions, it is necessary to first ascertain as to what was pleaded by the plaintiff to apply the well settled principle that the plaint has to be read as a whole, to find out the cause of action.

The plaint in Commercial Suit No. 272 of 2015 being annexed, it is necessary for us to record the key pleadings preceding the cause of action pleaded in clause 51 and we reproduce the same:-

> *"46. The Plaintiff apprehends that Roche is very likely to initiate some similar action against it in an attempt to thwart the launch and marketing of the Plaintiff's biosimilars of Trastuzumab despite Defendant No.4 & 5 having carefully and appropriately examined and considered the Plaintiff's applications and granted the necessary license, entitling the Plaintiff to launch and market its biosimilars of Trastuzumab.*
>
> *48. The Plaintiff states that any action by Roche seeking to interfere and/or restrain in the Plaintiff's launch and marketing of its biosimilar of Trastuzumab would be misconceived and unsustainable given that the Plaintiffs has already obtained the necessary license after detailed scrutiny by the authorities concerned, Roche has no locus standi and/or cause of action to file any suit against the Defendant No.4 and 5 and/or the Plaintiff in the manner it has chosen to do against other India companies. The Plaintiff submits that Roche has no right to sue so as to restrain the Plaintiff's launch and marketing of its biosimilar of Trastuzumab. Assuming whilst denying that Roche is aggrieved by the decision of Defendant No.4 & 5, even then, there is a provision for appeal to the Central Government, under Rule 122 DC of the Drugs and Cosmetics Rules,1945. Despite the above, Roche has already demonstrated its alacrity and willingness to adopt aggressive legal*

9 2004 8 SCC 76

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action to, in effect, somehow prevent products competing with its own reaching the Indian market.

49. The Plaintiff further states that:

a. Trastuzumab does not enjoy patent protection and thus it is in public domain- No civil suit can be filed for patent infringement;

b. There is no data exclusivity and the data relating to Trastuzumab is publicly available as India has not adopted the data exclusivity provision as the same is a TRIPS- plus provision and India only follow TRIPS- Thus, no suit can be filed for any violation of data exclusivity provision;

c. The name TRASTUZUMAB is a international non-proprietary name which is 'public property'- Thus, no suit can be filed for Trade Mark infringement or passing off for using the name 'TRASTUZUMAB'.

d. The WHO Guidelines on Similar Biotherapeutics approve of abbreviated pathways for approval of biosimilars;

e. No monopoly can exist on publicly available data, or even confidential data;

f. Consequently, Roche has no right under any provision of Intellectual Property law to restrain the Plaintiff against the launch of its biosimilar of 'TRASTUZUMAB'."

15. Based upon the aforesaid pleadings, para 50 and 51 are the relevant pleadings reflecting the cause of action for filing of the Suit and the opening word of clause 50 reads thus:-

"The facts and contentions set forth in this plaint constitute the cause of action for the present Suit."

In paragraph 51, it is pleaded thus:-

"51. The cause of action has arisen in October, 2015 when the Plaintiff has obtained approval for manufacture and marketing its Biosirnilar of Trastuzumab and further when the Plaintiff has now obtained license to manufacture its biosimilar of Trastuzumab on 27th November 2015 from the Defendant No.5 and when the Plaintiff has come to know of the successive suits and vexatious proceedings filed by the Defendant Nos. 1 to 3 against various Indian Companies. Furthermore, Roche has publicly announced and made the Plaintiff aware in Mumbai, through an internationally published position paper, that it intends to take "all necessary steps" so as to prevent the manufacture and sale of

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legitimately approved and licensed biosimilars on purported grounds of patient safety. A copy of the aforementioned position paper is annexed hereto and marked as Exhibit "G". The present suit is therefore filed within the period of limitation and no part of the cause of action thereof is barred by limitation."

16. The defendants raised a threefold objection in Notice of Motion filed under Order VII, Rule 11 and it involved the following three grounds:-

(a) The relief sought in the plaint disclose that the Suit is barred by law.

(b) The Suit does not disclose a cause of action.

(c) The purported cause of action sought to made against the defendant nos.1-3 in the Suit does not survive and the suit has become infructuous.

17. The order reflect that during the course of hearing of the Notice of Motion, at one point of time the plaintiff was to take instructions on withdrawal of Suit, on the ground that it was worked out as the product was already launched in the market. Apart from this, it is also noted that the Suit was filed by Roche in Delhi High Court questioning the approvals and license granted to the Plaintiff and therefore prayer clause (b) an even (c) could not be entertained. Therefore, the plaintiff was directed to take appropriate instructions.

However, on the next date of hearing the counsel for the plaintiff indicated that if the defendant do not interfere in marketing of its product, then he can take instructions for withdrawal of the suit. Somehow however the plaintiff did not press for its withdrawal and therefore the Notice of Motion filed by the Defendant was requested to be taken for hearing.

However, the aforesaid happenings did not have any impact on

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the findings rendered by the learned Single Judge, while pronouncing upon the Notice of Motion taken out by the defendant and the observations in the order as to what had transpired during the course of hearing, has no way impacted while we decide the Appeal on its own merits.

18. As per the well settled position in law, since there can be no cavil about the fact that the power under Order VII, Rule 11 is a drastic power, as its scuttle the proceedings in a Suit itself by adopting a short cut route therefore the Courts shall be careful in exercising the said power. This necessarily contemplate reading of the plaint in its entirety and it is not permissible to segregate or compartmentalize various paragraphs in the plaint as it is only on the reading of the various pleadings together in the backdrop of the reliefs sought therein, it will have to be ascertained whether the plaint deserve to be rejected that too on the grounds clearly contemplated in Rule 11 and not beyond that.

It is not permissible to cull out a sentence or a passage and to read it out of context in isolation as pleading has to be construed as they stand and what the plaintiff intended to convey through the said pleadings and it is not permissible either for the defendant or even for the Court to add or subtract or change the phraseology or words from the pleadings. The intention of the plaintiff in projecting its case in support of the relief sought in the suit shall only be gathered from the tenor and in terms of the pleadings taken as a whole. It is not permissible to adopt an hairsplitting approach so as to construe as to what the plaintiff intended to convey.

In the whole exercise to be carried out what is to be kept in

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mind is the purport of Order VII Rule 11, viz. to throw out at the threshold, such suits which on going through the whole rigmarole of trial would be liable to be rejected on any of the ground set out in Order VII Rule 11 like it being barred by *res judicata*, lacking cause of action etc.

19. The clear wordings, specifically in clause (d) of Order VII Rule 11, providing that the plaint shall be rejected 'where the suit appears from the statement in the plaint to be barred by any law', itself is indicative of the fact that this objection shall be decided based on the statement in the plaint and therefore, the court shall have due regard only and only to the pleadings in the plaint, and it is not open to decide the issue on the basis of any other material including the written statement. As the power of rejection of plaint under Order VII Rule 11, is a drastic power, conferred on the court to terminate a civil action, the conditions precedent to the exercise of the power must be strictly adhered to and only upon reading of the plaint as a whole, if the court is satisfied that any of the grounds set out under clause (a) to (e) are made out, it is then the plaint deserve rejection.

Equally well settled is the position that if on a meaningful reading of the Plaint it is noted that it is manifestly vexatious and meritless, in the sense of it not disclosing a clear right to sue or lack of cause of action, then definitely the courts shall exercise the power. It is also clarified that if by clever drafting an illusion of cause of action is created, then such an attempt has to be nipped in the bud at the very first hearing by examining the pleadings and for this purpose it is not a particular plea that will be considered, but the whole of the plaint has to be read for ascertaining whether cause of action is

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disclosed in the Plaint or is available for the plaintiff to file the Suit. If the plaint on its reading lack a cause of action, then it deserve to be rejected.

20. In the matter in hand, it is the case of defendant Roche that the plaint lacks cause of action and therefore, it deserve to be rejected and the learned Single Judge appreciated this contention and found that there is sufficient merit therein as it was noted that the cause of action though set out in paragraph no.51, it was not actually a cause reflecting the cause of action but definitely it had to be read along with other pleadings. It can be seen from reading of paragraph no. 44 to para 51, that the plaintiff's cause of action is the apprehension set out, that defendant no.1 Roche had already filed legal proceedings against other Indian Companies, who have launched/proposed to launch biosimilars of Trastuzumab, which was an obstructive action.

The plaintiff therefore apprehended that Roche is likely to initiate similar action against it so that it would thwart the launch and marketing of its product.

Reading of paragraph 48 of the plaint, it is seen that the plaintiff plead in a way that if Roche had to file any proceedings restraining Cadila from launching and marketing of its biosimilar of Trastuzumab, then how the proceedings would be misconceived and unsustainable. It is pleaded that if such proceedings are to be instituted then Roche lack locus standi and/or cause of action to file such a suit against the defendant nos.4 and 5, who have granted the necessary permissions and also against the plaintiff. The plaintiff therefore suggested in paragraph 48 that if Roche was aggrieved by the decision of Defendant Nos.4 and 5 then a remedy of Appeal is

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available to it but in no case, it could sue the plaintiff.

In paragraph 49 the plaintiff has pleaded all the defenses that would be available to it had the Suit been filed by Roche in regards to its biosimilar of Trastuzumab, by stating that it did not enjoy any patent protection and therefore it was in public domain and definitely no exclusivity can be claimed against it.

The whole fulcrum of the pleading in para 49 is as to how Roche i.e. defendant no.1 had no right under any provision of Intellectual Property Law to restrain the Plaintiff against launch of its biosimilar of Trastuzumab.

21. It is also worth to note that while pleading the cause of action, the plaintiff had categorically opened up paragraph 50 in the plaint by stating as 'the facts and contention set forth in this plaint constitute the cause of action for the present Suit'.

Therefore, it becomes imperative to read the plaint as a whole and the pleadings in para 50 and 51 necessarily has to be read in the backdrop facts which are set out from Para 44 onwards.

A cumulative reading of the meaningful paragraphs and averments in the plaint right from, para 44 to 51, the only cause of action for the plaintiff appears to be the apprehension expressed, that Roche was likely to initiate an action against it to thwart its launch and marketing of biosimilars of Trastuzumab and that is why, it sought a declaration as regards its entitlement and right to launch and market biosimilars of Trastuzumab.

22. In prayer clause (c), when an permanent order of injunction is sought restraining the defendant from interfering with and or

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preventing the plaintiff from launching in our view, the suit has not become infructuous, as the product was already launched as the plaintiff also sought a restrain order against defendant nos.1 to 3 from interfering with its act of marketing biosimilar of Trastuzumab.

23. In our view, the learned Single Judge has rightly appreciated the law laid down and applied the same to the facts before him in arriving at a conclusion that the Plaint do not disclose any actionable right or cause of action in favour of the plaintiff at the time of filing of the Suit. It is specifically noted that the suit is based on one cause of action, namely the plaintiff's apprehension that Roche is likely to stall or create hindrance in its launch of the biosimilar of Trastuzumab, despite the fact that it did not have any locus to do so as its patent had expired.

24. In order to determine whether a cause of action is or is not made out in a suit, what is to be searched, is only the pleadings in the plaint and it is not permissible to interpret the pleadings but they are to be read as it is without addition or subtraction of words and then it will have to be ascertained whether the claim discloses some cause of action. We agree with the learned Single Judge who noted that the plaint do not disclose any cause of action but the only reason for the defendant for initiating the proceedings by way of a suit is the apprehension of initiation of similar legal action against the plaintiff, its basis being the International Published Position Paper by Roche, in relation to the biosimilars, where it was indicated that Roche will initiate actions against the manufacturers, who bring a bio therapeutic product to the market and claim it as a 'biosimilar' without being providing any scientific evidence. It also contained a declaration that

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'Roche will continue to take all necessary steps in opposing the use of misleading claims that are unsubstantiated'.

Thus, we find sufficient merits in the submission of Dr. Saraf and which is clearly reflected from the order passed by the learned Single Judge, as that the plaint did not disclose any actionable right or the cause of action at the time of filing of the Suit.

25. In case of *T. Arivandandam vs. T. V. Satyapal & Anr*[10], the Apex Court has held that filing plaint by clever drafting which creates illusion of cause of action, is a deprecable practice and therefore when we meaningfully read the pleadings in the plaint, right from paragraph 44 to 52, in our view the Plaint do not disclose cause of action.

In *Dahiben vs. Arvindbhi Kalyanji Bhanushali* (Supra), where the Apex Court crystallized the parameters of consideration under Order VII Rule 11 of CPC, it becomes clear that it is not permissible to cull out a sentence or a passage and then read it in isolation, but the plaint must be read as a whole and if it do not disclose a real cause of action but only project an illusory one, then the courts are duty bound to be vigilant against any such camouflage or suppression and determine whether the cause of action really survives.

It is also worth to note that Exhibit-G to the plaint which form the anchor sheet of the plaintiff's apprehension, causing it to file a suit. It is also attempted to be read selectively and inaccurately and infact when reading of the position paper, it would reflect Roche's intention to take lawful measures available to protect its right and reputation including initiating of legal proceedings as it made the

10 (1977) 4 SCC 467

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following declaration:-

> *"Roche supports the development of regulatory frameworks for the introduction of biosimilars and continue being actively engaged in stakeholder dialogue. Such frameworks help to ensure that there is a high and consistent level of public health protection that applies to biosimilars, on the same basis as it applies to innovator/originator products. In addition, it is our strong belief that regulations relating to biosimilars should not impede, but rather promote and give incentive for, innovative research towards the development of new medicines.*
>
> *If a biotherapeutic product intended to be a copy of a reference product is approved but does not meet WHO criteria for biosimilars i.e. has not been demonstrated to be similar with regard to quality or non-clinical properties, it should not be called a biosimilar. Rather it should be called a non-comparable biologic (NCB)… … … Manufacturers who bring a biotherapeutic product to the market and claim their product is a "biosimilar" without meeting the WHO criteria for biosimilars are not acting in a transparent and responsible manner. We will continue to take all necessary steps to avoid related misunderstandings and will oppose the use of misleading claims that are unsubstantiated due to lack of reasonable data."*

26. Thus even the apprehension of the plaintiff is baseless as merely picking up some few sentences/words from the position paper of Roche it had assumed the apprehension. Apart from the fact that the suit entirely based on apprehension that Roche might interfere with its drug launching and marketing and it is to be noted that a Suit cannot be sustained only on speculative ground, specially when the plaintiff's drug was not only launched in 2015 but it was also being marketed and sold since then without any interference.

27. The suit filed by Roche against the plaintiff in the Delhi High Court was held to be maintainable and an application filed for rejection of the plaint has been rejected by the Delhi High Court. In any case, the learned Single Judge has referred to the said order but in our view, that is not at all necessary and the competent court shall determine the issue falling for its consideration.

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Worth to note that in other suits pending before Delhi High Court challenging the approvals granted to manufacturers of biosimilars of Trastuzumab, it was the argument about its maintainability was dismissed by recording that Roche had not asserted any rights premised on the patent which had expired and its claim do not at all emanate from its patent, therefore, the question of ever-greening of the patent of stifling competition does not arise. In fact, in one of the Suit filed by Roche against another entity Reliance Life Sciences (CS (Comm.) No. 234 of 2022) in connection with the same drug i.e. Trastuzumab, Delhi High Court noted that the patent linkage is not relevant as Roche's patent has lapsed.

28. It is in light of the aforesaid, we are of the clear view, that since the plaint lack the cause of action, the application under Order VII, Rule 11 was rightly allowed resulting into dismissal of the Suit. Though we must observe that one of the ground raised by the defendant and to some extend accepted by the learned Single Judge, that the Suit has been rendered infructuous but in any case, since, this is not a ground for rejection under Order VII, Rule 11, we would simpliciter brush it aside, as we conquer with Dr. Tulzapurkar that the reliefs sought in the plaint merely because the product has been launched is not rendered infructuous. However, in no way, it impacts the order passed under Order VII, Rule 11 rejecting the plaint because it lack the cause of action and it is a sufficient ground contemplated under Order VII, Rule 11(a) of CPC.

29. One more ground, which Roche invoked in the application under Order VII, Rule 11 is that the relief sought in the suit is barred by law and the law being pressed into service is Section 41(b) of the

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Specific Relief Act which bars a Court from restraining any person from initiating or prosecuting or proceeding in the following terms.

> *"41. Injunction when refused -*
>
> *An injunction cannot be granted-*
>
> *(a) …….*
>
> *(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;"*

30. The plaint when read as a whole with the prayers being read in conjunction with averments made in the Plaint, since the only cause for filing the proceeding is the apprehension is that Roche had initiated legal proceedings against the other entities and it may initiate similar proceedings against the Plaintiff and reading of paragraph 48 and 49 of the plaint, is nothing but an attempt to restrain Roche from instituting the proceedings in a court of law. But it is to be noted that the Roche had already instituted the proceedings before Delhi High Court and an attempt to dislodge the said proceedings by the Plaintiff/Cadila by filing an application under Order VII Rule 11 has been not successful.

Roche filed a Suit challenging the approvals granted by DCGI to the plaintiff and pleaded that the approvals are not in accordance with applicable law and we are informed that the suit is at an advance stage as the pleadings are completed and Cadila is actively defending the said proceeding which are pending for last 9 years.

Even on this count, in light of the pleading in para 47 and 48 we find that the suit is barred by law and therefore deserve rejection under Order VII, Rule 11.

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31. Finding no justification or substance to interference in the impugned order, we dismiss the Appeal, by upholding the order passed by the learned Single Judge.

(ASHISH S. CHAVAN, J.) **(BHARATI DANGRE, J.)**

Ashish

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