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

% *Judgment delivered on: 02.09.2026*

\+ **CS(OS) 379/2025**

GOVERNMENT OF CANADA ...... Plaintiff

Through: Mr. Nakul Dewan, Sr. Adv. and Mr. Shashank Verma, Sr. Adv. with Mr. Aaditya Vijay Kumar, Mr. Sooraj Sharma, Mr. Vipul Agrawal, Mr. Arjun Kant, Mr. Jatin Kochhar, Ms. Akshita Katoch, Mr. Upamanyu Ganguly, Mr. Gunjan Joshi, Ms. Himashi Singh and Ms. Pratishtha Chauhan, Advs.

Versus

SANJAY MADAN AND ORS ..... Defendants

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Upinder Singh, Ms. Sharanya Bhatnagar, Ms. Sommya Rohatgi and Mr. Hage Nanya, Advs. for D-1.
Mr. Sameer Srivastava and Mr. Vinay Kumar, Advs. for D-2.
Mr. Ateev Mathur, Mr. Amol Sharma, Mr. Anmol Mehta and Mr. Sanjay Gupta, Advs. for D-4.
Ms. Akshita Dogra, Adv. for D6/ICICI Bank.
Mr. Ramesh Babu M.R., Ms. Nisha Sharma and Ms. Tanya Chowdhary, Advs. for D-11.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

<u>JUDGMENT</u>

VIKAS MAHAJAN, J.

I.A. 21667/2025 (by defendant no.1 under Order VII Rules 10 & 11 read with Section 151 CPC)

1. The present suit has been filed by the plaintiff ['Government of Canada'] seeking, *inter alia*, recovery of funds and rendition of accounts relating to monies allegedly transferred from Canadian Bank Accounts to Indian Bank Accounts, which are stated to be held in the names of defendant no.1 and defendant no.2, who, it is alleged, have obtained monies through fraud from the Government of Ontario. This includes recovery of funds transferred through banking channels, along with the gains made on these funds, such as interest earned on deposits, profits from investments, and appreciation in the value of assets acquired using these funds. The plaintiff also seeks recovery of funds transferred to India through non-banking channels.

2. It is the case of the plaintiff that on 04.04.2023, defendant no.1 entered a guilty plea before the Ontario Superior Court of Justice, admitting to criminal charges pertaining to defrauding the Government of Ontario of millions of dollars by abusing his official position within the Ministry of Education. The defendant no.1 had further admitted having engaged in fraudulent activities and receiving secret commissions/kickbacks, during the period from 2011 to 2020.

3. It is stated that investigations have revealed that similar type of fraudulent activities had commenced even prior to 2011. The defendant no. 1 further admitted of transferring the proceeds of the said fraudulent activities

in India, where such funds were deposited in various bank accounts held in his name and in the name of his wife, Mrs. Shalini Madan, across multiple Indian Banks, which are arrayed as defendant nos. 3 to 10 in the instant suit.

4. It is averred that on 27.11.2023, defendant no.2 likewise pleaded guilty to criminal charges laid by the Ontario Provincial Police, including charges related to fraud, possession, and laundering of proceeds of crime. In his plea, he is stated to have admitted to acting as an accomplice of defendant no. 1 in the fraudulent schemes. It is stated that civil proceedings arising out of the said fraudulent acts, involving defendant no. 1 and other persons, including defendant no. 2, are presently pending adjudication in Canada.

5. It is the case of plaintiff that the fraudulent activities were carried out through two principal schemes. The first is described as the ***"Support for Families Program (SFFP) Fraud"***, which pertains to a scheme introduced by the Government of Ontario in 2020 to provide financial assistance to parents and guardians 'for at-home learning expenses' during the COVID-19 pandemic.

6. It is further the case of plaintiff that between April and July 2020, defendant no.1 misused his position by submitting more than 78,000 fraudulent applications under the said scheme, of which over 44,000 applications were processed, resulting in disbursement of amounts exceeding 10.8 million Canadian Dollars ['**CAD**']. These funds were then credited to the Canadian bank accounts held by defendant no. 1, Mrs. Shalini Madan, their sons, Chinmaya Madan and Ujjawal Madan, as well as to accounts operated by defendant no.1's accomplice i.e. defendant no. 2,

leading to deposits of approximately CAD 103,000 into the bank accounts opened by defendant no.2 at the instance of defendant no.1.

7. The second scheme is described as the ***"Fee for Service Consultants (FFSC) Fraud"***, which is stated to be another long-running fraudulent scheme uncovered during the investigation into the '**SFFP fraud**'. It is stated that from at least 2011 until August 2020, defendant no. 1, along with other accomplices, caused the Government of Ontario to enter into contracts with certain Vendors of Record for the provision of IT service consultants, in return for which he received illicit commissions or kickbacks from such vendors or their subcontractors.

8. It is the case of the plaintiff that in his guilty plea, defendant no. 1 has admitted to his involvement in both, the SFFP and FFSC frauds, while defendant no.2, in his plea dated 27.11.2023, admitted to actively participating in the FFSC scheme and deriving unlawful gains therefrom. They have also admitted of utilising the proceeds of the said fraud to acquire immovable properties in India.

9. It is stated that on 19.10.2020, the Ontario Superior Court of Justice ordered a Mareva injunction against defendant nos. 1 and 2, freezing their assets located in Ontario, which order was subsequently extended on 29.01.2021 to cover their worldwide assets. The Mareva injunction is stated to have remained in force as on the date of institution of the present suit.

10. In sum and substance, it is the case of the plaintiff that a substantial portion of the funds obtained through the aforesaid fraudulent schemes has been transferred from Canada to India and deposited in bank accounts held in the names of defendant no.1 and his wife i.e., Mrs. Shalini Madan. Although certain amounts have been stated to be repatriated to Canada, a

sum of at least CAD 33,345,991 remains unrecovered and are lying in India, which has necessitated the filing of the instant suit.

11. In the backdrop of above facts, the defendant no.1 has filed the present application under Order VII Rule 10 & 11 read with Section 151 of CPC seeking return/rejection of plaint.

SUBMISSIONS ON BEHALF OF DEFENDANT NO.1

12. At the outset, Mr. Ramesh Singh, learned Senior Counsel appearing for the applicant/defendant no.1 submits that while the present application raises various grounds for rejection including lack of disclosure of cause of action; *forum non conveniens*; non-maintainability of the suit under Section 84 of the CPC on account of plaintiff's lack of locus to institute the present suit against its own citizens, but he would be limiting his submissions to three core issues *viz.*(i) the reliefs prayed being barred by limitation; (ii) this Court lacking territorial jurisdiction to entertain the present suit; and (iii) plaintiff having abused the process of law.

13. On the aspect of limitation, Mr. Singh submits that the reliefs claimed are *ex-facie* time-barred under Article 68 and Article 91(a) of the Schedule to the Limitation Act, 1963. He substantiates by submitting that for the purpose of Article 68 and Article 91(a)of the Schedule, the starting date of limitation is the date of first discovery about misappropriated funds.

14. He submits that it is the admitted position in the plaint that knowledge of alleged transfer of illegal funds to the bank accounts in India was received by plaintiff between 22.10.2020 and 18.12.2020. Thus, the present suit ought to have been filed on or before 18.12.2023, and the same having been filed on 15.05.2025, makes it *prima facie* barred by limitation.

15. He submits that the repatriation of CAD 6,897,995 from the bank accounts in India cannot extend the period of limitation under Section 19 of the Limitation Act, 1963 as said repatriation was done by October 2020. He further submits that even subsequent Settlement Agreement dated 10.03.2025 cannot revive the claims, firstly, because by the date of settlement, the period of limitation for recovery had already expired; secondly, the payment under the said settlement was to be credited in terms of a restitution order passed in a criminal matter, but not on account of alleged debt to be recovered by the plaintiff.

16. He submits that even prayer for rendition of accounts is barred both under Article 4 or under Article 113 of the Schedule to the Limitation Act. He submits that for the purpose of Article 4 if defendant no.1 is presumed to be agent of plaintiff, the period of limitation would start when the neglect or misconduct became known to the principal/plaintiff, and for applicability of residuary Article 113, period of limitation would commence when right to sue accrues. He submits that in both the scenarios, the alleged misconduct or right to sue, the limitation would start running from 22.10.2020 - 18.12.2020 i.e. when the alleged misconduct had occurred or right to sue had accrued. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in ***Sankar Dastidar v. Banjula Dastidar (Smt) and Anr., (2006) 13 SCC 470***.

17. *Apropos* the second ground, Mr. Singh argues that this Court lacks territorial jurisdiction to entertain the present suit as the entire cause of action has arisen out of India. He submits that according to the averments in the plaint, the entire structural matrix of the alleged misappropriation took place in Canada. Even, the alleged amount of CAD 40,243,986 is stated to

have been allegedly transferred from plaintiff's bank accounts in Canada into defendant nos.3 to 10 Banks. Thus, entire facts which have to be proved by the plaintiff to succeed in the present suit originates in Canada.

18. He submits that the factum of alleged siphoned money finding its way into the banks in India is merely incidental and not integral to be proved to obtain a decree of recovery of amount as prayed for in the present suit, which is in the nature of disgorgement.

19. Alternatively, Mr. Singh submits that even if a minuscule fraction of the cause of action is assumed to have arisen within the jurisdiction of this Court, this Court must decline to exercise its jurisdiction invoking the doctrine of *forum non-conveniens*, as the absolute 'centre of gravity' of the dispute, including all primary documentary evidence and key witnesses are situated in Canada. He placed reliance on – (i) ***Kusum Ingots & Alloys Ltd. vs. UOI & Anr., (2004) 6 SCC***, and (ii) ***Sterling Agro v. UOI and Ors.***, ***(2011) SCC OnLine Del 3162***.

20. Lastly, regarding the third ground i.e. abuse of process of law, Mr. Singh submits that present suit is liable to be dismissed by this Court in exercise of its inherent power under Section 151 CPC as the present suit is an abuse of the process of the Court.

21. He substantiates this plea by contending that the plaint itself discloses that for recovery/disgorgement of alleged misappropriated amount, which includes amount claimed in the present suit, both civil and criminal proceedings are pending in Canada. Accordingly, present suit is nothing but an attempt to re-litigate the very same issue, which amounts to an abuse of the process of law. In support of this submission, he has placed reliance on

the judgment of the Supreme Court in ***K.K. Modi v. K.N. Modi & Ors., (1998) 3 SCC 573***.

22. On these grounds, Mr. Singh submits that the present suit, which seeks recovery of CAD 33,354,991 along with rendition of accounts against defendant nos. 3 to 10 Banks, is fundamentally untenable and liable to be rejected at the very threshold.

SUBMISSIONS ON BEHALF OF PLAINTIFF

23. *Per contra*, Mr. Nakul Dewan, learned Senior Counsel for non-applicant/plaintiff strongly opposes the instant application by submitting at the outset that the rejection of the plaint is sought solely by defendant no.1 in respect of reliefs sought against him, whereas distinct and independent reliefs have also been claimed against the other defendants as well, which include – (i) a decree for rendition of accounts against defendant nos. 3 to 10 Banks; (ii) various injunctive reliefs against defendant no.11/RBI *qua* repatriation of funds; and (iii) a decree praying for interest. He, therefore, submits that allowing the application filed by defendant no.1 would entail rejection of plaint in part, which is not permissible in law. Reliance in this regard is placed on ***Madhav Prasad Aggarwal and Anr. v. Axis Bank Ltd. and Anr., (2019) 7 SCC 158***.

24. Further while relying upon ***Vinod Infra Developers Ltd. v. Mahaveer Lunia & Ors., 2025 SCC OnLine SC 1208,*** Mr. Dewan contends that selective severance of reliefs is impermissible where different causes of action are independently pleaded and founded on distinct facts.

25. On the issue of limitation, Mr. Dewan submits that chronology pleaded in the suit demonstrates that the cause of action did not arise at a single isolated moment but evolved through successive discoveries,

compelled disclosures, admissions, judicial findings and forensic reconstruction, given the sophisticated and well-structured nature of defendant nos.1 and 2's fraud.

26. He submits that the plaint and its accompanying documents must be read as a whole rather than selectively. According to Mr. Dewan, whole reading of the plaint would clearly demonstrate that sophisticated, complex, and layered fraud of siphoning public monies under the SFFP and the FFSC Schemes in Canada was uncovered progressively through continuous and extensive forensic investigations, interviews, and wiretaps.

27. He submits that although initial irregularities appeared in late 2020, the nature and extent of fraud was unknown, given that a large number of bank accounts had been opened and several documents had been fabricated and ultimately, the suit was filed supported by KPMG India Report dated 07.01.2025, which provided an in-depth analysis of the movement of funds to India.

28. He submits that in the meanwhile defendant no.1 had also entered into a partial agreement *vide* Minutes of Settlement dated 06.03.2025, which was approved on 24.04.2025, under which he gave his unconditional consent to the forfeiture and repatriation of INR 65.9 crores [11.1 million CAD] from his Indian bank accounts, representing a partial portion of CAD 33,345,991 still outstanding.

29. He further submits that given the discovery of fraud was progressive in nature coupled with the fact that the fraud was layered over several bank accounts (with several documents being fabricated by the defendant nos.1 and 2), which could not have been discovered without a comprehensive forensic analysis, the facts to a large extent were discovered and unravelled

with the forensic report of KPMG dated 07.01.2025. The suit was filed within 4 months of the receipt of this Report. He submits all these facts, which made plaintiff to file the instant suit in 2025, have been set out in paragraphs relating to cause of action and limitation in the plaint.

30. He submits that Section 17 of the Limitation Act, 1963 postpones the commencement of limitation until plaintiff discovers the fraud, or could with reasonable diligence have discovered it. Limitation begins only when the plaintiff has knowledge sufficient to enable him to seek his remedy in Court. He submits partial knowledge of fraud, where defendant no.1's conduct prevents it from becoming full knowledge, does not suffice to commence limitation. Reliance in this regard is placed on ***Pallav Sheth v. Custodian & Ors., (2001) 7 SCC 549***.

31. He submits that defendant nos.1 and 2 have made several acknowledgments in writing in terms of section 18 of the Limitation Act, 1963, which is clear from (i) the agreed statement of facts signed by defendant no.1 dated 04.04.2023; (ii) the forfeiture orders dated 04.04.2023; (iii) letters dated 15.02.2024 and 25.03.2024 addressed by defendant no.1 and (iv) Minutes of Settlement dated 06.03.2025, approved on 24.04.2025. These documents extend the corresponding limitation to sue, in terms of section 18 of the Limitation Act,1963.

32. He submits that it is settled law that an acknowledgment need not be accompanied by a promise to pay, need not specify the exact amount due, and need not be express; it is sufficient if the statement indicates the existence of a subsisting jural relationship and an intention to admit it, which intention may be inferred from the circumstances. Reliance in this regard is placed on ***Dena Bank v. C. Shivakumar Reddy and Anr., (2021) 10 SCC***

330 and ***Asset Reconstruction Co.(India) Ltd. v. Bishal Jaiswal and Anr., (2021) 6 SCC 366***.

33. He submits that in any event whether these documents satisfy the requirements of a valid acknowledgment under Section 18 is itself a matter for trial and cannot be conclusively determined at the stage of Order VII Rule 11 CPC.

34. He submits that for recovery/disgorgement of present nature and rendition of accounts, the limitation accrues in terms of Article 113 of the schedule to the Limitation Act, which employs the phrase *'when the right to sue accrues'*, which is different from provisions like Articles 58, 59, and 104 which use word *'first accrues'*, therefore, the period of limitation for the purpose of Article 113 would be differently computed depending upon the last day when the cause of action therefor arose.

35. He submits that in cases involving fraud, the accrual of course of action under Article 113 must necessarily be read in conjunction with section 17 of the Limitation Act, 1963. The right to sue cannot be said to accrue until the fraud is discovered in the sense contemplated by that provision. Applying this to the present case, the cause of action, as pleaded, can be meaningfully asserted only when (i) the forensic link between the Canadian fraud and specific Indian balances is reconstructed, and (ii) plaintiff came in possession of material capable of being produced in legal proceedings. This was possible only with the KPMG report dated 07.01.2025.

36. He submits that the issue of limitation constitutes a mixed question of fact and law which cannot be decided under Order VII Rule 11.

37. He submits that application filed by defendant no.1 does not set out or mention the applicability of any particular Article of the Limitation Act, 1963. He submits that during arguments, Mr. Singh has relied upon Articles 4, 68 and 91(a). It is contended by Mr. Dewan that Mr. Singh's reliance on Articles 4, 68, and 91(a) is misconceived for the following reasons:

a) Article 91(a) does not apply to reimbursement of monies as claimed in the plaint but applies to "compensation" or "damages". Since only reimbursement has been sought by the plaintiff and damages are not claimed, Article 91(a) does not apply;

b) Article 68 applies to suits for recovery of specific movable property, not to money claims in restitution, whereas the present suit seeks a quantified sum representing fraud proceeds retained in Indian accounts, together with rendition against the banks holding those accounts; and

c) Article 4 applies to a principal agent relationship. Defendant no.1 was not an agent of plaintiff but a public servant whose conduct amounts to fraud and breach of fiduciary duty [and misconduct].

38. In response to the challenge regarding territorial jurisdiction and the doctrine of *forum non conveniens*, Mr. Dewan argues that the plea of *forum non conveniens* itself presupposes that this Court possesses the requisite jurisdiction to try the suit, meaning thereby, it cannot form a ground for non-suiting the plaintiff or rejecting its plaint under Order VII Rule 11.

39. He submits that in the present case, territorial jurisdiction is uncontrovertibly established under Section 20(c) for following reasons: (i)

proceeds from the fraud are retained in identified Indian accounts of defendant no.1 at ten branches of the banks located in New Delhi; (ii) rendition of accounts and repatriation directions can only be granted by an Indian court; and (iii) Canada is not a reciprocating territory under Section 44A CPC, therefore, a Canadian decree cannot be executed directly in India and a fresh suit on the original cause of action is necessary. Reliance in this regard is placed on ***Marine Geotechnics Marine Geotechnics LLC v. Coastal Marine Construction and Engineering Ltd., 2014 SCC OnLine Bom 309***.

40. He further submits that doctrine of *forum non conveniens* does not apply to civil suits governed by Section 20 of the CPC, where even part of the bundle of essential facts conferring jurisdiction is sufficient. Indubitably, material components of a transaction, including fund transfers, occurred within the jurisdiction of this Court (with banks located within the jurisdiction of this Court). Consequently, this Court is competent to entertain the suit. Reliance in this regard is placed on the following decisions (i) ***Horlicks Ltd. and Anr. v. Heinz India (Pvt.) Ltd., 2009 SCC OnLine Del 3342***, and (ii) ***Tata Chemicals Ltd. v. Puro Wellness Pvt. Ltd., 2019 SCC OnLine Del 7605***, which in turn relies upon ***Horlicks*** (supra).

41. He submits that Canadian criminal convictions, the Restitution Order, and the partial forfeiture proceedings in Canada are not directly and substantially the same subject matter as the present suit for recovery of specific Indian-held balances, rendition of accounts from Indian banks, and RBI-approved repatriation. Further, the pendency of foreign proceedings does not bar an Indian court from entertaining a suit. Reliance in this regard

is placed on ***Magotteaux Industries Pvt. Ltd. & Ors. v. AIA Industries Ltd., ILR (2009) 3 Delhi 22***.

42. He submits that the present suit, in contrast, seeks recovery of the balance CAD 33,345,991 lying in specifically identified Indian bank accounts, together with rendition of accounts against defendant nos.3 to 10 banks; mandatory injunctions against Indian financial institutions, and; RBI approval of repatriation. The reliefs are distinct, territorially specific, and cannot be obtained from a Canadian court. The Ontario Superior Court itself, in both the guilty plea proceedings and the Restitution Order, expressly preserved the Crown's right to pursue further civil recovery. He submits that a suit that pursues reliefs no foreign court could grant, and that is expressly preserved by the foreign court's own order, cannot be characterised as "re-litigation" or an abuse of process.

REJOINDER SUBMISSIONS

43. In rejoinder, Mr. Singh submits that for the purpose of Article 68 and Article 91(a) of the Schedule to the Limitation Act, 1963 the starting date is the date of first discovery about the misappropriated funds. He submits that as per para 157 of the plaint, the said date is October 22–23, 2020, as on the said dates 'two bank statements were obtained and reviewed, and plaintiff first discovered that illegal funds were transferred to bank accounts in India.

44. He further submits that plaint in prayer (c) itself seeks rendition of account in form of complete bank statements from defendant nos.3-10 banks from 01.01.2011. In that view of the matter, the justification for filing the suit only after obtaining complete information about the misappropriated

money transferred in the Indian bank accounts, is *ex facie* misconceived/ self-defeating.

45. He submits that relief sought in prayer (c) further demonstrates that present suit has been filed without having complete knowledge and information regarding the extent of monies misappropriated and transferred in India. In fact, KPMG Report itself records that future investigation is ongoing. In other words, KPMG Report dated 07.01.2025 is not conclusive. Given this position, plaintiff could have very well filed the present suit earlier, when, as per its own pleaded case and documents filed, it had the information regarding the figure of substantial misappropriated amount having been transferred to the Indian bank accounts.

46. He submits that justification of filing the instant suit this late is also misconceived for two reasons. Firstly, the very same plaintiff initiated civil proceedings in Canada in October of 2020 itself and continue to amend its plaint. The same could have been done here as well. Secondly, the Decree for recovery sought for in the present suit is not completely in line with KPMG Report, which records that current whereabouts of CAD 27.9 Million out of CAD 40.2 Million, is not known.

47. He submits that filing of the civil proceedings in Canada in October, 2020, itself shows the knowledge of fraud having come to the notice of the plaintiff at least in October, 2020 itself.

48. He submits that whatever documents on which attention of the Court has been drawn for showing applicability of Section 18 of the Limitation Act, 1963 are no acknowledgement in terms of the said Section for the reason that whatever has been recorded in the said documents are for the purpose of compounding of criminal offence.

49. He submits that Indian banks where the alleged misappropriated amount have actually been transferred and stashed is not a relevant fact/ circumstances/cause of action for the purpose of grant of a decree of recovery of alleged misappropriated money against defendant no.1. The location of the banks may be relevant for executing the decree in terms of prayer (a) but is not relevant for passing of the decree in terms of prayer (a). Furthermore, he submits that even the factum of money lying in Indian bank accounts is an incidental fact and not a material fact.

50. He submits that the fact that a decree granted by Court in Canada cannot be executed in terms of Section 44A CPC is not a relevant factor for according territorial jurisdiction to the Indian Courts when, otherwise no material cause of action for grant of decree in terms of prayer (a) has arisen in India.

51. As regards doctrine of forum *non conveniens*, Mr. Singh submits that the doctrine applies *vis-a-vis* foreign forum, even though it may not be applicable when two domestic *forums* are involved. He submits in the present facts and situation, the doctrine shall be appliable in view of the fact that the Courts in Canada (i.e. a foreign forum) are more appropriate Court of competent jurisdiction to decided the *lis*. Reliance in this regard is placed on ***Horlicks*** (supra).

ANALYSIS

52. I have heard learned senior counsel for the parties and have perused the record.

53. The principal objection of defendant no.1/applicant as to the lack of territorial jurisdiction of this Court, and the alternative submission that even if the small part of cause of action has arisen within the jurisdiction of this

Court, the doctrine of *forum non-conveniens* ought to be invoked in this case, as the appropriate forum is the *forum* in Canada, needs to be addressed first.

54. In the event, defendant no.1/applicant succeeds on this count, the logical consequence thereof would be the return of plaint and the question of entertaining other objections with regard to limitation and abuse of process of law would not arise.

55. The law is well settled that the objection as to territorial jurisdiction under Order VII Rule 10 CPC has to be appreciated by way of demurrer, which means that it has to be seen taking all the averments made in the plaint on its face value. In other words, such objection has to be considered limited to the averments made in the plaint as well as the documents filed by the plaintiff, whereas the defence set up by the defendant is irrelevant at that stage.

56. Reference in this regard may be had to the decision of the Division Bench of this Court in ***M/s RSPL Ltd. v. Mukesh Sharma & Anr., 2016 SCC OnLine Del 4285***, wherein relying upon the decision of Hon'ble Supreme Court in ***Exphar SA and Another v. Eupharma Laboratories Ltd. and Another, (2004) 3 SCC 688,*** following pertinent observations were made:

> *"**11. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct.** In Exphar SA v. Eupharma Laboratories Limited : (2004) 3 SCC 688, the Supreme Court observed that when an objection to*

jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. ***It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all****.”*

(emphasis supplied)

57. Section 20(a) of the Code of Civil Procedure, 1908 specifically provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant(s), at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. Whereas, Section 20(c) provides that a suit may be instituted in a Court within the local limits of whose jurisdiction, the cause of action has wholly or partly arisen.

58. *Ergo*, in order to determine its territorial jurisdiction, this Court needs to see two things: *One*, whether any of the defendants, at the time of commencement of the suit, actually and voluntarily resided or carried on business or personally worked for gain, within the local limits of this Court; *Second*, whether any cause of action, wholly or in part has arisen within the local limits of this Court; and for that, this Court has to peruse the relevant paragraphs in the plaint as regards the cause of action/territorial jurisdiction, that too, as noted above, only by way of demurrer.

59. It is settled law that a cause of action means every fact, which, if traversed, 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[1]. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd., (1996) 3 SCC 443,*** wherein the Hon'ble Supreme Court had articulated the above proposition in the following words:

> "*3.* ***It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, 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 claim 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 would possibly accrue or would arise.*** *In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained.*"
>
> (emphasis supplied)

[1] Swamy Atmananda & Ors. v. Sri Ramakrishna Tapovanam & Ors., (2005) 10 SCC 51

60. It is equally settled that for considering the plea for rejection of plaint under Order VII Rule 11(d) CPC, the averments made in the plaint alone have to be seen assuming the same to be correct. The Court cannot at that stage examine the defence put forth by the defendant in the written statement or the documents annexed thereto.

61. It is in the light of above settled legal proposition *apropos* jurisprudence governing both return and rejection of plaint, the averments made in the plaint with regard to the arising of cause of action, territorial jurisdiction and limitation, assumes relevance, and the same are reproduced herein below for ease of reference:

> *"7. Defendant No. 1 ("Sanjay") is a Canadian national who also holds Overseas Citizenship of India. He possesses both movable and immovable assets and multiple bank accounts at various banks in India, particularly in New Delhi…………………….*
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> xxxx xxxx xxxx
>
> *8. Shalini Madan is Sanjay Madan's spouse and a Canadian national. She possesses movable and immovable assets and jointly holds bank accounts with Sanjay in India, particularly in New Delhi………………………………………………….*
>
> xxxx xxxx xxxx
>
> *10. …………….**In the Canadian proceedings, Sanjay has admitted to holding two accounts with Yes Bank, where illegal funds derived from the fraud were transferred.** Additionally, Sanjay and Shalini jointly hold bank accounts at Yes Bank branches located in New Delhi. **The relief of rendition of accounts, among other reliefs, has been sought against Defendant No. 3……………….***
>
> *11. …………Sanjay holds two bank accounts with Kotak Mahindra in New Delhi, where illegal funds derived from the fraud were transferred. **The Plaintiff seeks the relief of***

rendition of accounts, among other reliefs, against Defendant No. 4………...

xxxx xxxx xxxx

14. ……..Sanjay holds at least two accounts with an IDBI Bank branch in New Delhi, where illegal funds derived from the fraud were transferred. ***The Plaintiff seeks the relief of rendition of accounts, among other reliefs, against Defendant No. 7……***

15. ……………. Sanjay holds at least two bank accounts with an Axis Bank branch in New Delhi, where illegal funds derived from the fraud were transferred. Vidhan also holds at least two bank accounts with an Axis Bank branch in New Delhi. ***The Plaintiff seeks the relief of rendition of accounts, among other reliefs, against Defendant No. 8.***

16. ……………..Sanjay holds at least one bank account with a PNB branch in New Delhi, where illegal funds derived from the fraud were transferred. ***The Plaintiff seeks the relief of rendition of accounts, among other reliefs, against Defendant No.9.***

17. …………… Sanjay holds at least one account with RBL Bank in New Delhi, where illegal funds derived from the fraud were transferred. The Plaintiff seeks the relief of rendition of accounts, among other reliefs, against Defendant No. 10.

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92. ***It is pertinent to note that Sanjay utilized the funds from the Kickback Scheme to acquire various properties in Canada and transferred a substantial portion of these funds to Indian bank accounts via wire transfers, cheques, or cash.*** *During his interview with the OPP on February 17, 2021, Vidhan Singh stated that Sanjay had offered to assist him in transferring funds obtained through the Kickback Scheme (FFSC Fraud) to India for a 10% commission fee.*

xxxx xxxx xxxx

94. ***Between 2011 and 2020, substantial funds were regularly transferred from bank accounts controlled by the***

Madan Family in Canada to various beneficiary accounts in India, held primarily by Sanjay and Shalini. *These transfers correspond with the Kickback Scheme's (FFSC Fraud) operational period and the Support for Families Program (SFFP). The data from Canadian bank accounts under the control of the Madan Family aligns with this timeframe, providing clear evidence of these transactions.*

95. ***Investigations reveal that approximately $40.2 million was transferred from five Canadian banks to numerous bank accounts in India, held in the names of Sanjay and Shalini, across nine different Indian banks****. These transactions were executed through wire transfers and cheques.* ***A detailed timeline of the movement of funds from Canada to India is presented in Schedule 7-A of the Report.***

xxxx xxxx xxxx

98. Notably, 80% of the total funds were transferred to three Indian banks- Induslnd Bank, ICICI Bank, and Yes Bank Ltd. - all in accounts held by Sanjay and Shalini………………………….

xxxx xxxx xxxx

100. ***Further investigation has identified additional bank accounts held by Sanjay and Shalini in India, which were used to receive the illegally obtained funds****…………………………*

xxxx xxxx xxxx

Cause of Action

157. ***The cause of action for filing the present suit arose in favour of the Plaintiff on October 22-23, 2020, when, during investigations in Canada, two bank statements were obtained and reviewed, and the Plaintiff first discovered that illegal funds were transferred from accounts controlled by Sanjay and Shalini in Canada to bank accounts in India. Thereafter, the cause of action arose on October 27-28, 2020, when KPMG LLP (Canada) received bank support from SBI Canada and ICICI Canada, which***

confirmed the transfer of illegal funds to bank accounts in India. The cause of action further arose on December 7, 2020, when Mr. Peter Armstrong (from KPMG LLP (Canada)) filed an Affidavit in the Canadian proceedings highlighting the movement of illicit funds to bank accounts controlled by Sanjay and Shalini in India. Additional causes of action arose on December 18, 2020, when Sanjay submitted his asset affidavit in the Civil Action, revealing the assets he held in India, and on January 8, 2021, when Sanjay, during his cross-examination on his sworn affidavit, in the Civil Action, admitted to his involvement in the Kickback Scheme (FFSC Fraud).

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158. The cause of action further arose on January 29, 2021, when the Ontario Superior Court of Justice issued a Worldwide Mareva Injunction against the Defendant Nos. 1 and 2, restraining them from dealing with their assets located anywhere in the world. A further cause of action arose on February13, 2021, when the Plaintiff pursued freezing of the accounts held with Defendant Nos. 5, 6 and 7, but the Plaintiff's requests were neither acknowledged nor accepted. On February 18, 2021, Defendant No. 5 refused to comply with the freezing request, citing the absence of an Indian court order.

159. The cause of action also arose on June 8, 2021, when Sanjay was examined in the Civil Action and admitted to using funds from the Kickback Scheme (FFSC Fraud) to purchase moveable and immoveable assets. Additionally, another cause of action arose on April 7, 2022, when the Ontario Superior Court of Justice, on the Crown's motion, waived the deemed and implied undertaking rules, authorizing the use of evidence from the Canadian proceedings in the present suit to be filed in India.

160.The cause of action arose on April 4, 2023, when Sanjay Madan entered a guilty plea before the Ontario Superior Court of Justice, admitting to defrauding the Government of Ontario, and acknowledging that monies *were due and recoverable, and was sentenced to 10 years of imprisonment. It further arose on November 27, 2023, when Sanjay Madan's accomplice, Vidhan Singh, entered a guilty plea, which was accepted by the Canadian Court.* ***The cause of action also arose on January 7, 2025, when KPMG LLP (Canada) furnished its Madan Investigation Report for India, which provided critical evidence of the flow of funds from Canada to Indian bank accounts during the relevant period. The Investigation Report prepared by KPMG LLP (Canada) has been instrumental in unveiling the vast scope of the fraud perpetrated by Defendant Nos. 1 and 2, and in tracing the diversion of funds originating in Canada. Upon receipt of the Report, the Plaintiff was able to fully comprehend the nature and extent of the fraud, thereby providing the necessary particulars to initiate the present suit for injunction, recovery of the remaining sums, and rendition of accounts*. *The cause of action further arose on April 24, 2025, when the Ontario Superior Court of Justice approved the settlement in the civil proceedings under which Sanj ay Madan consented to the forfeiture of INR 65.9 Crores from his Indian bank accounts, which is part of the $33,345,991 (excluding interest or gains) to be recovered by the Plaintiff, as well as the need for further disclosures through rendition of accounts to identify additional illicit funds or assets. The cause of action continues to subsist on a continuing basis, for each day that the remaining monies remain unrecovered, undisclosed, or unaccounted for, thereby resulting in a continuing deprivation of public funds rightfully owed to the Plaintiff.***

<u>Limitation</u>

161. ***The present suit is well within the prescribed period of limitation under Indian law, as it has been instituted within three years from the dates on which the causes of action arose, as enumerated and explained in the foregoing paragraphs*. *In addition, Defendant Nos. 1 and 2 have made express acknowledgments of liability during***

proceedings in Canada, which constitute acknowledgments within the meaning of Section 18 of the Limitation Act, 1963, thereby reviving and extending the limitation period for the present claims*. These acknowledgments are contained in the Agreed Statement of Facts recorded in the course of guilty plea proceedings held on April 4, 2023 and November 27, 2023, before the 91 Ontario Superior Court of Justice, by Defendant Nos. 1 and 2 respectively.*

Furthermore, the Minutes of Settlement dated March 6, 2025, approved on April 24, 2025, wherein Defendant No. 1 consented to the forfeiture of INR 65.9 Crores from his Indian bank accounts, constitutes an additional acknowledgment within the meaning of Section 18 of the Limitation Act*.*

Furthermore, and without prejudice to the above, the Plaintiff submits that even under Section 17 of the Limitation Act, 1963, the period of limitation would commence only from the date the fraud was discovered, which occurred progressively, as outlined in the forensic investigation report and disclosures mentioned in the foregoing paragraphs.

XII. JURISDICTION

162.This Hon'ble Court has the territorial jurisdiction to try the present Suit as most of the bank accounts used for transfer of the illegally obtained funds and/or those suspected of holding such funds are situated within the territorial limits of Delhi. In light of the investigation revealing that the trail of illicit funds transferred to Indian bank accounts can be last traced in Delhi*,* ***it is evident that at least a part of the cause of action has arisen within the jurisdiction of this Hon'ble Court****.* ***Therefore, in accordance with the provisions of Section 20 of the Code of Civil Procedure, 1908, which stipulates that a suit may be instituted in a court within the local limits of whose jurisdiction the cause of action has wholly or partly arisen, the Plaintiff is filing the present Suit before this Hon'ble Court****. Further, as the value of the suit exceeds INR 2* *crores, this Hon'ble Court also has the requisite pecuniary jurisdiction."*

(emphasis supplied)

62. For ascertaining whether this Court has the territorial jurisdiction in terms of Section 20 CPC, the relevant averments in the plaint, which are reproduced herein above, would reveal that it has been pleaded therein that the bank accounts used by defendant nos.1 and 2 for transfer of illegally obtained funds have been maintained with the defendant banks which are located within the territorial limits of this Court i.e. Delhi. It is further pleaded that the investigation conducted by the plaintiff has also revealed that the alleged illicit funds transferred to Indian bank accounts can be traced in Delhi. Indubitably, reading of plaint as a whole would reveal that the part of cause of action involving transfer of funds has occurred within the territorial jurisdiction of this Court, which furnishes to the plaintiff a right to claim relief against the defendants, therefore, this Court has the territorial jurisdiction to entertain and adjudicate the present suit.

63. That apart, a specific prayer for passing a preliminary decree for rendition of accounts against defendant nos.1 to 10, which includes the banks/financial institutions [i.e. defendant nos.3 to 10] situated within the territorial jurisdiction of this Court, has also been made in the Suit. Even the relief has specifically been claimed against defendant no.11/RBI for approving foreign remittance of funds from Indian bank accounts held by defendant nos.1 and 2 to the plaintiff. Since the said defendants nos. 3 to 11 are carrying on their businesses within the local limits of this Court, in that view of the matter as well, this Court would have the territorial jurisdiction to entertain the present suit against the defendant nos. 3 to 11.

64. It has also been argued on behalf of the plaintiff that Canada is not a reciprocating territory in terms of Section 44A CPC[2], which position has not been disputed on behalf of the defendant no.1. Reciprocating territory as per Section 44A means any country or territory outside India, which the Central Government may, by way of notification in the Official Gazette, declare to be a reciprocating territory and '*Superior Courts*' in relation to such a territory for the said Section. This Court can take judicial notice of the fact that the Central Government has in exercise of the powers conferred upon it by *Explanation I*[3] to Section 44A has declared by way of separate Gazette notifications approximately 12 countries to have reciprocal arrangement with India, but Canada has not been so notified.

65. The law is well settled that a decree or a judgment of a foreign country which has not been declared as a "Reciprocating Territory" by the Central Govt. is not executable in India.[4] The learned Single Judge of Bombay High Court in ***Marine Geotechnics LLC. v. Costal Marine Construction and Engineering Ltd., (2014) SCC OnLine Bom 309***, observed that since the decree of court in a non-reciprocating foreign territory cannot be executed, the party possessing such a decree has two options – either to file a suit in the domestic Indian court of competent jurisdiction premised on such foreign decree or a suit based on the original

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[2] **Section 44A. Execution of decrees passed by Courts in reciprocating territory.-** (1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

[3] **Explanation I .-**"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

[4] 1998 SCC OnLine Del 743 : Formosa Plastic Corporation Ltd. v. Ashok Chauhan & Ors.

underlying cause of action, or on both. The relevant extract from the said decision is reproduced herein below for ready reference:

> *"21. **Armed with a decree of a court in a non-reciprocating foreign territory, what must a party do in India ? His option is to file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree, or on the original, underlying cause of action, or both** (Badat and Co. v. East India Trading Co., AIR 1964 SC 538 ; (1964) 66 BLR 402). **He cannot simply execute such a foreign decree. He can only execute the resultant domestic decree**. To obtain that decree, he must show that the foreign decree, if he sues on it, satisfies the tests of section 13. If the decree is, on the other hand, of a court in a reciprocating territory, then he can straightaway put it into execution, following the procedure under section 44A and Order 21, rule 22 of the CPC. At that time, the judgment-debtor can resist the decree holder by raising any of the grounds under section 13. If he does not, or fails in his attempt, the decree will be executed as if it were a decree passed by a competent court in India."*
>
> (emphasis supplied)

66. This Court also in ***Century Metal Recycling Private Limited v. Sachin Chhabra & Ors. 2017 SCC OnLine Del 12582***, in the context of foreign judgment from a non-reciprocating territory, observed that though a suit can be filed in India based on such judgment but still the plaintiff will have to show that the cause of action therefor accrued within the territory of India, jurisdiction whereof is invoked or that the defendant, at the time of commencement of suit, actually and voluntarily resides or carries on business or personally works for gain within the said territory. The relevant extract of the decision reads thus:

> *"26. I am afraid, Section 13 of the CPC does not provide for filing of a suit. **Section 13 merely provides for cases in***

which a foreign judgment would be conclusive and in which it would not and though undoubtedly on the foreign judgment of a territory with which India does not have reciprocity treaty, a suit can be filed in India but the plaintiff would still have to show that the cause of action therefor accrued within the territory of India, jurisdiction whereof is invoked or that the defendant, at the time of commencement of suit, actually and voluntarily resides or carries on business or personally works for grain within the said territory. *If no cause of action is shown to have accrued within the jurisdiction of this Court or if the defendants are not shown to be so residing in or carrying on business within the jurisdiction of this Court, nothing in Section 13 of the CPC can entitle the plaintiff to institute a suit in this Court."*

(emphasis supplied)

67. Reference may also be beneficially had to the decision in ***Elis Jane Quinlan & Ors. v. Naveen Kumar Seth***, ***2026 SCC OnLine Bom 1011***, wherein it was observed as under:

> *"23. Ordinarily, when foreign court passes a judgment and a decree, which is sought to be executed in India, a suit needs to be filed in Indian court, which needs to conduct an inquiry into existence of circumstances under clauses (a) to (f) of Section 13 of the Code.* ***Thus, a decree of a foreign court is not executable in Indian courts unless Indian court makes a decree on the foreign judgment. However, Section 44A of the Code makes an exception where a decree is passed by foreign courts in reciprocating territories. Reciprocating territory means a country or territory outside India which the Central Government declares to be a reciprocating territory by issuance of a Notification. When a decree is made by Superior Courts of any reciprocating territory, the same can be filed in a District Court and it can be executed by the District Court as if it has been passed by the District Court itself****. Section 44A of the Code provides thus: […]"*

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24. ***Thus, there is a vital distinction between the decree passed by the foreign court in non-reciprocating territory and a decree passed by the foreign court in reciprocating territory. In the former case, the decree is not directly executable, and it is necessary to institute a suit on foreign judgment to secure a domestic decree on the foreign judgment. However, in the latter case, the decree passed by the foreign court in reciprocating territory can be directly executed by the District Court****. However, even while executing the decree of a foreign court in reciprocating territory, the exceptions specified in clauses (a) to (f) of Section 13 of the Code continue to apply and the District Court can refuse execution if the decree demonstrably falls in any of the exceptions specified in clauses (a) to (f) of Section 13 of the Code."*

(emphasis supplied)

68. As can be seen from the above, since India does not have a reciprocal treaty with Canada, the decree obtained by the plaintiff in Canada would not be executable in India. Even after obtaining the decree from Canada, the plaintiff will still have to file a suit in Delhi where the monies transferred by defendant no.1 to his various accounts maintained with defendant nos. 3 to 10 banks is stated to be lying, either based on such a decree or on the basis of underlying original cause of action, or both. In that view of the matter as well, no useful purpose will be served by asking the plaintiff to first obtain a decree from Canada, and then to file a suit in Delhi; rather it would be waste of time and effort when eventually the suit has to be filed within the territorial jurisdiction of this Court, again showing that the cause of action has arisen in Delhi or at the time of commencement of suit, defendants actually and voluntarily resides or carries on business or personally works for gain within Delhi.

69. Now adverting to the contention of the applicant/defendant no.1 that this Court is *forum non-conveniens*, therefore, the suit may not be entertained, it is to be noted that it is a trite law that the doctrine of *forum non-conveniens* does not apply to the civil suits in India which are governed by the provisions of CPC. Such a doctrine can though be invoked in an anti-suit injunction filed in the domestic Court in respect of a foreign *forum*, however, the present is not such a case.

70. The law in this regard has been exposited by the Division Bench of this Court in ***Horlicks*** (supra). The relevant extract from the said decision reads thus:

> *"Legal position*
>
> ***43. The legal position arising from the conspectus of the aforesaid judgments is thus abundantly clear that the principle of anti-suit injunction and forum non conveniens do apply to the foreign forums/Courts once the test laid down for exercise of such jurisdiction is satisfied and this legal position is prevalent in UK, USA, Australia, Canada as also in India.*** *The option under the Civil Procedure Code, 1908.*
>
> *xxx xxx xxx*
>
> ***55. The moot point, however, remains as to whether the exercise of power of anti-suit injunction in respect of another domestic forum or of the principle of forum non conveniens is something which is permissible under Section 151 of the said Code as being matters which are not envisaged. <u>Once again as noticed above, there is really no dispute that Section 151 of the said Code is the fountain from which flows the power to stay another suit or to give a finding that the Court where the suit is filed is not the forum convenience in respect of matters where litigation has been instituted in foreign forums.</u>*** *However, its application to domestic forums would have to be dealt with separately as there are pronouncements dealing with*

this aspect in different situations as also legislative enactments taking into consideration the earlier legal perspective and providing for a change in the legal position by specific acts of the legislature. Doctrine of anti-suit injunction and the principle of forum non conveniens as applicable to domestic forums.

56. The crux of the issue in the present case is the applicability of the principles of forum non conveniens i.e. whether the Court in which the suit is filed and which would otherwise have jurisdiction under the said Code can non-suit the plaintiff on the ground that there is a better situated forum to decide the matter in issue and the Court where the suit is filed is forum non conveniens. The learned Single Judge in the impugned judgment has taken a view that this is permissible*. The contention of the respondent that the principle of forum non conveniens being the other side of the coin of the doctrine of anti-suit injunction and having been applied to domestic forums of the Indian Courts, there could be no doubt that the principle of forum non conveniens would equally apply. It would thus be appropriate to consider the issue of applicability of the doctrine of anti-suit injunction to domestic forums.*

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65. In our considered view, there is little doubt in the legal proposition that an anti-suit injunction cannot be issued by a domestic forum against another domestic forum in India in view of the specific bar contained in Section 41(b) of the said Act. *The only thing now to be considered is whether there can be a different legal position applicable to the principle of forum non conveniens. The plea of the learned Counsel for the respondent, in fact, was that since anti-suit injunction could be granted, principles of forum non conveniens would apply as it would be the other side of the same coin. If that be so, nothing survives in the contention of the learned Counsel for the respondent. We, however, consider it appropriate to discuss some of the judgments referred to by learned Counsel for the parties in support of their respective pleas.*

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***78. The aforesaid exposition thus shows that principles while exercising the discretionary jurisdiction under Article 226 of the Constitution of India cannot ipso facto be applied to a civil proceeding governed by the said Code**. **Not only that, the principle of forum non conveniens emerged as a principle of admiralty law applicable primarily to foreign forums. It finds no place in a domestic forum in India. The plaintiff is always the dominus litis and so long as the Court has jurisdiction to try a suit, a party cannot be non-suited. A suit has to be governed by the provisions of the said Code.** In this context, we may refer to the observations made in Abdul Gafur v. State of Uttarakhand, (2008) 10 SCC 97, where the Supreme Court held that since Section 9 of the said Code provides that a civil Court shall have jurisdiction to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred, the civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute. It was further observed that a plaint can only be rejected in terms of Order 7 Rule 11 of the said Code and similarly a plea of bar to jurisdiction of a civil Court can be examined.*

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***80. We have found that there have been some passing references made to the principle of forum non conveniens. Some of them are in the context of exercising writ jurisdiction while others are in the context of a foreign forum**. Every judgment is not to be treated as a precedent nor every passing sentence in a judgment is to be read as a provision in a statute.*

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88. We are in agreement with the submissions of the learned Counsel for the appellants that if the principle of forum non conveniens would be applied to a civil suit

governed by the said Code, the plaintiff would be left in the dark. There may be more than one Court which may have jurisdiction in the matter but so long as a particular Court has the jurisdiction, the privilege is of the plaintiff*. The plaintiff may be made to run from one Court to the other without knowing where the initial case ought to be instituted. Such a situation is not envisaged by the said Code.*

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Conclusion

91. *The appeals had been argued at length. The legal position enunciated in different countries was cited before us. This required all the aspects and the judgments to be analyzed.* ***The fact, however, remains that there was really no dispute about the applicability of the doctrine of anti-suit injunction and the principle of forum non conveniens as applicable to foreign forums****. The question was only whether the principle of forum non conveniens would apply to domestic forums and the same required consideration of the application of doctrine of anti-suit injunction to domestic forums on account of direction of the arguments of the learned Counsel for the respondent that the principle of forum non conveniens was the other side of the coin of the doctrine of anti-suit injunction. The factual aspect which required consideration was even if such a principle of forum non conveniens was applicable in the given facts of a case whether it could be said that such a principle ought to have been applied to the present case and the nature of relief.*

92. On the conspectus of the aforesaid, we hold as under*:*

(i) ***The doctrine of anti-suit injunction though may be applicable both in foreign forums and domestic forums in different countries has no place in India regarding another domestic forum in view of the specific bar created by Section 41(b) of the said Act as interpreted in Cotton Corporation of India Limited v. United Industrial Bank***

Limited case (supra). <u>It would apply only in case of a foreign forum or in a situation where an injunction is sought against a domestic Court which is subordinate to the one where such an application is made.</u>

(ii) ***<u>The principle of forum non conveniens applies to foreign forums and Indian Courts can apply the said principle vis-a-vis foreign forums or while exercising discretionary jurisdiction under Article 226 of the Constitution of India.</u>***

(iii) ***The principle of forum non conveniens does not apply to civil suits in India which are governed by the said Code, there being no provision under the Code for the same and recourse to Section 151, CPC is not permissible for application of the principle of forum non conveniens to domestic forums <u>especially keeping in mind that it is the other side of the coin of the doctrine of anti-suit injunction.</u>*** *An aggrieved party can, however, approach the Supreme Court under Section 25 of the said Code.*

(iv) The impugned judgment of the learned Single Judge rejecting and returning the plaint cannot be sustained and is thus set aside.

(v) In the given facts of the case, even otherwise, if the principle of forum non conveniens had been applicable, then there was no reason not to proceed with the suits on merits.

(vi) The interlocutory applications for injunction would be required to be heard on merits by the learned Single Judge and decided in accordance with law."

(emphasis supplied)

71. As can be seen from above, the plaintiff is always the *dominus litis* and so long as the Court has jurisdiction to try a suit, a party cannot be non-suited. A suit has to be governed by the CPC. The principle of *forum non-conveniens* in a suit governed by provisions of CPC applies only in respect of foreign forum and that too in an exceptional circumstance, when a

suit is filed as an anti-suit injunction to prevent a proceeding in the foreign forum from becoming vexatious and oppressive. The said principle has no applicability in the suits filed in the domestic forums in India as they are governed by the CPC, although the writ courts under Article 226 of the Constitution may refuse to exercise jurisdiction in appropriate cases invoking the doctrine of *forum non-conveniens*. Even in the context of foreign forums as well, the principle of *forum non-conveniens* has been held to be the other side of the coin of the doctrine of anti-suit injunction.

72. In light of the above exposition, this Court is of the considered view that since it is not an anti-suit injunction, therefore, the doctrine of *forum non-conveniens* cannot be invoked in the present case. Accordingly, the alternative plea of *forum non-conveniens* as articulated by the defendant no.1/applicant is also rejected.

73. Insofar as defendant no.1/applicant's objection that the suit is barred by limitation is concerned, it is to be noted that the plaintiff has sought to invoke Section 17 of the Limitation Act, 1963 (hereinafter 'the Act') to contend that the period of limitation would commence only from the date the fraud was discovered, which occurred progressively, as last as on 07.01.2025, when KPMG LLP (Canada) furnished its Madan Investigation Report for India providing critical evidence of flow of funds from Canada to Indian Bank accounts during the relevant period.

74. To appreciate the controversy as to limitation, it would be apposite to reproduce Section 17 of the Limitation Act, which deals with the effect of fraud or mistake and reads thus:

*"17. **Effect of fraud or mistake.—**(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it*;* ***or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production****:*

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:
Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

(emphasis supplied)

75. In ***Pallav Sheth*** (supra) the Hon'ble Supreme Court had an occasion to consider the import and scope of Section 17 of the Limitation Act. The relevant observation of the Court reads thus:

"47. Section 17 of the Limitation Act, inter alia, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent [Section 17(1)(b)] or where any document necessary to establish the right of the plaintiff or the applicant has been fraudulently concealed from him [Section 17(1)(d)], the period of limitation shall not begin to run until the plaintiff or the applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. *These provisions embody fundamental principles of justice and equity viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud."*

(emphasis supplied)

76. Reference may also advantageously be had to the decision of the Hon'ble Supreme Court in ***Saranpal Kaur Anand v. Praduman Singh Chandhok and Ors., 2022 8 SCC 401***, wherein the Court while construing the provisions of Section 17 of the Act made the following relevant observations:

> *"11.* ***The general principle, which also manifests itself in Section 17 of the Limitation Act, is that every person is presumed to know his own legal right and title in the property, and if he does not take care of his own right and title to the property, the time for filing of the suit based on such a right or title to the property is not prevented from running against him. <u>The provisions of Section 17(1) embody fundamental principles of justice and equity viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or the documents have been wilfully concealed from him and also that a party who had acted fraudulently should not be given the benefit of limitation running in its favour by virtue of such frauds.</u>*** *[Pallav Sheth v. Custodian, (2001) 7 SCC 549] However it is important to remember that Section 17 does not defer the starting point of limitation merely because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but specific situations covered by clauses (a) to (d) to Section 17(1) of the Limitation Act. Sections 17(1)(b) and (d) encompass only those fraudulent documents or acts of concealment of documents which have the effect of suppressing knowledge entitling the party to pursue his legal remedy. Once a party becomes aware of antecedent facts necessary to pursue legal proceedings, the period of limitation commences. [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773]*
>
> *12.* ***Therefore in the event the plaintiff makes out a case that falls within any or more of the four clauses to sub-section (1) to Section 17 of the Limitation Act, the period of limitation for filing of the suit shall not begin to run until the plaintiff or applicant has discovered the***

fraud/mistake or could with reasonable diligence have discovered it or if the document is concealed till the plaintiff has the means of producing the concealed document or compelling its production a fortiori.

13. ***"Diligence" as a word of common parlance means attention, carefulness, and persistence in efforts of doing something.*** *[P. Ramanatha Aiyar, The Major Law Lexicon (4th Edn., Lexis Nexis Publication)] This Court in Chander Kanta Bansal v. Rajinder Singh Anand [Chander Kanta Bansal v. Rajinder Singh Anand, (2008) 5 SCC 117] , in reference to the proviso to Order 6 Rule 17 of the Code, defined "diligence" as : (SCC pp. 122-23, para 16)*

> *"16.* ***… According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation."***

14. The word "diligence" read with the word "reasonable" in the context of Section 17(1) of the Limitation Act is subjective and relative, and would depend upon circumstances of which the actor called upon to act reasonably, knows or ought to know. Vague clues or hints may not matter. ***Whether the plaintiff/applicant had the means to know the fraud is a relevant consideration. It is manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud. <u>When the time starts ticking subsequent events will not stop the limitation</u>. <u>The time starts running from the date of knowledge of the fraud/mistake</u>; or the plaintiff/applicant when required to exercise reasonable diligence could have first known or***

discovered the fraud or mistake. In case of a concealed document, the period of limitation will begin to run when the plaintiff/applicant had the means of producing the concealed document or compelling its production.

15. Thus when the plaintiff relies on Section 17(1)(b) of the Limitation Act asserting fraud or mistake, he has to state the date on which he has discovered the fraud or mistake, and also state that he could not have discovered the fraud or mistake with reasonable diligence on a date earlier than on which he has based his cause of action."

(emphasis supplied)

77. Clearly, the time starts running from the date of knowledge of the fraud/mistake; or the plaintiff could have first known or discovered the fraud or mistake by exercising reasonable diligence. It is thus, manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud.

78. Indubitably, the questions that whether the documents or material had been fraudulently concealed by the defendant no.1 from the plaintiff or the plaintiff had the means to know the fraud or the plaintiff had exercised reasonable diligence, are not only relevant considerations, but the same are questions of fact.

79. However, in the context of plea of limitation raised in terms of Order VII Rule 11(d) what is significant is to examine, are the averments made in the plaint. The relevant averments which are germane for the issue reads thus:

"155. The mediated settlement strengthens the evidentiary foundation of the Plaintiff's claims in the present Suit. It records Defendant No.1's explicit consent to the forfeiture of

INR 65.9 Crores from accounts held by him in India and establishes a framework for the repatriation of such funds through proceedings to be initiated before Indian courts. ***As reflected in the Madan Investigation Report for India, prepared by KPMG LLP (Canada) dated January 7, 2025, a total of CAD 40,243,986 was transferred from Canada to India, of which CAD 6,897,995 was repatriated by October 2020, leaving a balance of CAD 33,345,991 (exclusive of interest or gains) to be recovered. The INR 65.9 Crores identified in the Canadian settlement constitutes a partial portion of the outstanding balance of CAD 33,345,991 that is still to be recovered.*** *The settlement and the admissions contained therein substantiate the Plaintiffs assertions regarding the unlawful diversion of public funds and bolster the necessity of pursuing interim relief to prevent further dissipation of assets, as well as discovery and rendition of accounts for the identification and recovery of remaining sums.*

xxxxx xxxxx xxxxx

160. The cause of action arose on April 4, 2023, when Sanjay Madan entered a guilty plea before the Ontario Superior Court of Justice, admitting to defrauding the Government of Ontario, and acknowledging that monies were due and recoverable, and was sentenced to 10 years of imprisonment. It further arose on November 27, 2023, when Sanjay Madan's accomplice, Vidhan Singh, entered a guilty plea, which was accepted by the Canadian Court. ***The cause of action also arose on January 7, 2025, when KPMG LLP (Canada) furnished its Madan Investigation Report for India, which provided critical evidence of the flow of funds from Canada to Indian bank accounts during the relevant period. The Investigation Report prepared by KPMG LLP (Canada) has been instrumental in unveiling the vast scope of the fraud perpetrated by Defendant Nos. 1 and 2, and in tracing the diversion of funds originating in Canada. Upon receipt of the Report, the Plaintiff was able to fully comprehend the nature and extent of the fraud, thereby providing the necessary***

> ***particulars to initiate the present suit for injunction, recovery of the remaining sums, and rendition of accounts.*** *The cause of action further arose on April 24, 2025, when the Ontario Superior Court of Justice approved the settlement in the civil proceedings under which Sanjay Madan consented to the forfeiture of INR 65. 9 Crores from his Indian bank accounts, which is part of the $33,345,991 (excluding interest or gains) to be recovered by the Plaintiff, as well as the need for further disclosures through rendition of accounts to identify additional illicit funds or assets. The cause of action continues to subsist on a continuing basis, for each day that the remaining monies remain unrecovered, undisclosed, or unaccounted for, thereby resulting in a continuing deprivation of public funds rightfully owed to the Plaintiff.*
>
> *161. [….]* ***Furthermore, and without prejudice to the above, the Plaintiff submits that even under Section 17 of the Limitation Act, 1963, the period of limitation would commence only from the date the fraud was discovered, which occurred progressively, as outlined in the forensic investigation report and disclosures mentioned in the foregoing paragraphs.****"*

(emphasis supplied)

80. Once the plaintiff has specifically pleaded that the forensic report dated 07.01.2025 of KPMG LLP (Canada) provided critical evidence of the flow of funds from Canada to Indian bank accounts during the relevant period and that it only upon receipt of said report, the plaintiff was able to fully comprehend the nature and extent of the fraud, which provided the necessary particulars to initiate the present suit for injunction, recovery of the remaining sums, and rendition of accounts, at this stage there is no reason not to accept the same. Such an averment becomes a mixed question of law and fact that cannot be decided summarily at this threshold stage

under Order VII Rule 11 CPC. Therefore, the plaint cannot be rejected at this stage holding that the suit is *ex facie* barred by limitation.

81. Reference in this regard may had to the decision of Hon'ble Supreme Court in ***P.V. Guru Raj Reddy v. P. Neeradha Reddy (2015) 8 SCC 331***, wherein it was observed that the conditions precedent to terminate a civil action at the threshold are stringent, more so when rejection of plaint is sought on the ground of limitation. It was further held that when plaintiff claims that he gained knowledge of the essential facts giving rise to cause of action, at a particular point of time, the same has to accepted. The relevant portion of the decision reads thus:

> *"**6.** In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. **The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct.** At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."*
>
> (emphasis supplied)

82. Likewise, in ***Chhotanben v. Kirtibhai Jaikrushnabhai Thakkar, (2018) 6 SCC 422***, it was pointed out that the date on which the plaintiffs gained knowledge of essential facts is relevant for deciding as to whether the suit is barred by limitation or not. Such a plea, it was held, becomes a triable issue and hence the suit cannot be thrown out at the threshold.

83. There is another facet to the question of limitation. It has been contended on behalf of the defendant no.1 that the suit of the plaintiff shall

be governed by the limitation period as prescribed under Article 4, 68 and 91(a) of the Act. To appreciate the submissions on behalf of defendant no.1 / applicant, relevant it would be to set out the said Articles from the Schedule to the limitation, which reads thus:

Article	***Description of suit***	***Period of limitation***	***Time from which period begins to run***
PART I. - SUITS RELATING TO ACCOUNTS			
4.	*Other suits by principals against agents for neglect or misconduct*	*Three years*	*When the neglect or misconduct becomes known to the plaintiff.*
PART VI.—SUITS RELATING TO MOVABLE PROPERTY			
68.	*For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion*	*Three years*	*When the person having the right to the possession of the property first learns in whose possession it is.*
PART VII.—SUITS RELATING TO TORT			
91.	*For compensation.-* *(a) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation, or conversion;*	*Three years*	*When the person having the right to the possession of the property first learns in whose possession it is.*

84. Article 4 is applicable to the suits by principals against agents for neglect or misconduct. The present suit is not a suit filed by the principal against its agent for any alleged neglect or misconduct. Rather, it is the plaintiff's pleaded case that defendant no.1 was working as Sr. Govt. official with Government of Onterio, and has allegedly committed fraud, making it clear that there was neither principal-agent relationship between the plaintiff and defendant no.1 nor suit has been filed alleging misconduct or neglect on

part of defendant no.1. Likewise, it is also not the case of defendant no.1 that he was working as agent for the plaintiff. Further, since the present suit *inter alia* seeks recovery of monies obtained through fraud, Article 4 would not apply to the present suit.

85. Article 68 of the Schedule of the Act in Part VI titled as *"suits relating to movable properties"* provides limitation period of three years in case of suit filed for *'specific movable property'* lost, or acquired by theft, or dishonest misappropriation or conversion. Whereas, Article 91(a) in Part VII titled as *"suits relating to tort"* of the Schedule provides limitation period of three years for the suit claiming compensation for wrongfully taking or detaining any *'specific movable property'* lost or acquired by theft or dishonest misappropriation, or conversion.

86. Incidentally, both the Articles 68 and 91(a) use the expression *'specific movable property'*. A Coordinate Bench of this Court in ***K. K. Sharma v. M/s. City Bank and Anr., 2015 SCC OnLine Del 12283*** observed that Article 68 of the Act has no application to monies as the same applies only to movable properties and not monies. The relevant paragraphs from the said decision reads thus:

> *"17.* ***Article 68 of the Limitation Act also would have no application because the subject matter of this Article is movable properties and not monies. Movable properties not being monies, there does not arise any issue of any misappropriation or conversion under Article 68 of the Limitation Act if monies are wrongfully collected by the defendant no. 1/Bank for its customer.*** *The present case would really be a case of illegal endorsement not falling within Sections 14 and 15 of the N.I. Act and the present case is property first learns in whose possession it is. not a case of recovery of specific movable property under Article*

68 of the Limitation Act. This argument of the plaintiff is also therefore rejected."

(emphasis supplied)

87. The applicant/defendant no.1 has not pointed out any other specific Article from the Schedule of the Act which would apply to the subject matter of the present suit *viz*. recovery of fraudulently transferred money to Indian Banks and rendition of accounts by such banks in respect of such money, and in the *prima facie* opinion of this Court their exists none.

88. It is trite that if a suit is not covered by any specific Article under the Schedule to the Act, then it would fall within the realm of residuary Article *viz*. Article 113. The said Article prescribes the limitation period of three years for filing any suit for which no period of limitation is provided elsewhere in the Schedule and the limitation period for filing such a suit begins to run *"when the right to sue accrues"*.

89. The Hon'ble Supreme Court in ***Union of India and Others v. West Coast Paper Mills Ltd. and Another, (2004) 2 SCC 747,*** had an occasion to examine the expression *"when the right to sue first accrues"* as used in Article 58 in contradistinction to the expression *"when the right to sue accrues"* used in Article 113 of the Act. For ready reference, Articles 58 and 113 of the Act are reproduced herein below:

	Description of suit	*Period of limitation*	*Time from which period begins to run*
58.	*To obtain any other declaration.*	*Three years*	***When the right to sue <u>first</u> accrues.***
	*	*	*
113.	*Any suit for which no period of limitation is*	*Three years*	***When the right to sue***

provided elsewhere in this Schedule.	***accrues**.*

90. The Hon'ble Supreme Court noting the distinction between expressions used in Articles 58 and 113 observed that in case of Article 113, the period of limitation would be reckoned from the date on which cause of action arose first. However, under Article 113, the limitation would be reckoned from the 'last day' when the cause of action arose. The relevant extract from the said decision reads thus:

> *"21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". **The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose**."*
>
> (emphasis supplied)

91. Again, in ***Shakti Bhog*** (supra) the Hon'ble Supreme Court relying upon the decision in ***West Coast*** (supra) had drawn distinction between the language used in Article 113 *vis-à-vis* with other Articles in the first division of the Schedule i.e. Article 58, 59 and 104 to observe that to read expression "first" would tantamount to rewriting the provision and doing violence to the legislative intent. It was explicitly laid down that in cases governed by Article 113, what is required to be noted is - "when the right to sue accrues"

(and not when the right to sue "first" accrues). The relevant extract from said decision reads thus:

> *"17. The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.*
>
> *18. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right).* ***The view taken by the trial court, which commended to the first appellate court and the High Court in the second appeal, would inevitably entail in reading the expression in Article 113 as — when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act****. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.*
>
> *xxx xxx xxx*
>
> *25. The respondents had also relied on the dictum of this Court in Fatehji & Co. v. L.M. Nagpal [Fatehji & Co. v. L.M. Nagpal, (2015) 8 SCC 390 : (2015) 4 SCC (Civ) 371] . Indeed, in that case, this Court upheld the order of rejection*

of the plaint on the finding that the suit was barred by limitation under Article 54 of the 1963 Act, in the fact situation of that case. The Court was dealing with a suit for specific performance of a written agreement of sale dated 2-7-1973 and as per the terms, the performance of the contract was fixed for 2-12-1973. In that background, the Court noted that the subsequent letters exchanged between *the parties cannot be the basis to extend the period of limitation. Moreover, the Court dealt with the case governed by Article 54 of the 1963 Act, which stipulates the timeline for commencement of period of limitation, being the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.* ***In cases governed by Article 113 of the 1963 Act, such as the present case, however, what is required to be noted is — "when the right to sue accrues" (and not when the right to sue "first" accrues).****"*

(emphasis supplied)

92. The Division Bench of this Court in ***O.P. Khandelwal v. Steel Authority of India, 2024 SCC OnLine Del 6664*** relying upon the decision in ***Shakti Bhog*** (supra) held that where Article 113 of the Act is invoked, the period of limitation would be reckoned from the date on which the cause of action last arose. The relevant para 23 of the said decision reads thus:

"23. ***The aforesaid view taken by the Supreme Court makes it clear that in a suit where Article 113 of the Limitation Act is invoked, the period of limitation would be calculated from the date on which the cause of action last arose****, which in the present case would be on 23rd January, 2020, when the appellant was supplied the amending Internal Guidelines by the respondent."*

(emphasis supplied)

93. The plaintiff has specifically averred that the cause of action has *inter alia* arisen on 07.01.2025 when the KPMG LLP (Canada) furnished its investigation report for India, which provided critical evidence of the flow

of funds from Canada to Indian Bank accounts during the relevant period. It is further stated in explicit terms that the investigation report prepared by KMPG LLP (Canada) has been instrumental in unveiling the vast scope of fraud perpetrated by defendant nos. 1 and 2 and in tracing the diversion of funds originating in Canada. It is upon receipt of the report, the plaintiff was able to fully comprehend the nature and extent of the fraud, thereby providing necessary particulars to initiate the present suit. The plaintiff has further pleaded that cause of action also arose on 24.04.2025, when the Ontario Superior Court of Justice approved settlement in the civil proceedings under which defendant no.1 has consented to the forfeiture of INR 65.9 Crore from his Indian Bank accounts, which is part of CAD 33,345,991 to be recovered by the plaintiff.

94. Keeping in view that the plaintiff has pleaded cause of action on 07.01.2025 as well as on 24.04.2025, besides on various other dates viz., 22-23 October, 2020; 27-28 October, 2020; 07 December, 2020; 18 December, 2020; 08 January, 2021; 29 January, 2021, 13 February, 2021; 18 February, 2021, 08 June, 2021; 07 April, 2022; 04 April, 2023; 27 November, 2023, therefore, the suit cannot be said to be *ex facie* barred by limitation, in light of the law exposited in ***West Coast*** (supra); ***Shakti Bhog*** (supra), and; ***O.P. Khandelwal*** (supra), warranting rejection of plaint at the stage of Order VII Rule 11 CPC. However, the question as to whether any cause of action arose on 07.01.2025 and on 24.04.2025 as well as on other alleged dates is a question of fact, which cannot be decided at this threshold stage.

95. As this Court has come to the conclusion that the suit is not *ex facie* barred by limitation, the plea taken on behalf of plaintiff that

acknowledgments made by defendant nos.1 and 2 would also extend the period of limitation in terms of Section 18 of the Act, pales into insignificance for the time being and accordingly, the same is not being adverted to at this stage.

96. Next, it was argued on behalf of the applicant/defendant no.1 is that the present suit amounts to abuse of the process of law. The argument is predicated on the assertion that for the recovery / disgorgement of allegedly misappropriated amount, which includes the amount claimed in the present suit, similar civil proceedings are pending in Canada. On the other hand, the plaintiff has *inter alia* taken a stand that the proceedings in the Canadian Court are criminal proceedings and the restitution order of CAD 47,462,649 is a criminal procedure order of compensation, and further partial forfeiture and repatriation of assets in Canada was to the limited extent, whereas in contrast, the present suit seeks recovery of the balance CAD 33,345,991 lying in specifically identified Indian Bank accounts. Having regard to the rival stand taken by the parties, this also appears to be a disputed question of fact for which the provision of Section 151 cannot be invoked at this stage.

97. The submission is misconceived also for the reason that an Explanation[5] to Section 10 CPC explicitly provides that the pendency of suit in foreign Court does not preclude the Courts in India from trying the suit founded on the same cause of action. Reference in this regard may be had to the decision of the Division Bench of this Court in ***Magotteaux Industries Pvt. Ltd.*** (supra) wherein in the context of anti injunction suit, it was observed as under:

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5 Explanation. -The pendency of a suit in a foreign Court does not preclude the Courts in 1[India] from trying a suit founded on the same cause of action.

"53. As we have seen earlier in the discussion that the question of anti-suit injunction has been discussed by Hon'ble Supreme Court in Modi's case (supra) and subsequently followed by this Hon'ble Court in many decisions. Most of the decisions given by this Court as well as the Hon'ble Supreme Court in Modi's case involves contractual dispute Wherein the parties have agreed to submit themselves to the jurisdiction of one court or the other i.e. the foreign court. ***Such kind of situation is missing in the present case. In the absence of contractual dispute between the parties, we have to examine the present controversy by applying principles of ordinary civil law more specifically under the provisions of Section 10 of CPC in the principles of res subjudice. The explanation to Section 10 provides that the pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.*** *Applying the said principle conversely would mean that the foreign court is not precluded from entertaining any suit on the basis of some cause of action merely because the suit is pending in Indian Court. In the case in hand pending in this Court and the cause of action pertaining to the proceedings pending in the US Court is different.* ***Even assuming the cause of action pertaining to both the proceedings are same then by applying the explanation of Section 10 of CPC, the said action is maintainable in the US Court and the grant of anti-suit injunction by the learned single judge is not appropriate in the present case."***

(emphasis supplied)

98. Before parting, apt would it be to deal with the decisions relied upon on behalf of applicant/defendant no.1. The defendant no.1 has relied on the decision in ***Sankar Dastidar*** (supra) to buttress the contention that the suit is barred by limitation. The said decision dilates on the applicability of Articles 68, 69 and 91 of the Act. This Court has already held that Articles 68 and 91 are applicable only to *'specific movable properties'* which does not include

monies. Similarly, plain reading of Article 69 shows that it also sets a limitation period of three years for a suit to recover "other specific movable property" and not for monies. Therefore, the reliance placed by defendant no.1/applicant on the said decision is of no avail.

99. Similarly, the reliance placed by the defendant no.1/applicant on the decisions of the Hon'ble Supreme Court in ***Kusum Ingots*** (supra) and ***Sterling Agro Industries Limited*** (supra) is misplaced. In both the said decisions, it was observed that even if part of cause of action has arisen, within the territorial jurisdiction of a particular High Court, still the High Court can refuse to entertain the writ petition invoking the principle of *forum conveniens*. Incidentally, both these decisions were rendered in the context of writ petitions under Article 226 of the Constitution, where High Courts have discretion not to entertain the writ petition invoking the principle of *forum conveniens*, whereas the present is not a writ petition. It is also not an anti-suit injunction, to which the principle of *forum non conveniens* may apply only *qua* foreign forum.

100. Reverting to the decision in ***Bhagat Singh Bugga*** (supra), it is noted that said decision is a pre-independence Calcutta High Court decision related to grant of anti-suit injunction and scope of Section 10 of the CPC as it then stood. It is not an authority dealing with return of plaint under Order VII Rule 10 or on grounds of *forum non conveniens* or rejection of plaint under Order VII Rule 11 of CPC. Further, in that case no such issue pertaining to a suit already pending/decided before a foreign Court was involved nor Explanation to Section 10 which expressly provides that the pendency of a suit in a foreign Court is no bar to a suit in an Indian Court,

was under consideration. Therefore, reliance placed on ***Bhagat Singh Bugga***(supra) is misconceived.

101. As regards the ***Modi Entertainment Network*** (supra), suffice it to say that the Apex Court in the said decision was dealing with the question of grant of anti-suit injunction restraining the proceedings in a foreign forum, therefore, the principles laid therein would not be applicable to the present case, which is not an anti-suit injunction.

102. In ***K.K. Modi*** (supra), the Hon'ble Supreme Court specifically observed that it is an abuse of process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. Though, there is no quarrel to this proposition of law, however, as noted above, explanation to Section 10 specifically provides that pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action. Thus, this decision will also not help the cause of the applicant.

103. Under the circumstances discussed herein above, the application is devoid of merit. The same is accordingly dismissed.

VIKAS MAHAJAN, J.

SEPTEMBER 02, 2026
aj/jg