CASE NO.:
Appeal (civil) 2517 of 2007

PETITIONER:
Hardesh Ores Pvt. Ltd

RESPONDENT:
M/s. Hede and Company

DATE OF JUDGMENT: 15/05/2007

BENCH:
B.P. SINGH & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2517 OF 2007
(Arising out of SLP(C) No. 106 of 2007)
WITH
CIVIL APPEAL NO. 2518 OF 2007
(Arising out of SLP(C) No. 640 of 2007)

Sociedade de Fomento Industrial Pvt. Ltd. \005 Appellant
Versus
M/s. Hede and Company \005 Respondent

B.P. SINGH, J.

1. Special Leave granted.

2. These appeals have been filed by the appellants against the common judgment and order of the High Court of Judicature at Bombay dated 20.10.2006 in First Appeal Nos. 138 and 139 of 2006 whereby the High Court has affirmed the order of the Trial Court dismissing the suits filed by the appellants under Order VII Rule 11 of the Code of Civil Procedure holding that the suits are barred by limitation.

3. The representative facts giving rise to these appeals are taken from the pleadings in suit filed by Hardesh Ores Pvt. Ltd. The appellants herein, namely, Hardesh Ores Pvt. Ltd. in civil appeal arising out of SLP(C) No. 106/2007 (for short 'Hardesh') and Sociedade de Fomento Industrial Pvt. Ltd. in civil appeal arising out of SLP(C) No. 640/2007 (for short 'Fomento') respectively entered into two agreements with the respondent Hede & Co. (for short 'Hede') on 23.10.1996. The agreement with Hardesh was for extraction of ore from the mine in question whereas the agreement with Fomento was for purchase of minerals extracted from the mine. Both the agreements contained similar terms and conditions. As per Clause 2.1 of the Agreement, the agreement though executed on 23.10.1996 was to come into force from 1.1.1997 and was to remain in force for a period of 5 years from such date. Clause 2.2 of the agreement provided that on the expiry of every 5 years the agreement shall stand renewed for further periods of like duration at the sole option of Hardesh on the same terms and conditions as contained in the original agreement. Hardesh was entitled to exercise its option during the entire period of lease in respect of the said mine and renewals thereafter, and until such time as remaining deposits of ore in the said mine could be economically exploited. Clause 2.3 gave the right to Hardesh to terminate the agreement by giving two calendar months prior notice in writing to the respondent-Hede of its intention to do so. Clause 2.5 of the agreement provided inter alia that in case Hardesh was forced to abandon work in the said mine/land on account of any lawful or legal claim made and/or objection raised by any person including the holder of surface right or on account of any injunction being passed by any Court of Law or on account of any fault of the

respondent, the agreement shall not stand terminated but the operation thereof shall stand suspended for such time. In the event such a condition/situation continued to exist for a period exceeding six calendar months, Hardesh shall be entitled to terminate the agreement after giving 30 days notice in writing. Clause 9.2 of the agreement ensured that the respondent shall not in any manner interfere or obstruct Hardesh from carrying on the work of extraction, raising, loading or delivering the ore and its other functions under and in accordance with the agreement.

Clause 15 of the agreement provided that during the subsistence of the agreement, Hardesh shall solely be entitled to extract and deliver the ore from the said mine and the respondent shall not be entitled to authorise or permit any other person for that purpose nor shall the respondent either themselves or through their servants and/or agents, extract, raise, remove, load, transport or deliver the ore from the said mine unless expressly authorised or approved by Hardesh in writing.

Under Clause 20 of the agreement the respondent covenanted unto the appellant that during the pendency of the indenture they shall not enter into any agreement, understanding or arrangement with any other party for working the said mine/lease for carrying on any other operation whatsoever in the said mine/lease.

The agreement with Fomento is more or less in the same terms though with Fomento it is for the purchase of the iron ore extracted and to be extracted from the said mine.

4. Two suits for injunction were filed by the appellants herein on 4.10.2005. The reliefs claimed in the suit of Hardesh were as follows:-

(i) The defendants their agents or representatives be restrained from in any manner stopping and/or obstructing the Plaintiff from entering upon the said mine and/or carrying on the work of extraction, raising, loading and/or delivering the ore from the said mine to Fomento and/or from doing any activities ancillary thereto which the Plaintiff is empowered to do under the 23.10.1996 Extraction Agreement.

(ii) The Defendants their agents or representatives be restrained from entering into the mine and doing any work for extracting, raising, removing, loading, transporting, selling or delivering to any other persons iron ore from the said mine either by themselves or through their servants and/or agents.

(iii) The Defendants their agents or representatives be restrained from entering into any contract/agreements and/or understanding with third parties for prospecting and/or extracting and/or raising any iron ore from the said mine or selling the ore from the said mine to any third party.

(iv) That the Defendant be directed to give effect to the negative covenant contained in clause 15 and 20 of the Extraction Agreement dated 23.10.1996.

5. In the plaint reference was made to the agreements that were entered into between the parties. It was also stated that there were privately owned lands comprised within the said mine and no consent had been obtained from the surface right owners by the respondent and the same was to be obtained subsequently, which necessitated the incorporation of Clause 2.5 in the agreement. The agreement was to commence from January 01, 1997 but on 12.12.1996 in view of an order of the Supreme Court dated 12.12.1996 prohibiting mining operations in the authorised area, mining operations could not be commenced. In view of the situation that arose on account of the order of Supreme Court

which necessitated permission being sought from the Central Government for commencing mining operations, as also in view of the fact that the consent of the surface right owners had not been obtained, on the proposal of the respondent, the appellants exercising their right under Clause 15 of the agreement authorised the respondent to carry on extraction operation in the pits already opened. It is the case of the appellant that appellant had taken possession of the mine immediately after coming into effect of the contract on 1.1.1997. The respondent extracted the ore from the mine already opened pursuant to the authorisation given as per Clause 15 of the Agreement. This arrangement was of a temporary nature. Some obstruction was raised by the surface right owners in January, 1998 which was reported to the respondent. The respondent promised to sort out the problem with the surface right owners by getting their consent in writing. It is admitted in the plaint that although the said agreements were to come into force on 1.1.1997 no mining operations could be commenced in view of the order of the Supreme court dated 12.12.1996.

6. The case of the appellant in the plaint is that the extraction agreement was initially for a period of five years from 1.1.1997 with a right of renewal at the option of the appellant on the same terms and conditions. In view of the original period of 5 years coming to an end on 31.12.2001, in terms of clause 2.2 of the agreement appellant Hardesh exercised its option to renew the said agreement for further period of 5 years. This was conveyed to the respondent vide letter date 4.12.2001 which was received by it on 7.12.2001. According to the appellant with the exercise of option by appellant Hardesh the agreement stood renewed upto 31.12.2006. However, the appellant Hardesh received a letter dated 29.12.2001 from the respondent alleging that the plaintiff-appellant was not entitled to exercise the option for renewal. The letter dated 4.12.2001 annexed to the plaint has been marked as Exh. 41 and its reply dated 31.12.2001 has been marked as Exh. 43.

7. The appellant came to learn that the respondent was conducting the extraction in the private area where the surface rights were held by Salgaonkar sisters. This led the appellant to believe that the problem may have been sorted out with the surface right owners, namely, Salgaonkar sisters. If that was so, it was incumbent upon the respondent to inform the appellant so that the appellant could undertake the extraction work itself. The appellant had also come to learn that the first stage clearance had been granted in respect of the said mine on 17.10.2003 by the Ministry of Environment and Forest under the Forest Conservation Act, 1980 but the second stage clearance was yet to be obtained without which it was not possible to commence work.

8. In this background the appellant issued a notice dated 27.4.2005 to the respondent requesting them to furnish to the appellant within 15 days of the receipt of the notice the documents evidencing the consent obtained from Salgaonkar sisters. The notice also stated as follows :-

"Kindly note that if no documents as aforesaid are furnished to us within a period of 15 days from the receipt of this notice, or if no reply is received from you we shall presume that such consent has been obtained since you are doing the extraction in the area of the captioned mining lease wherein surface rights are held by Salgaonkar sisters, pursuant to the authorization granted to you, in terms of clause 15 of the Extraction Agreement dated 23.10.1996."

9. The said letter was annexed as Exh. 48. The respondent failed to furnish the documents, as requested, and, therefore the appellant issued notice dated 17.5.2005 withdrawing the authorization granted by the appellant under clause 15 of the Extraction Agreement and called upon the respondent to resist from doing any extraction or selling ore to any

party within 30 days of service of notice failing which the appellant asserted its right to enter into the mine to give effect to the agreement. The respondent replied by its letter dated 24.6.2005 refusing to comply with the demand contained in the notice. The appellant asserted that in view of Clauses 15 and 20 of the agreement the appellant had exclusive right to carry on extraction and not the respondent. It was also stated in the plaint that there were valid, subsisting and binding agreements between the plaintiffs (Hardesh and Fomento) and the defendant-respondent and that Hardesh and Fomento were at all material times and even today ready and willing to perform the terms of the agreement. It was asserted that the plaintiffs-appellants had performed their obligations under the agreements. The Extraction Agreement was specifically enforceable and the appellant had performed its obligations and were willing to fully carry out its obligations as per the said agreement. In the circumstances, it was submitted that the appellant was entitled to an order of preventive injunction and as also temporary injunction in the manner prayed for in the suit.

It is the case of the appellant-plaintiff that the cause of action arose to the plaintiff with the expiry of notice period dated 17.5.2005. On such pleas the prayers which have been extracted in earlier part of the judgment were made in the suit.

10. An application was filed on behalf of the respondent under Order VII Rule 11 of the Code of Civil Procedure submitting that there was absence of cause of action and also the plaint was barred by limitation. Subsequently, the plea of absence of cause of action was given up and only the plea of bar of limitation under the Limitation Act was pressed. It was submitted that Article 54 of the Limitation Act applied and that a suit for specific performance of the contract should have been filed within 3 years from the date the appellant-plaintiff had notice that the renewal of the agreement was refused by the respondent. In the instant case the refusal was communicated on 29.12.2001 and, therefore, the suit should have been filed within 3 years thereafter.

11. The Trial Court by its order of 23.2.2006 allowed the application and dismissed the suit as barred by limitation. It observed that from a mere perusal of the pleadings contained in paragraphs 47 to 51 of the plaint it appeared that the appellant had asserted that the agreements were specifically enforceable. A reading of the plaint established that the foundation of the appellant's suit was for specific performance of the renewal of the agreement dated 23.10.1996, the cause of action for which arose on 29.12.2001 when they received reply of the respondent denying that the agreement stood renewed. Since the suit was filed much after the expiry of 3 years from that date, it was hopelessly barred by limitation.

12. Aggrieved by the order of the Trial Court the appellants preferred two appeals before the High Court which have been dismissed by the impugned order. Before the High Court it was urged that in deciding an application under Order VII Rule 11 of the CPC the contentions raised in defence or submissions advanced by the respondent-defendant about their case need not be considered and the matter must be decided on the basis of averments in the plaint and the documents annexed with the plaint. The Trial Court had fallen into an error when it referred to the defence of the defendant to determine as to whether the plaint was liable to be rejected as barred by limitation. It also noticed the submission urged on behalf of the appellant that the question of limitation was a mixed question of law and fact and, therefore, such a question could be adjudicated only in the trial.

13. On the other hand the appellants contended that the case was squarely covered by the ratio laid down by this Court in the case of N.V. Srinivasa Murthy and Others Vs. Mariyamma (Dead) by Proposed Lrs. and Others : (2005) 5 SCC 548. By the device of clever drafting of the plaint the question of limitation was sought to be got over by camouflaging the real issue in the suit and making it appear as if it was merely a suit for perpetual injunction.

14. The High Court after appreciating the averments contained in the plaint observed that this was not merely a suit for perpetual injunction insisting upon performance of the negative covenants as contained in Clauses 15 and 20 of the agreement. The plaint clearly showed that the plaintiff's suit was in effect a suit for specific performance of the renewal of the agreement dated 23.10.1996. The cause of action for such a suit arose on 29.12.2001 when the respondent by its letter refuted the claim of the appellants for renewal w.e.f. 1.1.2001 for a period of 5 years. After considering the judgment of this Court in Srinivasa Murthy's case (supra) the High Court concluded that the ratio laid down therein was squarely applicable to the instant case. It recorded a finding that the suit for injunction simplicitor was nothing but a camouflage to get over the bar of limitation, which, in fact, showed that specific performance was implicit in the pleadings contained in the plaint itself. The suit though styled as 'suit for injunction' was, in fact, a suit for specific performance for the renewal of the agreement dated 23.10.1996 for which the cause of action had arisen on 29.12.2001. It negatived the contention urged on behalf of the appellants relying on the judgment of this Court in 2006 (5) SCC, 638 Ramesh B. Desai holding that in the instant case without going to the pleadings and the documents filed on behalf of the defence, the plaint itself and the documents annexed therewith showed that in fact it was a suit for specific performance of the agreement between the parties which appeared to be barred by the law of limitation. Accordingly it dismissed the appeals preferred by the appellants.

15. Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the appellants in Civil Appeal arising out of SLP(C) No. 106/2007 submitted that in dealing with an application under Order VII Rule 11 the court must go by the averments in the plaint. The plaint must be read as a whole. The mere use of words like "readiness" and "willingness" to perform the agreement by themselves do not make it a case of specific performance of agreement. Those averments in the instant case were necessary for enforcing the negative covenants contained in Clauses 15 and 20 of the agreement. He, therefore, submitted that the trial court was entirely wrong in construing the instant suit as a suit for specific performance of the agreement, whereas it was essentially a suit for perpetual injunction seeking enforcement of the negative covenants contained in the agreement in Clauses 15 and 20 thereof. He further submitted that the question of limitation was a mixed question of law and fact and could be decided only in the suit.

16. Mr. R.F. Nariman, learned senior counsel appearing on behalf of the appellant in civil appeal arising out of SLP(C) No. 640/2007 submitted that clause 2.2 of the agreement provided for a renewal every 5 years at the option of the lessee till the mine was exhausted. The use of the words "stand renewed", "further periods" and "sole option of Hardesh" were indicative of the fact that there was automatic renewal of the lease once the option was exercised by Hardesh and such renewals took place as and when options were exercised in future till such time as the mine got exhausted. He submitted that there were inbuilt provisions of pricing in the agreement itself which were dependent on export price. There was an inbuilt mechanism for escalation of price which supported his contention that the lease stood renewed from time to time on option being exercised by Hardesh. He also submitted that the subject matter of the lease was divided into two parts. So far as the forest land was concerned the cause of action had not even arisen and, therefore, there was no question of dismissing the entire suit. He drew our attention to clause 2.5 of the agreement and contended that the aforesaid clause provided for suspension of the agreement and not its termination in the eventualities enumerated in that clause. According to him Article 54 of the Limitation Act was not at all applicable and, if at all, Article 113 may apply since there was no specific article prescribing a period of limitation for the enforcement of positive or negative covenants. The article was elastic enough to include a case where the party unequivocally threatened

the plaintiff's right and the same need not be the first threat. Referring to Article 58, he submitted that the limitation is to be computed from the date when the right to sue first accrued whereas under Article 113 the threat giving rise to the cause of action need not be the first threat. In the instant case the defendant had started mining in the area including the land which were in dispute on account of the fact that the surface right owners had not given them permission to do so. It was in these circumstances that the respondent was called upon to disclose the documents, if any, evidencing grant of permission by the surface right owners. He relied upon a decision of this Court reported in Union of India and Others Vs. West Coast Paper Mills Ltd. and another : 2004 (2) SCC 747 highlighting the difference between Article 58 and Article 113 of the Limitation Act. He further submitted that Srinivasa Murthy's case (supra) was misapplied since the fact situation in the instant case was different from that in Srinivasa Murthy's case. The High Court fell into an error in looking at the defence of the respondent to come to the conclusion that the suit was barred since there was no valid renewal. Mr. Nariman, however, did not dispute that reference to "law" in Order VII Rule 11 of the CPC included a law relating to limitation such as the Limitation Act.

17. Mr. Mukul Rohtagi, learned senior counsel appearing for the respondent in civil appeal arising out of SLP(C) No. 106/2007 submitted that the High Court was fully justified in coming to the conclusion that the clever drafting of the plaint purporting to be a suit for injunction was merely to camouflage the real issue. He did not dispute that the plaint must be read as a whole and one must look to the substance rather than the form. He submitted that the appellant's case that there was automatic renewal after the original term expired on mere exercise of option by the appellant was not legally tenable. According to him the renewal of a mining lease must be evidenced by the execution of a deed evidencing renewal, or a fresh mining lease, and such a document must incorporate the negative covenants as were sought to be enforced. According to him if the submission urged on behalf of the appellants is to be accepted, by mere exercise of option and without execution of an actual agreement, a renewed agreement comes into existence with the same negative covenants which gave a right to the appellant to enforce the newly born negative covenants. According to him where an option is to be exercised by the lessee, he must insist upon the execution of an actual physical agreement evidencing renewal of the original term. If the promisor refused to execute such a document, the appellants should have sought the assistance of the Court and ought to have moved the Court claiming a relief against the promisor for execution of a document evidencing renewal of the lease. That should have been done within a period of 3 years from the date on which the promisor rejected the claim of the appellant that the lease stood renewed by mere exercise of option by it. If no suit is filed and no agreement executed by the parties, there can be no question of a fresh agreement coming into existence and consequently no question of enforcement of a negative covenant in such a non-existent agreement. He further submitted that the 1996 agreement was a lease for a period exceeding 11 months and, therefore, required compulsory registration in view of the provisions of Sections 17 and 49 of the Registration Act. It, therefore, cannot be read as evidence in the suit and consequently no rights under such an agreement can be claimed. He further submitted that even renewal of such a lease required registration. According to him the appellants were trying to side step something which was imperative and which had necessarily to be asked for in the suit, which had not been asked for. Therefore, applying the principle laid down in Srinivasa Murthy's case (supra) the suit must fail because the appellants should have asked for a declaration under Order II Rule 2 to the effect that the agreement stood renewed and the respondent's denial was unlawful. Rather than doing that, the appellants have sought only the end relief which could not be asked for without first asking for a declaration that the lease deed stood renewed on mere exercise of option without the execution of an indenture evidencing renewal of the lease.

Only in such a renewed lease a negative covenant could have been incorporated which could have been enforced. Since such an agreement never came into existence and a suit for declaration stood barred by time, the appellant cannot get over the limitation and seek the remedy of injunction by way of enforcement of the negative covenants in an agreement which never came into existence. In sum and substance he submitted that without first getting a renewed lease deed executed in physical form or getting a declaration from a Court of Law that lease stood renewed as contended by them, the appellant cannot seek a relief by way of injunction by filing a suit for enforcement of negative covenants. He further submitted that the appropriate Article which applied in the facts of this case was Article 54. Since the respondent denied the fact that the lease stood automatically renewed, the limitation commenced from that day and, therefore, a suit for declaration and/or specific performance was barred after 3 years from the date of refusal, i.e., 29.12.2001. Articles 58 and 113 did not apply to the facts of this case.

18. Mr. Ranjeet Kumar, learned senior counsel appearing on behalf of the respondent in civil appeal arising out of SLP(C) No. 640/2007 relied upon judgments in State of U.P. and Others Vs. Lalji Tandon (Dead) Through Lrs. : (2004) 1 SCC 1 and Provash Chandra Dalui and another Vs. Biswanath Banerjee and another : 1989 (Supp.1) SCC 47 and contended that there was a vital distinction between extension of a lease and renewal of a lease. The law is well settled that in case of renewal a fresh agreement has to be executed. He also relied upon decision of this Court in M.C. Mehta Vs. Union of India and Others : (2004) 12 SCC 188 to contend that even renewal of a lease amounted to a fresh grant of lease. He also contended that the plaint itself disclosed that the appellant-plaintiff had never worked the mine and it was the respondent-defendant who was working the mine.

19. Replying to the submissions urged on behalf of the respondents, Mr. Sorabjee, appearing for the appellants submitted that the question as to whether the agreement was really a mining lease or a mere agreement, and whether it required registration, has to be gone into in the suit and this question cannot be urged in an application under Order 7 Rule 11 CPC. At this stage whatever is stated in the plaint must be accepted. The question of registration may arise when the document is produced and objected to by the respondent. In any event, even if the document requires registration, that cannot be a ground for rejecting the plaint on the ground that the suit is barred by limitation. Moreover, since the respondents have given up the plea of absence of cause of action, this matter cannot be investigated at this stage. He reiterated his submission that under clause 2.2 of the agreement read with clause 18, by exercise of option claiming renewal, the agreement ipso facto stands renewed and there is no need to get a fresh agreement executed.

20. We may observe at the threshold that the question as to whether the agreement required registration is not a question which can be gone into at this stage particularly in view of the fact that the plaint has been rejected on the ground of limitation.

21. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a

passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another : (2004) 9 SCC 512 and Popat and Kotecha Property Vs. State Bank of India Staff Association : (2005) 7 SCC 510.

22. We shall therefore proceed on the basis of averments contained in the plaint and the documents annexed to it.

23. In the instant case it cannot be disputed that the agreement was acted upon as stated in the plaint itself. It is averred in the plaint that possession of the mine was taken in terms of the agreement by the appellant-plaintiff. The appellant-plaintiff also exercised its right under the agreement and in terms of clause 15 thereof authorized the respondent-defendant to carry on mining operations in the pits already opened up. Apart from these the mere fact that the appellant sought renewal of the lease which was denied by the respondent, is sufficient proof of the fact that the agreement had been acted upon by the appellant.

24. The next averment in the plaint which is relevant is paragraph 23 thereof wherein the appellant-plaintiff stated that since the original period of 5 years was to end on 31.12.2001 in terms of clause 2.2 of the agreement, the appellant-plaintiff exercised its option to renew the said agreement for further period of 5 years which was conveyed to the respondent vide its letter dated 4.12.2001 and which was received by the respondent-defendant on 7.12.2001. In the same paragraph it is stated that the extraction agreement entered into between the plaintiff-appellant and the defendant-respondent was operative and stood renewed upto 31.12.2006. A copy of the letter dated 4.12.2001 has been annexed to the plaint and marked as Exh. 41. The plaintiff-appellant further goes on to say that it received the reply from the defendant-respondent dated 29.12.2001 alleging that the plaintiff-appellant was not entitled to exercise the option of renewal. The said letter has been annexed to the plaint and marked as Exh. 43. A mere perusal of the letter dated 4.12.2001 addressed by the appellant to the respondent is enought to satisfy the Court that in terms of clause 2.2 of the agreement the appellant exercised its option to renew the captioned agreement for a further period of 5 years commencing from 1.1.2002 on the same terms and conditions as contained in the original agreement. The letter clearly states that after 31.12.2001 the captioned agreement will stand renewed for the period 1.1.2002 to 31.12.2006. To this the respondent-defendant replied by its letter dated 29.12.2001, the relevant part whereof reads as follows :-

"We do not agree with your contention in your letter dated 4/12/1997 that the Agreement in reference stands renewed as alleged from 1/1/2001 to 31/12/2006 or for any other period whatsoever."

It is thus apparent that the appellant-plaintiff exercised its right under the agreement to claim a renewal of the term of the lease and the respondent-defendant refuted that claim and denied the assertion that the agreement stood renewed as alleged from 1.1.2001 to 31.12.2006 or for any other period whatsoever. In view of the correspondence exchanged between the parties, clearly a cause of action accrued to the appellant-plaintiff since its right of renewal as a matter of course claimed by it was denied by the respondent-defendant. Whether the denial was justified or not is another matter. In the facts and circumstances of the case, a right accrued to the appellant-plaintiff to sue the respondent-defendant and to get a declaration that the agreement stood automatically renewed for a further period of 5 years. It is the admitted position that the appellant-plaintiff did not pursue the matter further and never sought relief from any court of

law of competent jurisdiction for a declaration that the lease stood renewed automatically upon the appellant-plaintiff exercising its option under the agreement. It was contended on behalf of the respondent-defendant that there is no question of automatic renewal of an agreement or lease by mere exercise of the option which the appellant-plaintiff may claim under the agreement. The respondent contends that renewal of an agreement or lease requires execution of another document evidencing such renewal and, in its absence, it cannot be argued that the agreement or lease stood automatically renewed. It was also urged relying upon the decision of this Court in the case of Ambika Querries Vs. State of Gujarat : 1987 (1) SCC 213 that the grant of renewal is a fresh grant and must be consistent with law. The respondents relied on the decision of this Court in Provash Chandra Dalui and another Vs. Biswanath Banerjee and Another : 1989 (Supp. 1) SCC, 487 wherein this Court considered the difference between "extension" and "renewal" of a lease. This Court observed thus :-

"14. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition to something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act."

The same view was reiterated by this Court in the case of State of U.P. and Others Vs. Lalji Tandon (Dead) through lrs. : (2004) 1 SCC 1 wherein it was observed as under :-

"There is a difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be."

25. Having regard to these decisions we must hold that in order to give effect to the renewal of a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, and there is no concept of automatic renewal of lease by mere exercise of option by the lessee. It is, therefore, not possible to accept the submission urged on behalf of the appellants-plaintiffs that by mere exercise of option claiming renewal, the lease stood renewed automatically and there was no need for executing a document evidencing renewal of the lease.

26. We shall now advert to some of the facts stated in the plaint itself. The case of the appellant-plaintiff is that since it was not possible to commence mining operation after taking possession of the mine, in exercise of its right under clause 15 of the agreement, it permitted the

respondent to carry on mining operations confined to the pits already opened up. Its case was that under its permission the respondents were carrying on limited mining operation. The appellants were awaiting permission of the Central Government under the Forest Conservation Act as also consent of the surface right holders permitting them to carry on mining operations. When the original term of the lease expired, they exercised their option to get the lease renewed for a further period of 5 years but the respondents refuted their claim and denied the fact that the lease stood renewed automatically. The option was exercised by the appellant and refuted by the respondent in December, 2001. Thereafter nothing much appears to have happened and during this period the respondent carried on mining operations. It was only on 15.5.2005 that the appellant Hardesh wrote to the respondent stating that they had been permitted to extract ore from the broken pits in the forest area under Clause 15 of the Extraction Agreement. The appellant also permitted the respondent to sell the ore to others like Dempo or Chowgules since Fomento was not interested in purchasing the low grade ore. The communication also referred to the option exercised by the appellant for renewal for a period of 5 years from 1.1.2002 to which the respondent replied saying that they were not entitled to exercise any option. The letter then goes on to say that the appellants were led to believe that the respondent had obtained the consent from the surface right owners of the privately owned land within the mining area about which no information had been given to the appellants. Therefore, by letter dated 27.4.2005 the respondent were called upon to furnish the documents evidencing consent given by the surface right owners. It was further stated that if no documents, as aforesaid, were furnished within a period of 15 days from the date of receipt of this notice or if no reply was received, the appellants shall presume that such consent had been obtained since the respondents were doing the extraction in the area of the captioned mining lease. Since no documents were furnished pursuant to notice dated 27.4.2005, the appellants assumed that such consent had been obtained. It, therefore, withdrew the permission given to the respondents under Clause 15 of the Extraction Agreement so that the appellants could make preparation to start the extraction work. The last paragraph of this letter reads as under:-

"We, therefore, give you notice to desist from doing any extraction of ore or doing work of any type in the above mine on the expiry of 30 days from the receipt of this notice failing which we would have no other alternative than to approach the court to get appropriate relief, including specific performance against you."

It is not necessary to refer to the correspondence exchanged thereafter. The suits came to be filed on August 04, 2005 in which a prayer for injunction was made with a view to enforce the negative covenants contained in clauses 15 and 20 of the agreement.

27. The respondent sought rejection of the plaint by filing application under Order VII Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of Clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellant-Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. In T. Arivandandam Vs. T.V. Satyapal and another 1977 (4) SCC 467 this Court observed as under :-

"We have not the slightest hesitation in condemning the petitioner for gross abuse of the process of the court

repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X , C.P.C. An activist Judge is the answer to irresponsible law suits."
In I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others : 1998(2) SCC 70 this Court noticed the judgment in Arvin and observed as under :-

"16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. "

28. The respondent strongly relied on the decision of this Court in Srinivasa Murthy's case (supra). That was a case where the plaintiffs alleged in the plaint that their father had incurred some debts and had therefore borrowed a sum of Rs.2000 from the predecessor in title of the defendants. Only by way of security for the loan advanced, a registered sale deed had been executed on 5.5.1953 with a contemporaneous oral agreement that on return of the borrowed sum with interest payable thereon @ 6% per annum a registered reconveyance deed shall thereafter be executed in favour of the borrower. The case of the plaintiff was that despite the registered sale deed, the plaintiff continued to be in possession of the suit lands. The receipt was obtained on 25.3.1987 from the defendants and the original registered sale deed dated 5.5.1953 was returned to the first plaintiff with an oral promise by the defendants to execute the registered document in favour of the plaintiff/borrower. On reading of all the averments of the plaint, it appeared that the cause of action for obtaining a registered reconveyance deed from the defendants in favour of the plaintiff first arose on 25.3.1987 when the entire loan amount was alleged to have been paid and an oral promise was given by the defendants to reconvey the suit lands. In the mutation proceedings an order was passed in favour of the defendants and the said order was confirmed in appeal by order of the Assistant Commissioner dated 28.4.1994. The cause of action is said to have arisen when the appellate authority confirmed the order of the lower authority directing mutation of the names of the defendants and then again in the first week of July, 1995 when the defendants were alleged to have made an attempt to interfere with the plaintiff's possession and enjoyment of the suit lands. The suit was filed on 26.8.1996 in which the reliefs claimed were, (a) declaration that the plaintiffs are absolute owners of the suit lands and (b) permanent injunction restraining the defendants from wrongfully entering the scheduled property and from interfering with the peaceful possession and enjoyment of scheduled lands.

29. This Court after examining the pleadings observed that the foundation of the suit was that the registered sale deed dated 5.5.1953 was in fact only a loan transaction executed to secure the amount borrowed from the plaintiffs' predecessor. The amount borrowed was alleged to have been fully paid back on 25.3.1987 and in acknowledgment thereof a formal receipt was obtained. At the same time there was an alleged oral agreement by the defendants to reconvey the property to the plaintiffs by registered deed. This Court held that on the basis of the averments

contained in the plaint relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of specific performance of oral agreement of recoveyance of property by registered document ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking a declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for reconveyance deed according to the plaintiffs own averments arose on 25.3.1987 when the plaintiff is claimed to have obtained the entire loan amount and obtained a promise from the defendants to reconvey the property. The mutation proceedings did not furnish any independent or fresh cause of action to seek a declaration of the sale deed of 5.5.1953 to be merely a loan transaction. The foundation of the suit was clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount. This Court went on to observe,

"14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1993, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Court.

15. Civil Suit No. 557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5.5.1993 to be not really a sale deed but a loan transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view, the present plaint is liable to rejection, if not on the ground that it does not disclose "cause of action", on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (d) of Order 7 Rule 11 of the Code of Civil Procedure."

30. Relying upon these decisions it was contended before us that though the suit is for grant of injunction, real foundation of the suit is that there exists an agreement containing negative covenants which can be enforced by the appellant-plaintiff. The relief is sought on the assumption that there is an existing agreement containing negative covenants in clauses 15 and 20 thereof, as they were in the original agreement. Counsel submitted that even the negative covenants in clauses 15 and 20 of the agreement presuppose the subsistence of the agreement and, therefore, unless the appellant-plaintiff satisfy the Court that there is a subsisting agreement, they cannot seek any relief from the Court to enforce the negative covenants contained therein.

31. On the other hand, it is the case of the appellant-plaintiff that on mere exercise of option by the appellant-plaintiff claiming renewal the agreement got renewed automatically.

32. We are of the view that the respondent is right in contending that enforcement of the negative covenants presupposes the existence of a subsisting agreement. As noticed earlier, the law is well settled that the renewal of an agreement or lease requires execution of a document in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. In the instant case, the appellant-plaintiff did exercise their option and claimed renewal. The respondents denied their right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Having regard to these facts it must be held that a cause of action accrued to the appellant-plaintiff when their right of renewal was denied by the respondents. This

happened in December, 2001 and, therefore, within three years from that date they ought to have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellants-plaintiffs have failed to do so. However, the plaint proceeds on the assumption that the original agreement stood renewed including the negative covenants contained in clauses 15 and 20 of the original agreement which authorised only the appellants to extract ore from the mine with an obligation cast on the respondents-defendants not to interfere with the enjoyment of their rights under the agreement. In the facts of this case, in the suit prayer for injunction based on negative covenants could not be asked for unless it was first established that the agreement continued to subsist. The use of the words "During the subsistence of this agreement" in clause 15, and "during the pendency of this indenture" in clause 20 of the agreement is significant. In the absence of a document renewing the original agreement for a further period of 5 years and in the absence of any declaration from a court of law that the original agreement stood renewed automatically upon the appellants exercising their option for grant of renewal, as is the case of the appellants, they cannot be granted relief of injunction, as prayed for in the suit, for the simple reason that there is no subsisting agreement evidenced by a written document or declared by a Court. If there is no such agreement, there is no question of enforcing clauses 15 and 20 thereof. The appellants ought to have prayed for a declaration that their agreement stood renewed automatically on exercise of option for renewal and only on that basis they could have sought an injunction restraining the respondents from interfering with their possession and operation. Having not done so, they cannot be permitted to camouflage the real issue and claim an order of injunction without establishing the subsistence of a valid agreement. In the instant suit as well they could have sought a declaration that the agreement stood renewed automatically but such a claim would have been barred by limitation since more than 3 years had elapsed after a categoric denial of their right claiming renewal or automatic renewal by the respondents-defendants.

33. Mr. Nariman contended that this case was governed not by Article 58 of the Limitation Act but, if at all, by Article 113 thereof because there is no specific article provided for enforcement of positive or negative covenants. We shall assume that he is right in contending that Article 113 may apply where enforcement of a positive or negative covenant is sought in a suit for injunction. However, in this case we have found that the real foundation for the suit was that the earlier agreement stood renewed automatically containing the same terms and conditions as in the original agreement including the negative covenants. There is neither a document to prove that the agreement stood renewed nor is there a declaration by a court that the agreement stood renewed automatically on exercise of option for renewal by the appellants. The basis for claiming the relief of injunction, namely, a subsisting renewed agreement did not exist in fact. In its absence, no relief as prayed for in the suit could be granted by the clever device of filing a suit for injunction, without claiming a declaration as to their subsisting rights under a renewed agreement, which is apparently barred by limitation.

34. We are, therefore, satisfied that the Trial Court as well as the High Court were justified in holding that the plaint deserved to be rejected under Order VII Rule 11 CPC since the suit appeared from the statements in the plaint to be barred by the law of limitation. We, therefore, find no merit in these appeals and the same are accordingly dismissed. No order as to costs.