

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CR 28/2023 CM(4599/2023)

Mansoor Ahmad Lone

... Petitioner/Appellant(s)

Through: Mr. Showkat Ali Khan, Advocate

V/s

Mohammad Abbas Dar and others

... Respondent(s)

Through: Mr. Hakim Suhail Ishtiyag, Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
22-12-2023

1. The petitioner herein has filed the instant revision petition under section 115 of the Civil Procedure Code seeking setting aside of order dated 22.5.2023 (for short impugned order) passed by the court of Sub Judge/Chief Judicial Magistrate, Pulwama (for short the trial court) in case titled as "Mohammad Abbas Dar and another versus Mohammad Mansoor Lone and others".
2. The facts emerging from the petition would reveal that the contesting respondents herein filed a suit for declaration, Mandatory and Perpetual injunction against the proforma respondents herein including the petitioner herein being defendant 1 in the suit. Besides the aforesaid parties, one Haroon Rashid Lone being the brother of present petitioner, had also been impleaded as party defendant 2 in the suit, however, the instant petition has been filed by the present petitioner through said Haroon Rashid Lone as attorney of the petitioner.

3. During the pendency of the suit before the trial court, the proforma respondent herein including the above named attorney of the petitioner filed an application before the trial court under Order 7 Rule 11 CPC for rejection of the plaint *inter alia* on the grounds that the suit filed by the plaintiff/contesting respondents herein **does not disclose any cause of action** and that the suit is **barred by law** as being hit by the provisions of Specific Relief Act.
4. The trial court upon considering the said application after inviting objections from the plaintiffs/respondents herein rejected the application in terms of the impugned order which is assailed by the petitioner herein in the instant petition.
5. Before proceeding to address to the grounds urged in the petition, it would be advantageous and appropriate to refer to Order 7 Rule 11 CPC hereunder:

O7 R11: Rejection of plaint.—

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

A plain reading of Order 7 Rule 11 shows that the same sets out grounds on which a plaint can be rejected.

6. As has been noticed in the preceding paras the petitioner herein did not file the application seeking rejection of the plaint, instead the attorney of the petitioner herein had preferred the application for rejection of the plaint as such, though the order impugned is assailed by the petitioner despite having not instituted the application under Order 7 Rule 11 CPC, yet the petitioner has a right to call in question the same, in that, the petitioner herein still can in law said to be a person aggrieved and competent to maintain the instant petition.

7. Insofar as the ground urged that the plaint did not disclose a cause of action is concerned, law is no more *res integra* and stands settled that the said ground of non-disclosure of cause of action has to be considered by the court on the basis of the averments made in the plaint and nothing else.

The Apex Court in case titled as **Raghwendra Sharan Singh versus Ram Prasanna Singh (dead) By Legal Representatives reported in 2020 (16) SCC 601** has observed as follows:

“6.5. In Church of Christ Charitable Trust & Educational Charitable Society, this Court in para 13 has observed and held as under:

While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

6.6. In ABC Laminart (P) Ltd. V. A. P. Agencies, this Court explained the meaning of cause of action as follows:

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

A closer examination of the plaint would reveal that the plaintiffs maintained the suit against the defendants on the premise that the land being the subject matter of the suit had been agreed to be sold by the defendants to the plaintiffs and in furtherance thereof payments had been made to the defendants by the plaintiffs in cash as well as through cheques, in acknowledgement thereof the defendants delivered the possession of the land to the plaintiffs. A further perusal of the plaint would reveal that the plaintiffs had also averred in the suit in specific terms that upon receiving the possession of the subject matter land, the plaintiffs dumped building material thereon whereupon the defendants started causing interference into the possession of the plaintiffs qua the land compelling them to approach to the higher authorities as well as the police concerned as a consequence whereof an FIR was also got registered against the defendants. Furthermore, written agreement in regard to the payments made by the plaintiffs to the defendants *qua* the subject matter land, acknowledging to have been received by the defendants is also stated to have been executed and despite that the defendants retracted from the deal by having instructed the Revenue

- authorities not to issue any Revenue extract(s) in favour of the plaintiffs.
8. A conjoint reading of the plaint would tend to show that the plaintiffs have pleaded the facts constituting the cause of action and even furnished the particulars which would enable the defendants before the court to address the assertions of the plaintiffs. The plaintiffs/respondents herein seemingly have disclosed the cause of action available to them against the defendants including the petitioner herein and seemingly has been well adverted to by the trial court while considering the application filed by the proforma respondents herein for rejection of the plaint on the ground of non-disclosure of cause of action.
9. Insofar as the plea of the suit being barred by law being hit by the provisions of Specific Relief Act is concerned, a bare perusal of the provisions of the Specific Relief Act in general would manifestly show that the said plea is misconceived and the same as well stands well considered by the trial court in the impugned order.
10. For the aforesaid reasons, no interference is called for in the impugned order, resultantly the petition fails.

(JAVED IQBAL WANI)
JUDGE

Srinagar
22-12-2023
N Ahmad

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No