

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 106 OF 2008

Nilesh Sitaram Amonkar	..	Applicant
vs.		
Ms Manisha S. Amonkar & Anr.	..	Respondents

Mr. Arun Shilwant and Mr. Sanjeev Punalekar i/b. PRS Legal for Applicant.
Ms Sushma Singh for Respondents.

CORAM : M. S. SONAK, J.
DATE : 20 AUGUST 2015

P.C. :-

1] This CRA challenges order dated 10 October 2007, by which the Trial Court has dismissed the applicant's application under Order VII Rule 11 of the CPC and further directed the applicant to pay Rs.6,000/- per month to each of the plaintiffs from the date of the order and during the pendency of the suit.

2] In so far as exercise of powers under Order VII Rule 11 of the CPC is concerned, no doubt, the Court can reject the plaint, if on basis of any statement in the plaint it is barred under any law.

3] In the present case, the plaint seeks the following substantive reliefs :

- “a. This Hon'ble Court be pleased to declare that each of the Plaintiffs have got 1/6th Share each in the suit property and business as more particularly described in Exhibit “J” hereto.*
- b. This Hon'ble Court be pleased to partition the suit property and business by meets and bounds and each of the plaintiffs be given 1/6th share.*
- c. In the alternative to prayer (a) and (b) the suit property and business be valued and sold and each of the plaintiffs be given their 1/6th share.*
- d. That the defendant no. 1 be directed to pay the plaintiffs a sum of Rs.35700/- being maintenance for the month of June and July 2006 and further directed the Defendant no. 1 to continue to pay the said maintenance from the date of filing of the suit till the disposal of the suit and/or till the partition is effected.*
- e. That the Defendant no. 1 directed to give accounts in respect of the garage business carried on in the suit property i.e. 43/E, Forjet Street, Off Gowalia Tank, Mumbai 400036.*
- f. That this Hon'ble Court be pleased to pass an order of injunction restraining the Defendant no. 1, his agents and servants from parting with possession of the suit property or create any third party rights / interest in respect of the suit premises and suit business as more particularly described in Exhibit “J” hereto.”*

4] The learned counsel for the applicant contends that since the suit premises are tenanted premises, the suit as instituted will not lie before the Civil Court but shall have to be tried before the Small

Causes Court which is the Special Court to deal with disputes between landlords and tenants in the context of tenanted premises. On this ground, it is urged that the plaint is required to be rejected by resort to the provisions contained in Order VII Rule 11 of the CPC.

5] Although, the suit premises in the present case may be tenanted premises, it cannot be said that for this reason, the plaint as instituted, is required to be rejected. This is not a case of dispute between landlords and tenants. In this case, the plaintiffs merely seek a share in the suit premises, which may be tenanted premises. Besides, there are several other prayers in context of business carried on by the applicant through the suit premises and for furnish of accounts and shares. Normally, in exercise of powers under Order VII Rule 11 of the CPC, the Court will not reject only part of a plaint. Besides, this is not a case where on the basis of the same statement in the plaint, the entire suit as such, can be said to be barred under some law. Upon cumulative consideration of all these circumstances, it cannot be said that there is any jurisdictional error on the part of the Trial Court in rejecting the applicant's application under Order VII Rule 11 of the CPC.

6] On the aspect of payment of Rs.6,000/- per month, per plaintiff, it is to be noted that the plaintiffs in this case are the brother and sister of the applicant. The Trial Court, upon consideration of the material before it has come to the prima facie conclusion that the business which is carried on by the applicant through the suit premises, is the family business. In the context of the plaintiffs being left out from the said business, the directions has been made. In the exercise of revisional jurisdiction under Section 115 of the CPC, it cannot be said that the exercise is in excess of jurisdiction or is vitiated by illegality or material irregularity. Ultimately, it is to be noted that an equitable order has been made by the Trial Court.

7] However, there is merit in the submission of the learned counsel for the applicant that such order, which is virtually in the nature of final order, could not have been made at the stage when the suit is yet to be decided finally. The learned counsel for the applicant has rightly submitted that if ultimately, the suit is dismissed on merits, the plaintiffs would have unduly availed themselves of this amount, without any obligation to refund the same or to reimburse the same to the applicant. Accordingly, the impugned order is required to be modified to this extent. The direction for payment is not interfered with. However, it is made clear that such payment should be regarded as interim relief during the pendency

of the suit. If ultimately, the suit is dismissed, plaintiffs shall be duty bound to refund / bring back the amount received by them in pursuance of the directions contained in the impugned order within such time and subject to such interest as the Trial Court may determine at the stage of final disposal of the suit. In fact, the plaintiffs to file within a period of four weeks from today an undertaking before the Trial Court that they shall bring back such amount and shall abide by orders that may be made by the Trial Court with regard to the time schedule and interest in the context of the amounts which they have received in pursuance of the impugned order.

8] Save as modified as aforesaid, there is no necessity to interfere with rest part of the impugned order. Accordingly, this CRA is disposed of. Rule is made absolute partly to the extent indicated.

9] Further, considering that the suit is of the year 2006 and the impugned order directs the applicant to make payments to the plaintiffs, during the pendency of the suit, it is only proper that the suit itself is disposed of as expeditiously as possible and in any case within a period of one year from today. All parties to cooperate in the matter of expeditious disposal of the suit.

10] It is clarified that the observations made by this Court are for the limited purpose of deciding whether the plaint in the present case ought to be rejected under Order VII Rule 11 of the CPC. Accordingly, the Trial Court, need not be influenced by such observations. The suit is to be decided on its own merits and in accordance with law.

11] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka