

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 130 OF 2014

M/s. Kumar Builder & Ors.	..	Petitioners
VS.		
Kumar Elixir Co-op. Hsg. Soc. & Anr.	..	Respondents

Mr. R. V. Govilkar for Petitioners.
Mr. Vaibhav Krishna i/b. Juris Consillis for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 23 MARCH 2015

P.C. :-

1] This civil revision application questions order dated 11 December 2013 made by the Civil Judge, Junior Division, Pune, dismissing the petitioners (original defendants) application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint.

2] The petitioners, applied for rejection of the plaint by invoking the provisions contained in Order 7 Rule 11 [sub clause (a) and sub clause (d) of the CPC] urging that the plaint did not disclose any cause of action and further from the statement in the plaint, the suit was barred by law of limitation.

3] In support of the contention that the plaint did not disclose any cause of action, Mr. Govilkar, learned counsel for the petitioners pointed out that the agreements entered into with the respondents (original plaintiffs) very clearly made a reference to the area of the property as being 3065 sq. meters, whereon building Nos. B and C came to be constructed. Further, the byelaws of the society, including in particular its object clause states that the object of the society is to obtain conveyance in respect of building Nos. B and C constructed on property admeasuring 3065 sq. meters. If the averments in the plaint are perused, then it is clear that the respondents seek reliefs in respect of area over and above the plot area of 3065 sq. meters. In this view of the matter, Mr. Govilkar contends that the plaint does not really disclose any cause of action and ought to be rejected under sub clause (a) of Order 7 Rule 11 of the CPC.

4] In so far as the issue of limitation is concerned, Mr. Govilkar submitted that it is the case of the respondents in the plaint that the property in question vested in them, no sooner the society was registered in the year 2006. If the averments in the plaint and the relief prayed for are meaningfully construed, then it is clear that the respondents seek conveyance in respect of the suit property. The suit, which has been instituted in the year 2012 is therefore grossly

barred by law of limitation and ought to be rejected by resort to sub clause (d) of Order 7 Rule 11 of the CPC.

5] In construing the plaint, there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. The substance of the plaint, has to be taken into consideration and the pleadings have to be construed as they stand without addition or subtraction of words or even the change of its apparent grammatical sense.¹

6] If the various averments in the plaint are construed by keeping in mind the aforesaid principles, then it cannot be said that there is failure to disclose cause of action. The case as set out by the respondents – plaintiffs in the plaint, is that apart from rights in respect of the two buildings B and C and the plot area of 3065 sq. meters, the plaintiffs are also entitled to rights in respect of such open area and seek to resist the claim of the petitioners – defendants to utilise the FSI or TDR in respect of such area. The issue at this stage is not whether such claim on the part of the respondents – plaintiffs is right or justified. The issue simply is whether cause of action has been disclosed in the plaint. The

1 2005 DGLS (Soft) 1036 [Popat and Kotecha Property vs. State Bank of India Staff Association.

averments in the plaint, if construed cumulatively, clearly disclose cause of action. Accordingly, no case is made out by the petitioners for rejection of the plaint on the ground that it does not disclose any cause of action.

7] In so far as the issue of limitation is concerned, reference is required to be made to the averments in paragraph 22 of the plaint, which read thus :

“22. The cause of action for the present suit first arose in the month of June 2012 i.e. on 02/06/2012, when the Plaintiff came across a public notice published in Daily Indian Express dt. 02/06/2012, when the Defendants for the first time made alleged claim over the portion of suit property which is open, but which is lawfully possessed by the plaintiff. The cause of action then arose when the Plaintiff society raised objection to said public notice through Adv. Deepak Sharma vide reply dt. 06/06/2012, but to no avail. The cause of action then arose when the Defendant No. 1 through his Adv. S. B. Khurjekar & Company issued a false counter reply dt. 28/06/2012, reiterating non-existing false claim over the portion of suit property which is open. The cause of action then arose on 26/09/2012 when Defendant No. 9 claiming through and under Defendant No. 1, sought to obstruct the Plaintiff society through its members from the peaceful use and enjoyment over the same, about which police complaint is immediately lodged. The cause of action thereafter continues to arise from time to time.”

8] Again the question, is not whether the cause of action as pleaded is genuine or not. At this stage, we are really concerned with the issue as to whether cause of action has been disclosed in the plaint. Further, we are really concerned with the issue as to whether on the basis of statement in the plaint, the same can be said to be barred by any law. If the averments in paragraph 22 of the plaint are considered, then it cannot be said that on the basis of the statement therein or for that matter on the basis of any other statement in the plaint, it has been barred by law of limitation. The issue of limitation, in a given case, can be an issue involving mixed question of law and fact. A plaint, of such nature cannot be rejected by resort to the provisions contained in Order 7 Rule 11 of the CPC.

9] The reliefs applied for in the plaint, read thus :

“a) It be declared that the suit property is lawfully possessed by the Plaintiff society through its members in terms of the individual agreements executed and registered under provisions of MOFA by the Defendants No. 1 to 8 in their favour and save and except the statutory obligation and liability to execute the final conveyance of the suit property as it stands today and to perform other statutory obligations and duties enumerated in the body of the plaint, the Defendants cease to have any right to avail any benefit including the benefit of TDR arising out of the suit property and to cause any construction on the portion of suit property which is open.

b) The Defendants No. 1 to 9 be enjoined by an order of permanent injunction restraining them jointly and each severally from applying and/or availing and/or utilizing the TDR of the suit property for the purpose of construction on the open portion of the suit property and they be also enjoined from selling, alienating and/or dealing and/or creating any third party interest in respect of the said open portion of land out of the suit property and with the TDR component of the suit property.

c) The Defendants No.1 to 9 be enjoined by an order of permanent injunction restraining them jointly and each severally from entering into the suit property and from obstructing the members of the Plaintiff society from the peaceful use and enjoyment of the suit property and from forcibly dispossessing the Plaintiff society from the open portion of the suit property and from changing and altering the nature thereof which is at present open.

d) The Defendants No.1 to 8 be directed by an order of mandatory injunction directing them to execute the final conveyance of the suit property in favour of the Plaintiff society.”

10] Although the relief in terms of prayer clause (d) seeks a mandatory injunction directing the execution of final conveyance of the suit property in favour of the plaintiffs society, the cause of action is based upon certain statutory rights which the plaintiffs claim. It is further the case of the respondents – plaintiffs that the statute under which, they seek such rights, do not prescribe any period of limitation. Reliefs in terms of prayer clauses (a), (b) and

(c) relate *inter alia* to the open space as also apprehensions of forcible dispossession. In such circumstances, it cannot be said that on the basis of statements in the plaint, the suit is barred by law of limitation. Ultimately, this is a matter which will have to be decided on the basis of a trial.

11] Accordingly, there is neither any jurisdictional error nor any perversity involved in the making of the impugned order. This petition is therefore dismissed. There shall be no order as to costs.

12] It is however clarified that the observations in the impugned order as also the observations in this order are for the limited purpose of deciding whether the plaint could have been rejected by resort to the provisions contained in Order 7 Rule 11 of the CPC. Accordingly, such observations should not influence the learned Civil Judge, whilst deciding the matter on merits after the conclusion of the trial.

(M. S. SONAK, J.)