

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.43 OF 2015
IN
NOTICE OF MOTION NO.1741 OF 2014
IN
SUMMARY SUIT NO.5371 OF 2012

ING Vysya Bank Ltd.	]	... Applicant/ (Orig. Deft. No.1)
Versus		
1. Smt. Ujwala Pankaj Damnawala,	]	... Respondent No.1/ (Orig. Plaintiff)
2. Sembawang Infrastructure Pvt. Ltd. (SIPL)/Punj Lloyd,	]	... Respondent No.2/ (Orig. Deft.No.2)
3. CBRE.	]	... Respondent No.3/ (Orig. Deft. No.3)

Ms. Ambreen Saheed i/b MDP & Partners for Applicant.
Ms. Sucruta A. Chimalkar for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 17, 2015

P. C. :-

1. This petition is directed against the Order dated 13/10/2014 made by the City Civil Court, dismissing the Petitioner's Notice of Motion urging rejection of the plaint by resort to the provision contained in Order 7 Rule 11 of the CPC.

2. The learned Advocate for Petitioner, mainly by reference to the legal notices appended to the plaint, urged that the case of the Plaintiff throughout was that the Respondent No.2 was liable for payment towards house-keeping, since it is the Respondent No.2 who had engaged the services of the Respondent No.1 for providing house-keeping services, *inter-alia*, in respect of the Petitioner's bank premises. The learned Advocate for Petitioner placed reliance on the decision of this Court in the case of ***Raj Shipping Agencies V/s. M. V. "Bunga Mas Tiga" and another***¹ and submitted that in the absence of disclosure of a cause of action, the plaint is required to be rejected under Order 7 Rule 11 of CPC.

3. I have heard the learned Advocate for the parties and perused the record. In my Judgment, there is no warrant to interfere with the impugned order. This is because the scope of proceedings under Order 7 Rule 11 of the CPC is extremely limited. At this stage, the Court is mainly concerned with the averments in the plaint. The Court, at this stage, is not really concerned with the veracity or otherwise of the averments in the plaint or for that matter, with the veracity or otherwise of the documents accompanying the plaint. Order 7 Rule 11 of (a) provides for rejection of the plaint, where it does not disclose cause of action. Submission of the learned Advocate for Petitioner mainly proceeded on the basis that there is no cause of action so far as the Petitioner is concerned or that the correspondence on record indicates that there was no privity of contract as between

¹ AIR 2001 Bombay 451

the Petitioner and the Respondent No.1. These are matters of defence on merit, which cannot normally be gone into at the stage of deciding an application under Order 7 Rule 11 of the CPC.

4. The decision in the case of Raj Shipping Agencies (supra) is clearly distinguishable. In the facts and circumstances of the said case, this Court held that in absence of a privity of contract between the Plaintiff and the foreign vessel, there was no question basing a suit alleging maritime lien. In this context, it was held that there was no disclosure of cause of action so far as the foreign vessel is concerned.

5. The impugned order, by adverting to the averments in the plaint as observed by the Respondent No.1-Plaintiff, has joint and several liability. The question as to whether such pleading is right or not, is not to be determined at the stage of considering an application under Order 7 Rule 11 of the CPC. For this purpose, it is not permissible to delve into the evidence and to show the discrepancies in the case of the Respondent No.1-Plaintiff.

6. There is no jurisdictional error in the impugned order. Accordingly, there is no reason to entertain the present petition.

7. It is clarified that the observations in this order are for the limited purpose of deciding whether the City Civil Court was right in rejecting the application under Order 7 Rule 11 of the CPC. Accordingly, none of the observations either in the impugned order

dated 13/10/2014 or for that matter this order, shall come in the way of the Petitioner, in the matter of questioning the order granting conditional leave to defend or for that matter, their defence on merits.

8. With the aforesaid observations, the impugned order is not interfered with. The petition is accordingly disposed of. Interim order to stand vacated. There shall be no order as to costs.

(M. S. SONAK, J.)