

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2687 OF 2015

Vahista Consultancy & Anr. .. Petitioners
VS.
Vahista Consultancy Pvt. Ltd. & Anr. .. Respondents

Mr. N. V. Vechalekar i/b. N. V. Vechalekar & Co. for Petitioners.

CORAM : M. S. SONAK, J.
DATE: 24 MARCH 2015

P.C. :-

1] This petition challenges order dated 5 January 2015 made by the 8th Jt. Civil Judge, Junior Division, Pune, dismissing the petitioners application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, urging rejection of the plaint.

2] At the outset, as against the impugned order, the correct remedy would have been the filing of a civil revision application and not a writ petition. However, this is not the only ground on which this writ petition is not being entertained.

3] The learned counsel for the petitioners, made the following submissions:

(A) That the resolution pursuant to which the plaint has been filed has been signed by only one of the Directors.

Besides, the entire company, which has instituted the present suit appears to comprises of only one Director. In such circumstances, the company cannot be said to be existing or in any case the resolution pursuant to which the suit is instituted is not a valid resolution. In this regard, the learned counsel placed reliance upon the provisions contained in Section 287 of the Companies Act, 1956 which provides that the quorum for a meeting of the Board of Directors of the Company shall be one-third of its total strength or two Directors whichever is higher;

(B) That the plaint does not disclose any cause of action and therefore is required to be rejected by resort to the provisions contained in Order 7 Rule 11 (a);

(C) That the suit is barred by law of limitation.

4] The impugned order has rejected the aforesaid contentions and there is neither any jurisdictional error nor any perversity involved in the making of the impugned order. Ultimately, it must be noted that the scope of an application under Order 7 Rule 11 of the CPC is extremely limited. For this purpose, the court is required to address itself to the averments in the plaint and there is no scope to take into consideration the defence, which the defendants may have in the matter.

5] The petitioner, makes reference to the extract of the resolution of the company, which bears the signature of only one of the Directors. That by itself is by no means determinative. There is no merit in the submission of the petitioner that the company itself is not in existence. Further, the circumstance that there is some defect in resolution pursuant to which the suit may have been instituted, is not one of the grounds for rejection of the plaint itself by resort to the provisions contained in Order 7 Rule 11 of the CPC.

6] In so far as the alleged absence of cause of action is concerned, again, the plaint is to be read in its entirety. At this stage, there is no scope for reference to the defence which the defendants may have on the merits. Thus, construed it cannot be said that there is no disclosure of cause of action. In fact the averments made by the learned counsel for the petitioners were to the effect that the suit as instituted is false or that it deserves a dismissal on merits. This is a matter which can be addressed once the trial in the suit is completed. The application under Order 7 Rule 11 of the CPC is not an appropriate remedy for said purpose.

7] In so far as the issue of limitation is concerned, it must be noted that the powers under Order 7 Rule 11 sub clause (d) can be

exercised where the suit appears from the statement in the plaint to be barred by any law. The learned counsel for the petitioners was unable to indicate any statement in the plaint, from which it could be said that the suit is barred by the law of limitation. Further, if the issue of limitation is a mixed question of law and fact, then it will not be appropriate to reject the plaint by resort to the provisions contained in Order 7 Rule 11(d). In paragraph 21 of the plaint, the plaintiffs have averred as follows:

“21) The plaintiffs state that the cause of action for filing the present suit arose for the first time when clients of the Defendant nos. 1 and 2 approached the plaintiffs, demanding a refund of their advances and amounts paid to the Defendant nos. 1 and 2. The cause of action further arose on 1/9/2012, when the plaintiff no. 1 was constrained to file an 'Application for Anticipatory Bail' u/s 438 of Criminal Procedure Code in order to prevent her own arrest for the debts and liabilities of the defendants.”

8] The question is not whether the aforesaid averments are right or wrong. At the stage of deciding an application under Order 7 Rule 11, the Courts shall have to proceed on the basis that such averments are correct. There is accordingly no case made out for exercise of powers under Order 7 Rule 11 of the CPC, this petition is accordingly dismissed. There shall be no order as to costs.

9] It is however made clear that the observations in the

impugned order or for that matter in the present order are only for the limited purposes of deciding the petitioners' application under Order 7 Rule 11 of the CPC. Accordingly, the learned trial court not to be influenced by such observations whilst deciding the suit on its own merits and in accordance with law.

(M. S. SONAK, J.)

Chandka