

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 525 OF 2015

Shri Dheeraj Vijay Kapoor

..Applicant

Vs

Shri Deepak Bhanudas Ghorpade

.. Respondent

Mr. P.S.Dani, Senior Advocate, i/b S. Joshi, Advocate for Applicant.

CORAM : R.G.KETKAR,J.

DATE : 17/11/2015

PC:

1. Heard Mr.P.S.Dani, learned senior counsel for the applicant at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the original defendant has challenged the Judgment and order dated 25.2.2015 passed by the learned Civil Judge, Senior Division, Pune below Exhibit-17 in Special Civil Suit No. 303 of 2012. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to a “defendant”, under Order VII, Rule 11(a) of C.P.C for rejection of Plaintiff.
3. In support of this Application, Mr. Dani strenuously contended that the plaint read as a whole, does not disclose any

cause of action. He has taken me through paragraphs (iv), (v), (vii), (viii) and (xii) of the Plaint and submitted that the respondent-original plaintiff has claimed Rs. 30 lacs towards damages. The respondent-plaintiff has claimed damages on account of the murder of his wife, Vidya Ghorpade and son Om, he had to attend Sessions trial and because of that he had sustained loss, injury and deterioration. He has also taken me through the claim of damages made by the plaintiff in paragraph (xii). He submitted that the entire plaint is based on the Judgment and order dated 21.1.2011 passed by the learned Sessions Judge in Sessions Case No.500 of 2009, in which case one Kiran Pujari was tried for offences punishable under sections 302, 379, 436, 201 read with section 511 Indian Penal Code, 1860. In that trial, said Pujari was convicted under section 302 and was sentenced to suffer life imprisonment. The present applicant is in no way concern with commission of offence of that case and in fact he was examined as prosecution witness. Instead of proceeding against the accused, the plaintiff has instituted the present suit against the defendant for recovery of damages. In short, he submitted that the learned trial Judge ought to have allowed the application as the plaint does not disclose cause of action.

4. I have considered the submissions advanced by Mr Dani. I

have also perused the material on record. Perusal of the plaint and in particular paragraphs (ix), (x) and (xi) shows that independent of the murder trial, the plaintiff had claimed damages on account of the alleged sexual harassment of his wife at work place. The plaintiff contended that his wife was subordinate employee of the defendant and the defendant had committed actionable wrong against his wife who was subordinate employee.

5. By the impugned order, the learned trial Judge, after considering the material on record as also provisions of Order VII, Rule 11, held that as per the case of the plaintiff he had suffered mental agony and harassment due to loss of his wife and child. He further alleges that the defendant had sexually harassed his wife at the work place. The learned trial Judge further held that plaint discloses cause of action and accordingly rejected the application.

6. After considering the averments made in the plaint and in particular paragraphs (iv), (v), (vii), (viii) and (xii), I do not find that the learned trial Judge has committed any error in holding that the plaint discloses cause of action. It cannot be said that the suit is based only on the basis of Sessions Case and the judgment rendered by the learned Sessions Judge. The learned trial Judge has rightly applied the principles governing the

application made under Order VII, Rule 11. While considering such application, the averments in the plaint are germane irrespective of the defence taken in the Written Statement. After considering the plaint and findings recorded by the learned trial Judge, I am of the opinion that no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

7. It is made clear that the observations made herein are prima facie and tentative for the purpose of considering correctness of the impugned order. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)