

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11328 OF 2014

1. Vijay Nilkanthrao Bhorkar,]
2. Swati Vijay Bhorkar.] ... Petitioners

Versus

Ravinder Pal Jolly.] ... Respondent

Ms. Jenifer Michael i/f Mr. Anil D'Souza for Petitioners.
Mr. Rajkumar B. Yadav for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 03, 2015

P. C. :-

1. This Court had issued notice on 18/03/2015 to the Respondent making it clear that the matter would be finally disposed of at the stage of admission.

2. Accordingly, Rule. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

3. This petition challenges orders dated 09/05/2013 and 08/08/2014 made by the competent authority and the appellate authority under the provisions of Sections 24 and 44 of the

Maharashtra Rent Control Act, 1999 ('Rent Act'), rejecting the Petitioners' plaint by purporting to exercise powers under Order 7 Rule 11 of the CPC.

4. Ms. Jenifer Michael, learned Counsel for Petitioners, made two submissions in support of this petition :-

- (a) That the competent authority, under Section 24 of the Rent Act, is not a 'Court' and therefore the provisions of Order 7 Rule 11 of CPC are not at all applicable to the proceedings before the competent authority. In support of this submission, reliance was placed upon the decision of the Hon'ble Apex Court in the case of ***Prakash Jain Vs. Marie Fernandes***¹;
- (b) In any case, in order to reject a plaint in exercise of power conferred by Order 7 Rule 11 of CPC, reference can be made only to the plaint and there is no question of taking into consideration any other material, including in particular the defence of the Defendants.

5. Mr. Rajkumar B. Yadav, learned Counsel for Respondent, submitted that there are concurrent findings recorded by the two Courts and therefore, the same may not be interfered with in the exercise of writ jurisdiction. Mr. Yadav further point out that the Petitioners had produced and relied upon possession letter dated 15/09/2010, in terms of which, the possession of the suit premises

¹ 2003 (11) LJSOFT (SC) 8

had been handed over by the Respondent to the Petitioners. Therefore, it is the case of the Petitioners that the Respondent had thereafter entered into possession of the suit premises, the Respondent cannot be a licensee and consequently, the Petitioners cannot be licensor qua the suit premises. In the absence of any licensor and licensee relationship, the competent authority would have no jurisdiction to entertain the plaint under Section 24 of the Rent Act. In any case, no cause of action was at all disclosed in the plaint and therefore, the two Courts were right in rejecting the plaint by exercising the powers under Order 7 Rule 11 of CPC.

6. Rival contentions now call for my determination.

7. In the present case, there is no necessity to decide the larger issue as to whether the provisions of Order 7 Rule 11 of CPC at all apply to summary proceeding under Chapter VIII of the Rent Act. This is because even if we are to proceed on the basis that such provisions or in any case, the principles analogous thereto apply, no case was made out to reject the plaint under Order 7 Rule 11 of CPC or by applying provisions analogous thereto.

8. It is settled position in law that a plaint can be rejected by recourse to Order 7 Rule 11 of CPC where it does disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. If the application Order 7 Rule 11 of CPC made by the Respondent is perused, then it is not clear as to whether the same

was made under sub-section (a) or sub-section (d) of Order 7 Rule 11 of CPC. Sub-section (a) permits rejection where the plaint does not disclose the cause of action and sub-section (d) permits rejection where the suit appears from the statement about the plaint to be barred by any law. Besides, there is a difference between non-existence of cause of action and non-disclosure thereof. From the submissions made on behalf of the Respondent, it does appear that the Respondent seeks to contend that there is no cause of action or that the cause of action pleaded is false. In such a situation, resort cannot be had to the provisions contained in Order 7 Rule 11 (a) of CPC.

9. The Respondent, however, contends that there is no licensor-licensee relationship and therefore the competent authority has no jurisdiction to entertain the plaint under Section 24 of the Rent Act. In a sense therefore, the plea is based upon the provisions contained in Order 7 Rule 11 (d) of CPC. For this purpose, the Respondent has to demonstrate that the suit appears from the statement in the plaint to be barred by any law. In the plaint, there are averments in the context of licensor-licensee relationship. Whether such averments are true or false, is a question which will have to be determined at the stage of trial. However, on the basis of certain defences or documents, it is impermissible for the Respondent to contend that the suit is barred by any law from the statement in the plaint.

10. The Hon'ble Apex Court, in the case of ***Kamala and Others Vs. K. T. Eshwara Sa and Others***², has held that Order 7 Rule 11 (d) of CPC has limited application. For its application, the suit must be shown to be barred under any law on basis of statement in the plaint. What would be relevant for invoking Order 7 Rule 11 (d) of CPC are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. For the purpose of invoking the said provisions, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at that stage.

11. In the present case, both the competent authority as well as the appellate authority have not adverted to the aforesaid principles in the matter of deciding application under Order 7 Rule 11 of CPC. The two authorities have referred to the defence of the Respondent. This is clearly impermissible. Further, the two authorities have adverted to the position that there is some dispute between the Petitioners and one Mr. Satish Uchil in the context of ownership of the suit premises and that such a dispute pending adjudication before the competent Court. Again, this was not a circumstance which was relevant at the stage of deciding an application under Order 7 Rule 11 of CPC. The two orders, though concurrent, are in excess of jurisdiction and consequently unsustainable.

² (2008) 12 Supreme Court Cases 661

12. Accordingly, the orders dated 09/05/2013 and 08/08/2014 are set aside and Application No.19 of 2013 is restored before the competent authority for decision in accordance with law.

13. It is, however, made clear that the observations in this Judgment and Order are for the limited purpose of deciding whether the plaint could have been rejected by resort to provisions under Order 7 Rule 11 of CPC. None of these observations are intended to in any manner curtail the defences of the Respondent. Accordingly, the competent authority to decide the matter in accordance with law, uninfluenced by the observations made for the aforesaid limited purpose.

14. All parties to appear before the competent authority on 02/09/2015 at 11.00 a.m. and produce authenticated copy of this order. On the said date, the Respondent shall be at liberty to seek leave to defend the proceedings. Such application to be considered by the competent authority in accordance with law and on its own merits.

(M. S. SONAK, J.)