

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1712 OF 2013

M/s.Gurukripa Developers

... Appellant

Vs.

Empathy Foundation & Ors.

... Respondents

Mr.S.S. Patwardhan for the Appellant

Mr.S.R. Shukla i/b Abhay Nevagi & Asso. for Respondent Nos.1 & 2

CORAM: **SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 27th JANUARY, 2015

ORAL JUDGMENT (PER SMT.VASANTI A. NAIK):

The First Appeal is Admitted and heard finally with the consent of the learned Counsel for the parties.

The First Appeal arises from the order of the 3rd Joint Civil Judge, Senior Division, Kolhapur, dated 25.6.2013 allowing the application filed by the respondent – defendant under Order 7 Rule 11 (d) of the Code of Civil Procedure.

The appellant is the original plaintiff. A suit was instituted by the plaintiff against the defendants for a declaration that an amount of

Rs.36,73,094/- is payable by the defendant No.1 to the plaintiff and the same should be recovered from the defendant No.1 with interest @ 18% per annum. The plaintiff had also sought a recovery of the amount of Rs.3,50,000/- towards labour advance, Rs.4,30,000/- against security deposit, Rs.12,75,000/- against construction material and Rs.15 lacs against loss of opportunity. It was the case of the plaintiff – firm that the consent of the defendant No.2 – Vidyalaya, which is an undertaking of the Government of India, defendant No.1 had entered into an agreement dated 9.2.2008 with the plaintiff firm for the construction of a school building. It was the case of the plaintiff that the defendant No.1 was liable to pay the bill amount within a period of 15 days from the date of the completion of the work. It was pleaded by the plaintiff that it had completed the construction work of worth more than Rs.1,82,00,000/- and the defendant No.1 had paid an amount of Rs.1,45,00,000/-. Since the defendant No.1 had neglected to repay the amount of over Rs.36 lacs, the plaintiff had instituted the suit seeking the aforesaid relief.

The Defendant No.1 had filed an application for rejection of the plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure as according to the defendant No.1, the suit was barred by the provisions of the Arbitration and Conciliation Act, 1996. According to the defendant

No.1, in view of the arbitration clause in the agreement between the plaintiff and the defendant No.1, the suit could not have been filed in the civil Court. It was the case of the defendant No.1 that only the Mumbai Courts had jurisdiction in the matter. The application filed by the defendant No.1 under Order 7 Rule 11(d) of the Code of Civil Procedure was considered by the trial Court and by the order dated 25.6.2013, the trial Court rejected the plaint under Order 7 rule 11(d) of the Code of Civil Procedure.

Mr.Patwardhan, the learned Counsel for the appellant, submitted that the plaint could not have been rejected under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure as it is not disclosed from the statement in the plaint that the suit is barred by any law. It is stated by taking this Court through the entire plaint that the suit did not appear from the statement in the plaint to be barred by any law. It is stated that the plaintiff had neither pleaded in regard to the arbitration clause nor had the plaintiff pleaded in regard to the exclusive jurisdiction of the Mumbai Courts. It is stated that the plaint cannot be rejected under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure on the basis of the written statement filed by the defendant or on the documents tendered by the defendant in the Court.

The learned Counsel for the defendant No.1 supported the order of the trial Court and submitted that the trial Court had rightly rejected the plaint under order 7 Rule 11(d) of the Code of Civil Procedure as there was an arbitration clause in the agreement and the agreement clearly provided that the Courts in Mumbai would have jurisdiction. It is stated that the trial Court had rightly relied on the judgment reported in **AIR 1991 P & H 12** to reject the plaint.

On hearing the learned Counsel for the parties, it appears that the following points arise for determination in this First Appeal:

- i) Whether the plaint could have been rejected under the provisions of Order 7 rule 11(d) of the Code of Civil Procedure?
- ii) What order?

It is clear from a reading of Order 7 Rule 11 of the Code of Civil Procedure that the plaint could be rejected only on the grounds enumerated in the various clauses of Rule 11. The defendant No.1 had filed the application for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure. According to the defendant No.1, in view of the arbitration clause, the civil Court was not entitled to entertain and

decide the suit. So also, according to the defendant No.1, the Courts in Mumbai had exclusive jurisdiction in the matter and the plaint could not have been instituted by the plaintiff at Kolhapur. We find on a reading of the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure that the plaint would be rejected where the suit appears from the statement in the plaint to be barred by any law. The plaintiff had not made any statement in the plaint in regard to the existence of the arbitration clause. So also, the plaintiff had not pleaded in regard to the exclusive jurisdiction of the Mumbai Courts in the matter of disputes between the parties. The said points were raised by the defendant No.1 by filing the agreement executed between the plaintiff and the defendant No.1. The defendant No.1 based the application under Order 7 Rule 11(d) of the Code of Civil Procedure on the agreement that was produced by the defendant No.1 on record. It is apparent from the provisions of the Order 7 Rule 11(d) of the Code of Civil Procedure that the plaint should be rejected only where the suit appears from a statement in the plaint to be barred by any law. What is required to be considered by the trial Court is the pleadings in the plaint and not the pleadings in the defence. So also, while considering an application for the rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, the Court is not entitled to look into the documents produced by the defendants before the trial Court. It is well

settled that a plaint could be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure only when it appears to the Court from the pleadings in the plaint that the suit is barred by any law. We have perused the plaint. We do not find anything in the plaint to show that the suit is barred by the provisions of the Arbitration and Conciliation Act, 1996 or that the Courts in Mumbai would have exclusive jurisdiction to entertain and decide the suit. It is observed by the Hon'ble Supreme Court in the judgment reported in **(2005) 7 SCC 510** that the statement in the plaint, without addition or subtraction must show that the suit is barred by any law, otherwise Order 7 Rule 11 would not be attracted. It appears that instead of relying on the judgments of the Hon'ble Supreme Court, the trial Court placed reliance on the judgment of the Punjab & Haryana High Court, which was not made applicable to the facts of this case.

Hence, for the reasons aforesaid, the First Appeal is allowed. The order of the 3rd Joint Civil Judge, Senior Division, Kolhapur, dated 25.6.2013 is hereby set aside. In the circumstances of the case, there would be no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)