

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.98 of 2014

(Dr. Dilip Kumar Sanyal .vs. Nitesh s/o. Vinodrai Divech and Ors.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Dr.Anjan De, Adv. for the applicant.
Mr.Y.V.Nayyar, Adv. for the respondents.

CORAM : A.P.BHANGALE, J.

DATE : 7.8.2015.

Heard the submissions at the bar. Perused the impugned order. By this Civil Revision Application u/s.115 of the Civil Procedure Code, the revision applicant has prayed for quashing and setting aside the order passed below Exh.24 in Regular Civil Suit No.584 of 2013 on 17.4.2014 by 6th Joint Civil Judge (Jr.Dn.), Nagpur. It appears that the present revision applicant (original defendant in the suit) preferred an application on 26.2.2014 during pendency of Regular Civil Suit No.584 of 2013 praying that the plaint be rejected under Order VII, Rule 11 of the Code of Civil Procedure r/w. Section 151 of the Code of Civil Procedure. According to the learned Counsel for the applicant, there were prayer clauses in the plaint as below :

- 1) Grant ad interim temporary injunction restraining the non-applicant, his agents, administrators, assigns or any other person or

persons claiming through or under them from taking forcible possession of suit premises i.e. Flat No.2.

2) *Grant temporary injunction restraining the non-applicant, his agents, administrators, assigns or any other person or persons claiming through or under them from taking forcible possession of suit premises i.e. Flat No.2.*

3) *Grant any other relief in favour of applicants 1 to 4 which the Hon'ble Court deems fit and proper in the facts and circumstances of the case, in the interest of justice.”*

Thus, the suit is for declaration that act of the defendant in taking over forcible possession of the suit premises i.e. Flat No.2 is illegal, arbitrary and bad in law and to declare the defendant as trespasser over the suit premises and consequently to restrain the defendant from taking over forcible possession of the suit premises and for any other relief which the Court may deem fit and proper. In the facts and circumstances of the case and in the interest of justice, it is submitted on behalf of the revision applicant that, in view of Section 34 of the Specific Relief Act, 1963, if any person entitled to any legal character or to any right as to any property institutes a suit against any person denying or interested to deny the title of the plaintiff, such right or character, it is discretion of the Court to make a declaration and the plaintiff need not in such a suit ask for any other relief provided that no Court shall make any such declaration where the plaintiff is able

to seek further relief for mere declaration of title & omits to do so. Bare reading of Section 34 makes it clear that type of cases in which declaratory decree may be passed and power of the Court to grant decree independently of the requirements of Section, power of Court to grant temporary decree is not limited to the terms of Section 34 of the Specific Relief Act. But the Court may use its judicial discretion in accordance with law to grant or refuse declaration depending upon the facts and circumstances of the case. Declaration granted in such suit is binding only on the parties to the suit or persons claiming under them.

My attention is also invited to Order VII, Rule 11, Clause (d) of the Code of Civil Procedure which provides that plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. On the other hand, the learned Counsel for the respondent (original plaintiff) submitted that the application under Order VII, Rule 11 of the Code of Civil Procedure at Exh.24 in pending Regular Civil Suit was opposed on merits and challenged without any crux or basis. It was contended with reference to prayer clause in the plaint that it was a suit simplicitor for declaration and permanent injunction. According to the plaintiff, defendant had tried to take forcible possession on 28.4.2013 and that does not mean that possession was taken away from the plaintiff had it been such a case, the plaintiff would have claimed possession of the suit premises and paid requisite Court fees. It is also brought to my notice that the defendant filed Written Statement in the trial Court to resist Regular Civil Suit No.584 of 2013

on 28.8.2014 and prayed for dismissal of the suit on various grounds. It is further submitted that even an application for amendment of the Written Statement is filed on behalf of the defendant on 24.9.2014. Thus, it appears that, after rejection of the application (Exh.54) on 17.4.2014, Written Statement was filed on 28.8.2014 and even an application to amend the written statement is filed on 24.9.2014. This is not in dispute. Under these circumstances, the impugned order whereby the application under Order VII, Rule 11 of Code of Civil Procedure r/w. Section 151 of the Code of Civil Procedure was rejected need not be interfered with as the trial Court will have to consider the pleadings between the parties, frame appropriate issues and to decide the suit on merits, according to law particularly when, under Chapter VI (Declaratory decrees) of the Specific Relief Act, the rule appears that any person entitled to any legal character or right to any property can institute the Civil suit against the person who may deny or is interested to deny such legal right or character and it is judicial discretion of the competent Civil Court concerned to grant or refuse relief of mere declaration if no further relief is prayed in the suit.

In view of proviso to Section 34 of the Specific Relief Act, if according to the Court, plaintiff could have sought further relief other than mere declaration to legal right or title and omitted to do so, in that event, the suit may fail or may be dismissed because of limited prayer. But under Order VII, Rule 11 of the Code of Civil Procedure, which is procedural provision, if upon bare perusal of the plaint, if any of the ground under the

clauses is made out and the Court finds that it does not disclose any cause of action or relief is grossly under valued and opportunity is given by the Court to correct the valuation made within time; if the plaintiff fails to do so, the Court may reject the plaint or in case wherefrom the statement in the plaint it appears barred by any law. In the present case, one cannot venture to say that the plaint itself was barred by law in view of proviso of Section 34 of the Specific Relief Act. Considering the exhaustive reliefs which may be claimed by the plaintiffs in respect of prayer of declaration and/or grant of injunction, at the most if; there is prayer for mere declaration then the suit may be dismissed upon considering the limited prayer. But it cannot be insisted upon by the defendants in the suit that plaint shall be rejected in such cases where plaintiff chose to omit asking for further reliefs from the Court. Therefore, in my opinion, there was no error on the part of the learned trial Judge to reject the application (Exh.24) since the suit has advanced further to the stage of Written Statement and amending the Written Statement etc., the trial Court may frame appropriate issues and proceed further to decide the suit on merits according to law. It is made clear that, as far as merits of the pending suit are concerned, the trial Court would apply its own mind in accordance with law without being influenced by the observations made hereinunder.

With the above observations, the Civil Revision Application is dismissed. Costs shall be costs in the cause

JUDGE

**jais*