

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

WRIT PETITION NO.7238 OF 2014

Shri Digambar S/o Kisan Kamble

-vs-

Shri Haji Kadar S/o Husain Bawla

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

Court's or Judge's Orders.

Ms R. P. Jog, Advocate for petitioner.

Shri S.G. Gore, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : MARCH 09, 2015

This Writ Petition takes exception to the order dated 01/10/2014 passed by the trial court below Exhibit-52 rejecting the application moved by the petitioner-original defendant seeking rejection of the plaint under the provisions of Order-7 Rule-11 of the Code of Civil Procedure (for short 'the Code').

The respondent-original plaintiff has filed suit for refund of earnest amount with interest, damages and permanent injunction seeking to restrain the defendant from dealing with or alienating the suit property. According to the plaintiff on 23/05/2008, an agreement was entered into with the defendant in respect of sale of agricultural land admeasuring 1H 21 Rs. According to the plaintiff, he had paid an amount of Rs.20,11,000/- to the defendant. It is further averred that there were exchange of notices and ultimately aforesaid agreement dated 23/05/2008 came to be cancelled.

The defendant had initially moved an application vide Exhibit-40 for rejection of the plaint on the ground that on page no.3 of the agreement certain insertions/corrections were made. The said application came to be dismissed by the trial Court and the order of the trial court was confirmed by this Court in Writ Petition No.842 of 2014. Thereafter the petitioner has filed present application vide Exhibit-52 for rejection of the plaint on the ground that the suit was barred in view of provisions of Section 22 of the Specific Relief Act, 1963 (for short 'the said Act'). It was also stated that the plaintiff had not approached the Court with clean hands and there was suppression of various material facts. Hence rejection of the plaint was sought under the provisions of Order 7 Rule 11 (a) and (d) of the Code.

The plaintiff opposed aforesaid application by filing reply. The trial Court thereafter considered said application and held that the suit was not barred under the provisions of Section 22 of the said Act. As regards suppression of material facts and not approaching the Court with clean hands, it was observed that the same was a matter of evidence and the same could be adjudicated during trial.

The learned counsel for the petitioner submitted that by notice dated 09/12/2008, the earnest amount had been duly forfeited but said fact had not been brought on record by the plaintiff. It was further submitted that the suit simplicitor for refund of earnest amount was not tenable and bar of Section 22 of the said Act was attracted. The learned counsel referred to various averments in the plaint to

demonstrate that the same was liable to be rejected in terms of provisions of Order-7 Rule-11(a) and (d) of the Code. Reliance was placed by the learned counsel on following judgments :

(i) (2012) 8 Supreme Court Cases 706. (Church of Christ Charitable Trust And Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee)

(ii) (2005) 4 Supreme Court Cases 605 (MCD Vs. State of Delhi & Anr.

(iii) AIR 1994 SC 853 (S. P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. And others.).

Aforesaid submissions were opposed by the learned counsel for the respondent. It was submitted that this was the second application filed by the defendant seeking rejection of the plaint. It was further stated that bar under Section 22 of the said Act was not attracted and further there was no suppression of any material facts. It was therefore submitted that the trial Court did not commit any error in rejecting said application.

The learned counsel for the respondent relied upon **AIR 1989 Supreme Court 606 (Jawahar Lal Wadhwa and Anr. v. Haripada Chakroberty)** in support of his submissions.

I have carefully considered aforesaid submissions. Under Clause-(a) of Rule-11 of Order-7 of the Code, the plaint is liable to be rejected if it does not disclose a cause of action. Under Clause-(d), if the suit appears from the

statement in the plaint to be barred by law, then the plaint is liable to be rejected. Perusal of the plaint indicates that it is the case of the plaintiff that the defendant had not complied with various terms and conditions as per the agreement dated 23/05/2008. It was further pleaded that the defendant had handed over possession of the suit lands to the plaintiff. On the basis of cause of action pleaded in paragraph 13, the plaintiff sought refund of earnest amount.

In so far as bar under Section 22 of the said Act is concerned, the same is in respect of seeking relief of possession or partition or any other relief including refund of earnest amount. It does not preclude the plaintiff from filing suit for refund of earnest amount simplicitor. There is no averment in the plaint to indicate that on the basis of any such statement made in the plaint, it was liable to be rejected under sub clause-(d) of Order 7 Rule 11 of the Code. In so far as cause of action is concerned, same has been stated in paragraph 13 of the plaint which refers to exchange of notices and the subsequent act of seeking refund of earnest amount. Averments in paragraph 13 of the plaint cannot be stated as to not disclosing the cause of action.

As regards submission of the learned counsel for the petitioner that various material facts had been suppressed and that the plaintiff had not approached the Court with clean hands, same is not a ground on which the plaint can be rejected at the outset itself. It would be a matter of evidence after the trial to come to the conclusion that there was suppression of any material fact or that the plaintiff had not

approached the Court with clean hands. Said aspect may have bearing on the question of granting any relief to the plaintiff. However at this stage, merely on the basis of plaintiff averments, the plaintiff was not liable to be rejected on said count. The decisions relied upon by the learned counsel for the petitioner in relation to suppression of material facts and not approaching the Court with clean hands are required to be considered after evidence of the parties is led. Similarly, the decision in the case of ***Church of Christ Charitable Trust*** (supra) would not be applicable as the cause of action has been disclosed in paragraph 13 of the plaintiff.

In view of aforesaid, it cannot be said that the trial Court erred in rejecting the application filed below Exhibit-52. Hence at this stage, no case for interference has been made out. It is clarified that it would be open for the original defendant to raise appropriate defence while resisting the suit and same shall be considered in accordance with law by the trial Court.

Subject to what is stated above, Writ Petition is dismissed with no order as to costs.

JUDGE