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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: October 15, 2015

% *Judgment Delivered on: October 20, 2015*

+ **CM(M) 761/2015**

DR K PUGAZHENDI & ORS

..... Petitioners

Through : Ms.Ginny J.Rautray and Ms.Harsha,
Advocates.

versus

AMBUJA BHUSHAN JAISWAL

..... Respondent

Through : Respondent in person.

PRATIBHA RANI, J.

CM(M) 761/2015

1. The petitioners before this Court have been impleaded as defendants No.1 to 7 in Civil Suit No.354/2014 by the respondent Ambuja Bhushan Jaiswal, who has instituted Civil Suit No.354/2014 with the following prayers:-

(i) To set aside letter No.NIL dated 11.06.2014 by which an Enquiry Committee was constituted by Dy.Registrar (IHA) and not by the Disciplinary Authority (i.e. Vice-Chancellor) in accordance with the Jawaharlal Nehru University Statutes.

(ii) To set aside the observations based recommendation in respect of the plaintiff made by the said Enquiry Committee without substantiating the same by its enquiry proceedings, issued vide letter dated 04.08.2014.

(iii) To set aside show cause notice dated 23.09.2014, served for violating the norms and procedures of JNU Statues and “Rule 5 of the JNU Students discipline and Conduct Rules”.

(iv) To set aside the proceedings issued vide No. DoS/2014-2015 dated 17.10.2014 regarding decision on reply of show cause by the committee which is not in accordance with the JNU Statues.

(v) To set aside vacation/eviction notice dated 22.10.2014 and 13.12.2014 passed by violating the JNU Statues and Para 2.13 of Hostel Manual.

(vi) To quash and set aside Warning Letter dated 09.05.2014 and other arbitrarily issued letters, based on false and fabricated material.

2. Learned counsel for the petitioners has submitted that the petitioners formed part of the Enquiry Committee constituted by Jawaharlal Nehru University. The Enquiry Committee submitted its report and consequent thereto the respondent has been evicted from the hostel. It has been urged that since no relief has been claimed against the petitioners, the impugned order being illegal and perverse is liable to be set aside.

3. Respondent, who has appeared in person, has submitted that his grievance is not only against the report of the Enquiry Committee but also against the petitioners who acted in violation of the statutory rules. The respondent has submitted that the impugned order warrants no interference by this Court for the reason that the plaint filed by him does disclose cause of action and could not have been rejected especially when the defence of the petitioners has been struck off by learned Trial Court.

4. In brief, the case of the respondent/plaintiff is that he was enrolled for pre-Ph.D/Ph.D degree programme in the School of Physical Sciences, Jawaharlal Nehru University, New Delhi on 29.07.2009 and is continuing his higher education in the University. He was provided hostel accommodation by the petitioner and was allotted room no. 051 Sabarmati (double seated) on 02.12.2009 and room no. 149 (old) Brahmaputra on 14.10.2011 in accordance with Section 11 of the Academic Rules and

Regulations/hostel manual of the University.

5. It has been pleaded that the respondent was one of the elected secretary of the Mess Committee in the year 2014 and the petitioner no.1 was made the Mess Warden in January 2014. The respondent checked the rampant corruption during the term of the petitioner no.1, as the Mess Warden. The petitioner no.1 issued a show cause notice to the respondent, vide letter dated 27.05.2014 and 02.06.2014. An enquiry committee was set up by the Deputy Registrar, vide letter dated 11.06.2014 in conflict with the JNU statutes and paragraph 2.13 of the hostel manual. The chairman of the enquiry committee/petitioner no.4 illegally circulated a general notice dated 26.06.2014 and after three sittings invited suggestions/comments from the residents of the hostel on the stay of illegal/unauthorized guests in the hostel and smooth functioning of mess etc. After a number of sittings, a unilateral enquiry report was prepared. The respondent appeared before the enquiry committee on 24.06.2014. Without serving any show cause notice, the respondent was served an eviction notice dated 25.08.2014 by the University asking him to vacate his room till 30.08.2014 at 5:00 pm. A representation was made to the petitioner no.7 for cancellation of the eviction notice being improper and arbitrary. The eviction notice dated 25.08.2014 was withdrawn vide letter dated 19.09.2014 by the petitioner no.2. A show cause notice dated 23.09.2014 was issued which was duly replied by the respondent on 07.10.2014.

6. The case of the respondent/plaintiff is that the committee of seven members scrutinized the reply of the respondent and without assigning any reasons declared the same unsatisfactory by misusing their official position. When he was on leave for the period between 20.10.2014 to 26.10.2014, in his absence the petitioner no. 2 pasted a notice on the respondent's room on

22.10.2014 to vacate the hostel by 27.10.2014. The respondent sent a representation to the petitioner no. 7 requesting him to restrain the officials of the University from harassing the respondent. On 13.12.2014, the petitioner no.1 again issued a notice to the respondent to vacate the room by 12:00 noon on the same day which was extended by five days.

7. Perusal of the Trial Court Record reveals that on 18.12.2014 when Civil Suit No.354/2014 came up for hearing, while considering the prayer for grant of ex-parte interim injunction, the learned Trial Court dealt with the facts as pleaded in the plaint. The prayer for grant of ex-parte injunction has been declined mainly on the ground that the period of five days granted to the respondent/plaintiff to vacate the hostel had already expired on 18.12.2014 at 12.00 noon i.e. by the time the prayer for grant of ex-parte injunction was heard by learned Trial Court.

8. On receiving the summons of the suit and notice of the application, learned counsel for the defendant appeared on 20.12.2014 and filed Vakalatnama.

9. Since the petitioners/defendants failed to file the written statement within the stipulated time, the defence was struck off on 01.04.2015 and matter was listed for ex-parte plaintiff's evidence on 08.05.2015.

10. When the case was listed for ex-parte plaintiff's evidence, the petitioners/defendants filed an application for review of the order dated 01.04.2015 as well application under Order VII Rule 11 CPC. Both the applications stand dismissed by the learned Trial Court vide impugned order dated 09.07.2014.

11. The thrust of contentions made by learned counsel for the petitioners before this Court is that the relief can only be claimed against Jawaharlal

Nehru University, which has not been impleaded as party, hence plaint is liable to be rejected.

12. Under Order I Rule 10 (2) CPC, at any stage of the proceedings the Court has ample power to strike out the name of any party who has been improperly joined or such person may be joined whose presence before the Court is necessary in order to enable the Court to fully or completely adjudicate upon and settle the questions.

13. If the petitioners feel that they are not necessary party in the Civil Suit No.354/2014, it does not call for rejection of the plaint as cause of action has to be ascertained from the facts pleaded in the plaint.

14. A bare perusal of the application under Order VII Rule 11 CPC shows that in para 4 the ground on which rejection of the plaint has been prayed is that the defendants/applicants have acted in their official capacity as officers of the University and all actions have been taken by the University, thus no relief is maintainable or available to the respondent/plaintiff against the petitioners/defendants.

15. While declining the prayer for rejections of the plaint under Order 7 Rule 11(a) CPC, the learned Trial Court has given the following reason:-

“.....It is relevant here to refer to clause (a) of Order VII Rule 11 of the Code of Civil Procedure under which a plaint must be rejected, where it does not disclose a cause of action”. There is a distinction that must be drawn between there being no cause of action and non-disclosure of a cause of action. The clause (a) of Rule 11 of Order VII of the Code is only applicable where the defendant is able to show that the plaint does not disclose a cause of action. On a mere perusal of the plaint and the supporting document, it cannot be said that prima facie no cause of action has been disclosed against the defendants/applicants. Order VII Rule 11 (a) of the Code of Civil Procedure is not applicable to a case where there is no cause of action. Further, the determination as to the question of absence of cause of action cannot be dealt with at this stage.

For that purpose, a detailed enquiry is needed which is to be done during the trial of the suit. If prima facie, a cause of action exists against a defendant, then the Court must proceed to decide the suit on merits. It is not competent for the Court to go into the correctness or otherwise of the allegations constituting the cause of action, this is beyond the purview of Order VII Rule 11 (a) of the Code, M.V. Sea Success I. v. L. & LSP & Indemnity Assocn, AIR 2002 Bom 151.

6. In light of the above, this Court is of the view that the contention of the applicants is without merits. Further, it is not shown if any other clause of Order VII Rule 11 of the Code of Civil Procedure is attracted in the present case. The application is, accordingly, dismissed.”

16. The scope of power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227 of Constitution of India. [Ref. *Waryam Singh & Anr. vs. Amarnath & Anr.* AIR 1954 SC 215 and *Mohammed Yusuf vs. Faij Mohammad & Ors.* I 2009 CLT 153 (SC)]

17. It is necessary to record here that in the application under Order VII Rule 11 CPC rejection of the plaint has not been claimed on the ground that

University has not been impleaded as a party. Learned Trial Court has considered the plaint not only on the first date of hearing when the prayer for grant of ex-parte injunction was declined but also while dismissing the application under Order VII Rule 11 CPC.

18. Legal position is well settled that the Trial Court is required to consider only the plaint as a whole to ascertain whether it discloses a cause of action. In the case Ponnala Lakshmaiah vs. Kommuri Pratap Reddy & Ors. (2012) 7 SCC 788, while exercising the power vested in the Court under Order VII Rule 11 CPC, the Apex Court emphasized that the courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed.

19. In Nahar Spinning Mills Ltd. vs. Vijay Hosiery Co. Ltd. & Ors. 129 (2006) DLT 50, the Co-ordinate Bench of this Court, after considering the decision of the Supreme Court in the case of Sopan Sukhdeo Sable v. Asstt. Charity Commr. AIR 2004 SC 1801, Roop Lal Sathi v. Nachhattar Singh Gill (1982) 3 SCC 487 and D. Ramachandran v. R.V. Janakiraman [1999] 1 SCR 983 and several other decisions, in para 18 of the report has held as under:

'The above discussion reveals that cause of action refers to a bundle of facts the existence of which entitles one person to obtain from the Court a remedy against the other. It must also be remembered that the pleadings must only contain a statement in a concise forms of material facts on which the party realise for his claim or his defense as the case may be but in the evidence by which they are to be proved. (see Order VI Rule 2(1)). It is also well settled that the plaint must be read as a whole to ascertain that it discloses a cause of action. The plaint cannot be defective and those portions which do not disclose cause of action cannot alone be rejected. Either the plaint survives in its entirety or is rejected in its entirety. If a

defendant states that no relief can be claimed against him on the averments contained in the plaint itself, he cannot ask for rejection of the plaint under Order VII Rule 11(a) as long as the plaint as a whole discloses a cause of action although against other defendants. Such a defendant can only, propose in both the provisions of Order I Rule 10 for seeking deletion of his name as a party to the suit....'

20. In the instant case, the learned Trial Court has already expressed its opinion that the plaint discloses cause of action. The defence of the petitioners/defendant has already been struck off. The case was at the stage of ex-parte evidence when the application under Order VII Rule 11 CPC was filed. The effect of non-joinder of Jawaharlal Nehru University as a party and whether the relief claimed in Civil Suit No.354/2014 is available against the petitioners/defendants, has to be considered by the learned Trial Court and not by this Court in exercise of its powers under Article 227 of Constitution of India.

21. The petition has no merits and the same is hereby dismissed.

22. Trial Court Record be sent back.

CM No.15819/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

OCTOBER 20, 2015

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