

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.773 of 2016**

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Rajesh Kumar

.... Appellant/s

Versus

Mahesh Kumar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 29-09-2016

Heard learned counsel, Mr. Binod Kumar, appearing
for the petitioner.

2. Perused the impugned order dated 16.07.2016 passed
in T.S. No. 188 of 2013 by the learned Sub-Judge-VI, Patna City,
whereby the learned court below rejected the application under
Order 7 Rule 11 C.P.C.

3. This application under Order 7 Rule 11 C.P.C. is
annexure-3. From perusal of the application, it appears that only
provision under Order 7 Rule 11 C.P.C. has been mentioned and
prayer has been made for rejection of the plaint as there is no
cause of action. This is the ground on which prayer for rejection of
the plaint is made. It may be mentioned here that “there is no
cause of action” is not a ground for rejection of the plaint. Order 7
Rule 11 C.P.C. provides that plaint can be rejected if the plaint
does not disclose a cause of action. The plaintiff has filed the suit

for specific performance of contract wherein the plaintiff has described bundle of facts entitling him to claim the relief for a decree for specific performance of contract.

4. So far application under Order 7 Rule 11 C.P.C. is concerned, the defence is that the entire money which was paid by the plaintiff to the defendant amounting to Rs. 14 Lakh has already been refunded by the defendant, therefore, the plaintiff has no cause of action. Again I may reiterate that the plaint has no cause of action is entirely a different matter and that can only be decided at the time of final hearing of the suit. It is not the case of the petitioner that the plaint does not disclose a cause of action.

5. The Hon'ble Supreme Court in the case of ***Liverpool & London S.P. & I Assn. ... vs M.V. Sea Success I & Anr.*** Reported in ***2004 (9) SCC 512*** has held that whether a plaint discloses a cause of action or not is essentially a question of fact. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed or not. In ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate inquiry into doubtful or complicated question of law or fact. By the statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown. So long as the plaint discloses the

some cause of action or raises some question fit to be decided by a Judge, mere fact that the case is weak and not likely to succeed is no ground for strike it out.

6. The Hon'ble supreme Court in the case of ***P.V. Guru Raj Reddy & Anr vs. P. Neeradha Reddy & Ors.*** reported in ***2015 (8) SCC 331*** has held that while exercising power under Order 7 Rule 11 C.P.C., only the averments in the plaint have to be read as a whole. Stand of the defendant in the written statement or in the application for rejection of the plaint is wholly immaterial at that stage.

7. In view of the settled principles of law, in my opinion, the application filed by the petitioner is frivolous and vexatious application. Thus, in my opinion, the learned court below has rightly rejected the application filed by the petitioner. Accordingly, this civil miscellaneous application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)