

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 14 OF 2016**

The Indian Performing Right Society
Limited, having its registered Office at
208, Golden Chambers, New Andheri
Link Road, Andheri (W), Mumbai, -
400 053, and having its Branch Office
at T-5, 3rd Floor, Mala, Panaji, Goa.

..... **Appellant.**

V/s

1) Kala Academy,
through its Member Secretary,
Campal, Panaji, Goa 403 001,

2) Mr. Abhishek Soman,
major of age, Flat No.501,
Sea Wing, Razvi Tower,
Near Pharmacy College,
Panaji, Goa 403001

..... **Respondents.**

Mr. Y.V. Nadkarni and Ms. Divya Shirgam, Advocates for the
appellant.

Mr. Amogh Prabhudessai, Additional Govt. Advocate for the
respondent No.1.

Mr. Ryan Menezes, Advocate for the respondent No.2.

CORAM :- F.M. REIS, J.

Date : - 24 JUNE 2016

ORAL JUDGMENT :

Heard Mr. V.Y. Nadkarni, learned Counsel appearing for the appellant, Mr. A. Prabhudessai, learned Additional Govt. Advocate for the respondent No.1 and Mr. Ryan Menezes, learned Counsel appearing for the respondent No.2.

2. Admit. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel. Notice was issued to the respondents also indicating that the appeal may be disposed of finally at the stage of admission.

3. Mr. Nadkarni, learned Counsel appearing for the appellant has assailed the impugned Order and Decree on the ground that the learned Trial Judge has erroneously come to the conclusion that the plaint filed by the appellant does not disclose a cause of action. The learned Counsel has pointed out that the learned Judge whilst passing the impugned order has only considered the averments at para 34 of the plaint, without considering whether the plaint disclosed a cause of action or not. The learned Counsel has taken me through the averments in the plaint to point out that essentially the claim of the

appellant is on the ground of infringement of copy right which had occurred at the Kala Academy,Goa on 27/02/2012 where it was alleged that there was such infringement which entitled the appellant to claim damages. The learned Counsel further points out that the learned Judge has only examined the truthfulness or otherwise of the cause of action pleaded in the plaint which is no ground for rejection of the plaint under Order VII, Rule 11 of the C.P.C.. The learned Counsel has, thereafter, taken me through the impugned order to point out that the learned Judge, without considering the plaint as a whole, has only considered the correctness or otherwise of the averments made in para 34 of the plaint to come to the conclusion that the respondents are entitled for the relief. In support of his submission, the learned Counsel has relied upon a Judgment of the Apex Court reported in AIR 2006 SC 1826 in the case of *Mayar (H.K.) Ltd., & ors. vs. Owners & Parties, Vessel M. V. Fortune Express & Ors.* and a Judgment reported in (2015) 8 SCC 331 in the case of *P.V. Guru Raj Reddy, represented by GPA Laxmi Narayan Reddy and another vs. P. Neeradha Reddy and ors..*

4. On the other hand, Mr. Ryan Menezes, learned Counsel

appearing for the respondent No.2 has supported the impugned order. The learned Counsel has pointed out that the learned Judge, on the basis of the material on record, has come to the conclusion that the alleged cause of action referred to and pleaded in the plaint could not give rise to any cause of action to the appellant to file the suit. The learned Counsel has pointed out that the cause of action pleaded in the plaint is erroneous and, as such, the learned Judge was justified to pass the impugned order. The learned Counsel further points out that the appellants have no locus standi to file the suit, nor can claim damages for infringement of copy right, as according to him, the appellants have no copyrights which have been infringed. The learned Counsel has taken me through the impugned order to show that there is no case made out for interference with the impugned order.

5. The learned Additional Government Advocate appearing for the respondent No.1 has submitted to the orders of this Court.

6. I have considered the submissions of the learned Counsel and I have also gone through the record. Rejection of the plaint in terms of Order VII, Rule 11 of the C.P.C.. can be allowed only in

cases where the plaint, read as a whole, does not disclose a cause of action. Correctness or otherwise of the averments pleaded in the plaint as the date when the cause of action arose, cannot be the only consideration to examine whether the plaint discloses a cause of action or not. On this count alone, the impugned order passed by the learned Judge cannot be sustained. Instead of examining the plaint as a whole to find out whether it discloses a cause of action, the learned Judge has embarked to examine the truthfulness or otherwise of the averments in the plaint disclosing the date of cause of action. These are not the aspects to be considered at the time of examining the application under Order VII, Rule 11 of the C.P.C.. Whether the appellants have a cause of action or not to file a suit, is a matter which will have to be examined based on defence of the respondents and after an appropriate issue on that count is framed by the Court. The view taken by me in this respect is supported by the Judgment of the Apex Court relied upon by Mr. Nadkarni, learned Counsel appearing for the appellants in the case of ***P.V. Guru Raj Reddy, represented by GPA Laxmi Narayan Reddy and another*** (supra), wherein it has been observed at para (5), thus :

“5. Rejection of the plaint under Order 7 Rule 11 of

CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

7. The same view was also taken by the Apex Court in the earlier Judgment in the case of *Mayar (H.K.) Ltd., & ors.* (supra), wherein it has been observed at para 11, thus :

“11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the

plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

Taking note of the said observations of the Apex Court, I find that the impugned Order passed by the learned Judge, rejecting the plaint under Order VII, Rule 11 of the C.P.C., cannot be sustained and

deserves to be quashed and set aside for the reasons stated herein below.

8. On perusal of the plaint, I find that the appellants have in the initial paragraphs pointed out the ground on which they are raising the claim to the copy rights and their locus to file such a suit. The plaint also discloses how it protects the individual copyrights owners from making unnecessary demands. It is further claimed that the appellants are entitled for a declaration that the respondents No.1 and 2 by holding and organizing an event on 27/2/2012, at Kala Academy have infringed the Copy Rights Act. It is further alleged that the appellants also are entitled for a permanent injunction. It is further alleged that the appellants had raised a demand asking the respondents No.1 and 2 to pay the outstanding amount of Rs.36,750/- as per invoice towards royalty for playing musical works to the public. It is further contended that the respondents No.1 and 2 have refused to pay such amount payable to the appellants. The appellants have also disclosed that they have a right to claim damages which have been specified at para 27 of the plaint. It is further alleged at para 34 that the cause of action to file the suit arose on 27/2/2012 when the respondents No.1

and 2 refused to comply with the terms of the legal notice.

9. Under Order VII, Rule 11 of the Civil Procedure Code, the Court has jurisdiction to reject the plaint when it does not disclose a cause of action. To examine whether the plaint discloses a cause of action, there has to be a meaningful and not formal reading of the plaint. To ascertain whether it does not disclose a clear right to sue, pleas taken by the respondents in the written statement would be wholly irrelevant at the stage of examining an application under Order VII, Rule 11 of the Civil Procedure Code. The pleadings in the plaint have to be construed as it stands without adding or subtraction of words or change of its apparent grammatical sense. Truthfulness alleged in the cause of action disclosed by the appellant cannot be examined whilst dealing with such an application. The contention of the respondents, in the present case, whilst filing an application under Order VII, Rule 11 of the Civil Procedure Code is essentially on the ground that the cause of action pleaded by the appellants is not correct as no notice was received as claimed by the appellants. These aspects cannot be examined whilst considering an application under Order VII, Rule 11 of the Civil Procedure Code. On reading the plaint as a

whole, I find that the finding of the learned Judge that it does not disclose a cause of action cannot be accepted. Truthfulness or otherwise of the allegations in the plaint would have to be examined after framing issues and proceeding to decide the suit, in accordance with law. The contention of Mr. Menezes, learned Counsel appearing for the respondent No.2 that there is no case made out for any infringement of copy right, or that the stated cause of action cannot give a cause to the appellant to file a suit, are matters which will have to be examined by the learned Judge on its own merits, in accordance with law.

10. In view of the above, the impugned Order dated 22/12/2015 is quashed and set aside and consequently, the application filed by the respondent under Order VII, Rule 11 of the C.P.C. stands rejected. All contentions of both the parties, on merits, are left open.

11. The appeal stands disposed of accordingly.

F. M. REIS, J.

ssm.