

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.32 OF 2015

1. Fortis Hospitals Limited,
154/9, Bannerghatta Road,
Bangalore 560 076.
2. Dr. Vivek Jawali,
Director & Chief Cardio
Vascular and Thoracic Surgeon,
Fortis Hospitals Limited,
154/9, Bennerghatta Road,
Bangalore 560 076.
3. Shri Abhinandan N. Dastenavar,
R/O D2, Shanti Enclave,
10th Main, 11th Cross,
Marutinagar, Malleshpalya,
Bangalore 560 075.
4. Dr. Selwyn Colaco,
Head Medical Affairs,
Fortis Hospitals Limited,
154/9, Bannerghatta Road,
Bangalore 560 076. Petitioners
(All Petitioners are represented through
its authorised signatory Mr. V. Vijayarathna)

V e r s u s

1. Antonieta Ribeiro e Souza,
75 years of age, housewife,
Indian National and her husband
2. Jose Feliciano de Souza,
75 years of age, both residing of
Models Exotica, Building 5,
UG-1, St. Inez, Panaji,
Tiswadi, Goa.

3. State of Goa,
through Chief Secretary,
Secretariat, Porvorim,
Bardez, North Goa District,
Goa.
4. Directorate of Health Services,
Head Office, Campal,
Panaji, Tiswadi,
North Goa District, Goa. ... Respondents

Shri V. Menezes, Advocate for the Petitioners.

Shri A. Prabhudessai, Additional Government Advocate for
Respondent nos.3 & 4.

Shri A. D. Bhole, Advocate for the other Respondents.

CORAM: C. V. BHADANG, J.
Reserved on: 26/9/ 2016.
Pronounced on: 18/10/2016.

JUDGMENT :

Admit. The learned counsel for the respondent nos. 1 and 2 and the learned Additional Government Advocate for the respondent no.3 waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 25/3/2015 passed by the learned District Judge at Panaji in

Civil Suit No.38/B, by which the learned District Judge has refused to reject the plaint under Order 7 Rule 11 of Code of Civil Procedure 1908 (CPC) has been dismissed.

2. The brief facts necessary for the disposal of the petition can be stated thus:

The respondent nos.1 and 2 are the plaintiffs, who have filed the aforesaid civil suit for recovery of money and compensation against the petitioners (original defendant nos. 1 to 4) and the respondent nos. 3 and 4 (defendant nos. 5 and 6). The case made out in the plaint is that the respondent no.1 was suffering from Degenerative Aortic Valve Disease and had consulted the petitioner no.2 Dr. Vivek Jawali, Director and Surgeon attached to Fortis Hospitals Ltd., Bangalore. The consultation was done in clinic of Dr. Francis Colaco at Margao on 26/9/2010. Dr. Vivek advised the respondent no.1 to undergo an open heart surgery in Fortis Hospitals at Bangalore. She was advised to meet the petitioner no.3, who was Marketing Manager of the petitioner no.1 hospital at the relevant time. The respondent no.1 informed that she has to deposit a sum of Rs.4.00 lakhs

by way of demand draft, on arrival at the hospital as security deposit and if the respondent no.1 is entitled to benefit under the Goa Government medical scheme then the demand draft would not be encashed and would be returned. The cost of the operation and treatment was estimated at Rs.1,50,000/-. The respondent no.1 obtained the entitlement under the mediclaim scheme of the Government of Goa as per the letter dated 30/9/2010 by the respondent no.4 herein under which the cost of the operation and treatment to the extent of Rs.1,50,000/- or actual hospital expenses were payable.

3. It is contended that the respondent nos.1 and 2 with great difficulty managed to raise an amount of Rs.4.00 lakhs and a demand draft dated 4/10/2010 for Rs.4.00 lakhs favouring the petitioner no.1 hospital was drawn. The date of the surgery was fixed as 11/10/2010. The respondent no.1 got herself admitted in the hospital on 8/10/2010, when she was put in a multi-bedroom no.643, (L-6, NS-2/1) with a common toilet. The respondent nos.1 and 2 were told that it was a common room for the patient and their attendant who

are covered under the Government of Goa medi-claim scheme.

4. Respondent nos. 1 and 2 were given a cardiac estimate sheet for Rs.2,29,000/-, which according to the respondent nos.1 and 2 was on a higher side. The respondent nos. 1 and 2 were told that this is considering the probable eventualities that could arise in exceptional case and in all ordinary circumstances the cost would be Rs.1,50,000/-. On 9/10/2010 a revised estimate for Rs.1,48,700/- was given.

5. It is the material case that on 10/10/2010 the respondent no.2 (who is the husband of the respondent no.1) was asked to sign a discharge sheet although the respondent no.1 continued to be placed in the same multi- bedroom bearing no.643. They were informed that this was a mere formality. The respondent no.1 was eventually operated on 11/10/2010 and was discharged on 23/10/2010 when they were presented with a bill of Rs.4,36,639/-. The respondent nos. 1 and 2 were shocked to see the actual bill which was much higher than the estimated amount of Rs.1,48,700/-.

6. On 24/11/2010 the respondent no.1 submitted the original bills for reimbursement with the Government of Goa which claim was rejected on the ground that the respondent no.1 had taken treatment in a Delux twin sharing room. It is the material case that the respondent no.1 had through out been treated and remained in the multi -bedroom no.643. The respondent nos. 1 and 2 on inquiry learnt that in a letter dated 24/11/2011 written by the petitioner/hospital to the Joint Director of Accounts, it was claimed that the respondent no.1 had requested for a deluxe twin sharing room of her choice even before the surgery was conducted. According to the respondent nos. 1 and 2 cost of the operation and treatment could not have exceeded Rs.1,50,000/- which was entitled to be reimbursed under the medical reimbursement scheme. The respondent nos.1 and 2 claim that the petitioner herein had conspired in claiming that the respondent no.1 had received treatment in Delux Twin sharing room when she was treated in a multi- bedroom. It appears that the respondent no.1 had lodged a complaint on the basis of which a F.I.R was registered with the Police

Station Panaji, (which has since been quashed by this Court in Criminal Writ Petitions no.37/2014, 43/2014 and Criminal Writ Petition no.61/2015). In short, it is the case that the act of the petitioner in advising the respondent no.1 to go for an urgent open heart surgery and to carry a demand draft of Rs.4.00 lakhs and later treating the respondent no.1 as a private patient showing that she was placed in a Delux twin sharing room instead of a multi-bedroom and extracting a sum of Rs.4,36,639/- amounts to mis- representation and fraud. In such circumstances the respondent nos.1 and 2 are claiming an amount of Rs.4,36,634/- jointly and severally against the petitioners and respondent nos.3 and 4 along with compensation of Rs.5.00 lakhs against the petitioner.

7. The petitioners filed written statement and opposed the the claim on various grounds. The petitioner nos.1, 2 and 4 filed an application Exhibit 15 under Order 7 Rule 11 (d) CPC for rejection of the plaint on the ground that the trial Court lacks territorial jurisdiction to entertain the suit, the suit is barred by limitation as the respondent nos.1 and 2 have allegedly been induced to prepare the demand draft on

26/9/2010 and the suit is filed on 5/10/2013, that the suit suffers from mis-joinder of causes of action, as the alleged cause of action against the petitioners and the respondent nos.3 and 4 is distinct. The petitioner no.3 filed a similar application Exhibit 25 for rejection of the plaint on the ground that it does not disclose any cause of action.

8. The respondent nos. 1 and 2 opposed the said applications on the ground that a significant part of the cause of action has arisen in Goa. The Respondent nos. 5 and 6 have their offices situated within the territorial limits of the jurisdiction of the trial Court. The plaint elaborately discloses cause of action as having accrued on 8/10/2010 and the suit having been filed within three years thereof, is within limitation. It was contended that the ground about mis-joinder of causes of action, cannot be entertained, under Order 7 Rule 11 of C.P.C.

9. The learned District Judge by the impugned order has dismissed both the applications, which order is subject matter of challenge in this revision application.

10. I have heard Shri Menezes, the learned counsel for the petitioners and Shri Bhobe the learned counsel for respondents nos.1 and 2. I have also heard Shri Prabhudessai, the learned Additional Government Advocate. With the assistance of the learned counsel for the parties I have perused the record and the impugned order passed.

11. It is submitted by the learned counsel for the petitioners that the petitioner no.2 (defendant no.2) is only a surgeon working with the petitioner no.1 hospital. It is submitted that as per the plaint allegations, it is the case of the respondent nos.1 and 2 that the inducement by the petitioner no.2 was at the clinic of Dr. Francisco Colaco at Margao on 26/9/2010. It is submitted that the suit claim is entirely based on the alleged fraud and mis-representation played on the respondent nos.1 and 2. It is submitted even according to the respondent nos.1 and 2, the alleged fraud and inducement was on 26/9/2010 and the suit having been filed beyond 3 years thereof would be barred by limitation. The learned counsel submitted that the date of admission in

the hospital i.e 8/10/2010 cannot be the accrual of cause of action. He submits that, if that be the accrual of cause of action, it was at Bangalore and the suit in that event would not lie before the learned District Judge at Panaji-Goa. The learned counsel was at pains to point out that the respondent nos.1 and 2 are trying to create an illusion of cause of action to bring the suit within the territorial jurisdiction of the Court at Goa and also to show that the suit is within limitation. The learned counsel has pointed out that for the purpose of limitation, the cause of action is claimed to have accrued on 8/10/2010 (which would be at Bangalore), while for the purpose of bringing the suit within the territorial jurisdiction, it is claimed that the inducement and misrepresentation was first practiced on 26/9/2010 at the clinic of Dr. Colaco at Margao. It is submitted that the suit is vexatious and does not disclose cause of action nor can it be said to be within limitation. He submits that there is also mis-joinder of causes of action, as the claim against respondent nos. 3 and 4 has no relevance to the alleged claim made against the petitioners. It is submitted that the prosecution against the petitioner nos. 2 and 4 and Mr. Karthik Rajgopal, the Zonal

Director of Petitioner no.1 has already been quashed by this Court. The learned counsel has placed reliance on the decision of the Supreme Court in the case of **Church Of Christ Charitable Trust and Educational Charitable Society vs M/S. Ponniamman Educational Trust (2012) 8 SCC 706**. He submits that the learned District was in error in refusing to reject the plaint.

12. On the contrary, it is submitted on behalf of the respondent nos. 1 and 2 that while considering an application under Order 7 Rule 11 of C.P.C. the Court has to confine to the averments made in the plaint and they have to be taken at their face value. It is submitted that the veracity of the submissions made in the plaint cannot be gone into at this stage. It is submitted that vide para 32 of the plaint the cause of action is shown to have accrued on 8/10/2010 and the suit having been filed on 5/10/2013 is well within limitation under Article 113 of the Indian Limitation Act. The learned counsel was at pains to point out that Order 7 Rule 11 speaks of 'disclosure of cause of action' and not its 'accrual'. In other words, it is submitted that once the plaint 'discloses'

a cause of action, the Court will have to abide by the same at the stage of consideration of an application for rejection of the plaint. It is submitted that the ground of want of territorial jurisdiction and mis-joinder of cause of action, are not the grounds which can be considered under Order 7 Rule 11 of C.P.C.. On behalf of the respondents reliance is placed on the decision of **Saleem Bhai and others AIR (2003) SC 759, Prem Lala Nahata and another Vs. Chandi Prasad Sikaria**, AIR 2007 SCC 1247 (1) and the decision of this Court in F.A. No.190/2008 M/s. Dom Fransciso Flat Owners Co-operative Housing Society Ltd. Vs. M/s. Alfran Constructions Pvt. Ltd. And others dated 2/5/2014. It is submitted that the impugned order does not suffer from any infirmity so as to require interference.

13. I have carefully considered the rival circumstances and the submissions made. The learned District Judge has found that the cause of action has partly arisen in Goa and partly in Bangalore. It has been found that the respondent nos.3 and 4 are having offices in Goa and want of territorial jurisdiction and misjoinder of parties is not a ground

available under Order 7 Rule 11 of C.P.C. In so far as the question of limitation is concerned, it has been found that the suit is filed within 3 years of 8/10/2010 i.e. when the cause of action is said to have accrued.

14. It is now well settled that while considering an application under Order 7 Rule 11 of C.P.C, the Court has to confine itself to the allegations in the plaint and the defence, if any, is irrelevant and cannot be looked into (see the case of **Saleem Bhai**. At the same time the Court has to see whether by a clever drafting an illusion of cause of action is being created as held by the Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust (supra)**. In the said case the Hon'ble Supreme Court has noticed its earlier decision in the case of **T. Arivandandam, Petitioner Vs. T. V Satyapal and another, respondents, AIR 1977 SC 2421**, in which it has held thus in para 5 of the judgment :

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the

judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The [Penal Code](#) (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

15. It has been further held as under:

“It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J, in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.”

(Emphasis supplied)

16. It can thus been seen that an illusion of cause of action by camouflaging the fact has to be guarded against and the Court would be perfectly within its powers to go through the plaint, and on a meaningful and not formal, reading of the plaint, to find out, whether there is a right to sue or whether there is an illusion of a cause of action created. In the later case, the Court is duty bound to nip the suit in bud in exercise of its jurisdiction under Order 7 Rule 11 of CPC.

17. In the case of **Prema Lala Nahata**, the Hon'ble Supreme Court has held that the effect of mis-joinder of parties and causes of action is not a ground of rejection of the plaint under Order 7 Rule 11(d). Thus I propose to confine the consideration only on the ground of the suit being barred by limitation. The Hon'ble Supreme Court has held in the case of **Hardesh Ores Pvt. Ltd. Vs. M/s. Hede and Company (2007) 5 SCC 614** has held that a plaint can be rejected under Order 7 Rule 11(d) of C.P.C. as being barred by limitation.

18. Coming back to the present case, it would be worthwhile to reproduce the averments in paras 27 and 29 of the plaint as under:

"27. All acts of the defendants of advising the Plaintiff No.1 to go for an urgent open heart surgery, asking her to carry Demand Draft of Rs.4,00,000/- in favour of the Defendant no.1 Hospital despite of her being covered under the Government of Goa Medi-claim Scheme, obtaining

signature of the Plaintiff no.2 on discharge summary on 10/10/2010 even before the surgery had been performed, later billing the Plaintiff No.1 as a private patient and extracting altogether a sum of Rs.4,36,639/- (rupees four lakhs thirty six thousand six hundred and thirty nine only) an showing the plaintiff no.1 as having used Deluxe Twin Sharing Room instead of multi-bedroom, amounts to misrepresentation and fraud on the part of the defendants. The total cost of the treatment under no circumstances could not have exceeded Rs.1,50,000/- (rupees one lakh fifty thousand only), for which amount the plaintiff No.1 was covered under the Government of Goa Medi-claim Scheme.

29. Due to the fraud and misrepresentation played by the defendants, the plaintiff have had to undergo immense mental stress and trauma. The plaintiff no.1 also had to unduly suffer hospitalization for about 15 days when not more than five days was required. The plaintiff no.2 has had to rum around to raise a huge sum of Rs.4,00,000/- (rupees four lakhs only)

within a short period of time. The plaintiff no.2 has also had to live under immense stress for 15 days during the unnecessarily protracted hospitalization of the plaintiff no.1 in Bangalore. The plaintiff are therefore entitled to compensation of Rs.5,00,000/- (rupees five lakhs only) from the defendants jointly and severally."

19. It can thus be seen that the entire basis of the claim made by the respondent nos.1 and 2 is alleged fraud and misrepresentation said to be practiced by the petitioners. According to the respondent nos.1 and 2 this started from the point, where they were advised that the respondent no.1 has to go for an urgent open heart surgery and asking her to carry a demand draft of Rs.4.00 lakhs in favour of the petitioner no.1, hospital despite of her being covered by the Goa Medical-claim Scheme. The respondent nos.1 and 2 have accordingly consulted the petitioner no.2 in the clinic of Dr. Colaco at Margao on 26/9/2010. Thus the date on which the alleged mis- representation and fraud was practiced would be 26/9/2010 and in that event the suit would be barred by limitation. There may be several subsequent events which

have occurred till the time when the claim of the petitioners for reimbursement, was rejected by the Government. Such developments may include (i) the visit of the respondent nos.1 and 2 to the petitioner hospital at Bangalore, (ii) the respondent no.1 getting admitted on 8/10/2010, (iii) the petitioners having obtained signature of the respondent no.2 on the discharge card on 10/10/2010, (iv) the respondent no.1 getting operated upon, followed by her discharge on 26/10/2010. This in my considered view cannot constitute the cause of action for filing the suit. The representation and the inducement allegedly made to the respondent nos.1 and 2 is on 26/9/2010. This is where the respondent nos.1 and 2 by a clever drafting are trying to create an illusion about, the accrual of the cause of action and the territorial jurisdiction. For the purpose of bringing the suit within the territorial jurisdiction of the Court at Goa, it is claimed that the fraud and mis-representation was practiced on 26/9/2010 at the clinic of Dr. Colaco at Margao and for bringing the suit within limitation, it is claimed that the cause of action accrued on 8/10/2010 when the respondent no.1 got herself admitted in the hospital at Bangalore. I am

conscious of the fact that the rejection of the plaint entails serious consequences and such an order can be passed. I am also conscious of the fact that the Court has to confine itself to the allegations in the plaint. However, at the same time it needs to be emphasized that the Court has to meaningfully read the plaint and then decide whether the plaint is liable to be rejected. The contention on behalf of the respondent nos.1 and 2 that the provisions only pertain to 'disclosure of cause of action', cannot be accepted. The disclosure as contemplated within the meaning of Order 7 Rule 11 of CPC is not mere mention in the plaint. The cause of action must be discernable from the allegations made in the plaint, which would amount to disclosure. Thus in my considered view the learned District Judge fell into error in holding that the suit was within limitation. It is not necessary to go into the question whether a suit can be dismissed in part or against some of the defendants. This is because once it has been found that the suit would be barred by limitation, the same cannot be dismissed in part. In the result the following order is passed:

ORDER:

The Revision application is allowed. The impugned order is hereby set aside. The applications at Exhibits 15 and 25 are hereby allowed. The plaint stands rejected. In the circumstances there shall be no order as to costs.

C. V. BHADANG, J.

Ap/