IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 41 OF 2015

M/s Cyrus Marine Services,
Sole Proprietary Concern of
Ms. Prity Bharucha,
Indian National, Major in age,
Business-woman,
Having her place of business at S-43,
Ground Floor, Sapana Terraces,
Swatantrya Path,
Vasco-Da-Gama, Goa – 403 802. … Petitioner

Versus

K.A. Shivaraman,
Sole Proprietor of M/s Siddhi Engineering,
Indian National, major in age,
Businessman, resident of H.No. 2/638(1),
Near Pai Hospital, Vaddem,
Vasco-Da-Gama, Goa – 403 802. … Respondent

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Mr. Balkrishna P. Sardessai, Advocate for the Petitioner.

Mr. Bhargav M. Khandeparkar, Advocate for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 13th JANUARY, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. This revision application challenges the order passed by the learned Additional Senior Civil Judge, Vasco on 02.11.2015 in Regular Civil Suit No. 56/2014/A, thereby rejecting the application of the petitioner filed under Order 7 Rule 11 of C.P.C. seeking rejection of the plaint. A suit has been filed by the respondent against the petitioner, claiming that under the contract given by the petitioner to the respondent for carrying out repairs to vessels, different bills were raised upon the petitioner claiming various amounts from the petitioner. These bills have been given in details in paragraph 4 of the plaint. According to the respondent, the total amount of these bills is Rs.22,08,196/- against which, the respondent admits that he has received the payment of Rs.9,94,619/- from the petitioner. The respondent claims that as the remaining amount is still outstanding, the respondent has filed a suit for recovery of amount of Rs.12,13,577/-.

3. The petitioner filed an application under Order 7 Rule 11 contending that the averments in the plaint do not disclose any cause of action and it is not known as to when the amount of Rs.12,13,577/- was claimed and demanded by the respondent from the petitioner and when the same was refused

by the petitioner. This application was resisted by the respondent submitting that the averments in the plaint are clear enough to disclose the cause of action in the suit.

4. After hearing both the sides, the learned Senior Civil Judge rejected the application on the ground that issue of bar of limitation would have to be decided after framing of issue and the perusal of the plaint clearly showed that there was cause of action to file the suit. Not satisfied with this order passed on 02.11.2015, the petitioner has filed the present Civil Revision Application.

5. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent. With their assistance, I have gone through the paper book of this application. The only question that arises for my determination is that, "Whether the discretion exercised by the learned Senior Civil Judge in rejecting the application filed by the petitioner under Order 7 Rule 11 of C.P.C. is perverse and arbitrary ?"

6. The learned Counsel for the petitioner has taken me through the averments made in the plaint to support his

argument that nowhere the plaint discloses any cause of action to file the present suit. It is submitted that there has to be some demand made by the plaintiff/respondent, which is refused by the petitioner/defendant. It is further submitted that this is the basic ingredient that goes into the bundle of facts constituting cause of action in a suit of the present nature and it is lacking and therefore, the plaint deserves to be rejected for non disclosure of cause of action.

7. The learned Counsel for the respondent submits that the cause of action is clearly disclosed by the averments made in the plaint itself and it is evident from the pleadings contained in paragraphs 4, 8, 9 and 11 of the plaint. He submits that it has been very specifically stated by the respondent that various bills totalling 11 in number have been raised from time to time by the respondent, upon the petitioner and from out of the total amount of these bills, which is of Rs.22,08,196/-, the petitioner has only paid an amount of Rs.9,94,619/- and the remaining amount of Rs.12,13,577/- is still outstanding against the petitioner. He submits that in the light of the facts that the bills were raised, that some amount of these bills i.e. the amount of Rs.12,13,577/- has been averred to be outstanding against the

petitioner, together with the fact that the work of repairs was carried out to the vessels by the respondent would themselves show that cause of action has been disclosed in the plaint. He submits that if, any amount is stated to be outstanding in a running account against the petitioner i.e. the defendant, which is maintained by the respondent i.e. the plaintiff, in regular course of business, it would be enough for disclosing cause of action for filing of a suit. These facts are sufficiently disclosed and therefore, he submits that there is no warrant for making any interference with the impugned order.

8. Learned Counsel for respondent has pointed out that a period of three years is prescribed for filing a suit relating to sums due on the executed works as mentioned under Article 18 of the Limitation Act and the suit is filed well in time from arising of cause of action. The learned Counsel for the respondent has relied upon the case of **M/s V.K. Aggarwal and Company Vs. Bhuma Niketan** decided by the learned Single Judge of the Punjab and Haryana High Court.

9. Before dealing with arguments of both sides, a reference to relevant provisions of law is necessary. The

relevant provisions contained under Order 7 Rule 11(a) of C.P.C. read thus:

> "**11. Rejection of plaint.-** *The plaint shall be rejected in the following cases:—*
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> *(a) where it does not disclose a cause of action;*
>
> *(b) ….*
>
> *(c) ….*
>
> *(d) ….*
>
> *(e) ….*
>
> *(f) ….”*

10. It is clear from these provisions that what is necessary is that the plaint, from the pleadings contained therein, must disclose cause of action, failing which the plaint is liable to be rejected. It is well settled law that what is to be considered is not the existence of cause of action but, disclosure of cause of action. This would mean that for the purposes of this section, a Court is not required to examine the question as to whether or not there exists a cause of action and has only to see from the plain reading of averments in the plaint whether or not the plaint discloses any cause of action. In other words, it is not permissible for the Court to go into merits of the issue and

the Court has to consider the issue only on the basis of pleadings in the plaint, pure and simple, as held in the case of **Saleem Bhai and Others Vs. State of Maharashtra and Others**, (2003) 1 SCC 557. Consideration of the pleadings has to be made as a whole and in a meaningful way. It should not be done in a formal way. If such thorough reading of the plaint does not disclose a clear right to sue, the Court must exercise the power under Order 7 Rule 11 of C.P.C. (See **T. Arivandandam Vs. T.V. Satyapal and Another**, (1977) 4 SCC 467).

11. In the instant case, several bills demanding payment for repairs carried out to vessels have been raised and it is also contended in the plaint that some amount, out of the total amount of these bills, has not been received. These facts taken together would only hint at possibility of cause of action but, not the cause of action itself. The question is whether these facts taken together would clearly disclose any cause of action, would have to be considered in the context of the conduct of the petitioner/defendant. If the conduct of the defendant i.e. the petitioner in this case is such as would show that he has failed or neglected to pay the outstanding amount of the bills inspite

of the demand made to the petitioner by the respondent i.e. the plaintiff, then, it would result in giving rise to and disclosure of cause of action. Thus, till the time something is indicated by the plaintiff to the defendant regarding an action to be taken by him in clearing the outstanding amount, which in the opinion of the plaintiff, is outstanding against the defendant and the defendant fails or neglects to comply, it cannot be said that any cause of action has been disclosed. Plainly said, there has to be a pleading in the plaint that demand was made and it was refused or neglected. Merely raising of bills in a running account is not enough as bills are continued to be raised and continued to be paid and, therefore, it is necessary that the plaintiff informs the defendant of the specific amounts not paid and makes a demand for payment. Unless, this is done, the defendant would not know what exactly is the demand of the plaintiff which he has to meet. Of course, correctness of the demand or otherwise is a matter of merits. But, demand of money and refusal or neglect to pay is a must and disclosure of the same in the plaint in a money suit or suit based on accounts would constitute what is called "disclosure of cause of action" within the meaning of Order 7 Rule 11(a) of C.P.C. and would disclose a clear right to sue.

12. In the instant case, there are various pleadings in the plaint as contained in paragraphs 8 to 11, in particular, in paragraph 14 of the plaint. I do not find any averments regarding giving of any indication by the respondent to the petitioner that an amount of Rs.12,13,577/- was outstanding against the petitioner out of the total payment of the bills raised by the plaintiff, which the defendant has refused or neglected to clear and pay. In fact, there is not a single averment of the fact that the petitioner has refused to make payment of Rs.12,13,577/-. If no such averment is made in the plaint, the only inference that can be made is that no cause has been shown in the plaint to take recourse to remedy provided under law and this is what amounts to non disclosure of cause of action. Raising of bills as said earlier and some of them remaining outstanding without defendant being made known the exact amount outstanding against him would not indicate cause of action. The need for resorting to legal remedy arises only when there is a refusal or neglect on the part of the defendant to abide by the demand or meet the expectation of the plaintiff. There being no such pleadings made in the plaint, no right to sue is disclosed in clear terms and so there is non compliance

with the requirements of Order 7 Rule 11(a) of C.P.C. in this case.

13. As regards the case law relied upon by the learned Counsel for the respondent, I must say that the ratio of this case is on a different issue. It relates to the running of limitation period in terms of Article 18 together with Article 113 of the Limitation Act, 1963 for filing of a suit based upon some documents and execution of work contract. The issue involved in the present case is not one of period of limitation or bar of limitation but is of non disclosure of cause of action. Therefore, I do not find that the ratio of this case would be of any assistance to the respondent here.

14. All the material aspects of the case, as discussed earlier for determining as to whether or not cause of action has been disclosed in the plaint, have not been considered by the learned Civil Judge. Therefore, I find that the order is perverse and arbitrary. It cannot be allowed to stand. In the circumstances, the Writ Petition is allowed. The impugned order is quashed and set aside. The application filed under Order 7 Rule 11 of C.P.C. is allowed. The plaint stands rejected.

15. Rule is made absolute. The Civil Revision Application stands disposed of.

S. B. SHUKRE, J.

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