

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL REVISION APPLICATION NO.65 OF 2016

(Smt. Shobha wd/o Arun Pohare ..vs.. Smt. Jyoti w/o Dattatraya Ashtaputre)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 04-10-2016

Heard Shri N.B. Kalwaghe, Advocate for the
applicant/original defendant No.2.

2. The applicant has challenged the order passed by the trial Court rejecting the application (Exhibit No.96) filed by her under Order VII Rule 11(a) of the Code of Civil Procedure praying that the plaint be rejected as it does not disclose any cause of action against her.

3. The plaintiff has filed the civil suit praying for decree for recovery of amount of Rs.9,39,300/- alongwith interest. The defendants filed written statement and the matter proceeded and after the evidence started and evidence of the plaintiff is recorded, the defendant No.2 filed the application (Exhibit No.96) contending that according to the plaintiff, she requested the defendants to pay the amount claimed by her with interest, however, the defendants had not paid any heed to the request of the plaintiff and therefore, she issued

notice and filed proceedings under the Consumer Protection Act, 1986, in which proceedings directions were given to the defendants to refund the amount, however, that order is challenged by defendant No.2 in revision which is pending, that Shri Arun Pohare expired on 23-04-2008 and the defendant No.1(C), 2 and 3 being his legal heirs have inherited his property and are liable to pay the amount to the plaintiff.

According to the defendant No.2, she has not received any notice as alleged by the plaintiff and she was not impleaded as party in the proceedings before the District Consumer Disputes Redressal Forum. It is submitted that as there is no demand by the plaintiff against the defendant No.2, there is no cause of action for the civil suit against the defendant No.2. The learned Advocate has argued that the trial Court that the trial Court has committed an error in recording that the filing of suit against the defendant No.2 itself amounts to demand and therefore, plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure. It is further submitted that the plaintiff has tried to create an illusion of cause of action by clever and crafty drafting and it is the duty of the Court while considering an application under Section VII Rule 11(a) of the Code of Civil Procedure to pierce the veil and examine whether the cause of action alleged by the plaintiff in fact exists or is illusory.

3. It is well settled that at the stage of considering the application under Order VII Rule 11 of the Code of Civil Procedure, the averments in plaint are required to be seen and the defence or averments in written statement cannot be considered. The plaintiff has stated that notice was issued by her to the defendants which includes defendant No.2 also. The plaintiff has stated that proceedings under the Consumer Protection Act, 1986 were filed before the District Consumer Disputes Redressal Forum and the order passed in the proceedings is challenged by the defendant No.2 in revision. The plaintiff has stated that defendant No.2 is legal heir of Shri Arun Pohare and has inherited the property of Shri Arun Pohare and therefore, she is liable to pay the amount.

4. Considering the above pleadings, it cannot be said that the plaint does not disclose cause of action against the defendant No.2. It may be that ultimately the plaintiff may not be able to prove her claim against the defendant No.2, however, the plaintiff cannot be non-suited under Order VII Rule 11(a) of the Code of Civil Procedure.

5. Though the learned trial Judge has made some observations which may not be in consonance with the legal position, however, the final order passed by the learned trial Judge cannot be faulted with. It cannot be

said that any illegality or error of jurisdiction is committed by the learned trial Judge while passing the impugned order. I see no reason to interfere in the matter.

The civil revision application is dismissed. No Costs.

JUDGE

adgokar

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar.

Uploaded on : 10-10-2016.

P.A. to Hon'ble Judge.