THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION NOs.4619, 4676 AND 4692 OF 2015

COMMON ORDER:

These three revisions can be disposed of by a common order, as the same petitioners have instituted these revisions. Further, the second respondent in all the three revisions is one and the same company while the first respondent in C.R.P.No.4619 of 2015 and C.R.P.No.4692 of 2015, is one and the same while his wife was the first respondent in C.R.P.No.4676 of 2015.

The petitioners herein, who are defendants 2 and 3 in the suits, have filed three different interlocutory applications with identical prayers to reject the plaint in the respective suits, under Order VII Rule 11 C.P.C.

The first respondent in each of these revisions is the plaintiff concerned. The respective suits have been instituted seeking recovery of money. It is the specific case in the suit that the first defendant company acting through its Managing Director, the first petitioner in all the three revisions herein, has issued certain cheques for payment of monies due, but however, those instruments have been returned unpaid by the banker and hence, the suits for recovery of money were instituted. The first defendant in the suit is the company while the second defendant was its Managing Director and the third defendant was the Director of the said company. As was noticed supra, defendants 2 & 3 in the respective suits filed interlocutory applications for rejecting the plaint on the ground that they have unnecessarily and without any justifiable cause or reason has impleaded to the respective suits. Those applications have been dismissed on the ground that under Order VII Rule 11 C.P.C, the plaint can be rejected at any time only for the circumstances set out in Clauses (a) to (f) mentioned therein, but not on the ground of misjoinder of parties.

Order VII contained in the first schedule of the C.P.C dealt with all aspects relating to plaints. Rule 2 of Order VII requires the plaint to set out the precise amount claimed in the suit where the suit is instituted for recovery of money. Rule 5 of Order VII requires the plaint to show as to how the defendant is interested in the subject matter and as to how he is liable to be called upon to answer the plaintiff's demand. Rule 11 dealt with rejection of the plaint and sets out the cases in which such rejection of plaint can be ordered. Clause (a) refers to where the plaint does not disclose a cause of action. Clause (b) refers to a case where the relief claimed is undervalued, and the plaintiff upon being required by the Court to correct the valuation fails to do so within the time fixed by the Court. Clause (c) refers to a situation where the relevant claim is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff fails to supply the requisite stamp paper within the time fixed by the Court. Clause (d) refers to where the suit appears from the statement in the plaint to be barred by any law. Clause (e) deals with failure to file a duplicate copy, while Clause (f) deals with failure of the plaintiff to comply with the provisions of Rule 9 which requires, as many number of copies of the plaint on a plain paper to be made available, as there are defendants to be served along with the requisite fee for service of summons on the defendants. Excepting for these grounds, a plaint cannot be rejected for other grounds. In the instant case, Clauses (b), (c), (e) & (f) have no applicability and hence, we are not required to examine the effect of those Clauses. The question, therefore is whether, the plaint has not disclosed any cause of action or whether from the statement made in the plaint, it can be said to have been barred by any law, get attracted or not. The plea of the petitioners/defendants 2 & 3 is that, for the nature of transactions carried out by and between the plaintiff and the first defendant company, defendants 2 & 3 are not necessarily required to be impleaded to the suit and hence, it is a case of misjoinder of parties.

The first defendant in the suit is a company of which, the second defendant/petitioner No.1 herein is the Managing Director, whereas, the second petitioner/third defendant is its Director. Therefore, at this stage, it is so difficult for one to come to a firm conclusion that they are unnecessary parties to a suit for recovery of money. Every company acts through its Managing Director. It is in fact, the Managing Director of the first defendant company, who, it is alleged, who has issued the cheques towards repayment of the monies due to the plaintiff concerned. Therefore, impleading the Managing Director of the first defendant company to the suit cannot be described as impleadment of an unnecessary party. It is the case of the plaintiff that, the third defendant is the Director of the first defendant company. If, that be so, the role of the third defendant in carrying on the affairs of the first defendant company can also fall for examination in a given case. Therefore, it cannot be said that impleading the third defendant to the suit is in any manner wrongful. At any rate, an issue can be settled, for trial, as to whether defendants 2 & 3 are proper and necessary parties to the suit, so that the apprehensions of the petitioners herein can be addressed.

It is a settled principle of law that for purposes of deciding an application moved under Order VII Rule 11, the averments contained in the plaint are only material which can be examined and the pleas taken in the written statement are wholly irrelevant.

It is apt to notice the following principles, as spelt out in ***Sopan Sukhdeo Sable and ors. vs. Assistant Charity Commissioner and Ors.***[1]***:***

> "10. In Saleem Bhai and Ors. v. State of Maharashtra and Ors. MANU/SC/1185/2002 : [2002]SUPP5SCR491 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and

(d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors. MANU/SC/0968/1998 : AIR1998SC634 it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

The principal objective behind this rule is only to keep away irresponsible law suits out of Courts and to weed out unnecessary and frivolous litigation. The material on record does not clearly indicate that the case falls in Clauses (a) or (d) of Rule 11, Order VII C.P.C for the plaint to e rejected. Therefore, I am of the opinion that there is no impropriety committed in rejecting the respective interlocutory applications moved by the petitioners herein, as the plaint filed in the respective suits certainly disclosed the necessary cause of action and at the same time the said cause of action has not been barred by any law. There is no failure in exercise of jurisdiction by the Court below, warranting interference at my hands.

Accordingly, all the three civil revision petitions stand dismissed. No costs.

Consequently, miscellaneous petitions pending if any, shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

11.03.2016
sp

[1] (2004) 3 SCC 137