THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1151 of 2015

ORDER:

This revision under Article 227 of the Constitution of India by the defendants/petitioners is directed against the orders dated 23.02.2015 of the learned VI Additional District & Sessions Judge-cum-judge, Mahila Court at Visakhapatnam passed in I.A.no.956 of 2014 in O.S.no.459 of 2014 filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 requesting to reject the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants and the learned counsel for the respondent/plaintiff. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiff brought a suit for eviction of the defendant from the plaint schedule property, recovery of arrears of rent and damages and for costs. In the said suit, the defendants had filed the aforementioned petition for rejection of the plaint. The said petition was resisted by the plaintiff. By the orders impugned in this revision, the Court below had dismissed the petition of the defendants. Therefore, the defendants are before this Court.

4. The case of the defendants in support of their request for rejection of the plaint, in brief, is as follows:

There is no mention anywhere in the plaint about any contract or agreement of tenancy between the parties. Further, in the plaint, at more than one place, the plaintiff had stated in very clear terms that the lease deed is with M/s. Srinivasa Houses. Nowhere in the plaint, it is ever stated that the defendants are the tenants of the plaintiff or that there was any rental agreement or lease deed executed between the parties. It is not even stated that there is an oral agreement of lease. The plaint schedule is in respect of two flats viz., flat nos.2 and 3 at GV Manor. The averments in the plaint schedule are false. In GV Manor to the next of the 'Sarat Sangam' cinema theatres, there is a shopping mall popularly known as Big Bazaar. There are no flats as such and the entire building consisting of ground + first + second + third + four + terrace is a commercial building. There are no flats, much less any flats with nos.2 and 3, in the 2nd floor as stated in the schedule appended to the plaint. There is no relationship of landlord and tenant between the parties to the suit. There are no allegations about any tenancy, date of starting of the tenancy, conditions like stipulation of rent, lease period etcetera. There is no tenancy agreement between the plaintiff and the defendants. There are no residential flats in the building-G.V Manor, which is a commercial building. The plaint is silent and no documents are filed to show as to when flat no.2 was constructed and completed as per agreement, document no.3 filed with the plaint. No completion certificate, handing over certificate, municipal tax assessment and/or tax receipt and electricity connection documents or electricity consumption receipts are filed to show the existence of the subject flats. The plaint averments indicate a clear admission that there is tenancy between the defendants and M/s. Srinivasa Homes. It is false to state that the defendants had taken 13,100 square feet carpet area for the period from October 2005 to September, 2020. The defendants had initially entered into a MOU dated 20.9.2004 with M/s.Srinivasa Homes represented by its Proprietrix in respect of chargeable area of 66,275 square feet. Apart from 2,800 square feet of permanent structure in the fifth floor (terrace) situated in GV Manor besides Sarat and Sangam Theatre in Dwarakanagar on railway station road, Visakhapatnam. Thereafter, the lease deed dated 28.03.2006 was entered or executed between M/s. Srinivasa Homes and the defendants. The defendants had also paid huge amount of Rs.52,00,000/- towards refundable deposit in addition to Rs.51,57,701/- towards adjustable security deposit to M/s.Srinivasa Homes as requested by them at the time of taking the premises on lease. There is no evidence in support of the claim of plaintiffs. It is false to state that the defendants had purchased 10,902 square feet in the 2nd floor. The defendants had not pruchased any area whatsoever. The defendants are only tenants having taken on lease the entire building known as GV Manor. The plaint averment that the plaintiff is the owner of 2,380 square feet in the 2nd floor in GV Manor is false. It is false to state that the defendants had purchased 10,902 square feet on 31.08.2013 or it is in 2nd floor of the GV Manor or the defendants are in occupation of excess of 4,098/- square feet or the plaintiff is the owner of 2,380 square feet out of the said extent. The defendants have been paying rents in terms of the lease to the landlords and the plaintiff is neither concerned nor can make use of any of the terms or the rates thereof. There is no privity of contract or any relationship of landlord and tenant between the plaintiff and the defendants. The question of terminating the tenancy does not arise. The suit filed on baseless assumptions of tenancy is not maintainable. The defendants, in their own right as tenants, are in occupation of the entire building GV Manor popularly known as Big Bazzar. The entire building was taken on lease by the defendants after negotiating with M/s. Srinivasa Homes is true. The defendants are not aware of any averments that Ajaykumar convinced the plaintiff that M/s. Srinivasa Homes will collect the rent from the defendants for the plaint schedule portion or pay the same to the plaintiff. It is false to state that the defendants have shown the draft lease deed dated 28.03.2006 to the plaintiff. To the alleged quit notice, an appropriate reply was issued. The plaintiff deliberately failed to mention about the reply notice. The question of defendants vacating or delivering possession of the property does not arise. The suit is not maintainable under facts and in law. Further, the question of non-payment of rents and recovery of arrears and damages also does not arise. The plaintiff has no *locus standi* to file the suit. Though it is stated in the plaint that the entire building is taken on lease by the defendants from M/s. Srinivasa Homes, the said Srinivasa Homes is not made a party to the suit. The plaint does not disclose a cause of action. From the very statement in the plaint, it appears that there is no relationship of landlord and tenant between the parties. Hence, the plaint is liable to be rejected.

5. The case of the plaintiff, in brief, is as follows:

None of the grounds mentioned in Order VII Rule 11 exist for entertaining the application filed by the defendants. None of the grounds sated in the provision of the Code are urged in the application filed by the defendants. No grounds are made out for rejection of the plaint. Even though 90 days time is provided for filing written statement under law, the defendants have not filed their written statement and the trial Court is extending time without specifying any reasons. The defendants having entered appearance and having engaged an advocate have not filed the written statement even within the extended time after the expiry of 90 days provided under the Code for filing written statement. The advocate for the defendant filed a memo stating that the defendant firm is no longer in existence; and, that the name of the defendant firm is Future Retail Limited and that the plaintiff has to take steps to correct the name. The affidavit of N.Rajesh Kumar Gupta was filed in support of the petition of the defendants. His designation in the organization is not stated and it is simply stated that he is an authorized signatory. The said person is not the Director of the defendant company. The material allegations that there are no required averments in the plaint are false. The plaint averments are true and correct. In the affidavit filed in support of the defendants' contentions, it is stated that the defendants are only tenants having taken the entire building on lease known as GV Manor. The plaintiff purchased 2,380 square feet in the second floor of GV Manor and thus became the owner of the same. The allegation that there is no privity of contract between the parties or that there is no landlord and tenant relationship and that the plaintiff has no locus standi etcetera are all false. The deponent of the affidavit filed in support of the petition had categorically admitted as follows:

> **"It is submitted that the allegations in para-III(1) of the plaint that the entire building was taken on lease by the defendants after negotiating with M/s.Srinivasa Homes is true."**
> **"The defendants have been paying rents as per Agreement of Lease".**

The jural relationship as stated in the quit notice is not denied by the defendants before filing of the suit. The quit notice is dated 10.07.2014. It was sent by courier. The plaint was presented on 06.08.2014. The allegation that there is no relationship of landlord and tenant and the plaint is liable to be rejected is false. The plaint does not disclose a cause of action is false. A reading of the affidavit filed along with the plaint and a reading of the plaint discloses the cause of action for the suit against the defendants and the plaintiff's *locus standi* to file the suit. In view of the averments in paragraphs (24) to (31) and (34) of the plaint, the petition is liable to be dismissed. The plaint cannot be rejected on the basis of the averments mentioned in the affidavit filed in support of the application for rejection of the plaint filed by the defendants. The application is intended to procrastinate the litigation. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the judge, the plaintiff may not succeed cannot be a ground for rejection of the plaint. Hence, the petition may be dismissed.

6. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced by either of the parties. On merits, the trial Court had dismissed the petition.

7. In the grounds of revision, the pleaded case of the defendants was reiterated and it is *inter alia* contended that the order of the court below is contrary to facts and law and that the trial Court erred in dismissing the petition of the defendants without properly understanding the facts and considering the plaint averments and that even if all the averments of the plaint are admitted to be true also, the same do not disclose a cause of action and that the trial court had failed to see that there is no jural relationship of landlord and tenant between the parties to the suit and that the tenancy that was admitted is between the defendants and M/s. Srinivas Homes and that therefore, there is no *locus standi* or cause of action for the plaintiff to file the suit.

8. On the other hand, the learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff and the contentions of the plaintiff in the counter filed before the trial court had supported the orders of the court below.

9. I have carefully gone through the plaint. As per the provisions of Order

VII Rule 11 of the code, the plaint shall be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

10. Before proceeding further, it is necessary to refer to the legal position. The learned counsel for the defendants had relied upon the following decisions:-

(1) K.L.V.Prasada Rao v. K.Venkateswara Goud[1]

(2) N.d.Khanna v. Hindustan Industrial Corporation[2]

(3) Azhar Hussain v. Rajiv Gandhi[3]

(4) T.Arivandandam v. T.V.Satyapal[4]

The learned counsel for the plaintiff relied upon the following decisions:

(5) Goginei Gnana Jyothi @ Gogineni Gnana Jyothieswar v. State of Andhra Pradesh[5]

(6) Mayar (H.K) Ltd. And others v. Owners and Parties, Vessel M.V.Fortune Express[6]

I have gone through the decisions cited.

In **United Insurance Co. v. C. R. Ramanatham,**[7] in paragraph 10 it is observed as under:

> **Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words "where the suit appears to be barred by any law" are qualified by "the statement in the plaint". What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded."**

In **Bhau Ram vs. Janak Singh and others**[8], it is held by the Supreme Court as under:

> **"The law has been settled by this Court in various decisions that while**

considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr. (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors. (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149."

11. I have carefully gone through the plaint to examine as to whether the plaint discloses a cause of action on a careful and meaningful reading and whether the suit appears from the statement in the plaint to be barred by any law. The suit is filed for eviction, recovery of arrears of rent and damages and costs after issuance of a quit notice. The quit notice has been received. By the date of filing of the suit, there was no reply to the quit notice though it is stated in the plaint to have been served. On a careful and meaningful reading of the plaint, it does not appear from the statement in the plaint that the suit is barred by any law. Be that as it may.

12. Coming to the existence of cause of action or lack of it, it is necessary to note that in the plaint, the averments to the following effect are made:

The plaintiff under registered sale deed dated 27.06.2002 purchased item 1 of the plaint schedule property from Sri Tirumala Trivikrama Rao and others and entered into a registered agreement of construction for one flat with M/s. Sri Srinivasa Homes represented by its Proprietrix and got constructed item no.1 of the plaint schedule property namely flat no.2 with a plinth area of 1190 square feet inclusive of common area in the complex. The plaintiff had also purchased on 14.02.2006 from M/s. Sri Srinivasa Homes represented by its Proprietrix, a property which is already constructed as Flat no.3 in the second floor with total plinth area of 1190 square feet inclusive of common area in the complex under the name and style locally known as GV Manor. Subsequently, on 28.03.2006, the defendants had entered into a lease deed with M/s. Sri Srinivasa Homes represented by its

Proprietrix in respect of remaining entire building known as G.V Manor comprising of 60,250 square feet of carpet area in the ground, first, second, third, fourth and added quarter circle column; and in the second floor, the defendant has taken 13,100 square feet carpet area for the period from October 2005 to September 2020. The said lease deed is not a registered lease deed and it is an unregistered document not available with the plaintiff and it must be in the custody of the defendant. The persons, who have executed the unregistered lease deed in favour of the defendant, that is the persons concerned of M/s. Sri Srinivasa Homes have no title to flat no.2 and 3 as these flats belong to the plaintiff. The defendant is in occupation of 4,098 square feet, which was not purchased by the defendant. The defendant is in occupation of excess 4098 square feet, out of which the plaintiff is the owner of 2380 square feet. As per the lease deed between the defendant and M/s. Sri Srinivasa Homes, the defendant is liable to pay Rs.21.06 paise per month per square foot from October 2011 to September 2014; and, from October 2014 to September 2017, the defendant is liable to pay Rs.33.60 paise per square foot per month. Since the plaintiff does not want to continue the tenancy of the defendants, the tenancy was terminated with effect from the midnight of 31.07.2014. The entire building was taken on lease after negotiating with M/s. Sri Srinivasa Homes, represented by its Proprietrix. One Baisetty Ajay Kumar had carried on the negotiations on behalf of his wife with the defendants. He had convinced the plaintiff that M/s. Sri Srinivasa Homes represented by the Proprietrix will collect the rent from the defendants for the plaint schedule portion and pay the same to the plaintiff till such time the registered lease deed is entered by the defendants with M/s. Sri Srinivasa Homes. In the cause of action paragraph, it is stated as follows:

> **"The cause of action for this suit arose, on 27-06-2002 when the plaintiff purchased site for construction of Flat no.2 in the second floor which is item-1 of the plaint schedule property, on 14-02-2006, when the plaintiff purchased item-2 of the plaint schedule property which is flat no.3 in the second floor, both put together measuring 2380 square feet in the second floor; when the defendant took the entire building on lease from M/s. Sri Srinivasa Homes on 28-03-2006 and entered into a**

unregistered Lease Deed and was paying rent, plaintiff presumes though as he has no correct and clear information, to M/s.Sri Srinivasa Homes represented by its Proprietrix Smt. Baisetty Revathi, wife of Sri Ajaya Kumar, subsequently, on 31-08-2013, it was published in the newspapers, not known to the plaintiff correctly, that out of the 15000 square feet in the second floor, defendant purchased from the Punjab National Bank 10902 square feet leaving an excess of 4098 square feet, out of which, plaint schedule both items put together is 2380 square feet and belongs to the plaintiff, then the defendant has been enjoying without paying rent to the plaintiff directly when defendant undertook to pay Rs.21.06 ps. Per square feet from October 2011 to September 2014; when defendant failed to pay rent to the plaintiff; when on 10-07-2014 the plaintiff got issued a quit notice terminating the tenancy of the defendant with effect from 31-07-2014; and on 10-07-2014 when the said Notice was affixed to the plaint schedule building by the plaintiff; when on the subsequent dates the defendant received the said quit notice and failed to respond till date at Visakhapatnam, where the plaint schedule is situated within the territorial and pecuniary jurisdiction of this Honourable Court." [reproduced verbatim]

A careful reading of the entire plaint including the averments, which are adverted to supra, would disclose a cause of action and that the defendants are in occupation of the property, which was purchased by the plaintiff having entered into a lease with M/s. Sri Srinivasa Homes in respect of the property of the plaintiff also as per the arrangement between M/s. Sri Srinivasa Homes and the plaintiff. On a plain reading of the plaint, it also appears that M/s. Sri Srinivasa Homes has leased out the entire property including the property of the plaintiff herein, which is described in the plaint schedule and assured the plaintiff to collect rents and pay to the same to the plaintiff in respect of plaint schedule portions and that the defendants have been enjoying the property without paying the rents to the plaintiff directly having undertaken to pay Rs.21.06 paise per square feet from October 2011 to September 2014.

13. Having regard to the precedential guidance in the decisions referred to supra, when the plaint averments are harmoniously read, they disclose *prima facie* that there are sufficient averments to come to an *ex facie* conclusion that cause of action for prosecuting the suit against the defendants is sufficiently pleaded in the plaint. In view of the peculiar facts and circumstances of the case, the question of bar of limitation or lack of cause of action raised by the defendant are mixed questions of fact and law and the same cannot also be prejudged. Having regard to the facts peculiar to the case and the precedential guidance, it must be held that the grounds urged by the defendants in the petition filed seeking rejection of the plaint are devoid of merit and hence, the same cannot be countenanced at this pre-trial stage. In the light of the detailed discussion coupled with the reasons, the pleas in regard to lack of cause of action and bar of limitation have to be tried as issues at an appropriate stage, in the interest of justice and to safeguard the interests of both the parties. As a result, the contentions of the defendants are rejected being devoid of merit.

14. Accordingly, this civil revision petition is dismissed.

No costs.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M.SEETHARAMA MURTI, J

01st June, 2016
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[1] 2008(2) ALT 455

[2] 20 (1981) DLT 236

[3] AIR 1986SC 1253

[4] AIR 1977SC2421

[5] 2015(3) ALD 530

[6] AIR 2006 SUPREME COURT 1828

[7] 1989 (1) ALT 190

[8] AIR 2012 SC 3023