

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3869 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt. 26.04.2016 in I.A.No.110 of 2016 in O.S.No.2147 of 2012 on the file of II Senior Civil Judge, City Civil Court, Hyderabad, whereby the trial Court declined to reject the plaint against the petitioner/defendant No.2.

2. The Petitioner/Defendant No.2 filed petition under Order 7 Rule 11 r/w 151 of Code of Civil Procedure (for short 'CPC') to reject the plaint alleging that the plaintiff/respondent No.1 herein suppressed true facts and with false allegationss filed the suit against defendant No.2 and the allegations are denied by the petitioner by filing Written Statement before the trial Court.

(b) It is specifically contended by the petitioner is that there was no privity of contract between the plaintiff/Respondent No.1 herein, and defendant No.2 and the plaintiff categorically admitted in his cross examination dt. 15.09.2016 that he has not filed any documents to show that there is privity of contract between him and defendant No.2 with regard to fastening liability on the defendant No.2. In the absence of any privity of contract between the

petitioner and respondent No.1 herein, the petitioner cannot be made liable for payment of the suit amount and thus, there is no cause of action for the plaintiff to file a suit against him and prayed to reject the plaint by exercising power under Order 7 Rule 11 of CPC.

3. The plaintiff/respondent No.1 filed Counter denying material allegations, *inter alia*, contending that the reasons mentioned in the petition for rejection of the plaint against defendant No.2 are not correct and proper. Defendant No.2 is the Head of Office of defendant No.1 and as such, defendant No.2 is a necessary party to the suit and the plaint discloses cause of action against defendant No.2 also and the admission made in the testimony of PW.1 is not sufficient to reject the plaint, at this stage, and prayed for dismissal of the petition.

4. The trial Court, upon hearing argument of both the counsel, concluded that the admission in the testimony of PW.1 regarding privity of contract between plaintiff and defendant No.2 is not sufficient to reject the plaint and it has to be enquired into and at this stage, it is not proper to reject the plaint against D.2/petitioner.

5. During hearing, learned counsel for revision petitioner/D.2 mainly contended that when the plaint does not disclose any cause of action against the petitioner and

in view of the admission made by plaintiff, the plaint can be rejected, by exercising power under Order 7 Rule 11 r/w 151 of CPC, and placed reliance on the judgments reported in M/ s Sakthi Sugars Limited, Coimbatore v. Union of India and another¹, Mt. Phool Sundri v. Gurbans Singh and others² and Astral Cables Limited v. National Small Industries Corporation Limited and others³ and on the strength of the principles laid down by this Court, it is contended that plaint can be rejected partly against one of the defendants, if the plaint does not disclose cause of action against such defendant under Order 7 Rule 11 CPC.

6. None appeared for the respondent Nos. 2 and 3 though notices were served on the counsel appearing before this Court as well as the counsel appearing before the trial Court and notice sent to plaintiff was returned.

7. Considering the contention raised by the learned counsel for revision petitioner and the order impugned, the point that arises for consideration is:

¹ AIR 1981 Delhi 212(1)

² AIR 1957 Rajasthan 97(V 44 C 38 April)

³ 2011 LS(Mad) 2940

“ Whether the plaint discloses cause of action against defendant No.2 and if so, whether the plaint is liable to be rejected while exercising power under Order 7 Rule 11 of CPC ?

8. Point: Defendant No.1 is Manager/incharge, Vodafone Essar South Limited and defendant No.2 is Chief Executive Officer, Vodafone India Head Office. Defendant No.1 is only an inter-mediatory of defendant No.2 and he is the Manager of South Limited. Therefore, defendant No.1 is working under the control of defendant No.2 and the corporate liability can be attached to both Defendant Nos. 1 and 2, in view of the relationship between defendant Nos.1 and 2.

9. The main allegation in the affidavit of the petitioner is that in the cross examination of PW.1, he admitted that there is no privity of contract between plaintiff and defendant No.2 and defendant No.2 is the Head Office of defendant No.1 and defendant No.1 is operating its business on behalf of head office i.e., D.2 within southern states of the Country. Therefore, they are jointly and severally liable though there is no privity of contract between plaintiff and defendant No.2 directly. The plaint cannot be rejected partly on the ground that plaint does not disclose any cause of action against D.2. If this aspect is looked into in the angle of corporate liability or unless the

head office is made a party, the branch or regional office cannot be made liable.

10. At this stage, learned counsel for revision petitioner submitted that defendant Nos. 1 and 2 are having separate entities and filed two documents before the trial Court and they are marked as Exs. P.1 and P.2, but the relationship between defendant Nos. 1 and 2 cannot be decided at this stage. Therefore, the trial Court rightly rejected the request made by the revision petitioner/defendant No.2 since it is premature to decide such liability at this stage without completion of trial. Learned counsel for revision petitioner though relied on several decisions, they deal with rejection of plaint against one of the defendants and there is no quarrel about the legal position. Even otherwise, according to Order 7 Rule 11(a) of CPC, if the plaint does not disclose any cause of action against defendant No.2, the plaint shall be rejected. But, here, the plaint discloses cause of action and cause of action means a bundle of facts, which give rise to claim the relief, but not an isolated para in the plaint. Therefore, at this stage, the defence set up by the defendant No.2 in the Written Statement cannot be considered to reject the plaint partly, while exercising jurisdiction under Order 7 Rule 11(a) of CPC. Therefore, I find no grounds warranting interference of this Court with the findings of the trial Court, at this stage. Hence, this

Civil Revision Petition is devoid of merits and it is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed. However, it is left open to the revision petitioner/D.2 to agitate any legal pleas in the suit before the trial Court. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

Date: 26-09-2016.
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.3869 of 2016

Dt. 26-09-2016

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