

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5459 of 2015

ORDER:

In this revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner-defendant, the challenge is to the order dated 11.09.2015 of the learned VII Junior Civil Judge, City Civil Court, Hyderabad, passed in IA.no.172 of 2015 in OS.no.173 of 2015 filed under Order VII Rule 11(a) read with Section 151 of the Code of the Civil Procedure, 1908 ('the Code', for short) requesting to reject the plaint.

2. I have heard the submissions of Ms. Jyothi Kiran, learned counsel for the revision petitioner/ defendant ('the defendant', for short) and Sri Hameed Pasha, learned counsel for the respondent/plaintiff ('the plaintiff', for short). I have perused the material record.

3. At the outset, it is to be noted that the plaintiff filed the suit against the defendant for eviction from Flat No.C-3, bearing Municipal No.8-2-677/ C/ 17 in Survey No.129/ 43, in basement Floor of Banjara Garden, admeasuring 1120 Square feet with 60 Square yards of undivided share of land, situated at Road No.12, Banjara Hills, Hyderabad, morefully described in the schedule annexed to the plaint and for recovery of arrears of rents, mesne profits/ future rents till the date of recovery of possession and for costs. The defendant filed a written statement and is resisting the suit.

4. The defendant filed the subject application, contending, in brief, as follows: "The defendant was served with copy of the plaint and summons. The copies of documents filed along with the plaint are not

served upon him as the copies of documents are not filed along with the plaint. Therefore, the defendant was not in a position to go through the documents. Copies of the documents were served on this defendant on 02.04.2015. The plaintiff filed the suit on the basis of lease deed dated 05.05.2014 executed between Harsha Bhartee and the defendant. However, the plaintiff concocted a false story that he has authorized his wife, Harsha Bhartee, to lease out the schedule flat to him and further alleged that the defendant stopped paying rents from September, 2014, and that a notice dated 24.12.2014, under Section 106 of the T.P. Act, terminating the tenancy in respect of the suit schedule flat was issued by registered post with acknowledgment due. However, a perusal of the said lease document filed along with the plaint would disclose that the wife of the plaintiff is the landlady and that she executed the lease deed in her own capacity as absolute owner and leased out the suit schedule flat to the defendant. The covenants in the lease deed do not disclose any authorization allegedly given by the plaintiff to his wife, who is the executant of the lease deed, to execute the lease deed on his behalf. The plaintiff's wife, Harsha Bhartee, is the landlady and the defendant is the tenant as per the terms of the lease agreement dated 05.05.2014. Therefore, the plaintiff has nothing to do with the same. The suit is based on a concocted story. There is no cause of action for the plaintiff to file the suit and seek eviction and other reliefs as there is no landlord and tenant relationship between the plaintiff and the defendant. Hence, the plaint is liable for rejection."

5. The case of the plaintiff, in brief, is this: 'The defendant having knowledge of the true facts filed the petition for rejection of the plaint.

The petition is vexatious, frivolous and untenable. A plaint cannot be rejected either on the ground of non supply of documents filed with the plaint or belated supply of copies of the said documents. When an application is filed for rejection of the plaint on the ground that copies of the documents filed along with the plaint were not supplied, the said petition was dismissed. Again the subject petition for the same relief is filed by abusing the process of law. The petition is not maintainable and is liable for dismissal with exemplary costs. A plaint can be rejected if only the plaint averments do not disclose a cause of action or for any other reasons stated in Order VII Rule 11 of the Code. The plaint cannot be rejected on whimsical and flimsy grounds pleaded by the defendant. The petition is liable for dismissal.'

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 defendant was reiterated and it is *inter alia* contended that the trial Court erred in dismissing the petition of the defendant without properly understanding the facts and considering the plaint averments 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 plaintiff's wife and the defendant 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.

In *United Insurance Co. v. C. R. Ramanatham*,¹ 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*², it is held by the Supreme Court as under:

¹ 1989 (1) ALT 190

² AIR 2012 SC 3023

“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, Haradesh 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 Ponniyamman 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 rents and costs after issuance of a quit notice *inter alia* stating that the plaintiff's wife was authorized to lease out the property and that she leased out the property on the defendant approaching her as authorized by her husband, the plaintiff. And a written authorization said to have been given by the plaintiff to his wife and the registered gift deed executed in favour of the plaintiff by the plaintiff's mother are also referred to in the plaint and the said documents are also filed along with the plaint. It is also averred in the plaint that the quit notice was returned with postal endorsement 'door locked - intimation 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 is the sole and absolute owner of the suit schedule flat having acquired the same from his mother by virtue of a registered settlement deed dated 31.08.2010. The defendant approached the plaintiff through his authorized person, that is, his wife, Harsha Bhartee, and requested her to let out the suit schedule flat. The defendant obtained scheduled flat on lease on 01.05.2014, on a monthly rent of Rs.16,500/-, exclusive of electricity consumption charges and maintenance charges. The lease deed was executed on 05.05.2014 between the defendant and the plaintiff's authorized person. The plaintiff had authorized, in writing, his wife to let out the schedule flat to tenants. As such the plaintiff's wife on behalf of the plaintiff executed the said lease deed in favour of the defendant in respect of the schedule flat, for a period of three months. The plaintiff filed the original lease deed as well as the letter of authorization before the Court for consideration. After expiry of the lease period by 31.07.2014, the defendant neither came forward to enter into fresh lease deed nor paying the monthly rents. Therefore, the tenancy has become month to month tenancy. The defendant is also not paying the electricity and maintenance charges from August, 2014. As such, the plaintiff got issued legal notice dated 24.12.2014 by registered post with acknowledgment due under Section 106 of the T.P.Act terminating the tenancy from 31.12.2014. The defendant wantonly, knowingly and deliberately did not receive the said notice. Even after issuance of the notice, the defendant

has not paid the rents and arrears of rent and even after the termination of tenancy he has not vacated the suit schedule property. Therefore the defendant became an unwanted tenant and a defaulter in payments of monthly rents. As such the defendant is liable to be evicted from the suit schedule property and the plaintiff is entitled to recover the arrears of rent as well the physical possession of the schedule property from the defendant.

12.1 In the paragraph dealing with cause of action, it is stated as follows:

“The cause of action firstly accrued in the month of September, 2014 since where after the defendant has not been paying rents and on 24.12.2014 when the plaintiff got issued legal notice under section 106 of Transfer of Property Act addressed to the defendant intimated the termination of tenancy and was called upon to vacate and handover the physical possession of the suit schedule property on or before 15.01.2015 and to pay the arrears of rent from the month of September, 2014 and when the defendant neither vacated nor paid the arrears of rent in respect of the suit schedule property on or before 15.01.2015 and thereafter each day till filing of the suit.’

[Reproduced verbatim]

13. A careful reading of the entire plaint including the averments, which are adverted to supra, would disclose a cause of action and that the defendant as a tenant is in occupation of the property, which was acquired by the plaintiff by virtue of a registered settlement deed. On a plain reading of the plaint, it also appears that the plaintiff authorized his wife, Harsha Bhartee, in writing, to let out the schedule flat to

tenants as the plaintiff who is a mechanical engineer engaged in irrigation projects would be out of station and as such, his wife, has leased out the suit flat to the defendant under the lease deed dated 05.05.2014.

14. 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 defendant is sufficiently pleaded in the plaint. Having regard to the facts peculiar to the case and the precedential guidance, it must be held that the grounds urged by the defendant 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 plea in regard to lack of cause of action has to be tried as an issue 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 defendant are rejected being devoid of merit.

15. Before parting with the case, be it noted that the learned counsel for the defendant placed reliance on a decision in Church Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust³. However, in view of the facts peculiar to the case and the plaint averments adverted to supra, in detail, the said decision on facts of the instant case is not helpful to the defendant.

³ (2012) 8 SCC 706

16. Viewed thus, this Court finds that the revision petition is liable for dismissal.

17. Accordingly, this civil revision petition is dismissed.

No costs.

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

M. SEETHARAMA MURTI, J

4th November, 2016
Vjl

