

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3557 OF 2016

ORDER :

The revision petitioner is the defendant in O.S.No.102 of 2010 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad. The suit was filed by the revision respondent/plaintiff for recovery of Rs.1,32,85,781/- (equal to USD 292,573.92) with interest towards the lease amount due of the premises of the plaintiff said to have been taken by the defendant covered by lease deed for a period of five years from 11.06.2007 to 31.08.2012 as per the terms of the lease deed and for the default committed in payment of rent and other charges from January, 2009.

2. The name of the plaintiff is described as M/s Enterprise Centre-I, L.L.C, 7600, Wisconsin Avenue, 11th Floor, Bethesda, Maryland, 20814, United States of America and defendant as Goldstone Technologies Ltd, Amarchand Sharma Complex, S.D.Road, Secunderabad – 500 003, represented by its Managing Director & CEO Shri Clinton Travis Caddell and also represented by Director Lam Preetha Priyadarshini, 209, Sikh Road, Secunderabad – 500 003.

3. The defendant after service of summons and put forth appearance in the suit filed I.A.No.2115 of 2011 for rejection of the plaint supra. It is from the petition seeking rejection of

the plaint with supporting affidavit of Vittal Poppuri, General Manager of M/s Goldstone Technologies Limited with office at 9-1-83 and 84, Amarchand Sharma Complex, S.D.Road, Secunderabad, as authorized representative of the entity contending that the suit claim is based on false and baseless allegations, contrary to law, mis-conceived and mischievous, for no debt or liability is due or outstanding between the plaintiff in the suit and the defendant company. There were no business transactions for anything due or liable and there existed no pivity of contract between them and the deponent has no knowledge of the alleged proceedings in respect of alleged exparte order passed by the Foreign Court and the defendant company is not bound by law to pay any sum thereunder muchless with interest claimed in the plaint of the suit filed on 7/12.04.2010, the suit claim is nothing but distortion of true facts and misconceived, the plaintiff has to file a petition under Order 32 of Civil Rules of Practice before the trial Court if so called attorney were to submit such a suit, which is a pre-condition and for no such petition filed to sustain the suit apart from a power of attorney is laconic with several blanks, incomplete and unsubstantiated, there is no any board resolution of the company authorizing the signatory to the plaint and thereby sought for rejection of the plaint.

4. It is also averred and contended that even serious objections were raised by scrutiny section of the trial Court in regard to above and on jurisdiction that were not explained in resubmitting the plaint for its registration without compliance. It is the further specific contention that the points of jurisdiction and cause of action as lacking for the suit property is not within jurisdiction of the Court and the defendant is not a party to the said lease deed dated 16.05.2007; apart otherwise from non-maintainability based on exparte decree obtained in Virginia County Court, which is not on merits and it is outcome of violation of various tenets of law and suffice to return or reject the plaint therefrom and instead of so doing the trial Court numbered the suit and impugned dismissal order of the plaint rejection petition is liable to be set aside by allowing the revision rejecting the plaint.

5. The counter filed by the plaintiff in opposing the plaint rejection petition is with the submissions in nut-shell that the affidavit is bereft of reasons and no way stipulates under which clause of (a) to (f) of Rule 11 of Order 7 CPC is invoked to reject the plaint and there are no reasons for rejection to sustain the petition. The written statement filed in the suit by the defendant was signed by its authorized signatory Mr P.V.S.Sarma, whereas the present deponent is Mr Vittal Poppuri described as General Manager and once the shelter

taken of requirement of Rule 32 C.R.P application to sustain suit, that equally apply to the defendant to sustain the petition and written statement. A perusal of the plaint averments would show and establish the plaintiff's valid claim against the defendant and the plaint with supporting documents filed also demonstrates the plaintiff's entitlement to the suit claim. The plaintiff in the suit is a limited company based in DELAWARE, USA. The defendant is a private limited company. Defendant when desirous of expanding its business in common wealth of Virginia, USA obtained permission from State Corporation Commission (for short, 'SCC') by disclosing his address there at Virginia and the leased premises consists of 3309 sq. feet for five years, terminated by 31.08.2012. As per the terms of the lease deed, there was default committed in payment of rent and charges from January, 2009 despite demands and the defendant abonded the premises ultimately in May, 2009 without paying the rents and other charges and later there was no response, which made the plaintiff to file civil suit in Fair Fax Circuit Court, Virginia for recovery of the money and there was an exparte judgment passed on merits by the competent Court, and in lieu of proceedings pursuant to it the plaintiff instituted the present suit for recovery by also based on it, and the contra allegations are untenable. The plaintiff sought permission under Rule 32 C.R.P by filing application through its attorney for filing the suit by signing,

apart from non-obtaining of permission is a curable defect and the Court can return the plaint before numbering by raising objections. For the return of plaint, on explanation it was duly numbered by registering the suit and the contra allegations including on maintainability or in respect of jurisdiction etc are untrue and untenable. Plaint is very clear regarding jurisdiction to try the suit and the contra averments the defendant has to prove, there are no merits in the present petition and the allegations are with scant respect to the judicial system and are denied and sought for dismissal of the application.

6. Pursuant to the respective contentions, vide impugned order dated 28.03.2016, the lower Court dismissed the application for rejection of the plaint with no costs with observations that the Court before numbering by raising objections returned the plaint and those were explained and clarified for registering the suit. As per plaintiff, USA is not a reciprocating territory to India as per Section 44-A of CPC and thereby judgment passed by the Court in USA is only an additional evidence and basing on that evidence a fresh judgment to be passed by the Court in India. The written statement did not state that the defendant did not do business as alleged in the plaint, but for saying the name of director mentioned is not correct and that is a matter to be decided during trial of the suit on the defendant makes out a

case of no cause of action against the entity. The plaint documents show cause of action and defence of defendant cannot be decisive to reject the plaint, but for considering the plaint pleadings as held by the Apex Court in **Saleem Bhai v State of Maharashtra**¹ and in **Church of Christ Charitable Trust & Educational Charitable Society v Ponniamman Educational Trust**² and as such the written statement defence is no way relevant to consider rejection of plaint or not and the decisions relied upon by the defendant-petitioner no way relevant and thereby no merits in the application and dismissed the same.

7. Heard both sides at length in the revision petition from the respective contentions and submissions, i.e. in impugning the legality and correctness and propriety of the dismissal order of the lower Court by the defendant/revision petitioner and in supporting the impugned order by the plaintiff/revision respondent. Perused the material available on record i.e. copies relied of plaint, plaint documents, petition and counter before the lower Court and grounds of revision.

8. No doubt, the Apex Court way back in **T.Arivandandam v T.V.Satyapal and another**³ held that from reading of the plaint, if it is manifestly vexatious and meritless, in the sense

¹ 2003(2) ALD 84

² 2012(8) SCC 706

³ AIR 1977 SC 2421

of not disclosing a clear right to sue, the trial Court should exercise its power under Order 7 Rule 11 CPC taking care to see that the grounds mentioned therein is fulfilled. The trial Courts should insist imperatively on examining the party at the first hearing (or 10 CPC) so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. The counsel as officers of justice can also contribute to the cause of justice by screening wholly fraudulent and frivolous litigation and by not collaborating in shady actions. The Court can also impose heavy costs for any such vexatious litigation while rejecting.

9. Thus, from the above expression referring to the Code of Civil Procedure, 1908, amended in the year 1976, on the scope of Order 7 Rule 11 (a) to (d) subsisting by then of (a) plaint not disclosing cause of action, (b) relief where undervalued, the Court required to correct within the time fixed and failed to do so, (c) where the relief claimed even properly valued, but insufficiently stamped and when required to comply within time fixed failed to do so or (d) whether the suit bars from the statement in the plaint to be barred by any law. As on today from the Code of Civil Procedure amendment w.e.f. 01.07.2002, the other two grounds available are where it is not filed the plaint in duplicate and where plaintiff fails to comply the provisions of

Rule 9 viz. to present as many copies of plaint as there are defendant within 7 days from the date of order on admitting the plaint, with requisite proceeds for service of summons on defendants.

10. From the above it is very clear that even after plaint is numbered, the Court can reject at its own. The expression supra also enables the Court to reject the plaint without even application by defendant, where found the claim is vexatious with heavy costs and where it is not in compliance with the provision. The rejection no doubt not from the averments of any defence in the application to reject to decide, but from the plaint averments and its reading to reject if it does not disclose cause of action or it is barred by law particularly from Clauses (a) and (d), leave about the power of the Court to reject under Clause (b) or (c) or (e) or (f) supra. Thereby, there is no force in the submission of the counsel for the plaintiff/respondent to the revision that the application for rejection of the plaint won't lie for it did not mention any of the Clauses (a) to (f) specifically. When same by itself is not a ground to reject the application, but for to decide pursuant to the averments in the application by reading of the plaint and the documents if any in support of plaint averments and if same is not disclosing existence of cause of action or from its reading and on its face without any dispute barred by any law

to reject the plaint. No doubt, the trial Court did not advert to it.

11. From the above, coming to the facts, basically from reading of the plaint, the plaintiff referred the defendant in the array of cause titles (short and long) as M/s Goldstone Technologies Ltd and in plaint para 2 that the defendant is a private limited company with the registered office at Secunderabad in the address supra and the defendant to expand its business at Commonwealth, Virginia, applied for permission to transact business and obtained from SCC, vide dated 16.01.2003 from its principal office at Westwood Centre, Dr.Suite#200 Vienna and the defendant executed lease deed dated 16.05.2007 for 3309 sq. feet for five years expired by 31.08.2012 and the other averments in clarifying the same from January, 2009 committed default in payment of outstanding dues and from May, 2009 stopped paying operating expenses and Real Estate Tax, other additional rent as per the lease terms and even abonded the premises from then without paying the dues. It also referred that the plaintiff filed civil suit before Fair Fax Circuit Court, Virginia, where the defendant summons were ordered and served and there was an exparte decree/judgment dated 20.11.2009 and the defendant got knowledge of said judgment and failed to challenge and the same is binding and there is cause of

action thereby and that the suit is well within limitation. Hence, to pass a decree.

12. In the plaint, the cause of action is no doubt mentioned, but the crux is the address of the defendant must be co-related to the address in the lease deed, leave about the decree/judgment of the Fair Fax Circuit Court, Virginia obtained only based on said lease deed terms, now to rely only in trial of the Suit as supporting evidence. Now coming to the contents of the lease deed filed with the plaint, the tenant's name is referred as 'Goldstone Technologies Ltd.', a foreign corporation registered at Virginia. It is not mentioned the same is of Indian Origin in the lease deed muchless with the present suit defendant's address as registered office at Secunderabad of India. Once the lease deed is the basis to set up cause of action to the claim against the defendant and it is not co-related in the plaint. Even copy of the decree of the Circute Court supra in the cause title arrayed as one of plaint documents mainly relied by plaintiff-revision respondent no way discloses anything further. When it is an important question on cause of action against the defendant when that was not shown to decide by the trial Court within the scope of Order 7 Rule 11 Clauses (a) and (d) CPC and since did not advert to it, said impugned dismissal order of the trial Court on its face won't survive to sustain but for to set aside.

13. No doubt, at para 2 page 1 of the plaint, there is a reference as Goldstone Technologies Limited is a foreign corporation formed in India and authorized to transact business in the common wealth of Virginia. The plaint filed at Fair Fax County, Virginia mentions averments of the foreign corporation firm in India cannot be the basis to say that the defendant is a party to the lease deed as a tenant to the suit claim.

15. Once such is required and the trial Court did not advert and from the plaint it is totally silent, the saying of the lease deed executed by the defendant is no way suffice, for absence of co-relation of lease deed description to the plaint description by any other material record. Undisputedly from the material filed of the lease deed description of tenant no way co-relates to the plaint description by defendant and once such is the case and it is the suit document to support the suit claim to rely and none of plaint enclosures could show direct co-relation of lease deed tenant is the defendant in present suit, it is made basis in the application to reject the plaint, saying the defendant is not the so called lessee and thereby there is no cause of action against the defendant and the defendant is not concerned and is falsely implicated and the suit claim for no privity is barred by law the trial Court should have been gone through the same at least to return if at all to submit any substantial material to co-relate the

lessee of the lease deed and the defendant in the present suit are one and the same, for the lease deed is not co-relating so also other plaint enclosed documents unless by filing any other substantial material as a basis. It is the duty of the Court in this regard as laid down in **Arivandandam** supra by the Apex Court.

16. Form the decision placed reliance on by the plaintiff/respondent to the revision in **State of Orissa v. Klockner and Company and others**⁴, what was held, at para 25 as pointed out by the High Court against the trial Judge the distinction between plea that there was no cause of action for the suit and the plea that plaint does not disclose a cause of action. Even from that expression and as Order 7 Rule 11(a) says where plaint does not disclose cause of action and what is pointed out in the application to reject the plaint is that the defendant is not the tenant of the so called lease deed for the alleged arrears of rent due in maintaining the suit claim for no privity and no cause of action against the defendant to the plaintiff and once there is no direct identity to that extent in the plaint averments and documents relied in support of it to the suit claim, the suit against the defendant is thus claimed as barred by law and when it is with reference to clauses (a) and (d) of Rule 11 CPC, though not those were mentioned in the application, but for Order 7 Rule 11 CPC and once it is the duty of the Court from reading of the plaint to decide whether plaint discloses cause of action and not barred by law and from reading of plaint when it did not disclose to co-relate with the

⁴ 1996(8) SCC 377

lease deed that tenant and occupant for arrears of rent is the defendant herein, suffice to reject the plaint if not at least to return the plaint for compliance by filing any substantial document to correlate like from Registrar of Companies any certified copies from India and abroad. The trial Court as did not do so, the impugned order is liable to be set aside and the matter is required to be remitted back to the trial Court for re-determination.

17. In the Course of hearing, learned counsel for the revision respondent wanted to bring new material and not even any authenticated certified copies from any public office that too without any even application to receive as additional material by invoking Order 41 Rule 27 and Sections 107 to 151 CPC, this Court did not chose to permit.

18. In the result, the revision petition is allowed and the impugned dismissal order dated 28.03.2016 in I.A.No.2115 of 2011 of the trial Court is set aside and I.A.No.2115 of 2011 is restored to its file with a direction to give fresh hearing and disposal as per the observations supra in the previous para and only within the limited scope and on merits. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

01.11.2016
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