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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 113/2016

Date of Decision: 29.04.2016

JAGDISH CHANDER TOOR Appellant
Through: Appellant in person.

Versus

STATE BANK OF INDIA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.15412/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM Appln.15413/2016

1. For the reasons stated in the application, the delay of 87 days in refiling the appeal is condoned.
2. The application stands disposed of.

RSA 113/2016

1. The appellant has put up a challenge to the order dated 10.07.2013 passed in Suit No.75/2013 whereby the plaint of the appellant, seeking rendition of accounts of what money has been paid to the appellant as well as for obtaining copy of the service record of

the appellant, was rejected under Order 7 Rule 11 CPC and the order dated 28.09.2015 passed by the learned ADJ-01, Patiala House Courts, New Delhi, in RCA No. 43/2013 whereby the aforesaid rejection of plaint by the Trial Court under Order 7 Rule 11 CPC has been upheld and affirmed.

2. The appellant worked as Deputy Manager of the State Bank of India from 01.11.1996 till his retirement on 29.02.2012. He had represented on 15.06.2005 & 26.03.2005, to the bank authorities for payment of arrears of pay and allowances payable to him consequent upon his promotion to the post of Deputy Manager as on 01.11.1996. However his arrears of pay and allowances were not paid consequent to his promotion to the post of Deputy Manager.

3. The appellant again represented before the state bank authorities for release of the three increments which were awarded to him during his tenure, but only one increment of Rs.620/- was released to him.

4. Since, according to the appellant, arrears of his full pay was not released to him, he represented again, on which representation, he was asked to obtain data pertaining to his salary which was paid during the period ranging from 01.11.2005, the period from which the arrears were due. The aforesaid data was collected and handed over to the authorities but to no avail. The case of the appellant was that the SBI had wrongly fixed his basic pay. Under such circumstances, a suit was filed by the appellant seeking direction to the respondent/defendant to provide true account on the basis of which the appellant had been paid and certain amounts were deducted as well as for obtaining true copy of his entire service record.

5. The respondent/defendants contested the suit and filed their written statement. The stand of the respondent/defendants in the written statement was that the suit was misconceived and that it was the third round of litigation on behalf of the appellant. It was stated in the written statement that in the first round of litigation, the suit for permanent and mandatory injunction (Civil Suit No.19/2012) was dismissed by order dated 24.01.2013 holding that the appellant/plaintiff had been given all his retirement benefits to which he was entitled and no cause of action subsisted.

6. In the second round of litigation (Civil Suit No.31/2012), an application under Order 7 Rule 11 CPC preferred by the respondent/defendants was allowed and the suit was dismissed vide order dated 05.03.2013.

7. It was categorically submitted that the set of facts which were shown to have given rise to cause of action in Suit No.31/2012 were actually the same as in the suit filed in the third round of litigation.

8. The respondents, in their written statement asserted that the claim of rendition of account could be granted only in certain specific cases where the relationship between the parties is such that rendition of account would be the only relief entitling him to satisfactorily assert his legal right. Other objections with regard to suit not being appropriately valued for the purposes of court fees and the suit being barred by limitation in as much as the appellant was promoted with effect from 01.11.1996 and allegedly was denied the benefit of such promotion and the suit being vitiated for gross concealment of material facts, were also raised.

9. The respondent/defendant filed an application under Order 7 Rule 11 of the CPC seeking rejection of the plaint on the ground of the suit being without any case of action, barred by law and such prayer having been refused in the earlier rounds of litigation.

10. The defendants relied upon ***K.C.Skaria vs. Govt. of State of Kerala***, (2006) 2 SCC 285. In the said judgment, the Supreme Court has observed as follows:

“15. It is now well settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right (vide Jowahar Singh v. Haria Mal [(1899) 60 PR 1899 : 6 Punj LR 1900] , followed in Gulam Qutab-ud-din Khan v. Mian Faiz Bakhsh [AIR 1925 Lah 100] , State of J&K v. L. Tota Ram [AIR 1971 J&K 71] , Triloki Nath Dhar v. Dharmarth Counsel [AIR 1975 J&K 76]). The right to seek rendition of accounts is recognised in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee(s), suits by a member of a joint family against the karta for partition and accounts, suits by a co-sharer against other co-sharer(s) who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor”

11. The Trial Court vide order dated 10.07.2013 held that the relationship of the appellant/plaintiff and the respondent/defendant was

not such which would have entitled him to claim rendition of accounts. Thus no cause of action arose for the suit to be entertained.

12. The relief of mandatory injunction sought by the plaintiff was rejected on the ground that though there was a specific averment of the appellant/plaintiff that he had moved an application under the RTI act seeking the service records and accounts and the defendants did not provide correct answers, but the suit was not accompanied by either the RTI application or the reply on behalf of the respondent/defendant or their PIO, which to the estimation of the appellant, was unsatisfactory.

13. The plaint of the appellant/plaintiff was rejected for not disclosing any cause of action or barred by law.

14. The First Appellate Court affirmed and upheld the aforesaid finding of the Trial Court and held as hereunder:

“7. It is also observed by the Hon’ble Apex Court in catena of judgments that the Trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the poverty searchingly under Order 10 of the Code. The idea underlying Order 7 Rule 11 is that when no cause of action is disclosed, the court will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the court would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court’s resources

being used up on case which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant.

8. It is further observed that the rules and procedure are primarily intended to achieve the twine object underlining the Code of Civil Procedure. First, the parties must approach the court with true and clear facts, which are entitling them for seeking the legal remedy before the court and secondly that the dispute between the parties should be resolved finally and expeditiously. The expeditious disposal is a linchpin to the administration of civil justice. The purpose of Order 7 rule 11 CPC is to put an end to the cases, which are covered under clause (a) to (d) of Order 7 rule 11 CPC at the very threshold and in any case at the possible earliest stage. To allow the parties carry on vague and vexatious litigation, which in any case offends the provisions of Code, would be travesty of justice. In order to secure ends of justice and ensure expeditious disposal, a litigant is obviously at liberty to invoke the provisions of Order 7 Rule 11 CPC at any stage of the proceedings.”

15. The Trial Court is competent to reject a plaint at any stage of proceedings if it finds that the conditions under Rule 11 of Order 7 exist. If there is no cause of action for filling a suit, the same cannot be assumed and a clear right to sue should be evident in the plaint. The courts have got inherent powers to see that vexatious litigation is not allowed to consume the time of the court. The provisions of the rule are mandatory and if it is found that the case is barred by any law including law of limitation or there is no cause of action, the plaint has to be rejected. It would however be necessary to emphasise that the

phrase “no cause of action” has to be narrowly construed because rejection of the plaint at the threshold entails very serious consequences. This power therefore ought to be exercised by a court only when the court is absolutely sure that the plaintiff does not have any case at all.

16. A meaningful reading of the plaint of the appellant does not disclose any cause of action. The relationship of the parties, though, is of an employer and employee but there is no obligation on the part of the employer (defendants) to render accounts to its employee on his asking; more so, when such prayers have earlier been rejected by Courts of law. Such information could be obtained through other modes as well. In the event of the RTI application seeking such accounts from the respondents or the reply given thereto, not having been annexed with the plaint, no cause of action has been made out. Had it only been default on the part of the appellant/plaintiff in furnishing information as to the existence of the cause of action, the situation would have been different. In the present case, there is a specific averment that information sought through the RTI mechanism was not provided properly because of the defendants not cooperating in the matter. In such a situation, not bringing such documents on record with the plaint clearly demonstrates that there is no cause of action. Though technically, the defence of the defendant is not to be adverted to while deciding an application under Order 7 Rule 11 of the CPC, nonetheless active concealment of the fact regarding similar nature of litigation having been brought up earlier, in which the appellant had lost, disentitles the appellant/plaintiff from any relief.

17. This court finds no reason to differ with the findings of either the learned Trial Court or the First Appellate Court.

18. No substantial question of law arises in the aforesaid second appeal.

19. The same is consequently dismissed.

CM Appln.15411/2016

1. Since the RSA No.113/2016 is dismissed, this application has become infructuous.

2. Dismissed as having become infructuous.

ASHUTOSH KUMAR, J

APRIL 29, 2016

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