

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.206 of 2013

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Shankar Nath Majumdar S/O Sudhindra Nath Majumdar R/O Mohalla- Ram Ratan
Lane Adampur, P.S.- Adampur, District- Bhagalpur, Registered General Power Of
Attorney Holder Of Sri Sudhindra Nath Majumdar, Resident Of 135 Sarat Bose
Road, Kolkata

.... Petitioner/s

Versus

Chandan Kumar Sinha Son Of Late Ravindra Nath Sinha Resident Of Mohalla-
Moshakh Chak, P.S.- Adampur, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-01-2017

Heard Mr. Ajay Kumar Singh, learned counsel for the
petitioner. Nobody has appeared on behalf of the opposite party.

The present revision application has been filed against the
order by which the learned court below has rejected the petition filed
by the defendant-petitioner praying for rejection of the plaint under
Order 7 Rule 11 C.P.C.

The plaintiff filed the suit for specific performance of
contract. The defendant filed the petition praying for rejection of the
plaint on the ground that it did not disclose cause of action for the suit
and further on the ground that no date of agreement for sale or any
agreement for sale has been mentioned or annexed with the plaint.



Learned court below, after hearing the parties, has rejected the prayer as made by the defendant.

Mr. Singh, learned counsel for the petitioner has submitted that the learned court below has committed error of jurisdiction and has acted with material irregularity in ignoring the fact that the plaint does not disclose cause of action and the averments made therein does not mention the date for agreement for sale nor the agreement for sale has been enclosed with the plaint. Learned counsel in support of this submission has relied upon the decision of the Apex Court in the case of **Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I, 2004 (9) SCC 512** and in the case of **Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust, 2012 (8) SCC 706**. It has also been propounded that the plaint in a suit for specific performance of contract must be in consonance with Form 47 and 48 as prescribed in C.P.C. and in case of non compliance, the plaint must be rejected.

After considering the submissions and the materials on record including the impugned order, it appears from the copy of the plaint (Annexure-1) that the plaintiff has come out with the case of an agreement for sale of the suit land with the defendant and has mentioned the fact in the plaint that the defendant-petitioner had received Rs. 15,50000/- in pursuance to the agreement for sale and



also granted the receipt to the plaintiff for the same. The document which has been annexed with the plaint as required under Order 7 Rule 14 C.P.C. discloses that it is an authorization letter authorizing the plaintiff for immediate sale of the suit land. In the backdrop of these facts and according to the established principles that the facts mentioned in the plaint are to be accepted without addition or subtraction, it does not appear to this Court that the plaintiff has not disclosed cause of action for filing the suit and the plaint is fit to be rejected for that reason. The distinction between non disclosure of cause of action and absence of cause of action is to be maintained while considering the prayer for rejection of plaint on that ground. It is only non disclosure of cause of action in the plaint which may entail the consequence of rejection of plaint. The principle in this regard has been well laid by their lordships in the case of **Kamala Vs. K.T. Eshwara Sa, 2008 (12) SCC 661**. The averments made in the plaint are to be read in totality and in meaningful manner and no compartmentalization in this regard is permitted. The plea of the plaintiff regarding payment of Rs. 15,50,000/- to the defendant in pursuance to the argument for sale is also to be considered before construing the authorization letter in one way or the other. It is only in cases of “vexatious and bogus litigation” that the drastic power under Order 7 Rule 11 C.P.C. for rejection of the plaint is to be exercised.



The decisions relied upon on behalf of the petitioners have been rendered in different setting of facts and do not support the prayer of the defendant-petitioner in the present facts.

The learned court below after considering the facts and submissions has rightly turned down the prayer for rejection of the plaint. This Court does not find error of jurisdiction or any illegality in the impugned order.

The revision application, sans merit, is, accordingly, dismissed.

(V. Nath, J)

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