

IN THE HIGH COURT OF BOMBAY AT GOA.
CIVIL REVISION APPLICATION NO. 6 OF 2017.

MR. SHAIKH JINA.,	... Petitioner
Versus	
SHRI. SARVESH ANANT HEGDE.,	... Respondent.

Mr. Kaif Noorani, Advocate for the petitioner.
Mr. C. A. Coutinho, Advocate for the respondent.

Coram:- M. S. SONAK, J.
Date:- 25th April, 2017.

ORAL ORDER:

Heard Mr. K. Noorani, learned Counsel for the petitioner and Mr. C. A. Coutinho, learned Counsel for the respondent.

2. This revision application takes exception to the order dated 7.1.2017 by which the learned Trial Judge has dismissed the petitioner's application under Order VII Rule 11(a) of the CPC seeking rejection of plaint for failure to disclose cause of action. The petitioner had also submitted that suit has rendered infructuous consequent upon the deposit of rent/compensation by the petitioner before the Rent Controller. The petitioner had invoked provision of Section 151 of CPC urging the dismissal of the suit on the ground that same has been rendered infructuous. Section 151 of CPC has also been invoked on the ground that devolution of the interest in the suit property upon the respondent/plaintiff was in the year 2013 i.e. after institution of the suit and therefore the suit is not maintainable.

3. Mr. Noorani, submits that upon meaningful reading of the plaint and documents accompanying the same there is failure to disclose the cause of action. He further submits that from the plaint and documents accompanying the same, it is clear that the petitioner deposited compensation/rent amounting to Rs.90,000/- (Rupees ninety thousand only) before the Rent Controller, South Goa, Margao by taking out an application under Section 18 of the Rent Control Act. Mr. Noorani, submits that if terms and conditions of the licence are perused then the termination can be only on the ground of failure to pay compensation. In this case, since rent compensation has been deposited, there is no cause of action in any case there is failure to disclose cause of action. Mr. Noorani, in any case, submits that suit is required to be dismissed by resort to Section 151 of CPC because the petitioner had already paid the rent/compensation and the reliefs applied in the suit are rendered infructuous. Mr. Noorani submits that since the plaintiffs claim title on the basis of the Will and since such title is devolved upon the plaintiffs in the year 2013, the suit instituted in the year 2012 was misconceived and was required to be dismissed. In support of his submissions he places reliance in the decision of the Supreme Court in the case of **the Church of Christ Charitable Trust and Educational Charitable Society Vs Ponniamman Educational Trust 2012(3) RCR (CIVIL) 811 and Baburao Vs. Pokhardas died through L.R.s, 2016(6) Bom CR 546.**

4. Mr. C. A. Coutinho, defends the impugned order by pointing out that there is ample disclosure of the cause of action in the plaint. He submits that the petitioner is only a licensee. It is pleaded that there were defaults committed by the petitioner. It is pleaded that despite the deposit before the Rent Controller the default persists. It is pointed out that there was no reason to make any deposit before the Rent Controller. In any case he submitted that since the petitioner is only a licensee, the respondent is entitled to terminate the licence and seek recovery of possession. He submits that there is no question of suit becoming infructuous or suit being misconceived. He submits that the respondent had every right and authority to institute the suit as on the date on which it was instituted. In any case all these are the matters which cannot be gone into on the application under Order VII Rule 11 of CPC. He submits that on the basis of such frivolous application the petitioner had delayed the progress of the suit for almost a year, therefore, the Civil Revision application should be dismissed with exemplary costs.

5. The rival contentions now fall for my determination.

6. At the stage of deciding the application under Order VII Rule 11 of CPC, scope of the Courts exercise of power is quite limited. There is distinction between the non existence cause of action and the failure to disclose the cause of action. At this stage, it is not for the Court to look into the defence of the defendant. At this stage, it is

not even permissible for the Court to compartmentalise or dissect the averments or reliefs in the plaint. The plaint has to be read as a whole. If, upon meaningful reading of the plaint as a whole, cause of action is disclosed then, there is no question of rejecting the plaint by resort to provisions of Order VII Rule 11 of CPC.

7. In the case of **Mayar H. K. Ltd and other 2006(3) SCC 100** at paragraphs 10 and 11, this is what the Hon'ble Apex Court held:-

“10. Under Order VII Rule 11 of the Code, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the Code would be on consideration of the principles laid down by this Court. In T. Arivandandam vs. T.V. Satyapal and Another, (1977) 4 SCC 467, this Court has held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court

should exercise its power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In Roop Lal Sethi vs. Nachhattar Singh Gill, (1982) 3 SCC 487, this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order VI Rule 16 to strike out the paragraphs in absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In ITC Ltd. Vs. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order VII Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said

provision. In Saleem Bhai and Others vs. State of Maharashtra and Others, (2003) 1 SCC 557, this Court has held that the trial court can exercise its powers under Order VII Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510, this Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words :

"There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence of a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without

addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue

influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

(Emphasis supplied)

8. In this case, upon meaningful reading of the plaint, it cannot be said that there is no disclosure of the cause of action. In the plaint, it is specifically pleaded that soon after the death of Shashikant Dalal, plaintiff specifically informed the defendant (petitioner herein) that the suit premises are bequeathed to the respondent and that licence fees should be paid to the respondent. This is stated in para 12 of the plaint. In paragraph which follow there are averments that, despite request, petitioner failed and neglected to pay licence fees. Thereafter it is stated that licence itself was terminated. Despite termination of the licence it is pleaded that the petitioner fail to vacate the premises. In the plaint, there are disclosures with regard to correspondence and in that context, it is

pleaded that after the death of Shashikant Dalal, the petitioner deposited the amount for the months of September, 2011 to February, 2011 amounting to Rs.90,000/- (Rupees ninety thousand only) before the Rent Controller. It is also pleaded that the petitioner has denied ownership of the plaintiff and even that constitutes a ground to terminate the licence. Finally, there are averments that the Rent Control Act is not applicable to the suit premises. Mesne profits have also been applied for. All these are more than sufficient for disclosure of cause of action.

9. Mr. Noorani, submissions are more in the nature of petitioner's defence to the suit. At the stage of deciding the application under Order VII rule 11 of the CPC there is no question of referring to the defence which may have been raised in the written statement. Upon meaningful reading of the averments in the plaint in their entirety, it cannot be said that there is any failure to disclose any cause of action.

10. Submission that reliefs in the suit have rendered infructuous merely because the petitioner may have deposited some portion compensation/rent before the Rent Controller also cannot be accepted. The decision in the case of ***the Church of Christ Charitable Trust and Educational Charitable Society*** (supra) is not applicable as the facts in the case offer no parallel to the present case. The same is the position in relation to the decision in

Baburao, (supra).

11. This is clearly not a case where it can be said that the reliefs in the suit have been rendered infructuous and therefore suit deserves dismissal under Section 151 CPC. The mere deposit of a portion of rent/compensation before the Rent Controller does not wipe out cause of action arising out of termination of a licence. The plaintiff seeks relief for recovery of possession and mesne profits, which are yet to be determined or granted.

12. There is no jurisdictional error in the making of the impugned order. The Civil Revision Application is therefore dismissed. There shall be no order as to costs.

M. S. SONAK, J.

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