

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Revision Application No.38/2017

Atmaram s/o Maroti Kawale(since deceased) through Lrs Krishna Atmaram Kawale
(since deceased) Ganesh Atmaram Kawale and others

VS..

Subodh s/o Ghanshyam Gattani and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr.D.C.Chahande, Adv. for applicant.
Mr.A.M.Quazi, Adv.for non applicant no.1.

CORAM : N.W.SAMBRE, J.

DATE : APRIL 05, 2017

This revision is filed by the original defendant no.1 to the Special Civil Suit No. 751/2005 pending on the file of 6th Joint Civil Judge, Senior Division, Nagpur, praying for a decree for specific performance of contract based on an agreement of sale entered into between the parties on or about February 14, 2000.

In the said suit at this stage, the defendant no.1 moved an application, Exh.94, under Order VII Rule 11 (a) of the Code of Civil Procedure Code. The sum and substance of the claim made by the applicant is, there is no cause of action specifically pleaded in the plaint and the verification is not in accordance with Order VI Rule 15 sub rule 1, 2 and 3.

The said application came to be rejected by the learned Jt. Civil Judge, Senior Division, on 3rd November, 2014 and as such, the present revision application.

Shri D.C.Chahande, learned counsel for the applicant-original defendant no.1 would invite my attention to the provisions of Order VI Rule 15 sub rule 1, 2 and 3 and also the verification in support of the cause of action in Special Civil Suit No.751/2005 so as to canvas that there is no cause of action specifically pleaded, so also the verification is not in accordance with Rule 15 of Order VI of the Code of Civil Procedure. He would then submit that the parties to the proceedings i.e. the plaintiff have led his evidence. Upon perusal of the evidence and contents of the plaint, it cannot infer that there is a satisfaction of order VI Rule 15 and specific pleadings of the cause of action. He would draw support from the judgment of this Court in the matter of **Sociedade De Formento Industrial Limited Vs. Gurudas S. Pai, reported in 2016(5) Mh.L.J. 143**. According to him, while dealing with the plea under Order VII Rule 11 (a) of the CPC and while construing absence of cause of action, the evidence as is brought before the Court, is required to be taken into account in addition to the pleadings of the parties. He would then urge that the harmonious reading of the cause of action with that of the verification clause in the plaint, does not satisfy the mandatory requirement under the Code of Civil Procedure and as such, the plaint should have been rejected under Order VII Rule 11 (a) as it does not disclose the cause of action.

Per contra, Shri Quazi, the learned counsel for the original plaintiff, respondent in herein, would urge that what has been pointed out before this Court is in the form of short fall. Even if the same are accepted, the same short falls are in the form of the defects which can be cured. So as to substantiate his contention, he would invite attention of this Court to the Judgment of the Hon'ble Apex Court in the matter of **Smt. Neena Vikram Verma Vs Balmukund Singh Gautam and others, reported in 2014(4) ALL M R 486(SC)**. In addition, so as to substantiate his contention that the defects if any are curable, he would rely upon the judgment of this Court in the matter of **Shishupal N.Patle Vs. Praful M. Patel, reported in 2010(6) ALL M. R 267**.

According to him, the plain reading of Order VII Rule 11 (a) with that of the provisions of Order VI Rule 15 does not contemplate the reading of the evidence while construing the cause of action, if the plaint is to be rejected under Order VII Rule 11 (a). He would then urge that the cause of action in view of the Judgment of the Hon'ble Apex Court in the matter of **Swamy Atmananda and others Vs. Shri Ramkrishna Tapovanam reported in AIR 2005 SC 2392** is termed to be bundle of facts, if harmoniously read construing the entire pleadings in the plaint. According to him, the application is rightly rejected by the Court below and the present revision is also required to be rejected.

With the assistance of the respective counsel for the parties, I have perused the agreement of sale Exh.56, the notices dated 26.02.2001, 6.03.2001, 12.10.2011 and the public notice, which are placed on record. The copy of the plaint in addition to the pleadings in the form of cause of action, the verification and also the evidence of the parties i.e. the plaintiff at Exh.152 is scanned carefully. What could be gathered from the material available on the record is, a suit is filed by HUF Shri Subhodh Gattani- M/s. Ram Enterprises appears to be it's proprietary firm. For establishing the proprietary firm of HUF, it is not brought to my notice any particular provision of law so as to establish the identity of proprietary firm. In the aforesaid background, cumulative reading of the contents of the agreement which formed a basis of initiation of the suit, the notes referred in reply thereto and the cause of action along with the verification in support of the plaint, in my opinion, cannot be stretched to the extent, to form an opinion that the plaint is not disclosing any cause of action or to say that verification suffers from deficiency which are not curable, particularly in the light of the provisions of order VI Rule 15 sub rule 1, 2, and 3. Apart from above, what can be gathered from the judgment of the Hon'ble Apex Court in the matter of Swamy Atmanand (supra) and in the matter of Mrs. Neena Verma (supra), the defects, if any, as are pointed out cannot be termed to be detrimental to the interest of the party so as to warrant rejection of plaint in exercise of powers under Order VII Rule 11 (a) of the Code of Civil Procedure. Various

judgments as pointed out, and are referred to hereinabove, of this Court have in clear terms expressed that such defects, if any noticed, are curable.

In that view of the matter, in my opinion, the order of rejection of application under Order VII Rule 11 (a) i.e. Exh. 94, does not suffer from any error of jurisdiction, which calls for interference in revisional jurisdiction. The revision lacks of merit and it is rejected as such.

There is one more ground which, in my opinion, could be the base for rejection of civil revision application i.e. delay and laches with which the present revision application is brought before this Court. The order impugned is passed three years back and thereafter the suit proceeded on merits. As such, the revision is also liable to be rejected on this ground, as it suffers from delay and laches.

JUDGE

Andurkar..