

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2779 of 2009 and
M.P.No.1 of 2009

1.M.Sivaram

2.M/S.Aruna Hotels Ltd.
(Formerly Aruna Sugars and Enterprises Ltd)
Represented by its Managing Director
M.Sivaram, Aruna centre
145, sterling road, Nungambakkam
Chennai-34. .. Petitioners

Vs.

M.Krishnamurthy .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.04.2009 made in I.A.No.20626 of 2004 in O.S.No.1866 of 2004 on the file of the III Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.R.Rajagopal

For Respondent : Mr.R.Sivakumar

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 09.04.2009 made in I.A.No.20626 of 2004 in O.S.No.1866 of 2004 on the file of the III Assistant City Civil Court, Chennai.

2. The petitioners are the defendants 1 & 2 and respondent is the plaintiff in O.S.No.1866 of 2004 on the file of the III Assistant City Civil Court, Chennai. The respondent filed suit for declaration that the first petitioner is not the exclusive promoter of the second petitioner company and for injunction restraining the first petitioner from transferring the assets of the second petitioner company to any other persons including the third defendant without consent of the respondent. The petitioners filed I.A.No.20626 of 2004 under Order VII Rule 11(a) & (d) of C.P.C. to reject the plaint on the ground that no cause of action has arisen and the suit is barred by law.

3. According to the petitioners, the respondent filed the suit on the ground that there was a family settlement between the first

petitioner and respondent and the respondent agreed to receive Rs.40,00,000/- from the second petitioner company to give up all his rights against the second petitioner company. According to the petitioners, such allegation made against the first petitioner is that the said arrangement has done in his individual capacity and that the suit cannot be maintained. On the contrary, if the respondent pleads that the first petitioner acted on behalf of the second petitioner company, he could not have acted as it can be done only by following the procedure as contemplated under the Companies Act. The first petitioner does not owe any money to the respondent under any arbitration award and there is no arbitration award. Even if assuming there is an award and the respondent has instituted insolvency proceedings, it is in the individual capacity of the first petitioner and not against the second petitioner. Only to settle private disputes, the respondent has filed suit against the company to spoil the name of the company. The relief sought for by the respondent is barred by Section 9 of C.P.C. As per Section 397 of the Companies Act, there is a specific bar that the suit can be decided for any misfeasance and the respondent has to approach the Company Law Board.

4. The respondent filed counter affidavit and denied all the averments made by the petitioners and submitted that the petitioners have made necessary averments in the plaint as to how cause of action for the suit has arisen. The respondent is having less than 10% of shares of the second petitioner company and cannot approach the Company Law Board. As per the provisions of the Companies Act, the relief sought for by the respondent is in consonance with the provisions of the Specific Relief Act and the suit is not barred by Section 9 of C.P.C.

5. The learned Judge considering the averments made in the plaint, affidavit and counter affidavit, dismissed the application holding that the plaint discloses cause of action and that the respondent has stated that he is having only less than 10% of shares in the second petitioner company, he can maintain the suit with regard to mismanagement of the affairs of the company and the petitioners have not made out any case for rejection of plaint as per the Order VII Rule 11(a) & (d) of C.P.C.

6. Against the order dated 09.04.2009 made in I.A.No.20626 of 2004 in O.S.No.1866 of 2004, the present civil revision petition is filed by the petitioners.

7. The learned counsel for the petitioners submitted that the learned Judge failed to see that the relief sought for in the suit can be adjudicated only before the Company Law Board constituted under the provisions of the Companies Act. The suit is barred by Section 9 of C.P.C. A reading of the plaint as a whole clearly shows that the suit is vexatious and merit less. The learned Judge failed to see that the plaint does not disclose any cause of action. The Hon'ble Apex Court in the judgment reported in **1977 (4) SCC 467 (T.Arivanandam vs. T.V.Satyapal and another)** held that if by clear drafting, an illusion of cause of action was created, the same must be nipped at the bud at the first hearing itself. The learned Judge erred in dismissing the application by holding that the relief of misfeasance or oppressive management of affairs of the company could be granted by the Civil Court overlooking the fact that under Section 397 of the Companies Act only the Company Law Board was empowered to entertain and decide the said issue. The learned Judge in not considering the averments made in the plaint as a whole dismissed the application by considering only the cause of action paragraph, which is contrary to the decision reported in **2007 (5) MLJ 187 (Hardesh Ores Pvt. Ltd. and another v. Hede and Company)**.

8. In support of his contention, the learned counsel for the petitioners relied on the following judgments, which has been held as follows:

(i) **1977 (4) SCC 467 (T.Arivanandam vs. T.V.Satyapal and another);**

"5. The learned Munsif must remember 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, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. . . . "

(ii) **1999-2-L.W. 757 (Rani Mohanraj and another v. P.Rajarathinam);**

"22. . . . Suit itself is filed with an oblique motive and with an intention to retain the assets belonging to minor. When Natural guardian is alive

and the effect of the suit also will amount to preventing police officers from discharging their statutory duties, the same shall not be allowed to be continued. It is only in the interest of justice respondent should be prevented from further prosecuting suit. Entertaining complaint and investigating the same is the duty of police officers. That is not to be prevented by granting injunction whether permanent or temporary. When suit is barred by law, lower Court should have considered the same before entertaining the same."

(iii) ***(2007) 5 MLJ 187 (SC) (Hardesh Ores Pvt. Ltd. and another v. Hede and Company);***

"21. The language of Order VII Rule 11 C.P.C. is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr.Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose, the

averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or 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.”

9. Per contra, the learned counsel for the respondent submitted that the respondent has furnished all the necessary particulars and made necessary averments in the plaint, which discloses cause of action. As far as cause of action paragraph is concerned, it is nothing to concise statement of averments made in the plaint, which discloses cause of action. It is not in dispute that the respondent is not owning 10% of shares or more than 10% of shares in the second petitioner company. In view of the same only, the suit is proper remedy for the relief sought for by the respondent. The learned Judge has given valid reasons for

dismissing the application. Thus he prayed for dismissal of this revision petition.

10. Heard both sides and perused the materials available on record.

11. The respondent filed suit for declaration and injunction. According to the respondent, a family settlement was entered into between him and first petitioner on 17.08.1998 whereby the respondent agreed to give up all his rights, claim, benefits and interest in respect of M/S.Aruna Sugars and Enterprises Limited, now the second petitioner herein, for a consideration of Rs.40,00,000/-. The first petitioner did not pay entire amount as agreed upon and respondent has initiated arbitration proceedings against the first petitioner. The first petitioner being a major share holder is mismanaging the affairs of the second petitioner company. The petitioners filed I.A.No.20626 of 2004 for rejection of the plaint under Order VII Rule 11(a) & (d) of the C.P.C. on the ground that there is no cause of action and it is barred by law.

12. According to the petitioners, plaint has been cleverly

drafted and an illusion of cause of action has been created. The plaint as a whole does not disclose any cause of action and the learned Judge considered only cause of action portion and dismissed the application. Further, the suit is barred by the provisions of the Companies Act and Section 9 of C.P.C. These contentions are without merits.

13. A reading of the plaint as a whole discloses cause of action for the suit and the learned Judge considered the averments made in the plaint and has held that the plaint discloses cause of action. As far as the contention that the suit is barred by the provisions of the Companies Act is concerned, the respondent has stated that he is having less than 10% of the shares in the second petitioner company and he cannot approach the Company Law Board under the provisions of the Companies Act. Whether this contention is correct or not to be decided only after conclusion of trial by appreciating the evidence let in by the parties.

14. It is well settled that while considering the application filed under Order VII Rule 11 of C.P.C., the averments made in the plaint alone have to be taken into consideration. Only when the petitioners

satisfy the Court that the plaint is liable to be rejected as per the Order VII Rule 11(a) & (d) of C.P.C., the Court can reject the plaint. All the above three judgments as referred by the learned counsel for the petitioners have laid down only this principle. At the stage of considering the application for rejection of plaint, the contentions of defendant contrary to averments in the plaint and documents filed along with plaint are irrelevant and the Court cannot take into consideration these contentions.

15. The learned Judge considering all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity in the order of the learned Judge dated 09.04.2009 warranting interference by this Court.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking/Non-speaking order

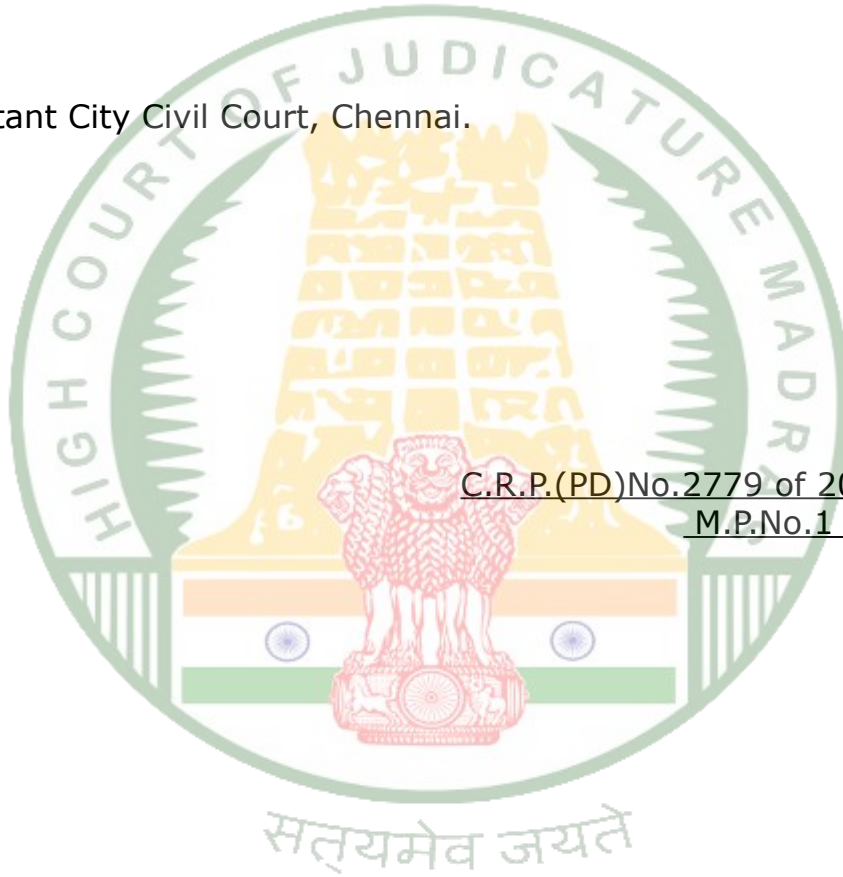
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V.M.VELUMANI, J.

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To

III Assistant City Civil Court, Chennai.



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