

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1488 OF 2017

ORDER:

This civil revision petition is filed challenging the order in E.A.No.72 of 2016 in E.A.No.71 of 2016 in E.P.No.2 of 2014 dated 21.02.2017, passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad, whereby, E.A.No.72 of 2016 is filed Order VII Rule 11 r/w Section 151 C.P.C to reject the claim petition in E.A.No.71 of 2016 was allowedf.

For the sake of convenience, the parties hereinafter will be referred as arrayed in E.A.No.72 of 2016.

The petitioner/decree holder filed E.A.No.72 of 2016 under Order VII Rule 11 r/w Section 151 C.P.C to reject the claim petition E.A.No.71 of 2016 with exemplary costs. It is the case that the petitioner/decree holder filed E.P. 2 of 2014 as per the directions of the Apex Court in S.L.P Appeal in Civil No.20082 of 2013 for execution of the order passed in C.D.No.1520 of 1998 by the Consumer District Forum-II, Hyderabad, seeking registration and delivery of possession of the schedule property and for recovery of Rs.3,41,000/- towards compensation by attaching the movables shown in the E.P. 'B' schedule property. The first respondent/claim petitioner filed O.S.No.783 of 2009 against the second respondent and another, seeking perpetual injunction, immediately after the said C.D.No.1520 of 1998 was allowed, in his favour on 17.08.2000 and without impleading her as a party to the said suit. The first respondent/claim petitioner already filed E.A.No.7 of 2014 under Order XXI Rules 97 & 99 r/w Section 151

C.P.C, claiming that she is the absolute owner of Flat No.101 of ground floor and the petitioner/decreed holder filed E.A.No.9 of 2014 in E.A.No.7 of 2014 under Order VII Rule 11 C.P.C to reject E.A.No.7 of 2014 and the said application was dismissed by the Executing Court. Further, the matter was carried to this Court in C.R.P.No.4123 of 2014 and the same was allowed, setting aside the order dated 23.07.2014 passed in E.A.No.9 of 2014 and attained finality. Despite rejection and dismissal of earlier application filed under Order XXI Rules 97 & 99 r/w Section 151 C.P.C, the respondent filed an identical application by changing the provision of law. Thus, E.A.No.71 of 2014 is barred by Principle of *Res Judicata*, since the dispute is already decided between the parties.

The petitioner/decreed holder before the Trial Court filed petition under Order VII Rule 11 contending that E.A.No.71 of 2016 is not maintainable, in view of rejection of earlier application in E.A.No.7 of 2014 and that the petition is aimed to protract the execution proceedings for some time to grab the property manipulating the things and circumventing the provisions of law and therefore, prayed to reject the petition.

The first respondent/decreed holder filed counter denying material allegations in the petition, *inter alia* contending that the petition is filed to delay and protract the matter and to deprive her rights over the property. It is also submitted that the decreed holder who was tenant, has been resorting to manipulations and fabrication of the documents so as to grab the first respondent's property behind her, in collusion with the second respondent. It is also submitted that the petition filed under Order VII Rule 11 C.P.C is not maintainable as the provisions of Order VII Rule 11

are not applicable to the claim petition and they are applicable only to a plaint. The first respondent also submitted in the counter that the decree holder has not even mentioned on what ground in Order VII Rule 11 C.P.C, the application is filed, so as to reject the claim petition. Further, it is also submitted in the counter that the first respondent is not a party to any of the proceedings and therefore, any of the judgments do not bind her in any manner.

Upon hearing arguments of both the counsel, the Court below allowed the application under Order VII Rule 11 C.P.C and rejected the claim petition in E.A.No.71 of 2016 under Order VII Rule 11 (1) & (d) of C.P.C., answering the following points framed for consideration in favour of the petitioner:

1. Whether the property claimed by petitioner/decreed holder and respondent no.1/claim petition are one and the same or whether they are distinct and different properties?
2. Whether the petitioner/decreed holder has established that there is no cause of action for respondent No.1/claim petitioner to file claim petition in E.A.No.71 of 2016?
3. Whether the petitioner/decreed holder has established that this Court has no jurisdiction to entertain claim petition in E.A.No.71 of 2016?
4. Whether the petitioner/decreed holder is entitled to the relief of rejection of petition in E.A.No.71 of 2016, as prayed for?
5. To what relief:

Aggrieved by the said order, the first respondent/claim petitioner preferred the present revision under Section 115 C.P.C, raising several contentions, mainly contending that the dismissal

of an earlier application would not operate as *res judicata*, as the present petition is filed under Section 151 C.P.C but not under Order XXI Rules 97 & 99 C.P.C, thereby, rejection of the present application E.A.No.71 of 2016 is an illegality committed by the Court below and framing of such points for consideration and dismissal of the application is beyond the scope of Order VII Rule 11 (a) & (d), thus, committed a serious error in rejecting the application filed by the petitioner in E.A.No.71 of 2016 allowing E.A.No.72 of 2016.

During hearing, learned counsel for the petitioner Sri C. Raghu before this Court reiterated the contentions urged in the petition itself, whereas, learned counsel for the respondent before this Court supported the order of the Trial Court in all respects.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1. Whether the petition discloses cause of action?
2. Whether the claim in E.A.No.71 of 2016 in E.P.No.2 of 2014 is barred by Principle of Res Judicata. If so, whether rejection of petition is in accordance with law?

POINTS: 1 & 2

As the Trial Court recorded a finding that the petition did not disclose any cause of action and that it is barred by Principle of Res Judicata, I find that it is appropriate to decide both the points by common discussion, keeping in mind the limited scope of Order VII Rule 11 C.P.C

According to Order VII Rule 11 C.P.C, plaint shall be rejected a) Where it does not disclose a cause of action;(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) Where the suit appears from the statement in the plaint to be barred by any law, provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

In the present facts of the case, the Court below rejected petition under Order VII Rule 11 (a) & (d) C.P.C, on the ground that the plaint does not disclose cause of action and the claim in the petition is hit by Section 11 of C.P.C i.e. Principle of *Res Judicata*. The Court below curiously framed five points for consideration and most of the points framed and decided by the Court below pertains to a decision based on facts, keeping in view the orders passed by the Courts in E.P. at various stages. But, no documents were marked in the petition. However, the Court below adverted to several orders and passed the present order under challenge.

To decide the application under Order VII Rule 11 C.P.C, the Court has to look into the allegations made in the petition alone and the truth or otherwise in the allegations made in the petition which form a cause of action cannot be decided. If the petition *prima facie* discloses no cause of action, the Court can reject the petition.

In **Jageshwari Devi and others v. Shatrughan Ram**¹, the Supreme Court while considering the scope of Order VII Rule 11(a) C.P.C, expressed its opinion that there is a difference between non-disclosure of a cause of action and defective cause of action; while the former comes within the scope of Order VII Rule 11 C.P.C, the latter is to be decided during trial of the suit. The Apex Court further held that the contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order VII Rule 11 C.P.C no exception can be taken to the order.

Therefore, rejection of plaint on the ground that it is defective is an illegality and the Court has to look into the allegations made in a petition while considering the application under Order VII Rule 11 C.P.C and cannot look into any other aspect like petition filed under Order VII Rule 11 C.P.C and defense in the written statement or counter filed by the plaintiff/respondent to determine the Court below advertent to several aspects, including the evidence on record, decide the application. Such decision is contrary to the principle laid down in **Jageshwari Devi**¹ case.

¹ (2007) 15 Supreme Court Cases 52

An identical question came up before the Apex Court in **Bhau Ram v Janak Singh and others**², wherein, in paragraph 15 of the judgment, the Apex Court held that in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. [vide **C. Natrajan vs. Ashim Bai and Another**³, , **Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others**⁴, **Hardesh Ores (P) Ltd. vs. Hede and Company**⁵ , **Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others**⁶, **Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others**⁷ , **Saleem Bhai and Others vs. State of Maharashtra and Others**⁸]. The above view has been once again reiterated in the recent decision of the Apex Court in **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee**⁹.

In the present facts of the case, the Court below adverted to several aspects, ignoring the scope of enquiry in a petition filed under Order VII Rule 11 C.P.C, thus, exercising jurisdiction which is not conferred on it, transgressing the limits under Order VII Rule 11 C.P.C.

On a bare look at the petition, it discloses *prima facie* cause of action for filing the petition. But, the other contention is that, the present petition is hit by Principle of Res Judicata, as the

² (2012) 8 Supreme Court Cases 701

³ (2007) 14 SCC 183

⁴ (2007) 10 SCC 59

⁵ (2007) 5 SCC 614

⁶ (2006) 3 SCC 100

⁷ (2004) 3 SCC 137

⁸ (2003) 1 SCC 557

⁹ 2012 (6) JT 149

earlier application in E.A.No. 7 of 2014 was rejected under Order VII Rule 11 C.P.C. An identical application is filed in the present petition also and the identical allegations are made in the present petition though filed under Section 151 C.P.C. No doubt, the Principle of *Res Judicata* is based on public policy to put an end to the litigation and to prevent abuse of process of the Court by filing one after the other suits or petitions.

In **Vaish Aggarwal Panchayat v. Inder Kumar and others**¹⁰, the Supreme Court held that Principle of *Res Judicata* is both mixed question of fact and law and issue is required to be framed and decided on merits and the petition cannot be rejected at the threshold on the ground that it is hit by Section 11 of C.P.C.

In view of the law declared by the Apex Court, the Court has to frame an issue with regard to Principle of *Res Judicata* and try the issue and decide. But that cannot be a ground to reject the petition, circumventing the provision under Order VII Rule 11 (d) C.P.C. Therefore, it is difficult to uphold the contention of the learned counsel for the respondent before this Court. Even otherwise, Order VII Rule 13 C.P.C is an exception to file application.

According to Order VII Rule 13 C.P.C, where rejection of plaint does not preclude presentation of fresh plaint, the rejection of the plaint on any of the grounds shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Therefore, dismissal of earlier application in E.A.No.7 of 2014 on any of the grounds under Order VII Rule 11 C.P.C would not preclude the petitioner/claim petitioner from filing

¹⁰ 2015 SCC 751

a fresh application on any of the grounds or even rectify the mistakes or errors in the earlier application. When some leverage is given to the party by the procedural law, rejecting an application under Section 151 C.P.C on the Principle of *Res Judicata* by exercising power under Order VII Rule 11 (d) C.P.C is erroneous on the face of record.

The Court below framed several points, which I extracted hereinabove and some of the points are based on fact findings in various earlier proceedings and though, no oral evidence was adduced and no documents were marked, the Court below considered based on the material produced before the Court and accepted the contention of the respondents before this Court and allowed application, transgressing its jurisdictional limits under Order VII Rule 11 C.P.C and thereby, the order is liable to be set-aside. Therefore, the order passed by the Court below in E.A.No.76 of 2016 dated 21.02.2017 is hereby set aside directing to restore E.A.No.71 of 2016, to its original number in the register and remand the matter to the Court below to decide the dispute within the four corners of Order VII Rule 11 (a) & (d) C.P.C afresh, keeping in mind the principle laid down by the Apex Court in the judgments referred supra.

As observed by this Court in the earlier paragraphs, when the Court below exceeded jurisdiction that is conferred on it, this Court can exercise its power under Section 115 C.P.C. Therefore, the order passed by the Court below is hereby set-aside.

In the result, the civil revision petition is allowed setting aside the order in E.A.No.72 of 2016, directing the Court below to restore both E.A.Nos.71 & 72 of 2014 to its original number in the

register and decide the same in accordance with law by following the principles laid down by the Apex Court in the judgment referred supra.

It is needless to state that the observations herein made if any, will have no bearing on the issues involved in the matter and the Court below is directed to decide the matter uninfluenced by any of the observations made hereinabove.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: -07.2017

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