

• THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.5884 OF 2011

% 09th November, 2017.

CIVIL REVISION PETITION No.5884 OF 2011

M/s.Ashrith Relators & Developers and another

.. PETITIONERs

VS.

\$ Capt. Arun Prasad

... RESPONDENT

! Counsel for the petitioner : Sri P.Sri Raghuram

^ Counsel for the respondents : Sri V.Hari Haran

< Gist:

> Head Note:

? CITATIONS:

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**CIVIL REVISION PETITION No.5884 OF 2011****ORDER:**

The revision is maintained by the petitioners/defendants in the suit of the sole plaintiff in O.S.No.213 of 2008, pending on the file of the learned Principal District Judge, Ranga Reddy District at L.B.Nagar (since stated, transferred and pending with the XIV Additional Chief Judge, Ranga Reddy District at Malkajgiri), though originally it was dismissed on 31.12.2012, the same was restored and pending and chief affidavit of the plaintiff stated filed and not taken on oath so far as P.W.1 chief.

2. The contentions in the application filed by the defendants under Order VII Rule 11 particularly from clauses (a) & (d) of CPC are that the plaintiff has no cause of action against the defendants to get the suit reliefs for the specific performance of the alleged oral contract for sale more particularly for the fact that the plaint nowhere specifically asserted as to how the defendants got right and title over the plaint schedule property but also from the context of the written statement of the defendants apart from what they mentioned in the application that the Patel Engineering is the owner and not the defendants in question but for if at all the allegation is in arrangement as an intermediary and once

such is the case, the plaintiff without impleading that Patel Engineering if necessary cannot allege any existence of cause of action that too when reply notice of the defendants referred in the plaint and also enclosed as document No.6 is very clear of denying the said allegations about the entering of any agreement and their got any title over the property and the relief is also barred by Sections 13 and 17 of the Specific Relief Act for no specific performance of the contract can be granted against a person with no title for the alleged property for not a case of any subsequent acquisition of title by the defendants much less by the date of suit. Hence, the trial court in dismissing the application on 20.09.2010 in dismissing the I.A.No.1518 of 2009 is unsustainable and is liable to be revised by setting aside the same by allowing the application.

3. Whereas, it is the submission of the counsel for the respondent/plaintiff to the revision petition that the impugned order of the lower court is a reasoned one supported by reasons merely because some other view possible even an appellate court cannot interfere within the limited scope for this Court while sitting in revision, there is nothing to interfere, hence, to dismiss the revision.

4. Heard both sides at length and perused the grounds urged, impugned order of the lower court and the petition and the counter in passing the impugned order, with no necessity

of filing but for the additional document of plaint, the written statement context of the defendants.

5. As plaint averments alone are decisive in determining the plaint is liable to be rejected under any of the clauses (a) to (f) of Order VII Rule 11 CPC by the amended CPC of 2002. The plaint averments undisputedly alleges existence of a lengthy cause of action from bundle of alleged essential facts. What the defendants say in seeking to reject the plaint is that these are distorted versions conveniently with legal framework engineered to create a false cause of action without subsistence of a real cause of action that is criteria for the court to consider. Undisputedly, the very wording of Order VII Rule 11 clause (a) speaks that where it does not disclose a cause of action. The stress is to the word 'disclosure'.

6. No doubt, it is the contention of the learned Senior Counsel for the revision petitioner that the question of disclosure arises from existence when there is no existence mere pretended existence by disclosure is not a disclosure. However, once the law clearly says plaint averments are decisive and from the plaint averments it discloses whether it is a real disclosure or pretended disclosure is premature for the court to go into though otherwise a stale claim can be rejected instead of allowing to put the ordeal of facing trial by the other side. Once the law on its scope is limited, if it is a

false claim, the remedy of the defendant for the ordeal is to claim any compensatory costs or otherwise by invoking Sections 35 and 35(a) of the CPC.

7. So far as the other contention of the bar of limitation invoking Section 13 and 17 of the Specific Relief Act concerned, the plaint averments show the defendants are bound to submit to the relief of specific performance, whereas the contention in seeking to reject the plaint is that the defendants have no right over the property and without a right, the question of performance of a contract does not arise and it is a bar under Section 17 of the Specific Relief Act. Even for that as referred supra, existence of a real cause of action and the bar applies to the facts from proof are the matters for adjudication. However, in such case, rather than deciding by rejecting a plaint, it is to invoke, to sub-serve the ends of justice, Order XIV Rules 1 and 2 of CPC, which reads as follows:

“ ORDER - XIV

Settlement of Issues and Determination of suit on issues of Law or on issues Agreed upon

1. Framing of issues:- (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) *Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.*

(3) *Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.*

(4) *Issues are of two kinds:*

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Court to pronounce judgment on all issues:- *(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to,-

*(a) the jurisdiction of the Court, or
(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”*

8. From the very wording of the above provisions particularly from Order XIV Rule 2 clause (2)(b) this requires to be determined as a preliminary issue as to there is a real cause of action in existence and the suit claim is barred by Section 13 and 17 of the Specific Relief Act thereby and also for the reason written statement of the defendants already filed, way back on 13.06.2008, before the trial court, issues if not framed, the trial court shall hear and frame the issues, if necessary by one of the issues as a preliminary issue in considering the chief examination affidavit of plaintiff stated

filed to take the same for such determination by differing the other issues.

9. Accordingly and with these observations, directing the trial court, the revision is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

09.11.2017
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Note: LR copy to be marked.

