

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION No.464 of 2017

ORDER:

This civil revision petition is filed assailing the order dated 12.07.2016, passed in I.A.No.61 of 2016 in O.S.No.75 of 2014, by the learned Senior Civil Judge, Parvathipuram (for short, 'the trial court').

2. The brief facts of the case are as follows;

The revision petitioners are the defendants, and the respondent is the plaintiff in O.S.No.75 of 2014. The plaintiff-State Bank of India (ADB) filed a suit for recovery of a mortgage debt. In the suit, the defendants filed an interlocutory application I.A.No.61 of 2016 under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint. The said petition has been dismissed by the trial Court on merits. Aggrieved by the orders passed by the trial Court in the aforementioned petition, this civil revision petition has been filed for setting aside the orders passed by the trial court.

3. Heard the arguments of the learned counsel for the revision petitioners, and the respondents.

4. The main contention of the counsel for the revision petitioners is that the petition filed by the defendants has been dismissed by considering the averments made in the written statement filed by the defendants which is against the ratio laid down in the decision reported in the case of Saleem Bhai and others v. State of Maharashtra and others¹.

¹ (2003) 1 SCC 557

5. As a matter of fact, the said decision rendered by the Supreme Court is not applicable to the facts of the present case. Paragraph 9 of the judgment reads as under;

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC 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. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 or Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

6. In the instant case, the trial Court did not insist for filing of the written statement for deciding a petition filed under Order VII Rule 11 of Code of Civil Procedure, 1908. The trial Court having considered the pleadings of both the parties which are available before it, has come to a conclusion that there is cause of action for filing the suit, and that the facts alleged by the parties are subject to the trial. On consideration of this aspect, the trial court has dismissed the petition filed for rejection of the plaint with exemplary costs of Rs.500.

7. The brief facts of the plaint are that the State Bank of India (Agricultural Development Bank) has advanced a loan to defendant No.1 for purchase of tractor-trailer and its implements for Rs.3,70,000. The defendants 2 to 4 stood as guarantors. The defendant No.1 agreed to repay

the loan in 16 half-yearly installments at the rate of Rs.24,596/- with interest. The defendant has executed an agreement of hypothecation on 19.10.2004 and on the same day the defendants 2 to 4 have executed a Deed of Guarantee. The defendants have deposited their title deeds in respect of the plaint schedule property with an intention to create a registered mortgage as a collateral security. On 18.10.2004, mortgage was created. The plaintiff has placed reliance on 11 documents.

8. The defendant No. 1 had also filed his written statement making several allegations against the plaintiff bank that they have retained the documents executed by the defendant and taking advantage of the documents which are illegally retained by the plaintiff they have filed a suit. It is also alleged that the first defendant had discharged the mortgage amount by getting exemption of 25% agricultural moratorium by canceling of deed of mortgage before the Sub-Registrar, Parvatipuram. On these grounds and other grounds sought for the dismissal of the suit.

9. The order passed by the trial Court reveals that the defendant has raised a contention with regard to the limitation. The trial Court has observed that though the suit is based on a mortgage deed, which will have limitation for 12 years to maintain a suit the defendant had raised a plea of limitation. No doubt the trial Court has considered some of the pleadings made in the written statement and came to the conclusion that the disputes raised in the written statement would be decided in the suit after full-fledged trial. By these observations made by the trial Court no prejudice would be caused to the defendant. The allegations made by the defendant in his written statement can be considered during the trial basing on the evidence adduced by the parties. The question of limitation also can be considered by the trial Court at the time of the trial by framing an issue to that effect. The

averments of the plaint and the documents filed by the plaintiff clearly disclose that there is cause of action for filing this suit. The filing of the plaint cannot be rejected unless one of the grounds are there for rejection in section mentioned in Order VII Rule 11 of the Code of Civil Procedure. As per paragraph 3 of the plaint, there is sufficient cause of action for filing the suit. As per clause (a) there is cause of action. As per clause (b) there is no plea raised by the defendant. As per clause (d) the suit does not appear to be barred by any law. The contentions raised by the defendant do not fall in any of the categories as contemplated under Order VII Rule 11 of the Code of Civil Procedure. Therefore, the order passed by the trial Court is justified in dismissing the petition filed by the defendant for rejection of the plaint. There are no valid grounds to interfere with the order passed by the trial court. On consideration of the facts of the case as per the material available on record there are no valid grounds to interfere with the findings of the trial court in dismissing the petition filed for rejection of plaint.

10. IN THE RESULT, the civil revision petition is dismissed, and the order dated 12.07.2016 passed in I.A.No.61 of 2016 in O.S.No.75 of 2014 is confirmed. Miscellaneous petitions, if any pending, shall stand closed. No costs.

GUDI SEVA SHYAM PRASAD, J

14th July, 2017

KSM

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