

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.220 OF 2017

Sumit s/o Arunkumar Mukhedkar

Petitioner

Versus

Prakash s/o Pannalal Chordiya
and another

Respondents

Mr.R.N.Dhorde, Senior Counsel i/by Mr.Anand V. Indrale (Patil),
advocate for the petitioner.

Mr.M.F.Patni, advocate for Respondents.

CORAM : M.S.SONAK, J.

DATE : 08th January, 2018.

P.C. :

1 Heard Mr.R.N.Dhorde, learned Senior Counsel i/by Mr.Anand V. Indrale (Patil), advocate for the petitioner and Mr.M.F.Patni, advocate for Respondents.

2 The challenge in this Revision Application is to the order dated 02.11.2017, by which the learned Trial Judge has rejected petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, seeking rejection of the plaint on the ground that it does not disclose cause of action.

3 Mr.Dhorde submits that in this case, pre-suit notice was issued only on behalf of plaintiff no.1. The suit, however, has been instituted on behalf of two plaintiffs and in the suit, it is stated that decree may be passed in favour of both the plaintiffs. Mr.Dhorde further submits that the plaint is entirely vague and

there is no disclosure of cause of action. Mr.Dhorde points out that in the notice issued, the claim made was for Rs. Fifteen Crores, however, in the suit, only principal amount of Rs.Fifteen lakhs has been claimed. For all these reasons, Mr.Dhorde submits that this was a fit case where plaint was required to be rejected for failure to disclose cause of action.

4 Mr.Patni, advocate for respondents, submits that there was a typographical error in the notice in demanding an amount of Rs.Fifteen Crores instead of Rs.Fifteen lakhs. Mr.Patni submits that in this case, amounts were lent to the defendant through banking channels. He submits that in the suit of this nature, there is no requirement of issuance of any notice prior to the institution of the suit. He, therefore, submits that mere fact that the notice was issued on behalf of plaintiff no.1 and the suit has been instituted by two plaintiffs, makes no dent to the cause of action, which is clearly disclosed in the suit.

5 The rival contentions now fall for my determination.

6 The settled position of law that at the stage of consideration of application under Order VII Rule 11 of the CPC, what is only relevant is averments in the plaint. Further, there is a difference between lack of cause of action and disclosure of cause of action. At this stage, there is no question of going into merits of the rival claims. As long as cause of action is disclosed in the plaint, there arises no question of exercise of powers under Order VII Rule 11(a) of the CPC.

7 In the present case, upon reading of the plaint in its entirety, it cannot be said that there is any failure to disclose cause of action. In the plaint, it is averred that an amount of Rs.Twenty five lakhs was lent by plaintiffs to the defendant through proper banking channels i.e. RTGS. Thereafter it is pleaded that an amount of Rs.10,00,000/- (Rs.Ten lakhs) was returned by the defendant, again through proper banking channels. The suit seeks recovery of balance amount of Rs.15,00,000/- (Rs.Fifteen lakhs) together with interest that is accrued thereon. The issue today is not, the claim to be allowed on merits or not, the issue is whether in these circumstances, it can be said that there is no disclosure of cause of action. On reading of the plaint in its entirety, this is not a case where it can be said that there is any failure to disclose cause of action. The discrepancies, so far the pre-suit notice is concerned, are quite insignificant and irrelevant at least for the purpose of deciding the application under Order VII Rule 11 of the Code of Civil Procedure.

8 This is not a case where issuance of pre-suit notice is mandated by any law. Accordingly, the circumstance that notice was issued on behalf of one plaintiff and suit has been instituted by two plaintiffs, does not mean that there is any failure to disclose cause of action. The learned Trial Judge has correctly appreciated the scope and import of the provisions contained in Order VII Rule 11 of the Code of Civil Procedure and has further correctly applied principles of law to the facts of the case. There is no jurisdictional error or material irregularity so as to warrant exercise of revisional jurisdiction.

9 Civil Revision Application is, therefore, dismissed.
There shall be no order as to costs.

10 It is clarified that the observations made in the
impugned order as also in the present order are for the limited
purpose of deciding the application under Order VII Rule 11 of the
Code of Civil Procedure. Therefore, such observations need not
influence the trial Court while deciding the suit on its own merits
in accordance with law.

M.S.SONAK
JUDGE

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