

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 52/2018

(THE GENERAL MANAGER, NIRMAL UJWAL CREDIT CO-OPERATIVE SOCIETY, NAGPUR & ANOTHER
VERSUS METAL MINERALS, NAGPUR)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.V. Bhutada, counsel for the applicants.
 Shri S.D. Moharir, counsel for the non-applicant.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 06, 2018.

In view of notice of final disposal issued earlier, the learned counsel for the parties have been heard at length.

The applicants are the defendants in the suit for recovery filed by the non-applicant. In the plaint, it is the case of the plaintiff that it is a proprietary concern undertaking the work of construction. On the basis of a contract undertaken in the year 2011, the plaintiff undertook various works. He thereafter raised bills for being paid the amount of work done. After issuing various letters to the defendants, the present suit for recovery of unpaid amounts came to be filed. In the said suit, the General Manager of the Credit Cooperative Society for whom the work was said to have been carried out, was arrayed as defendant no.1 and the the Secretary of that Society was arrayed as defendant no.2.

The defendants filed an application below Exhibit 29 seeking rejection of the plaint on the ground that the same did not disclose any cause of action under provisions of Order VII Rule 11(a) of the Code of Civil Procedure, 1908 and hence it was liable to be rejected. This application was opposed by the plaintiff and the trial Court by the impugned order rejected that application on the ground that the plaint disclosed a cause of action for filing the suit.

Shri S.V. Bhutada, learned counsel for the applicants, submitted that on the reading of the entire plaint, it was clear that the cooperative society for whom the work was alleged to have been carried out, was not arrayed as defendant. It was the General Manager and the Secretary of that society who were arrayed as defendants. There was no cause of action against those defendants, inasmuch as, said defendants were merely employees of the cooperative society and were not vicariously liable to satisfy the dues of the society. According to him, in absence of the society being a party to the suit, no effective decree can be passed in the suit. In absence of any cause of action against the defendants, the plaint was liable to be rejected. Relying upon the decision in **(2012) 8 SCC 706** (*Church of Christ Charitable Trust and Educational Charitable Society Versus Ponniamman Educational Trust*), it was submitted that a cause of action should include some act done by the defendant as in absence of such act, no cause of action should accrue. He also referred to the decision in **(2004) 11 SCC 168** (*Shipping Corporation of India Ltd. Versus Machado Brothers & Others*) to urge that permitting such suit in which no decree was likely to be passed, would result in wastage of time. The learned counsel also referred to the provisions of Section 9 of the Multi State Cooperative Societies Act, 2002 in support of his submissions. He therefore, submitted that the plaint was liable to be rejected.

Shri S.D. Moharir, learned counsel for the non-applicant, submitted that on reading the complete plaint, a cause of action against the defendants was disclosed. According to him, defendants arrayed were officers of the cooperative society and were liable to satisfy the claim of the plaintiff. Relying upon the judgment of the Division Bench in **AIR 2002 Bombay 151** (*M.V. "Sea Success I"*)

Versus L & L S.P. and Indemnity Association Ltd. & Anr), it was submitted that the plaint could be rejected only if there was a failure to disclose a cause of action and not that there was no cause of action for the suit. He also submitted that it was only the plaint averments that were required to be taken into consideration. He urged that on a complete reading of the plaint, same would indicate that there was a cause of action against the defendants for filing the suit.

I have heard the learned counsel for the parties at length. While considering an application under provisions of Order VII Rule 11(a) of the Code, it is only the plaint averments that are to be taken into consideration and not the probable defence of the defendant. According to the plaintiff, he had carried out various works as asked by the cooperative society and was seeking repayment of those dues. In paragraph 5 of the plaint, it has been pleaded that the plaintiff issued various letters to the defendants claiming payment of the arrears. Details of those letters issued to the defendants are mentioned therein. Paragraph 7 of the plaint indicates that cause of action for filing of the suit. It is on the basis of these averments that the relief of recovery of arrears has been prayed for. On reading the plaint in its entirety, it cannot be said that there is absence of disclosure of any cause of action in the plaint. Whether that cause of action ultimately results in a decree in favour of the plaintiff is a matter to be considered at the trial. At this stage, when it is found that the cause of action has been disclosed in the plaint, it would not be permissible to reject the plaint under the provisions of Order VII Rule 11(a) of the Code. The observations in paragraph 51 of the judgment of the Division Bench in *M.V. "Sea Success I"* (*supra*) relied upon by the learned counsel for the non-applicant support his contentions.

As regards the decisions relied upon by the learned counsel for the applicants, it has to be observed that on the plain reading of the plaint a cause of action against the defendants arrayed has been pleaded. At this stage, it cannot be said that the suit as filed would be ultimately dismissed. In that view of the matter, in absence of any jurisdictional error by the trial Court, I do not find any case made out to interfere with that order. Needless to state that it is open for the defendants to raise all possible defences while opposing the suit and if such defences are raised, it would be open for the trial Court to consider the same in accordance with law.

With these observations, the civil revision application stands dismissed. No costs.

JUDGE

APTE