

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.53/2018

Mr.Kailash Rotkar Vs. Wockhardt Hospitals Ltd. And others.

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Shri S.V.Bhutada and Y.J.Maheshwari, Advocates for the applicant.
Shri D.V.Chauhan, Advocate for non applicant no.1..

CORAM : A.S.CHANDURKAR, J.

DATED : 27.08.2018

1. This Civil Revision Application filed under Section 115 of the Civil Procedure Code, 1908 (for short, the Code), takes exception to the order passed by the trial Court below Exh. 35 on 22.02.2018 thereby dismissing the application that was moved by the defendant no.4 under provisions of Order VII Rule 11(a) of the Code for rejection of the plaint.

2. The facts in brief are that, it is the case of the original plaintiff that the defendant no.1 was admitted in the plaintiff's hospital for undergoing medical treatment. It was recommended to the defendant no.1 that surgery would have to be performed on him. The defendant no.1 was, at that time, accompanied by his wife, son and, his brother, who is defendant no.4. For the purposes of undertaking surgery, his son had signed the consent form and the plaintiff had informed the defendants about the nature of expenses to be incurred. Till 21.04.2014, an amount of Rs.6,40,000/- was paid by the defendants. But thereafter, despite various requests being made to all the defendants, further amounts were not paid. In the meanwhile, the defendant no.1 expired and hence, according to the plaintiff, it was the duty of his widow, son as well as the brother of the deceased to clear the dues. As the same was not done, a suit for recovery of amount of unpaid expenses incurred towards treatment of the original defendant no.1 was filed.

3. In the suit, the defendant no.4 filed an application under the provisions of Order VII Rule 11 (a) of the Code, stating therein that the suit as filed against the defendant no.4, was without any cause of action and that, there was no legal liability on the part of the defendant no.4 to answer the claim of the plaintiff. In absence of any such cause of action, the defendant no.4 was not required to be arrayed as party to the suit. It was, thus, prayed that the plaint was liable to be rejected against the defendant no.4. Reply was filed by the original plaintiff opposing that application. It was stated that it was a matter of evidence as to whether the defendant no.4 was liable to satisfy the claim of the plaintiff. The plaint averments indicated a cause of action against the defendant no.4 and hence, the application was liable to be rejected. The trial Court after hearing the counsel for the parties, rejected that application and the said order is challenged in this Civil Revision Application.

4. The learned counsel for the applicant submitted that on reading the entire plaint, it was clear that the defendant no.4 was not connected in any manner whatsoever with the claim of the plaintiff. The defendant no.4 as the brother of the defendant no.1, had merely accompanied him for the purposes of his treatment. The consent form had been signed by the defendant no.2, who was the son of the defendant no.1. The learned counsel referred to the averments in the plaint and submitted that there is no justification seen in the plaint for adding the defendant no.4 as a party. It was further submitted that after the death of the defendant no.1, it was only the Class-I heirs of the said defendant no.1 who were liable to satisfy the claim, if any. As the defendant no.4 was the Class-II heir, he could not be saddled with such liability. The learned counsel for the applicant placed reliance on the decisions in *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponnamman Educational Trust*, reported at (2012) 6 Mh.L.J 738, in *Jahangir @ Jawahar Kaikashrau Karanjia (since deceased) Smt. Mehbi Karanjia and others Vs. Maureen De Sequeira* reported at 2017(6) Mh.L.J. 270 and in *Shipping Corporation of India Ltd. Vs. Machado Brothers*

and Others reported at (2004)11 Supreme Court Cases 168, in support of his submission that the plaint was liable to be rejected against the defendant no.4.

5. The learned counsel for the non-applicant no.1 supported the impugned order. According to him, on reading the entire plaint, a cause of action had been made out against the defendant no.4. Merely because, the consent form was signed by the defendant no.2 that by itself, would not exclude the liability of the defendant no.4. It was urged that for the purposes of the provisions of Order VII Rule 11 (a) of the Code, it was sufficient that a cause of action was disclosed in the plaint. There was a distinction between non-disclosure of a cause of action and a defective cause of action. Even if it was assumed that there was a defective cause of action against the defendant no.4, the plaint was not liable to be rejected on that ground. The learned counsel placed reliance on the decisions in *Liverpool & London S.P. & I Association Ltd. Vs. M.V.Sea Success I and Another* reported at (2004) 9 Supreme Court Cases 512 and *Jageshwari Devi and others Vs. Shatrughan Ram* reported at 2007(15) Supreme Court Cases 52.

6. I have heard the learned counsel for the parties at length and I have also gone through the averments in the plaint and documents filed along with it. Since the defendant no.4 seeks rejection of the plaint under the provisions of Order VII Rule 11(a) of the Code, it is only the plaint averments and documents filed along with the plaint that are required to be considered at this stage. Perusal of the plaint indicates that, according to the plaintiff, the defendant no.1 along with other defendants, who were related to him, visited the hospital from time to time and all the said relatives were explained about the steps to be taken towards the treatment of the defendant no.1. It has been pleaded that the defendants were continuously kept aware about the expenses being incurred on the treatment of the defendant no.1. Despite requests being made from time to time, the defendants failed to deposit the treatment charges. It is on that premise, the aforesaid suit has been filed

seeking recovery of the amount of expenses incurred by the plaintiff hospital on the treatment of the defendant no.1. The consent form that has been filed along with the plaint indicates that it has been signed by the defendant no.2 and there is a reference in some of the documents to the name of the defendant no.4 as a nearest relative for being contacted.

7. In Jageshwari Devi (supra), it has been held by the Hon'ble Supreme Court that there is a distinction between non-disclosure of a cause of action and a defective cause of action. While the plaint liable to be rejected on the ground that there is absence of cause of action, mere fact that the cause of action as disclosed is vague and incomplete, would not be a ground for rejection of the plaint under the provisions of Order VII Rule 11(a) of the Code. Similarly, in Liverpool London S.P. & I. Association Ltd.(supra), it has been observed that the plaint is not liable to be rejected on the ground that the averments as made are not sufficient to prove the facts stated therein for the purpose of obtaining necessary relief. As long as some cause of action has been made out, the plaint is not liable to be rejected on that count.

8. When the plaint is examined in the aforesaid context, it can be seen that the cause of action against all the defendants has been disclosed. According to the plaintiff, failure on the part of all the defendants to make payment for the treatment of defendant no.1 has given a cause of action to the plaintiff. At this stage, it is not necessary to take into consideration the aspect as to whether decree could be passed against the defendant no.4. That exercise is beyond the purview of the provisions of Order VII Rule 11(a) of the Code. The contention sought to be urged on behalf of the defendant no.4 is that as he had not signed the consent form and he was the Class-II heir, the plaint was liable to be rejected. These aspects would require adjudication on merits and if some cause of action against the defendant no.4 has been pleaded in the plaint, same is sufficient for permitting the suit to proceed and not for rejecting the plaint. In the light of aforesaid decisions, the ratio of the judgments relied upon by the learned counsel for the applicant do not

support his contention. The trial Court, after considering the plaint averments and taking them at their face value, has rightly rejected the application below exh.35. No jurisdictional error has been committed by the trial Court while passing the impugned order.

9. Accordingly by clarifying that the suit shall be decided on its own merits and that the observations made in this order are only for deciding the civil revision application, the same stands dismissed. It is open for the defendant no.4 to raise all permissible defences before the trial Court.

10. Considering the fact that the impugned order is dated 22.02.2018 and the Civil Revision Application was pending in this Court till today, the said aspect shall be taken into consideration while considering the prayer made on behalf of defendant no.4 for filing his written statement.

JUDGE

Andurkar