

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.874 of 2018

ORDER

This revision under Article 227 of the Constitution of India is filed questioning the order dated 26.10.2017 passed in I.A.No.158 of 2017 in O.S.No.3032 of 2015 by the XIX Junior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order 7 Rule 11 read with Section 151 of CPC, to reject the plaint at threshold.

2. The petitioner/defendant filed petition under Order 7 Rule 11 read with Section 151 of CPC to reject the plaint, on the ground that the plaint does not disclose any cause of action and that the very basis of cause of action shown by the respondent/plaintiff in her plaint is that she sent a letter dated 05.06.2015 demanding the petitioner to pay the rent as if the petitioner is a tenant and not paying the rent for the suit schedule property since February, 2013. It is stated that the said cause of action is invented for the purpose of maintainability of the suit and no particulars were mentioned by the respondent/plaintiff in the said letter, even to give reply to the same. The letter dated 05.06.2015 is silent about the arrears of rent, except saying that since last few months, the petitioner has not been paying rent and demanded to vacate the house. There is no jural relationship of landlord and tenant either with the petitioner or his wife with the respondent/plaintiff. In fact, the wife of respondent entered into an agreement of sale dated 20.11.1995, with the husband of respondent/plaintiff to purchase the suit property by paying considerable amount as advance, and thereafter, his wife

paid the balance sale consideration to the husband of respondent/plaintiff by way of demand draft and a part payment by cash to the son of the respondent. The husband of the respondent/plaintiff, who executed the unregistered agreement of sale, did not turn up to execute the registered sale deed in favour of his wife. The petitioner made efforts to find out the whereabouts of the husband of respondent and her son, but in vain and they never turned up as the respondent family shifted to Mysore and thus, the respondent in order to grab the suit schedule property hatched a plan and initially sent a letter dated 05.06.2015 mentioning her address as J. Prabha Sastry, Mysore, due to which, the petitioner could not contact nor could reply to her. As a matter of fact, there is no mention in the said letter about the death of Mr. J.C.V.Sastry, since the respondent and her son are claiming to be the L.Rs., of late J.C.V.Sastry and filed the family members certificate allegedly issued by the Mandal Revenue Officer, Mysore, dated 16.12.2005. As there is hike in the prices, the respondent/plaintiff got issued a legal notice dated 08.08.2015, through her Advocate of Secunderabad, alleging that the petitioner has obtained the suit schedule property on lease in the year 1994, on monthly rent of Rs.500/- and that it was enhanced to Rs.5,000/-per month and that the wife of the petitioner obtained drinking water tap connection in her name without any authorisation and that there was demand to pay the outstanding amount towards rent due and to vacate the premises. But there is no specific period for the rent payable in the said notice and at what rate, the monthly rent is agreed to be paid and that the legal heir certificate would not give rise to any cause of

action and prayed to reject the plaint at the threshold since the plaint did not disclose the cause of action and the claim of respondent is barred by law.

3. The respondent/plaintiff filed counter denying the material allegations *inter alia*, contending that the petitioner is liable to pay arrears of rent to a tune of Rs.1,50,000/- from February, 2013 to September, 2015, which is within three years as on the date of filing the suit and the suit claim is not barred. It is also contended that a cause of action for the suit arose in the month of February, 2014 when the petitioner did not pay the arrears of rent and continuing in possession and enjoyment of the property and therefore, when the plaint discloses cause of action, the plaint cannot be rejected at the threshold and prayed to dismiss the petition.

4. Upon hearing argument of both the counsel, the trial Court dismissed the petition negating the relief claimed by the petitioner under Order 7 Rule 11 of CPC.

5. Aggrieved by the order passed by the Court below, the present revision is filed mainly on the ground that when the notice and the letter are silent, the cause of action mentioned in the plaint is artificial and the trial Court did not consider the law laid down by this Court in **K. Dhana Laxmi V B. Srinivasulu Reddy**¹, to reject the plaint as there is no pleading in the entire plaint, except the date created cause of action for grabbing the suit property, but the trial Court did not consider the same in proper perspective. It is also

¹ 2009(5) ALD 332

contended that the relief claimed in the petition is barred by limitation since Mr.J.C.V.Sastry died long ago and prayed to reject the plaint exercising power under Order 7 Rule 11 of C.P.C., while allowing the revision petition.

6. At the stage of admission, the counsel for petitioner reiterated all the grounds during arguments.

7. As per the contentions urged by petitioner before this Court, the first ground is that the plaint did not disclose cause of action and a copy of the plaint in O.S.No.3032 of 2015 is placed on record and as per paragraph No.4 of the plaint, the cause of action for the present suit arose during the month of February, 2013 when the defendant is not paying the rent i.e., committed default, and on 05.06.2015, a demand was made in writing for payment of arrears of rent and on 08.08.2015, a notice was issued demanding payment of arrears of rent and to vacate the premises. It is contended that there was no reference as to the period of default and rent payable for the premises in both the alleged demand, notice and there was also no reference in the pleadings about the letter and the notice. But this contention is without any substance as there is clear reference about the letter dated 05.06.2015 and notice dated 08.08.2015 in paragraph Nos.3 (F) and (G) of the plaint. Thus, the plaint discloses the cause of action for filing the suit. But, whether the cause of action mentioned in the plaint is true or not is a question of fact to be decided during trial. Even according to Order 7 Rule 11 (a) of CPC, the plaint shall be rejected where it does not disclose a cause of action. What is 'cause of action' is a question to

be determined. This Court in **Legand Estates Private Limited V. Mir Zaheer Mohammed Khan**², after elaborate consideration of law laid down by the Apex Court with reference to the cause of action and the law declared under Order 7 Rule 11(a) of CPC, held that the cause of action is a 'bundle of facts' which gives rise to claim relief.

8. Here in this case, after the alleged death of Mr. J.C.V.Sastry, the respondent succeeded the property and entitled to evict the person in possession as a tenant or in any other capacity. The plaint also discloses that a letter was addressed and a legal notice was also issued to petitioner demanding payment of arrears of rent and to evict the premises, but the petitioner did not pay arrears of rent and vacate the premises. Therefore, the demand made by the respondent personally by letter and notice gives rise to a right to claim relief in the suit.

9. In **State of Haryana V. State of Punjab and another**³, the Apex Court had an occasion to decide the meaning of 'cause of action' as occurring in Section 20 of the Code of Civil Procedure and is commonly used in connection with 'ordinary' suits, has, in that context, "acquired a judicially-settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the

² 2017(5) ALT 554

³ (2004) 12 SCC 673

expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in 'cause of action'. Therefore, cause of action is nothing but set of facts which give rise to a party to redress his claim before the competent Court of law. In the later judgment in **Bhau Ram v. Janak Singh and others**⁴, the Apex Court, while placing reliance on the judgments including **Sopan Sukhdeo Sable and others V. Assistant Charity Commissioner and others**⁵, held as under:

"The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 of Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. (vide C. Natrajan v. Ashim Bai and another (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and others (2007) 10 SCC 59, Hardesh Ores (P) Ltd., V. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd., and others v. Owners & Parties, Vessel M.V.Fortune Express and others (2006) 3 SCC 100, Sopan Sukhdeo Sable and others v. Assistant charity Commissioner and others (2004) 3 SCC 137, Saleem Bhai and others v. State of Maharashtra and others (2003) 1 SCC 557). The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149]".

In view of the law laid down by the Apex Court in the above decisions referred to supra, the 'cause of action' means 'bundle of facts' which gives rise to seek relief to the plaintiff by filing suit before the civil Court.

⁴ 2012 (5) ALT 29 (SC)

⁵ (2004) 3 SCC 137

10. Here, the plaint filed along with the petition discloses cause of action substantially and whether the said cause of action is true or not is a question to be decided only at the end of trial, but at the threshold on the ground of non-disclosure of cause of action, plaint cannot be rejected.

11. The other contention raised by the counsel for petitioner is that the claim is barred by limitation invoking clause (d) of Order 7 Rule 11 of CPC. Order 7 Rule 11 (d) of CPC permits the Court to reject the plaint where the suit appears from the statement in the plaint to be barred by any law.

12. Here in the present case, the respondent claimed the relief of passing of a decree to direct the defendant, petitioner herein, to pay an amount of Rs.1,65,000/- towards arrears of the rent from the month of February, 2013 to October, 2015; to direct the defendant to pay the future mesne profits at the rate of Rs.5,000/- per month from the date of suit till the date of delivery of possession to the plaintiff; and to direct the defendant to vacate the suit schedule property. It appears from the allegations made in the plaint, the tenancy was determined by issuing notice as required under the provisions of Transfer of Property Act, treating the possession of the petitioner as illegal and sought for mesne profits. The suit was filed on 29.10.2015 as mentioned in the plaint and the claim of the plaintiff for recovery of arrears of rent is within time and question of bar of limitation to the relief to vacate the schedule premises does not arise in this case as long as the petitioner is continuing as a tenant.

However, the bar of limitation is a mixed question of fact and law and such question cannot be decided at the threshold to reject the plaint in view of the law declared by the Full Bench judgment of the Apex Court in **Vaish Aggarwal Panchayat V. Inder Kumar and others**⁶.

13. In view of the law declared by the Apex Court in the judgments referred supra, I find no merit in the revision and it deserves to be dismissed.

14. In the result, the Civil Revision Petition is dismissed, at the stage of admission. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

14th February, 2018

sj



M. SATYANARAYANA MURTHY, J

⁶ 2015 SCC 751