

*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

+ CIVIL REVISION PETITION No.3968 OF 2017

% 20.08.2018

Smt. Sunita Agarwal

Petitioner

VERSUS

\$ **G. Sudershan & 2 Others.**

Respondents

! Counsel for Petitioner : Sri R.A.Achuthanand

^ Counsel for the respondent : Sri M. Siva Sekhar

<GIST:

> HEAD NOTE:

? Cases referred

¹ (1994) 2 SCC 392

² (2008) 15 SCC 673

³ AIR 1998 SC 634

⁴ (2005) 4 SCC 315

⁵ (1977) 4 SCC 467

⁶ AIR 1968 SC 471

⁷ (2007) 14 SCC 183

⁸ (2008) 12 SCC 661

⁹ 2015 (3) ALT (SC) 14 (D.B.)



THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3968 of 2017

ORDER:

1 Challenge in this Civil Revision Petition, filed under Article 227 of the Constitution of India, is to the order dated 28.6.2017 passed in I.A.No.28 of 2015 in O.S.No.301 of 2014 on the file of the Court of the I Junior Civil Judge, City Civil Court, Secunderabad.

2 The factual matrix leading to the filing of the present Civil Revision Petition, is as follows:

3 The respondents are owners of the shop bearing D.No.3-4-242 situated behind Mahankali temple, Tobacco Bazaar, Secunderabad (hereinafter referred to as 'the suit schedule property'). The respondents let out the suit schedule property to the petitioner on a monthly rent of Rs.4,000/- under a registered lease deed dated 18.8.2004 for a period of 25 years. The respondents got issued a legal notice under Section 106 of Transfer of Property Act on 07.10.2013 directing the petitioner to vacate the suit schedule property and handover vacant possession of the same to them. The petitioner got issued a reply notice on 18.12.2013 denying the various averments made in the notice. Having no other alternative the respondents filed O.S.No.301 of 2014 on the file of the Court of the I Junior Civil Judge, City Civil Court, Secunderabad against the petitioner seeking eviction from the petition schedule premises. During the pendency of the suit, the petitioner filed I.A.No.28 of 2015 under Order VII rule 11 (a) & (d) r/w 151 CPC for rejection of the plaint. The respondents filed counter inter alia contending that the petition is not maintainable

either on facts or in law. The trial Court, after affording reasonable opportunity to both parties, dismissed the petition on merits by order dated 28.6.2017. Hence, the present Civil Revision Petition.

4 The contention of the learned counsel for the petitioner is three fold: 1) The trial Court misconstrued the scope of clauses (a) & (d) of Rule 11 of Order VII CPC and dismissed the petition on untenable grounds, 2) the trial Court failed to consider the fact that the respondents filed a premature suit which is not maintainable under law, and 3) the trial Court committed grave error while interpreting the clauses of the lease deed, more particularly Clauses 13 and 15.

5 *Per contra*, the learned counsel for the respondents submitted that the trial Court, while deciding the petition under Order VII Rule 11 CPC, has to take into consideration the pleadings in the plaint only. He further submitted that the trial Court considered the clauses of the lease deed in right perspective and dismissed the petition. He further submitted that this Court shall not lightly interfere with the findings recorded by the trial Court while exercising revisional jurisdiction unless there is an error *ex faice*.

6 Basing on the rival contentions, the point that arises for consideration in this Civil Revision Petition is '*whether the impugned order suffers from any irregularity, illegality or impropriety, warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India*'?

7 The learned counsel for the petitioner strenuously submitted that the respondents, having taken a plea of fraud, failed to furnish material particulars, therefore, the suit is liable to be rejected *in limine*.

8 As rightly pointed out by the learned counsel for the petitioner the respondents have taken a specific plea in Para No.III (f) of the plaint that the petitioner fraudulently got drafted the lease deed suppressing the actual period of tenancy. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this court to the following judgements:

9 **Mohan Rawale vs. Damodar Tatyaba Alias Dadasaheb¹** wherein the Hon'ble apex Court while considering the scope of Section 81 (1) and Section 83 (1) (a) of Representation of Peoples Act, made the following observations at para Nos.10, 12, 13 and 16:

10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence". He said: "In point of law ... every cause of action is a reasonable one." (See *Republic of Peru v. Peruvian Guano Co.*) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground 1 (1887) 36 Ch D 489 that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and Order 7, Rule I (e) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section 81(1); the 'material facts' in Section 83(1)(a) and "full particulars" in Section 83(1)(b).

12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not

¹ (1994) 2 SCC 392

sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.

13. In *Bruce v. Odhams Press Ltd.*² Scott L.J. said: "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad." The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

16. The distinction between 'material facts' and 'particulars' which together constitute the facts to be proved or the *facta probanda* on the one hand and the evidence by which those facts are to be proved *facta probantia* on the other must be kept clearly distinguished. In *Philipps v. Philipps*³, Brett, L.J. said:

"I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. ... The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts. Erie C.J. expressed it in this way. He said that there were facts that might be called the *allegata probanda*, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erie C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies."

10 ***Ranganayakamma vs. K.S. Prakash***² wherein the Hon'ble apex Court held at Para Nos.39, 40 and 41 as follows:

39. Another aspect of the matter cannot also be lost sight of. Order VI, Rule 4 of the Code of Civil Procedure reads as under:

"4. Particulars to be given where necessary in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

40. When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed.

41. We have been taken through the averments made in the plaint. The plea of fraud is general in nature. It is vague. It was alleged by the plaintiffs that signatures were obtained on several papers on one pretext or the other and they had signed in good faith believing the representations made by the respondents, which according to them appeared to be fraudulent representation. When such representations were made, what was the nature of representation, who made the representations and what type of representations were made, have not been stated. Allegedly, on some occasions, respondent Nos. 1 and 2 used to secure the signatures of one or more of the plaintiffs and

² (2008) 15 SCC 673

defendants No. 3 to 8 on several papers but the details therein had not been disclosed.

11 As per the principle enunciated in the case cited supra, a party to the proceedings who pleads fraud has to furnish the material facts as well as material particulars.

12 ***I.T.C. Limited vs. Debts Recovery Appellate Tribunal***³ wherein the Hon'ble apex Court held at Para No.27 as under:

As stated above non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer, J. in T.Arivandandam's case, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on 'fraud', the Bank cannot take shelter under the words 'fraud' or 'misrepresentation' used in the plaint.

13 As per the principle enunciated in the case cited supra, mere drawal of money without movement of goods does not amount to fraud.

14 Let me consider the facts of the case on hand in the light of the above legal principle.

15 The contention of the learned counsel for the respondents is that the petitioner fraudulently got drafted the lease deed by mentioning the lease period as 25 years instead of 5 years. The respondents having taken such a plea, ought to have mentioned the material facts and material particulars in the plaint. The very purport of Order VI Rule 4 CPC is that the plaintiff has to furnish all the material facts and material particulars so as to enable the defendant to set up his/her defence by laying proper foundation in

³ AIR 1998 SC 634

the written statement. In the instant case the petitioner and the respondents are parties to the lease deed dated 18.8.2004. Mere suppression of fact may not be a fraud in each and every case. Taking plea of fraud is a material fact. Material particulars in relation to a lease deed *prima facie* are (1) names of the parties, (2) date of the execution, and (3) reference to its clauses. The respondents have furnished all the material particulars with reference to alleged fraud. If the gist of the plaint is taken into consideration the petitioner played fraud while drafting the lease deed with reference to duration of lease. Whether the lease deed is for a period of 25 years or 5 years will be decided at the time of full fledged trial only. The petitioners have complied with the provisions of Order VI Rule 4 CPC. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that the plaint is liable to be rejected for non-compliance of Order VI Rule 4 CPC by the respondents. Even assuming, but not conceding, that the plaint is bereft of ingredients of Order VI Rule 4 CPC, so far as alleged fraud is concerned, that itself is not a valid ground to reject the plaint, for the simple reason that the suit for eviction is not filed basing on this ground alone.

16 The next contention of the learned counsel for the petitioner is that the respondents have no right whatsoever to file the suit till expiry of lease period. Refuting the said contention, the learned counsel for the respondents submitted that in view of Clause 15 of the lease deed, the respondents are entitled to file the suit for

eviction. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this court to the following judgments:

17 ***Vithalbhai (P) Ltd vs. Union Bank of India***⁴ wherein the Hon'ble apex Court held at para No.21 as follows:

Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The Court may reject the plaint if it does not disclose the cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced.

18 As per the principle enunciated in the case cited supra, the court may reject the plaint if the suit is a premature one. As rightly pointed out by the learned counsel for the petitioner, the petitioner has taken a specific plea in the written statement that the suit filed by the respondents is a premature one.

19 ***T. Arivandandam vs. T.V. Satyapal***⁵ wherein the Hon'ble apex Court held at Para No.5 as follows:

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

⁴ (2005) 4 SCC 315

⁵ (1977) 4 SCC 467

20 As per the principle enunciated in the case cited supra, the defendant in the suit is entitled to file an application under Order VII Rule 11 CPC if the suit filed by the plaintiff is a vexatious one.

21 ***Calcutta Credit Corporation Ltd vs. Happy Homes (Private)***

Ltd⁶ wherein the Hon'ble apex Court held at para No.7 as follows:

But, it was contended, the notice intimating an intention to quit at 3-30 P.m. on August 31, 1953, was not a notice "duly given" within the meaning of s. 111(h) of the Transfer of Property Act. It is not necessary to decide for the purpose of this case whether the month of the tenancy of Allen Berry expired on the midnight of the first day of every calendar month for', in our judgment, a notice which is defective may still determine the tenancy, if it is accepted by the landlord. A notice which complies with the requirements of s. 106 of the Transfer of Property Act operates to terminate the tenancy, whether or not the party served with the notice assent; thereto. A notice which does not comply with the requirements of S. 106 of the Transfer of Property Act in that it does not expire with the end of the month of the tenancy, or the end of the year of the tenancy, as the case may be, or of which the duration is shorter than the duration contemplated by S. 106, may still be accepted by the party served with the notice and if that party accepts and acts upon it, the part.), serving the notice will be estopped from denying its validity. The defect in the notice served by one, party may undoubtedly be relied upon by the other party and he may plead that the tenancy does not stand determined but after the notice is accepted by the other party who acts upon it, the party serving the notice cannot contend that the notice served by him was defective, and on that account the tenancy was not determined., The reason of the rule is clear. A tenancy is determined by service of the notice in the manner prescribed by S. 111 (h) read with S. 106 of the Transfer of Property Act. If the notice is duly given, the tenancy stands determined on the expiry of the period of the tenancy. Even if the party served with the notice does not assent thereto, the notice takes effect. If the notice is defective, it does not operate to terminate the tenancy by force of the statute. But a tenancy is founded in contract, and it is always open to the parties thereto to agree that the tenancy shall be determined otherwise than by notice served in the manner provided by S. 106 of the Transfer of Property Act, or by a notice of a duration shorter than the period provided by the Act. If the parties so agree, the tenancy will conic to an end.

22 This decision deals with the effect of defective notice. As per the principle enunciated in the case cited supra, a person who fails to raise objection with regard to the validity of the notice issued under Section 106 T.P.Act at the earliest point of time, deemed to have waived his right at a subsequent stage.

⁶ AIR 1968 SC 471

23 On the other hand, the learned counsel for the respondents has drawn the attention of this Court to the ratio laid down in **C.Natrajan vs. Ashim Bai**⁷, **Kamala vs. K.T. Eshwara SA**⁸ and **P.V. Guru Raj Reddy rep. by GPA Laxmi Narayan Reddy vs. P.Neeradha Reddy**⁹. As per the principle enunciated in all these cases, the averments in the plaint have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercising power under Order VII Rule 11 CPC, the stand of the defendant in the written statement or in the application for rejection of plaint is wholly immaterial.

24 Suffice it to say that there is no golden yardstick to define "cause of action". Cause of action consists of bundle of facts. Each fact by itself would create a cause of action for legal redressal. All the facts put together may give rise to a cause of action. To put it in a different way, a particular fact may create a cause of action or all the facts put together may give rise to a cause of action depending upon the facts and circumstances of each case. Cause of action is heart and soul of a civil suit. Accruing of cause of action in favour of the plaintiff is *sine qua non* to file a civil suit. Premature suit presupposes non-accruing of cause of action in favour of the plaintiff as on date of filing of suit. Inarticulation of cause of action para in the plaint eventually leads to dismissal of the suit.

⁷ (2007) 14 SCC 183

⁸ (2008) 12 SCC 661

⁹ 2015 (3) ALT (SC) 14 (D.B.)

25 There is no second opinion with regard to the proposition of law submitted by the learned counsel for the petitioner that a premature suit is liable to be dismissed in *limine*.

26 The petitioner also filed the petition under Clause (d) of Rule 11 of Order VII CPC as if the suit is barred by any other law for the time being in force.

27 The petitioner is not disputing the jural relationship of tenant and landlord between him and the respondents. The petitioner is also not disputing the execution of the lease deed dated 18.8.2004. The landlord is entitled to file a suit for eviction against the tenant on various grounds. Merits or demerits of the grounds will be considered at the time of full fledged trial. There is no specific law, which prevents the landlord to file a suit against the tenant.

28 In view of the facts and circumstances of the case I am of the considered view that the plea taken by the petitioner falls outside the purview of Clause (d) of Rule 11 of Order VII CPC. Therefore, the contention of the learned counsel for the petitioner on this aspect is liable to be rejected.

29 The learned counsel for the petitioner strenuously submitted that the respondents have no right whatsoever to issue legal notice dated 07.10.2013 to the petitioner under Section 106 of Transfer of Property Act before expiry of the lease period or without taking a specific plea that the petitioner violated Clause 13 of the lease deed.

30 Section 106 of Transfer of Property Act deals with issuance of quit notice. A plain reading of Section 106 T.P.Act clearly shows that the landlord is entitled to issue a notice under Section 106 of the T.P.Act to terminate the tenancy. There is no bar for issuance of a notice. A perusal of Section 106 in juxtaposition with Section 111 (h) of Transfer of Property Act indicates that a landlord is entitled to issue a quit notice even prior to the expiry of the lease period if the exigency so warrants. The decision relied upon by the learned counsel for the petitioner in *Calcutta Credit Corporation* case (6 supra) is no way helpful to the case of the petitioner. The facts of the case on hand are entirely different to the facts of the case cited above.

31 The learned counsel for the respondents strenuously submitted that the finding of the trial Court that Clause 15 of the lease deed enjoins the respondents to file the suit. On the other hand, the learned counsel for the petitioner submitted that the trial Court ought to have considered Clause 15 of the lease deed in the light of Clauses 13 and 14 and allowed the petition.

32 In order to appreciate the rival contentions, it is not out of place to extract Clauses 13 to 15 of the lease deed which read as hereunder:

13. If the lessee commits breach of any terms, stipulations or conditions of this Lease Agreement or fails to pay rent for any 3 months, then notwithstanding the period of tenancy, the Lessors shall be entitled with due notice of termination of tenancy, to re-enter upon and resume possession of the Schedule Mulgi and this agreement shall cease and stand terminated.

14. The lease period may be extended by mutual consent after the expiry of the said term of 25 years. The Lessors shall not seek eviction up to 25 years excepting under the circumstances for breach of this agreement.

15. In case of vacation of the premises on or before the expiry date of the agreement or terminating of the tenancy, either of the parties liable to give three months' notice in advance.

33 Clause 13 enables the respondents to file a petition for eviction of the petitioner from the petition schedule premises, notwithstanding the period of tenancy, in the following circumstances:

- i. breach of any terms, stipulations or conditions of the Lease deed by the petitioner, and
- ii. If the petitioner fails to pay rent for a period of three months.

34 Clause 14 deals with extension of lease period by mutual consent after expiry of the lease period. This clause has no relevancy for disposal of this Civil Revision Petition.

35 The learned counsel for the petitioner submitted that the petitioner alone can terminate the lease by issuing three months prior notice taking aid of Clause 15 of the lease deed.

36 If the submission of the learned counsel for the petitioner is accepted, the respondents have no right whatsoever to file a suit for eviction before the expiry of lease period, unless the petitioner violates the conditions of the lease deed or commits default in payment of rent for three months as stipulated in Clause 13 of the lease deed. To put it in a different way, Clause 15 is subservient to Clause 13 of the lease deed. In order to ascertain the underlying object of the lease deed one has to read all the clauses harmoniously. One clause cannot be read in isolation of other clauses. Some times, one clause of the deed has to be read in juxtaposition with the other clauses so as to ascertain the intention of the parties to the deed. Whether a particular clause is

an independent one or relies on other clause of the deed depends on facts and circumstances of each case.

37 A perusal of Clause 15 of the lease deed at a glance demonstrates that it consists of two parts. First part deals with rights of the petitioner/tenant to vacate the suit schedule property before expiry of the lease period and the second part deals with termination of tenancy by the landlords/respondents. If either of the parties intend to terminate the lease, issuance of three months prior notice is mandatory. The term '*on or before expiry of the date of the agreement*' as deployed in Clause 15 itself prima facie indicates that either of the parties to the deed is entitled to terminate the lease even without pressing into service Clause 13. If the submission of the learned counsel for the petitioner is accepted, the petitioner alone is entitled to take advantage of Clause 15. When the petitioner is entitled to terminate the contract before expiry of the lease period, without assigning any reasons, why not the landlord is entitled to terminate the lease deed taking aid of Clause 15? The rights and obligations flow from Clause 15 equally apply to both parties. A party to the lease deed cannot interpret a particular clause in such a way to claim rights by him alone thereby preventing other party under any circumstances to exercise such right. Adducing of evidence by both parties is inevitable in order to ascertain the intention of the parties to the deed for deploying Clause 15 in the lease deed. With what intention the parties to the lease deed have used these words has to be considered at the time of full fledged trial only. The devil does not know the human mind. The intention of the parties to

the lease deed can be gathered basing on the facts pleaded and proved. If this court expresses any opinion on Clause 15, certainly it would cause prejudice to any one of the parties to the proceedings. Therefore, this Court is consciously restraining itself to express any opinion on Clause 15 of the lease deed in view of the settled principles of law. Whether Clause 15 is subservient to clause 13 or clause 15 is an independent clause *de hors* Clause 13 is a debatable issue, which requires a full fledged trial. Clause 15 *prima facie* enjoins the respondents to file a suit. I am fully agreeing with the findings recorded by the trial Court that Clause 15 gives rise to a cause of action for filing of the suit. Apart from that, the other facts pleaded in the plaint, *prima facie*, accrues cause of action in favour of the respondents.

38 There is one another interesting aspect, which was not addressed by both parties either wittingly or unwittingly. Though both counsel have not addressed a particular fact knowingly or unknowingly, still it is the duty of the Court to address such vital fact or issue. It is needless to say that the court has to take into consideration the pleadings of both parties so as to render substantial justice.

39 To appreciate the rival contentions, it is apt to extract para No.3 (g) and (h) of the plaint, which read as under:

(g) The plaintiff submit that the Defendant thereafter failed to pay the monthly rents from September 2013 onwards, and the Defendant with dishonest intention sent a Legal Notice dt:17.10.2013, demanding the plaintiffs to name a bank standing in the name of the plaintiffs for depositing the monthly rents and further sent a Demand Draft for Rs.6,084/- bearing No.025349, dt:7.10.2013 Drawn on ICICI Bank M.G. Road Branch, Secunderabad in the name of Ganga Sudarshan & Brothers, wherein the plaintiffs are not having any such bank account on the said names, as such the plaintiffs have returned the said Demand Draft to the Defendant.

(h) Thus in view of the aforesaid reasons, the Plaintiffs got issued Termination Notice dt:11.11.2013 determining the Tenancy of the Defendant immediately after expiry of (3) THREE MONTHS from the date of receipt of Termination Notice and further demanded the Defendant to vacate and deliver the vacant physical possession of All that Plaint Schedule Property, and so also demanded to pay arrears of Rents from September 2013 onwards till the date of termination by cash, without prejudice to Plaintiffs rights as Plaintiffs are not holding any Bank Account under three names jointly.

40 A perusal of the above two paras clearly indicates that the respondents/plaintiffs have taken a plea that the petitioner / defendant committed default in payment of rent for more than three months. It is not out of place to extract hereunder the relevant portion of the cause of action para of the plaint.

“....since September 2013 when the Defendant stopped paying the rents by cash from the month of JULY 2010 onwards when the Defendant committed wilful default in paying monthly rents.....”

41 A perusal of Sub-Paras (g) & (h) of Paragraph No.III in consonance with the above relevant portion of cause of action i.e., para IV of the plaint, clearly indicates that the respondents have taken a specific plea that the petitioner committed wilful default in payment of rent. Clause 13 encompasses in it the above referred paras.

42 The trial Court has not focused its attention to the above referred paras in the plaint. Simply because this aspect was not considered by the trial Court and not addressed by the counsel before this court that itself would not compel this court to close its eyes and pass orders mechanically without applying mind.

43 As observed earlier, each fact gives rise to a cause of action. Taking of specific plea of non-payment of rent by the petitioner for a period of three months eventually accrues a right in favour of the respondents to file a suit. Accruing right in favour of the plaintiff

is the genesis of cause of action. In view of the principle enunciated in **C.Natrajan** (7 supra), **Kamala** (8 supra) and **P.V. Guru Raj Reddy** (9 supra) the court has to take into consideration the facts pleaded in the plaint only in order to ascertain whether there is a cause of action to file the suit.

44 This Court has to consider the scope of Order VII Rule 11 (a) & (d) in touch stone with the facts pleaded in the plaint only. If there is no pleading in the plaint, coupled with absence of specific finding by the trial Court, it certainly would preclude this court to express any opinion on such aspects. On *contra*, if there is a pleading in the plaint that itself legally enjoins the court to address such factual aspect even at the stage of revision notwithstanding recording of a specific finding by the trial Court and not addressing of that aspect by the learned counsel. The facts pleaded in the plaint *prima facie* reveals a cause of action in favour of the plaintiff to file the suit. I am fully agreeing with the finding recoded by the trial Court so far as Clause 15 of the lease deed is concerned.

45 Having regard to the facts and circumstances of the case and in the light of the foregoing discussion, I have no hesitation to hold that the petitioner miserably failed to establish that there is no cause of action in favour of the respondents to file the suit for eviction. The petitioner equally failed to establish that the suit is barred by any law for the time being in force. The petitioner failed to establish that the facts of the case on hand fall within the ambit of Clauses (a) & (d) of Rule 11 of Order VII CPC.

46 This Court can exercise jurisdiction under Article 227 of the Constitution of India if there is an error manifest on the face of the impugned order. From a careful scrutiny of the impugned order as well as the material available on record, this court is of the considered view that there is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

47 In the result, the Civil Revision Petition is devoid of merit and is accordingly dismissed. No order as to costs. Consequently miscellaneous petitions if any pending in this Civil Revision Petition shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 20th August, 2018

L.R. Copy be marked: **Yes** / **No**

Kvsn

